

DYNAVAX TECHNOLOGIES CORP

Form S-3/A

October 10, 2013

Table of Contents

As filed with the Securities and Exchange Commission on October 10, 2013

Registration No. 333-191610

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**AMENDMENT NO. 1**  
**TO**  
**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**DYNAVAX TECHNOLOGIES CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**33-0728374**  
(I.R.S. Employer  
Identification No.)

**2929 Seventh Street, Suite 100**

**Berkeley, CA 94710-2753**

**(510) 848-5100**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Michael S. Ostrach**

**Vice President, Chief Business Officer and General Counsel**

**Dynavax Technologies Corporation**

**2929 Seventh Street, Suite 100**

**Berkeley, CA 94710-2753**

**(510) 848-5100**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Robert L. Jones, Esq.**

**Glen Sato, Esq.**

**Cooley LLP**

**3175 Hanover Street**

**Palo Alto, CA 94304-1130**

**(650) 843-5000**

**Approximate date of commencement of proposed sale to the public:**

**From time to time after the effective date of this registration statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box:

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box:

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities To Be Registered	Amount to be Registered(1)	Proposed	
		Maximum Aggregate Offering Price(2)	Amount of Registration Fee (3)(4)
Common Stock, \$0.001 par value per share	(1)	(2)	
Preferred Stock, \$0.001 par value per share	(1)	(2)	

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Debt Securities	(1)	(2)	
Warrants	(1)	(2)	
Total		\$150,000,000	\$19,320.00

- (1) There are being registered hereunder such indeterminate number of shares of common stock and preferred stock, such indeterminate principal amount of debt securities, such indeterminate number of warrants to purchase common stock, preferred stock or debt securities, as shall have an aggregate initial offering price not to exceed \$150,000,000. If any debt securities are issued at an original issue discount, then the offering price of such debt securities shall be in such greater principal amount as shall result in an aggregate offering price not to exceed \$150,000,000, less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or together with any of the other securities registered hereunder. The securities registered hereunder also include such indeterminate number of shares of common stock and preferred stock and amount of debt securities as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to antidilution provisions of any such securities. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended, the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (2) The proposed maximum aggregate offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of security pursuant to General Instruction II.D of Form S-3 under the Securities Act of 1933, as amended.
- (3) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
- (4) Fee previously paid.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

**Table of Contents**

*The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.*

**Subject to Completion, Dated October 10, 2013**

**PROSPECTUS**

**\$150,000,000**

**Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

From time to time, we may offer, issue and sell up to \$150,000,000 of any combination of the securities described in this prospectus, either individually or in combination with other securities, at prices and on terms described in one or more supplements to this prospectus. We may also offer securities as may be issuable upon conversion, redemption, repurchase, exchange or exercise of any securities registered hereunder, including any applicable antidilution provisions.

We will provide the specific terms of these offerings and securities in one or more supplements to this prospectus. We also may authorize one or more free writing prospectuses to be provided to you in connection with these offerings. The prospectus supplement and any related free writing prospectus also may add, update or change information contained in this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus, as well as any documents incorporated by reference, before buying any of the securities being offered.

Our common stock is listed on the NASDAQ Capital Market under the symbol DVAX. The last reported sale price of our common stock on October 4, 2013 was \$1.28 per share. The applicable prospectus supplement will contain information, where applicable, as to any other listing, if any, on the NASDAQ Capital Market or any securities market or other exchange of the securities covered by the applicable prospectus supplement.

*Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading Risk Factors on page 4 of this prospectus and as updated in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus.*

**This prospectus may not be used to consummate a sale of any securities unless accompanied by a prospectus supplement.**

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The securities may be sold directly by us to investors, through agents designated from time to time or to or through underwriters or dealers, on a continuous or delayed basis. For additional information on the methods of sale, you should refer to the section titled "Plan of Distribution" in this prospectus. If any agents or underwriters are involved in the sale of any securities with respect to which this prospectus is being delivered, the names of such agents or underwriters and any applicable fees, commissions, discounts and over-allotment options will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds that we expect to receive from such sale will also be set forth in a prospectus supplement.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2013.**

**Table of Contents**

**TABLE OF CONTENTS**

<u>ABOUT THIS PROSPECTUS</u>	i
<u>PROSPECTUS SUMMARY</u>	1
<u>RISK FACTORS</u>	4
<u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	4
<u>USE OF PROCEEDS</u>	5
<u>RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF COMBINED FIXED CHARGES AND PREFERRED STOCK</u>	
<u>DIVIDENDS TO EARNINGS</u>	5
<u>DESCRIPTION OF CAPITAL STOCK</u>	5
<u>DESCRIPTION OF DEBT SECURITIES</u>	8
<u>DESCRIPTION OF WARRANTS</u>	14
<u>LEGAL OWNERSHIP OF SECURITIES</u>	17
<u>PLAN OF DISTRIBUTION</u>	20
<u>LEGAL MATTERS</u>	21
<u>EXPERTS</u>	21
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	21
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	22

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. Under this shelf registration statement, we may offer and sell shares of our common stock and preferred stock, various series of debt securities and/or warrants to purchase any of such securities, either individually or in combination with other securities, in one or more offerings, up to a total dollar amount of \$150,000,000. This prospectus provides you with a general description of the securities that may be offered.

Each time we offer securities under this prospectus, a prospectus supplement that will contain more specific information about the terms of that offering will be provided. We also may authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. The prospectus supplement and any related free writing prospectus that we may authorize to be provided to you also may add, update or change any of the information contained in this prospectus or in the documents that we have incorporated by reference into this prospectus. We urge you to read carefully this prospectus, any applicable prospectus supplement and any free writing prospectuses we have authorized for use in connection with a specific offering, together with the information incorporated herein by reference as described under the heading "Incorporation of Certain Information by Reference," before buying any of the securities being offered.

**This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.**

You should rely only on the information that we have provided or incorporated by reference in this prospectus, any applicable prospectus supplement and any related free writing prospectus that we may authorize to be provided to you. We have not authorized any other person to provide you with different or additional information. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus, any applicable prospectus supplement or any related free writing prospectus that we may authorize to be provided to you. You must not rely on any unauthorized information or representation. This prospectus, any applicable supplement to this prospectus or any related free writing prospectus do not constitute an

**Table of Contents**

offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus, any applicable supplement to this prospectus or any related free writing prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction.

You should assume that the information appearing in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any related free writing prospectus, or any sale of a security. Our business, financial condition, results of operations and prospectus may have changed since those dates.

This prospectus contains and incorporates by reference market data, industry statistics and other data that have been obtained from, or compiled from, information made available by third parties. We have not independently verified their data. This prospectus and the information incorporated herein by reference includes trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus, any applicable prospectus supplement or any related free writing prospectus are the property of their respective owners.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed, or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the section entitled Where You Can Find Additional Information.



## **Table of Contents**

### **PROSPECTUS SUMMARY**

*This summary highlights selected information contained elsewhere in this prospectus or incorporated by reference in this prospectus, and does not contain all of the information that you need to consider in making your investment decision. You should carefully read the entire prospectus, the applicable prospectus supplement and any related free writing prospectus, including the risks of investing in our securities discussed under the heading Risk Factors contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus. You also should carefully read the information incorporated by reference into this prospectus, including our financial statements, and the exhibits to the registration statement of which this prospectus is a part. Unless the context requires otherwise, references in this prospectus to Dynavax, the Company, we, us and our refer to Dynavax Technologies Corporation.*

### **About Dynavax Technologies Corporation**

Dynavax Technologies Corporation, a clinical-stage biopharmaceutical company, discovers and develops novel products to prevent and treat infectious and inflammatory diseases and cancer. Our lead product candidate is HEPLISAV™, a Phase 3 investigational adult hepatitis B vaccine.

In addition to HEPLISAV, our pipeline comprises clinical-stage product candidates including an autoimmune program partnered with GlaxoSmithKline, an asthma program partnered with AstraZeneca and a cancer immunotherapy program as well as a preclinical development program utilizing nanoparticle adjuvant technology. We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations in developing therapies to prevent or treat infectious and inflammatory diseases and cancer.

We were incorporated in California in August 1996 under the name Double Helix Corporation, and we changed our name to Dynavax Technologies Corporation in September 1996. We reincorporated in Delaware in 2001. Our principal offices are located at 2929 Seventh Street, Suite 100, Berkeley, California 94710-2753. Our telephone number is (510) 848-5100. Our Internet address is [www.dynavax.com](http://www.dynavax.com). We do not incorporate the information on our website into this prospectus, and you should not consider it part of this prospectus.

Dynavax Technologies and HEPLISAV are registered trademarks of the Company. Each of the other trademarks, trade names or service marks appearing in this prospectus belongs to its respective holder. For further information regarding us and our financial information, you should refer to our recent filings with the SEC. See [Where You Can Find More Information](#).

### **The Securities That May Be Offered**

We may offer shares of our common stock and preferred stock, various series of debt securities and/or warrants to purchase any of such securities, either individually or in combination with other securities, with a total value of up to \$150,000,000 from time to time under this prospectus, together with the applicable prospectus supplement and any related free writing prospectus, at prices and on terms to be determined by market conditions at the time of any offering. This prospectus provides you with a general description of the securities we may offer. Each time we offer a type or series of securities under this prospectus, a prospectus supplement that will describe the specific amounts, prices and other important terms of the securities will be provided, including, to the extent applicable:

designation or classification;

aggregate principal amount or aggregate offering price;

maturity date, if applicable;

original issue discount, if any;

rates and times of payment of interest or dividends, if any;

redemption, conversion, exercise, exchange or sinking fund terms, if any;

**Table of Contents**

ranking;

restrictive covenants, if any;

voting or other rights, if any;

conversion or exchange prices or rates, if any, and, if applicable, any provisions for changes to or adjustments in the conversion or exchange prices or rates and in the securities or other property receivable upon conversion or exchange; and

material or special U.S. federal income tax considerations, if any.

The applicable prospectus supplement and any related free writing prospectus that we may authorize to be provided to you may also add, update or change any of the information contained in this prospectus or in the documents we have incorporated by reference. However, no prospectus supplement or free writing prospectus will offer a security that is not registered and described in this prospectus at the time of the effectiveness of the registration statement of which this prospectus is a part.

**THIS PROSPECTUS MAY NOT BE USED TO CONSUMMATE A SALE OF SECURITIES UNLESS IT IS  
ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.**

We may offer and sell these securities to or through one or more agents, underwriters, dealers or other third parties. We, and our agents or underwriters, reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities to or through agents or underwriters, we will include in the applicable prospectus supplement:

the names of those agents or underwriters;

applicable fees, discounts and commissions to be paid to them;

details regarding over-allotment options, if any; and

the net proceeds to us.

*Common stock.* We may issue shares of our common stock from time to time. In this prospectus, we have summarized certain general features of our common stock under *Description of Capital Stock Common Stock*. We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to any common stock being offered.

*Preferred Stock.* We may issue shares of our preferred stock from time to time, in one or more series. Under our certificate of incorporation, our board of directors has the authority, without further action by the stockholders (unless such stockholder action is required by applicable law or the rules of any stock exchange or market on which our securities are then traded), to designate and issue up to 5,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the designations, voting powers, preferences and rights of the shares of each wholly unissued series, and any qualifications, limitations or restrictions thereof, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding. We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of the certificate of designation that describes the terms of the series of preferred stock that we are offering before the issuance of the related series of preferred stock. In this prospectus, we have summarized certain general features of the preferred stock under *Description of Capital Stock Preferred Stock*. We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to the series of preferred stock being offered, as well as the complete certificate of designation

that contains the terms of the applicable series of preferred stock.

**Table of Contents**

*Debt Securities.* We may issue debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. The senior debt securities will rank equally with any other unsecured and unsubordinated debt. The subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner described in the instrument governing the debt, to all of our senior indebtedness. Convertible debt securities will be convertible into or exchangeable for our common stock or our other securities. Conversion may be mandatory or at the holder's option and would be at prescribed conversion rates.

The debt securities will be issued under an indenture that we will enter into with a national banking association or other eligible party, as trustee. In this prospectus, we have summarized certain general features of the debt securities under Description of Debt Securities. We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to the series of debt securities being offered, as well as the complete indenture and any supplemental indentures that contain the terms of the debt securities. We have filed the form of indenture as an exhibit to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of the debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports that we file with the SEC.

*Warrants.* We may issue warrants for the purchase of common stock, preferred stock and/or debt securities in one or more series. We may issue warrants independently or in combination with common stock, preferred stock and/or debt securities. In this prospectus, we have summarized certain general features of the warrants under Description of Warrants. We urge you, however, to read the applicable prospectus supplement (and any related free writing prospectus that we may authorize to be provided to you) related to the particular series of warrants being offered, as well as the form of warrant and/or the warrant agreement and warrant certificate, as applicable, that contain the terms of the warrants. We have filed the forms of the warrant agreements and forms of warrant certificates containing the terms of the warrants that we may offer as exhibits to the registration statement of which this prospectus is a part. We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant and/or the warrant agreement and warrant certificate, as applicable, that contain the terms of the particular series of warrants we are offering, and any supplemental agreements, before the issuance of such warrants.

Warrants may be issued under a warrant agreement that we enter into with a warrant agent. We will indicate the name and address of the warrant agent, if any, in the applicable prospectus supplement relating to a particular series of warrants.

**Table of Contents**

**RISK FACTORS**

Investing in our securities involves a high degree of risk. You should carefully review the risks and uncertainties described under the heading "Risk Factors" contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus, before deciding whether to purchase any of the securities being registered pursuant to the registration statement of which this prospectus is a part. The risks described in these documents are not the only ones we face, but those that we consider to be material. Each of the risk factors could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our securities, and the occurrence of any of these risks might cause you to lose all or part of your investment. Moreover, the risks described are not the only ones that we face. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Please also read carefully the section below titled "Special Note Regarding Forward-Looking Statements."

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the documents incorporated by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, which we refer to as the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. Forward-looking statements include statements about:

our business strategy and our expectations with respect to the implementation of our business strategy;

our expectations with respect to the potential therapeutic value of our product candidates;

our expectations with respect to regulatory submissions and approvals and our clinical trials;

our future research and development and intellectual property position;

our product development efforts;

our ability to commercialize our product candidates;

the timing of the introduction of our products;

the effect of Generally Accepted Accounting Principles (GAAP) accounting pronouncements;

the potential for entry into collaborative arrangements;

uncertainty regarding our future operating results and our profitability; and

our estimates regarding our capital requirements, our need for additional financing and anticipated sources of funds. In some cases, you can identify forward-looking statements by terms such as may, will, should, expect, plan, anticipate, believe, estimate, predict, future, intend, or certain or the negative of these terms and similar expressions intended to identify forward-looking statements. Discussions containing these forward-looking statements may be found, among other places, in the Business and Management's Discussion and Analysis of Financial Condition and Results of Operations sections incorporated by reference from our most recent Annual Report on Form 10-K and from our most recent Quarterly Reports on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Forward-looking statements reflect our current views with respect to future events, are based on assumptions and are subject to risks, uncertainties and other important factors. We discuss many of these risks, uncertainties and other important factors in greater detail under the heading Risk Factors contained in our most recent annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Given these risks, uncertainties and other important factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date such forward-looking statements are made. You should carefully read this prospectus, any applicable supplement to this prospectus and any related free writing prospectus, together with the information incorporated herein by reference as described under the section entitled Where You Can Find Additional Information, completely and with the understanding that our actual future results may be materially different from what we expect. We can give no assurances that any of the events anticipated by the forward-looking statements will occur or, if any of them do, what impact they will have on our results of operations and financial condition.

**Table of Contents**

Except as required by law, we assume no obligation to update any forward-looking statements publicly, or to update the reasons why actual results could differ materially from those anticipated in any forward-looking statements, even if new information becomes available in the future.

**USE OF PROCEEDS**

Except as described in any prospectus supplement or in any related free writing prospectus that we may authorize to be provided to you, we currently intend to use the net proceeds from the sale of the securities offered by us hereunder for research, development and manufacturing candidates and other general corporate purposes. Pending these uses, we expect to invest the net proceeds in short-term, interest-bearing securities.

**RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS TO EARNINGS**

Our earnings were insufficient to cover fixed charges and combined fixed charges and preferred stock dividends for each of the periods presented. Accordingly, the following table sets forth the deficiency of earnings to fixed charges for each of the periods presented. Because of the deficiency, ratio information is not applicable. Amounts shown are in thousands.

	<b>For the Six Months Ended June 30, 2013</b>	<b>2012</b>	<b>2011</b>	<b>Year Ended December 31,</b>			<b>2008</b>
				<b>2010</b>	<b>2009</b>		
Deficiency of earnings available to cover fixed charges	\$ (37,989)	\$ (69,949)	\$ (48,597)	\$ (57,308)	\$ (15,127)		\$ (26,536)
Deficiency of earnings available to cover fixed charges and preferred stock dividends	\$ (37,989)	\$ (69,949)	\$ (48,597)	\$ (57,308)	\$ (15,127)		\$ (26,536)

For purposes of computing the deficiency of earnings available to cover fixed charges and combined fixed charges and preferred stock dividends, fixed charges represent interest expense on indebtedness and the portion of operating lease rental expense that is considered by us to be representative of interest. Deficiency of earnings consists of loss from operations before income taxes and fixed charges.

We do not have any shares of preferred stock outstanding as of June 30, 2013.

**DESCRIPTION OF CAPITAL STOCK****General**

Our authorized capital stock consists of 350,000,000 shares of common stock, \$0.001 par value per share, and 5,000,000 shares of preferred stock, \$0.001 par value per share. As of October 4, 2013, there were 183,055,110 shares of our common stock outstanding and no shares of preferred stock outstanding.

The following summary description of our capital stock is based on the provisions of our amended and restated certificate of incorporation, or certificate of incorporation, and amended and restated bylaws, or bylaws, and the applicable provisions of the Delaware General Corporation Law. This information is qualified entirely by reference to the applicable provisions of our certificate of incorporation, bylaws and the Delaware General Corporation Law. For information on how to obtain copies of our amended and restated certificate of incorporation and bylaws, which are exhibits to the registration statement of which this prospectus is a part, see the section entitled "Where You Can Find Additional Information" in this prospectus.

**Common Stock**

*Voting Rights.* Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our certificate of incorporation and bylaws do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.



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*Dividends.* Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

## **Table of Contents**

*Liquidation.* In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

*Rights and Preferences.* Holders of common stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate in the future.

*Fully Paid and Nonassessable.* All of our outstanding shares of common stock are, and the shares of common stock to be issued in this offering, if any, will be, fully paid and nonassessable.

## **Preferred Stock**

Pursuant to our certificate of incorporation, our board of directors has the authority, without further action by the stockholders (unless such stockholder action is required by applicable law or the rules of any stock exchange or market on which our securities are then traded), to designate and issue up to 5,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the designations, voting powers, preferences and rights of the shares of each wholly unissued series, and any qualifications, limitations or restrictions thereof, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

## **Rights Agreement**

On November 5, 2008, we entered into a Rights Agreement with Mellon Investor Services LLC (now Computershare Limited) under which one preferred share purchase right was distributed on November 17, 2008 for each share of common stock held on that date. No certificates for the rights will be issued unless a person or group, subject to certain exceptions, acquires or makes a tender offer to purchase 20% or more of our common stock. Each right entitles the registered stockholder to purchase from us, upon such event, one one-hundredth of a share of Series A Junior Participating Preferred Stock, par value \$0.001 per share, at a price of \$6.00 per one one-hundredth of a preferred share, subject to adjustment. Each preferred share has designations and powers, preferences and rights, and the qualifications, limitations and restrictions designed to make it the economic equivalent of a share of common stock. The rights expire on November 18, 2018, and are subject to redemption at a price of \$0.001 in specified circumstances.

We will fix the designations, voting powers, preferences and rights of the preferred stock of each series, as well as the qualifications, limitations or restrictions thereof, in a certificate of designation relating to that series. We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of any certificate of designation that describes the terms of the series of preferred stock we are offering before the issuance of that series of preferred stock. This description will include:

the title and stated value;

the number of shares we are offering;

the liquidation preference per share;

the purchase price;

the dividend rate, period and payment date and method of calculation for dividends;

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whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;

the procedures for any auction and remarketing, if any;

the provisions for a sinking fund, if any;

the provisions for redemption or repurchase, if applicable, and any restrictions on our ability to exercise those redemption and repurchase rights;

any listing of the preferred stock on any securities exchange or market;

whether the preferred stock will be convertible into our common stock, and, if applicable, the conversion price, or how it will be calculated, and the conversion period;

whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange price, or how it will be calculated, and the exchange period;

voting rights, if any, of the preferred stock;

preemptive rights, if any;

restrictions on transfer, sale or other assignment, if any;

whether interests in the preferred stock will be represented by depositary shares;

a discussion of any material U.S. federal income tax considerations applicable to the preferred stock;

the relative ranking and preferences of the preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs;

any limitations on the issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the preferred stock.

## **Table of Contents**

The General Corporation Law of the State of Delaware, our state of incorporation, provides that the holders of preferred stock will have the right to vote separately as a class (or, in some cases, as a series) on an amendment to our certificate of incorporation if the amendment would change the par value or, unless the certificate of incorporation provided otherwise, the number of authorized shares of the class or change the powers, preferences or special rights of the class or series so as to adversely affect the class or series, as the case may be. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

Our board of directors may authorize the issuance of preferred stock with voting, exchange or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. Preferred stock could be issued quickly with terms designed to delay or prevent a change in control of our company or make removal of management more difficult. Additionally, the issuance of preferred stock may have the effect of decreasing the market price of our common stock.

## **Warrants**

As of October 4, 2013, warrants to purchase an aggregate of 12,463,973 shares of our common stock were issued and outstanding. The warrants contain provisions for the adjustment of the exercise price and the aggregate number of shares issuable upon the exercise of the warrants in the event of stock dividends, stock splits, reorganizations and reclassifications and consolidations.

## **Registration Rights**

We agreed to provide certain registration rights to Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited, Deerfield Partners, L.P. and Deerfield International Limited, collectively known as Deerfield, as well as Deerfield's permitted transferees, pursuant to the terms of a Registration Rights Agreement dated July 18, 2007. In accordance with such agreement, we have filed registration statements with the SEC covering the resale of shares of our common stock issuable upon the exercise of warrants we issued to Deerfield and its permitted transferees.

We also agreed to provide certain registration rights to entities affiliated with Symphony Capital Partners, L.P. and Symphony Dynamo Holdings LLC, collectively known as Symphony, pursuant to the terms of an Amended and Restated Registration Rights Agreement dated November 9, 2009. In accordance with such agreement, we have filed a registration statement with the SEC covering the resale of shares of our common stock and the resale of shares of our common stock issuable upon the exercise of warrants we issued to Symphony and their affiliates.

## **Anti-Takeover Effects of Provisions of Our Amended and Restated Certificate of Incorporation and Bylaws**

Our certificate of incorporation and bylaws provide for our board of directors to be divided into three classes, with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Because our stockholders do not have cumulative voting rights, our stockholders representing a majority of the shares of common stock outstanding will be able to elect all of our directors due to be elected at each annual meeting of our stockholders. In addition, our certificate of incorporation provides that vacancies on our board of directors resulting from death, resignation, disqualification, removal or other causes may be filled by the affirmative vote of a majority of the remaining directors in office, even if less than a quorum, and that newly created directorships shall be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum, unless our board of directors determines otherwise. Our bylaws provide that all stockholder action must be effected at a duly called meeting of stockholders and not by a consent in writing, and that only the chairman of our board, our president, our secretary or a majority of the authorized number of directors may call a special meeting of stockholders. Our certificate of incorporation requires a 66-2/3% stockholder vote for the amendment, repeal or modification of certain provisions of our certificate of incorporation relating to, among other things, the classification of our board of directors and filling of vacancies on our board of directors. Our certificate of incorporation and bylaws also require a 66-2/3% stockholder vote for the stockholders to adopt, amend or repeal certain provisions of our bylaws relating to stockholder proposals at annual meetings, director nominees and the number and term of office of directors.

The combination of the classification of our board of directors, the lack of cumulative voting and the 66-2/3% stockholder voting requirements will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to effect a change of our control.

These provisions may have the effect of deterring hostile takeovers or delaying changes in our control or in our management. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and in the policies they implement, and

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to discourage certain types of transactions that may involve an actual or threatened change of our control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts.

**Table of Contents**

**Section 203 of the General Corporation Law of the State of Delaware**

We are subject to Section 203 of the General Corporation Law of the State of Delaware, or Section 203, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, lease, transfer, pledge or other disposition of 10% or more of the assets of the corporation to or with the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or

			the receipt by the interested stockholder of the benefit of any loss, advances, guar; -	<u>      -      </u>	<u>      723      </u>
Total	<u>\$2,752</u>	<u>\$ 2,505</u>	<u>\$ 5,026</u>	<u>\$ 8,463</u>	

The settlement loss for the twenty-six weeks ended July 30, 2006 resulted from the departure of Mark Weber, the Company's former Chief Executive Officer.

The special termination benefits for the twenty-six weeks ended July 30, 2006 resulted from the closure of the Company's manufacturing facility located in Ozark, Alabama.

Net benefit cost related to the Company's CAP Plan was recognized as follows:

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>	<u>8/5/07</u>	<u>7/30/06</u>
Service cost, including plan expenses	\$ 46	\$ 45	\$ 92	\$ 90
Interest cost	<u>251</u>	<u>242</u>	<u>502</u>	<u>484</u>
Total	<u>\$297</u>	<u>\$287</u>	<u>\$594</u>	<u>\$574</u>

Net benefit cost related to the Company's postretirement plan was recognized as follows:

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>	<u>8/5/07</u>	<u>7/30/06</u>
Interest cost	\$ 350	\$ 316	\$ 698	\$ 719
Amortization of net loss	99	116	194	208
Amortization of prior service benefit	(205)	(265)	(409)	(376)
Special termination benefits	<u>-</u>	<u>-</u>	<u>-</u>	<u>242</u>

Total	<u>\$ 244</u>	<u>\$ 167</u>	<u>\$ 483</u>	<u>\$ 793</u>
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## 6. INCOME TAXES

In the first quarter of 2007, the Company adopted the provisions of Financial Accounting Standards Board ( FASB ) Interpretation No. 48, Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109 ( FIN 48 ). As a result of the implementation of FIN 48, the Company increased its liability for unrecognized tax benefits by \$4,884, inclusive of interest and penalties, which was accounted for as a reduction to the Company's first quarter of 2007 beginning balance of retained earnings. In addition, the Company also reclassified \$48,955 from taxes payable and deferred tax liabilities to a liability for unrecognized tax benefits. The total amount of unrecognized tax benefits as of the beginning of 2007 was \$53,839.

Upon adoption of FIN 48, the Company elected to classify any interest and penalties related to unrecognized tax benefits in the Company's income tax provision. Interest and penalties recognized in the Company's Condensed Consolidated Income Statement for the twenty-six weeks ended August 5, 2007 totaled \$1,310. Interest and penalties accrued in the Company's Condensed Consolidated Balance Sheet as of August 5, 2007 totaled \$3,289.

During the twenty-six weeks ended August 5, 2007, the Company's liability for unrecognized tax benefits increased by \$7,997 to \$61,836. Such increase related principally to tax positions taken during the current year. If the total amount of unrecognized tax benefits was recognized, \$59,894 of this amount would reduce the effective tax rate and \$1,942 of this amount would reduce goodwill.



The Company files income tax returns in the United States and in various foreign, state and local jurisdictions. With few exceptions, either examinations have been completed by tax authorities or the statute of limitations has expired for United States Federal, foreign, state and local income tax returns filed by the Company for years through 2002.

While it is expected that the amount of unrecognized tax benefits will increase in the next 12 months, the Company does not expect this change to have a significant impact on the Company's consolidated results of operations or financial position.

## 7. COMPREHENSIVE INCOME

Comprehensive income was as follows:

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>	<u>8/5/07</u>	<u>7/30/06</u>
Net income	\$39,100	\$28,953	\$92,106	\$77,698
Reclassification of pension and postretirement costs to net income, net of taxes	802	-	1,479	-
Foreign currency translation adjustments, net of taxes	<u>-</u>	<u>3</u>	<u>-</u>	<u>30</u>
Comprehensive income	<u>\$39,902</u>	<u>\$28,956</u>	<u>\$93,585</u>	<u>\$77,728</u>

The income tax effect related to the reclassification of pension and postretirement costs to net income was an expense of \$491 and \$906 for the thirteen and twenty-six weeks ended August 5, 2007, respectively. The income tax effect related to foreign currency translation adjustments was an expense of \$2 and \$19 for the thirteen and twenty-six weeks ended July 30, 2006, respectively.

## 8. STOCK-BASED COMPENSATION

At the Company's Annual Meeting of Stockholders held in June 2006, the Company's 2006 Stock Incentive Plan (the 2006 Plan) was approved. The 2006 Plan replaced the Company's existing 1997, 2000 and 2003 Stock Option Plans. The 1997, 2000 and 2003 Stock Option Plans terminated on the date of such approval, other than with respect to outstanding options under those plans, which will continue to be governed by the respective plan under which they were granted. Shares issued as a result of stock option exercises are primarily funded with the issuance of new shares of the Company's common stock.

### 2006 Stock Incentive Plan

Under the 2006 Plan, the Company may grant the following types of incentive awards: (i) non-qualified stock options ( NQs ); (ii) incentive stock options ( ISOs ); (iii) stock appreciation rights; (iv) restricted stock; (v) restricted stock units ( RSUs ); (vi) performance shares; and (vii) other stock-based awards. Each award granted under the 2006 Plan is evidenced by an award agreement that specifies, as applicable, the exercise price, the term of the award, the periods of restriction, the number of shares to which the award pertains, applicable performance period(s) and performance measure(s), and such other terms and conditions as the plan committee determines.

Through August 5, 2007, the Company has granted only service-based NQs and RSUs, as well as performance shares under the 2006 Plan. The per share exercise price of options granted under the 2006 Plan cannot be less than the market price of the common stock on the date of grant (the date prior to the date of grant for awards granted prior to September 21, 2006). The maximum term of options granted under the 2006 Plan is ten years. The award agreements for options and RSUs granted under the 2006 Plan generally provide for accelerated vesting upon the participant's retirement (as defined in the 2006 Plan).

### 1997, 2000 and 2003 Stock Option Plans

Under its 1997, 2000 and 2003 Stock Option Plans, the Company currently has service-based NQs and ISOs outstanding. Options were granted with an exercise price equal to the market price of the common stock on the date immediately preceding the date of grant. NQs and ISOs granted have a ten-year term. Options are generally cumulatively exercisable in either three equal installments commencing three years after the date of grant or in four equal installments commencing one year after the date of grant. The options provide for accelerated vesting upon the optionee's retirement (as defined in the 1997, 2000 and 2003 Stock Option Plans).

The Company estimates the fair value of stock options granted at the date of grant using the Black-Scholes model. The estimated fair value of the options, net of estimated forfeitures, is amortized to expense on a straight-line basis over the options vesting period.

The following summarizes the assumptions used to estimate the fair value of stock options granted during the twenty-six weeks ended August 5, 2007 and July 30, 2006, respectively:

	<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>
Weighted average risk-free interest rate	4.69%	4.73%
Weighted average expected option life	6.3 Years	6.2 Years
Weighted average expected volatility	33.3%	33.3%
Expected annual dividends per share	\$0.15	\$0.15
Weighted average estimated fair value per share of options granted	\$24.08	\$15.34

The Company receives a tax deduction for certain stock-based compensation transactions. For the twenty-six weeks ended August 5, 2007 and July 30, 2006, such tax deductions related only to the exercise of certain stock options. The actual income tax benefit realized from stock option exercises for the twenty-six weeks ended August 5, 2007 and July 30, 2006 was \$6,485 and \$5,321, respectively. Of those amounts, \$5,249 and \$2,415, respectively, were excess tax benefits from stock option exercises. Excess tax benefits arise when the actual tax benefit resulting from a stock option exercise exceeds the tax benefit associated with the grant date fair value of the related stock option. In accordance with FASB Statement No. 123R, Share-Based Payment, the Company reported excess tax benefits as financing cash flows in its Condensed Consolidated Statements of Cash Flows.

Stock option activity for the twenty-six weeks ended August 5, 2007 was as follows:

<u>Options</u>	<u>Weighted Average Price Per Option</u>
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Outstanding at February 4, 2007	3,791	\$25.15
Granted	229	58.71
Exercised	611	19.37
Cancelled	<u>14</u>	<u>26.73</u>
Outstanding at August 5, 2007	<u>3,395</u>	<u>\$28.44</u>
Exercisable at August 5, 2007	<u>1,736</u>	<u>\$20.91</u>

During the twenty-six weeks ended August 5, 2007, the Company granted 157 RSUs at a weighted average fair value of \$56.06 per share. RSUs granted to employees vest in three installments commencing two years after the date of grant. RSUs granted to non-employee directors vest in four equal installments commencing one year after the date of grant. The RSU award agreements provide for accelerated vesting upon the award recipient's retirement (as defined in the 2006 Plan). The fair value of the RSUs is equal to the closing price of the Company's common stock on the date of grant. The fair value of the RSUs, net of estimated forfeitures, is amortized to expense on a straight-line basis over the RSUs' vesting period.

During the twenty-six weeks ended August 5, 2007, the Company issued performance share awards to certain individuals. Certain of the Company's executive officers received performance share awards subject to a performance period of two years. Additionally, the Company's executive officers received performance share awards subject to a performance period of three years. The final number of shares that will be earned, if any, is contingent upon the Company's achievement of a goal based on both earnings growth and improvement in return on equity during the applicable performance cycle. Depending on the level of objectives achieved, up to a total number of 13 shares will be issued for the two-year performance period and up to 69 shares for the three-year performance period. The fair value of the performance shares is equal to the closing price of the Company's common stock on the date of grant, reduced for the present value of any dividends expected to be paid on the Company's common stock during the performance cycle, as the performance shares do not accrue dividends prior to being earned. The Company records expense for performance shares ratably based on such fair value and the Company's current expectations of the probable number of shares that will ultimately be issued.

## 9. ASSET IMPAIRMENTS

During the first quarter of 2007 and the second quarter of 2006, the level of profitability in certain of the Company's retail stores was an impairment indicator which caused the Company to evaluate whether the net book value of the long-lived assets in such stores was recoverable. Based on these evaluations, the Company determined that the long-lived assets in certain of these stores were not recoverable and recorded impairments of \$1,279 in the first quarter of 2007 and \$1,918 in the second quarter of 2006. These determinations were made by comparing each store's expected undiscounted future cash flows to the carrying amount of the long-lived assets. Since the long-lived assets in certain stores were deemed not recoverable, the net book value of the long-lived assets in excess of the fair value was written off. Fair value was estimated based on the net present value of the future cash flows expected from these stores. The impairment charges were included in selling, general and administrative expenses of the Retail Apparel and Related Products segment.

During 2006, the Company closed its manufacturing facility located in Ozark, Alabama, which resulted in the Company recording a long-lived asset impairment of \$988 in the first half of 2006 (of which \$549 was recorded in the first quarter of 2006 and \$439 was recorded in the second quarter of 2006). The impairment charge was included in selling, general and administrative expenses of the Wholesale Dress Furnishings segment.

During 2005, Federated Department Stores, Inc. acquired The May Department Stores Company, and subsequently changed the combined company's name to Macy's, Inc. (Macy's). In connection with the acquisition, Macy's has closed certain of its locations. Since the Company had identifiable long-lived assets consisting of shops within stores (fixtures located in third party customer locations) in certain of the locations that were closed, this was an impairment indicator which caused the Company to evaluate whether the net book value of these long-lived assets was recoverable. In the second quarter of 2006, the Company determined that the long-lived assets in these locations were not recoverable and recorded an impairment of \$116. Since the long-lived assets related to closed locations, there were deemed to be no future cash flows associated with these locations, and therefore a fair value of zero was determined to apply to the long-lived assets in these locations. As such, the impairment recorded was equal to the net book value of the long-lived assets in these locations. This amount was included in selling, general and administrative expenses of the Wholesale Sportswear and Related Products segment.

## 10. SALE OF INVESTMENTS

On January 31, 2006, Warnaco, Inc. (Warnaco) acquired 100% of the shares of the companies that operate the licenses and related wholesale and retail businesses of *Calvin Klein* jeans and accessories in Europe and Asia and the *ck Calvin Klein* bridge line of sportswear and accessories in Europe. The Company's Calvin Klein, Inc. subsidiary is the licensor of the businesses sold and had minority interests in certain of the entities sold. The Company accounted for the investments in these entities under the cost method and, as such, the investments had a carrying amount of \$768 at the time of the sale. During the first half of 2006, the Company received \$32,811 in cash proceeds from the sale of these entities, net of an amount held in escrow and associated fees. The sale resulted in a pre-tax gain of \$32,043 in the first half of 2006 (consisting of a gain of \$31,368 recorded in the first quarter of 2006 and an adjustment to the gain of \$675 recorded in the second quarter of 2006), which is net of related fees, an amount held in escrow and the carrying

value of the investments. The Company's share of the cash proceeds being held in escrow represents security for indemnification of certain potential losses incurred by Warnaco, as well as other adjustments to the purchase price. During the first quarter of 2007, \$3,335 was released to the Company from escrow. The Company recorded this release of escrow as an additional gain. The balance of the Company's share of the amount held in escrow as of August 5, 2007 totaled approximately \$1,500. The Company will be entitled to receive a distribution of its share of any amount remaining in escrow in 2008, and the Company will record the release of any such amount as an additional gain if and when such amount is released to the Company.

## 11. NET INCOME PER COMMON SHARE

The Company computed its basic and diluted net income per common share as follows:

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>	<u>8/5/07</u>	<u>7/30/06</u>
Net income	\$39,100	\$28,953	\$92,106	\$77,698
Less:				
Preferred stock dividends	-	-	-	3,230
Inducement payment and offering costs	<u>-</u>	<u>10,948</u>	<u>-</u>	<u>10,948</u>
Net income available to common stockholders for basic and diluted net income per common share	<u>\$39,100</u>	<u>\$18,005</u>	<u>\$92,106</u>	<u>\$63,520</u>
Weighted average common shares outstanding for basic net income per common share	56,340	53,897	56,134	48,666
Weighted average impact of dilutive securities	1,340	1,062	1,428	1,164
Weighted average impact of dilutive warrant	<u>163</u>	<u>73</u>	<u>162</u>	<u>74</u>
Total shares for diluted net income per common share	<u>57,843</u>	<u>55,032</u>	<u>57,724</u>	<u>49,904</u>
Basic net income per common share	<u>\$ 0.69</u>	<u>\$ 0.33</u>	<u>\$ 1.64</u>	<u>\$ 1.31</u>
Diluted net income per common share	<u>\$ 0.68</u>	<u>\$ 0.33</u>	<u>\$ 1.60</u>	<u>\$ 1.27</u>

In connection with the Company's acquisition of Calvin Klein in 2003, the Company issued \$250,000 of Series B convertible preferred stock. The Series B convertible preferred stock had a conversion price of \$14.00 per share and a dividend rate of 8% per annum, payable quarterly in cash. In certain quarters in 2003, the Company elected not to pay a cash dividend and the Series B convertible preferred stock was treated as if an in-kind dividend was paid. As such, by the end of 2003, the liquidation preference of the originally issued Series B convertible preferred stock increased to \$264,746. During the second quarter of 2005, the holders of the Series B convertible preferred stock converted an aggregate of \$102,820 of the Series B convertible preferred stock into 7,344 shares of the Company's common stock. During the second quarter of 2006, the holders of the Series B convertible preferred stock completed a voluntary conversion of all of the remaining outstanding shares of Series B convertible preferred stock into 11,566 shares of the Company's common stock and subsequently sold 10,057 of such shares in a registered common stock offering. In connection with the conversion in 2006, the Company made an inducement payment to the preferred stockholders of \$0.88 for each share of common stock received upon conversion, or an aggregate of \$10,178. The inducement payment was based on the net present value of the dividends that the Company would have been obligated to pay the preferred stockholders through the earliest date on which it was estimated that the Company would have had the right to convert the Series B convertible preferred stock, net of the net present value of the dividends payable over the same period on the shares of common stock into which the Series B convertible preferred stock was convertible. In addition, the Company incurred certain costs, totaling \$770, specifically related to the registered common stock offering.

As set forth in Emerging Issues Task Force Topic D-42, "The Effect on the Calculation of Earnings per Share for the Redemption or Induced Conversion of Preferred Stock," when convertible preferred stock is converted pursuant to an inducement offer, the excess of the fair value of consideration transferred in the transaction to the holders of the convertible preferred stock over the fair value of the securities issuable pursuant to the original conversion terms should be subtracted from net income to arrive at net income available to common stockholders in the calculation of net income per common share. As such, the inducement payment and offering costs paid by the Company in connection with the conversion and subsequent registered common stock offering resulted in a reduction of net income available to common stockholders for the thirteen and twenty-six weeks ended July 30, 2006.

Potentially dilutive securities excluded from the calculation of diluted net income per common share were as follows:

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>	<u>8/5/07</u>	<u>7/30/06</u>
Weighted average antidilutive securities	<u>289</u>	<u>369</u>	<u>214</u>	<u>256</u>





According to FASB Statement No. 128, Earnings per Share, contingently issuable shares that have not met the necessary conditions as of the end of a reporting period should not be included in the calculation of diluted net income per common share for that period. The Company issued performance shares during the first quarter of 2007 that did not meet the performance conditions as of August 5, 2007 and, therefore, were excluded from the calculation of diluted net income per common share for the thirteen and twenty-six weeks ended August 5, 2007. The maximum number of potentially dilutive shares that could be issued upon vesting is 82. These performance shares were also excluded from the computation of weighted average antidilutive securities.

In addition, conversion of the Series B convertible preferred stock that was converted into 1,398 and 6,482 weighted average common shares outstanding for the thirteen and twenty-six weeks ended July 30, 2006, respectively, was not assumed for the purpose of calculating dilutive securities outstanding because the resulting impact on the calculation of diluted net income per common share would have been antidilutive.

## 12. NONCASH INVESTING AND FINANCING TRANSACTIONS

Omitted from the Financing Activities section of the Condensed Consolidated Statement of Cash Flows for the twenty-six weeks ended July 30, 2006 was a decrease in Series B convertible preferred stock of \$161,926, an increase in common stock of \$11,566 and an increase in additional capital of \$150,360 associated with the conversion of all of the remaining outstanding shares of the Series B convertible preferred stock.

## 13. SEGMENT DATA

The Company manages its operations through its operating divisions, which are aggregated into five reportable segments: (i) Wholesale Dress Furnishings; (ii) Wholesale Sportswear and Related Products; (iii) Retail Apparel and Related Products; (iv) Retail Footwear and Related Products; and (v) Calvin Klein Licensing.

*Wholesale Dress Furnishings Segment* - This segment represents the results of the Company's wholesale dress shirt and neckwear divisions. The Company's wholesale dress shirt division derives revenue primarily from marketing dress shirts under the brand names *Van Heusen, IZOD, Eagle, Geoffrey Beene, ARROW, Kenneth Cole New York, Kenneth Cole Reaction, unlisted, A Kenneth Cole Production, Calvin Klein Collection, ck Calvin Klein, Calvin Klein, BCBG Max Azria, BCBG Attitude, CHAPS, Sean John, Donald J. Trump Signature Collection, JOE Joseph Abboud* and *MICHAEL Michael Kors*, to department, mid-tier department and specialty stores. The Company began marketing neckwear at wholesale in the fourth quarter of 2006 upon the acquisition of the assets of Superba. The Company's neckwear division derives revenue primarily from marketing neckwear under the brand names *ARROW, IZOD, Calvin Klein, DKNY, Tommy Hilfiger, Nautica, Perry Ellis Portfolio, Ike Behar* and *Jones New York*. The Company also markets dress shirts and neckwear under various private label brands.

*Wholesale Sportswear and Related Products Segment* - The Company aggregates its wholesale sportswear divisions into the Wholesale Sportswear and Related Products segment. This segment derives revenue primarily from marketing men's sportswear under the brand names *Van Heusen, IZOD, Geoffrey Beene, ARROW, Calvin Klein, Donald J. Trump Signature Collection* and *G.H. Bass Earth* (beginning in the first quarter of 2007) and women's sportswear under the *IZOD* brand name (beginning in the second quarter of 2007).

*Retail Apparel and Related Products Segment* - The Company aggregates its Van Heusen, Izod, Geoffrey Beene and Calvin Klein outlet retail divisions into the Retail Apparel and Related Products segment. This segment derives revenue principally from operating retail stores in the outlet channel of distribution which sell apparel and accessories under the brand names *Van Heusen, IZOD, Geoffrey Beene* and *Calvin Klein*. In addition, the Company aggregates the results of its Calvin Klein Collection retail division into the Retail Apparel and Related Products segment. This division sells *Calvin Klein Collection* branded high-end collection apparel and accessories through the Company's own full price retail store located in New York City.

*Retail Footwear and Related Products Segment* - This segment represents the results of the Company's Bass retail division. This division derives revenue principally from operating retail stores, primarily in the outlet channel of distribution, which sell footwear, apparel and accessories under the *Bass* brand name.

*Calvin Klein Licensing Segment* - The Company aggregates the results of its Calvin Klein licensing and advertising divisions into the Calvin Klein Licensing segment. This segment derives revenue from licensing and similar

arrangements worldwide relating to the use by third parties of the *Calvin Klein Collection*, *ck Calvin Klein* and *Calvin Klein* brands for a broad array of products and retail services.

The following table presents summarized information by segment:

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>8/5/07</u>	<u>7/30/06</u>	<u>8/5/07</u>	<u>7/30/06</u>
<u>Revenue - Wholesale Dress Furnishings</u>				
Net sales	\$113,845	\$ 79,756	\$ 257,311	\$179,815
Royalty revenue	1,375	1,476	3,021	3,142
Advertising and other revenue	<u>490</u>	<u>351</u>	<u>1,356</u>	<u>810</u>
Total	115,710	81,583	261,688	183,767
<u>Revenue - Wholesale Sportswear and Related Products</u>				
Net sales	122,659	101,401	285,917	264,653
Royalty revenue	2,530	2,619	5,266	5,519
Advertising and other revenue	<u>879</u>	<u>1,186</u>	<u>1,956</u>	<u>2,528</u>
Total	126,068	105,206	293,139	272,700
<u>Revenue - Retail Apparel and Related Products</u>				
Net sales	175,453	154,916	327,890	288,800
Royalty revenue	<u>1,891</u>	<u>1,802</u>	<u>3,831</u>	<u>3,739</u>

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Total	177,344	156,718	331,721	292,539
<u>Revenue - Retail Footwear and Related Products</u>				
Net sales	76,906	71,047	138,197	128,040
Royalty revenue	50	162	100	325
Advertising and other revenue	<u>235</u>	<u>-</u>	<u>611</u>	<u>-</u>
Total	77,191	71,209	138,908	128,365
<u>Revenue - Calvin Klein Licensing</u>				
Royalty revenue	39,137	32,653	84,371	65,622
Advertising and other revenue	<u>16,926</u>	<u>11,559</u>	<u>34,455</u>	<u>22,373</u>
Total	56,063	44,212	118,826	87,995
<u>Total Revenue</u>				
Net sales	488,863	407,120	1,009,315	861,308
Royalty revenue	44,983	38,712	96,589	78,347
Advertising and other revenue	<u>18,530</u>	<u>13,096</u>	<u>38,378</u>	<u>25,711</u>
Total	<u>\$552,376</u>	<u>\$458,928</u>	<u>\$1,144,282</u>	<u>\$965,366</u>
Operating income - Wholesale Dress Furnishings	\$ 11,254	\$ 8,337 <sup>(1)</sup>	\$ 36,267	\$ 15,116 <sup>(1)</sup>

Operating income - Wholesale Sportswear and Related Products	15,468	15,182	45,432	50,587
Operating income - Retail Apparel and Related Products	18,340	13,320	31,289	24,901
Operating income - Retail Footwear and Related Products	7,800	3,882	11,311	4,423
Operating income - Calvin Klein Licensing	29,450	23,084 <sup>(2)</sup>	59,787 <sup>(2)</sup>	73,045 <sup>(2)</sup>
Corporate expenses <sup>(3)</sup>	<u>14,376</u>	<u>13,364</u>	<u>27,271</u>	<u>34,568</u>
Income before interest and taxes	<u>\$ 67,936</u>	<u>\$ 50,441</u>	<u>\$ 156,815</u>	<u>\$133,504</u>

(1)

Operating income for the Wholesale Dress Furnishings segment for the thirteen and twenty-six weeks ended July 30, 2006 includes \$1,897 and \$11,294, respectively, of costs associated with closing the Company's manufacturing facility in Ozark, Alabama, in the second quarter of 2006.

(2)

Operating income for the Calvin Klein Licensing segment for the thirteen and twenty-six weeks ended July 30, 2006 includes a gain of \$675 and \$32,043, respectively, associated with the sale by the Company's Calvin Klein, Inc. subsidiary of minority interests in certain entities that operate various licensed *Calvin Klein* jeans and sportswear businesses in Europe and Asia and *ck Calvin Klein* bridge apparel and accessories businesses in Europe. Operating income for the Calvin Klein Licensing segment for the twenty-six weeks ended August 5, 2007 includes a gain of \$3,335 associated with the release of cash held in escrow in connection with such sale.

(3)

Corporate expenses represent overhead operating expenses that the Company does not allocate to its segments and include expenses for senior corporate management, corporate finance and information technology related to corporate infrastructure. Additionally, the Company includes all stock-based compensation expenses in Corporate expenses. Corporate expenses for the twenty-six weeks ended July 30, 2006 include \$10,535 of costs resulting from the departure of Mark Weber, the Company's former Chief Executive Officer, in the first quarter of 2006.

#### 14. OTHER COMMENTS

The Company has guaranteed the payment of certain purchases made by one of the Company's suppliers from a raw material vendor. The maximum amount guaranteed is \$500. The guarantee expires on January 31, 2008.

The Company has guaranteed to a former landlord the payment of rent and related costs by the tenant currently occupying space previously leased by the Company. The maximum amount guaranteed as of August 5, 2007 is approximately \$4,800, which is subject to exchange rate fluctuation. The Company has the right to seek recourse of approximately \$3,100 as of August 5, 2007, which is subject to exchange rate fluctuation. The guarantee expires on May 19, 2016.

ITEM 2 - MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

References to the brand names *Calvin Klein Collection*, *ck Calvin Klein*, *Calvin Klein*, *Van Heusen*, *IZOD*, *Eagle*, *Bass*, *Geoffrey Beene*, *ARROW*, *BCBG Max Azria*, *BCBG Attitude*, *CHAPS*, *Sean John*, *Donald J. Trump Signature Collection*, *JOE Joseph Abboud*, *Kenneth Cole New York*, *Kenneth Cole Reaction*, *unlisted*, *A Kenneth Cole Production*, *MICHAEL Michael Kors*, *DKNY*, *Tommy Hilfiger*, *Nautica*, *Perry Ellis Portfolio*, *Ike Behar*, *Jones New York*, *Timberland* and to other brand names are to registered trademarks owned by us or licensed to us by third parties and are identified by italicizing the brand name.

References to our acquisition of Superba refer to our January 2007 acquisition of substantially all of the assets of Superba, Inc., a privately-held manufacturer and distributor of neckwear in the United States and Canada, which we refer to as Superba.

References to our acquisition of Arrow refer to our December 2004 acquisition of Cluett Peabody Resources Corporation and Cluett Peabody & Co., Inc., which companies we refer to collectively as Arrow.

References to our acquisition of Calvin Klein refer to our February 2003 acquisition of Calvin Klein, Inc. and certain affiliated companies, which companies we refer to collectively as Calvin Klein.

## OVERVIEW

The following discussion and analysis is intended to help you understand us, our operations and our financial performance. It should be read in conjunction with our condensed consolidated financial statements and the accompanying notes, which are included elsewhere in this report.

We are one of the largest apparel companies in the world, with a heritage dating back over 125 years. Our brand portfolio consists of nationally recognized brand names, including *Calvin Klein*, *Van Heusen*, *IZOD*, *ARROW*, *Bass* and *Eagle*, which are owned, and *Geoffrey Beene*, *Kenneth Cole New York*, *Kenneth Cole Reaction*, *unlisted*, *A Kenneth Cole Production*, *BCBG Max Azria*, *BCBG Attitude*, *Sean John*, *CHAPS*, *Donald J. Trump Signature Collection* and *MICHAEL Michael Kors*, which are licensed. We launched a new licensed line of dress shirts under the *JOE Joseph Abboud* brand in the second quarter of 2006. In the fourth quarter of 2006, we acquired Superba, which enabled us to add the *DKNY*, *Tommy Hilfiger*, *Nautica*, *Perry Ellis Portfolio*, *Ike Behar* and *Jones New York* names, as well as various private label names, to our portfolio of licensed brands.

Our historical strategy has been to manage and market a portfolio of nationally recognized brands across multiple product categories, through multiple channels of distribution and at multiple price points. This strategy was enhanced by our acquisition of Calvin Klein in 2003, which provided us with one of the most famous designer names in the world and an additional platform for growth in revenue and profitability. Through that transaction, and to a lesser extent, our acquisition of Arrow in 2004, we were able to diversify our business model by providing growth opportunities from strong and highly profitable licensing streams which do not require capital investments. Our



acquisition in January 2007 of Superba's established neckwear business complements our heritage business in dress shirts and presents us with opportunities to grow and enhance the performance of both businesses.

We are currently implementing certain initiatives that are intended to build upon our business strategy, each of which we believe provides us with the opportunity to fill product and brand portfolio needs. The first initiative is our assumption of the wholesale *IZOD* women's sportswear collection. *IZOD* women's sportswear was previously a licensed business, and during the second quarter of 2007, we assumed the development and sale of the line. Our second initiative is a licensing arrangement with The Timberland Company to design, source and market men's and women's casual sportswear under the *Timberland* brand in North America. We will assume the management of the men's apparel line, which is currently produced by The Timberland Company, for the Fall 2008 season and will launch a women's line for the Fall 2009 season. *Timberland* is an authentic outdoor traditional brand targeted to the department and specialty store channels of distribution that we believe has a unique positioning that will complement our existing portfolio of sportswear brands and enable us to reach a broader spectrum of consumers. In addition to these initiatives, during the fourth quarter of 2007, we plan to open five *Calvin Klein* better specialty retail stores in premier malls in the U.S., which are intended to serve as a platform for showcasing the totality of the *Calvin Klein* white label better product.

## OPERATIONS OVERVIEW

We generate net sales from (i) the wholesale distribution of men's dress shirts, men's sportswear, neckwear (beginning in the fourth quarter of 2006) and women's sportswear (beginning in the second quarter of 2007); and (ii) the sale, through approximately 725 company-operated retail stores, of apparel, footwear and accessories under the brand names *Van Heusen*, *IZOD*, *Geoffrey Beene*, *Bass* and *Calvin Klein*. Our stores principally operate in an outlet format. We also operate a full price collection store located in New York City under the *Calvin Klein Collection* brand, in which we principally sell men's and women's high-end collection apparel and accessories, soft home furnishings and tableware.

We generate royalty, advertising and other revenue from fees for licensing the use of our trademarks. Calvin Klein royalty, advertising and other revenue, which comprised 88% of total royalty, advertising and other revenue in the first half of 2007, is derived under licenses and other arrangements for a broad array of products, including jeans, underwear, fragrances, eyewear, watches and home furnishings.

In the first half of 2007, net sales were 88% and royalty, advertising and other revenue was 12% of our total revenue.

Gross profit on total revenue is total revenue less cost of goods sold. We include as cost of goods sold, costs associated with the production and procurement of product, including inbound freight costs, purchasing and receiving costs, inspection costs, internal transfer costs and other product procurement related charges. Since there is no cost of goods sold associated with royalty, advertising and other revenue, 100% of such revenue is included in gross profit. Due to the above factors, our gross profit may not be comparable to that of other entities.

Selling, general and administrative expenses include all other expenses, excluding interest and income taxes. Salaries and related fringe benefits is the largest component of selling, general and administrative expenses, comprising 50% of such expenses in the first half of 2007. Rent and occupancy for offices, warehouses and retail stores is the next largest expense, comprising 21% of selling, general and administrative expenses in the first half of 2007.

## RESULTS OF OPERATIONS

Thirteen Weeks Ended August 5, 2007 Compared With Thirteen Weeks Ended July 30, 2006

### Net Sales

Net sales in the second quarter of 2007 increased 20.1% to \$488.9 million from \$407.1 million in the prior year. This increase included the following: (i) \$34.1 million of net sales attributable to growth in our Wholesale Dress Furnishings segment, due principally to the addition of sales from our recently-acquired neckwear business; (ii) \$26.4 million of net sales attributable to growth in our retail segments, driven by a 7% increase in comparable store sales and the opening of *Calvin Klein* outlet retail stores in premium malls; and (iii) \$21.3 million of net sales attributable to growth in our Wholesale Sportswear and Related Products segment, particularly from our *Calvin Klein* and *Van Heusen* brands, as well as from our assumption of the *IZOD* women's sportswear business in the second quarter of 2007. Due to the 53rd week in fiscal 2006, we believe that second quarter 2007 comparable store sales are more appropriately compared with the thirteen week period ended August 6, 2006, which is approximately the same period on a calendar basis. The impact of the calendar shift was an increase in comparable store sales of 2%. Therefore, on a shifted basis, comparable store sales increased 5%.

#### Royalty, Advertising and Other Revenue

Royalty, advertising and other revenue in the second quarter of 2007 increased 22.6% to \$63.5 million from \$51.8 million in the prior year. This increase was primarily attributable to our Calvin Klein Licensing segment, driven by continued strength in the fragrance business, due principally to the new men's and women's *CKIN2U* fragrance line that was successfully launched in the first quarter of 2007 and increased sales of both the men's and women's *euphoria* fragrance. Also contributing to the Calvin Klein revenue increase was the success of the multiple new licensed product categories launched over the past few years and strong performances in jeans and underwear.

### Gross Profit on Total Revenue

Gross profit on total revenue in the second quarter of 2007 was \$277.5 million, or 50.2% of total revenue, compared with \$227.1 million, or 49.5% of total revenue in the prior year. The 70 basis point improvement was due principally to strong product sell-throughs primarily in our outlet retail business, which yielded more full price selling and, to a lesser extent, a change in revenue mix, as royalty, advertising and other revenue, which does not carry a cost of sales and has a gross profit percentage of 100%, increased as a percentage of total revenue.

### Selling, General and Administrative (SG&A) Expenses

SG&A expenses in the second quarter of 2007 were \$209.5 million, or 37.9% of total revenue, and \$177.4 million, or 38.7% of total revenue, in the prior year. The \$32.1 million increase in SG&A expenses in the second quarter of 2007 included (i) increased expenses of \$12.3 million in our Wholesale Sportswear and Related Products segment and our retail segments principally to support the sales growth previously mentioned; (ii) expenses of approximately \$10.0 million related to our recently-acquired neckwear business; (iii) an increase in advertising expenditures of \$5.0 million; and (iv) start-up costs of \$2.2 million associated with our *Timberland* wholesale sportswear business and *Calvin Klein* better specialty retail stores.

### Gain on Sale of Investments

We sold, in the first quarter of 2006, minority interests held by one of our subsidiaries in certain entities that operate the licenses and related wholesale and retail businesses of *Calvin Klein* jeans and accessories in Europe and Asia and the *ck Calvin Klein* bridge line of sportswear and accessories in Europe. The second quarter of 2006 included a pre-tax adjustment of \$0.7 million to the gain associated with the sale.

### Interest Expense, Net

The majority of our interest expense relates to our fixed rate long-term debt. As a result, variances in our net interest expense tend to be driven by changes in interest income and, to a lesser extent, costs related to our revolving credit facility.

Net interest expense in the second quarter of 2007 was \$3.9 million compared with \$4.4 million in the prior year. The net interest expense decrease was due principally to an increase in interest income driven primarily by an increase in investment rates of return over the prior year.

### Income Taxes

In the first quarter of 2007, we adopted the provisions of Financial Accounting Standards Board Interpretation No. 48 ( FIN 48 ). Under FIN 48, volatility in our tax rate may occur, either from quarter to quarter, or from year to year, due to events or new information that causes us to re-evaluate our unrecognized tax benefits.

Income taxes for the second quarter of 2007 were provided for at a rate of 38.9% compared with last year's full year rate of 37.5%.

### Twenty-Six Weeks Ended August 5, 2007 Compared With Twenty-Six Weeks Ended July 30, 2006

### Net Sales

Net sales in the first half of 2007 increased 17.2% to \$1,009.3 million from \$861.3 million in the prior year. This increase included the following: (i) \$77.5 million of net sales attributable to growth in our Wholesale Dress Furnishings segment, due principally to the addition of sales from our recently-acquired neckwear business; (ii) \$49.2 million of net sales attributable to growth in our retail segments, driven by a 7% increase in comparable store sales and the opening of *Calvin Klein* outlet retail stores in premium outlet malls; and (iii) \$21.3 million of net sales attributable to growth in our Wholesale Sportswear and Related Products segment, particularly from our *Calvin Klein* and *Van Heusen* brands, as well as from our assumption of the *IZOD* women's sportswear business in the second quarter of 2007. Due to the 53rd week in fiscal 2006, we believe that first half of 2007 comparable store sales are more appropriately compared with the twenty-six week period ended August 6, 2006, which is approximately the same period on a calendar basis. The impact of the calendar shift was an increase in comparable store sales of 2%. Therefore, on a shifted basis, comparable store sales increased 5%.

Net sales for the full year 2007 are expected to increase approximately 17%, due principally to growth in our existing businesses, as well as additional sales from our recently-acquired neckwear business and our assumption of the *IZOD* women's sportswear business in the second quarter of 2007.

### Royalty, Advertising and Other Revenue

Royalty, advertising and other revenue in the first half of 2007 increased 29.7% to \$135.0 million from \$104.1 million in the prior year. This increase was primarily attributable to our Calvin Klein Licensing segment, due principally to the continued success of the fragrance business, which experienced the successful global launch of the new *CKIN2U* fragrance line for both men and women, as well as continued strength in sales of both the men's and women's *euphoria* fragrance line. Calvin Klein licensing revenue also increased as a result of the multiple new licensed product categories launched over the past few years and from strong performances in jeans and underwear.

We currently expect that royalty, advertising and other revenue will increase approximately 19% in our Calvin Klein Licensing segment for the full year 2007 as a result of growth of existing licensees, particularly in fragrance, jeans and underwear, as well as royalties generated from new license agreements. Royalty, advertising and other revenue in our other segments is expected to decrease an aggregate of 2% for the full year 2007 as a result of the loss of royalties associated with *ARROW* neckwear, which had been licensed to Superba, and the loss of royalties associated with *IZOD* neckwear and *IZOD* women's sportswear, which had been licensed to third parties but are now being produced by us as a result of the termination or expiration of those licenses. Royalty, advertising and other revenue is expected to increase approximately 17% in total for the full year 2007.

### Gross Profit on Total Revenue

Gross profit on total revenue in the first half of 2007 was \$570.0 million, or 49.8% of total revenue, compared with \$469.9 million, or 48.7% of total revenue in the prior year. The 110 basis point improvement was due principally to (i) a change in revenue mix, as royalty, advertising and other revenue, which does not carry a cost of sales and has a gross profit percentage of 100%, increased as a percentage of total revenue; and (ii) strong product sell-throughs in our wholesale dress shirt and outlet retail businesses, which yielded more full-price selling. Partially offsetting these increases was a decrease in gross margin in our wholesale sportswear business, which was negatively impacted by the overall weak retail environment, resulting in slower than planned sell-throughs at customer accounts that required us to record additional markdown allowances to relieve inventories at such accounts in the first quarter of 2007.

We currently expect that the gross profit on total revenue percentage will decrease approximately 70 to 80 basis points for the full year 2007. We anticipate that during the remainder of 2007, our gross profit percentage will decrease compared to the prior year as revenue grows faster in our wholesale businesses, which typically carry a lower gross margin percentage than our retail and licensing businesses.

Selling, General and Administrative (SG&A) Expenses

SG&A expenses in the first half of 2007 were \$416.5 million, or 36.4% of total revenue, and \$368.4 million, or 38.2% of total revenue, in the prior year. The \$48.1 million increase in SG&A expenses in the first half of 2007 included (i) increased expenses of \$24.0 million in our Wholesale Sportswear and Related Products segment and our retail segments principally to support the sales growth previously mentioned; (ii) expenses of approximately \$20.0 million related to our recently-acquired neckwear business; (iii) an increase in advertising expenditures of \$14.1 million, principally related to our *Calvin Klein* brand; and (iv) start-up costs of \$3.6 million associated with our *Timberland* wholesale sportswear business and *Calvin Klein* better specialty retail stores. Also impacting the change in SG&A expenses for the first half of 2007 compared to the prior year was the absence of costs incurred in the first half of 2006 of (i) \$11.3 million associated with the closing of our manufacturing facility in Ozark, Alabama; and (ii) \$10.5 million in severance and other separation costs associated with the departure of Mark Weber, our former Chief Executive Officer.

Our full year 2007 SG&A expenses are currently expected to decrease as a percentage of total revenue by approximately 200 basis points compared with the full year 2006 percentage, which includes a decrease of 100 basis points attributable to the absence in 2007 of the 2006 facility closing costs and departure costs described above. The remaining 100 basis point decrease is due primarily to the growth in our wholesale businesses mentioned previously, as our wholesale businesses typically have lower expense rates than our retail businesses. This decrease is expected to be partially offset by start-up expenses of approximately \$11.3 million associated with our men's *Timberland* sportswear line, which we will assume the management of for Fall 2008 and our *Calvin Klein* better specialty retail stores, which we plan to begin to open in the fourth quarter of 2007.

### Gain on Sale of Investments

We sold, in the first quarter of 2006, minority interests held by one of our subsidiaries in certain entities that operate the licenses and related wholesale and retail businesses of *Calvin Klein* jeans and accessories in Europe and Asia and the *ck Calvin Klein* bridge line of sportswear and accessories in Europe. The sale resulted in a pre-tax gain of \$32.0 million in the first half of 2006, which was net of related fees, an amount held in escrow and the carrying value of the investments. Our share of the proceeds being held in escrow represents security for indemnification of certain potential losses incurred by the purchaser, as well as other adjustments to the purchase price. During the first half of 2007, \$3.3 million was released to us from escrow. We recorded this release of escrow as an additional gain. The balance of our share of the amount held in escrow as of August 5, 2007 totaled approximately \$1.5 million. We will be entitled to receive a distribution of our share of any amount remaining in escrow in 2008, and we will record the release of any such amount as an additional gain if and when such amount is released to us.

### Interest Expense, Net

The majority of our interest expense relates to our fixed rate long-term debt. As a result, variances in our net interest expense tend to be driven by changes in interest income and, to a lesser extent, costs related to our revolving credit facility.

Net interest expense in the first half of 2007 was \$8.4 million compared with \$10.0 million in the prior year. The net interest expense decrease was due principally to an increase in interest income from an increase in investment rates of return over the prior year.

### Income Taxes

In the first quarter of 2007, we adopted the provisions of FIN 48. Under FIN 48, additional volatility in our tax rate may occur in the future, either from quarter to quarter, or from year to year, due to events or new information that causes us to re-evaluate our unrecognized tax benefits.

Income taxes for the first half of 2007 were provided for at a rate of 37.9% compared with last year's full year rate of 37.5%. We currently estimate our full year rate for 2007 to be in a range of 37.2% to 37.7%. It is possible that our estimated full year rate could change from discrete events arising from specific transactions, audits by tax authorities or the receipt of new information.



## LIQUIDITY AND CAPITAL RESOURCES

Generally, our principal source of cash is from operations, and our principal uses of cash are for capital expenditures, contingent purchase price payments and dividends.

### Operations

Cash provided by operating activities was \$31.6 million in the first half of 2007, which compares with cash provided by operating activities of \$102.8 million in the prior year. This decrease was due principally to changes in working capital, including (i) an increase in accounts receivable related principally to the revenue growth mentioned previously, including from our recently-acquired neckwear business and our new *IZOD* women's sportswear business, combined with the calendar shift caused by the 53rd week in fiscal 2006, which resulted in a higher sales volume near the end of the second quarter of 2007 when compared to the prior year; (ii) an increase in inventories related principally to an anticipated sales increase in the third quarter of 2007 as compared to the prior year's third quarter, including from our recently-acquired neckwear business and our new *IZOD* women's sportswear business; and (iii) a decrease in accounts payable and accrued expenses during 2007 due to payments of incentive compensation and advertising expenses that were incurred in the fourth quarter of 2006 and exceeded the prior year amounts. Partially offsetting the effect of these changes was an increase in net income.

For the full year 2007, we expect that our cash provided by operating activities will exceed net income, due principally to depreciation and amortization and noncash stock-based compensation expense. This is expected to be offset, in part, by increases in working capital to support the anticipated sales growth mentioned previously.

### Capital Expenditures

Our capital expenditures in the first half of 2007 were \$33.3 million. We currently expect that capital expenditures for the full year 2007 will increase to a range of \$100.0 million to \$110.0 million from the prior year amount of \$46.2 million. The planned increase in capital expenditures for 2007 is due principally to (i) additional office space, warehouse and distribution facility expansion and information technology spending both domestically and internationally to allow our infrastructure to support the sales growth and new businesses mentioned previously; and (ii) the build out of *Calvin Klein* better specialty retail stores.

### Contingent Purchase Price Payments

In connection with our acquisition of Calvin Klein, we are obligated to pay Mr. Calvin Klein contingent purchase price payments through 2017 based on 1.15% of total worldwide net sales of products bearing any of the *Calvin Klein* brands. Such contingent purchase price payments are recorded as additions to goodwill and totaled \$14.9 million in the first half of 2007. We currently expect that such payments will be \$33.0 million to \$35.0 million for the full year 2007.

In connection with our acquisition of Superba in January 2007, we are obligated to pay Superba's stockholders contingent purchase price payments if the earnings of the acquired business exceed certain targets in 2007, 2008 and 2009. The maximum payout that Superba's stockholders can receive is \$15.0 million, \$25.0 million and \$30.0 million with respect to earnings in 2007, 2008 and 2009, respectively. No assurance can be made that the earnings required to be met by the acquired business to earn the maximum payout (or any other payout) can be achieved. Any such contingent purchase price payments would be payable 90 days after fiscal year end. No such payments were recorded for the twenty-six weeks ended August 5, 2007.

### Sale of Investments

We sold, in the first quarter of 2006, minority interests held by one of our subsidiaries in certain entities that operate the licenses and related wholesale and retail businesses of *Calvin Klein* jeans and accessories in Europe and Asia and the *ck Calvin Klein* bridge line of sportswear and accessories in Europe. We received \$32.8 million in cash proceeds from the sale of these entities in the first half of 2006 and \$3.3 million in cash proceeds in the first half of 2007 in connection with the release of a portion of the amount held in escrow in connection with the sale.

### Dividends

Our common stock, which as of August 5, 2007 is the only class of stock issued, currently pays annual dividends totaling \$0.15 per share.

Cash dividends on our common stock are currently estimated to be \$8.4 million to \$8.5 million for the full year 2007.

During the second quarter of 2006, the holders of our Series B convertible preferred stock voluntarily converted all of the remaining outstanding shares of Series B convertible preferred stock into 11.6 million shares of our common stock. The holders subsequently sold a majority of such shares in a registered common stock offering. We made an inducement payment to the preferred stockholders of \$0.88 for each share of common stock received upon conversion, or an aggregate of \$10.2 million in connection with the conversion, and incurred certain costs, totaling \$0.7 million, specifically related to the registered common stock offering. The inducement payment was based on the net present value of the dividends that we would have been obligated to pay the preferred stockholders through the earliest date on which it was estimated that we would have had the right to convert the Series B convertible preferred stock, net of the net present value of the dividends payable over the same period on the shares of common stock into which the Series B convertible preferred stock was convertible. The aggregate \$10.9 million inducement payment and offering costs was treated similar to a preferred stock dividend under accounting principles generally accepted in the United States.

#### Cash Flow Summary

Our net cash flow in the first half of 2007 was \$0.2 million. Cash flow for the full year 2007 will be impacted by various other factors in addition to those discussed earlier in this Liquidity and Capital Resources section. For example, the exercise of stock options provided \$17.6 million of cash for the full year in 2006. We currently estimate

that the cash generated from the exercise of stock options for the full year 2007 will be similar to the amount in 2006.

Based on our current operations, and considering all of the above factors, we currently expect to generate \$85.0 million to \$90.0 million of cash flow for the full year 2007.

### Financing Arrangements

Our capital structure as of August 5, 2007 was as follows:

(in millions)

Long-term debt	\$ 399.5
Stockholders' equity	\$1,050.0

We believe our capital structure provides a secure base to support our current operations and our planned growth in the future. There are no maturities of our long-term debt until 2011.

For near-term liquidity, in addition to our cash balance, we have a \$325.0 million secured revolving credit facility that provides for revolving credit borrowings, as well as the issuance of letters of credit. We may, at our option, borrow and repay amounts up to a maximum of \$325.0 million for revolving credit borrowings and the issuance of letters of credit, which may be increased by us by up to \$100.0 million, with a sublimit of \$50.0 million for standby letters of credit and with no sublimit on trade letters of credit. Based on our working capital projections, we believe that our borrowing capacity under this facility provides us with adequate liquidity for our peak seasonal needs for the foreseeable future. During the first half of 2007, we had no revolving credit borrowings under the facility, and the maximum amount of letters of credit outstanding was \$142.4 million. As of August 5, 2007, we had \$124.7 million outstanding letters of credit under this facility. We currently do not expect to have any revolving credit borrowings under the facility during the remainder of 2007.

Given our capital structure and our projections for future profitability and cash flow, we believe we could obtain additional financing, if necessary, for refinancing our long-term debt, or, if opportunities present themselves, future acquisitions. Although we believe we could obtain such financing, due to the current state of credit markets, there can

be no assurance that such financing could be obtained on terms as favorable to us as our current financings or otherwise on terms satisfactory to us. Furthermore, as credit markets are constantly changing, there can be no assurance that such financing, if needed, could be obtained at such time as a need arises or that it would be available to us on terms satisfactory to us.

## SEASONALITY

Our business generally follows a seasonal pattern. Our wholesale businesses tend to generate higher levels of sales and income in the first and third quarters, as the selling of Spring and Fall merchandise to our customers occurs at higher levels as these selling seasons begin. Our retail businesses tend to generate higher levels of sales and income in the third and fourth quarters, due to the back to school and holiday selling seasons. Royalty, advertising and other revenue tends to be earned somewhat evenly throughout the year, although the third quarter has the highest level of royalty revenue due to higher sales by licensees in advance of the holiday season.

Due to the above factors, our operating results for the thirteen and twenty-six week periods ended August 5, 2007 are not necessarily indicative of those for a full fiscal year.

ITEM 3 - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Financial instruments held by us include cash equivalents and long-term debt. Interest rates on our long-term debt are fixed. Therefore, a change in rates generally would not have an effect on our interest expense. Note 7, Long-Term Debt, in the Notes to Consolidated Financial Statements included in Item 8 of our Annual Report on Form 10-K for the year ended February 4, 2007 outlines the principal amounts, interest rates, fair values and other terms required to evaluate the expected sensitivity of interest rate changes on the fair value of our fixed rate long-term debt. Cash equivalents held by us are affected by short-term interest rates. Therefore, a change in short-term interest rates would have an impact on our interest income. Given our balance of cash and cash equivalents as of August 5, 2007, the effect of a 50 basis point change in short-term interest rates on our interest income would be approximately \$1.8 million annually.

Principally all of our revenue and expenses are currently denominated in United States dollars. However, certain of our operations and license agreements expose us to fluctuations in foreign currency exchange rates, primarily the rate of exchange of the United States dollar against the Euro, the Yen and the Canadian dollar. Our principal exposure to changes in exchange rates for the United States dollar results from our licensing businesses. Many of our license agreements require the licensee to report sales to us in the licensee's local currency, but to pay us in United States dollars based on the exchange rate as of the last day of the contractual selling period. Thus, while we are not exposed to exchange rate gains and losses between the end of the selling period and the date we collect payment, we are exposed to exchange rate changes during and up to the last day of the selling period. During times of a strengthening United States dollar, our foreign royalty revenue will be negatively impacted, and during times of a weakening United States dollar, our foreign royalty revenue will be favorably impacted.

A secondary exposure to changes in exchange rates for the United States dollar results from our foreign wholesale operations. During 2006, we expanded our wholesale operations to include sales to department and specialty stores throughout Canada and parts of Europe. Sales for these foreign operations are both generated and collected in foreign currency, which exposes us to foreign exchange gains and losses between the date of the sale and the date we collect payment. As with our licensing business, the results of these operations will be negatively impacted during times of a strengthening United States dollar and favorably impacted during times of a weakening United States dollar.

Not all foreign license agreements expose us to foreign exchange risk. Many of our foreign license agreements specify that contractual minimums be paid in United States dollars. Thus, for these foreign license agreements where the licensee's sales do not exceed contractual minimums, the licensee assumes the risk of changes in exchange rates and we do not.

Also somewhat mitigating our exposure to changes in the exchange rate for the Euro is our Calvin Klein administrative office in Milan, Italy. During times of a strengthening United States dollar against the Euro, our Milan expenses will be favorably impacted, and during times of a weakening United States dollar against the Euro, our Milan expenses will be negatively impacted.

Changes in the exchange rate for the United States dollar have not had a material effect on our consolidated results of operations or financial position.

#### ITEM 4 - CONTROLS AND PROCEDURES

As of August 5, 2007, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of August 5, 2007. Disclosure controls and procedures are controls and procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

There have been no changes in our internal control over financial reporting during the period to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II OTHER INFORMATION

ITEM 4 - SUBMISSION OF MATTERS TO A VOTE OF STOCKHOLDERS

Our Annual Meeting of Stockholders was held on June 19, 2007. There were present in person or by proxy, holders of 52,675,010 shares of our common stock, or 94.1% of all shares of common stock eligible to be voted at the meeting. The holders of the common stock voted on all matters reported below.

The following directors were elected to serve for a term of one year:

	<u>For</u>	<u>Vote Withheld</u>
Mary Baglivo	52,617,433	57,577
Emanuel Chirico	48,881,467	3,793,543
Edward H. Cohen	48,874,224	3,800,786
Joseph B. Fuller	43,930,085	8,744,925
Margaret L. Jenkins	52,614,365	60,645
Bruce Maggin	49,047,885	3,627,125
V. James Marino	52,615,308	59,702
Henry Nasella	47,473,544	5,201,466
Rita M. Rodriguez	52,615,054	59,956
Craig Rydin	52,613,563	61,447

The proposal for Ernst & Young LLP to serve as our independent auditors until our next Annual Meeting of Stockholders was ratified. The votes were 52,527,070 For, 114,629 Against and 33,311 Abstentions.

ITEM 6 - EXHIBITS

The following exhibits are included herein:

3.1	Certificate of Incorporation (incorporated by reference to Exhibit 5 to the Company's Annual Report on Form 10-K for the fiscal year ended January 29, 1977).
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- 3.2 Amendment to Certificate of Incorporation, filed June 27, 1984 (incorporated by reference to Exhibit 3B to the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 1985).
- 3.3 Certificate of Designation of Series A Cumulative Participating Preferred Stock, filed June 10, 1986 (incorporated by reference to Exhibit A of the document filed as Exhibit 3 to the Company's Quarterly Report on Form 10-Q for the period ended May 4, 1986).
- 3.4 Amendment to Certificate of Incorporation, filed June 2, 1987 (incorporated by reference to Exhibit 3(c) to the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 1988).
- 3.5 Amendment to Certificate of Incorporation, filed June 1, 1993 (incorporated by reference to Exhibit 3.5 to the Company's Annual Report on Form 10-K for the fiscal year ended January 30, 1994).
- 3.6 Amendment to Certificate of Incorporation, filed June 20, 1996 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended July 28, 1996).
- 3.7 Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock of Phillips-Van Heusen Corporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on February 26, 2003).
- 3.8 Corrected Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock of Phillips-Van Heusen Corporation, dated as of April 17, 2003 (incorporated by reference to Exhibit 3.9 to the Company's Annual Report on Form 10-K for the fiscal year ended February 2, 2003).
- 3.9 Certificate of Amendment of Certificate of Incorporation, filed June 29, 2006 (incorporated by reference to Exhibit 3.9 to the Company's Quarterly Report on Form 10-Q for the period ended May 6, 2007).

3.10	Certificate Eliminating Reference to Series B Convertible Preferred Stock from Certificate of Incorporation of Phillips-Van Heusen Corporation, filed June 12, 2007 (incorporated by reference to Exhibit 3.10 to the Company's Quarterly Report on Form 10-Q for the period ended May 6, 2007).
3.11	By-laws of Phillips-Van Heusen Corporation, as amended through March 3, 2005 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on March 8, 2005).
10.1	Second Amended and Restated Revolving Credit Agreement, dated as of July 10, 2007, among Phillips-Van Heusen Corporation, The IZOD Corporation, PVH Wholesale Corp., PVH Retail Corp., izod.com inc., G.H. Bass Franchises Inc., CD Group Inc., PVH CK Stores, Inc., PVH Ohio, Inc., PVH Michigan, Inc., PVH Pennsylvania, Inc., PVH Wholesale New Jersey, Inc., PVH Retail Management Company, PVH Superba/Insignia Neckwear, Inc. and the lender parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent, JPMorgan Securities Inc., as Joint Lead Arranger and Sole Bookrunner, Bank of America, N.A., as Joint Lead Arranger and Co-Syndication Agent, SunTrust Bank, as Co-Syndication Agent, Wachovia Bank, National Association, as Co-Documentation Agent, and The CIT Group/Commercial Services, Inc., as Co-Documentation Agent (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed on July 16, 2007).
+10.2	Schedule of Non-Management Directors' Fees, effective June 19, 2007.
+10.3	Form of Restricted Stock Unit Agreement for Directors under the Phillips-Van Heusen Corporation 2006 Stock Incentive Plan.
+15	Acknowledgement of Independent Registered Public Accounting Firm.
+31.1	Certification of Emanuel Chirico, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

- +31.2 Certification of Michael Shaffer, Executive Vice President and Chief Financial Officer, pursuant to Section 302 of the Sarbanes Oxley Act of 2002.
- +32.1 Certification of Emanuel Chirico, Chief Executive Officer, pursuant to Section 906 of the Sarbanes Oxley Act of 2002, 18 U.S.C. Section 1350.
- +32.2 Certification of Michael Shaffer, Executive Vice President and Chief Financial Officer, pursuant to Section 906 of the Sarbanes Oxley Act of 2002, 18 U.S.C. Section 1350.

+ Filed herewith.

Exhibits 32.1 and 32.2 shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that Section. Such exhibits shall not be deemed incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PHILLIPS-VAN HEUSEN CORPORATION

Registrant

Dated: September 12, 2007

/s/ Bruce Goldstein

Bruce Goldstein

Senior Vice President and Controller

(Chief Accounting Officer)

**Exhibit Index**

**Exhibit**

**Description**

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