
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended August 3, 2013

or

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 1-16097

THE MEN'S WEARHOUSE, INC.

(Exact Name of Registrant as Specified in its Charter)

Texas
(State or Other Jurisdiction of
Incorporation or Organization)

74-1790172
(I.R.S. Employer
Identification Number)

6380 Rogerdale
Houston, Texas
(Address of Principal Executive Offices)

77072-1624
(Zip Code)

(281) 776-7000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes . No .

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes . No .

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 definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes . No .

The number of shares of common stock of the Registrant, par value \$.01 per share, outstanding at September 2, 2013 was 47,795,084 excluding 23,055,266 shares classified as Treasury Stock.

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Forward-Looking and Cautionary Statements

Certain statements made in this Quarterly Report on Form 10-Q and in other public filings and press releases by the Company (as defined below) contain “forward-looking” information (as defined in the Private Securities Litigation Reform Act of 1995) that involves risk and uncertainty. These forward-looking statements may include, but are not limited to, references to sales, earnings, margins, costs, number and costs of store openings, future capital expenditures, acquisitions, demand for clothing, market trends in the retail and corporate apparel clothing business, currency fluctuations, inflation and various economic and business trends. Forward-looking statements may be made by management orally or in writing, including, but not limited to, Management’s Discussion and Analysis of Financial Condition and Results of Operations included in this Quarterly Report on Form 10-Q and other sections of our filings with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, and the Securities Act of 1933, as amended.

Forward-looking statements are not guarantees of future performance and a variety of factors could cause actual results to differ materially from the anticipated or expected results expressed in or suggested by these forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to: actions by governmental entities; domestic and international economic activity and inflation; success, or lack thereof, in executing our internal operating plans and new store and new market expansion plans, including successful integration of acquisitions; performance issues with key suppliers; disruption in buying trends due to homeland security concerns; severe weather; foreign currency fluctuations; government export and import policies; aggressive advertising or marketing activities of competitors; and legal proceedings. Future results will also be dependent upon our ability to continue to identify and complete successful expansions and penetrations into existing and new markets and our ability to integrate such expansions with our existing

operations. Refer to “Risk Factors” contained in Part I of our Annual Report on Form 10-K for the year ended February 2, 2013 for a more complete discussion of these and other factors that might affect our performance and financial results. These forward-looking statements are intended to convey the Company’s expectations about the future, and speak only as of the date they are made. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

PART I. FINANCIAL INFORMATION
ITEM 1 — CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
GENERAL INFORMATION

The condensed consolidated financial statements herein include the accounts of The Men’s Wearhouse, Inc. and its subsidiaries and have been prepared without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). As applicable under such regulations, certain information and footnote disclosures have been condensed or omitted. We believe that the presentation and disclosures herein are adequate to make the information not misleading, and the condensed consolidated financial statements reflect all elimination entries and normal recurring adjustments which are necessary for a fair statement of the results for the three and six months ended August 3, 2013 and July 28, 2012.

Our business historically has been seasonal in nature, and the operating results of the interim periods presented are not necessarily indicative of the results that may be achieved for the full year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements for the year ended February 2, 2013 and the related notes thereto included in the Company’s Annual Report on Form 10-K for the year then ended filed with the SEC.

Unless the context otherwise requires, “Company”, “we”, “us” and “our” refer to The Men’s Wearhouse, Inc. and its subsidiaries.

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THE MEN’S WEARHOUSE, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)

	August 3, 2013 (Unaudited)	July 28, 2012 (Unaudited)	February 2, 2013
ASSETS			
CURRENT ASSETS:			
Cash and cash equivalents	\$ 32,488	\$ 106,399	\$ 156,063
Accounts receivable, net	56,083	69,622	63,010
Inventories	599,811	577,078	556,531
Other current assets	71,835	70,786	79,549
Total current assets	760,217	823,885	855,153
PROPERTY AND EQUIPMENT, net	397,129	383,015	389,118
TUXEDO RENTAL PRODUCT, net	144,171	116,586	126,825
GOODWILL	76,510	87,672	87,835
INTANGIBLE ASSETS, net	30,022	32,093	32,442
OTHER ASSETS	6,485	4,748	4,974
TOTAL ASSETS	\$ 1,414,534	\$ 1,447,999	\$ 1,496,347
LIABILITIES AND EQUITY			
CURRENT LIABILITIES:			
Accounts payable	\$ 136,629	\$ 119,433	\$ 123,983
Accrued expenses and other current liabilities	172,446	161,850	164,344
Income taxes payable	3,554	728	5,856
Total current liabilities	312,629	282,011	294,183
DEFERRED TAXES AND OTHER LIABILITIES	86,836	98,401	92,929
Total liabilities	399,465	380,412	387,112

COMMITMENTS AND CONTINGENCIES (Note 3 and Note 13)

EQUITY:			
Preferred stock	—	—	—
Common stock	708	722	725
Capital in excess of par	382,519	372,601	386,254
Retained earnings	1,162,933	1,163,324	1,190,246
Accumulated other comprehensive income	26,234	36,302	36,924
Treasury stock, at cost	(569,860)	(517,894)	(517,894)
Total equity attributable to common shareholders	1,002,534	1,055,055	1,096,255
Non-controlling interest	12,535	12,532	12,980
Total equity	1,015,069	1,067,587	1,109,235
TOTAL LIABILITIES AND EQUITY	\$ 1,414,534	\$ 1,447,999	\$ 1,496,347

See Notes to Condensed Consolidated Financial Statements.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
(In thousands, except per share data)
(Unaudited)

	For the Three Months Ended		For the Six Months Ended	
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012
Net sales:				
Retail clothing product	\$ 408,683	\$ 413,024	\$ 832,420	\$ 833,493
Tuxedo rental services	147,701	154,124	246,183	232,613
Alteration and other services	37,056	37,540	75,018	75,274
Total retail sales	593,440	604,688	1,153,621	1,141,380
Corporate apparel clothing product sales	53,815	57,614	110,170	107,496
Total net sales	647,255	662,302	1,263,791	1,248,876
Cost of sales:				
Retail clothing product	177,578	184,038	363,061	372,644
Tuxedo rental services	22,578	21,235	37,076	32,248
Alteration and other services	28,926	28,145	57,344	55,703
Occupancy costs	72,791	69,367	144,065	138,065
Total retail cost of sales	301,873	302,785	601,546	598,660
Corporate apparel clothing product cost of sales	36,588	39,260	75,531	75,910
Total cost of sales	338,461	342,045	677,077	674,570
Gross margin:				
Retail clothing product	231,105	228,986	469,359	460,849
Tuxedo rental services	125,123	132,889	209,107	200,365
Alteration and other services	8,130	9,395	17,674	19,571
Occupancy costs	(72,791)	(69,367)	(144,065)	(138,065)
Total retail gross margin	291,567	301,903	552,075	542,720
Corporate apparel clothing product gross margin	17,227	18,354	34,639	31,586
Total gross margin	308,794	320,257	586,714	574,306
Goodwill impairment charge	9,501	—	9,501	—
Selling, general and administrative expenses	232,505	228,667	457,872	441,769
Operating income	66,788	91,590	119,341	132,537
Interest income	181	143	302	271
Interest expense	(540)	(508)	(884)	(941)
Earnings before income taxes	66,429	91,225	118,759	131,867
Provision for income taxes	23,451	31,655	42,825	45,717
Net earnings including non-controlling interest	42,978	59,570	75,934	86,150
Net (earnings) loss attributable to non-controlling interest	(35)	(177)	100	127

Net earnings attributable to common shareholders	\$ 42,943	\$ 59,393	\$ 76,034	\$ 86,277
Net earnings per common share attributable to common shareholders (Note 2):				
Basic	\$ 0.86	\$ 1.16	\$ 1.50	\$ 1.68
Diluted	\$ 0.85	\$ 1.15	\$ 1.50	\$ 1.67
Weighted-average common shares outstanding (Note 2):				
Basic	49,843	50,711	50,225	50,822
Diluted	50,133	50,932	50,460	51,084
Cash dividends declared per common share	\$ 0.18	\$ 0.18	\$ 0.36	\$ 0.36

See Notes to Condensed Consolidated Financial Statements.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	For the Three Months Ended		For the Six Months Ended	
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012
Net earnings including non-controlling interest	\$ 42,978	\$ 59,570	\$ 75,934	\$ 86,150
Currency translation adjustments, net of tax	(7,819)	(8,761)	(11,035)	(619)
Comprehensive income including non-controlling interest	35,159	50,809	64,899	85,531
Comprehensive (income) loss attributable to non-controlling interest:				
Net (earnings) loss	(35)	(177)	100	127
Currency translation adjustments, net of tax	229	416	345	—
Amounts attributable to non-controlling interest	194	239	445	127
Comprehensive income attributable to common shareholders	\$ 35,353	\$ 51,048	\$ 65,344	\$ 85,658

See Notes to Condensed Consolidated Financial Statements.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	For the Six Months Ended	
	August 3, 2013	July 28, 2012
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net earnings including non-controlling interest	\$ 75,934	\$ 86,150
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	43,450	41,775
Tuxedo rental product amortization	19,004	17,956
Loss on disposition of assets	1,001	1,434
Goodwill impairment charge	9,501	—

Asset impairment charges	46	122
Share-based compensation	9,069	8,322
Excess tax benefits from share-based plans	(1,114)	(2,039)
Deferred tax (benefit) provision	(5,301)	4,740
Deferred rent expense and other	1,923	211
Changes in operating assets and liabilities:		
Accounts receivable	5,663	(13,006)
Inventories	(47,956)	(4,831)
Tuxedo rental product	(37,224)	(34,789)
Other assets	6,585	(6,816)
Accounts payable, accrued expenses and other current liabilities	23,061	8,379
Income taxes payable	(1,488)	(505)
Other liabilities	(912)	1,329
Net cash provided by operating activities	<u>101,242</u>	<u>108,432</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures	(52,261)	(68,846)
Proceeds from sales of property and equipment	<u>191</u>	<u>14</u>
Net cash used in investing activities	<u>(52,070)</u>	<u>(68,832)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	5,409	3,939
Cash dividends paid	(18,350)	(18,613)
Deferred financing costs	(1,776)	—
Tax payments related to vested deferred stock units	(3,865)	(4,421)
Excess tax benefits from share-based plans	1,114	2,039
Repurchases of common stock	<u>(152,129)</u>	<u>(41,296)</u>
Net cash used in financing activities	<u>(169,597)</u>	<u>(58,352)</u>
Effect of exchange rate changes	<u>(3,150)</u>	<u>(155)</u>
DECREASE IN CASH AND CASH EQUIVALENTS	(123,575)	(18,907)
Balance at beginning of period	<u>156,063</u>	<u>125,306</u>
Balance at end of period	<u>\$ 32,488</u>	<u>\$ 106,399</u>

See Notes to Condensed Consolidated Financial Statements.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

1. Significant Accounting Policies

Basis of Presentation — The condensed consolidated financial statements herein include the accounts of The Men's Wearhouse, Inc. and its subsidiaries (the "Company") and have been prepared without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). As applicable under such regulations, certain information and footnote disclosures have been condensed or omitted. We believe that the presentation and disclosures herein are adequate to make the information not misleading, and the condensed consolidated financial statements reflect all elimination entries and normal recurring adjustments which are necessary for a fair presentation of the financial position, results of operations and cash flows at the dates and for the periods presented. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended February 2, 2013.

The preparation of the condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts and related disclosures. Actual amounts could differ from those estimates.

Recent Accounting Pronouncements — In February 2013, the Financial Accounting Standards Board ("FASB") issued updated guidance regarding the reporting of amounts reclassified out of accumulated other comprehensive income. The update requires disclosure of amounts reclassified out of accumulated other comprehensive income by component. In addition, entities are required to present, either on the face of

the statement of operations or in the notes, significant amounts reclassified out of accumulated other comprehensive income by the respective line items of net income but only if the amount reclassified is required to be reclassified to net income in its entirety in the same reporting period. For amounts not reclassified in their entirety to net income, entities are required to cross-reference to other disclosures that provide additional detail about those amounts. As this update only affects disclosure requirements its adoption at the beginning of fiscal 2013 had no impact on our financial position, results of operations or cash flows.

In July 2012, the FASB issued updated guidance regarding testing indefinite-lived intangible assets for impairment. The amendments in this update will allow an entity to first assess qualitative factors to determine whether it is necessary to perform a quantitative impairment test. Under these amendments, an entity would not be required to calculate the fair value of an indefinite-lived intangible asset unless the entity determines, based on a qualitative assessment, that it is more likely than not that the indefinite-lived intangible asset is impaired. The amendments include a number of events and circumstances for an entity to consider in conducting the qualitative assessment. The adoption of this update at the beginning of our 2013 fiscal year had no impact on our financial position, results of operations or cash flows but may change the way we perform our testing of indefinite-lived intangible assets for impairment.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)**

2. Earnings per Share

Basic earnings per common share attributable to common shareholders is determined using the two-class method and is computed by dividing net earnings attributable to common shareholders by the weighted-average common shares outstanding during the period. Diluted earnings per common share attributable to common shareholders reflects the more dilutive earnings per common share amount calculated using the treasury stock method or the two-class method.

The following table sets forth the computation of basic and diluted earnings per common share attributable to common shareholders (in thousands, except per share amounts). Basic and diluted earnings per common share attributable to common shareholders are computed using the actual net earnings available to common shareholders and the actual weighted-average common shares outstanding rather than the rounded numbers presented within our condensed consolidated statement of earnings and the accompanying notes. As a result, it may not be possible to recalculate earnings per common share attributable to common shareholders in our condensed consolidated statement of earnings and the accompanying notes.

	For the Three Months Ended		For the Six Months Ended	
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012
Numerator				
Total net earnings attributable to common shareholders	\$ 42,943	\$ 59,393	\$ 76,034	\$ 86,277
Net earnings allocated to participating securities (restricted stock and deferred stock units)	(139)	(624)	(474)	(1,101)
Net earnings attributable to common shareholders	<u>\$ 42,804</u>	<u>\$ 58,769</u>	<u>\$ 75,560</u>	<u>\$ 85,176</u>
Denominator				
Basic weighted-average common shares outstanding	49,843	50,711	50,225	50,822
Effect of dilutive securities:				
Stock options and equity-based compensation	290	221	235	262
Diluted weighted-average common shares outstanding	<u>50,133</u>	<u>50,932</u>	<u>50,460</u>	<u>51,084</u>
Net earnings per common share attributable to common shareholders:				
Basic	<u>\$ 0.86</u>	<u>\$ 1.16</u>	<u>\$ 1.50</u>	<u>\$ 1.68</u>
Diluted	<u>\$ 0.85</u>	<u>\$ 1.15</u>	<u>\$ 1.50</u>	<u>\$ 1.67</u>

For the three and six months ended August 3, 2013, 0.2 million and 0.3 million anti-dilutive shares of common stock were excluded from the calculation of diluted earnings per common share, respectively. For the three and six months ended July 28, 2012, 0.4 million and 0.3 million anti-dilutive shares of common stock were excluded from the calculation of diluted earnings per common share, respectively.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

3. Debt

On April 12, 2013, we entered into a Third Amended and Restated Credit Agreement (the "Credit Agreement"), with a group of banks to amend and restate our existing credit facility, which provided us with a revolving credit facility that was scheduled to mature on January 26, 2016.

The Credit Agreement provides for a total senior revolving credit facility of \$300.0 million, with possible future increases to \$450.0 million under an expansion feature, which matures on April 12, 2018. In addition, the Credit Agreement provides for a \$100.0 million term loan, available in a single advance during the 120 day period after the closing date. On August 6, 2013, we borrowed \$100.0 million under the term loan provision of our Credit Agreement which will be repaid over five years, with 10% payable annually in quarterly installments and the remainder due at maturity (see Note 14). The Credit Agreement is secured by the stock of certain of our subsidiaries. The Credit Agreement has several borrowing and interest rate options including the following indices: (i) adjusted LIBO rate, (ii) adjusted EURIBO rate, (iii) CDOR rate, (iv) Canadian prime rate or (v) an alternate base rate (equal to the greater of the prime rate, the federal funds rate plus 0.5% or the adjusted LIBO rate for a one month period plus 1.0%). Advances under the Credit Agreement bear interest at a rate per annum using the applicable indices plus a varying interest rate margin of up to 2.50%. The Credit Agreement also provides for fees applicable to amounts available to be drawn under outstanding letters of credit which range from 1.75% to 2.50%, and a fee on unused commitments which ranges from 0.35% to 0.50%. As of August 3, 2013, there were no borrowings outstanding under the Credit Agreement.

The Credit Agreement contains certain restrictive and financial covenants, including the requirement to maintain certain financial ratios. The restrictive provisions in the Credit Agreement reflect an overall covenant structure that is generally representative of a commercial loan made to an investment-grade company. Our debt, however, is not rated and we have not sought, and are not seeking, a rating of our debt. We were in compliance with the covenants in the Credit Agreement as of August 3, 2013.

We utilize letters of credit primarily to secure inventory purchases and as collateral for workers compensation claims. At August 3, 2013, letters of credit totaling approximately \$21.5 million were issued and outstanding. Borrowings available under our Credit Agreement at August 3, 2013 were \$278.5 million.

4. Supplemental Cash Flows

Supplemental disclosure of cash flow information is as follows (in thousands):

	For the Six Months Ended	
	August 3, 2013	July 28, 2012
Cash paid for:		
Interest	\$ 301	\$ 734
Income taxes, net	\$ 43,209	\$ 43,429
Schedule of noncash investing and financing activities:		
Additional capital in excess of par resulting from tax benefit related to share-based plans	\$ 607	\$ 2,004
Cash dividends declared	\$ 9,279	\$ 9,214

We had unpaid capital expenditure purchases included in accounts payable, accrued expenses and other current liabilities of approximately \$14.5 million and \$7.9 million at August 3, 2013 and July 28, 2012, respectively. Capital expenditure purchases are recorded as cash outflows from investing activities in the condensed consolidated statement of cash flows in the period they are paid.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

5. Other Current Assets, Accrued Expenses and Other Current Liabilities and Deferred Taxes and Other Liabilities

Other current assets consist of the following (in thousands):

	August 3, 2013	July 28, 2012	February 2, 2013
Prepaid expenses	\$ 35,731	\$ 35,533	\$ 35,403
Current deferred tax asset	25,463	22,311	26,607
Tax receivable	1,437	3,363	8,040
Other	9,204	9,579	9,499

deferred stock units	—	(4,421)	—	—	—	(4,421)	—	(4,421)
Tax benefit related to share-based plans	—	2,004	—	—	—	2,004	—	2,004
Treasury stock reissued	—	26	—	—	151	177	—	177
Repurchases of common stock	—	—	—	—	(41,296)	(41,296)	—	(41,296)
BALANCES — July 28, 2012	\$ 722	\$ 372,601	\$ 1,163,324	\$ 36,302	\$ (517,894)	\$ 1,055,055	\$ 12,532	\$ 1,067,587

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)**
7. Share Repurchases and Reissuances

In March 2013, the Board of Directors (the "Board") approved a \$200.0 million share repurchase program for our common stock. This approval amended and replaced our existing \$150.0 million share repurchase program authorized by the Board in January 2011, which had a remaining authorization of \$45.2 million at the time of amendment.

In July 2013, we entered into an accelerated share repurchase agreement ("ASR Agreement") with J.P. Morgan Securities LLC ("JP Morgan"), as agent for JPMorgan Chase Bank, National Association, London Branch, to purchase \$100.0 million of our common stock. We paid \$100.0 million to JPMorgan and received an initial delivery of 2,197,518 shares (which is approximately 85% of the number of shares expected to be repurchased in connection with this transaction), and reduced our shares outstanding as of August 3, 2013. The value of the initial shares received on the date of purchase was approximately \$85.0 million, reflecting a \$38.68 price per share which was recorded as a retirement of the shares for purposes of calculating earnings per share. In accordance with authoritative guidance, we recorded the remaining \$15.0 million as a forward contract indexed to our common stock within capital in excess of par. The specific final number of shares to be repurchased by JPMorgan will generally be based on the volume-weighted average share price of our common stock during the calculation period of the ASR Agreement which is expected to be completed no later than the fourth quarter of 2013. In the unlikely event we are required to deliver value to JPMorgan at the end of the purchase period, we, at our option, may elect to settle in shares or cash.

In addition to the ASR Agreement, during the first six months of fiscal 2013, 1,489,318 shares at a cost of \$52.0 million were repurchased in open market transactions at an average price per share of \$34.89 under the Board's March 2013 authorization. At August 3, 2013, the remaining balance available under the Board's March 2013 authorization was \$48.0 million, which has been reduced by the entire \$100.0 million payment under the ASR Agreement.

During the first six months of fiscal 2012, 1,121,484 shares at a cost of \$41.0 million were repurchased at an average price per share of \$36.59 under the January 2011 authorization.

During the six months ended August 3, 2013 and July 28, 2012, 5,378 shares and 7,041 shares, respectively, at a cost of \$0.2 million and \$0.3 million, respectively, were repurchased at an average price per share of \$30.03 and \$37.28, respectively, in private transactions to satisfy tax withholding obligations arising upon the vesting of certain restricted stock.

The following table summarizes our total common stock repurchases (in thousands, except share data and average price per share):

	For the Six Months Ended	
	August 3, 2013	July 28, 2012
Shares repurchased	3,692,214	1,128,525
Total costs	\$ 152,129	\$ 41,296
Average price per share	\$ 37.14	\$ 36.59

Shares purchased pursuant to the ASR Agreement are presented in the above table in the periods in which they are received. The total costs includes the entire \$100.0 million payment, however, the average price per share calculation excludes the \$15.0 million recorded as a forward contract.

As of August 3, 2013 and July 28, 2012, 6,735 treasury shares and 6,295 treasury shares, respectively, of our common stock were reissued pursuant to a two-year services agreement with an unrelated third party. The fair value of the common stock issued during the six months ended August 3, 2013 and July 28, 2012 was approximately \$0.2 million, respectively.

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THE MEN'S WEARHOUSE, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

8. Share-Based Compensation Plans

For a discussion of our share-based compensation plans refer to Note 9 in our Annual Report on Form 10-K for the fiscal year ended February 2, 2013.

We account for share-based awards in accordance with the authoritative guidance regarding share-based payments, which requires the compensation cost resulting from all share-based payment transactions be recognized in the financial statements. The amount of compensation cost is measured based on the grant-date fair value of the instrument issued and is recognized over the vesting period. Share-based compensation expense recognized for the three and six months ended August 3, 2013 was \$4.6 million and \$9.1 million, respectively. Share-based compensation expense recognized for the three and six months ended July 28, 2012 was \$4.2 million and \$8.3 million, respectively.

Non-Vested Deferred Stock Units and Restricted Stock Shares

The following table summarizes the activity of time-based and performance-based deferred stock units for the six months ended August 3, 2013:

	Shares		Weighted-Average Grant-Date Fair Value	
	Time- Based	Performance- Based	Time- Based	Performance- Based
Non-Vested at February 2, 2013	471,369	—	\$ 36.22	\$ —
Granted	449,595	97,668	33.09	33.09
Vested ⁽¹⁾	(325,763)	—	38.19	—
Forfeited	(22,778)	(15,110)	32.39	33.09
Non-Vested at August 3, 2013	<u>572,423</u>	<u>82,558</u>	<u>\$ 32.80</u>	<u>\$ 33.09</u>

⁽¹⁾ Includes 110,740 shares relinquished for tax payments related to vested deferred stock units for the six months ended August 3, 2013.

On April 3, 2013, our Board approved a change in the form of award agreements to be issued for grants of deferred stock units (“DSUs”) to participants under our 2004 Long-Term Incentive Plan. As revised, the award agreements provide that dividend equivalents, if any, will be accrued during the vesting period for such DSU awards and paid out only upon vesting of the underlying DSUs. As such, grants of DSU awards on or after April 3, 2013 earn dividends throughout the vesting period which are subject to the same vesting terms as the underlying share award. Grants of DSUs generally vest over a period of from one to three years. DSU awards granted prior to April 3, 2013 are entitled to receive non-forfeitable dividend equivalents, if any, when and if paid to shareholders of record at the payment date. Included in the non-vested time-based awards as of August 3, 2013 are 142,762 deferred stock units granted prior to April 3, 2013.

The performance-based DSUs represent a contingent right to receive one share of common stock and generally vest in one-third tranches over a three year period, subject to our achievement of a performance target during an applicable performance period. Any unvested performance-based DSUs at the end of the performance period are rolled over and become eligible to vest in subsequent performance periods. Any performance-based DSUs that are unvested at the end of all vesting periods will lapse and be forfeited as of such time. The performance-based DSUs earn dividends throughout the vesting period and are subject to the same vesting terms as the underlying performance-based awards.

The following table summarizes the activity of restricted stock for the six months ended August 3, 2013:

	Shares	Weighted- Average Grant-Date Fair Value
	Non-Vested at February 2, 2013	99,847
Granted	11,971	37.59
Vested	(32,695)	29.44
Forfeited	—	—
Non-Vested at August 3, 2013	<u>79,123</u>	<u>\$ 29.54</u>

As of August 3, 2013, we have unrecognized compensation expense related to non-vested deferred stock units and shares of restricted stock of approximately \$18.0 million, which is expected to be recognized over a weighted-average period of 1.4 years.

Stock Options

The following table summarizes the activity of stock options for the six months ended August 3, 2013:

	Shares	Weighted-Average Exercise Price
Outstanding at February 2, 2013	1,024,768	\$ 25.54
Granted	19,080	33.09
Exercised	(210,977)	18.78
Forfeited	(25,012)	19.58
Expired	(5)	7.97
Outstanding at August 3, 2013	807,854	\$ 27.67
Exercisable at August 3, 2013	496,348	\$ 26.80

The weighted-average grant date fair value of the 19,080 stock options granted during the six months ended August 3, 2013 was \$13.10 per share. The following table summarizes the weighted-average assumptions used to fair value stock options at the date of grant using the Black-Scholes option pricing model for the six months ended August 3, 2013.

	For the Six Months Ended August 3, 2013
Risk-free interest rate	0.76%
Expected lives	5.0 years
Dividend yield	2.20%
Expected volatility	55.00%

The assumptions presented in the table above represent the weighted-average of the applicable assumptions used to fair value stock options. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant. The expected lives represents the period of time the options are expected to be outstanding after their grant date. The dividend yield is based on the average of the annual dividend divided by the market price of our common stock at the time of declaration. Expected volatility is based on historical volatility of our common stock.

As of August 3, 2013, we have unrecognized compensation expense related to non-vested stock options of approximately \$3.1 million which is expected to be recognized over a weighted-average period of 2.1 years.

Employee Stock Discount Plan

The Employee Stock Discount Plan ("ESDP") allows employees to authorize after-tax payroll deductions to be used for the purchase of up to 2,137,500 shares of our common stock at 85% of the lesser of the fair market value on the first day of the offering period or the fair market value on the last day of the offering period. We make no contributions to this plan but pay all brokerage, service and other costs incurred. The plan, as amended, allows participants to purchase no more than 125 shares during any calendar quarter.

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During the six months ended August 3, 2013, employees purchased 53,245 shares under the ESDP, which had a weighted-average share price of \$27.19 per share. As of August 3, 2013, 795,203 shares were reserved for future issuance under the ESDP.

9. Goodwill and Other Intangible Assets

Goodwill

Goodwill allocated to our reportable segments and changes in the net carrying amount of goodwill for the six months ended August 3, 2013 are as follows (in thousands):

Retail	Corporate Apparel	Total
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Balance at February 2, 2013	\$ 59,995	\$ 27,840	\$ 87,835
Impairment charge	(9,501)	—	(9,501)
Translation adjustment	(1,118)	(706)	(1,824)
Balance at August 3, 2013	\$ 49,376	\$ 27,134	\$ 76,510

Goodwill is evaluated for impairment annually as of our fiscal year end. A more frequent evaluation is performed if events or circumstances indicate that impairment could have occurred. During the second quarter of fiscal 2013, based on estimates provided to us by market participants during our review of strategic alternatives for the K&G brand, we concluded that the carrying value of the K&G brand exceeded its fair value. Based on further analysis, it was determined that the entire carrying value of K&G's goodwill was impaired resulting in a non-cash goodwill impairment charge of \$9.5 million.

Intangible Assets

The gross carrying amount and accumulated amortization of our identifiable intangible assets are as follows (in thousands):

	August 3, 2013	July 28, 2012	February 2, 2013
Amortizable intangible assets:			
Carrying amount:			
Trademarks, tradenames, and other intangibles	\$ 14,423	\$ 12,432	\$ 14,502
Customer relationships	31,244	32,138	32,098
Total carrying amount	45,667	44,570	46,600
Accumulated amortization:			
Trademarks, tradenames, and other intangibles	(8,981)	(8,379)	(8,663)
Customer relationships	(7,886)	(5,356)	(6,751)
Total accumulated amortization	(16,867)	(13,735)	(15,414)
Total amortizable intangible assets, net	28,800	30,835	31,186
Infinite-lived intangible assets:			
Trademarks	1,222	1,258	1,256
Total intangible assets, net	\$ 30,022	\$ 32,093	\$ 32,442

The pretax amortization expense associated with intangible assets subject to amortization totaled approximately \$0.8 million for the three months ended August 3, 2013 and July 28, 2012, respectively. The pretax amortization expense associated with intangible assets subject to amortization totaled approximately \$1.6 million for the six months ended August 3, 2013 and July 28, 2012, respectively, and approximately \$3.3 million for the year ended February 2, 2013. Pretax amortization associated with intangible assets subject to amortization at August 3, 2013 is estimated to be \$1.6 million for the remainder of fiscal year 2013, \$3.2 million for each of the fiscal years 2014, 2015 and 2016 and \$3.1 million for fiscal year 2017.

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10. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The authoritative guidance for fair value measurements establishes a three-tier fair value hierarchy, categorizing the inputs used to measure fair value. The hierarchy can be described as follows: Level 1- observable inputs such as quoted prices in active markets; Level 2- inputs other than the quoted prices in active markets that are observable either directly or indirectly; and Level 3- unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions. The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

There were no transfers into or out of Level 1 and Level 2 during the six months ended August 3, 2013 or July 28, 2012, respectively, or during the year ended February 2, 2013.

Assets and Liabilities that are Measured at Fair Value on a Recurring Basis

(in thousands)	Fair Value Measurements at Reporting Date Using			Total
	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	

At August 3, 2013-								
Assets:								
Derivative financial instruments	\$	—	\$	271	\$	—	\$	271
Liabilities:								
Derivative financial instruments	\$	—	\$	15	\$	—	\$	15
At February 2, 2013-								
Assets:								
Cash equivalents	\$	20,054	\$	—	\$	—	\$	20,054
Derivative financial instruments	\$	—	\$	215	\$	—	\$	215
Liabilities:								
Derivative financial instruments	\$	—	\$	17	\$	—	\$	17
At July 28, 2012-								
Assets:								
Cash equivalents	\$	20,036	\$	—	\$	—	\$	20,036
Derivative financial instruments	\$	—	\$	43	\$	—	\$	43
Liabilities:								
Derivative financial instruments	\$	—	\$	47	\$	—	\$	47

Cash equivalents consist of money market instruments that have original maturities of three months or less. The carrying value of cash equivalents approximates fair value due to the highly liquid and short-term nature of these instruments.

Derivative financial instruments are comprised of foreign currency forward exchange contracts primarily entered into to minimize our foreign currency exposure related to forecasted purchases of certain inventories denominated in a currency different from the operating entity's functional currency. Our derivative financial instruments are recorded in the condensed consolidated balance sheets at fair value based upon observable market inputs. Derivative financial instruments in an asset position are included within other current assets in the condensed consolidated balance sheets. Derivative financial

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instruments in a liability position are included within accrued expenses and other current liabilities in the condensed consolidated balance sheets. Refer to Note 11 for further information regarding our derivative instruments.

Assets and Liabilities that are Measured at Fair Value on a Non-Recurring Basis

Long-lived assets, such as property and equipment, goodwill and identifiable intangibles, are periodically evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If the asset carrying amount exceeds its fair value, an impairment charge is recognized in the amount by which the carrying amount exceeds the fair value of the asset. The fair values of long-lived assets held-for-use are based on our own judgments about the assumptions that market participants would use in pricing the asset and on observable market data, when available. We classify these measurements as Level 3 within the fair value hierarchy. For the three and six months ended August 3, 2013, we recorded charges for the impairment of long-lived assets of approximately \$0.1 million which is included within selling, general and administrative ("SG&A") expenses in our condensed consolidated statement of earnings. The asset impairment charges reduced the carrying amounts of the applicable long-lived assets, primarily leasehold improvements for certain Men's Wearhouse and Tux stores, to their fair values of zero as of August 3, 2013. For the three and six months ended July 28, 2012, we recorded charges for the impairment of long-lived assets of \$0.1 million which is included within SG&A expenses in our condensed consolidated statement of earnings. The asset impairment charges reduced the carrying amounts of the applicable long-lived assets, primarily leasehold improvements for certain Men's Wearhouse and Tux stores, to their fair values of zero as of July 28, 2012.

During the second quarter of fiscal 2013, we recorded a goodwill impairment charge related to our K&G brand totaling \$9.5 million. We estimated the fair value of the K&G brand based on estimates provided to us by market participants which we classified as Level 2 within the fair value hierarchy.

Fair Value of Financial Instruments

Our financial instruments, other than those presented in the disclosures above, consist of cash, accounts receivable, accounts payable and accrued expenses and other current liabilities. Management estimates that, as of August 3, 2013, July 28, 2012, and February 2, 2013, the carrying value of cash, accounts receivable, accounts payable and accrued expenses and other current liabilities approximate their fair value due to the highly liquid or short-term nature of these instruments.

11. Derivative Financial Instruments

We are exposed to market risk associated with foreign currency exchange rate fluctuations as a result of our direct sourcing programs and

our operations in foreign countries. In connection with our direct sourcing programs, we may enter into merchandise purchase commitments that are denominated in a currency different from the functional currency of the operating entity. Our risk management policy is to hedge a significant portion of forecasted merchandise purchases for our direct sourcing programs that bear foreign exchange risk using foreign exchange forward contracts. We have not elected to apply hedge accounting to these transactions denominated in a foreign currency.

Our derivative financial instruments are recorded in the condensed consolidated balance sheet at fair value determined by comparing the cost of the foreign currency to be purchased under the contracts using the exchange rates obtained under the contracts (adjusted for forward points) to the hypothetical cost using the spot rate at period end.

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The tables below disclose the fair value of the derivative financial instruments included in the condensed consolidated balance sheets as of August 3, 2013, February 2, 2013 and July 28, 2012 (in thousands):

	Asset Derivatives		Liability Derivatives	
	Balance Sheet		Balance Sheet	
	Location	Fair Value	Location	Fair Value
Derivatives not designated as hedging instruments:				
At August 3, 2013- Foreign exchange forward contracts	Other current assets	\$ 271	Accrued expenses and other current liabilities	\$ 15
At February 2, 2013- Foreign exchange forward contracts	Other current assets	\$ 215	Accrued expenses and other current liabilities	\$ 17
At July 28, 2012- Foreign exchange forward contracts	Other current assets	\$ 43	Accrued expenses and other current liabilities	\$ 47

At August 3, 2013, we had 10 contracts to purchase Euros for an aggregate notional amount of US\$0.8 million maturing in various increments at various dates through January 2014, 11 contracts to purchase United States dollars ("USD") for an aggregate notional amount of Canadian dollars ("CAD") \$1.6 million maturing in various increments at various dates through November 2013 and 32 contracts to purchase USD for an aggregate notional amount of pounds Sterling ("GBP") £10.1 million maturing in various increments at various dates through December 2013. For the three and six months ended August 3, 2013, we recognized net pre-tax gains of \$0.5 million and \$1.2 million, respectively, in cost of sales in the condensed consolidated statement of earnings for our derivative financial instruments not designated as cash flow hedges.

At February 2, 2013, we had four contracts maturing in varying increments to purchase Euros for an aggregate notional amount of US\$1.2 million maturing at various dates through May 2013, 10 contracts maturing in varying increments to purchase USD for an aggregate notional amount of CAD \$4.1 million maturing at various dates through May 2013 and 16 contracts maturing in varying increments to purchase USD for an aggregate notional amount of GBP £14.0 million maturing at various dates through June 2013.

At July 28, 2012, we had 10 contracts to purchase Euros for an aggregate notional amount of US\$0.9 million maturing in various increments at various dates through December 2012, 13 contracts to purchase United States dollars ("USD") for an aggregate notional amount of Canadian dollars ("CAD") \$7.3 million maturing in various increments at various dates through December 2012 and 18 contracts to purchase USD for an aggregate notional amount of pounds Sterling ("GBP") £11.8 million maturing in various increments at various dates through December 2012. For the three and six months ended July 28, 2012, we recognized a net pre-tax gain of \$0.6 million and a pre-tax loss of \$0.2 million, respectively, in cost of sales in the condensed consolidated statement of earnings for our derivative financial instruments not designated as cash flow hedges.

We had no derivative financial instruments with credit-risk-related contingent features underlying the agreements as of August 3, 2013, February 2, 2013 or July 28, 2012, respectively.

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12. Segment Reporting

Our operations are conducted in two reportable segments, retail and corporate apparel, based on the way we manage, evaluate and internally report our business activities.

The retail segment includes the results from our four retail merchandising brands: Men's Wearhouse, Men's Wearhouse and Tux, Moores Clothing for Men ("Moores") and K&G. These four brands are operating segments that have been aggregated into the retail reportable segment based on their similar economic characteristics, products, production processes, target customers and distribution methods. MW Cleaners is also aggregated in the retail segment as these operations have not had a significant effect on our revenues or expenses. Specialty apparel merchandise offered by our four retail merchandising concepts include suits, suit separates, sport coats, slacks, sportswear, outerwear, dress shirts, shoes and accessories for men. Ladies' career apparel, sportswear and accessories, including shoes, and children's apparel is offered at most of our K&G stores and tuxedo rentals are offered at our Men's Wearhouse, Men's Wearhouse and Tux and Moores retail stores.

The corporate apparel segment includes the results from our corporate apparel and uniform operations conducted by Twin Hill in the United States ("U.S.") and Dimensions, Alexandra and Yaffy in the United Kingdom ("UK"). The two corporate apparel and uniform concepts are operating segments that have been aggregated into the reportable corporate apparel segment based on their similar economic characteristics, products, production processes, target customers and distribution methods. The corporate apparel segment provides corporate clothing uniforms and workwear to workforces.

Operating income is the primary measure of profit we use to make decisions on allocating resources to our operating segments and to assess the operating performance of each operating segment. It is defined as income before interest expense, interest income, income taxes and non-controlling interest. Corporate expenses and assets are allocated to the retail segment.

Net sales by brand and reportable segment are as follows (in thousands):

Net sales:	For the Three Months Ended		For the Six Months Ended	
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012
MW ⁽¹⁾	\$ 426,597	\$ 429,513	\$ 828,432	\$ 800,981
Moores	74,544	78,361	128,315	133,839
K&G	84,860	89,995	182,200	193,087
MW Cleaners	7,439	6,819	14,674	13,473
Total retail segment	593,440	604,688	1,153,621	1,141,380
Twin Hill	9,977	6,218	17,936	13,283
Dimensions and Alexandra (UK)	43,838	51,396	92,234	94,213
Total corporate apparel segment	53,815	57,614	110,170	107,496
Total net sales	\$ 647,255	\$ 662,302	\$ 1,263,791	\$ 1,248,876

⁽¹⁾ MW includes Men's Wearhouse and Men's Wearhouse and Tux stores.

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The following table sets forth supplemental products and services sales information for us (in thousands):

Net sales:	For the Three Months Ended		For the Six Months Ended	
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012
Men's tailored clothing product	\$ 226,479	\$ 227,664	\$ 461,323	\$ 457,944
Men's non-tailored clothing product	164,305	165,836	331,078	332,724
Ladies' clothing product	17,899	19,524	40,019	42,825
Total retail clothing product	408,683	413,024	832,420	833,493
Tuxedo rental services	147,701	154,124	246,183	232,613
Alteration services	29,617	30,721	60,344	61,801
Retail dry cleaning services	7,439	6,819	14,674	13,473
Total alteration and other services	37,056	37,540	75,018	75,274
Corporate apparel clothing product	53,815	57,614	110,170	107,496

Total net sales	\$	<u>647,255</u>	\$	<u>662,302</u>	\$	<u>1,263,791</u>	\$	<u>1,248,876</u>
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Operating income (loss) by reportable segment and the reconciliation to earnings before income taxes is as follows (in thousands):

Operating income (loss):	For the Three Months Ended		For the Six Months Ended	
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012
Retail	\$ 65,088	\$ 89,399	\$ 116,558	\$ 132,766
Corporate apparel	1,700	2,191	2,783	(229)
Operating income	66,788	91,590	119,341	132,537
Interest income	181	143	302	271
Interest expense	(540)	(508)	(884)	(941)
Earnings before income taxes	\$ 66,429	\$ 91,225	\$ 118,759	\$ 131,867

13. Legal Matters

We are involved in various routine legal proceedings, including ongoing litigation, incidental to the conduct of our business. Management does not believe that any of these matters will have a material adverse effect on our financial position, results of operations or cash flows.

14. Subsequent Events

In July 2013, we signed a definitive agreement to acquire JA Holding, Inc. ("JA Holding"), the parent company of the American clothing brand, Joseph Abboud®, for approximately \$97.5 million in cash consideration, subject to certain adjustments. The transaction closed on August 6, 2013.

On August 6, 2013, we borrowed \$100.0 million under the term loan provision of our Credit Agreement to fund the acquisition of JA Holding. The rate on the term loan is based on the monthly LIBOR rate plus 1.75%. In conjunction with the loan, we also entered into an interest rate swap for \$100.0 million, in which the variable rate payments due under the term loan will be exchanged for a fixed rate of 1.27%, resulting in a combined interest rate of 3.02%. The interest rate swap qualifies for hedge accounting treatment under authoritative guidance which will result in changes in the fair value of the swap being recorded as an adjustment to comprehensive income within equity.

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

General

For supplemental information, it is suggested that "Management's Discussion and Analysis of Financial Condition and Results of Operations" be read in conjunction with the corresponding section included in our Annual Report on Form 10-K for the year ended February 2, 2013. References herein to years are to our 52-week or 53-week fiscal year, which ends on the Saturday nearest January 31 in the following calendar year. For example, references to "2013" mean the 52-week fiscal year ending February 1, 2014.

Our operations are conducted in two reportable segments, retail and corporate apparel, based on the way we manage, evaluate and internally report our business activities.

We conduct our retail segment as a specialty apparel retailer offering suits, suit separates, sport coats, slacks, sportswear, outerwear, dress shirts, shoes and accessories for men, and tuxedo rentals. We offer our products and services through multiple brands and channels including The Men's Wearhouse, Men's Wearhouse and Tux, Moores Clothing for Men ("Moores"), K&G and the Internet at www.menswearhouse.com and www.kgstores.com. Our stores are located throughout the United States ("U.S.") and Canada and carry a wide selection of exclusive and non-exclusive merchandise brands. In addition, we offer our customers a variety of services, including alterations and our loyalty program. Most of our K&G stores offer ladies' career apparel, sportswear, accessories and shoes and children's apparel. MW Cleaners is also aggregated in the retail segment, as these operations have not had a significant effect on our revenues or expenses. MW Cleaners conducts retail dry cleaning, laundry and heirlooming operations in the Houston, Texas area.

The corporate apparel segment includes the results from our corporate apparel and uniform operations conducted by Twin Hill in the U.S. and Dimensions, Alexandra and Yaffy in the United Kingdom ("UK"). These operations provide corporate clothing uniforms and workwear to workforces through multiple channels including managed corporate accounts, catalogs and the Internet.

Refer to Note 12 of Notes to Condensed Consolidated Financial Statements for additional information and disclosures regarding our reportable segments and the discussion included in "Results of Operations" below.

In March 2013, we announced that we engaged Jefferies & Co. to assist us in evaluating strategic alternatives for our K&G operations. We believe our core strengths lie primarily in our service culture and specialty men's apparel retailing, and that we will be better able to focus our efforts on these core operations by taking this action. During the second quarter of fiscal 2013, based on estimates provided to us by market participants during our review of strategic alternatives for the K&G brand, we concluded that the carrying value of the K&G brand exceeded its fair value. Based on further analysis, it was determined that the entire carrying value of K&G's goodwill was impaired resulting in a non-cash goodwill impairment charge of \$9.5 million.

In July 2013, we signed a definitive agreement to acquire JA Holding, Inc. (“JA Holding”), the parent company of the American clothing brand, Joseph Abboud®, for approximately \$97.5 million in cash consideration, subject to certain adjustments. The transaction closed on August 6, 2013. We believe this transaction will accelerate our strategy of offering exclusive brands with broad appeal at attractive prices and will enhance shareholder value.

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Overview

Highlights of our performance for the quarter ended August 3, 2013 compared to the quarter ended July 28, 2012 are presented below, followed by a more comprehensive discussion under “Results of Operations”:

- Revenues for the second quarter of 2013 decreased by \$15.0 million or 2.3%, to \$647.3 million compared to revenues of \$662.3 million in the second quarter of 2012.
- Gross margin for the second quarter of 2013 decreased by \$11.5 million or 3.6%, to \$308.8 million compared to \$320.3 million in the second quarter of 2012. Gross margin as a percentage of total net sales for the second quarter of 2013 was 47.7% compared to 48.4% for the second quarter of 2012.
- During the second quarter of fiscal 2013, we recorded a non-cash goodwill impairment charge of \$9.5 million.
- Selling, general and administrative (“SG&A”) expenses for the second quarter of 2013 increased 1.7%, to \$232.5 million compared to SG&A expenses of \$228.7 million in the second quarter of 2012 and increased 1.4% as a percentage of total net sales as compared to the second quarter of 2012.
- Net earnings attributable to common shareholders for the second quarter of 2013 decreased by \$16.5 million or 27.7%, to \$42.9 million compared to \$59.4 million for the second quarter of 2012.
- Diluted earnings per common share attributable to common shareholders decreased 26.1% to \$0.85 per share for the second quarter of 2013 compared to \$1.15 per share for the second quarter of fiscal 2012.

Highlights of our performance for the six months ended August 3, 2013 compared to the six months ended July 28, 2012 are presented below, followed by a more comprehensive discussion under “Results of Operations”:

- Revenues for the first six months of 2013 increased by \$14.9 million or 1.2%, to \$1,263.8 million compared to revenues of \$1,248.9 million in the first six months of 2013.
- Gross margin for the first six months of 2013 increased by \$12.4 million or 2.2%, to \$586.7 million compared to \$574.3 million in the first six months of 2012. Gross margin as a percentage of total net sales for the first six months of 2013 was 46.4% compared to 46.0% for the first six months of 2012.
- During the first six months of fiscal 2013, we recorded a non-cash goodwill impairment charge of \$9.5 million.
- SG&A expenses for the first six months of 2013 increased 3.7%, to \$457.9 million compared to SG&A expenses of \$441.8 million in the first six months of 2012 and increased 0.8% as a percentage of total net sales as compared to the first six months of 2012.
- Net earnings attributable to common shareholders for the first six months of 2013 decreased by \$10.2 million or 11.9%, to \$76.0 million compared to \$86.3 million for the first six months of 2012.
- Diluted earnings per common share attributable to common shareholders decreased 10.2% to \$1.50 per share for the first six months of 2013 compared to \$1.67 per share for the first six months of fiscal 2012.
- Net cash provided by our operating activities for the first six months of 2013 was \$101.2 million compared to \$108.4 million for the first six months of 2012. We held cash and cash equivalent balances of \$32.5 million at August 3, 2013, \$156.1 million at February 2, 2013 and \$106.4 million at July 28, 2012.
- During the first six months of 2013, we paid cash dividends of \$18.4 million.
- During the first six months of 2013, we repurchased 3,692,214 shares of our common stock for \$152.1 million. These totals do not include additional shares that will be retired upon the completion of our accelerated share repurchase agreement (“ASR Agreement”).

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Store data

The following table presents information with respect to retail apparel stores in operation during each of the respective fiscal periods:

	For the Three Months Ended		For the Six Months Ended		For the Year Ended
	August 3, 2013	July 28, 2012	August 3, 2013	July 28, 2012	February 2, 2013
Stores open at beginning of period:	1,141	1,162	1,143	1,166	1,166
Opened	9	4	15	8	37

Closed	(13)	(13)	(21)	(21)	(60)
Stores open at end of period	<u>1,137</u>	<u>1,153</u>	<u>1,137</u>	<u>1,153</u>	<u>1,143</u>
Stores open at end of period:					
Men's Wearhouse	652	613	652	613	638
Men's Wearhouse and Tux	269	325	269	325	288
Moore's	120	117	120	117	120
K&G	96	98	96	98	97
	<u>1,137</u>	<u>1,153</u>	<u>1,137</u>	<u>1,153</u>	<u>1,143</u>

During the first six months of 2013, we opened 15 stores (14 Men's Wearhouse stores and one K&G store) and closed 21 stores (two K&G stores due to substandard performance and 19 Men's Wearhouse and Tux stores: nine due to lease expiration and 10 due to substandard performance).

Seasonality

Our sales and net earnings are subject to seasonal fluctuations. In most years, a greater portion of our net retail clothing sales have been generated during the fourth quarter of each year when holiday season shopping peaks. In addition, our tuxedo rental revenues are heavily concentrated in the second quarter while the fourth quarter is considered the seasonal low point. With respect to corporate apparel sales and operating results, seasonal fluctuations are not significant but customer decisions to rebrand or revise their corporate wear programs can cause significant variations in period results. Because of these fluctuations in our sales, results for any quarter are not necessarily indicative of the results that may be achieved for the full year. Additionally, U.S. and global economic conditions that impact consumer confidence and the level of consumer discretionary spending also impact our operating results.

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Results of Operations

For the Three Months Ended August 3, 2013 compared to the Three Months Ended July 28, 2012

The following table sets forth our results of operations expressed as a percentage of net sales for the periods indicated:

	For the Three Months	
	Ended ⁽¹⁾	
	August 3, 2013	July 28, 2012
Net sales:		
Retail clothing product	63.1%	62.4%
Tuxedo rental services	22.8	23.3
Alteration and other services	<u>5.7</u>	<u>5.7</u>
Total retail sales	91.7	91.3
Corporate apparel clothing product sales	8.3	8.7
Total net sales	100.0%	100.0%
Cost of sales ⁽²⁾ :		
Retail clothing product	43.5	44.6
Tuxedo rental services	15.3	13.8
Alteration and other services	78.1	75.0
Occupancy costs	<u>12.3</u>	<u>11.5</u>
Total retail cost of sales	50.9	50.1
Corporate apparel clothing product cost of sales	68.0	68.1
Total cost of sales	52.3	51.6
Gross margin ⁽²⁾ :		
Retail clothing product	56.5	55.4
Tuxedo rental services	84.7	86.2
Alteration and other services	21.9	25.0
Occupancy costs	<u>(12.3)</u>	<u>(11.5)</u>
Total retail gross margin	49.1	49.9
Corporate apparel clothing product gross margin	<u>32.0</u>	<u>31.9</u>
Total gross margin	47.7	48.4
Goodwill impairment charge	1.5	0.0
Selling, general and administrative expenses	<u>35.9</u>	<u>34.5</u>
Operating income	10.3	13.8
Interest income	0.0	0.0
Interest expense	<u>(0.1)</u>	<u>(0.1)</u>
Earnings before income taxes	10.3	13.8
Provision for income taxes	3.6	4.8
Net earnings including non-controlling interest	6.6	9.0
Net earnings attributable to non-controlling interest	0.0	0.0

Net earnings attributable to common shareholders	6.6%	9.0%
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- (1) Percentage line items may not sum to totals due to the effect of rounding.
(2) Calculated as a percentage of related sales.

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Total net sales decreased \$15.0 million or 2.3%, to \$647.3 million for the second quarter of 2013 as compared to the second quarter of 2012.

Total retail sales decreased \$11.2 million or 1.9%, to \$593.4 million for the second quarter of 2013 as compared to the second quarter of 2012 due mainly to a \$6.4 million decrease in tuxedo rental services revenues and a \$4.3 million decrease in retail clothing product revenues. These decreases are attributable to the following:

(in millions)	Amount Attributed to
\$ 2.7	0.7% increase in comparable sales at Men's Wearhouse/Men's Wearhouse and Tux.
(3.6)	4.9% decrease in comparable sales at Moores.
(2.5)	3.0% decrease in comparable sales at K&G.
(13.1)	Decrease in net sales not included in comparable sales.
10.5	Increase from net sales of stores opened in 2012, relocated stores and expanded stores not yet included in comparable sales.
3.8	Increase in net sales from 15 new stores opened in 2013.
(7.5)	Decrease in net sales resulting from closed stores.
(1.5)	Other.
<u>\$ (11.2)</u>	<u>Decrease in total retail sales.</u>

Comparable sales exclude the net sales of a store for any month of one period if the store was not open throughout the same month of the prior period and include e-commerce net sales, beginning in fiscal 2013. The increase at Men's Wearhouse/Men's Wearhouse and Tux resulted from increased average unit retails (net selling prices) for clothing that more than offset decreased average transactions per store and decreased units sold per transaction. In addition, tuxedo rental service revenues decreased due to decreased unit rentals and decreased tuxedo fees caused mainly by the Easter holiday shift allowing for an earlier prom season that shifted tuxedo revenue from the second quarter to the first quarter of fiscal 2013 that more than offset an increase in the average per unit rental price. The decrease at Moores was driven by decreased average transactions per store for clothing product and decreased units sold per transaction that more than offset increased average unit retails. The decrease at K&G was driven by decreased average transactions per store and decreased average unit retails that more than offset increased units sold per transaction. Because fiscal 2012 was a 53 week fiscal year, comparable sales for the 52 weeks of fiscal 2013 are calculated using the trailing (or comparable) 52 weeks of fiscal 2012. This "calendar shift" resulted in \$13.1 million of the total retail sales decrease for the second quarter of 2013 being excluded from the comparable sales changes shown in the table above. If comparable sales for the second quarter of 2013 are calculated by comparison to the 13 weeks included in the second quarter of 2012 (rather than the trailing 13 weeks), comparable sales would have decreased 2.1% at Men's Wearhouse/Men's Wearhouse and Tux, 5.5% at Moores and 5.1% at K&G.

Total corporate apparel clothing product sales decreased \$3.8 million for the second quarter of 2013 as compared to the second quarter of 2012. UK corporate apparel sales decreased \$7.6 million due mainly to a lower level of customer-directed new uniform rollouts this year compared to last year. U.S. corporate apparel sales increased \$3.8 million, due primarily to increased sales from new customer rollouts.

Our gross margin was as follows:

	For the Three Months Ended	
	August 3, 2013	July 28, 2012
Gross margin (in thousands)	\$ 308,794	\$ 320,257
Gross margin as a percentage of related sales:		
Retail gross margin:		
Clothing product	56.5%	55.4%
Tuxedo rental services	84.7%	86.2%
Alteration and other services	21.9%	25.0%
Occupancy costs	(12.3)%	(11.5)%
Total retail gross margin	49.1%	49.9%
Corporate apparel clothing product gross margin	32.0%	31.9%
Total gross margin	47.7%	48.4%

Buying and distribution costs are included in determining our retail and corporate apparel clothing product gross margins. Our gross margin may not be comparable to other specialty retailers, as some companies exclude costs related to their distribution network from cost of goods sold while others, like us, include all or a portion of such costs in cost of goods sold and exclude them from SG&A expenses. Distribution costs are not included in determining our tuxedo rental services gross margin but are included in SG&A expenses.

In the retail segment, total gross margin as a percentage of related sales decreased from 49.9% in the second quarter of 2012 to 49.1% in the second quarter of 2013. On an absolute dollar basis total retail segment gross margin decreased \$10.3 million or 3.4% from the same prior year quarter to \$291.6 million in the second quarter of 2013. Retail clothing product margin increased from 55.4% in the second quarter of 2012 to 56.5% in the second quarter of 2013 due primarily to increased average unit retail. On an absolute dollar basis retail clothing product margin increased \$2.1 million. Tuxedo rental services margin decreased from 86.2% in the second quarter of 2012 to 84.7% in the second quarter of 2013 due mainly to increased royalty expenses. On an absolute dollar basis tuxedo rental services margin decreased \$7.8 million. Occupancy costs, which is relatively constant on a per store basis and includes store related rent, common area maintenance, utilities, repairs and maintenance, security, property taxes and depreciation, increased from 11.5% in the second quarter of 2012 to 12.3% in the second quarter of 2013 primarily due to fixed cost deleveraging due to lower sales. On an absolute dollar basis occupancy costs increased \$3.4 million primarily due to higher rent and depreciation expense.

In the corporate apparel segment, total gross margin as a percentage of related sales increased slightly from 31.9% in the second quarter of 2012 to 32.0% in the second quarter of 2013 mainly as a result of changes in the sales mix. On an absolute dollar basis, corporate apparel gross margin decreased \$1.1 million as the impact of sales mix changes was more than offset by decreased sales.

During the second quarter of fiscal 2013, based on estimates provided to us by market participants during our review of strategic alternatives for the K&G brand, we concluded that the carrying value of the K&G brand exceeded its fair value. Based on further analysis, it was determined that the entire carrying value of K&G's goodwill was impaired resulting in a non-cash goodwill impairment charge of \$9.5 million.

SG&A expenses increased to \$232.5 million in the second quarter of 2013 from \$228.7 million in the second quarter of 2012, an increase of \$3.8 million or 1.7%. As a percentage of total net sales, these expenses increased from 34.5% in the second quarter of 2012 to 35.9% in the second quarter of 2013. The components of this 1.4% net increase in SG&A expenses as a percentage of total net sales and the related absolute dollar changes were as follows:

%	Attributed to
(0.1)	Decrease in advertising expense as a percentage of sales from 3.9% in the second quarter of 2012 to 3.8% in the second quarter of 2013. On an absolute dollar basis, advertising expense decreased \$1.3 million.
0.1	Increase in store salaries as a percentage of sales from 12.1% in the second quarter of 2012 to 12.2% in the second quarter of 2013. Store salaries on an absolute dollar basis decreased \$0.8 million primarily due to decreased commissions associated with decreased retail sales.
1.4	Increase in other SG&A expenses as a percentage of sales from 18.5% in the second quarter of 2012 to 19.9% in the second quarter of 2013. On an absolute dollar basis, other SG&A expenses increased \$3.0 million primarily due to increased payroll-related costs and \$2.9 million related primarily to the acquisition of JA Holding, Inc. and separation costs related to a former executive.
1.4%	Total

In the retail segment, SG&A expenses as a percentage of related net sales increased from 35.1% in the second quarter of 2012 to 36.6% in the second quarter of 2013. On an absolute dollar basis, retail segment SG&A expenses increased \$4.4 million primarily due to increased payroll-related costs and \$2.9 million related primarily to the acquisition of JA Holding, Inc. and separation costs related to a former executive. These increases were offset partially by decreased advertising expense.

In the corporate apparel segment, SG&A expenses as a percentage of related net sales increased from 28.1% in the second quarter of 2012 to 28.9% in the second quarter of 2013. On an absolute dollar basis, corporate apparel segment SG&A expenses decreased \$0.6 million primarily due to reduced UK operating expenses.

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Corporate apparel segment operating income of \$1.7 million for the second quarter of 2013 includes \$1.1 million of operating income in the UK and \$0.6 million of operating income in the U.S.

Our effective income tax rate was 35.3% for the second quarter of fiscal 2013 and 34.7% for the second quarter of fiscal 2012. The effective tax rate for the second quarter of fiscal 2013 was higher than the statutory U.S. federal rate of 35% due to tax rate effects from state income taxes, offset partially by lower foreign statutory tax rates imposed on our foreign operations. The effective tax rate for the second quarter of fiscal 2012 was lower than the statutory U.S. federal rate of 35% due to the favorable tax rate effects from net permanent book-to-tax adjustments, lower foreign statutory tax rates imposed on our foreign operations and benefits from the conclusion of various income tax audits, offset partially by the effect of state income taxes.

These factors resulted in net earnings attributable to common shareholders of \$42.9 million or 6.6% of net sales for the second quarter of 2013, compared with net earnings of \$59.4 million or 9.0% of net sales for the second quarter of 2012.

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For the Six Months Ended August 3, 2013 compared to the Six Months Ended July 28, 2012

The following table sets forth our results of operations expressed as a percentage of net sales for the periods indicated:

	For the Six Months Ended ⁽¹⁾	
	August 3, 2013	July 28, 2012
Net sales:		
Retail clothing product	65.9%	66.7%
Tuxedo rental services	19.5	18.6
Alteration and other services	5.9	6.0
Total retail sales	91.3	91.4
Corporate apparel clothing product sales	8.7	8.6
Total net sales	100.0%	100.0%
Cost of sales ⁽²⁾ :		
Retail clothing product	43.6	44.7
Tuxedo rental services	15.1	13.9
Alteration and other services	76.4	74.0
Occupancy costs	12.5	12.1
Total retail cost of sales	52.1	52.5
Corporate apparel clothing product cost of sales	68.6	70.6
Total cost of sales	53.6	54.0
Gross margin ⁽²⁾ :		
Retail clothing product	56.4	55.3
Tuxedo rental services	84.9	86.1
Alteration and other services	23.6	26.0
Occupancy costs	(12.5)	(12.1)
Total retail gross margin	47.9	47.5
Corporate apparel clothing product gross margin	31.4	29.4
Total gross margin	46.4	46.0
Goodwill impairment charge	0.8	0.0
Selling, general and administrative expenses	36.2	35.4
Operating income	9.4	10.6
Interest income	0.0	0.0
Interest expense	(0.1)	(0.1)
Earnings before income taxes	9.4	10.6
Provision for income taxes	3.4	3.7
Net earnings including non-controlling interest	6.0	6.9
Net loss attributable to non-controlling interest	0.0	0.0
Net earnings attributable to common shareholders	6.0%	6.9%

(1) Percentage line items may not sum to totals due to the effect of rounding.

(2) Calculated as a percentage of related sales.

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Total net sales increased \$14.9 million or 1.2%, to \$1,263.8 million for the first six months of 2013 as compared to the first six months of 2012.

Total retail sales increased \$12.2 million or 1.1%, to \$1,153.6 million due mainly to a \$13.6 million increase in tuxedo rental services revenues slightly offset by a \$1.1 million decrease in retail clothing product revenues. The net increase is attributable to the following:

(in millions)	Amount Attributed to
\$ 8.5	1.2% increase in comparable sales at Men's Wearhouse/Men's Wearhouse and Tux.
(7.3)	5.8% decrease in comparable sales at Moores.
(9.1)	5.0% decrease in comparable sales at K&G.
5.8	Increase in net sales not included in comparable sales.
24.7	Increase from net sales of stores opened in 2012, relocated stores and expanded stores not yet included in comparable sales.
4.8	Increase in net sales from 15 new stores opened in 2013.
(12.8)	Decrease in net sales resulting from closed stores.
(2.4)	Other.

\$ 12.2 Increase in total retail sales.

Comparable sales increased at Men's Wearhouse/Men's Wearhouse and Tux resulting from increased average unit retails for clothing that more than offset decreased average transactions per store and decreased units sold per transaction. In addition, tuxedo rental service revenues increased due to an increase in average per unit rental price that more than offset decreased unit rentals. The decrease at Moores was driven by decreased units sold per transaction and decreased average transactions per store for clothing product that more than offset increased average unit retails. The decrease at K&G was driven by decreased average transactions per store and decreased units sold per transaction that more than offset increased average unit retails. Because fiscal 2012 was a 53 week fiscal year, comparable sales for the 52 weeks of fiscal 2013 are calculated using the trailing (or comparable) 52 weeks of fiscal 2012. This "calendar shift" resulted in \$5.8 million of the total retail sales increase for the first six months of 2013 being excluded from the comparable sales changes shown in the table above. If comparable sales for the first six months of 2013 are calculated by comparison to the 26 weeks included in the first six months of 2012 (rather than the trailing 26 weeks), comparable sales would have increased 2.1% at Men's Wearhouse/Men's Wearhouse and Tux and decreased 4.4% at Moores and 5.2% at K&G.

Total corporate apparel clothing product sales increased \$2.7 million, to \$110.2 million. UK corporate apparel sales decreased \$2.0 million due to a weaker British pound this year compared to last year. U.S. corporate apparel sales increased \$4.7 million due primarily to increased sales from customer programs and new customer rollouts.

Our gross margin was as follows:

	For the Six Months Ended	
	August 3, 2013	July 28, 2012
Gross margin (in thousands)	\$ 586,714	\$ 574,306
Gross margin as a percentage of related sales:		
Retail gross margin:		
Clothing product	56.4%	55.3%
Tuxedo rental services	84.9%	86.1%
Alteration and other services	23.6%	26.0%
Occupancy costs	(12.5)%	(12.1)%
Total retail gross margin	47.9%	47.5%
Corporate apparel clothing product gross margin	31.4%	29.4%
Total gross margin	46.4%	46.0%

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Buying and distribution costs are included in determining our retail and corporate apparel clothing product gross margins. Our gross margin may not be comparable to other specialty retailers, as some companies exclude costs related to their distribution network from cost of goods sold while others, like us, include all or a portion of such costs in cost of goods sold and exclude them from SG&A expenses. Distribution costs are not included in determining our tuxedo rental services gross margin but are included in SG&A expenses.

In the retail segment, total gross margin as a percentage of related sales increased from 47.5% in the first six months of 2012 to 47.9% in the first six months of 2013. On an absolute dollar basis total retail segment gross margin increased \$9.4 million or 1.7% from the same prior year period to \$552.1 million in the first six months of 2013. Retail clothing product margin increased from 55.3% in the first six months of 2012 to 56.4% in the first six months of 2013 due primarily to increased average unit retails. On an absolute dollar basis retail clothing product margin increased \$8.5 million. Tuxedo rental services margin decreased from 86.1% in the first six months of 2012 to 84.9% in the first six months of 2013 due mainly to increased royalty expenses. On an absolute dollar basis tuxedo rental services margin increased \$8.7 million. Occupancy costs, which is relatively constant on a per store basis and includes store related rent, common area maintenance, utilities, repairs and maintenance, security, property taxes and depreciation, increased from 12.1% in the first six months of 2012 to 12.5% in the first six months of 2013. On an absolute dollar basis, occupancy costs increased \$6.0 million primarily due to higher rent and depreciation expense.

In the corporate apparel segment, total gross margin as a percentage of related sales increased from 29.4% in the first six months of 2012 to 31.4% in the first six months of 2013 mainly due to foreign currency gains recognized on our derivative financial instruments not designated as cash flow hedges associated with our UK-based operations and changes in the sales mix. On an absolute dollar basis, corporate apparel gross margin increased \$3.1 million.

During the first six months of fiscal 2013, based on estimates provided to us by market participants during our review of strategic alternatives for the K&G brand, we concluded that the carrying value of the K&G brand exceeded its fair value. Based on further analysis, it was determined that the entire carrying value of K&G's goodwill was impaired resulting in a non-cash goodwill impairment charge of \$9.5 million.

SG&A expenses increased to \$457.9 million in the first six months of 2013 from \$441.8 million in the first six months of 2012, an increase of \$16.1 million or 3.7%. As a percentage of total net sales, these expenses increased from 35.4% in the first six months of 2012 to 36.2% in the first six months of 2013. The components of this 0.8% net increase in SG&A expenses as a percentage of total net sales and the related absolute dollar changes were as follows:

%	Attributed to
0.0	Advertising expense as a percentage of sales remained flat at 3.6% in the first six months of 2012 and the first six months of 2013. On an absolute dollar basis, advertising expense increased \$0.9 million.
(0.1)	Decrease in store salaries as a percentage of sales from 12.6% in the first six months of 2012 to 12.5% in the first six months of 2013. Store salaries on an absolute dollar basis increased \$0.4 million primarily due to increased store sales support salaries partially offset by decreased commissions.
0.9	Increase in other SG&A expenses as a percentage of sales from 19.2% in the first six months of 2012 to 20.1% in the first six months of 2013. On an absolute dollar basis, other SG&A expenses increased \$11.9 million primarily due to increased non-store payroll and payroll-related costs and \$2.9 million related primarily to the acquisition of JA Holding, Inc. and separation costs related to a former executive.
0.8%	Total

In the retail segment, SG&A expenses as a percentage of related net sales increased from 35.9% in the first six months of 2012 to 36.9% in the first six months of 2013. On an absolute dollar basis, retail segment SG&A expenses increased \$16.1 million primarily due to increased non-store payroll, payroll-related costs and advertising expense, as well as, \$2.9 million related primarily to the acquisition of JA Holding, Inc. and separation costs related to a former executive.

In the corporate apparel segment, SG&A expenses as a percentage of related net sales decreased from 29.6% in the first six months of 2012 to 28.9% in the first six months of 2013. On an absolute dollar basis, corporate apparel segment SG&A expenses remained unchanged.

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Corporate apparel segment operating income of \$2.8 million for the first six months of 2013 includes \$2.0 million of operating income in the UK and \$0.8 million of operating income in the U.S.

Our effective income tax rate was 36.1% for the first six months of fiscal 2013 and 34.7% for the first six months of fiscal 2012. The effective tax rate for the first six months of 2013 was higher than the statutory U.S. federal rate of 35% due to tax rate effects from state income taxes, offset partially by lower foreign statutory tax rates imposed on our foreign operations. The effective tax rate for the first six months of 2012 was lower than the statutory U.S. federal rate of 35% due to the favorable tax rate effects from net permanent book-to-tax adjustments, lower foreign statutory tax rates imposed on our foreign operations and benefits from the conclusion of various income tax audits, offset partially by the effect of state income taxes.

These factors resulted in net earnings attributable to common shareholders of \$76.0 million or 6.0% of net sales for the first six months of 2013, compared with net earnings of \$86.3 million or 6.9% of net sales for the first six months of 2012.

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Liquidity and Capital Resources

At August 3, 2013, February 2, 2013 and July 28, 2012, cash and cash equivalents totaled \$32.5 million, \$156.1 million and \$106.4 million, respectively. We had working capital of \$447.6 million, \$561.0 million and \$541.9 million at August 3, 2013, February 2, 2013 and July 28, 2012, respectively. Our primary sources of working capital are cash flows from operations and available borrowings under our Credit Agreement (as defined below). The \$113.4 million decrease in working capital at August 3, 2013 compared to February 2, 2013 was due mainly to purchases of common stock made during the first six months of 2013.

Credit Facilities

On April 12, 2013, we entered into a Third Amended and Restated Credit Agreement (the "Credit Agreement"), with a group of banks to amend and restate our existing credit facility, which provided us with a revolving credit facility that was scheduled to mature on January 26, 2016.

The Credit Agreement provides for a total senior revolving credit facility of \$300.0 million, with possible future increases to \$450.0 million under an expansion feature, which matures on April 12, 2018. In addition, the Credit Agreement provides for a \$100.0 million term loan, available in a single advance during the 120 day period after the closing date. On August 6, 2013, we borrowed \$100.0 million under the term loan provision of our Credit Agreement which will be repaid over five years, with 10% payable annually in quarterly installments and the remainder due at maturity. The rate on the term loan is based on the monthly LIBOR rate plus 1.75%. In conjunction with the loan, we also entered into an interest rate swap for \$100.0 million, in which the variable rate payments due under the term loan will be exchanged for a fixed rate of 1.27%, resulting in a combined interest rate of 3.02%. The Credit Agreement is secured by the stock of certain of our subsidiaries. The Credit Agreement has several borrowing and interest rate options including the following indices: (i) adjusted LIBO rate, (ii) adjusted EURIBO rate, (iii) CDOR rate, (iv) Canadian prime rate or (v) an alternate base rate (equal to the greater of the prime rate, the federal funds rate plus 0.5% or the adjusted LIBO rate for a one month period plus 1.0%). Advances under the Credit Agreement bear interest at a rate per annum using the applicable indices plus a varying interest rate margin of up to 2.50%. The Credit Agreement also provides for fees applicable to amounts available to be drawn under outstanding letters of credit which range from 1.75% to 2.50%, and a fee

on unused commitments which ranges from 0.35% to 0.50%. As of August 3, 2013, there were no borrowings outstanding under the Credit Agreement.

The Credit Agreement contains certain restrictive and financial covenants, including the requirement to maintain certain financial ratios. The restrictive provisions in the Credit Agreement reflect an overall covenant structure that is generally representative of a commercial loan made to an investment-grade company. Our debt, however, is not rated and we have not sought, and are not seeking, a rating of our debt. We were in compliance with the covenants in the Credit Agreement as of August 3, 2013.

We utilize letters of credit primarily to secure inventory purchases and as collateral for workers compensation claims. At August 3, 2013, letters of credit totaling approximately \$21.5 million were issued and outstanding. Borrowings available under our Credit Agreement at August 3, 2013 were \$278.5 million.

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Cash flow activities

Operating activities — Our primary source of operating cash flow is from sales to our customers. Our primary uses of cash include clothing product inventory and tuxedo rental product purchases, personnel related expenses, occupancy costs, advertising costs and income tax payments. Our operating activities provided net cash of \$101.2 million in the first six months of 2013, due mainly to net earnings, adjusted for non-cash charges, an increase in accounts payable, accrued expenses and other current liabilities and decreases in accounts receivable and other assets, offset by increases in inventories and tuxedo rental product.

- The increase in accounts payable, accrued expenses and other current liabilities was primarily due to the timing of vendor payments for inventory and tuxedo product purchases and the seasonal increase in tuxedo rental deposits.
- The decrease in other assets was primarily due to the timing and amounts of required tax payments.
- The decrease in accounts receivable was primarily due to the collection of receivables at our UK corporate apparel operations.
- Inventories increased primarily due to our usual inventory replenishment following the holiday shopping season and customer rollouts of corporate apparel uniform programs scheduled for the second half of 2013.
- Tuxedo rental product increased from purchases of new Vera Wang product offerings and replenishment product to support the continued growth of our tuxedo rental business.

During the first six months of 2012, our operating activities provided net cash of \$108.4 million, due mainly to net earnings, adjusted for non-cash charges, and an increase in accounts payable, accrued expenses and other current liabilities, offset by increases in accounts receivable, inventories, tuxedo rental product and other assets.

- The increase in accounts payable, accrued expenses and other current liabilities was primarily due to the timing of vendor payments for inventory and tuxedo product purchases and the seasonal increase in tuxedo rental deposits.
- The increase in accounts receivable was primarily due to an increase in UK sales during the June/July 2012 period as compared to the December 2011/January 2012 period when sales were lower than usual due to Dimensions and Alexandra consolidation activities during those months.
- Inventories increased mainly because of customer rollouts of corporate apparel uniform programs scheduled for the second half of 2012.
- Tuxedo rental product increased to support the continued growth of our tuxedo rental business and to replenish product offerings.
- The increase in other assets related primarily to the timing and amounts of required tax payments and an increase in prepaid expenses.

Investing activities — Our cash outflows from investing activities are primarily for capital expenditures. During the first six months of 2013 and 2012, our investing activities used net cash of \$52.1 million and \$68.8 million, respectively, primarily for capital expenditures. Our capital expenditures relate to costs incurred for stores opened, remodeled or relocated during the period or under construction at the end of the period, office and distribution facility additions and infrastructure technology investments.

Financing activities — Our cash outflows from financing activities consist primarily of repurchases of common stock and cash dividend payments, while cash inflows from financing activities consist primarily of proceeds from the issuance of common stock. During the first six months of 2013, our financing activities used net cash of \$169.6 million due mainly to the repurchase of common stock of \$152.1 million and cash dividends paid of \$18.4 million, offset by \$5.4 million proceeds from the issuance of common stock. Our financing activities used net cash of \$58.4 million for the first six months of 2012, due mainly to the repurchase of common stock of \$41.3 million and cash dividends paid of \$18.6 million, offset by \$3.9 million proceeds from the issuance of common stock.

Share repurchase program — In March 2013, the Board of Directors (the “Board”) approved a \$200.0 million share repurchase program for our common stock. This approval amended and replaced our existing \$150.0 million share repurchase program authorized by the Board in January 2011, which had a remaining authorization of \$45.2 million at the time of amendment.

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In July 2013, we entered into an accelerated share repurchase agreement (“ASR Agreement”) with J.P. Morgan Securities LLC (“JPMorgan”), as agent for JPMorgan Chase Bank, National Association, London Branch, to purchase \$100.0 million of our common stock. We paid \$100.0 million to JPMorgan and received an initial delivery of 2,197,518 shares (which is approximately 85% of the number of shares expected to be repurchased in connection with this transaction), and reduced our shares outstanding as of August 3, 2013. The value of the initial shares received on the date of purchase was approximately \$85.0 million, reflecting a \$38.68 price per share which was recorded as a retirement of the shares for purposes of calculating earnings per share. In accordance with authoritative guidance, we recorded the remaining \$15.0 million as a forward contract indexed to our common stock within capital in excess of par. The specific final number of shares to be repurchased by JPMorgan will generally be based on the volume-weighted average share price of our common stock during the calculation period of the ASR Agreement which is expected to be completed no later than the fourth quarter of 2013. In the unlikely event we are required to deliver value to JPMorgan at the end of the purchase period, we, at our option, may elect to settle in shares or cash.

In addition to the ASR Agreement, during the first six months of fiscal 2013, 1,489,318 shares at a cost of \$52.0 million were repurchased in open market transactions at an average price per share of \$34.89 under the Board’s March 2013 authorization. At August 3, 2013, the remaining balance available under the Board’s March 2013 authorization was \$48.0 million, which has been reduced by the entire \$100.0 million payment under the ASR Agreement.

During the first six months of fiscal 2012, 1,121,484 shares at a cost of \$41.0 million were repurchased at an average price per share of \$36.59 under the January 2011 authorization.

During the six months ended August 3, 2013 and July 28, 2012, 5,378 shares and 7,041 shares, respectively, at a cost of \$0.2 million and \$0.3 million, respectively, were repurchased at an average price per share of \$30.03 and \$37.28, respectively, in private transactions to satisfy tax withholding obligations arising upon the vesting of certain restricted stock.

The following table summarizes our total common stock repurchases (in thousands, except share data and average price per share):

	For the Six Months Ended	
	August 3, 2013	July 28, 2012
Shares repurchased	3,692,214	1,128,525
Total costs	\$ 152,129	\$ 41,296
Average price per share	\$ 37.14	\$ 36.59

Shares purchased pursuant to the ASR Agreement are presented in the above table in the periods in which they are received. The total costs includes the entire \$100.0 million payment, however, the average price per share calculation excludes the \$15.0 million recorded as a forward contract.

As of August 3, 2013 and July 28, 2012, 6,735 treasury shares and 6,295 treasury shares, respectively, of our common stock were reissued pursuant to a two-year services agreement with an unrelated third party. The fair value of the common stock issued during the six months ended August 3, 2013 and July 28, 2012 was approximately \$0.2 million, respectively.

Dividends — Cash dividends paid were approximately \$18.4 million and \$18.6 million for the six months ended August 3, 2013 and July 28, 2012, respectively.

In June 2013, our Board of Directors declared a quarterly cash dividend of \$0.18 per share payable on September 27, 2013 to shareholders of record at close of business on September 17, 2013.

Future sources and uses of cash

Our primary uses of cash are to finance working capital requirements of our operations. In addition, we will use cash to fund capital expenditures, income taxes, dividend payments and repurchases of common stock, operating leases and various other commitments and obligations, as they arise. In July 2013, we signed a definitive agreement to acquire JA Holding, Inc. (“JA Holding”), the parent company of the American clothing brand, Joseph Abboud®, for approximately \$97.5 million in cash consideration, subject to certain adjustments. The transaction closed on August 6, 2013.

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Capital expenditures are anticipated to be in the range of \$100.0 to \$108.0 million for 2013. This amount includes the anticipated costs of opening approximately 29 to 33 new Men’s Wearhouse stores, one new Moores store and one new K&G store in 2013. The balance of the capital expenditures for 2013 will be used for telecommunications, point-of-sale and other computer equipment and systems, store relocations, remodeling and expansion, distribution and office facilities and investment in other corporate assets. The actual amount of future capital expenditures will depend in part on the number of new stores opened and the terms on which new stores are leased, as well as on industry trends consistent with our anticipated operating plans.

Additionally, market conditions may produce attractive opportunities for us to make acquisitions larger than our past acquisitions. Any such acquisitions may be undertaken as an alternative to opening new stores. We may use cash on hand, together with cash flow from operations, borrowings under our Credit Agreement and issuances of debt or equity securities, to take advantage of any significant acquisition opportunities.

Current domestic and global economic conditions, including high unemployment levels, reduced public sector spending and constrained credit markets, could negatively affect our future operating results as well as our existing cash and cash equivalents balances. In addition, conditions in the financial markets could limit our access to additional capital resources, if needed, and could increase associated costs. We believe based on our current business plan, that our existing cash and cash flows from operations will be sufficient to fund our planned store openings, relocations and remodels, other capital expenditures and operating cash requirements, and that we will be able to maintain compliance with the covenants in our Credit Agreement for at least the next 12 months. Borrowings available under our Credit Agreement were \$278.5 million as of August 3, 2013.

We are exposed to market risk associated with foreign currency exchange rate fluctuations as a result of our direct sourcing programs and our operations in foreign countries. In connection with our direct sourcing programs, we may enter into merchandise purchase commitments that are denominated in a currency different from the functional currency of the operating entity. Our risk management policy is to hedge a significant portion of forecasted merchandise purchases for our direct sourcing programs that bear foreign exchange risk using foreign exchange forward contracts. As these foreign exchange forward contracts are with three financial institutions, we are exposed to credit risk in the event of nonperformance by these parties. However, due to the creditworthiness of these major financial institutions, full performance is anticipated.

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Critical Accounting Policies and Estimates

The preparation of our condensed consolidated financial statements requires the appropriate application of accounting policies in accordance with generally accepted accounting principles. In many instances, this also requires management to make estimates and assumptions about future events that affect the amounts and disclosures included in our financial statements. We base our estimates on historical experience and various assumptions that we believe are reasonable under our current business model. However, because future events and conditions and their effects cannot be determined with certainty, actual results will differ from our estimates and such differences could be material to our financial statements. There have been no significant changes to our critical accounting policies and estimates as discussed in our Annual Report on Form 10-K for the fiscal year ended February 2, 2013.

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ITEM 3 - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risks relating to our operations result primarily from changes in foreign currency exchange rates and changes in interest rates. There have been no material changes to our market risks as disclosed in our Annual Report on Form 10-K for the year ended February 2, 2013. Refer to Notes 10 and 11 of Notes to Condensed Consolidated Financial Statements, contained herein for disclosures on our investments and derivative financial instruments and Note 3 and Note 14 of Notes to Condensed Consolidated Financial Statements contained herein for disclosures regarding our Credit Agreement and our recent borrowing under such Credit Agreement.

ITEM 4 - CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer ("CEO") and principal financial officer ("CFO"), evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on this evaluation, the CEO and CFO have concluded that, as of the end of such period, our disclosure controls and procedures were effective to ensure that information that is required to be disclosed by us in the reports it files or submits under the Exchange Act is (i) recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Controls over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the fiscal quarter ended August 3, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1 — LEGAL PROCEEDINGS

We are involved in various routine legal proceedings, including ongoing litigation, incidental to the conduct of our business. Management does not believe that any of these matters will have a material adverse effect on our financial position, results of operations or cash flows.

ITEM 1A — RISK FACTORS

There have been no material changes in our risk factors from those disclosed in Item 1A contained in Part I of our Annual Report on Form 10-K for the fiscal year ended February 2, 2013 except for as follows:

Our success significantly depends on our key personnel and our ability to attract and retain key personnel.

Our success depends upon the personal efforts and abilities of our senior management team and other key personnel. Although we believe we have a strong management team with relevant industry expertise, the extended loss of the services of key personnel could have a material adverse effect on the securities markets' view of our prospects and materially harm our business.

Also, our continued success and the achievement of our expansion goals are dependent upon our ability to attract and retain additional qualified employees as we expand.

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ITEM 2 — UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

(c) The following table presents information with respect to our purchases of common stock made during the quarter ended August 3, 2013 as defined by Rule 10b-18(a)(3) under the Exchange Act:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid Per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (In thousands) <small>(1)(2)</small>
May 5, 2013 through June 1, 2013	—	\$ —	—	\$ 167,152
June 2, 2013 through July 6, 2013	359,948	\$ 37.80	359,948	\$ 153,547
July 7, 2013 through August 3, 2013 ⁽²⁾	2,337,706	\$ 38.72	2,337,706	\$ 48,032
Total	2,697,654	\$ 38.60	2,697,654	\$ 48,032

(1) Refer to Note 7 of Notes to Condensed Consolidated Financial Statements for information regarding our share repurchase program.

(2) In July 2013, we paid \$100.0 million under the ASR Agreement and received an initial delivery of 2,197,518 shares of our common stock, representing approximately 85% of the shares expected to be repurchased in connection with the transaction. The ASR Agreement is expected to be completed no later than the fourth quarter of 2013. Shares purchased pursuant to the ASR Agreement are presented in the above table in the periods in which they are received. The amount that may yet be purchased under our share repurchase program, as presented in the above table, was reduced by the entire \$100.0 million payment.

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ITEM 6 — EXHIBITS

(a) Exhibits.

Exhibit Number	Exhibit Index
2.1	— Agreement and Plan of Merger, dated July 17, 2013, by and among The Men's Wearhouse, Inc., Blazer Merger Sub Inc., JA Holding, Inc. and JA Holding, LLC. (incorporated by reference from Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on July 18, 2013).
10.1	— Master Confirmation — Uncollared Accelerated Share Repurchase Agreement dated July 22, 2013 by and between The Men's Wearhouse, Inc. and J.P. Morgan Securities LLC, as agent for JPMorgan Chase Bank (filed herewith).
31.1	— Certification of Periodic Report Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 by the Chief Executive Officer (filed herewith).

EXECUTION VERSION

J.P.Morgan

JPMorgan Chase Bank, National Association
 P.O. Box 161
 60 Victoria Embankment
 London EC4Y 0JP
 England

July 22, 2013

To: The Men's Wearhouse, Inc.
 6380 Rogerdale Road
 Houston, Texas 77072-1624
 Attention: Jon Kimmins

Re: Master Confirmation—Uncollared Accelerated Share Repurchase

This master confirmation (this "**Master Confirmation**"), dated as of July 22, 2013, is intended to set forth certain terms and provisions of certain Transactions (each, a "**Transaction**") entered into from time to time between J.P. Morgan Securities LLC ("**JPMS**"), as agent for JPMorgan Chase Bank, National Association, London Branch ("**JPMorgan**"), and The Men's Wearhouse, Inc., a Texas corporation ("**Counterparty**"). This Master Confirmation, taken alone, is neither a commitment by either party to enter into any Transaction nor evidence of a Transaction. The additional terms of any particular Transaction shall be set forth in a Supplemental Confirmation in the form of Schedule A hereto (a "**Supplemental Confirmation**"), which shall reference this Master Confirmation and supplement, form a part of, and be subject to this Master Confirmation. This Master Confirmation and each Supplemental Confirmation together shall constitute a "Confirmation" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Master Confirmation. This Master Confirmation and each Supplemental Confirmation evidence a complete binding agreement between Counterparty and JPMorgan as to the subject matter and terms of each Transaction to which this Master Confirmation and such Supplemental Confirmation relate and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

This Master Confirmation and each Supplemental Confirmation supplement, form a part of, and are subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if JPMorgan and Counterparty had executed the Agreement on the date of this Master Confirmation (but without any Schedule except for (i) the election of New York law as the governing law (without reference to its choice of law provisions) and (ii) the election that subparagraph (ii) of Section 2(c) will not apply to the Transactions.

The Transactions shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between JPMorgan and Counterparty or any confirmation or other agreement between JPMorgan and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between JPMorgan and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which JPMorgan and Counterparty are parties, the Transactions shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement, and the occurrence of any Event of Default or Termination Event under the Agreement with respect to either party or any Transaction shall not, by itself, give rise to any right or obligation under any such other agreement or deemed agreement. Notwithstanding anything to the contrary in any other agreement between the parties or their Affiliates, the Transactions shall not be "Specified Transactions" (or similarly treated) under any other agreement between the parties or their Affiliates.

JPMorgan Chase Bank, National Association
 Organised under the laws of the United States as a National Banking Association.
 Main Office 1111 Polaris Parkway, Columbus, Ohio 43240
 Registered as a branch in England & Wales branch No. BR000746
 Registered Branch Office 25 Bank Street, Canary Wharf, London, E14 5JP
 Authorised and regulated by the Financial Services Authority

All provisions contained or incorporated by reference in the Agreement shall govern this Master Confirmation and each Supplemental Confirmation except as expressly modified herein or in the related Supplemental Confirmation.

If, in relation to any Transaction to which this Master Confirmation and a Supplemental Confirmation relate, there is any inconsistency between the Agreement, this Master Confirmation, such Supplemental Confirmation and the Equity Definitions, the following will prevail for purposes of such Transaction in the order of precedence indicated: (i) such Supplemental Confirmation; (ii) this Master Confirmation; (iii) the Equity Definitions; and (iv) the Agreement.

1. Each Transaction constitutes a Share Forward Transaction for the purposes of the Equity Definitions. Set forth below are the terms and conditions that, together with the terms and conditions set forth in the Supplemental Confirmation relating to any Transaction, shall govern such Transaction.

General Terms.

Trade Date:	For each Transaction, as set forth in the related Supplemental Confirmation.
Buyer:	Counterparty
Seller:	JPMorgan
Shares:	The common stock of Counterparty, par value USD 0.01 per share (Exchange symbol "MW").
Exchange:	The New York Stock Exchange
Related Exchange(s):	All Exchanges.
Prepayment/Variable Obligation:	Applicable
Prepayment Amount:	For each Transaction, as set forth in the related Supplemental Confirmation.
Prepayment Date:	For each Transaction, as set forth in the related Supplemental Confirmation.
Contract Fee:	For each Transaction, as set forth in the related Supplemental Confirmation. On the Prepayment Date, Buyer shall pay Seller an amount in USD equal to the Contract Fee in immediately available funds by wire transfer to an account specified by Seller.

Valuation.

VWAP Price:	For any Exchange Business Day, the volume-weighted average price at which the Shares trade as reported in the composite transactions for United States exchanges and quotation systems, during the regular trading session for the Exchange on such Exchange Business Day, excluding (i) trades that do not settle regular way, (ii) opening (regular way) reported trades in the consolidated system on such Exchange Business Day, (iii) trades that occur in the last ten minutes before the scheduled close of trading on the Exchange on such Exchange Business Day and ten minutes before the scheduled close of the primary trading in the market where the trade is effected, and (iv) trades on such Exchange Business Day that do not satisfy the requirements of Rule 10b-18(b)(3) under the Securities
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	Exchange Act of 1934, as amended (the " Exchange Act "), as determined in good faith by the Calculation Agent (all such trades other than any trades described in clauses (i) to (iv) above, " Rule 10b-18 Eligible Transactions "). Counterparty acknowledges that the Calculation Agent may refer to the Bloomberg Page "MW US <Equity> AQR SEC" (or any successor thereto), in its judgment, for such Exchange Business Day to determine the VWAP Price.
Forward Price:	For each Transaction, the arithmetic average of the VWAP Prices for all of the Exchange Business Days in the Calculation Period for such Transaction, subject to "Valuation Disruption" below.
Forward Price Adjustment Amount:	For each Transaction, as set forth in the related Supplemental Confirmation.
Calculation Period:	For each Transaction, the period from, and including, the Calculation Period Start Date for such Transaction to, and including, the Termination Date for such Transaction.
Calculation Period Start Date:	For each Transaction, as set forth in the related Supplemental Confirmation.
Termination Date:	For each Transaction, the Scheduled Termination Date for such Transaction; <i>provided</i> that JPMorgan shall have the right to designate any Exchange Business Day on or after the First Acceleration Date to be the Termination Date for such Transaction (the " Accelerated Termination Date ") by

delivering notice to Counterparty of any such designation prior to 6:00 p.m. (New York City time) on the Exchange Business Day immediately following the designated Accelerated Termination Date.

Scheduled Termination Date: For each Transaction, as set forth in the related Supplemental Confirmation, subject to postponement as provided in "Valuation Disruption" below.

First Acceleration Date: For each Transaction, as set forth in the related Supplemental Confirmation.

Valuation Disruption: The definition of "Market Disruption Event" in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words "at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be" and inserting the words "at any time on any Scheduled Trading Day during the Calculation Period or Settlement Valuation Period" after the word "material," in the third line thereof.

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.

Notwithstanding anything to the contrary in the Equity Definitions, if a Disrupted Day occurs (i) in the

Calculation Period, the Calculation Agent may, in its good faith and commercially reasonable discretion, postpone the Scheduled Termination Date, or (ii) in the Settlement Valuation Period, the Calculation Agent may extend the Settlement Valuation Period. The Calculation Agent may also determine that (i) such Disrupted Day is a Disrupted Day in full, in which case the VWAP Price for such Disrupted Day shall not be included for purposes of determining the Forward Price or the Settlement Price, as the case may be, or (ii) such Disrupted Day is a Disrupted Day only in part, in which case the VWAP Price for such Disrupted Day shall be determined by the Calculation Agent based on Rule 10b-18 Eligible Transactions in the Shares on such Disrupted Day taking into account the nature and duration of the relevant Market Disruption Event, and the weighting of the VWAP Price for the relevant Exchange Business Days during the Calculation Period or the Settlement Valuation Period, as the case may be, shall be adjusted in a commercially reasonable manner by the Calculation Agent for purposes of determining the Forward Price or the Settlement Price, as the case may be, with such adjustments based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares; *provided* that, upon a written request of Counterparty the Calculation Agent shall deliver reasonable evidence to Counterparty to support its calculations related to such disruptions. Any Exchange Business Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be an Exchange Business Day; if a closure of the Exchange prior to its normal close of trading on any Exchange Business Day is scheduled following the date hereof, then such Exchange Business Day shall be deemed to be a Disrupted Day in full.

If a Disrupted Day occurs during the Calculation Period for any Transaction or the Settlement Valuation Period for any Transaction, as the case may be, and each of the nine immediately following Scheduled Trading Days is a Disrupted Day (a "**Disruption Event**"), then the Calculation Agent, in its good faith and commercially reasonable discretion, may deem such Disruption Event (and each consecutive Disrupted Day thereafter) to be either (x) a Potential Adjustment Event in respect of such Transaction or (y) an Additional Termination Event in respect of such Transaction, with Counterparty as the sole Affected Party and such Transaction as the sole Affected Transaction.

Settlement Terms.

Settlement Procedures: For each Transaction:

- (i) if the Number of Shares to be Delivered for such Transaction is positive, Physical Settlement shall be applicable to such Transaction; *provided* that

9.11 of the Equity Definitions related to the restrictions imposed by applicable securities laws with respect to any Shares delivered by JPMorgan to Counterparty under any Transaction; or

- (ii) if the Number of Shares to be Delivered for such Transaction is negative, then the Counterparty Settlement Provisions in Annex A hereto shall apply to such Transaction.

Number of Shares to be Delivered:	For each Transaction, a number of Shares (rounded down to the nearest whole number) equal to (a)(i) the Prepayment Amount for such Transaction, <i>divided by</i> (ii)(A) the Forward Price for such Transaction <i>minus</i> (B) the Forward Price Adjustment Amount for such Transaction, <i>minus</i> (b) the number of Initial Shares for such Transaction; <i>provided</i> that if the result of the calculation in clause (a)(ii) is equal to or less than the Floor Price for such Transaction, then the Number of Shares to be Delivered for such Transaction shall be determined as if clause (a)(ii) were replaced with “(ii) the Floor Price for such Transaction”. For the avoidance of doubt, if the Forward Price Adjustment Amount for any Transaction is a negative number, clause (a)(ii) of the immediately preceding sentence shall be equal to (A) the Forward Price for such Transaction, <i>plus</i> (B) the absolute value of the Forward Price Adjustment Amount.
Floor Price:	For each Transaction, as set forth in the related Supplemental Confirmation.
Excess Dividend Amount:	For the avoidance of doubt, all references to the Excess Dividend Amount shall be deleted from Section 9.2(a)(iii) of the Equity Definitions.
Settlement Date:	For each Transaction, if the Number of Shares to be Delivered for such Transaction is positive, the date that is one Settlement Cycle immediately following the Termination Date for such Transaction.
Settlement Currency:	USD
Initial Share Delivery:	For each Transaction, JPMorgan shall deliver a number of Shares equal to the Initial Shares for such Transaction to Counterparty on the Initial Share Delivery Date for such Transaction in accordance with Section 9.4 of the Equity Definitions, with such Initial Share Delivery Date deemed to be a “Settlement Date” for purposes of such Section 9.4.
Initial Share Delivery Date:	For each Transaction, as set forth in the related Supplemental Confirmation.
Initial Shares:	For each Transaction, as set forth in the related Supplemental Confirmation.
<u>Share Adjustments.</u>	
Potential Adjustment Event:	In addition to the events described in Section 11.2(e) of the Equity Definitions, it shall constitute an additional

Potential Adjustment Event if (x) the Scheduled Termination Date for any Transaction is postponed pursuant to “Valuation Disruption” above (including, for the avoidance of doubt, pursuant to Section 7 hereof), (y) a Regulatory Disruption as described in Section 7 occurs or (z) a Disruption Event occurs. In the case of any event described in clause (x), (y) or (z) above occurs, the Calculation Agent may, in its commercially reasonable discretion, adjust any relevant terms of such Transaction as necessary to preserve as nearly as practicable the fair value of such Transaction to JPMorgan prior to such postponement, Regulatory Disruption or Disruption Event, as the case may be.

Excess Dividend: For any calendar quarter, any dividend or distribution on the Shares with an ex-dividend date occurring during such calendar quarter (other than any

dividend or distribution of the type described in Section 11.2(e)(i) or Section 11.2(e)(ii)(A) of the Equity Definitions or any Extraordinary Dividend) (a “**Dividend**”) the amount or value of which per Share (as determined by the Calculation Agent), when aggregated with the amount or value (as determined by the Calculation Agent) of any and all previous Dividends with ex-dividend dates occurring in the same calendar quarter, exceeds the Ordinary Dividend Amount. “**Extraordinary Dividend**” means the per Share cash dividend or distribution, or a portion thereof, declared by Counterparty on the Shares that is classified by the board of directors of Counterparty as an “extraordinary” dividend.

Consequences of Excess Dividend:	The declaration by the Issuer of any Excess Dividend, the ex-dividend date for which occurs or is scheduled to occur during the Relevant Dividend Period for any Transaction, shall, at JPMorgan’s election in its sole discretion, either (x) constitute an Additional Termination Event in respect of such Transaction, with Counterparty as the sole Affected Party and such Transaction as the sole Affected Transaction or (y) result in an adjustment, by the Calculation Agent, to the Floor Price as the Calculation Agent determines appropriate to account for the economic effect on such Transaction of such Excess Dividend.
Ordinary Dividend Amount:	For each Transaction, as set forth in the related Supplemental Confirmation.
Method of Adjustment:	Calculation Agent Adjustment
Early Ordinary Dividend Payment:	For each Transaction, if an ex-dividend date for any Dividend that is not (x) an Excess Dividend, (y) a dividend or distribution of the type described in Section 11.2(e)(i) or Section 11.2(e)(ii)(A) of the Equity Definitions and (z) an Extraordinary Dividend, occurs during any calendar quarter occurring (in whole or in part) during the Relevant Dividend Period for such Transaction and is prior to the Scheduled Ex-Dividend Date for such Transaction for the relevant calendar quarter (as determined by the Calculation Agent), the Calculation

Agent shall make such adjustment to the exercise, settlement, payment or any other terms of the relevant Transaction as the Calculation Agent determines appropriate to account for the economic effect on such Transaction of such event.

Scheduled Ex-Dividend Dates:	For each Transaction, as set forth in the related Supplemental Confirmation for each calendar quarter.
Relevant Dividend Period:	For each Transaction, the period from, and including, the Trade Date for such Transaction to, and including, the Relevant Dividend Period End Date for such Transaction.
Relevant Dividend Period End Date:	For each Transaction, if the Number of Shares to be Delivered for such Transaction is negative, the last day of the Settlement Valuation Period; otherwise, the Termination Date for such Transaction.

Extraordinary Events.

Consequences of Merger Events:	
(a) Share-for-Share:	Cancellation and Payment
(b) Share-for-Other:	Cancellation and Payment
(c) Share-for-Combined:	Cancellation and Payment
Tender Offer:	Applicable; <i>provided</i> that (a) Section 12.1(l) of the Equity Definitions shall be amended (i) by deleting the parenthetical in the fifth line thereof, (ii) by replacing “that” in the fifth line thereof with “whether or not such announcement” and (iii) by adding immediately after the words “Tender Offer” in the fifth line thereof “, and any publicly announced change or amendment to such an announcement (including, without limitation, the announcement of an abandonment of such intention)” and (b) Sections 12.3(a) and 12.3(d) of the Equity Definitions shall each be amended by

replacing each occurrence of the words “Tender Offer Date” by “Announcement Date.”

Consequences of Tender Offers:

(a) Share-for-Share:	Cancellation and Payment
(b) Share-for-Other:	Cancellation and Payment
(c) Share-for-Combined:	Cancellation and Payment
Nationalization, Insolvency or Delisting:	Cancellation and Payment; <i>provided</i> that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange.

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Additional Disruption Events:

(a) Change in Law:	Applicable; <i>provided</i> that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) by replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Positions” and (iii) by immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date”; <i>provided further</i> that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word “regulation” in the second line thereof the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)”.
(b) Failure to Deliver:	Applicable
(c) Insolvency Filing:	Applicable
(d) Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	For each Transaction, as set forth in the related Supplemental Confirmation.
Hedging Party:	JPMorgan
Determining Party:	JPMorgan
(e) Hedging Disruption:	Applicable
Hedging Party:	JPMorgan
Determining Party:	JPMorgan
(f) Increased Cost of Hedging:	Not Applicable
Hedging Party:	JPMorgan
Determining Party:	JPMorgan
(g) Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	For each Transaction, as set forth in the related Supplemental Confirmation.
Hedging Party:	JPMorgan
Determining Party:	JPMorgan

Hedging Adjustments:

For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment by reference to the effect of such event on JPMorgan, assuming that

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JPMorgan maintains a commercially reasonable Hedge Position.

Non-Reliance/Agreements and
Acknowledgements Regarding
Hedging Activities/Additional
Acknowledgements:

Applicable

2. Calculation Agent.

JPMorgan. Whenever the Calculation Agent is required to act or to exercise judgment in any way with respect to any Transaction hereunder, it will do so in good faith and in a commercially reasonable manner.

3. Account Details.

(a) Account for payments to Counterparty:

To be provided separately

Account for delivery of Shares to Counterparty:

To be provided separately

(b) Account for payments to JPMorgan:

To be provided separately

Account for delivery of Shares to JPMorgan:

To be provided separately

4. Offices.

(a) The Office of Counterparty for each Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

(b) The Office of JPMorgan for each Transaction is: London

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

5. Notices.

(a) Address for notices or communications to Counterparty:

The Men's Wearhouse, Inc.
6380 Rogerdale Road
Houston, Texas 77072-1624
Attention: Jon Kimmins
Email Address: jk114@tmw.com

(b) Address for notices or communications to JPMorgan:

JPMorgan Chase Bank, National Association
EDG Marketing Support

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Email: edg_special_equities_notices@jpmorgan.com

With a copy to:

Attention: Sudheer Tegulapalle
Title: Executive Director
Telephone No: (212) 622-2100
Email Address: sudheer.r.tegulapalle@jpmorgan.com

6. Representations, Warranties and Agreements.

- (a) *Additional Representations, Warranties and Covenants of Each Party.* In addition to the representations, warranties and covenants in the Agreement, each party represents, warrants and covenants to the other party that:
- (i) It is an “eligible contract participant” (as such term is defined in the Commodity Exchange Act, as amended).
 - (ii) Each party acknowledges that the offer and sale of each Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(2) thereof. Accordingly, each party represents and warrants to the other that (A) it has the financial ability to bear the economic risk of its investment in each Transaction and is able to bear a total loss of its investment, (B) it is an “accredited investor” as that term is defined under Regulation D under the Securities Act and (C) the disposition of each Transaction is restricted under this Master Confirmation, the Securities Act and state securities laws.
 - (iii) As of the Trade Date for each Transaction hereunder, it is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of this Master Confirmation and the Supplemental Confirmation for such Transaction has been duly authorized, executed and delivered by it and (assuming due authorization, execution and delivery thereof by the other party hereto) this Master Confirmation, as supplemented by such Supplemental Confirmation, constitutes a valid and legally binding obligation of it. It has all corporate power to enter into this Master Confirmation and the Supplemental Confirmation for such Transaction and to consummate the transactions contemplated hereby and thereby and, with respect to Counterparty to purchase the Shares and deliver any Settlement Shares in accordance with the terms hereof and thereof.
 - (iv) As of the Trade Date for each Transaction hereunder, the execution and delivery by it of, and the performance by it of its obligations under, this Master Confirmation and the Supplemental Confirmation for such Transaction, and the consummation of the transactions herein and therein contemplated, do not conflict with or violate (A) any provision of the certificate of incorporation, by-laws or other constitutive documents of it, (B) any statute or order, rule, regulation or judgment of any court or governmental agency or body having jurisdiction over it or any of its subsidiaries or any of their respective assets or (C) any contractual restriction binding on or affecting it or any of its subsidiaries or any of its assets.
 - (v) As of the Trade Date for each Transaction hereunder, all governmental and other consents that are required to have been obtained by it with respect to performance, execution and delivery of this Master Confirmation and the Supplemental Confirmation for such Transaction have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

- (b) *Additional Representations, Warranties and Covenants of Counterparty.* In addition to the representations, warranties and covenants in the Agreement, Counterparty represents, warrants and covenants to JPMorgan that:
- (i) As of the Trade Date for each Transaction hereunder, (A) such Transaction is being entered into pursuant to a publicly disclosed Share buy-back program and its Board of Directors has approved the use of derivatives to effect the Share buy-back program, and (B) there is no internal policy of Counterparty, whether written or oral, that would prohibit Counterparty from entering into any aspect of such Transaction, including, without limitation, the purchases of Shares to be made pursuant to such Transaction.
 - (ii) As of the Trade Date for each Transaction hereunder, the purchase or writing of such Transaction and the transactions contemplated hereby will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.
 - (iii) As of the Trade Date for each Transaction hereunder, it is not entering into such Transaction, and as of the date of any election pursuant to Section 15 of this Master Confirmation or the Counterparty Settlement Provisions with respect to any Transaction hereunder, it is not making such election, in each case (A) on the basis of, and is not aware of, any material non-public information regarding Counterparty or the Shares, (B) in anticipation of, in connection with, or to facilitate, a distribution of its securities, a self tender offer or a third-party tender offer in violation of the Exchange Act or (C) to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares). For all purposes of this agreement, “material non-public information” shall have the meaning set forth in the Communications Procedures attached as Annex B hereto.

- (iv) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least USD 50,000,000 as of the date hereof.
- (v) As of the Trade Date for each Transaction hereunder, and as of the date of any election with respect to any Transaction hereunder, Counterparty is in compliance with its reporting obligations under the Exchange Act and its most recent Annual Report on Form 10-K, together with all reports subsequently filed by it pursuant to the Exchange Act, taken together and as amended and supplemented to the date of this representation, do not, as of their respective filing dates, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.
- (vi) Counterparty has made, and will make, all filings required to be made by it with the Securities and Exchange Commission, any securities exchange or any other regulatory body with respect to each Transaction.
- (vii) The Shares are not, and Counterparty will not cause the Shares to be, subject to a “restricted period” (as defined in Regulation M promulgated under the Exchange Act) at any time during any Regulation M Period (as defined below) for any Transaction unless Counterparty has provided written notice to JPMorgan of such restricted period not later than the Scheduled Trading Day immediately preceding the first day of such “restricted period”; Counterparty acknowledges that any such notice may cause a Disrupted Day to occur pursuant to Section 7 below; accordingly, Counterparty acknowledges that its delivery of such notice must comply with the standards set forth in Section 8 below. “**Regulation M Period**” means, for any Transaction, (A) the Relevant Period (as defined below) for such Transaction, (B) the Settlement Valuation Period, if any, for such Transaction and (C) the Seller Termination Purchase Period (as defined below), if any,

for such Transaction. “**Relevant Period**” means, for any Transaction, the period commencing on the Calculation Period Start Date for such Transaction and ending on the later of (1) the earlier of (x) the Scheduled Termination Date and (y) the last Additional Relevant Day (as specified in the related Supplemental Confirmation) for such Transaction, or such earlier day as elected by JPMorgan and communicated to Counterparty on such day (or, if later, the First Acceleration Date without regard to any acceleration thereof pursuant to “Special Provisions for Acquisition Transaction Announcements” below) and (2) if Section 15 is applicable to such Transaction, the date on which all deliveries owed pursuant to Section 15 have been made.

- (viii) As of the Trade Date, the Prepayment Date, the Initial Share Delivery Date, the Settlement Date, any Cash Settlement Payment Date and any Settlement Method Election Date for each Transaction, Counterparty is not, and will not be, “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”)) and Counterparty would be able to purchase a number of Shares with a value equal to the Prepayment Amount in compliance with the laws of the jurisdiction of Counterparty’s incorporation.
- (ix) Counterparty is not, and after giving effect to each Transaction will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (x) Counterparty shall cooperate with JPMorgan, and execute and deliver, or use its commercially reasonable efforts to cause to be executed and delivered, all such other instruments, and to obtain all consents, approvals or authorizations of any person, and take all such other actions as JPMorgan may reasonably request from time to time, consistent with the terms of the Agreement, this Master Confirmation and any Supplemental Confirmation, in order to effectuate the purposes of the Agreement, this Master Confirmation, any Supplemental Confirmation and any Transaction.
- (xi) Counterparty has not entered, and will not enter, into any repurchase transaction with respect to the Shares (or any security convertible into or exchangeable for the Shares) (including, without limitation, any agreements similar to the Transactions described herein) where any initial hedge period, calculation period, relevant period, settlement valuation period or seller termination purchase period (each however defined) in such other transaction will overlap at any time (including, without limitation, as a result of extensions in such initial hedge period, calculation period, relevant period, settlement valuation period or seller termination purchase period as provided in the relevant agreements) with any Relevant Period, any Settlement Valuation Period (if applicable) or any Seller Termination Purchase Period (if applicable) under this Master Confirmation. In the event that the initial hedge period, relevant period, calculation period or settlement valuation period in any other transaction overlaps with any Relevant Period, any Settlement Valuation Period (if applicable) or any Seller Termination Purchase Period (if applicable) under this Master Confirmation as a result of any postponement of the Scheduled Termination Date or extension of the Settlement Valuation Period pursuant to “Valuation Disruption” above or any analogous provision in such other transaction, Counterparty shall promptly amend such other transaction to avoid any such overlap.
- (xii) Counterparty shall, at least one day prior to the first day of the Calculation Period, the Settlement Valuation Period, if any, or the Seller Termination Purchase Period, if any, for any Transaction, notify JPMorgan of the total

number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception set forth in paragraph (b)(4) of Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”) by or for Counterparty or any of its “affiliated purchasers” (as defined in Rule 10b-18) during each of the four calendar weeks preceding such day and during the calendar week in which such day occurs (“Rule 10b-18 purchase” and “blocks” each being used as defined in Rule 10b-18), which notice shall be substantially in the form set forth in Schedule B hereto.

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- (xiii) As of the Trade Date for each Transaction hereunder, and as of the date of any election with respect to any Transaction hereunder, there has not been any Merger Announcement (as defined below).

7. **Regulatory Disruption.** In the event that JPMorgan concludes, in its sole discretion, that it is appropriate with respect to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by JPMorgan), for it to refrain from or decrease any market activity on any Scheduled Trading Day or Days during the Calculation Period or, if applicable, the Settlement Valuation Period, JPMorgan may by written notice to Counterparty elect to deem that a Market Disruption Event has occurred and will be continuing on such Scheduled Trading Day or Days.

8. **10b5-1 Plan.** Counterparty represents, warrants and covenants to JPMorgan that:

- (a) Counterparty is entering into this Master Confirmation and each Transaction hereunder in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1 under the Exchange Act (“**Rule 10b5-1**”) or any other antifraud or anti-manipulation provisions of the federal or applicable state securities laws and that it has not entered into or altered and will not enter into or alter any corresponding or hedging transaction or position with respect to the Shares. Counterparty acknowledges that it is the intent of the parties that each Transaction entered into under this Master Confirmation comply with the requirements of paragraphs (c)(1)(i)(A) and (B) of Rule 10b5-1 and each Transaction entered into under this Master Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c).
- (b) During the Calculation Period and the Settlement Valuation Period, if any, for any Transaction and in connection with the delivery of any Alternative Delivery Units for any Transaction, JPMorgan (or its agent or Affiliate) may effect transactions in Shares in connection with such Transaction. The timing of such transactions by JPMorgan, the price paid or received per Share pursuant to such transactions and the manner in which such transactions are made, including, without limitation, whether such transactions are made on any securities exchange or privately, shall be within the sole judgment of JPMorgan. Counterparty acknowledges and agrees that all such transactions shall be made in JPMorgan’s sole judgment and for JPMorgan’s own account.
- (c) Counterparty does not have, and shall not attempt to exercise, any control or influence over how, when or whether JPMorgan (or its agent or Affiliate) makes any “purchases or sales” (within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)) in connection with any Transaction, including, without limitation, over how, when or whether JPMorgan (or its agent or Affiliate) enters into any hedging transactions. Counterparty represents and warrants that it has consulted with its own advisors as to the legal aspects of its adoption and implementation of this Master Confirmation and each Supplemental Confirmation under Rule 10b5-1.
- (d) Counterparty acknowledges and agrees that any amendment, modification, waiver or termination of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a “plan” as defined in Rule 10b5-1(c). Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5, and no such amendment, modification or waiver shall be made at any time at which Counterparty or any officer, director, manager or similar person of Counterparty is aware of any material non-public information regarding Counterparty or the Shares.
- (e) Counterparty shall not, directly or indirectly, communicate any information relating to the Shares or any Transaction (including, without limitation, any notices required by Section 10(a)) to any employee of JPMorgan or JPMS, other than as set forth in the Communications Procedures attached as Annex C hereto.

9. **Counterparty Purchases.** Counterparty (or any “affiliate” or “affiliated purchaser” as defined in Rule 10b-18) shall not, without the prior written consent of JPMorgan, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order

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that would effect a purchase of, or commence any tender offer relating to, any Shares (or equivalent interest, including, without limitation, a unit of beneficial interest in a trust or limited partnership or a depository share), listed contracts on the Shares or securities that are convertible into, or exchangeable or exercisable for Shares (including, without limitation, any Rule 10b-18 purchases of blocks (as defined in Rule 10b-18)) during any Relevant Period, any Settlement Valuation Period (if applicable) or any Seller Termination Purchase Period (if applicable), under this Master Confirmation; *provided* that on any Exchange Business Day during any Relevant Period Counterparty may purchase through JPMS, in compliance with Rule 10b-18, an amount of Shares not

to exceed 5% of the average daily trading volume reported for the Shares during the four calendar weeks preceding the week in which such purchase is to be effected.

10. Special Provisions for Merger Transactions. Notwithstanding anything to the contrary herein or in the Equity Definitions:

- (a) Counterparty agrees that it:
 - (i) will not during the period commencing on the Trade Date for any Transaction and ending on the last day of the Relevant Period or, if applicable, the later of the last day of the Settlement Valuation Period and the last day of the Seller Termination Purchase Period, for such Transaction make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction (a “**Merger Announcement**”) unless such Merger Announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares;
 - (ii) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify JPMorgan following any such Merger Announcement that such Merger Announcement has been made; and
 - (iii) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide JPMorgan with written notice specifying (i) Counterparty’s average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date of any Merger Transaction or potential Merger Transaction that were not effected through JPMorgan or its Affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date of any Merger Transaction or potential Merger Transaction. Such written notice shall be deemed to be a certification by Counterparty to JPMorgan that such information is true and correct. In addition, Counterparty shall promptly notify JPMorgan of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders.
- (b) Counterparty acknowledges that any such Merger Announcement or delivery of a notice with respect thereto may cause the terms of any Transaction to be adjusted or such Transaction to be terminated; accordingly, Counterparty acknowledges that its delivery of such notice must comply with the standards set forth in Section 8 above.
- (c) Upon the occurrence of any Merger Announcement (whether made by Counterparty or a third party), JPMorgan in its sole discretion may (i) elect that the Calculation Agent make adjustments to the terms of any Transaction, including, without limitation, the Scheduled Termination Date or the Forward Price Adjustment Amount, and/or suspend the Calculation Period and/or any Settlement Valuation Period or (ii) treat the occurrence of such Merger Announcement as an Additional Termination Event with Counterparty as the sole Affected Party and the Transactions hereunder as the Affected Transactions and with the amount under Section 6(e) of the Agreement determined taking into account the fact that the Calculation Period or Settlement Valuation Period, as the case may be, had fewer Exchange Business Days than originally anticipated.

“**Merger Transaction**” means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

11. Special Provisions for Acquisition Transaction Announcements. Notwithstanding anything to the contrary herein or in the Equity Definitions:

- (a) If an Acquisition Transaction Announcement occurs on or after the date hereof and on or prior to the Settlement Date for any Transaction, then the Calculation Agent shall make such adjustments to the exercise, settlement, payment or any other terms of such Transaction as the Calculation Agent determines appropriate (including, without limitation and for the avoidance of doubt, adjustments that would allow the Number of Shares to be Delivered to be less than zero), at such time or at multiple times as the Calculation Agent determines appropriate, to account for the economic effect on such Transaction of such Acquisition Transaction Announcement (including adjustments to account for changes in volatility, expected dividends, stock loan rate and liquidity relevant to the Shares or to such Transaction). If an Acquisition Transaction Announcement occurs after the Trade Date, but prior to the First Acceleration Date of any Transaction, the First Acceleration Date shall be the date of such Acquisition Transaction Announcement. If the Number of Shares to be Delivered for any settlement of any Transaction is a negative number, then the terms of the Counterparty Settlement Provisions in Annex A hereto shall apply.
- (b) “**Acquisition Transaction Announcement**” means (i) the announcement of an Acquisition Transaction or an event that, if consummated, would result in an Acquisition Transaction, (ii) an announcement that Counterparty or any of its subsidiaries has entered into an agreement, a letter of intent or an understanding designed to result in an Acquisition Transaction, (iii) the announcement of the intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, an Acquisition Transaction, (iv) any other announcement that in the reasonable judgment of the Calculation Agent may result in an Acquisition Transaction, or (v) any announcement of any change or amendment to any previous Acquisition Transaction Announcement (including any announcement of the abandonment of any such previously announced Acquisition Transaction, agreement, letter of intent, understanding or intention). For the avoidance of doubt, announcements as used in the definition of Acquisition Transaction Announcement refer to any public announcement

whether made by the Issuer or a third party.

- (c) “**Acquisition Transaction**” means (i) any Merger Event (for purposes of this definition the definition of Merger Event shall be read with the references therein to “100%” being replaced by “15%” and references to “50%” being replaced by “75%” and without reference to the clause beginning immediately following the definition of Reverse Merger therein to the end of such definition), Tender Offer or Merger Transaction or any other transaction involving the merger of Counterparty with or into any third party, (ii) the sale or transfer of all or substantially all of the assets of Counterparty, (iii) a recapitalization, reclassification, binding share exchange or other similar transaction with respect to Counterparty, (iv) any acquisition by Counterparty or any of its subsidiaries where the aggregate consideration transferable by Counterparty or its subsidiaries exceeds 50% of the market capitalization of Counterparty, (v) any lease, exchange, transfer, disposition (including, without limitation, by way of spin-off or distribution) of assets (including, without limitation, any capital stock or other ownership interests in subsidiaries) or other similar event by Counterparty or any of its subsidiaries where the aggregate consideration transferable or receivable by or to Counterparty or its subsidiaries exceeds 15% of the market capitalization of Counterparty or (vi) any transaction in which Counterparty or its board of directors has a legal obligation to make a recommendation to its shareholders in respect of such transaction (whether pursuant to Rule 14e-2 under the Exchange Act or otherwise).

12. **Acknowledgments.**

(a) The parties hereto intend for:

- (i) each Transaction to be a “securities contract” as defined in Section 741(7) of the Bankruptcy Code and a “forward contract” as defined in Section 101(25) of the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 555, 556, 560 and 561 of the Bankruptcy Code;

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- (ii) the Agreement to be a “master netting agreement” as defined in Section 101(38A) of the Bankruptcy Code;
- (iii) a party’s right to liquidate, terminate or accelerate any Transaction, net out or offset termination values or payment amounts, and to exercise any other remedies upon the occurrence of any Event of Default or Termination Event under the Agreement with respect to the other party or any Extraordinary Event that results in the termination or cancellation of any Transaction to constitute a “contractual right” (as defined in the Bankruptcy Code); and
- (iv) all payments for, under or in connection with each Transaction, all payments for the Shares (including, for the avoidance of doubt, payment of the Prepayment Amount) and the transfer of such Shares to constitute “settlement payments” and “transfers” (as defined in the Bankruptcy Code).

(b) Counterparty acknowledges that:

- (i) during the term of any Transaction, JPMorgan and its Affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to establish, adjust or unwind its hedge position with respect to such Transaction;
- (ii) JPMorgan and its Affiliates may also be active in the market for the Shares and Share-linked transactions other than in connection with hedging activities in relation to any Transaction;
- (iii) JPMorgan shall make its own determination as to whether, when or in what manner any hedging or market activities in Counterparty’s securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Forward Price and the VWAP Price;
- (iv) any market activities of JPMorgan and its Affiliates with respect to the Shares may affect the market price and volatility of the Shares, as well as the Forward Price and VWAP Price, each in a manner that may be adverse to Counterparty; and
- (v) each Transaction is a derivatives transaction in which it has granted JPMorgan an option; JPMorgan may purchase shares for its own account at an average price that may be greater than, or less than, the price paid by Counterparty under the terms of the related Transaction.

13. **No Collateral, Netting or Setoff.** Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. Obligations under any Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Master Confirmation or any Supplemental Confirmation, or under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under any Transaction, whether arising under the Agreement, this Master Confirmation or any Supplemental Confirmation, or under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment.

14. **Delivery of Shares.** Notwithstanding anything to the contrary herein, JPMorgan may, by prior notice to Counterparty, satisfy its

obligation to deliver any Shares or other securities on any date due (an “**Original Delivery Date**”) by making separate deliveries of Shares or such securities, as the case may be, at more than one time on or prior to such Original Delivery Date, so long as the aggregate number of Shares and other securities so delivered on or prior to such Original Delivery Date is equal to the number required to be delivered on such Original Delivery Date.

15. **Alternative Termination Settlement.** In the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to any Transaction or (b) any Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares consists solely of cash, (ii) a Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), if either party would owe any amount to the other party pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Amount**”), then, in lieu of any payment of such Payment Amount, unless Counterparty makes an election to the contrary no later than the Early Termination Date or the date on which such Transaction is terminated or cancelled, Counterparty or JPMorgan, as the case may be, shall deliver to the other party a number of Shares (or, in the case of a Nationalization, Insolvency or Merger Event, a number of units, each comprising the number or amount of the securities or property that a hypothetical holder of one Share would receive in such Nationalization, Insolvency or Merger Event, as the case may be (each such unit, an “**Alternative Delivery Unit**”) with a value equal to the Payment Amount, as determined by the Calculation Agent over a commercially reasonable period of time (and the parties agree that, in making such determination of value, the Calculation Agent may take into account a number of factors, including, without limitation, the market price of the Shares or Alternative Delivery Units on the Early Termination Date or the date of early cancellation or termination, as the case may be, and, if such delivery is made by JPMorgan, the prices at which JPMorgan purchases Shares or Alternative Delivery Units to fulfill its delivery obligations under this Section 15); *provided* that in determining the composition of any Alternative Delivery Unit, if the relevant Nationalization, Insolvency or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash; and *provided further* that Counterparty may elect that the provisions of this Section 15 above providing for the delivery of Shares or Alternative Delivery Units, as the case may be, shall not apply only if Counterparty represents and warrants to JPMorgan, in writing on the date it notifies JPMorgan of such election, that, as of such date, Counterparty is not aware of any material non-public information regarding Counterparty or the Shares and is making such election in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws. If delivery of Shares or Alternative Delivery Units, as the case may be, pursuant to this Section 15 is to be made by Counterparty, paragraphs 2 through 7 of Annex A hereto shall apply as if (A) such delivery were a settlement of such Transaction to which Net Share Settlement applied, (B) the Cash Settlement Payment Date were the Early Termination Date or the date of early cancellation or termination, as the case may be, and (C) the Forward Cash Settlement Amount were equal to (x) zero *minus* (y) the Payment Amount owed by Counterparty. For the avoidance of doubt, if Counterparty validly elects for the provisions of this Section 15 relating to the delivery of Shares or Alternative Delivery Units, as the case may be, not to apply to any Payment Amount, the provisions of Article 12 of the Equity Definitions, or the provisions of Section 6(d)(ii) of the Agreement, as the case may be, shall apply. If delivery of Shares or Alternative Delivery Units, as the case may be, is to be made by JPMorgan pursuant to this Section 15, the period during which JPMorgan purchases Shares or Alternative Delivery Units to fulfill its delivery obligations under this Section 15 shall be referred to as the “**Seller Termination Purchase Period.**”

16. **Calculations and Payment Date upon Early Termination.** The parties acknowledge and agree that in calculating (a) the Close-Out Amount pursuant to Section 6 of the Agreement and (b) the amount due upon cancellation or termination of any Transaction (whether in whole or in part) pursuant to Article 12 of the Equity Definitions as a result of an Extraordinary Event, JPMorgan may (but need not) determine such amount based on (i) expected losses assuming a commercially reasonable (including, without limitation, with regard to reasonable legal and regulatory guidelines) risk bid were used to determine loss or (ii) the price at which one or more market participants would offer to sell to the Seller a block of shares of Common Stock equal in number to the Seller’s hedge position in relation to the Transaction. Notwithstanding anything to the contrary in Section 6(d)(ii) of the Agreement or Article 12 of the Equity Definitions, all amounts calculated as being due in respect of an Early Termination Date under Section 6(e) of the Agreement or upon cancellation or termination of the relevant Transaction under Article 12 of the Equity Definitions will be payable on the day that notice of the amount payable is effective; *provided* that if Counterparty elects to receive or deliver Shares or Alternative Delivery Units in accordance with Section

15, such Shares or Alternative Delivery Units shall be delivered on a date selected by JPMorgan as promptly as practicable.

17. **Limit on Beneficial Ownership.** Notwithstanding anything to the contrary in this Master Confirmation, Counterparty acknowledges and agrees that, on any day, JPMorgan shall not be obligated to receive from Counterparty any Shares, and Counterparty shall not be entitled to deliver to JPMorgan any Shares, to the extent (but only to the extent) that after such transactions JPMorgan’s ultimate parent entity would directly or indirectly “beneficially own” (as such term is defined for purposes of Section 13(d) of the Exchange Act) at any time on such day in excess of 8% of the outstanding Shares. Any purported receipt of Shares shall be void and have no effect to the extent (but only to the extent) that after such receipt, JPMorgan’s ultimate parent entity would directly or indirectly so beneficially own in excess of 8% of the outstanding Shares. If, on any day, any receipt of Shares by JPMorgan is not effected, in whole or in part, as a result of this Section 17, Counterparty’s obligations to deliver such Shares shall

not be extinguished and any such delivery shall be effected over time by Counterparty as promptly as JPMorgan determines, such that after any such delivery, JPMorgan's ultimate parent entity would not directly or indirectly beneficially own in excess of 8% of the outstanding Shares.

18. **Maximum Share Delivery.** Notwithstanding anything to the contrary in this Master Confirmation, in no event shall JPMorgan be required to deliver any Shares, or any Shares or other securities comprising Alternative Delivery Units, in respect of any Transaction in excess of the Maximum Number of Shares set forth in the Supplemental Confirmation for such Transaction.
19. **Additional Termination Events.**
- (a) The occurrence of an event described in paragraph III of Annex B hereto will constitute an Additional Termination Event, with Counterparty as the sole Affected Party and the Transactions specified in such paragraph III as the Affected Transactions.
- (b) Notwithstanding anything to the contrary in Section 6 of the Agreement, if a Termination Price is specified in the Supplemental Confirmation for any Transaction, then an Additional Termination Event will occur without any notice or action by JPMorgan or Counterparty if the price of the Shares on the Exchange at any time falls below such Termination Price, with Counterparty as the sole Affected Party and such Transaction as the sole Affected Transaction.
20. **Non-confidentiality.** JPMorgan and Counterparty hereby acknowledge and agree that, subject to Section 8(e), each is authorized to disclose every aspect of this Master Confirmation, any Supplemental Confirmation and the transactions contemplated hereby and thereby to any and all persons, without limitation of any kind, and there are no express or implied agreements, arrangements or understandings to the contrary.
21. **Counterparty Indemnification.** Counterparty agrees to indemnify and hold harmless JPMorgan and its officers, directors, employees, Affiliates, advisors, agents and controlling persons (each, an "**Indemnified Person**") from and against any and all losses, claims, damages and liabilities, joint or several (collectively, "**Obligations**"), to which an Indemnified Person may become subject arising out of or in connection with this Master Confirmation or any Supplemental Confirmation, or any claim, litigation, investigation or proceeding relating thereto, regardless of whether any of such Indemnified Person is a party thereto, and to reimburse each such Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparation for, providing evidence for or defending any of the foregoing; *provided, however*, that Counterparty shall not have any liability to any Indemnified Person to the extent that such Obligations (a) are determined by a court of competent jurisdiction to have resulted from the gross negligence, fraud or willful misconduct of such Indemnified Person (and in such case, such Indemnified Person shall promptly return to Counterparty any amounts previously expended by Counterparty hereunder) or (b) are trading losses incurred by JPMorgan as part of its purchases or sales of Shares pursuant to this Master Confirmation or any Supplemental Confirmation (unless such trading losses are related to the breach of any agreement, term or covenant by Counterparty herein).
22. **Assignment and Transfer.** Notwithstanding anything to the contrary in the Agreement, JPMorgan may assign any of its rights or duties hereunder to any one or more of its Affiliates, without the prior written

consent of Counterparty provided that (A) such Affiliate of JPMorgan (1) has a rating for its long term, unsecured and unsubordinated indebtedness that is equal to or better than JPMorgan's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by JPMorgan generally for similar transactions, by JPMorgan or JPMorgan Chase & Co. Notwithstanding any other provision in this Master Confirmation to the contrary requiring or allowing JPMorgan to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, JPMorgan may designate any of its Affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform JPMorgan's obligations in respect of any Transaction and any such designee may assume such obligations. JPMorgan may assign the right to receive Settlement Shares to any third party who may legally receive Settlement Shares. JPMorgan shall be discharged of its obligations to Counterparty only to the extent of any such performance. For the avoidance of doubt, JPMorgan hereby acknowledges that notwithstanding any such designation hereunder, to the extent any of JPMorgan's obligations in respect of any Transaction are not completed by its designee, JPMorgan shall be obligated to continue to perform or to cause any other of its designees to perform in respect of such obligations.

23. **Amendments to the Equity Definitions.**
- (a) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "a diluting or concentrative" and replacing them with the words "an"; and adding the phrase "or such Transaction" at the end of the sentence.
- (b) Section 11.2(c) of the Equity Definitions is hereby amended by (i) replacing the words "a diluting or concentrative" with "an" in the fifth line thereof, (ii) adding the phrase "or such Transaction" after the words "the relevant Shares" in the same sentence, (iii) deleting the words "dilutive or concentrative" in the sixth to last line thereof, and (iv) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."
- (c) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "a diluting or concentrative" and

replacing them with the word “a material”; and adding the phrase “or the relevant Transaction” at the end of the sentence.

- (d) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (i) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (ii) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor “or (C) at JPMorgan’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”
- (e) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:
 - (i) deleting (1) subsection (A) in its entirety, (2) the phrase “or (B)” following subsection (A) and (3) the phrase “in each case” in subsection (B); and
 - (ii) replacing the phrase “neither the Non-Hedging Party nor the Lending Party lends Shares” with the phrase “such Lending Party does not lend Shares” in the penultimate sentence.
- (f) Section 12.9(b)(v) of the Equity Definitions is hereby amended by:
 - (i) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); and
 - (ii) (1) deleting subsection (C) in its entirety, (2) deleting the word “or” immediately preceding subsection (C), (3) deleting the penultimate sentence in its entirety and replacing it with the sentence “The Hedging Party will determine the Cancellation

Amount payable by one party to the other” and (4) deleting clause (X) in the final sentence

- 24. **Extraordinary Dividend.** If Counterparty declares any Extraordinary Dividend that has a record date during the period commencing on the Trade Date for any Transaction and ending of the last day of the Relevant Period or, if applicable, the later of the last day of the Settlement Valuation Period and the last day of the Seller Termination Purchase Period, for such Transaction, then prior to or on the date on which such Extraordinary Dividend is paid by Counterparty to holders of record, Counterparty shall pay to JPMorgan, for each Transaction under this Master Confirmation, an amount in cash equal to the product of (i) the amount of such Extraordinary Dividend and (ii) the theoretical short delta number of shares as of the opening of business on the related ex-dividend date, as determined by the Calculation Agent, required for JPMorgan to hedge its exposure to such Transaction.
- 25. **Status of Claims in Bankruptcy.** JPMorgan acknowledges and agrees that neither this Master Confirmation nor any Supplemental Confirmation is intended to convey to JPMorgan rights against Counterparty with respect to any Transaction that are senior to the claims of common stockholders of Counterparty in any United States bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit JPMorgan’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to any Transaction; *provided further* that nothing herein shall limit or shall be deemed to limit JPMorgan’s rights in respect of any transactions other than any Transaction.
- 26. **Wall Street Transparency and Accountability Act.** In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 (“WSTAA”), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, nor any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the date of this Master Confirmation, shall limit or otherwise impair either party’s otherwise applicable rights to terminate, renegotiate, modify, amend or supplement any Supplemental Confirmation, this Master Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under any Supplemental Confirmation, this Master Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, without limitation, rights arising from Change in Law, Loss of Stock Borrow, Increased Cost of Stock Borrow, Hedging Disruption, Increased Cost of Hedging, or Illegality).
- 27. **Role of Agent.** Each party agrees and acknowledges that (a) JPMS, an Affiliate of JPMorgan, has acted solely as agent and not as principal with respect to this Master Confirmation and each Transaction and (b) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of any Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party’s obligations under any Transaction. JPMS is authorized to act as agent for JPMorgan.
- 28. **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE AGREEMENT, THIS MASTER CONFIRMATION, EACH SUPPLEMENTAL CONFIRMATION, THE TRANSACTIONS HEREUNDER AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT, THIS MASTER CONFIRMATION AND ANY SUPPLEMENTAL CONFIRMATION AND THE TRANSACTIONS HEREUNDER. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THE TRANSACTIONS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND

CERTIFICATIONS PROVIDED HEREIN.

29. **Counterparts.** This Master Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Master Confirmation by signing and delivering one or more counterparts.

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Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Master Confirmation and returning it to us.

Very truly yours,

**J.P. MORGAN SECURITIES LLC, as agent for
JPMorgan Chase Bank, National Association**

By: /s/ Sudheer Tegulapalle
Authorized Signatory
Name: Sudheer Tegulapalle
Executive Director

Accepted and confirmed as of the date first set forth above:

THE MEN'S WEARHOUSE, INC.

By: /s/ Jon W. Kimmins
Authorized Signatory
Name: Jon W. Kimmins

JPMorgan Chase Bank, National Association
Organised under the laws of the United States as a National Banking Association.
Main Office 1111 Polaris Parkway, Columbus, Ohio 43240
Registered as a branch in England & Wales branch No. BR000746
Registered Branch Office 25 Bank Street, Canary Wharf, London, E14 5JP
Authorised and regulated by the Financial Services Authority

SCHEDULE A

FORM OF SUPPLEMENTAL CONFIRMATION

JPMorgan Chase Bank, National Association
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

[], 2013

To: The Men's Wearhouse, Inc.
6380 Rogerdale Road
Houston, Texas 77072-1624
Attention: Jon Kimmins

Re: Supplemental Confirmation—Uncollared Accelerated Share Repurchase

The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between J.P. Morgan Securities LLC, as agent for JPMorgan Chase Bank, National Association, London Branch ("**JPMorgan**"), and The Men's Wearhouse, Inc., a Texas corporation ("**Counterparty**") on the Trade Date specified below. This Supplemental Confirmation is a binding contract between JPMorgan and Counterparty as of the relevant Trade Date for the Transaction referenced below.

1. This Supplemental Confirmation supplements, forms part of, and is subject to the Master Confirmation, dated as of July 22, 2013 (the "**Master Confirmation**"), between JPMorgan and Counterparty, as amended and supplemented from time to time. All provisions contained in the Master Confirmation govern this Supplemental Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Supplemental Confirmation relates are as follows:

Trade Date: [], 2013

Forward Price Adjustment Amount: USD []

Calculation Period Start Date: The []th Exchange Business Day immediately following the Trade Date.

Scheduled Termination Date: The []th Exchange Business Day immediately following the Trade Date.

First Acceleration Date: The []th Exchange Business Day immediately following the Trade Date.

Prepayment Amount: USD []

Prepayment Date: [], 2013

Initial Shares: [] Shares; *provided* that if, in connection with the Transaction, JPMorgan is unable to borrow or otherwise acquire a number of Shares equal to the

JPMorgan Chase Bank, National Association
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Registered as a branch in England & Wales branch No. BR000746
Registered Branch Office 25 Bank Street, Canary Wharf, London, E14 5JP
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Initial Shares for delivery to Counterparty on the Initial Share Delivery Date, the Initial Shares delivered on the Initial Share Delivery Date shall be reduced to such number of Shares that JPMorgan is able to so borrow or otherwise acquire. The aggregate of all Shares delivered to Counterparty in respect of the Transaction pursuant to this paragraph shall be the "Initial Shares" for purposes of "Number of Shares to be Delivered" in the Master Confirmation.

Initial Share Delivery Date: [], 2013

Ordinary Dividend Amount: For any calendar quarter, USD [] per Share

Scheduled Ex-Dividend Dates: []

Maximum Stock Loan Rate: [] basis points per annum

Initial Stock Loan Rate: [] basis points per annum

Maximum Number of Shares: [] Shares

Floor Price: USD 0.01 per Share

Contract Fee: USD []

Termination Price: USD [] per Share

Additional Relevant Days: The [] Exchange Business Days immediately following the Calculation Period.

Reserved Shares: Notwithstanding anything to the contrary in the Master Confirmation, as of the date of this Supplemental Confirmation, the Reserved Shares shall be equal to [] Shares.

3. Counterparty represents and warrants to JPMorgan that neither it nor any "affiliated purchaser" (as defined in Rule 10b-18 under the Exchange Act) has made any purchases of blocks pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act during either (i) the four full calendar weeks immediately preceding the Trade Date or (ii) during the calendar week in which the Trade Date occurs.

4. This Supplemental Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same

instrument, and any party hereto may execute this Supplemental Confirmation by signing and delivering one or more counterparts.

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Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Supplemental Confirmation and returning it to us.

Very truly yours,

J.P. MORGAN SECURITIES LLC, as agent for JPMorgan Chase Bank, National Association

By: _____
Authorized Signatory
Name:

Accepted and confirmed as of the Trade Date:

THE MEN'S WEARHOUSE, INC.

By: _____
Authorized Signatory
Name:

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SCHEDULE B

FORM OF CERTIFICATE OF RULE 10B-18 PURCHASES

[Letterhead of Counterparty]

JPMorgan Chase Bank, National Association
c/o J.P. Morgan Securities LLC
383 Madison Avenue
5th Floor
New York, New York 10172

Re: Uncollared Accelerated Share Repurchase

Ladies and Gentlemen:

In connection with our entry into the Master Confirmation, dated as of July 22, 2013, between J.P. Morgan Securities LLC, as agent for JPMorgan Chase Bank, National Association, London Branch, and The Men's Wearhouse, Inc. a Texas corporation, as amended and supplemented from time to time (the "**Master Confirmation**"), we hereby represent that set forth below is the total number of shares of our common stock purchased by or for us or any of our affiliated purchasers in Rule 10b-18 purchases of blocks (all as defined in Rule 10b-18 under the Securities Exchange Act of 1934) pursuant to the once-a-week block exception set forth in Rule 10b-18(b)(4) during the four full calendar weeks immediately preceding the first day of the [Calculation Period][Settlement Valuation Period][Seller Termination Purchase Period] (as defined in the Master Confirmation) and the week during which the first day of such [Calculation Period][Settlement Valuation Period][Seller Termination Purchase Period] occurs.

Number of Shares:

We understand that you will use this information in calculating trading volume for purposes of Rule 10b-18.

Very truly yours,

By: _____
Authorized Signatory
Name:

B-1

ANNEX A

COUNTERPARTY SETTLEMENT PROVISIONS

1. The following Counterparty Settlement Provisions shall apply to any Transaction to the extent indicated under the Master Confirmation:

Settlement Currency: USD

Settlement Method Election: Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word "Physical" in the sixth line thereof and replacing it with the words "Net Share" and (ii) the Electing Party may make a settlement method election only if the Electing Party represents and warrants to JPMorgan in writing on the date it notifies JPMorgan of its election that, as of such date, the Electing Party is not aware of any material non-public information regarding Counterparty or the Shares and is electing the settlement method in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws.

Electing Party: Counterparty

Settlement Method Election Date: The earlier of (i) the Scheduled Termination Date and (ii) the second Exchange Business Day immediately following the Accelerated Termination Date (in which case the election under Section 7.1 of the Equity Definitions shall be made no later than 10 minutes prior to the open of trading on the Exchange on such second Exchange Business Day), as the case may be.

Default Settlement Method: Cash Settlement

Forward Cash Settlement Amount: An amount equal to (a) the Number of Shares to be Delivered, *multiplied by* (b) the Settlement Price.

Settlement Price: An amount equal to the sum of the average of the VWAP Prices for the Exchange Business Days in the Settlement Valuation Period, *plus* USD 0.05, subject to Valuation Disruption as specified in the Master Confirmation (in each case, *plus* interest on such amount during the Settlement Averaging Period at the rate of interest for Counterparty's long term, unsecured and unsubordinated indebtedness, as determined by the Calculation Agent).

Settlement Valuation Period: A number of Scheduled Trading Days selected by JPMorgan in its reasonable discretion, beginning on the Scheduled Trading Day immediately following the Exchange Business Day immediately following the Termination Date.

Cash Settlement: If Cash Settlement is applicable, then Buyer shall pay to JPMorgan the absolute value of the Forward Cash Settlement Amount on the Cash Settlement Payment Date.

Cash Settlement Payment Date: The Exchange Business Day immediately following the last day of the Settlement Valuation Period.

Annex A-1

Net Share Settlement Procedures: If Net Share Settlement is applicable, Net Share Settlement shall be made in accordance with paragraphs 2 through 7 below.

2. Net Share Settlement shall be made by delivery on the Cash Settlement Payment Date of a number of Shares satisfying the conditions set forth in paragraph 3 below (the "**Registered Settlement Shares**"), or a number of Shares not satisfying such conditions (the "**Unregistered Settlement Shares**"), in either case with a value equal to 101% (in the case of Registered Settlement Shares) or 105% (in the case of Unregistered Settlement Shares) of the absolute value of the Forward Cash Settlement Amount, with such Shares' value based on the value thereof to JPMorgan (which value shall, in the case of Unregistered Settlement Shares, take into account a commercially reasonable illiquidity discount), in each case as determined by the Calculation Agent. If all of the conditions for delivery of either Registered

Settlement Shares or Unregistered Settlement Shares have not been satisfied, Cash Settlement shall be applicable in accordance with paragraph 1 above notwithstanding Counterparty's election of Net Share Settlement.

3. Counterparty may only deliver Registered Settlement Shares pursuant to paragraph 2 above if:

(a) a registration statement covering public resale of the Registered Settlement Shares by JPMorgan (the "**Registration Statement**") shall have been filed with the Securities and Exchange Commission under the Securities Act and been declared or otherwise become effective on or prior to the date of delivery, and no stop order shall be in effect with respect to the Registration Statement; a printed prospectus relating to the Registered Settlement Shares (including, without limitation, any prospectus supplement thereto, the "**Prospectus**") shall have been delivered to JPMorgan, in such quantities as JPMorgan shall reasonably have requested, on or prior to the date of delivery;

(b) the form and content of the Registration Statement and the Prospectus (including, without limitation, any sections describing the plan of distribution) shall be satisfactory to JPMorgan;

(c) as of or prior to the date of delivery, JPMorgan and its agents shall have been afforded a reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities and the results of such investigation are satisfactory to JPMorgan, in its discretion; and

(d) as of the date of delivery, an agreement (the "**Underwriting Agreement**") shall have been entered into with JPMorgan in connection with the public resale of the Registered Settlement Shares by JPMorgan substantially similar to underwriting agreements customary for underwritten offerings of equity securities, in form and substance satisfactory to JPMorgan, which Underwriting Agreement shall include, without limitation, provisions substantially similar to those contained in such underwriting agreements relating, without limitation, to the indemnification of, and contribution in connection with the liability of, JPMorgan and its Affiliates and the provision of customary opinions, accountants' comfort letters and lawyers' negative assurance letters.

4. If Counterparty delivers Unregistered Settlement Shares pursuant to paragraph 2 above:

(a) all Unregistered Settlement Shares shall be delivered to JPMorgan (or any Affiliate of JPMorgan designated by JPMorgan) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof;

(b) as of or prior to the date of delivery, JPMorgan and any potential purchaser of any such shares from JPMorgan (or any Affiliate of JPMorgan designated by JPMorgan) identified by JPMorgan shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them);

(c) as of the date of delivery, Counterparty shall enter into an agreement (a "**Private Placement Agreement**") with JPMorgan (or any Affiliate of JPMorgan designated by JPMorgan) in connection with the private placement of such shares by Counterparty to JPMorgan (or any such Affiliate) and the private resale of such shares by JPMorgan (or any such Affiliate), substantially similar to private placement purchase agreements customary for

Annex A-2

private placements of equity securities, in form and substance commercially reasonably satisfactory to JPMorgan, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating, without limitation, to the indemnification of, and contribution in connection with the liability of, JPMorgan and its Affiliates and the provision of customary opinions, accountants' comfort letters and lawyers' negative assurance letters, and shall provide for the payment by Counterparty of all fees and expenses of JPMorgan (and any such Affiliate) in connection with such resale, including, without limitation, all fees and expenses of counsel for JPMorgan, and shall contain representations, warranties, covenants and agreements of Counterparty reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales; and

(d) in connection with the private placement of such shares by Counterparty to JPMorgan (or any such Affiliate) and the private resale of such shares by JPMorgan (or any such Affiliate), Counterparty shall, if so requested by JPMorgan, prepare, in cooperation with JPMorgan, a private placement memorandum in form and substance reasonably satisfactory to JPMorgan.

5. JPMorgan, itself or through an Affiliate (the "**Selling Agent**") or any underwriter(s), will sell all, or such lesser portion as may be required hereunder, of the Registered Settlement Shares or Unregistered Settlement Shares and any Makewhole Shares (as defined below) (together, the "**Settlement Shares**") delivered by Counterparty to JPMorgan pursuant to paragraph 6 below commencing on the Cash Settlement Payment Date and continuing until the date on which the aggregate Net Proceeds (as such term is defined below) of such sales, as determined by JPMorgan, is equal to the absolute value of the Forward Cash Settlement Amount (such date, the "**Final Resale Date**"). If the proceeds of any sale(s) made by JPMorgan, the Selling Agent or any underwriter(s), net of any fees and commissions (including, without limitation, underwriting or placement fees) customary for similar transactions under the circumstances at the time of the offering, together with carrying charges and expenses incurred in connection with the offer and sale of the Shares (including, without limitation, the covering of any over- allotment or short position (syndicate or otherwise)) (the "**Net Proceeds**") exceed the absolute value of the Forward Cash Settlement Amount, JPMorgan will refund, in USD, such excess to Counterparty on the date that is three (3) Currency Business Days following the Final Resale Date, and, if any portion of the Settlement Shares remains unsold, JPMorgan shall return to Counterparty on that date such unsold Shares.

6. If the Calculation Agent determines that the Net Proceeds received from the sale of the Registered Settlement Shares or Unregistered Settlement Shares or any Makewhole Shares, if any, pursuant to this paragraph 6 are less than the absolute value of the Forward Cash Settlement Amount (the amount in USD by which the Net Proceeds are less than the absolute value of the Forward Cash Settlement Amount being the “**Shortfall**” and the date on which such determination is made, the “**Deficiency Determination Date**”), Counterparty shall on the Exchange Business Day next succeeding the Deficiency Determination Date (the “**Makewhole Notice Date**”) deliver to JPMorgan, through the Selling Agent, a notice of Counterparty’s election that Counterparty shall either (i) pay an amount in cash equal to the Shortfall on the day that is one Currency Business Day after the Makewhole Notice Date, or (ii) deliver additional Shares. If Counterparty elects to deliver to JPMorgan additional Shares, then Counterparty shall deliver additional Shares in compliance with the terms and conditions of paragraph 3 or paragraph 4 above, as the case may be (the “**Makewhole Shares**”), on the first Clearance System Business Day which is also an Exchange Business Day following the Makewhole Notice Date in such number as the Calculation Agent reasonably believes would have a market value on that Exchange Business Day equal to the Shortfall. Such Makewhole Shares shall be sold by JPMorgan in accordance with the provisions above; *provided* that if the sum of the Net Proceeds from the sale of the originally delivered Shares and the Net Proceeds from the sale of any Makewhole Shares is less than the absolute value of the Forward Cash Settlement Amount then Counterparty shall, at its election, either make such cash payment or deliver to JPMorgan further Makewhole Shares until such Shortfall has been reduced to zero.

7. Notwithstanding the foregoing, in no event shall the aggregate number of Settlement Shares for any Transaction be greater than the Reserved Shares *minus* the amount of any Shares actually delivered by Counterparty under any other Transaction under this Master Confirmation (the result of such calculation, the “**Capped Number**”). Counterparty represents and warrants (which shall be deemed to be repeated on each day that a Transaction is outstanding) that the Capped Number is equal to or less than the number of Shares determined according to the following formula:

$$A - B$$

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Where A = the number of authorized but unissued shares of Counterparty that are not reserved for future issuance on the date of the determination of the Capped Number; and

B = the maximum number of Shares required to be delivered to third parties if Counterparty elected Net Share Settlement of all transactions in the Shares (other than Transactions in the Shares under this Master Confirmation) with all third parties that are then currently outstanding and unexercised.

“**Reserved Shares**” means initially, 3,540,000 Shares. The Reserved Shares may be increased or decreased in a Supplemental Confirmation.

If at any time, as a result of this paragraph 7, Counterparty fails to deliver to JPMorgan any Settlement Shares, Counterparty shall, to the extent that Counterparty has at such time authorized but unissued Shares not reserved for other purposes, promptly notify JPMorgan thereof and deliver to JPMorgan a number of Shares not previously delivered as a result of this paragraph 7. Counterparty agrees to use its best efforts to cause the number of authorized but unissued Shares to be increased, if necessary, to an amount sufficient to permit Counterparty to fulfill its obligation to deliver any Settlement Shares.

Annex A-4

ANNEX B

COMMUNICATIONS PROCEDURES

July 22, 2013

I. Introduction

The Men’s Wearhouse, Inc. (“**Counterparty**”) and J.P. Morgan Securities LLC, as agent for JPMorgan Chase Bank, National Association, London Branch (“**JPMorgan**”), have adopted these communications procedures (the “**Communications Procedures**”) in connection with entering into the Master Confirmation (the “**Master Confirmation**”), dated as of July 22, 2013, between JPMorgan and Counterparty relating to Uncollared Accelerated Share Repurchase transactions. These Communications Procedures supplement, form part of, and are subject to the Master Confirmation.

II. Communications Rules

For each Transaction, from the Trade Date for such Transaction until the date all payments or deliveries of Shares have been made with respect to such Transaction, Counterparty and its Employees and Designees shall not engage in any Program-Related Communication with, or disclose any Material Non-Public Information to, any EDG Trading Personnel. Except as set forth in the preceding sentence, the Master Confirmation shall not limit Counterparty and its Employees and Designees in their communication with Affiliates and Employees of JPMorgan, including, without limitation, Employees who are EDG Permitted Contacts.

III. Termination

If, in the sole judgment of any EDG Trading Personnel or any Affiliate or Employee of JPMorgan participating in any Communication with Counterparty or any Employee or Designee of Counterparty, such Communication would not be permitted by these Communications Procedures, such EDG Trading Personnel or Affiliate or Employee of JPMorgan shall immediately terminate such Communication. In such case, or if such EDG Trading Personnel or Affiliate or Employee of JPMorgan determines following completion of any Communication with Counterparty or any Employee or Designee of Counterparty that such Communication was not permitted by these Communications Procedures, such EDG Trading Personnel or such Affiliate or Employee of JPMorgan shall promptly consult with his or her supervisors and with counsel for JPMorgan regarding such Communication. If, in the reasonable judgment of JPMorgan's counsel following such consultation, there is more than an insignificant risk that such Communication could materially jeopardize the availability of the affirmative defenses provided in Rule 10b5-1 under the Exchange Act with respect to any ongoing or contemplated activities of JPMorgan or its Affiliates in respect of any Transaction pursuant to the Master Confirmation, it shall be an Additional Termination Event pursuant to Section 19(a) of the Master Confirmation, with Counterparty as the sole Affected Party and all Transactions under the Master Confirmation as Affected Transactions.

IV. Definitions

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Master Confirmation. As used herein, the following words and phrases shall have the following meanings:

“**Communication**” means any contact or communication (whether written, electronic, oral or otherwise) between Counterparty or any of its Employees or Designees, on the one hand, and JPMorgan or any of its Affiliates or Employees, on the other hand.

“**Designee**” means a person designated, in writing or orally, by Counterparty to communicate with JPMorgan on behalf of Counterparty.

“**EDG Permitted Contact**” means any of Mr. David Aidelson, Mr. Gregory Batista, Mr. Elliot Chalom, Mr. Steven Seltzer, Mr. James F. Smith and Mr. Sudheer Tegulapalle or any of their designees; *provided* that JPMorgan may amend the list of EDG Permitted Contacts by delivering a revised list of EDG Permitted Contacts to Counterparty.

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“**EDG Trading Personnel**” means Mr. Graham Orton, Mr. Michael Tatro and any other Employee of the public side of the Equity Derivatives Group or the Special Equities Group of J.P. Morgan Chase & Co.; *provided* that JPMorgan may amend the list of EDG Trading Personnel by delivering a revised list of EDG Trading Personnel to Counterparty; and *provided further* that, for the avoidance of doubt, the persons listed as EDG Permitted Contacts are not EDG Trading Personnel.

“**Employee**” means, with respect to any entity, any owner, principal, officer, director, employee or other agent or representative of such entity, and any Affiliate of any of such owner, principal, officer, director, employee, agent or representative.

“**Material Non-Public Information**” means information relating to Counterparty or the Shares that (a) has not been widely disseminated by wire service, in one or more newspapers of general circulation, by communication from Counterparty to its shareholders or in a press release, or contained in a public filing made by Counterparty with the Securities and Exchange Commission and (b) a reasonable investor might consider to be of importance in making an investment decision to buy, sell or hold Shares. For the avoidance of doubt and solely by way of illustration, information should be presumed “material” if it relates to such matters as dividend increases or decreases, earnings estimates, changes in previously released earnings estimates, significant expansion or curtailment of operations, a significant increase or decline of orders, significant merger or acquisition proposals or agreements, significant new products or discoveries, extraordinary borrowing, major litigation, liquidity problems, extraordinary management developments, purchase or sale of substantial assets and similar matters.

“**Program-Related Communication**” means any Communication the subject matter of which relates to the Master Confirmation or any Transaction under the Master Confirmation or any activities of JPMorgan (or any of its Affiliates) in respect of the Master Confirmation or any Transaction under the Master Confirmation.

Annex B-2

