

# Blakes Bulletin

## Securities Regulation

### OSC Postpones Magna's Multiple Voting Share Elimination Vote Pending Additional Disclosure

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On June 24, 2010, the Ontario Securities Commission (the Commission) issued an order requiring Magna International Inc. (Magna) to disclose additional information by way of an amended information circular before allowing it to proceed with a planned shareholder vote to approve the collapse of Magna's multiple voting share structure (the Proposed Transaction). The Commission, however, refused to find that the Proposed Transaction, which paid the Stronach Trust an estimated 1,800% premium in exchange for the elimination of the Class B multiple voting shares (Class B Shares) held by the Trust, was abusive of either the Magna shareholders or the capital markets. Such a finding would have potentially enabled the Commission to block the Proposed Transaction.

The Commission held that, as the Proposed Transaction was a material related party transaction, as there was no fairness opinion and there was no Board recommendation, the information circular provided to shareholders must include substantially the same information and analysis that the Magna Board received in considering the legal and business issues raised by the transaction.

#### BACKGROUND

The current Magna multiple voting share structure was created in 1978 by a shareholder vote. The structure gives the Class A subordinate voting shareholders (Class A Shares) one vote per share, while the Class B shareholders receive 300 votes per share. Importantly, the Class B Shares have no "coat-tail" or "sunset" protections. Under the multiple voting share structure, the Stronach Trust—the indirect owner of all of the outstanding Class B Shares—holds 66% of Magna's

voting rights, while owning only 0.6% of Magna's total equity.

In March 2010, Frank Stronach was approached by the executive management of Magna and asked whether he was interested in eliminating Magna's multiple voting share structure. Discussions between Mr. Stronach and executive management ensued. In April 2010, executive management informed Magna's board of directors (the Board) of the discussions. The Board established a special committee of independent directors of Magna (the Special Committee), chaired by Michael Harris, to review and consider the Proposed Transaction.

The Special Committee conducted further negotiations with Mr. Stronach, during which Mr. Stronach—who indicated that he was satisfied with the *status quo*—made a final "take it or leave it" offer. According to the terms of Mr. Stronach's final proposal to the Special Committee, in exchange for selling the Stronach Trust's Class B shares to Magna for cancellation, the Stronach Trust would receive the following:

- nine million newly issued Class A Shares and US\$300-million in cash;
- a five-year fixed non-renewable consulting agreement with Magna entitling Mr. Stronach to 2.75% of Magna's pre-tax profits in 2011, declining by 0.25% every year thereafter; and
- a 26.67% equity interest in and 73.33% of the voting rights of an electric car partnership (the e-car partnership) formed between Magna and the Stronach Trust valued at US\$300-million, conditional upon the Stronach Trust contributing US\$80-million to the e-car partnership.

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#### Highlights

- OSC declines to block Magna transaction, eliminating Stronach multi-voting shares
- OSC requires amended circular with additional disclosure for transaction, resulting in delay of meeting

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On May 5, 2010, the Board, acting on the recommendations of the Special Committee, determined that it would:

- require the Proposed Transaction to be approved by a simple majority of the votes cast by disinterested shareholders at a special meeting;
- structure the Proposed Transaction as a plan of arrangement which would be subject to court approval; and
- make no recommendation to shareholders on how to vote.

The Board did not obtain a fairness opinion from its financial advisor, CIBC World Markets (CIBC), regarding the Proposed Transaction. CIBC indicated it was unable to provide a fairness opinion because the amount of dilution associated with the Proposed Transaction was unprecedented and the benefit to shareholders depended on a future increase in the trading multiple of Magna's shares.

### THE OSC HEARING

The Commission held a hearing on June 23 and June 24, 2010 to review the Proposed Transaction (the Hearing). Several institutional investors, including the Ontario Teachers' Pension Plan Board, the Canada Pension Plan Investment Board and OMERS, which opposed the Proposed Transaction, were granted limited standing at the hearing.

At the Hearing, Staff of the Commission alleged that the Proposed Transaction was abusive and contrary to the public interest because:

- the process the Board followed in reviewing and negotiating the Proposed Transaction was flawed; and
- the disclosure included in the information circular was inadequate in light of the Board's refusal to provide a recommendation to shareholders.

### THE COMMISSION'S DECISION

The Commission issued an expedited decision on June 24, 2010, with full reasons for the decision to be provided in due course.

The Commission ruled that the Proposed Transaction was neither abusive of the Magna shareholders nor the capital markets.

However, the Commission did find that the disclosure provided in the information circular was inadequate. The Commission noted the applicable legal requirement was to describe the substance of matters to be approved by shareholders in sufficient detail to enable a shareholder to form a reasoned judgment concerning how to vote on the Proposed Transaction. Applying this standard to the Proposed Transaction, the Commission held that, as the Proposed Transaction was a material related party transaction, as there was no fairness opinion and there was no Board recommendation, the information circular provided to shareholders must include substantially the same information and analysis that the Board received in considering the legal and business issues raised by the Proposed Transaction.

Accordingly, the Commission issued an order preventing the shareholders from voting to approve the Proposed Transaction until Magna delivered an amended information circular to the shareholders. The Commission specifically enumerated the additional information that was required to be included in the amended circular, including a clear articulation of how management and the Board arrived at the consideration to be paid to the Stronach Trust, a detailed discussion of the review and approval process adopted by the Special Committee, a description of potential alternatives to the Proposed Transaction, and disclosure relating to CIBC's advice and certain legal advice received by the Board.

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