Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF *THE SECURITIES ACT*,
R.S.O. 1990, C.S.5, AS AMENDED

- and -

IN THE MATTER OF MAGNA INTERNATIONAL INC.

- and -

IN THE MATTER OF THE STRONACH TRUST
AND 446 HOLDINGS INC.

REASONS FOR DECISION AND ORDER
(Section 127 of the Act)

Hearing:	June 23 and 24, 2010	
Decision:	June 24, 2010	
Panel:	James E. A. Turner	- Vice-Chair and Chair of the Panel
	Paulette L. Kennedy	- Commissioner
	C. Wesley M. Scott	- Commissioner
Counsel:	James Sasha Angus Cullen Price Shannon O'Hearn Naizam Kanji Erin O'Donovan	- For Staff of the Ontario Securities Commission
	Larry Lowenstein Allan Coleman Laura Fric Jean M. Fraser Emmanuel Pressman Jeremy Fraiberg (Osler, Hoskin & Harcourt LLP)	- For Magna International Inc.

Peter F. C. Howard Ed Waitzer Ellen Snow Brian Pukier (Stikeman Elliott LLP)	- For Stronach Trust and 446 Holdings Inc.
Samuel Rickett David Hausman Murray Braithwaite (Fasken Martineau DuMoulin LLP)	- For the Special Committee of Magna International Inc.
James D. G. Douglas David Di Paolo Margot Finley Paul G. Findlay Caitlin Sainsbury (Borden Ladner Gervais LLP)	- For Ontario Teachers' Pension Plan Board, Canada Pension Plan Investment Board, OMERS Administration Corporation, Alberta Investment Management Corporation, Letko, Brosseau & Associates Inc. and British Columbia Investment Management Corporation
Kelly McKinnon James Camp (Gowling Lafleur Henderson LLP)	- For Goodman & Company Investment Counsel Limited
R. Paul Steep Iain Scott (McCarthy Tétrault LLP)	- For Mason Capital Management LLC

TABLE OF CONTENTS

REASONS AND DECISION

I. INTRODUCTION

[1] These are our reasons for the decision and order we issued on June 24, 2010 pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") related to the proposed plan of arrangement of Magna International Inc. ("**Magna**") to collapse its dual class share structure (the "**Proposed Transaction**").

[2] This hearing arose out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") on June 15, 2010 in connection with a Statement of Allegations issued by Staff of the Commission ("**Staff**") on the same day, naming as respondents, Magna, the Stronach Trust and 446 Holdings Inc. ("**446**") (collectively, the "**Respondents**"). The allegations made by Staff are set out in paragraph 34 of these reasons.

[3] Staff sought an order of the Commission under subsection 127(1)2 of the Act cease trading the issuance of securities in connection with the Proposed Transaction for such period as the Commission deemed necessary, on the grounds that the Proposed Transaction was contrary to the public interest. Staff also sought an order under subsection 127(1)3 of the Act that the exemptions contained in sections 5.5(a) and 5.7(1) (a) of Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") did not apply to Magna in respect of the Proposed Transaction, and an order under subsection 127(1)5 of the Act requiring Magna to amend its Management Information Circular/Proxy Statement dated May 31, 2010 (the "**Circular**") to provide additional disclosure.

II. PRELIMINARY MATTERS

[4] On June 18, 2010, following a hearing to consider whether to grant intervenor status in this matter to several applicants, the Commission issued an order granting intervenor status to the special committee of independent directors of the board of directors of Magna (the "**Special Committee**") to make submissions to the Commission with respect to the disposition of this matter, but not to adduce evidence, to cross-examine witnesses or to otherwise participate as a party to this proceeding (referred to as "***Torstar* standing**").

[5] The Commission also granted *Torstar* standing to a group of institutional shareholders of Magna opposed to the Proposed Transaction. That group consisted of Ontario Teachers' Pension Plan Board, Canada Pension Plan Investment Board, OMERS Administration Corporation, Alberta Investment Management Corporation, Letko, Brosseau & Associates Inc., and British Columbia Investment Management Corporation (the "**Opposing Shareholders**"). The Opposing Shareholders were represented by Borden Ladner Gervais LLP and indicated that they would make joint submissions in this matter.

[6] The Commission also granted *Torstar* standing to two shareholders who are in favour of allowing the holders (the "**Class A Shareholders**") of Magna Class A subordinate voting shares (the "**Subordinate Voting Shares**") to vote on the Proposed Transaction. *Torstar* standing was granted to Goodman & Company Investment Counsel Limited ("**Goodman**") on June 18, 2010 and to Mason Capital Management LLC ("**Mason**") on June 21, 2010.

[7] The Commission did not grant standing to the Canadian Foundation for the Advancement of Investor Rights.

[8] The Commission has released separate reasons for its decisions on standing in this matter. Those reasons were issued on January 14, 2011.

[9] On June 18, 2010, the Commission also heard a motion brought by Magna for an order maintaining the confidentiality, and restricting the use, of all non-public documents produced by Magna in the course of this proceeding. Magna submitted that many of the documents produced should not be made available to the public because they contained commercially sensitive and confidential information, the disclosure of which would have potentially caused irreparable harm to Magna. The Commission ordered that the parties to this proceeding, other than Magna, should not use the documents produced for any purpose other than in connection with this proceeding, and that upon final disposition of this matter, all confidential information and documents should be destroyed (see the order of the Commission dated June 18, 2010).

III. THE OBJECTIVE OF THE PROPOSED TRANSACTION

[10] The objective of the Proposed Transaction was to eliminate Magna's longstanding dual class share structure through a plan of arrangement under which Magna would indirectly purchase for cancellation all of its outstanding Class B multiple voting shares (the "**Class B Shares**"). If the arrangement was completed:

> (i) Magna would indirectly acquire and cancel all of the outstanding Class B Shares beneficially owned indirectly by the Stronach Trust for consideration comprised of US$300 million in cash and 9,000,000 newly issued Subordinate Voting Shares;
>
> (ii) Magna would have a single class of outstanding voting equity securities, to be renamed "common shares", of which the Stronach Trust would indirectly hold approximately 7.44%;
>
> (iii) certain amendments would be made to the consulting contracts under which Mr. Frank Stronach's services were provided to Magna and its subsidiaries (see paragraph 28 of these reasons); and
>
> (iv) Magna and the Stronach Trust would enter into the E-Car Partnership, a joint venture between Magna and the Stronach Trust for the development of Magna's vehicle electrification business; the Stronach Trust would indirectly effectively control that partnership.

[11] The total value of the consideration to be paid by Magna to the Stronach Trust for the acquisition and cancellation of the Class B Shares was estimated to be approximately $860 million.

[12] The objective of the Proposed Transaction was to collapse Magna's dual class share structure with the expectation that the Subordinate Voting Shares (reconstituted as common shares) would, as a result, trade in the market at a higher trading multiple than the current Subordinate Voting Shares, with any resulting appreciation in share value to be, in effect, split

between the Stronach Trust and the Class A Shareholders on an equal basis (see paragraph 86 of these reasons).

IV. THE DECISION

Summary of Submissions

[13] At the hearing on the merits, Staff sought the orders referred to above and submitted that the Proposed Transaction should not be put to a vote of the Class A Shareholders in its current form unless and until shareholders received more complete disclosure as to the desirability or fairness of the Proposed Transaction, including disclosure of the financial information received by the Special Committee from its financial advisors and a recommendation of the board of directors of Magna (the "**Magna Board**"). Staff also alleged that the approval and review process followed by the Magna Board and the Special Committee in deciding to submit the Proposed Transaction to shareholders was inadequate.

[14] The Opposing Shareholders urged the Commission to find that the Proposed Transaction was abusive of Class A Shareholders and Ontario capital markets and to exercise its public interest jurisdiction to restrain the Proposed Transaction. The Opposing Shareholders sought an order permanently cease trading the Subordinate Voting Shares to be issued to Stronach Trust pursuant to the Proposed Transaction.

[15] Magna submitted that Staff and the Opposing Shareholders did not meet the onus of demonstrating that there were grounds for the Commission to intervene in the Proposed Transaction in the public interest. Magna submitted that the disclosure provided to shareholders complied fully with the requirements of applicable securities law. It also submitted that the Magna Board and the Special Committee followed a proper and thorough process in reviewing and approving the submission of the Proposed Transaction to a shareholder vote. Magna submitted that any delay in allowing Class A Shareholders to consider the Proposed Transaction was not warranted, because a delay could both affect the market price of the Subordinate Voting Shares and expose the Proposed Transaction to risk that it might not be completed.

[16] Magna noted that the Proposed Transaction was to be carried out by way of a plan of arrangement under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B. 16 (the "**OBCA**"). It submitted that the Commission should not interfere with the court-supervised arrangement process and that Class A Shareholders should be permitted to decide for themselves whether to approve the Proposed Transaction.

[17] Goodman and Mason submitted that there were no valid grounds for the Commission to intervene in the Proposed Transaction in the public interest and that Class A Shareholders should be permitted to decide for themselves whether the Proposed Transaction should proceed.

Decision and Order

[18] We had a short deadline for issuing our decision in this matter because the Magna special meeting of shareholders to approve the Proposed Transaction was scheduled for Monday, June 28, 2010, four days after the completion of the hearing. Accordingly, we issued our

decision (the "**Decision**") and order on June 24, 2010. We concluded that it was in the public interest to make the following order:

1. If Magna wishes to proceed with shareholder approval of the Proposed Transaction or any similar modified transaction, it must amend the Circular in accordance with this decision and send such amended Circular to shareholders in accordance with applicable corporate law;

2. Subordinate Voting Shares to be issued by Magna in connection with the Proposed Transaction are cease traded until such time as Magna complies with clause (1) of this order; and

3. the exemption contained in section 5.5(a) of MI 61-101 is not available to Magna unless it complies with the disclosure requirements of section 5.3 of MI 61-101.

If Magna wishes to proceed with the Proposed Transaction, Magna shall deliver a copy of the amended circular to Staff at least five days before it is sent to shareholders. If Staff has concerns with respect to the proposed disclosure in that circular, Staff may bring a motion for directions or other relief before us on notice to the other parties (excluding those parties with only Torstar standing).

Additional Disclosure Required

[19] We concluded that, before the Proposed Transaction could be voted on by Class A Shareholders, the Circular had to be amended to provide full and accurate disclosure of the following information and, in each case, a meaningful discussion and analysis of the implications of that information for purposes of the Proposed Transaction and the shareholder vote:

1. A clear articulation of how management and the Magna Board arrived at the consideration to be paid to the Stronach Trust under the Proposed Transaction and the potential economic benefits to shareholders. For greater clarity, this analysis should:

   (i) specify the metrics used to express value creation (e.g. share price increase due to "multiple expansion");

   (ii) address the concepts articulated by Mr. Galifi in his testimony with respect to "value sharing" between the Stronach Trust and other shareholders;

   (iii) explain why management and the Magna Board believed there might be a positive impact on the share price and the sensitivity of "value sharing" to share price changes; and

   (iv) include any analysis that would further assist shareholders to understand the concepts articulated;

2. An explanation of the relevance to determining the value of the Class B Shares of the Russian Machines transaction and the privatization and restructuring proposals referred to on page 6 of the Circular;

3. A description of the potential alternatives to the Proposed Transaction considered by the Special Committee (as mentioned in the Circular);

4. A detailed discussion of the review and approval process adopted by the Special Committee consistent with the description contained in Mr. Harris' affidavit submitted in evidence; that disclosure should include the steps taken by the Special Committee to negotiate the terms of the Proposed Transaction with detailed information as to what variations were proposed and the responses to those proposals; we noted that our order required compliance with the disclosure obligations in section 5.3 of MI 61-101;

5. Inclusion in the Circular of the two reports prepared by CIBC World Markets Inc. ("**CIBC**") and the report prepared by PricewaterhouseCoopers LLP ("**PwC**") (those reports had already been publicly disclosed) and a meaningful discussion of the advice received by the Special Committee from CIBC and PwC with respect to the material financial elements of the Proposed Transaction; that discussion should make clear that PwC valued only the assets to be transferred to the E-Car Partnership and not the E-Car Partnership itself;

6. We considered the statement contained in the Circular that the dilution to shareholders "would be significantly greater than the case for other historical transactions in which dual class share structures were collapsed" to be misleading; we required disclosure of the dilution suffered by minority shareholders in other historical transactions in which dual class share structures have been collapsed and a discussion of the relevance of that disclosure to the dilution to shareholders under the Proposed Transaction;

7. A clear statement of how CIBC assessed the Proposed Transaction from a financial perspective and the reasons why it concluded that it could not opine as to the financial fairness of the Proposed Transaction; we required a statement whether CIBC advised as one of those reasons that it could not issue a fairness opinion because of the terms of the Proposed Transaction relative to other transactions collapsing dual class share structures;

8. A discussion of the advice received by the Special Committee as to the nature of the legal standard to be applied by a court in determining under the OBCA whether the arrangement is fair and reasonable and what matters the court would likely consider in reaching that determination;

9. A clear statement by the disinterested members of the Magna Board or the Special Committee whether they have concluded that (i) the Proposed Transaction is fair and reasonable in accordance with the applicable corporate law standard, or (ii) they have reached no such conclusion;

10. Disclosure whether the change in the market price of the Subordinate Voting Shares subsequent to the public announcement of the Proposed Transaction changed the position of the Magna Board or the Special Committee that it cannot make any recommendation to shareholders as to how they should vote on the Proposed Transaction; we required clarification that there is at least a question whether the increase in the market price of the Subordinate Voting Shares immediately following the public announcement of the Proposed Transaction was also affected by the other public announcements on that day;

11. Clarification of the financial analysis related to Magna's conclusion that the 25% market capitalization exemption in section 5.5(a) of MI 61-101 (the "**Market Cap Exemption**") is available to Magna in connection with the Proposed Transaction, including whether the amendments to the Consulting Agreements (as defined below) are "connected transactions" and the fair market values used for each component of the consideration to be paid to the Stronach Trust, including the interest in the E-Car Partnership and the amendments to the Consulting Agreements; and

12. In connection with the purchase price of the E-Car assets to be acquired by the E-Car Partnership, an explanation as to what it means that the purchase price is equal to the fair market value determined by mutual agreement "taking into account the valuation work conducted by PwC for the Special Committee".

[20] We also required that the Circular contain a statement that the disinterested members of the Magna Board or the Special Committee have concluded that the Circular as amended provides disclosure and information sufficient to permit shareholders to make an informed decision as to how to vote on the Proposed Transaction.

[21] These are our full reasons for our Decision and order.

V. THE PARTICIPANTS

A. The Respondents

1. Magna International Inc.

[22] Magna is a corporation existing under the laws of Ontario and is a reporting issuer under the Act. Magna develops, designs, and manufactures automotive systems, modules, assemblies and components and engineers and assembles vehicles, principally for sale to original equipment manufacturers of cars and light trucks in North America, Europe, and elsewhere. As of March 31, 2010, Magna had 240 manufacturing operations and 76 product development, engineering and sales centres in 25 countries.

[23] The authorized share capital of Magna consists of an unlimited number of Subordinate Voting Shares, 776,961 Class B Shares and 99,760,000 preference shares, issuable in series, all with no par value. As of May 31, 2010, there were 112,072,348 Subordinate Voting Shares, 726,829 Class B Shares and no preference shares issued and outstanding. The Subordinate Voting Shares are listed on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange ("**NYSE**").

[24] The Subordinate Voting Shares are entitled to one vote per share and the Class B Shares are entitled to 300 votes per share. The Class B Shares, all of which are indirectly held by the Stronach Trust, currently represent approximately 66% of the votes but less than 1% of the equity attached to Magna's total outstanding shares. The Class B Shares and the Subordinate Voting Shares have the same rights to dividends and to receive the property and assets of Magna on liquidation, dissolution, or winding up. Holders of the Class B Shares may at any time convert the Class B Shares into Subordinate Voting Shares on a one-for-one basis. Magna refers to this

capital structure as a "dual class share structure" because of the disproportionate allocation of votes to the two classes of equity shares. We adopt the same term for purposes of these reasons.

[25] No "coat-tail" protection is provided to the Class A Shareholders in the event of a change of control transaction involving the purchase of the Class B Shares. Coat-tail protection would generally require that the Class A Shareholders participate on the same basis as the holders of Class B Shares in any change of control transaction. Further, there is no "sunset" provision applicable to the Class B Shares pursuant to which the Class B Shares would cease to have multiple votes per share at some specified future date.

2. The Stronach Trust and 446

[26] The Stronach Trust is a trust established pursuant to the laws of Ontario. The Stronach Trust has legal and effective control of Magna through its indirect ownership of all the outstanding Class B Shares. Mr. Frank Stronach, the founder and Chairman of Magna, and certain members of his immediate family, are the trustees of the Stronach Trust and are members of the class of potential beneficiaries of the Stronach Trust.

[27] 446 is a corporation existing under the OBCA and is indirectly owned by the Stronach Trust. 446 was formed for the purpose of entering into the transactions contemplated by the Proposed Transaction. 446 is the sole registered and beneficial holder of all of the outstanding securities of the corporation that is the sole registered and beneficial holder of all of the Class B Shares.

[28] Mr. Stronach provides services to Magna and its subsidiaries, personally and through associated entities, pursuant to four consulting, business development and business services agreements (the "**Consulting Agreements**"). Under three of the Consulting Agreements, the fees payable are 3% of Magna's pre-tax profits before profit sharing. In the event the Consulting Agreements, which have one-year terms and are subject to extension, are terminated early, Magna is required to pay the fees payable under the Consulting Agreements for the balance of the one-year term. The aggregate fees paid to Mr. Stronach pursuant to the Consulting Agreements were $37,783,000 in 2007, $8,152,000 in 2008 and nothing in 2009 (Magna's pre-tax profits before profit sharing in 2009 were NIL).

B. The Intervenors

1. The Special Committee

[29] On April 8, 2010, a meeting of the Magna Board was held at the request of the executive management of Magna at which the Magna Board was informed of a conceptual proposal discussed by executive management and the Stronach Trust to collapse Magna's dual class share structure. At that meeting, the Magna Board established the Special Committee which was comprised of Michael Harris (Chair), Louis Lataif and Donald Resnick, all of whom, in the view of the Magna Board, are directors of Magna independent of Mr. Stronach and the Stronach Trust.

[30] The mandate of the Special Committee was to review and consider the proposal developed by executive management for submission, firstly to the Stronach Trust, and if acceptable to the

Stronach Trust, to report to the Magna Board as to whether the proposal should be submitted to the Class A Shareholders for their consideration.

2. The Opposing Shareholders

[31] The Opposing Shareholders are institutional investors which hold and/or manage, in the aggregate, approximately 4,600,000 Subordinate Voting Shares, representing approximately 4% of the issued and outstanding Subordinate Voting Shares.

3. Goodman & Company Investment Counsel Limited

[32] Goodman is a Canadian investment company offering comprehensive investment services. Goodman manages over $30 billion in assets. Goodman submitted that it is required to act solely in the best interests of the investment funds that it manages. It has similar duties under the investment management agreements for the separate accounts that it manages. As at May 25, 2010 (the record date for the proposed Magna shareholders' meeting to consider the Proposed Transaction), Goodman owned and/or held approximately 5,000,000 Subordinate Voting Shares.

4. Mason Capital Management LLC

[33] Mason Capital Management LLC ("**Mason**") is a New York based fund manager that invests on behalf of pensions, endowments and foundations and has significant investments in Canadian public issuers, including issuers with dual class share structures. Mason owns and/or manages approximately 100,000 Subordinate Voting Shares.

VI. STAFF'S ALLEGATIONS AND SUBMISSIONS OF PARTICIPANTS

A. Staff's Allegations

[34] Staff made the following allegations in the Statement of Allegations:

(i) the Circular did not contain specific financial information obtained by the Special Committee from its financial advisors;

(ii) the Circular failed to provide sufficient information concerning the desirability or fairness of the Proposed Transaction and the Magna Board had not made useful recommendations regarding the arrangement in the Circular; and

(iii) the purchase by Magna of the Class B Shares held indirectly by the Stronach Trust as part of the Proposed Transaction, in these novel and unprecedented circumstances, was contrary to the public interest and should be cease traded because:

(a) the holders of the Subordinate Voting Shares were being asked to approve the arrangement resolution without a recommendation from the Magna Board and without sufficient information to form a reasoned judgment concerning the Proposed Transaction; and

(b) the approval and review process followed by the Magna Board and Special Committee in negotiating the arrangement and proposing it to the holders of the Subordinate Voting Shares was inadequate.

[35] Staff also submitted that the Magna Board should have put the Proposed Transaction to a shareholder vote only if it was willing to discuss the fairness of that transaction and provide a formal valuation.

[36] On the basis of those allegations, Staff sought the following orders:

(i) an order under subsection 127(1)2 of the Act that trading in the Class B Shares cease for such period as the Commission may specify;

(ii) an order under subsection 127(1)3 of the Act that the exemptions contained in clauses 5.5(a) and 5.7(1)(a) of MI 61-101 do not apply to Magna in respect of the Proposed Transaction;

(iii) an order under subsection 127(1)5 of the Act that Magna amend the Circular; and/or

(iv) such further and other orders as the Commission considered appropriate.

B. Magna's Submissions

[37] Magna submitted that no aspect of the Proposed Transaction was contrary to the public interest for the following reasons:

(i) the Proposed Transaction was subject to the approval of shareholders, including by a majority of the votes cast by minority Class A Shareholders;

(ii) the Proposed Transaction was subject to approval by the Ontario Superior Court of Justice which is required to determine whether the arrangement is fair and reasonable;

(iii) the Proposed Transaction was the product of a proper and thorough process undertaken by the Special Committee, which had the assistance of independent legal and financial advisors;

(iv) in the proper exercise of its business judgment, the Magna Board, on the recommendation of the Special Committee, determined that it was in the best interests of Magna for its shareholders to be provided with the opportunity to decide for themselves whether the Proposed Transaction ought to be implemented;

(v) there is no requirement that a special committee or a board of directors make a recommendation to shareholders with respect to how they should vote on matters put before them. A board acting in good faith can determine, as the Magna Board did here, that the making of a recommendation would not be appropriate having regard to all the circumstances. In such cases, the obligation of the issuer is to provide its shareholders with an explanation as to why no recommendation is made.

Magna clearly complied with this obligation, as the Circular provides detailed reasons for the Magna Board's determination not to make a recommendation;

(vi) Magna is not required under MI 61-101 to obtain and disclose a formal valuation of the Class B Shares. The arrangement is exempt from the valuation requirement by reason of the availability of the Market Cap Exemption. In any event, a formal valuation of the Class B Shares would not have been of assistance to the Class A Shareholders in determining whether to vote for or against the Proposed Transaction;

(vii) the disclosure in the Circular fully complied with the statutory requirement that shareholders have before them all information necessary to make an informed decision; and

(viii) the Proposed Transaction was not abusive or coercive. Class A Shareholders could vote "no" without any negative consequences. The result of a negative vote would be that the status quo was maintained with respect to Magna's dual class share structure.

[38] Magna submitted that Staff and the Opposing Shareholders were implicitly attacking the ability of the Class A Shareholders to make an informed decision as to the desirability of the Proposed Transaction and were attempting to prevent the transaction from being put to a shareholder vote.

[39] Magna submitted that the Proposed Transaction could have been carried out without minority shareholder approval because of the availability of the Market Cap Exemption. However, at the insistence of both Mr. Stronach and the Special Committee, the Proposed Transaction was to be put to a vote of the Class A Shareholders to ensure that the Class A Shareholders had the right to determine whether the Proposed Transaction should proceed. As a result, the Proposed Transaction would only be implemented if a majority of the Class A Shareholders approved it.

[40] Magna submitted that there was no basis on which to challenge the business judgment of the Magna Board in determining to put the Proposed Transaction to a vote of shareholders without a recommendation as to how shareholders should vote. That business decision was recommended by the Special Committee and is within the range of reasonable alternatives available to the Magna Board. Accordingly, Magna submitted that we should defer to the Magna Board's business judgment in these circumstances.

[41] Magna submitted that, in any event, the Commission is not the appropriate forum to adjudicate on whether directors have complied with their fiduciary duties or to assess whether a proposed transaction is fair and reasonable. Accordingly, the Commission was not the proper forum in which to address any of the issues raised in the Statement of Allegations other than the disclosure issues.

[42] Magna's submissions were adopted and supported by the Stronach Trust and 446.

C. The Intervenors' Submissions

1. The Special Committee

[43] The Special Committee submitted that its process in reviewing the Proposed Transaction was appropriate and thorough and that it was advised by financial and legal advisors independent of Magna and the Stronach Trust.

[44] The Special Committee submitted that objection to the price that Magna proposed to pay to eliminate the dual class share structure was not an appropriate basis for seeking a section 127 order from the Commission. According to the Special Committee, the overall benefits of the Proposed Transaction were a matter for the Class A Shareholders to consider in voting on the Proposed Transaction. The Special Committee also submitted that the Ontario Superior Court of Justice would review the fairness of the Proposed Transaction in considering approval of the arrangement.

[45] The Special Committee submitted that it understood that the consideration proposed to be paid to the Stronach Trust for the Class B Shares was much higher than in previous transactions that collapsed dual class share structures. However, the Special Committee submitted that the Stronach Trust was under no obligation to support the Proposed Transaction and was not prepared to negotiate the price to be paid to it. In light of these circumstances, the Special Committee had to exercise its business judgment whether to forego the opportunity of eliminating the dual class share structure or to put it to a shareholder vote with appropriate disclosure and procedural safeguards.

[46] The Special Committee submitted that it considered numerous factors (set out in Schedule A hereto, commencing at page 56) in reaching the conclusion that the Proposed Transaction and the potential benefits from it were sufficiently attractive to Class A Shareholders to submit the Proposed Transaction to a vote of shareholders. However, the Special Committee was unable to assess the value or potential benefits of the Proposed Transaction to Class A Shareholders (see paragraph 155 of these reasons). As a result, the Special Committee submitted that it could not reasonably make a recommendation to Class A Shareholders in connection with the Proposed Transaction.

2. The Opposing Shareholders

[47] The Opposing Shareholders objected to the Proposed Transaction on the following grounds:

(i) the Proposed Transaction was abusive and coercive to Class A Shareholders in light of (a) the significant and unprecedented premium being paid to the Stronach Trust for its Class B Shares, (b) the extension of the Consulting Contracts to Mr. Stronach for no apparent consideration, and (c) the diversion of the strategically significant E-Car business from Magna to the Stronach Trust;

(ii) the failure of the directors of Magna to make a decision as to whether or not the Proposed Transaction was in the best interests of Magna;

(iii) the failure of the Special Committee to make a determination as to the fairness of the Proposed Transaction to the Class A Shareholders and to make a recommendation to those shareholders; and

(iv) Magna's disclosure was insufficient to permit shareholders to make an informed decision.

[48] The Opposing Shareholders submitted that it was unprecedented for a controlling shareholder to receive such a huge premium over the value of the relevant subordinate voting shares when a company eliminates a dual class share structure. They submitted that multiple voting shares have usually been exchanged for common shares on a one-for-one basis when a dual class share structure is collapsed.

3. Goodman & Company Investment Counsel Limited

[49] Goodman submitted that, in the unique circumstances of the Proposed Transaction, sufficient disclosure had been made to permit shareholders to vote on an informed basis and that shareholders should be given the right to do so without intervention by the Commission. Goodman submitted that the Commission should carefully weigh the potential harm posed to shareholders before intervening in a transaction in which all legal requirements have been satisfied. Goodman submitted that two key procedural safeguards for shareholders are being provided: the Proposed Transaction would proceed only if it was approved by a majority of the votes cast by disinterested Class A Shareholders and only if it was determined by a court to be fair and reasonable.

[50] Goodman submitted that any intervention by the Commission would pose serious risk of harm to Class A Shareholders in that the opportunity to obtain the real economic benefits from the Proposed Transaction would be lost. Goodman submitted that any intervention by the Commission would be unwarranted, contrary to shareholders' best interests, and would undermine the confidence and integrity of Ontario capital markets.

4. Mason Capital Management LLC

[51] Mason submitted that it is neither in the public interest nor consistent with the purposes of securities regulation for the Commission to intervene on the grounds of the amount proposed to be paid to the Stronach Trust for the Class B Shares, or to constrain that amount or prevent the Proposed Transaction from being put to shareholders for their consideration. Such intervention would amount to a retroactive alteration of the entitlement of shareholders to the value resulting from the rights attaching to the shares held by them and would impair the ability of corporations to adjust their share structure.

[52] Mason also submitted that there was no basis for the Commission to require a valuation or a fairness opinion in connection with the Proposed Transaction because neither is required under MI 61-101. Further, requiring a fairness opinion to be obtained as a pre-condition to submitting a transaction to shareholders would be an inappropriate attempt to regulate the price that may be paid to a controlling shareholder to relinquish the rights attaching to its shares.

[53] Mason did not make submissions on any other aspect of this matter, including the process followed by the Magna Board and the Special Committee or the adequacy of Magna's public disclosure relating to the Proposed Transaction. Mason did not comment on the desirability of the Proposed Transaction, which Mason submitted was a matter for the individual judgment of each shareholder.

VII. THE HEARING

[54] The hearing on the merits in this matter was heard over a day and a half on June 23 and 24, 2010. Late in the evening on June 24, 2010, we issued our Decision and indicated that we would issue full reasons in due course.

[55] Three affidavits were filed in evidence at the hearing. We received the affidavit of Mr. Vincent Galifi, the Executive Vice President and Chief Financial Officer of Magna, sworn on June 21, 2010, the affidavit of Mr. Michael Boyd, the Managing Director and Head of Mergers and Acquisitions of CIBC, sworn on June 21, 2010, and the affidavit of Mr. Michael Harris, the lead director of Magna and Chair of the Special Committee, sworn on June 21, 2010. Those individuals testified at the hearing relating to their respective affidavits and were cross-examined by Staff.

[56] We had a limited record before us and limited time to review and consider all of the evidence and submissions before us. It was a challenge to address all of the complex issues that arose from this proceeding based on that record and a day and a half hearing. We concluded, however, that we had sufficient evidence and submissions to address a number of the issues raised before us.

VIII. BACKGROUND

1. History of Magna and its Share Structure

[57] In 1957, Mr. Stronach formed a small tool and die company, Multimatic Investments Limited, which subsequently expanded into the production of automotive components. In 1969, Multimatic Investments Limited merged with Magna Electronics Corporation Limited to become Magna International Inc.

[58] In 1978, Magna was a public company with annual sales of approximately $128,000,000, net income of $7,400,000 and assets of $75,000,000. Magna's capital consisted of two classes of shares: common shares and Class A special shares. The Class A special shares were non-voting shares but had the right to receive 125% of dividends paid on the common shares.

[59] At that time, voting control of Magna, through its common shares, was vested in a management group led by Mr. Stronach. With a view to securing Mr. Stronach's continued oversight of Magna's growth as well as his voting control of the company, management proposed two resolutions restructuring the capital of Magna. The first provided for the common shares to be converted into Class B Shares that would have the same dividend rights as the Class A special shares, but would carry 500 votes per share (the voting rights of the Class B Shares were later changed to 300 votes per share). The second resolution proposed converting the Class A special shares into Class A common shares with a right to vote and, as part of adjusting the

dividend to accord with that of the then common shares, to provide each holder with five Class A common shares for every four Class A special shares.

[60] These resolutions were put forward for approval to both the common shareholders and the Class A special shareholders at meetings held on November 29, 1978. Both classes of shareholders approved the changes in share capital by special resolution (i.e., by more than two third's majority of the votes cast) and the resulting Class A common shares and Class B Shares were listed for trading on the TSX and, subsequently, on the NYSE.

[61] As a result of this restructuring of Magna's share structure, Mr. Stronach obtained voting control of Magna and holders of common shares received a premium on the conversion of their common shares into subordinate voting shares.

[62] In 1984, Magna shareholders voted to implement a corporate constitution (the "**Corporate Constitution**") proposed by Mr. Stronach that contained a number of principles, including that:

(i) Magna would distribute, on average, not less than 20 percent of its annual net profit after tax to shareholders;

(ii) management has an obligation to produce a profit. If Magna does not generate a minimum after-tax return of four percent on share capital for two consecutive years, the Class A Shareholders, voting as a class, have the right to elect additional directors;

(iii) Class A shareholders and Class B shareholders, each voting separately as a class, would have the right to approve any investment in an unrelated business in the event such investment, together with all other investments in unrelated businesses, exceeded 20 percent of Magna's equity; and

(iv) any change to Magna's Corporate Constitution would require the approval of its Class A and Class B shareholders voting separately as a class.

[63] Since 1978, Magna has evolved from a Canadian-based, North American focused automotive parts supplier to the most diversified automotive supplier in the world. In 2009, its sales were over $17 billion; it had assets in excess of $12 billion and over 72,500 employees.

[64] Magna submitted that Class A Shareholders are principally comprised of sophisticated institutional shareholders, with more than 80% of the Subordinate Voting Shares held by such institutions.

[65] The Stronach Trust exercises legal and effective control of Magna through its indirect ownership of 726,829 Class B Shares, representing all of the outstanding Class B Shares.

[66] In its Annual Information Form dated March 29, 2010, Magna disclosed, under the heading "Risk Factors":

Risks Related to Our Controlling Shareholder

We are indirectly controlled by the Stronach Trust.

Our business and affairs are indirectly controlled by the Stronach Trust, through the right to direct the votes attaching to 100% of our Class B Shares, which represent approximately 66% of the votes attaching to all of our shares in aggregate. The Stronach Trust may be able to cause us to effect corporate transactions without the consent of our other shareholders. The Stronach Trust is also able to cause or prevent a change in our control. Under present law, any offer to purchase our Class B Shares, whether by way of a public offer or private transaction and regardless of the offered price, would not necessarily result in an offer to purchase our Class A Subordinate Voting Shares. Accordingly, holders of our Class A Subordinate Voting Shares do not have a right to participate if a takeover bid is made for our Class B Shares.

2. The Announcement of the Proposed Transaction

[67] On May 6, 2010, Magna issued a news release (the "**May 6 News Release**") announcing that it had entered into an agreement with the Stronach Trust under which Class A Shareholders would have the opportunity to decide whether to eliminate Magna's dual class share structure.

[68] The May 6 News Release stated that, if the arrangement resolution was approved by the Class A Shareholders and the Court, Magna would:

(i) purchase for cancellation all 726,829 Class B Shares and the Stronach Trust would indirectly receive nine million newly issued Subordinate Voting Shares and US$300 million in cash;

(ii) amend the Consulting Agreements, which were renewable on an annual basis, to terminate on December 31, 2014 and to reduce the annual fees payable from the current 3% of Magna's Pre-Tax Profits Before Profit Sharing (as defined in the Corporate Constitution) as follows:

- 2.75% in 2011,
- 2.5% in 2012,
- 2.25% in 2013, and
- 2.0% in 2014;

(iii) establish a joint venture with the Stronach Trust involving the engineering, development and integration of electric vehicles of any type, the development, testing and manufacturing of batteries and battery packs for hybrid (H) and electric vehicles (EV) and all ancillary activities in connection with electric vehicle technologies. Magna would invest $220 million for a 73% interest. Magna's contribution would include the assets of Magna's recently established e-car systems vehicle electrification and battery business unit, certain other vehicle electrification assets, and the balance in cash. The Stronach Trust would invest $80 million in cash for a 27% interest in the joint venture and would have effective control through the

> right to appoint three of five board members, with Magna appointing the remaining two members.
>
> (May 6 News Release at p. 2)

[69] Magna filed a material change report dated May 11, 2010 in respect of the Proposed Transaction (the "**Material Change Report**"). In the May 6 News Release and the Material Change Report, Magna disclosed the following:

> Although the Board did not make a recommendation as to how shareholders of Magna should vote in respect of the resolution, the Special Committee and the Board have identified several important factors, such as the potential benefits expected to be realized upon the completion of the arrangement (described above), which shareholders should consider in determining how to vote in respect of the proposal. These factors and a summary of the advice received from the independent advisors, as well as the detailed transaction terms, the background to the proposal, the process followed by the independent directors in reviewing the proposal with the benefit of independent legal and financial advisors, and other relevant information will be contained in the proxy materials for the special meeting of shareholders to be called and held to consider the arrangement.

3. Market Reaction to the Announcement

[70] On May 5, 2010, the last trading day immediately prior to the issue of the May 6 News Release, the closing prices of the Subordinate Voting Shares on the TSX and the NYSE were $64.27 and US$62.53, respectively (Circular at p. 35).

[71] The Circular disclosed that from May 6, 2010 to May 31, 2010, the Subordinate Voting Shares traded up 7.9% (from US $62.53 to US $67.49) despite significant declines in equity markets and, in particular, a decline of 0.9% in respect of the S&P/TSX Index, a decline of 6.6% in respect of the S&P 500 Index and a decline of 8.0% in respect of U.S. companies carrying on a business comparable to Magna (including BorgWarner Inc., Johnson Controls Inc., American Axle & Manufacturing Holdings, Inc., Lear Corporation, TRW Automotive Holdings Corp., Dana Holding Corp. and ArvinMeritor, Inc.) (Circular at p. 35).

4. The Special Meeting of Shareholders

[72] On June 2, 2010, Magna filed with the Commission (i) its Notice of Special Meeting of Shareholders dated May 31, 2010 (the "**Notice of Meeting**") in respect of the special meeting of shareholders to be held on June 28, 2010 to consider the arrangement resolution giving effect to the Proposed Transaction, and (ii) the Circular. The Notice of Meeting indicated that shareholders would be asked to vote on and approve at the meeting the arrangement resolution giving effect to the Proposed Transaction.

[73] The Notice of Meeting also indicated that approval of the arrangement resolution would require the affirmative vote of:

(i) at least a simple majority of the votes cast by the minority holders of the Subordinate Voting Shares, voting separately as a class;

(ii) at least two-thirds of the votes cast by the holders of Subordinate Voting Shares and Class B Shares, voting together as a class; and

(iii) at least two-thirds of the votes cast by the holder of Class B Shares, voting separately as a class.

(Circular, at p. 1)

5. Background to the Proposed Transaction

[74] We have set out in Schedule A to these reasons an extract from the Circular which purports to summarize the principal events leading up to the submission of the Proposed Transaction to a vote of shareholders. The Circular described or included:

(i) the factors executive management took into account in developing the conceptual proposal which led to the Proposed Transaction;

(ii) the appointment of the Special Committee and the process followed by the Magna Board and the Special Committee in reviewing the Proposed Transaction;

(iii) a listing of the information considered and reviewed by the Special Committee;

(iv) the factors considered by the Special Committee in concluding that the Magna Board should submit the Proposed Transaction to a vote of shareholders and that no recommendation should be made to shareholders as to how they should vote on the Proposed Transaction; and

(v) the reasons why the Special Committee did not make any recommendation to shareholders as to how they should vote on the Proposed Transaction; there were four reasons specified:

(a) while the Proposed Transaction, if implemented, would result in the elimination of Magna's dual class share structure, certain of the benefits that may arise as a result were not capable of being quantified in advance, including the potential increase in the trading value of the Subordinate Voting Shares;

(b) advice from CIBC that, if the Proposed Transaction was implemented, the dilution to Class A Shareholders (disregarding the impact of any potential change in the trading multiple for the Subordinate Voting Shares as a result of the Proposed Transaction) would be significantly greater than was the case for other historical transactions in which dual class share structures had been collapsed. The Circular also stated that "pursuant to the terms of its engagement with the Special Committee, CIBC did not provide a fairness opinion, adequacy opinion or formal valuation;"

(c) the unique circumstances of Magna and its relationship with its founder, Mr. Stronach, and the value placed on that relationship including Mr. Stronach's influence on the culture and key operating principles on which Magna was founded and the significant growth and development of Magna since the implementation of its dual class share structure; and

(d) the determination by the Magna Board that it was in the best interests of Magna to submit the Proposed Transaction to a vote of shareholders.

[75] The Magna Board did not require that a formal valuation of the Class B Shares be prepared in connection with the Proposed Transaction, no fairness opinion in respect of the Proposed Transaction was provided and no recommendation was made to Class A Shareholders as to how they should vote on the Proposed Transaction. The Magna Board indicated that Class A Shareholders should carefully review and consider the terms of the Proposed Transaction, the factors that were identified in the Circular as considerations by the Special Committee and should ultimately reach their own conclusions on whether to support and vote in favour of the Proposed Transaction.

[76] The Circular also disclosed that the directors and executive officers of Magna intended to vote in favour of the Proposed Transaction.

6. The Special Committee and the Proposal

[77] The Special Committee was established by the Magna Board on April 8, 2010 with the mandate "to review and consider the Proposal [as defined in the Circular] as it was developed by executive management for submission initially to the Stronach Trust and, if acceptable to the Stronach Trust, to report to the Magna Board as to whether the Proposal should be submitted to [Class A Shareholders] for their consideration." (See the extract from the Circular set out in Schedule A for a description of the Special Committee approval and review process.)

[78] The "Proposal" was defined in the Circular as meaning "the proposal made by certain members of executive management of Magna and subsequently presented to, reviewed and considered by, the Special Committee under which, among other things, the share capital structure of Magna would be reorganized to eliminate the Class B Shares thereby leaving Magna with a single class of voting shares." We will use the same definition of the "**Proposal**" for purposes of these reasons.

[79] The Proposal resulted from a conceptual proposal developed by Magna executive management for a possible transaction that could be value enhancing for Magna and its shareholders and acceptable to the Stronach Trust. The conceptual proposal discussed by executive management with Mr. Stronach on April 5, 2010 involved three principal elements: (i) Magna purchasing for cancellation all of the Class B Shares for consideration comprised of 9,000,000 Subordinate Voting Shares and US$300 million in cash; (ii) amendments to the Consulting Agreements to provide for a five year non-renewable term and fixed, annual aggregate fees; and (iii) a partnership between Magna and the Stronach Trust with respect to Magna's vehicle electrification initiative.

[80] Accordingly, the conceptual proposal originally discussed by executive management with the Stronach Trust evolved into the Proposal which the Special Committee was authorized by its mandate to review and consider. The Proposal, in turn, ultimately became the Proposed Transaction. There does not appear to have been any material difference in the principal elements of, or the cash and share consideration payable under, the transaction between the conceptual proposal, the Proposal and the Proposed Transaction. We note in this respect that as a result of comments from the Special Committee, the Stronach Trust agreed to reduce fees under the Consulting Agreements, as described in paragraph 68(ii) of these reasons, and to increase its investment in the E-Car Partnership by $20 million (from a total of $60 million to $80 million). In addition, it was agreed that the Consulting Agreements would terminate immediately upon Mr. Stronach's death or permanent disability and that, if the Proposed Transaction was completed, Mr. Stronach would step down as Chairman of the Nominating Committee of the Magna Board.

[81] As noted above, the Special Committee was composed of three directors whom the Magna Board had concluded were independent of Mr. Stronach and the Stronach Trust: Mr. Harris (Chair), Mr. Lataif and Mr. Resnick. All of the independent directors of Magna were invited to participate in the Special Committee process and were notified of all scheduled meetings.

[82] According to the Circular, in conducting its review and consideration of the Proposal, the Special Committee met a total of 10 times between April 8 and May 5, 2010.

7. Financial Advice to the Special Committee

[83] The Special Committee retained CIBC to provide financial advice in connection with the Proposed Transaction. Two reports were prepared by CIBC for the Special Committee (the "**CIBC Reports**") summarizing CIBC's financial analysis of the Proposed Transaction. A report was also prepared by PwC (the "**PwC Report**") which addressed the estimated range of fair values of the assets and business proposed to be contributed by Magna to the E-Car Partnership. The CIBC Reports and the PwC Report were referred to in the Circular but were not included in or summarized in the Circular. The CIBC Reports and the PwC Report were made public by posting on the System for Electronic Document Analysis and Retrieval (SEDAR) on June 17, 2010, subsequent to the mailing of the Circular and two days after the issue of the Notice of Hearing in this matter on June 15, 2010.

[84] In connection with its reports, CIBC reviewed 15 historical transactions where dual class share structures were collapsed. Dilution to the subordinate voting shareholders in those precedent transactions ranged from 0 to 3.04%. The average dilution to shareholders was 0.89%, or 1.28% for issuers, like Magna, that had no coat-tail provisions. CIBC observed that the terms of the Proposed Transaction would result in dilution to the Class A Shareholders of 11.4%, a much higher level of dilution to shareholders than in any of the precedent transactions. CIBC's review also found that eight of the last ten dual class share reorganizations had occurred at no premium. This information was not included in the Circular.

8. Benefits of the Proposed Transaction to Class A Shareholders

[85] Magna submitted that, if approved, the Proposed Transaction would eliminate the Magna dual class share structure with the potential to create value for Class A Shareholders and would return control of Magna to the Class A Shareholders. Magna submitted that the Class A Shareholders were fully capable of evaluating the Proposed Transaction and to make a determination as to whether the potential benefits outweighed the costs.

[86] As to how the terms of the Proposed Transaction were developed, we were told that in May, 2010, the Subordinate Voting Shares were trading at a price that reflected an EV/EBITDA multiple (Enterprise Value/Earnings before Interest, Taxes, Dividends and Amortization) that was approximately two times lower than that of Magna's industry peers. In developing the initial conceptual proposal, we were told that Mr. Galifi adopted a conservative approach and estimated that the elimination of the dual class share structure could result in the amount of this discount being reduced by half. Based on Magna's projected 2011 EBITDA, this would result in an increase of approximately $1.5 billion in enterprise value. Mr. Galifi testified that the potential increase in enterprise value arising from the elimination of the dual class share structure would be split approximately 50/50 between the Stronach Trust and Class A Shareholders. Accordingly, Mr. Galifi submitted that a value enhancement was expected to be realized from the expansion of Magna's EV/EBITDA multiple and that enhancement would benefit the Class A Shareholders.

[87] Accordingly, Magna and the Stronach Trust submitted that the Proposed Transaction had the potential to unlock significant value for the Class A Shareholders and would establish a stronger foundation for the continued and long-term success of Magna. It was submitted that the Proposed Transaction was expected to:

(i) reduce or eliminate any trading discount of the Subordinate Voting Shares associated with the dual class share structure;

(ii) enhance the liquidity and marketability of Magna's shares;

(iii) address the concern expressed by some Class A Shareholders as to the alignment of the interests of all shareholders;

(iv) allow each Magna shareholder to have a voting interest that was proportionate to that holder's equity ownership interest;

(v) eliminate the ability of the holder of the Class B Shares to sell control of Magna without any consideration being paid to the Class A Shareholders; and

(vi) enable Magna to share the investment risk and benefit from the strong and visionary leadership of Mr. Stronach in connection with the E-Car Partnership.

[88] Magna submitted that the Circular contained all information necessary to permit Class A Shareholders to make an informed decision as to how they should vote on the Proposed Transaction. Magna said that, based on the disclosure made by Magna in the Circular, numerous capital market participants, including shareholders, investors, analysts, the Supporting Shareholders, Goodman, Mason and others, have engaged in a knowledgeable and informed

debate regarding the terms of the Proposed Transaction and its implications, through press releases, public statements and reports, on a near daily basis, since the Proposed Transaction was announced.

9. Analyst Reaction to the Proposed Transaction

[89] Securities analysts at Bank of America Merrill Lynch, BMO Capital Markets, Citi, Credit Suisse, Deutsche Bank, Goldman Sachs, GMP Securities, JP Morgan, RBC Capital Markets and UBS, among others, issued commentaries or reviews generally supportive of the Proposed Transaction. In addition, RiskMetrics Group ("**RiskMetrics**"), an independent third party market research company and market analyst, issued a report on June 13, 2010 recommending that Class A Shareholders vote in favour of the Proposed Transaction.

[90] In a report with respect to the Proposed Transaction dated June 8, 2010, Veritas Investment Research Corporation ("**Veritas**") stated that:

> Based on the presumption that the proposed E-Car joint venture is a fair value transaction, we estimated that the net cost of the Proposal to Magna is approximately US$640 M, which represents a cost of approximately $5.35 per share, or roughly 9% of Magna's May 5 closing share price of $62.53. As long as shareholders believe that the appreciation in Magna's share price from the elimination of the Company's dual class share structure would at least offset the 9% per share cost of the Proposal, the Proposal appears to be beneficial.
>
> (*A Changing of the Guard: An Assessment of the Proposal to Eliminate Magna's Multiple Voting Shares dated June 8, 2010* (the "Veritas Report") at p. 1)

[91] Veritas also stated that:

> Based on Magna's May 5 Class A share price, the shares and cash to be received by Mr. Stronach would be valued at $860M, or $1,190 for each of his Class B Shares. Whether there is any negotiation room now or in the future is unknown, but purely from an economic perspective, we believe that Mr. Stronach's price floor to give up his Class B shares and lucrative consulting contracts is approximately $270M, or $371 per share.
>
> (The Veritas Report at p. 1)

[92] RiskMetrics' report on the Proposed Transaction contained the following statement:

> From a purely corporate governance perspective, this proposal pushes the boundaries of shareholder tolerance and acceptance into formerly un-navigated territory. The unique circumstances of this company, it's [*sic*] controlling shareholder's history with minority shareholders, and the absence of strong regulation around dual class share structures in Canada have contributed to what is an exceptionally difficult choice for shareholders.

> However, based on a review of the terms of the transaction, while acknowledging the lack of fairness opinion and special committee and board recommendation on the transaction, on balance, a vote FOR this proposal warrants support due to the following considerations:
>
> • the potential benefits of the one-share-one-vote structure such as: (i) eliminating all or part of the seemingly long existing trading discount of Class A shares; (ii) improved marketability of the common shares and thus lower cost of capital; (iii) enhancing accountability of directors as they will be elected or removed by public shareholders instead of the current controlling shareholder; (iv) removal of the anti-takeover effects of the controlling shareholder, and
>
> • the potential downside risk of missing this unexpected opportunity to get rid of the multiple voting shares albeit at a high price.
>
> (Report on Magna International Inc. dated June 13, 2010, at p. 1)

[93] Glass Lewis & Co. concluded in its analysis of the Proposed Transaction:

> Overall, we agree that the elimination of the Company's dual class share structure would provide a variety of benefits for minority shareholders and better align the Company's equity ownership and voting power. We also recognize that the class B shares carry higher proportional voting rights and a number of other special features which suggest that their value should exceed that of class A subordinate voting shares.
>
> However, in the absence of a fairness opinion or any valuation of the class B shares, we believe that the board has failed to justify the consideration being offered to the Stronach Trust for the cancellation of its class B shares.
>
> (Magna International Inc. Proxy Paper dated June 10, 2010 at p. 10)

IX. THE ISSUES

[94] The following are the questions and issues we addressed in this matter:

(i) Did the Circular provide sufficient disclosure to the Class A Shareholders to permit them to make an informed decision?

(ii) Was the Proposed Transaction abusive and should the Commission restrain it in the public interest?

(iii) Did the Magna Board comply with its fiduciary duties in submitting the Proposed Transaction to shareholders?

(iv) Was the process followed by the Magna Board and the Special Committee in reviewing the Proposed Transaction inadequate?

(v) Should a formal valuation be required of the subject matter of the Proposed Transaction?

[95] We have summarized above the principal submissions made by the participants. It is fair to say that the submissions of Staff and the Opposing Shareholders, on the one hand, and the submissions of Magna and the Stronach Trust, on the other hand, overlapped to a significant extent.

[96] We have attempted to summarize below the submissions made to us that relate to the different questions or issues that we addressed. Some of the submissions made to us apply equally to a number of the questions and issues referred to above.

[97] There was no doubt that the Proposed Transaction was unprecedented. We are not aware of any comparable transaction carried out in Ontario capital markets on comparable terms. The transaction raises a number of important issues.

X. ANALYSIS

A. Did the Circular Provide Sufficient Disclosure to Class A Shareholders to Permit Them to Make an Informed Decision?

1. Submissions

Staff

[98] Staff characterized this matter as primarily one raising issues of inadequate disclosure. Staff's allegations focused on the following issues: (i) the Circular did not contain specific financial information obtained by the Special Committee from its advisors, (ii) the Circular did not contain a fairness opinion or formal valuation, (iii) the Circular failed to provide sufficient information concerning the desirability or fairness of the Proposed Transaction, and (iv) the Magna Board did not make useful recommendations with respect to it.

[99] Staff also said that the Circular states that CIBC did not provide a fairness opinion. Staff submitted that the Circular should have stated that a fairness opinion was not available in the circumstances and why that was the case.

The Opposing Shareholders

[100] The Opposing Shareholders submitted that the disclosure provided by Magna in the Circular did not comply with Ontario securities law, particularly with the provisions of MI 61-101 and National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**"). In addition, Section 14.1 of Form 51-102F5 – *Information Circular* requires that an information circular describe matters to come before a meeting of shareholders "in sufficient detail to enable reasonable securityholders to form a reasoned judgment concerning the matter". Similarly, the Opposing Shareholders referred to the requirements of the OBCA that shareholders be provided with sufficiently detailed, accurate information, in the form of a management information circular, upon which shareholders can make a reasoned judgment. The Opposing Shareholders submitted that the Circular omitted information necessary to meet this disclosure standard.

[101] The Opposing Shareholders also submitted that the fact that the Special Committee was unable to determine that the Proposed Transaction was fair to the Class A Shareholders and to make a recommendation to them as to how to vote, demonstrated that, even if the Class A Shareholders were provided with all of the information that was available to the Special Committee, the Class A Shareholders would not be able to make an informed decision.

Magna

[102] Magna submitted that the disclosure provided in the Circular was accurate in every material respect and is sufficient for shareholders to make an informed decision on how to vote on the Proposed Transaction.

[103] Magna submitted that the core aspect of the Proposed Transaction was straightforward and easy to understand. The Class B Shares were being purchased for cancellation by Magna for consideration comprised of 9,000,000 Subordinate Voting Shares and US$300 million in cash. Those facts were fully set out in the Circular.

[104] Magna submitted that the alleged violations of Ontario securities law, in reality, do not amount to failures of disclosure at all. Appropriate factual statements were made in a forthright manner in the Circular that there was no recommendation being made by the Magna Board and that there was no fairness opinion or valuation that was being provided. Nothing more needed to be said on those topics.

2. The Law

Corporate and Securities Law Disclosure Requirements Applicable to the Circular

[105] If management of a reporting issuer solicits proxies from the registered holders of voting securities, management is obligated under section 9.1(2) of NI 51-102 to send an information circular to those shareholders. The information required to be disclosed in the information circular is prescribed by Form 51-102F5. Item 14.1 of that form provides, in part, as follows:

> If action is to be taken on any matter to be submitted to the meeting of securityholders other than approval of financial statements, briefly describe the substance of the matter, or related groups of matters, except to the extent described under the foregoing items, in sufficient detail to enable reasonable securityholders to form a reasoned judgment concerning the matter. …

[106] Subsection 96(6)(a) of the OBCA states, in part, that:

> Notice of a meeting of shareholders at which special business is to be transacted shall state or be accompanied by a statement of,
>
> (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; …

[107] The OBCA also requires that a management information circular provide disclosure to shareholders that meets substantially the same disclosure standard as that applicable under NI 51-102 (see section 31 of the Regulation to the OBCA).

[108] The common law standard of disclosure to shareholders is articulated in the landmark decision of *Garvie v. Axmith* (1961), 31 D.L.R. (2d) 65 at 84-87 in which the Court stated that:

> … the notice to shareholders must contain such particulars as will permit them to exercise an intelligent judgment upon the proposition …
>
> Similarly, in this case …, it was impossible for any Rockwin shareholder to come to any intelligent conclusion as to whether he should favour or oppose the transaction, and that is the right of each shareholder and a right which he must have accorded to him in the notice of the special general meeting sent to him. … and the shareholders should be able to sit down with the material and come to an intelligent conclusion … I have come to the conclusion that this failure to give proper and adequate notice of what the transaction involved, is fatal to the defendant.

[109] Accordingly, the securities law, corporate law and common law requirements as to the standard of disclosure required in the Circular are substantially the same. They require that disclosure be provided in the Circular in sufficient detail to enable a reasonable shareholder to make an informed decision on how to vote on the Proposed Transaction. That standard of disclosure constitutes an objective test that must be applied in the specific circumstances.

The Importance of Disclosure under Ontario Securities Law

[110] Section 1.1 of the Act sets out the purposes of securities law to be:

> (1) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (2) to foster fair and efficient capital markets and confidence in capital markets.

[111] Section 2.1(2) provides that, in pursuing the purposes of the Act, the Commission shall have regard to the following fundamental principles:

> …
>
> 2. the primary means of achieving the purposes are,
>
> i. requirements for timely, accurate and efficient disclosure of information, …

[112] The importance of disclosure under Ontario securities law was underscored in *Re Philip Services Corp.* (2006), 29 OSCB 3941 at para. 7, where the Commission stated:

> Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect

> their investment decisions. The Act's focus on public disclosure of material facts in order to achieve market integrity would be meaningless without a requirement that such disclosure be accurate and complete and accessible to investors (see Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission) (1977), [1978] 2 S.C.R. 112 (SCC)).

[113] While that statement addresses public disclosure of material facts, there is equally no doubt as to the importance of disclosure in connection with a shareholders' meeting. That disclosure must be accurate, complete and not misleading and must be contained within the four corners of the applicable circular.

[114] The Commission noted in *Re Sears Canada* that there is a difference between disclosure that strictly follows the "line items requirements" in a form or rule and disclosure that focuses on information that may be material to an investor's decision to tender his or her shares to a bid in the particular circumstances. The Commission stated in *Re Sears Canada* that:

> No-one should be held to a standard of infallibility when it comes to judging disclosure with the benefit of hindsight. However, meeting one's disclosure obligations is a contextual and not purely mechanical exercise, and requires the exercise of judgment.
>
> (*Re Sears Canada Inc.*, 2006 L.N.O.N.O.S.C. 1044 at para. 189-190) ("***Re Sears Canada***")

[115] In *Re YBM Magnex et. al.* (2003), 26 OSCB 5285 ("***YBM***") at paras. 89-91, the Commission stated that:

> Assessments of materiality are not to be judged against the standard of perfection or with the benefit of hindsight. It is not a science and involves the exercise of judgment and common sense; *Core Mark International Inc. v. 162093 Canada Ltd.* (8 June 1989) Toronto 1220/89 at 4-5 (Ont. H.C.)

[116] The Commission concluded *In the Matter of MacDonald Oil Exploration Limited* (1999), 22 OSCB 6452 ("***MacDonald Oil***"), that the lack of a directors' circular did not increase a bidder's onus to disclose. However, it did make the impact of failing to meet the onus more significant. The Commission stated at page 8 that:

> At the hearing, there was some discussion about whether the lack of a directors' circular increased the bidders' onus to disclose or, whether the onus remains the same but the ramifications of failure to meet the onus are more significant. *Our conclusion is that the onus is always the same but, where there is no directors' circular to counter-balance the take-over bid circular, disclosure defects are more likely to be material*. [emphasis added]

[117] These principles apply to the disclosure required in an information circular for a shareholders' meeting related to a material corporate transaction. Disclosure in a management information circular for such a meeting must set forth the information that would be important to a reasonable shareholder in deciding how to vote on the particular transaction. Disclosure must

be accurate and complete and must not omit facts necessary to make any statement or information not misleading. Only through compliance with these principles does a circular provide disclosure that permits a shareholder to make an informed decision on the matter being submitted to a vote.

3. Analysis

Disclosure under MI 61-101

[118] We have discussed above the disclosure standard generally applicable to the Circular. Magna is, however, also subject to the disclosure requirements of MI 61-101.

[119] The Proposed Transaction is a "related party transaction" within the meaning of MI 61-101. Magna disclosed in the Circular that the Proposed Transaction was exempt from the requirement under MI 61-101 for minority shareholder approval and the requirement to provide a formal valuation, as a result of the availability of the Market Cap Exemption. As noted above, the Market Cap Exemption is available where the fair market value of the subject matter of a related party transaction does not exceed 25% of the issuer's market capitalization (as defined for purposes of MI 61-101).

[120] Notwithstanding the availability of that exemption, the Magna Board, apparently on the recommendation of the Special Committee, and the Stronach Trust as a pre-condition to entering into the Proposed Transaction, required that the Proposed Transaction be approved by a simple majority of the votes cast by minority Class A Shareholders.

[121] Section 5.3(1) of MI 61-101 provides that the disclosure required by that section applies only to a related party transaction for which section 5.6 requires the issuer to obtain minority approval (as defined in MI 61-101). Accordingly, the disclosure requirements contained in section 5.3 of MI 61-101 do not technically apply to the Circular. Notwithstanding, the disclosure requirements contained in section 5.2(1) of MI 61-101 do apply to the Circular. That section requires additional disclosure (including with respect to the review and approval process adopted by the Magna Board) in a material change report required to be filed under securities law in respect of the Proposed Transaction. The Proposed Transaction constitutes a material change within the meaning of the Act that required Magna to issue a news release and file a material change report.

[122] Subsection 5.2(1) of MI 61-101 provides that:

> An issuer shall include in a material change report, if any, required to be filed under securities legislation for a related party transaction
>
> (a) a description of the transaction and its material terms,
>
> (b) the purpose and business reasons for the transaction,
>
> (c) the anticipated effect of the transaction on the issuer's business and affairs,
>
> (d) a description of

(i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties, and

(ii) the anticipated effect of the transaction on the percentage of securities of the issuer, or of an affiliated entity of the issuer, beneficially owned or controlled by each person referred to in subparagraph (i) for which there would be a material change in that percentage,

(e) *unless this information will be included in another disclosure document for the transaction, a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction,* including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee, … [emphasis added]

[123] Magna was complying with section 5.2(1)(e) through its disclosure in the Circular.

[124] As a result, Companion Policy 61-101CP to MI 61-101 (the "**Companion Policy**") applies to the Proposed Transaction. Subsections 6.1(1), (2) and (3) of the Companion Policy are relevant and provide, in part, as follows:

6.1 Role of Directors

(1) Paragraphs … 5.2(1)(e) of the Instrument require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the Instrument should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose *their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction*. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained. … [emphasis added]

[125] Accordingly, the Companion Policy applied to the Circular and states that it should:

(i) provide sufficient information to enable Class A Shareholders to make an informed decision;

(ii) disclose the Magna Board's reasonable beliefs as to the desirability or fairness of the Proposed Transaction;

(iii) disclose the Magna Board's useful recommendations regarding the Proposed Transaction and, if no such recommendations are made, provide detailed reasons why a recommendation is not being made;

(iv) discuss fully the background of the deliberations of the directors and the Special Committee; and

(v) discuss fully any analysis of expert opinions obtained by the Special Committee.

[126] The Companion Policy does not constitute a legal requirement; it is simply a statement of the expectations of the Commission with respect to the type of disclosure desirable in complying with section 5.2(1)(e) of MI 61-101, which does constitute a legal requirement. Having said that, the provisions of the Companion Policy are a clear articulation of the views of the Commission as to the appropriate disclosure in connection with a related party transaction such as the Proposed Transaction.

[127] We should add, however, that our views with respect to the adequacy of the disclosure in the Circular did not turn on whether MI 61-101 and the Companion Policy applied to the Circular. We would have come to the same conclusions by applying the standard that the disclosure in the Circular must be sufficient to permit a reasonable shareholder to make an informed decision as to how to vote on the Proposed Transaction.

4. The Adequacy of Disclosure in the Circular

Disclosure is Contextual

[128] While the applicable disclosure standard does not change based on the circumstances, how that standard is applied is contextual and will vary with the circumstances. In this case, those circumstances include the fact that (i) the Proposed Transaction constituted a material related party transaction between Magna and the Stronach Trust, (ii) neither the Magna Board nor the Special Committee made any recommendation to the Class A Shareholders as to how they should vote on the Proposed Transaction, or as to their views of the desirability or fairness of the Proposed Transaction to Class A Shareholders, and (iii) no fairness opinion or formal valuation was obtained with respect to the Proposed Transaction.

[129] Because neither the Magna Board nor the Special Committee was providing a recommendation, Class A Shareholders were essentially left to their own devices in making the decision as to how they would vote on the Proposed Transaction. Those circumstances, in our view, demanded a high level of disclosure to Class A Shareholders in the Circular. In these circumstances, the disclosure in the Circular must, to the extent reasonably possible, have provided Class A Shareholders with substantially the same information and analysis that the Special Committee received in considering and addressing the legal and business issues raised by the Proposed Transaction.

[130] The Special Committee considered the extensive list of factors, considerations and information identified in the Circular as relevant to their analysis and they had access to the advice of their independent financial advisors in considering those matters. In these circumstances, shareholders should have had access to substantially the same information and analysis in order to make an informed decision. It was clear that the Circular did not provide that level of disclosure.

Disclosure in the Circular

[131] In our view, the Circular did not provide sufficient information to Class A Shareholders to permit them to make an informed decision and did not contain information that was material to shareholders in the circumstances. Information is material for this purpose if there is a substantial likelihood that a reasonable shareholder would consider the information important in deciding how to vote on the Proposed Transaction (*Re Donnini* (2002), 25 OSCB 6225 ("***Re Donnini***") at paras. 135 and 136 and *In the Matter of Biovail Corporation, et al.* (2010) 33 OSCB ("***Re Biovail***") at para. 66). In our view, there was material information that was not included in the Circular. We set out in the Decision the information and disclosure that we concluded should have been and was required to be included in the Circular (see paragraph 19 of these reasons).

[132] In coming to that conclusion, we recognized that some Class A Shareholders believed that the disclosure in the Circular was sufficient for them to make an informed decision. In coming to that conclusion, those Class A Shareholders were making a subjective decision as to what was relevant and important to them in deciding how to vote on the Proposed Transaction. It did not change our view that the Circular failed to disclose material information to Class A Shareholders. We did not consider the deficiencies in disclosure in the Circular to be in any way technical or a matter of judgment. Our concerns were serious and substantive.

[133] We note in this respect that the Circular provided a laundry list of considerations, factors and information that the Special Committee reviewed and considered in assessing the Proposed Transaction. There was no meaningful discussion of the substantive information that was reviewed or the implications of that information to the Proposed Transaction. Listing such matters provides only cold comfort to Class A Shareholders that the Special Committee reviewed relevant information in considering whether to submit the Proposed Transaction to shareholders. Providing that laundry list of matters reviewed did not assist Magna in meeting the applicable disclosure standard. The Circular also stated that "… the Special Committee did not find it practicable to, and did not, quantify or otherwise attempt to assign relative weight to specific factors in reaching its conclusions". That is at best an unhelpful boiler plate statement and at worst an acknowledgement that the Special Committee did not attempt to determine what was important to Class A Shareholders in the circumstances.

[134] Taking a laundry list approach to disclosure may or may not be adequate where a board of directors or special committee makes a recommendation to shareholders in respect of a proposed transaction. It is not adequate in circumstances where shareholders are left to their own devices to make a decision in circumstances such as these.

[135] It goes without saying that any public disclosure made by Magna with respect to the Proposed Transaction that was not contained in the Circular did not assist Magna in satisfying its disclosure obligation with respect to the Circular. Shareholders are entitled to adequate disclosure within the four corners of the Circular. The public disclosure of the CIBC and PwC reports by means of a public filing did not assist Magna in meeting its disclosure obligations under Ontario securities law.

[136] We heard submissions that we should not be concerned with the issues raised by this matter because Class A Shareholders holding in the aggregate a very substantial majority of the Subordinate Voting Shares had already lodged proxies in favour of the Proposed Transaction. While the requirement for shareholder approval is a critical factor in our consideration of whether the Proposed Transaction was abusive (see paragraph 190 of these reasons), it certainly cannot be relied on to say that the disclosure in the Circular was adequate. If the disclosure in the Circular was materially deficient, then Class A Shareholders were not being given the information necessary to make an informed decision and their vote could not be relied upon.

[137] The business judgment rule does not apply to the question whether the Circular contained adequate disclosure. The Supreme Court of Canada stated in *Kerr v. Danier Leather Inc.*, [2007] 3 SCR 331, at paragraph 54 that:

> … I agree with the appellants that while forecasting is a matter of business judgment, disclosure is a matter of legal obligation. The Business Judgment Rule is a concept well-developed in the context of *business* decisions but should not be used to qualify or undermine the duty of disclosure.

Further, in our view, Magna's decision to put the Proposed Transaction to a shareholder vote in these circumstances was not entitled to deference under the business judgment rule. There were a number of legal issues engaged by that decision.

[138] The disclosure standard applicable to the Circular is an objective test. Accordingly, we are entitled to determine whether the disclosure in the Circular complied with that standard. Determining questions such as the standard of materiality to be applied, and the adequacy of the disclosure made, are matters squarely within our expertise as a specialized tribunal. While the evidence of experts, investors and shareholders may be relevant or useful, we do not need such evidence in order to make such decisions (see *Re Donnini, supra* at para. 123, *Rex Diamond Mining Corp. et al. v. Ontario Securities Commission*, 2010 ONSC 3926 (Ont. Div. Ct.) at para. 3 and *Re Biovail, supra* at para. 80).

[139] In our view, the Circular failed to provide Class A Shareholders with sufficient information to make an informed decision as to how to vote on the Proposed Transaction. That means that Magna failed to comply with its disclosure obligations under applicable Ontario securities law (in particular, the requirements of item 14.1 of Form 51-102F5 (see paragraph 105 of these reasons)).

Other Deficiencies in Disclosure

[140] We believe that it was clear from our Decision in what areas we concluded that disclosure in the Circular was inadequate (see paragraphs 18 and 19 of these reasons). We would make the following additional comments.

[141] We were concerned that the Circular did not contain a clear articulation of the potential benefits to Class A Shareholders of the Proposed Transaction. In our view, Mr. Galifi's affidavit and testimony before us provided a much clearer articulation of the "value sharing" between the Stronach Trust and the Class A Shareholders inherent in the Proposed Transaction.

[142] The Class A Shareholders were being asked to approve the repurchase of the Class B Shares by Magna from the Stronach Trust. Because the Class A Shareholders hold 99.4% of the equity of Magna, the Class A Shareholders would indirectly bear almost all of the cost of the repurchase. While we understand the theory of the value sharing inherent in the Proposed Transaction, we nonetheless considered the value of the Stronach Trust control block represented by the Class B Shares to be a very relevant matter for consideration by Class A Shareholders. The Circular failed to contain any meaningful information or discussion as to the fair market value of the Class B Shares.

[143] In this respect, Magna referred in the Circular to the implied value of the Stronach Trust's control block (i) in the Russian Machines Transaction, and (ii) as reflected in certain arm's length privatization proposals. Magna stated that these were factors executive management took into account when first developing the conceptual proposal. The description of the Russian Machines Transaction in the Circular failed to mention the price at which Magna repurchased the Class B Shares as part of that transaction. We concluded that the Circular should have contained more information concerning the implied value of the Class B Shares and a discussion of the relevance of those implied values to the value of the control block.

[144] The Circular stated that the Special Committee considered "potential alternatives to the Proposal". However, there was no discussion of those alternatives in the Circular. The Circular mentioned the review by executive management and the Magna Board of potential structures and incentives relating to Magna's vehicle electrification and product diversification strategies, including potential management co-investment rights. However, there was no discussion of the results of this review and how the formation of the E-Car Partnership related to Magna's vehicle electrification strategy.

[145] The Circular did not contain the CIBC Reports or the PwC Report and did not summarize the advice received by the Special Committee from those advisors. There was no meaningful discussion of the analysis of those experts as contemplated by the Companion Policy.

[146] The Circular also contained the statement that the Special Committee received advice from CIBC that the dilution to minority shareholders resulting from the Proposed Transaction "would be significantly greater than was the case for other historical transactions in which dual class share structures were collapsed". In our view, based on the evidence submitted to us, that was a gross understatement. Disclosure of the dilution in those transactions was clearly relevant and the Circular should have addressed explicitly the relevance of those historical transactions.

[147] The Circular also stated that "pursuant to the terms of its engagement with the Special Committee, CIBC did not provide a fairness opinion, adequacy opinion or formal valuation". As discussed above, we considered that statement to be misleading by reason of what it omitted to say. The Circular should have disclosed the reasons why CIBC was not providing a fairness opinion.

[148] In accordance with the Companion Policy, the directors of Magna should disclose their reasonable views as to the desirability and fairness of the Proposed Transaction. That is one of the reasons we required that the Circular disclose the nature of the legal standard to be applied by a court in determining whether the Proposed Transaction was fair and reasonable. More importantly, we required a clear statement by the disinterested directors or the Special Committee whether they had concluded that the Proposed Transaction was fair and reasonable or whether they have reached no such conclusion.

[149] We note that the Circular stated that the Magna Board had determined that it was in the best interests of Magna to submit the arrangement resolution to shareholders. That is different than stating that the Proposed Transaction was in the best interests of Magna. The Magna Board must have come to the latter conclusion given that it authorized Magna to enter into the Proposed Transaction.

[150] We recognize that those preparing information circulars for complex transactions have a challenging task. They must find an often uneasy balance between providing sufficient information (which conveys the substance of the relevant material information to shareholders) and "[burying] the shareholder in an avalanche of trivial information", which creates its own kinds of risks for intelligent and informed decision making: *Re Universal Explorations Ltd and Petrol Oil and Gas Co. Ltd.* (1982), 37 A.R. 35, at p. 37 (Alta. C.A.). The preparation of adequate disclosure requires the application of good judgment to the particular circumstances. That good judgment appears to have been lacking in the preparation of the Circular.

Absence of Magna Board or Special Committee Recommendation

[151] As noted above, no recommendation was made by the Magna Board or the Special Committee as to how the Class A Shareholders should vote on the Proposed Transaction. It does not appear to us that there is any requirement under corporate or securities law that a board make such a recommendation. However, failing to provide a recommendation results, in our view, in a heightened obligation to provide meaningful disclosure and analysis in the Circular. That heightened obligation is reflected in the provisions of the Companion Policy that indicate that where no recommendation is made, detailed reasons should be provided. It is also consistent with the principle reflected in *MacDonald Oil* referred to in paragraph 116 of these reasons.

[152] We note that in *Hollinger Inc. (Re)* (2006), 29 OSCB 7071, 2005 LNONOSC 858 ("***Re Hollinger***"), there is a suggestion that the board of directors of Hollinger Inc. ("**Hollinger**") was not in compliance with OSC Rule 61-501 (the predecessor to MI 61-101) because it failed to make a recommendation to shareholders in connection with the proposed transaction at issue in that matter.

[153] In *Re Hollinger*, the Commission considered the effect of a failure by the directors to provide their reasonable beliefs as to the desirability or fairness of the proposed transaction and to provide a useful recommendation with respect to the transaction:

> In this case, the Independent Privatization Committee and the Board of Hollinger Inc. (the "Board") have not made any recommendation to the shareholders as to how they should vote in respect of the GPT [going private transaction], having determined only that the shareholders should be given the opportunity to vote. In so doing, it is noted in the Circular that, in the absence of a fairness opinion from GMP and having regard to the unique and unusual circumstances set out in the Valuation, they were unable to reach a conclusion or make a recommendation as to whether the Common Share consideration is fair, from a financial point of view, to the minority shareholders.

[154] It is important to note that, in *Re Hollinger*, Hollinger was seeking a discretionary order from the Commission to set aside a management cease trading order that had been issued as a result of Hollinger's failure to file financial statements. The relief was being sought so that Hollinger's controlling shareholder could pursue an insider bid as a means for carrying out a going private transaction. Hollinger was required to obtain a formal valuation under OSC Rule 61-501 in respect of that transaction. The valuation that was obtained was highly qualified and of little use to shareholders as a result of unquantified and potentially substantial balance sheet uncertainties and litigation risk created by Hollinger's chief executive officer (a related party of the offeror). Put another way, there was a concern that the offeror had access to information about the value of Hollinger that was not available to shareholders to whom the offer was to be made. Accordingly, shareholders were dependent on guidance from the independent committee for assurance as to the reasonableness of the price offered. Because no recommendation was being made to shareholders, that guidance was not available.

[155] We note in this respect that the principal reason why the Special Committee concluded that it was unable to make a recommendation to Class A Shareholders with respect to the Proposed Transaction was stated in the Circular. Magna disclosed that the benefits to Class A Shareholders of the Proposed Transaction were largely premised upon the market's reaction to the Proposed Transaction (through the potential increase in Magna's EV / EBITDA multiple) and that market reaction could not be predicted in advance. Further, that benefit accrues over an extended period subsequent to completion of the Proposed Transaction.

[156] We also note that in *Re Hollinger* the Commission was being asked to exercise its discretion to revoke an existing management cease trading order to permit the bid. That is quite different than being requested to intervene in a transaction on public interest grounds.

[157] Accordingly, the circumstances before us are substantially different from those in *Re Hollinger*.

[158] As contemplated by the Companion Policy, we would expect directors to make a useful recommendation to shareholders with respect to a material corporate transaction upon which those shareholders are being asked to vote. A statement that directors are not making a recommendation is generally insufficient without detailed reasons. However, there may be

legitimate reasons why directors conclude that it is not possible or desirable to make a recommendation to shareholders and yet also conclude that the particular matter is appropriately put before shareholders for their consideration and approval. The failure to provide a recommendation may heighten concerns around the desirability or fairness of a transaction and the adequacy of disclosure but, in our view, it is not fatal to allowing shareholders to consider a transaction if there is adequate disclosure to them.

[159] Accordingly, in our view, the failure of the Magna Board or Special Committee to provide a recommendation as to how Class A Shareholders should vote does not thereby render the disclosure in the Circular inadequate or prevent the Proposed Transaction from being submitted to shareholders for a vote. To hold otherwise would be to disenfranchise shareholders, who are ultimately the owners of Magna.

[160] We note in this respect, however, that we concluded in our Decision that additional disclosure was necessary in the Circular as to the reasonable beliefs of the Magna Board as to, among other things, the desirability or fairness of the Proposed Transaction (see paragraph 148 of these reasons).

Lack of a Fairness Opinion

[161] The Circular also stated that CIBC did not provide a fairness opinion to the Special Committee with respect to the Proposed Transaction. Magna said that CIBC was unable to issue a fairness opinion because (i) a fairness opinion is generally based on fundamental value considerations, while the Proposed Transaction was not advanced based on the fundamental value of the Class B Shares, and (ii) the benefit to Class A Shareholders depended on the future market trading price of the Magna common shares following the Proposed Transaction, something CIBC could not and would not predict.

Analysis

[162] Generally, fairness opinions are obtained by directors to assist them in establishing that they acted with due care and diligence in approving a transaction. Fairness opinions are not generally provided for the benefit of shareholders, although they are usually disclosed and shareholders may take some comfort from them. In this case, the Special Committee was aware of the reasons why CIBC concluded that it could not issue a fairness opinion and Mr. Harris stated in his affidavit that the Special Committee was disappointed that such an opinion could not be obtained. There is no requirement in MI 61-101, or otherwise under Ontario securities law, requiring a reporting issuer to obtain a fairness opinion as a condition of proceeding with a related party transaction. To our knowledge, the Commission has never in the past required a fairness opinion in connection with a transaction such as the Proposed Transaction.

[163] In any event, we were prepared to accept that a fairness opinion could not be obtained from CIBC in these circumstances. Accordingly, requiring a fairness opinion might have prevented the Class A Shareholders from being able to consider and vote on the Proposed Transaction, a result that, in our view, was not in the public interest.

[164] We concluded, however, that the Circular was misleading by not fully explaining the reasons why CIBC was not prepared or able to issue a fairness opinion in the circumstances.

Those reasons would have assisted Class A Shareholders in understanding the rationale for the Proposed Transaction and the potential benefits to them of that transaction. In our view, it was not good enough to simply state baldly in the Circular that no fairness opinion was being given.

[165] It is a different question whether the Circular contained adequate disclosure of the financial advice received by the Special Committee. As noted above, the Companion Policy contemplates that Magna should discuss in the Circular any analysis of expert opinions obtained. In our view, the advice received by the Special Committee from its financial advisors should have been included or summarized in the Circular. The failure to include that disclosure rendered the disclosure in the Circular materially inadequate.

[166] We would add that, in our view, the inability to obtain a fairness opinion did not relieve the Magna Board or Special Committee from their obligation to address and comment on the desirability or fairness of the Proposed Transaction to Class A Shareholders. To the contrary, in our view, the Magna Board and Special Committee had an obligation to do so.

5. Conclusion

[167] For the reasons discussed above, we concluded that if Magna wished to proceed with the Proposed Transaction, the Circular had to be amended to provide disclosure of the information referred to in paragraph 19 of these reasons (a reasonable time prior to the shareholders meeting) and, in each case, a meaningful discussion and analysis of the implications of that information for purposes of the Proposed Transaction and the shareholder vote.

[168] We also required that the Circular contain a statement that the disinterested members of the Magna Board or the Special Committee have concluded that the Circular as amended provides disclosure and information sufficient to permit shareholders to make an informed decision as to how to vote on the Proposed Transaction. That is the disclosure standard applicable to the Circular.

B. Is the Proposed Transaction Abusive and Should the Commission Restrain It in the Public Interest?

1. Submissions

Staff Submissions

[169] Staff alleged that the Proposed Transaction was contrary to the public interest. Staff acknowledged, however, that the "unprecedented amount of premium and the use of minority shareholder funds to acquire the Class B Shares did not, by themselves, require Commission intervention". Ultimately, Staff's position on the question of abuse, apart from the issue of the adequacy of disclosure, was that the Commission should have intervened for three reasons: (i) because the Magna Board did not provide a recommendation or "opine on the fairness of the transaction" in the Circular, (ii) because no valuation of the Class B Shares was provided to Class A Shareholders, and (iii) because of the involvement of Magna executive management in the negotiation of the Proposed Transaction. We specifically address those questions elsewhere in these reasons.

The Opposing Shareholders' Submissions

[170] The Opposing Shareholders submitted that it was coercive and abusive for Class A Shareholders to be asked to approve an exorbitant and unprecedented payment to the holder of the Class B Shares in order to eliminate a voting structure that was purportedly established for the benefit of Class A Shareholders. The Opposing Shareholders submitted that permitting Class A Shareholders to be forced to choose between continued economic deprivation as a result of the dual class share structure and an arbitrary transfer of corporate assets would erode public confidence in the capital markets.

[171] The Opposing Shareholders submitted that it is rare for a controlling shareholder to receive such an excessive premium over the value of the relevant subordinate voting shares when a company eliminates a dual class share structure. They said that multiple voting shares have usually been exchanged for common shares on a one-for-one basis when dual class share structures are collapsed.

[172] The Opposing Shareholders referred to eleven Canadian examples since 2000 where a dual class share structure has been eliminated. In ten of those transactions, the holder of the multiple voting shares converted its shares into subordinate voting shares without a premium. The other transaction involved a grant under the issuer's stock-linked compensation plan, which represented a premium of 66.1%. In nine of the eleven transactions, the conversion was effected under conversion rights already provided in the issuer's articles. However, in two circumstances amendments to share provisions were required. One of those conversions was accomplished by amending the articles to provide equal voting rights to a class of non-voting shares held by the public. The other amended the multiple voting share provisions to provide for a conversion right, with the conversion ratio supported by a board recommendation and fairness opinion.

[173] The Opposing Shareholders submitted that the premium that was being paid to the Stronach Trust for its Class B Shares was unconscionable and contrary to the reasonable expectations of the Class A Shareholders. The Opposing Shareholders submitted that because of the right of the holder of the Class B Shares to convert those shares into Subordinate Voting Shares on a one-for-one basis (the Class B Shares are convertible at the option of the holder into Subordinate Voting Shares; the Subordinate Voting Shares are not convertible into Class B Shares) and the otherwise identical entitlements of the two classes of shares in respect of dividends and upon liquidation, Class A Shareholders had a reasonable expectation that the collapse of the dual class share structure would be effected on a one-for-one basis consistent with the existing conversion right attaching to the Class B Shares. The Opposing Shareholders submitted that this was consistent with the vast majority of prior transactions where dual class share structures have been collapsed.

[174] According to the Opposing Shareholders, the value to be transferred to the Stronach Trust under the Proposed Transaction not only represented a premium above the market price of an equivalent number of Subordinate Voting Shares of approximately 1800%, but also included amendments to the extremely lucrative Consulting Contracts and transfer to the Stronach Trust of a controlling interest in the E-Car Partnership to be formed, which Magna had recently identified as its "strategic objective" in a "rapidly growing sector".

[175] Further, the Opposing Shareholders submitted that the Proposed Transaction was really "an issuer bid" notwithstanding that the transaction was structured as a plan of arrangement. Paragraph (b) of the definition of "issuer bid" in subsection 89(1) of the Act does not include an offer to acquire that is a step in a reorganization or arrangement that requires approval in a vote of security holders. The Opposing Shareholders submitted that the exception in paragraph (b) of that definition did not apply here because the purchase of the Class B Shares was not a "step" in a larger transaction, but the essence of the transaction itself. The only step in the plan of arrangement, out of seventeen steps, that does not relate to an issuer bid was the step that required the Stronach Trust to enter into the E-Car Partnership. The Opposing Shareholders submitted that it was unclear why this step needed to be part of the plan of arrangement, unless it was to attempt to fit the transaction into the exemption in paragraph (b) of the definition of "issuer bid". As a result, the Opposing Shareholders submitted that the Proposed Transaction should be treated as an "issuer bid" and a formal valuation should be required in respect of that bid in accordance with MI 61-101.

[176] In the alternative, if the Proposed Transaction was not technically an issuer bid, and thus did not require a formal valuation, the Opposing Shareholders submitted that the integrity of the capital markets required that market participants should adhere to both the letter and spirit of the rules and the "animating principles" underlying those rules, to ensure shareholders are treated fairly (*Re H.E.R.O. Industries Ltd.* (1990), 13 OSCB 3775 (" ***Re H.E.R.O.***") at p. 3776, cited in *Re Sears Canada, supra* at para. 305; *Re Canadian Tire Corp.* (1987), 10 OSCB 857 ("***Re Canadian Tire***") at p. 31(QL); and *Re Patheon Inc.* (2009), 32 OSCB 6445) ("***Patheon***").

[177] Accordingly, the Opposing Shareholders submitted that the Proposed Transaction was abusive in that it was structured to circumvent statutory issuer bid and corporate law protections otherwise available for the benefit of the Class A Shareholders and thus frustrated the justifiable and reasonable expectations of investors and others in the capital markets (*C.T.C. Dealer Holdings Ltd. v. Ontario Securities Commission* (1987), 59 O.R. (2d) 79 at 104 (Div. Ct.)).

[178] The Opposing Shareholders submitted that the Class A Shareholders' confidence in the fairness and integrity of the capital markets would be undermined if we did not intervene to restrain the Proposed Transaction.

Goodman and Mason

[179] Goodman and Mason submitted that the objections being made to the Proposed Transaction were essentially objections to an excessive price proposed to be paid by Magna to the Stronach Trust for its Class B Shares. They submitted that there are potential benefits to the Class A Shareholders from the Proposed Transaction and that shareholders should be able to decide for themselves whether to approve that transaction. Goodman and Mason submitted that the Proposed Transaction was not abusive and there were no valid grounds for the Commission to intervene in the public interest.

2. The Law

[180] The Commission has jurisdiction under subsection 127(1) of the Act to intervene in a transaction where it concludes that it is in the public interest to do so (*Re Canadian Tire, supra* at

p. 29 (QL), *Re H.E.R.O., supra* and *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("***Asbestos***") at para. 39 (SCC).

[181] The Commission's public interest jurisdiction is animated by the purposes set out in subsection 1.1 of the Act, namely (i) to provide protection to investors from unfair, improper or fraudulent practices, and (ii) to foster fair and efficient capital markets and confidence in capital markets. As a result, the Commission must consider the fair treatment of investors, capital market efficiencies and public confidence in capital markets when exercising its public interest jurisdiction (*Asbestos, supra* at para. 41).

[182] The Act states that these purposes are achieved by having regard to:

(i) requirements for timely, accurate and efficient disclosure of information;

(ii) restrictions on fraudulent and unfair market practices and procedures; and

(iii) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[183] The Supreme Court of Canada has confirmed the Commission's broad jurisdiction to intervene on public interest grounds where doing so would further the purposes of the Act. However, the Court noted that the Commission's jurisdiction is constrained by the purposes of the Act and the regulatory nature of section 127. The primary purpose of an order under section 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets (*Asbestos, supra* at paras. 42, 43 and 45; see also *Patheon, supra* at para. 114).

[184] The Commission has held that it is entitled to intervene on public interest grounds in conduct that is technically in compliance with securities law requirements but that is inconsistent with the animating principles underlying those requirements or is abusive of investors or the capital markets. The Commission may find conduct to be abusive if a proposed transaction is artificial and defeats the reasonable expectations of investors or shareholders (*Re Canadian Tire, supra*; *Re H.E.R.O., supra* at p. 3776; *Re Financial Models* (2005), 28 OSCB 2184 and *Patheon*, *supra* at para. 116).

[185] The Commission recognized in *Re Canadian Tire* that it should act to restrain a transaction that is clearly abusive of shareholders and of the capital markets, whether or not that transaction constitutes or involves a breach of Ontario securities law. The Commission's mandate under section 127 is not, however, to intervene in transactions under some rubric of ensuring fairness. To invoke its public interest jurisdiction, in the absence of a demonstrated breach of securities law or the animating principles underlying that law, a transaction must be demonstrated to be abusive of shareholders in particular, or of the capital markets in general. A showing of abuse is something different from, and must go beyond, a complaint of unfairness (See *Re Canadian Tire, supra* and *Re Canfor Corp.* (1995), 18 OSCB 475, 487).

3. Analysis

[186] While the Commission has a broad public interest jurisdiction, that jurisdiction must be exercised for appropriate regulatory purposes and with some caution and restraint. Where there is no breach of Ontario securities law, the Commission should generally act under its public interest jurisdiction only where there is conduct inconsistent with Ontario securities law or the animating principles underlying that law, or an abuse of shareholders or the capital markets. It was held in *Re Cablecasting Ltd.*, [1978] OSCB 37 that the Commission will be less reluctant to exercise its public interest authority where the principle of a new policy ruling is foreshadowed by principles already enunciated under Ontario securities law or in existing policy statements. The Commission stated:

> Another relevant consideration in assessing whether to act against a particular transaction is whether the principle of the new policy ruling that would be required to deal with the transaction is foreshadowed by principles already enunciated in the Act, the regulations or prior policy statements. Where this is the case the Commission will be less reluctant to exercise its discretionary authority than it will be in cases that involve an entirely new principle.
>
> (*Cablecasting, supra* at p. 43)

[187] In *Re Canadian Tire*, the issue before the Commission was whether a take-over bid that was made in compliance with applicable Ontario securities law was nonetheless abusive of shareholders and the capital markets. In *Re Canadian Tire*, the transaction was structured by an offeror to avoid triggering a coat-tail provision for the benefit of the holders of Class A non-voting shares of Canadian Tire Corporation, Limited ("**Canadian Tire**"), while paying a huge control premium for the common shares of Canadian Tire. The Commission found that the transaction was grossly abusive of shareholders and should be cease traded in the public interest.

[188] In our view, the key finding in *Re Canadian Tire* was that the public holders of Class A non-voting shares of Canadian Tire had a reasonable expectation, as a result of the coat-tail protection contained in Canadian Tire's articles, that they would share in any control premium being paid for the common shares. That reasonable expectation was being frustrated by an artificial transaction structured specifically to avoid triggering the coat-tail protection. The holders of common shares, including the controlling shareholders of Canadian Tire, were receiving an offer for their shares at a huge premium to the market price of those shares. Public holders of Class A non-voting shares were not receiving any offer for their shares and they were not being given any right to vote on or approve the offer made to the holders of common shares. In those circumstances, the Commission concluded that the offer being made to the holders of common shares was grossly abusive, undermined confidence in the capital markets and should be restrained.

[189] The circumstances before us in this matter were quite different. There was no "coat-tail" protection available to the Class A Shareholders and there was no sunset provision applicable to Magna's dual class share structure. As a result, the Stronach Trust was legally entitled to sell its Class B Shares to any purchaser at whatever price it negotiated. Holders of Subordinate Voting Shares knew when they purchased their shares that they had no right to participate in any such

offer (see paragraph 66 of these reasons for an example of the public disclosure made in this respect). As a result, in our view, the Class A Shareholders had no reasonable expectation that they would share in any control premium being paid for the Class B Shares. In addition, and most importantly, the Class A Shareholders were being given the right to vote on and approve the Proposed Transaction. There is a financial rationale why the Class A Shareholders might wish to vote in favour of that transaction. If Class A Shareholders did not vote to approve the Proposed Transaction, it would not proceed.

[190] If approval by a majority vote of the minority Class A Shareholders had not been a requirement for proceeding with the Proposed Transaction, we have little doubt that we would have restrained it as an abusive related party transaction.

[191] It seemed to us that the primary complaint of the Opposing Shareholders was that the price proposed to be paid by Magna to the Stronach Trust for the Class B Shares was excessive and unprecedented. In our view, a transaction is not abusive simply because certain investors or shareholders consider the price proposed to be paid to be outrageous. There are other Class A Shareholders who see the financial benefits to them of the Proposed Transaction and support proceeding with it. It is not our role as securities regulators to assess the desirability of the Proposed Transaction from a financial or economic standpoint. That is ultimately for the Class A Shareholders to determine.

[192] The Class A Shareholders will suffer the dilution from the Proposed Transaction and will have some portion of the potential benefits arising from it. In our view, the Class A Shareholders should be entitled to decide for themselves whether the Proposed Transaction proceeds. They will make that decision through the proposed majority of the minority shareholder vote.

[193] Accordingly, in our view, once the issue of adequate disclosure was addressed, there were no valid grounds for us to conclude in the circumstances that the Proposed Transaction was abusive of Class A Shareholders or should be restrained on other grounds. It is clear from Commission decisions that any view or perception that we may have as to the possible unfairness of a transaction is not a sufficient ground upon which we can or should intervene in the public interest.

[194] All of the Class A Shareholders would have no doubt preferred that the Stronach Trust sell its Class B Shares to Magna at a lower price. However, such a transaction does not appear to have been available. A controlling shareholder is entitled to decide whether and on what terms it is prepared to sell its control block (see *Benson et al. v. Third Canadian General Investment Trust Ltd.* (1993), 14. O.R. (3d) 493). The Court concluded in that case that:

> The AGF bid stirred up the pot and got some (and possibly many) shareholders drooling for an opportunistic one-time value bump. However, this dessert was not on the menu. …

[195] We would simply add for clarity that we should not be taken to be suggesting that shareholder approval can remedy a transaction or circumstances that are abusive of shareholders or the capital markets. To the contrary, if a transaction is abusive, then shareholder approval will not be sufficient.

4. Conclusion

[196] Based on the evidence before us, and given the requirement for majority of the minority Class A Shareholder approval of the Proposed Transaction, we were not persuaded that the Proposed Transaction was abusive or that we should intervene in the public interest on other grounds.

C. Did the Magna Board Comply with its Fiduciary Duties in Submitting the Proposed Transaction to Shareholders?

Opposing Shareholders' Submissions

[197] The Opposing Shareholders also submitted that directors of a corporation are required to make decisions in the best interests of the corporation. They submitted that the Magna directors did not make a decision as to whether the Proposed Transaction was in the best interests of Magna. Instead, they said that the directors abdicated their responsibility by, in effect, delegating the decision to the Class A Shareholders and the Ontario Superior Court of Justice. The Opposing Shareholders submitted that the directors' failure to exercise their fiduciary duties resulted in a fundamental decision about Magna being made by shareholders who do not have access to the information required to make an informed decision. They submitted that, in view of the directors' failure to comply with their fiduciary duties, it was abusive and contrary to the public interest for Magna to ask shareholders to vote on the Proposed Transaction.

Analysis

[198] It is not our principal jurisdiction to assess or determine whether directors have complied with their fiduciary duties in connection with a proposed transaction. That is primarily a corporate law matter. The Commission has, however, in a number of decisions, when applying its public interest jurisdiction or other provisions of applicable Ontario securities law, considered the role and process followed by a board of directors or a special committee of independent directors in reviewing and approving a transaction or matter (see, for instance, *Re Standard Trustco Ltd. et al* (1992), 6 B.L.R. (2d) 241, *YBM, supra*, *Re Sears Canada, supra*, *Re AiT Advanced Information Technologies Corp.* (2008), 31 OSCB 712, *Re Rowan* (2008), 31 OSCB 6515) and *Re Neo Material Technologies Inc.* (2009), 32 OSCB 6941). In *Re Hudbay Minerals Inc.* (2009), 32 OSCB 1044, we stated that "[t]hese kinds of issues are not solely matters for the courts."

[199] MI 61-101 and the Companion Policy are clear that the review and approval process followed by a board are relevant considerations for the Commission both as a disclosure and substantive matter in connection with a transaction that is subject to that Instrument. We address that review and approval process later in these reasons.

[200] As noted in paragraph 124 of these reasons, the Companion Policy applies to the Proposed Transaction. The Companion Policy recommends as good practice that a related party transaction be negotiated, or reviewed and reported upon, by a special committee of disinterested directors. Subsection 6.1(5) of the Companion Policy provides that:

> To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing our interest in maintaining capital markets that operate efficiently, fairly and with integrity. *While the Instrument only mandates an independent committee in limited circumstances, we are of the view that it generally would be appropriate for issuers involved in a material transaction to which the Instrument applies to constitute an independent committee of the board of directors for the transaction….* [emphasis added]

[201] Magna purported to follow that recommendation by appointing the Special Committee to review the Proposed Transaction and report to the Magna Board as to whether it should be submitted to Class A Shareholders for their consideration. We have no reason to believe that by submitting the Proposed Transaction to shareholders for their consideration in these circumstances, the Magna Board or Special Committee improperly delegated that decision to shareholders or thereby breached their fiduciary duties.

[202] We do not accept that, in these circumstances, there is any fundamental corporate or securities law impediment preventing the Magna Board and Special Committee from putting the Proposed Transaction to the Class A Shareholders for a vote. To the contrary, as noted above, we believe that the Class A Shareholders are the persons entitled to decide whether the Proposed Transaction proceeds.

[203] In any event, we would hesitate to address the question of compliance by the Magna Board with its fiduciary duties in these circumstances based on a day and a half hearing with the limited record that was before us.

D. Was the Process Followed by the Magna Board and the Special Committee in Reviewing the Proposed Transaction Inadequate?

1. Submissions

Staff Allegation

[204] Staff alleged that:

> …
>
> (ii) the purchase by Magna of the Class B shares of Magna held by the Stronach Trust as part of the Proposed Transaction, in these novel and unprecedented circumstances, is contrary to the public interest and should be cease traded because:
>
> …

(b) the approval and review process followed by the Magna Board in negotiating the arrangement and proposing it to the holders of the Subordinate Voting Shares was inadequate.

[205] Staff submitted in this respect that the material terms of the Proposed Transaction were settled by executive management and the Stronach Trust without sufficient oversight and input by the Special Committee. Staff submitted that the whole process related to the review and consideration of the Proposed Transaction by the Special Committee was "management driven".

Opposing Shareholders

[206] The Opposing Shareholders submitted that the Proposed Transaction was substantially negotiated between executive management and the Stronach Trust and no attempt was made to determine the fair market value of the Class B Shares. Accordingly, the approval and review process related to the Proposed Transaction was inadequate.

Magna Submissions

[207] Magna submitted that its board of directors engaged in an appropriate, proper and thorough process prior to submitting the Proposed Transaction to shareholders for their consideration. Magna submitted that the Proposed Transaction, by necessity, had first to be acceptable to and supported by the Stronach Trust. The Magna Board established the Special Committee which, through the course of 10 meetings held between April 8, 2010 and May 5, 2010, considered and reviewed issues related to the Proposed Transaction, with the assistance of its own independent financial and legal advisors. Magna submitted that, in the proper exercise of its business judgment, the Magna Board determined, on the recommendation of the Special Committee, that it was in the best interests of Magna to submit the Proposed Transaction to a vote of shareholders and to structure the transaction as an arrangement so that it would be subject to approval by the Ontario Superior Court of Justice after a fairness hearing.

[208] Magna submitted that this proceeding was initiated as a result of Staff and the Opposing Shareholders concluding that the price to be paid for the cancellation of the Class B Shares was excessive and objectionable, and as a consequence, they inferred that the Special Committee's process must have been flawed.

Special Committee

[209] As noted above, the Special Committee submitted that it engaged in a proper and thorough process, independent of executive management and the Stronach Trust. The Special Committee noted that as part of that process it received independent legal advice and independent financial advice from CIBC and PwC.

2. The Law

[210] As discussed above, the Proposed Transaction was a related party transaction between Magna and its controlling shareholder and was subject to MI 61-101. As indicated in the Companion Policy, related party transactions "are capable of being abusive or unfair" and such transactions give rise to potential conflicts of interest.

[211] The Companion Policy contemplates that a committee of independent directors should negotiate, or review and report on, a related party transaction such as the Proposed Transaction. That practice furthers the fundamental purpose of MI 61-101 to ensure that, "all security holders are treated in a manner that is fair and that is perceived to be fair" (section 1.1 of the Companion Policy).

[212] We have discussed above our views with respect to whether the Magna Board was required to make a recommendation to Class A Shareholders as to how they should vote on the Proposed Transaction, whether a fairness opinion should have been provided and whether the Magna Board was acting in accordance with its fiduciary duties in putting the Proposed Transaction to a shareholder vote. We will address here only the challenge to the Magna Board and Special Committee process in reviewing the Proposed Transaction.

3. Analysis

[213] Consistent with the Companion Policy, the Special Committee was formed to review and consider the proposal that ultimately led to the Proposed Transaction. In considering the Proposed Transaction, it is clear that the Special Committee was aware of and concerned with the conflict of interest inherent in Magna entering into a material related party transaction with its controlling shareholder.

[214] Our principal concerns with respect to the Magna Board and Special Committee process related to (i) the actions of executive management in negotiating the terms of a proposal with Mr. Stronach when executive management became aware that Mr. Stronach was prepared to consider a transaction that could eliminate Magna's dual class share structure, (ii) the narrow mandate of the Special Committee, and (iii) whether the Magna Board and Special Committee sufficiently addressed in the Circular the desirability or fairness of the Proposed Transaction to Class A Shareholders.

Involvement of Executive Management

[215] The members of executive management (Mr. Walker, Mr. Galifi and Mr. Palmer) had a fundamental conflict of interest in attempting to negotiate the terms of a transaction with Mr. Stronach, who was both their boss and the controlling shareholder of Magna. Apart from the inherent conflict in negotiating a transaction with Mr. Stronach, the members of executive management of Magna may also have had a personal interest in whether or not Mr. Stronach continued in a management role at Magna and on what terms.

[216] In our view, when Mr. Galifi and Mr. Palmer became aware that Mr. Stronach was prepared to at least consider a transaction collapsing Magna's dual class share structure, the matter should have been immediately referred to the Magna Board. Executive management was fundamentally conflicted in purporting to negotiate with Mr. Stronach and it appears that they did so without any independent financial advice, including advice as to the terms of comparable transactions. The result was that the Special Committee was faced with a transaction that had been substantially negotiated and agreed to by Magna and the Stronach Trust and that was presented to it as essentially a "take it or leave it" proposition.

[217] While the Circular referred to the proposal resulting from the discussions between senior management and Mr. Stronach as a "conceptual proposal", the key elements of that conceptual proposal, including the cash and share purchase price payable for the Class B Shares, were ultimately reflected in the Proposed Transaction. The Special Committee was unsuccessful in negotiating any material changes to the principal elements of the so-called conceptual proposal (although the Special Committee was able to negotiate the changes referred to in paragraph 80 of these reasons).

[218] We do not accept that it was necessary for executive management to negotiate a proposal with the Stronach Trust before the matter could be referred to the Magna Board. In our view, the process of negotiation was a key aspect of the process that should have been conducted or overseen by the Special Committee. Accordingly, in our view, the Special Committee process followed by the Magna Board in considering and reviewing the Proposed Transaction was defective from the start. That defect was not remedied by the fact that the Special Committee as part of its process met with its own advisors without the presence of executive management for a portion of each meeting.

Special Committee Mandate

[219] The Special Committee's mandate as disclosed in the Circular was to review and consider the Proposal "as it was developed by executive management for submission initially to the Stronach Trust, and if acceptable to the Stronach Trust, to report to the Magna Board as to whether the Proposal should be submitted to the [Class A Shareholders] for their consideration."

[220] There were at least three fundamental problems with that mandate.

[221] First, the Special Committee appears to have been limited to considering and reviewing the Proposal "developed by executive management for submission initially to the Stronach Trust". As noted above, executive management had a fundamental conflict of interest in negotiating any aspect of the Proposed Transaction with the Stronach Trust. The Special Committee should not have been limited in its terms of reference to considering only the Proposal developed by executive management with the Stronach Trust.

[222] Second, the Special Committee's mandate was only to "review and consider" the Proposal. It was not authorized to negotiate those terms, although the Special Committee appears to have taken a broader view of its mandate.

[223] Third, the Special Committee's mandate was only to "report to the Magna Board as to whether the Proposal should be submitted to the Class A Shareholders for their consideration". Accordingly, the Special Committee, by its mandate, was not to consider broader issues such as whether the Proposed Transaction was in the best interests of, or was fair to, the Class A Shareholders. By its mandate, the Special Committee was only to decide whether the Proposed Transaction should be submitted to a shareholder vote.

[224] In our view, the Special Committee's mandate and terms of reference were, in the circumstances, fundamentally flawed. The mandate and terms of reference of the Special Committee were tied to executive management's involvement in the process, were too narrow

and did not authorize the Special Committee to address the key question: whether the Proposed Transaction was fair to the Class A Shareholders.

[225] Further, the Circular states that "the Special Committee and its advisors made a variety of observations and commentary to executive management with respect to the key elements of the Proposal". Why the Special Committee would make suggestions to executive management and not directly to the Stronach Trust is beyond us. The Special Committee should have been dealing with the Stronach Trust, not executive management. That concern is reinforced by the statement in the Circular that "[i]n addition, the Chair of the Special Committee met personally with both Mr. Stronach and Ms. Belinda Stronach, in their capacity as representatives of the Stronach Trust, to discuss certain key issues considered by the Special Committee concerning the financial and other terms of the Proposal".

[226] Accordingly, the Special Committee process appears to have been tainted by the involvement of executive management at the start of and during the process, and the Special Committee's mandate and terms of reference were too narrow and fundamentally flawed.

Desirability or Fairness of the Proposed Transaction

[227] The key question that should have been more fully addressed by the Magna Board and Special Committee was the desirability or fairness of the Proposed Transaction to Class A Shareholders. The need to address that question is made clear by the terms of the Companion Policy referred to in paragraph 124 of these reasons. There was no evidence before us indicating that question was considered by the Special Committee. The minutes of the meetings of the Special Committee did not reflect any direct consideration of that question and the only recommendation made by the Special Committee was that the Proposed Transaction be submitted to a shareholder vote. We do not accept that the Special Committee was unable to appropriately address the fairness of the Proposed Transaction because no fairness opinion was available to the Special Committee from its financial advisors. That is a separate and different issue.

No Intervention

[228] We considered intervening in the Proposed Transaction on the grounds that the Special Committee process was inadequate. Ultimately, however, we were not satisfied that we had sufficient evidence before us of the actual process followed by, and the actual deliberations of the Special Committee, to come to a definitive conclusion. The conclusions set forth above are based on the disclosure in the Circular and a review of Mr. Harris' affidavit and the minutes of the meetings of the Special Committee attached to that affidavit. We had very limited additional information with respect to the Special Committee process. Further, detailed submissions were not made by Staff or the Opposing Shareholders with respect to the specific issues discussed above. As a result, Magna and the Special Committee did not make submissions to us with respect to those matters. Accordingly, we concluded, on balance, that we did not have sufficient evidence or grounds to intervene in the Proposed Transaction on the basis that the Special Committee process was inadequate.

[229] We would add that the Stronach Trust was certainly entitled to take the negotiating positions it did in bringing the Proposed Transaction forward. Even if the conceptual proposal had been immediately referred to the Magna Board and the Special Committee, that may have made no difference in terms of the transaction that the Stronach Trust was prepared to consider or agree to. Certainly, Mr. Stronach stated that he was content with the status quo and showed no inclination to negotiate with the Special Committee the principal elements of, or the cash and share consideration payable under, the Proposed Transaction. On the other hand, early board involvement in the discussions might have led down a different road. If directors wish to obtain the benefits arising from the review of a related party transaction by a special committee of independent directors, they must ensure that the process followed appropriately manages the conflicts of interest of all parties and that the mandate of that committee is sufficiently broad and authorizes the Special Committee to address the key issues in the circumstances.

4. Conclusion

[230] While we came to the conclusions referred to in paragraph 226 with respect to the Special Committee review process, we were not satisfied, on balance, that we had sufficient evidence or grounds to intervene in the Proposed Transaction on that basis.

E. Should a Formal Valuation be required of the Subject Matter of the Proposed Transaction?

1. Submissions

[231] Staff submitted that when examining transactions under MI 61-101 from a public interest perspective, the Commission should take a purposive approach to the interpretation of the applicable requirements. Commission intervention is justified based not only on technical non-compliance, but where conduct is inconsistent with the principles underlying MI 61-101 or is designed to avoid the application of the procedural protections contained in MI 61-101. Staff submitted that a formal valuation should be required in connection with the Proposed Transaction in the circumstances.

[232] The Opposing Shareholders submitted that, in fairness to shareholders, we should have required that a formal valuation be prepared in connection with the Proposed Transaction notwithstanding the availability of the Market Cap Exemption. As noted above, the Opposing Shareholders also submitted that the Proposed Transaction was, in substance, an issuer bid and that, as an issuer bid, a formal valuation would have been required under MI 61-101.

[233] Magna submitted that the Proposed Transaction was exempt under MI 61-101 from the valuation and minority approval requirements applicable to related party transactions because of the availability of the Market Cap Exemption. That exemption establishes a bright line test for determining when a related party transaction is of sufficient size to require the additional protections afforded by MI 61-101. Magna submitted that it was entitled to rely on the Market Cap Exemption.

[234] Magna also submitted that a formal valuation of the Class B Shares was not relevant to Class A Shareholders. Magna said that the principal way the market assesses transactions such as

the Proposed Transaction is by the amount of dilution that will be suffered by shareholders. A formal valuation of the Class B Shares would not be relevant to that assessment.

2. Analysis

[235] Magna disclosed in the Circular that the Proposed Transaction was exempt from the valuation and minority approval requirements applicable to related party transactions because of the availability of the Market Cap Exemption.

[236] Sections 5.5 and 5.7 of MI 61-101 exempt an issuer from complying with the minority approval and formal valuation requirements of MI 61-101 where "at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction … exceeds 25 per cent of the issuer's market capitalization…". The purpose of the Market Cap Exemption is to require that only very large related party transactions comply with the valuation and minority approval requirements of MI 61-101.

[237] Under MI 61-101, in determining the availability of the Market Cap Exemption, an issuer must aggregate the fair market values of any "connected transactions" that are also related party transactions. "Connected transactions" are defined in section 1.1 of MI 61-101 as two or more transactions that have at least one party in common and (a) are negotiated or completed at approximately the same time, or (b) the completion of at least one of the transactions is conditional on the completion of each of the other transactions.

[238] The purpose of the connected transaction concept is to link related transactions and to prevent an issuer from arbitrarily dividing a transaction into smaller parts in order to obtain the benefit of the Market Cap Exemption. The connected transaction concept is therefore an anti-avoidance provision.

[239] Under MI 61-101, the Proposed Transaction could have been carried out without approval by a majority vote of the minority Class A Shareholders because of the availability of the Market Cap Exemption. However, apparently at the insistence of both the Special Committee and the Stronach Trust, the Proposed Transaction was to be put to a majority of the minority shareholder vote to ensure that the Class A Shareholders had the right to determine whether the Proposed Transaction proceeded. As a result, the Proposed Transaction was to be implemented only if a majority of the votes cast by minority Class A Shareholders were in favour of the Proposed Transaction.

[240] No one made a compelling argument to us that the Market Cap Exemption did not apply by its terms to the Proposed Transaction. We did require pursuant to our Decision, however, that fuller information be included in the Circular with respect to the availability of that exemption. In particular, we required that Magna clarify its financial analysis related to the conclusion that the Market Cap Exemption was available in connection with the Proposed Transaction. That clarification was to include whether the amendments to the Consulting Agreements were "connected transactions" and the fair market values used for each component of the consideration to be paid to the Stronach Trust, including the interest in the E-Car Partnership and the amendments to the Consulting Agreements. The inclusion of those elements as non-cash consideration caused us some concern in considering whether the Market Cap Exemption was

available. At the end of the day, however, those elements of the Proposed Transaction did not put into question the availability of the Market Cap Exemption.

[241] The availability of the Market Cap Exemption also meant that no formal valuation was required with respect to the Proposed Transaction under MI 61-101.

No Formal Valuation

[242] As noted above, the Opposing Shareholders submitted that the Proposed Transaction, while structured as an arrangement, was in substance an issuer bid. They submitted as a result that a formal valuation should have been required under section 3.3 of MI 61-101. It appeared to us, however, that the Proposed Transaction was structured as an arrangement in order to engage the requirement for a court determination of the fairness of that transaction. That is an appropriate safeguard for shareholders. It did not appear to us that the Proposed Transaction was structured in that manner for the purpose of avoiding the requirement for a valuation in connection with an issuer bid.

[243] That submission also seemed to us to be inconsistent with the substance of the Proposed Transaction. A formal valuation of the shares to be acquired under an issuer bid is required so that the shareholders receiving the issuer bid have sufficient information as to the fair market value of the shares they hold so that they can decide whether to tender those shares for the price offered under the issuer bid. In the case of the Proposed Transaction, that offer is being made only to the Stronach Trust, not to the Class A Shareholders.

[244] The Opposing Shareholders also submitted, however, that the fair market value of the Class B Shares was nonetheless relevant to Class A Shareholders in deciding how to vote on the Proposed Transaction. That is to say that the fair market value of the Class B Shares, and any non-cash consideration being paid for those shares, was relevant to Class A Shareholders in deciding whether the consideration payable to the Stronach Trust under the Proposed Transaction was excessive and whether they should vote in favour of that transaction.

[245] We agree that information with respect to the fair market value of the Class B Shares, and any non-cash consideration being paid for them, was relevant to the Class A Shareholders in deciding how to vote on the Proposed Transaction.

[246] It was clear, however, that the consideration being paid to the Stronach Trust for the Class B Shares far exceeded the fair market value of the Subordinate Voting Shares (one may view the market price of those shares as a measure against which to consider the amount of the consideration being paid for the Class B Shares). As the Opposing Shareholders pointed out, the premium being paid was 1,800% of the market price of the Subordinate Voting Shares. The Class A Shareholders were certainly aware of the market price of the Subordinate Voting Shares. However, the consideration being paid to the Stronach Trust was justified primarily on the basis that the Class A Shareholders would benefit from the increase in the trading multiple of the Subordinate Voting Shares as a result of the elimination of the dual class share structure. Class A Shareholders would assess that potential benefit relative to the dilution they would suffer as a result of the Proposed Transaction. That rationale for the Proposed Transaction did not turn on the fair market value of the Class B Shares.

[247] In the circumstances, Magna was not legally required under MI 61-101 to prepare a formal valuation in respect of the Class B Shares, or of the non-cash consideration being paid for those shares, because of the availability of the Market Cap Exemption. If a formal valuation had been required under MI 61-101, we would not have granted an exemption from that requirement because the fair market value of the Class B Shares, and of any non-cash consideration, was certainly relevant to the decision of Class A Shareholders in deciding how they should vote on the Proposed Transaction.

[248] On balance, however, we concluded that a formal valuation was not necessary to the decision of the Class A Shareholders given the economic rationale for the Proposed Transaction. We considered more relevant the information we required to be disclosed in the Circular relating to historical transactions in which dual class share structures have been collapsed. It seemed unlikely to us in the circumstances that a formal valuation of the Class B Shares would have affected how the Class A Shareholders would view or vote on the Proposed Transaction. The requirement to prepare a formal valuation is a disclosure matter and does not affect the consideration that may be paid pursuant to a transaction.

[249] Accordingly, we were not satisfied that there were sufficient grounds for us to require Magna to prepare a formal valuation in connection with the Proposed Transaction. Market participants are entitled to rely on the provisions of MI 61-101 in structuring corporate transactions. The Commission should hesitate to impose a requirement for a formal valuation, where one does not otherwise apply, except in clear and compelling circumstances.

3. Conclusion

[250] We concluded that no formal valuation was required in connection with the Proposed Transaction under MI 61-101 and that there were insufficient grounds to unilaterally impose such a requirement.

XI. EVENTS SUBSEQUENT TO THE RELEASE OF OUR DECISION

[251] At the time of the hearing, the special meeting of shareholders to vote on the Proposed Transaction was scheduled for the following Monday, June 28, 2010, and a final hearing to approve the terms of the arrangement on the basis that it is fair and reasonable (pursuant to section 182(5) of the OBCA) was scheduled to take place on June 29, 2010, before a Judge of the Ontario Superior Court of Justice.

[252] As a result of our Decision and order, Magna postponed the special meeting of shareholders to July 28, 2010 and issued a supplement Circular containing additional disclosure in response to our Decision.

[253] We understand that a draft of the supplement Circular was provided to Staff, that Staff communicated a number of comments to Magna and that, as a result of the responses to those comments, Staff had no further comments on the draft supplement. On July 9, 2010, Magna mailed the supplement to the Circular to shareholders.

[254] This Panel did not review the disclosure in the supplement mailed to shareholders. We were not called upon to do so and that was not our role.

[255] The special meeting of shareholders was held on July 28, 2010 and the Proposed Transaction was approved in accordance with the requirements set out in the Interim Order dated May 31, 2010 of the Ontario Superior Court of Justice. The Proposed Transaction was approved by approximately 75% of the votes cast by minority Class A Shareholders, voting separately as a class.

[256] The Ontario Superior Court of Justice held a hearing on August 12 and 13, 2010 to consider the application by Magna for an order approving the proposed arrangement.

[257] On August 17, 2010, the Ontario Superior Court of Justice issued a decision approving the proposed arrangement (pursuant to subsections 182(3) and 182(5) of the OBCA) on the grounds that Magna had satisfied the "fair and balanced" test applicable to the Court's approval of an arrangement. The Court cited the fact that Magna's Class A Shareholders voted approximately 75% in favour of the Proposed Transaction. The Court stated that the fair and balanced test is based on three indicia of fairness: (i) the outcome of the shareholder vote, upon which considerable reliance can be placed; (ii) the market reaction to the announcement of the Proposed Transaction, which provides evidence that market participants believed that there was a reasonable possibility of achieving the potential benefits upon which the transaction was premised and therefore that the Proposed Transaction was not inherently unfair; and (iii) the presence of a liquid trading market in which Class A Shareholders who opposed the Proposed Transaction could sell their shares at prices that had not been demonstrated to have been reduced as a result of the announcement of the Proposed Transaction.

[258] On August 26, 2010, certain shareholders of Magna appealed to the Ontario Divisional Court to overturn the Court decision approving the Proposed Transaction. On Monday, August 30, 2010, one day before the August 31, 2010 deadline for completion of the Proposed Transaction, a three-member panel of the Ontario Divisional Court dismissed the appeal.

[259] We understand that the Proposed Transaction was completed in accordance with its terms.

XII. CONCLUSION

[260] For the reasons discussed above, we concluded that it was in the public interest to issue an order that, amongst other things, cease traded the Subordinate Voting Shares to be issued by Magna in connection with the Proposed Transaction until such time as Magna amended the Circular in accordance with our Decision (see paragraph 19 of these reasons for details of that order).

Dated at Toronto this 31st day of January, 2011.

"*James E. A. Turner*"

James E. A. Turner

"*Paulette L. Kennedy*"

Paulette L. Kennedy

"*C. Wesley M. Scott*"

C. Wesley M. Scott

SCHEDULE A
Extract from the Magna Management Information Circular/Proxy Statement
Dated May 31, 2010
(See "Background to the Proposal and the Arrangement" commencing with the fourth paragraph on page 6 of the Circular.)

"The Magna Board has been concerned for some time about succession issues. In the few years preceding the Russian Machines Transaction (as described below), Mr. Stronach had been approached by several potential investors and intermediaries with privatization and other restructuring proposals which could have enabled the Stronach Trust to realize significant value from its control block. None of these overtures met the approval of the Stronach Trust for a variety of reasons, including concerns and issues related to the preservation of Magna's competitive profile for the benefit of all stakeholders and, in particular, concerns over Magna taking on any significant financial leverage.

During the fall of 2006, discussions were held with Basic Element Limited, the parent company of Russian Machines, to explore a possible framework for a privatization proposal. Again, in light of concerns regarding the assumption of significant debt in connection with any privatization proposal and given the uncertain industry outlook at that time, the privatization concept was ultimately rejected.

In August 2007, Magna, with the approval of its shareholders (including a majority of the minority holders of Subordinate Voting Shares), entered into a plan of arrangement with Russian Machines, the Stronach Trust and certain members of executive management pursuant to which, among other things, Russian Machines purchased from treasury 20 million Subordinate Voting Shares for approximately $1.54 billion and the Stronach Trust and Russian Machines entered into a strategic alliance. The effect of such alliance was that the Stronach Trust continued to control Magna, Russian Machines was entitled to appoint nominees for election to the Magna Board and the Stronach Trust and Russian Machines shared equally in all the dividends and capital appreciation on their pooled beneficial ownership of shares of Magna (the "Russian Machines Transaction"). As part of the Russian Machines Transaction, the Stronach Trust became the indirect beneficial owner of all the outstanding Class B Shares and the voting power attached to the Class B Shares was reduced from 500 votes to 300 votes per share in order to preserve the pre-transaction voting interests between the Subordinate Voting Shares and the Class B Shares. For reasons unrelated to Magna or the Stronach Trust, this alliance was dissolved in the fall of 2008.

… In the fall of 2009, executive management and the Corporate Governance and Compensation Committee of the Board commenced a review of potential structures and incentives relating to Magna's vehicle electrification and product diversification strategies, including potential management co-investment rights.

In March 2010, these discussions led to a broader discussion between Mr. Stronach, Vincent J. Galifi, Executive Vice-President and Chief Financial Officer, and Jeffrey O. Palmer, Executive Vice-President and Chief Legal Officer, about succession planning and related issues. Knowing that investors and analysts had, for many years, expressed concerns regarding Magna's dual class share structure, Messrs. Galifi and Palmer asked Mr. Stronach whether he regarded the

Class B Shares as an inter-generational asset or whether he would possibly consider a transaction which would eliminate the dual class share structure as part of an overall reorganization to address succession concerns and related issues. Mr. Stronach indicated that, while he was content with the status quo, he would be willing to consider such a transaction provided it was supported by the holders of the Subordinate Voting Shares and did not jeopardize Magna's entrepreneurial culture or the key operating principles embodied in its Corporate Constitution.

In light of Mr. Stronach's response, executive management began to develop a conceptual proposal for a possible transaction which could be value enhancing for Magna and its shareholders and acceptable to the Stronach Trust. In developing the conceptual proposal, executive management took into account various factors, including the following:

- despite Magna's strong operating and financial performance, the Subordinate Voting Shares have traded at enterprise value to EBITDA multiples that are significantly below Magna's industry peers; … [Chart as to "Historical Enterprise Value / 1-Year Forward EBITDA" not reproduced];

- the potential positive impact on the trading price of the Subordinate Voting Shares of a transaction which results in the elimination of the dual class share structure;

- the expectation of increased marketability and improved liquidity of Magna's equity securities following the elimination of the dual class share structure;

- higher trading values and enhanced marketability would correspondingly enhance Magna's ability to raise equity capital at a lower cost of capital and make equity a more attractive currency for future potential acquisitions or investments;

- the opportunity for an orderly transition that ensures the preservation and promotion of Magna's core values and operating philosophies notwithstanding the elimination of the dual class share structure;

- the desirability of having Mr. Stronach continue to provide his insight and leadership to Magna through an appropriate transition period;

- the certainty regarding the future of Magna's consulting arrangements with Mr. Stronach and his affiliated entities resulting from a fixed expiry date and fixed annual fees payable under the Consulting Agreements;

- the concern expressed by some holders of Subordinate Voting Shares as to the alignment of interests of all Shareholders;

- the implied value of the Stronach Trust's control block in the Russian Machines Transaction, which was negotiated at arm's length;

- the implied value of the Stronach Trust's control block reflected in the arm's length privatization proposals previously discussed with potential investors and intermediaries;

- Mr. Stronach's desire for the Stronach Trust to have a continuing equity interest in Magna; and

- Mr. Stronach's desire to have a direct and controlling interest in Magna's vehicle electrification business (and historical co-participation precedents within the Magna Group consistent with that objective).

On April 5, 2010, Donald J. Walker, Co-Chief Executive Officer, and Messrs. Galifi and Palmer met with Mr. Stronach to discuss a conceptual proposal involving three principal elements: (i) Magna purchasing for cancellation all the Class B Shares for consideration comprised of 9,000,000 Subordinate Voting Shares and US$300 million in cash; (ii) amendments to the Consulting Agreements to provide for a five year non-renewable term and fixed, annual aggregate fees; and (iii) a partnership between the Stronach Trust and Magna in respect of the vehicle electrification business.

These members of executive management indicated that, if Mr. Stronach was willing to consider such a conceptual proposal, they would advise the Magna Board so that a special committee of independent directors could be established to oversee a process of reviewing the conceptual proposal. Mr. Stronach advised that he thought the conceptual proposal could possibly lead to an acceptable transaction, but emphasized that he was content with the status quo and that he wished to retain control of Magna's new operating group, the vehicle electrification initiative, because, in his view, it needed a "focused and strong hand" to guide it through its early and formative stages. He also indicated that he would not object to executive management working with the Magna Board to develop a more detailed proposal, but expressed his overriding concern for preserving the culture and key operating principles on which Magna had been built, particularly the Corporate Constitution, and further advised that any proposal would have to be supported by a majority of the minority holders of Subordinate Voting Shares even if such a vote was not legally required.

In order to explore whether such a conceptual proposal might be achievable, at executive management's request, a meeting of the Magna Board was called and held on April 8, 2010 at which the directors were informed of the conceptual proposal.

Special Committee Consideration and Review of the Proposal

At the April 8, 2010 meeting, the Magna Board established the Special Committee comprised of Michael D. Harris (Chair), Louis E. Lataif and Donald Resnick. The mandate of the Special Committee was to review and consider the Proposal as it was developed by executive management for submission initially to the Stronach Trust and, if acceptable to the Stronach Trust, to report to the Magna Board as to whether the Proposal should be submitted to the holders of Subordinate Voting Shares for their consideration. All independent directors were invited to participate in the Special Committee process and were notified of all scheduled meetings.

The Proposal that the Special Committee initially considered included the repurchase of all of the outstanding Class B Shares for consideration comprised of 9,000,000 newly issued Subordinate Voting Shares and US$300 million in cash; the amendment of the consulting,

business development and business services agreements between Magna and certain of its subsidiaries and Mr. Stronach and certain entities controlled by him to, among other things, extend them for a five-year, non-renewable term for fixed, aggregate annual fees; and the reorganization of Magna's vehicle electrification business by transferring Magna's E-Car operating group and related assets and liabilities into a limited partnership in exchange for an ownership interest in the limited partnership with the partnership to be effectively controlled by an entity associated with the Stronach Trust.

Immediately following the meeting of the Magna Board, the Special Committee held its organizational meeting. The Special Committee engaged CIBC as its independent financial advisor and Fasken Martineau DuMoulin LLP as its independent legal advisor to assist it in the performance of its work, as well as PwC as an independent financial advisor to prepare a valuation of the vehicle electrification business. The Special Committee also consulted as necessary with members of executive management of Magna and Osler, Hoskin & Harcourt LLP, legal counsel to Magna.

In conducting its review and consideration of the Proposal, the Special Committee met a total of 11 times between April 8 and May 5, 2010. In the course of its review and as the Proposal was refined, the Special Committee and its advisors made a variety of observations and commentary to executive management with respect to the key elements of the Proposal, including the procedural elements of the Proposal and certain financial terms of the Proposal. In addition, the Chair of the Special Committee met personally with both Mr. Stronach and Ms. Belinda Stronach, in their capacity as representatives of the Stronach Trust, to discuss certain key issues considered by the Special Committee concerning the financial and other terms of the Proposal.

Among other things, the Special Committee and its advisors determined that if the Proposal were to be submitted to Shareholders for their consideration, the Proposal should be subject to certain key procedural safeguards, including that it be: (i) approved by a majority of the votes cast at a special meeting by disinterested holders of Subordinate Voting Shares; and (ii) carried out as a plan of arrangement which would be subject to review by a court that would consider the fairness and reasonableness of the Proposal. In addition, the Special Committee and its advisors made a variety of observations and comments with respect to certain financial terms of the Proposal, which were considered in the refinement of the Proposal.

As part of its review process, the Special Committee considered and reviewed a substantial amount of information in consultation with its legal and financial advisors, including the following:

- potential alternatives to the Proposal, including maintaining the status quo as well as potential alternatives to specific terms of the Proposal;
- Magna's Restated Articles of Incorporation, including the terms of the Class B Shares and the Corporate Constitution;
- the potential benefits to Magna which could result from the elimination of the dual class share structure;

- a review of current and historical commentary from, among others, shareholders, analysts and institutional shareholder advisory firms regarding Magna's dual class share structure and governance structure;

- the stated intentions of Mr. Stronach as to the status quo and the conditions of his consideration of any Proposal, including as reflected in discussions between executive management and Mr. Stronach and between the Chair of the Special Committee and Mr. Stronach;

- advice and information, a written preliminary report and a written final report prepared by CIBC addressed to the Special Committee summarizing the financial analysis of CIBC in connection with the proposed repurchase of the Class B Shares, including a review of historical share conversion precedents involving the elimination of a dual class share structure, a peer benchmarking review, historical market valuation of the Subordinate Voting Shares and a review of the proposed repurchase of the Class B Shares, including information concerning dilution to the holders of Subordinate Voting Shares resulting from the Proposal, and a sensitivity analysis on the theoretical trading value of the Subordinate Voting Shares at a range of different trading multiples and reflecting the Proposal;

- the potential metrics by which the Proposal may be assessed by Shareholders and other third parties;

- the terms of the Consulting Agreements;

- the potential benefits to Magna and its subsidiaries of entering into the amendments to the Consulting Agreements contemplated by the Proposal;

- a report prepared by PwC and addressed to the Special Committee as to the estimated fair market value of the business of E-Car;

- information provided by executive management and management of E-Car concerning the business of E-Car, including its financial performance and prospects and the financial and business implications for Magna of the proposed establishment of the E-Car Partnership;

- Magna's five-year business plan (through December 31, 2014) relating to the business of E-Car;

- the proposed terms of the E-Car Partnership, including the relative control rights and equity interests of the partners, and the proposed terms of the transfer of the assets comprising the business of E-Car to the E-Car Partnership;

- the potential benefits to Magna of the establishment of the E-Car Partnership;

- information provided by executive management concerning the impact of the Proposal on Magna, if implemented, including information as to the potential financial impact and with respect to any material contracts to which Magna or any of its subsidiaries is a party;

- drafts of the Transaction Agreement to be entered into by Magna to govern the Proposal;

- potential implications for Magna in the event that the Proposal does not proceed, including if the Proposal is not approved or is announced and subsequently withdrawn; and

- advice from the Special Committee's independent legal advisors as to the role and duties of the Special Committee in its review of the Proposal.

The Proposal to be voted on by Shareholders developed since the original conceptual proposal was first presented to Mr. Stronach to reflect, among other things, further discussions between members of executive management and the Chair of the Special Committee and Mr. Stronach and Ms. Belinda Stronach, in their capacity as representatives of the Stronach Trust.

Determinations of the Special Committee

At a meeting of the Special Committee held on May 5, 2010, the Special Committee delivered its report to the Magna Board in which it concluded that the Magna Board should:

- submit the Arrangement Resolution to a vote of the Shareholders at the Meeting and, in furtherance thereof, authorize Magna to enter into the Transaction Agreement; and

- make no recommendation to Shareholders as to how they should vote in respect of the Arrangement Resolution but advise Shareholders they should take into account the considerations described below under "Factors Considered by the Special Committee", among others, in determining how to vote in respect of the Arrangement Resolution.

Factors Considered by the Special Committee

In reaching its conclusion, the Special Committee considered a number of factors, including the following:

- the Proposal is structured as a plan of arrangement under the OBCA requiring approval by, among others: (i) a majority of the votes cast by the Minority Class A Subordinate Voting Shareholders at a special meeting of Shareholders; and (ii) the Court after a hearing at which the Court will determine the fairness and reasonableness of the Proposal;

- if implemented, the Proposal would result in the elimination of Magna's dual class share structure which may provide some or all of the following benefits to Magna:

    - the trading price of the Subordinate Voting Shares may increase relative to the pre-announcement trading price to the extent that the trading price reflected a discount attributable to the dual class share structure;

- all Shareholders will have a vote in proportion to their relative equity stake in Magna, consistent with the capital structure of many of its competitors;

- certain investors who choose not to invest, or whose investment policies prevent them from investing, in shares of corporations with dual class share structures may now consider purchasing Subordinate Voting Shares, thereby potentially enhancing liquidity; and

- the Subordinate Voting Shares may be more attractive for purposes of raising capital or as acquisition currency in the future;

- the terms of the Class B Shares contain no "coat-tail" protection for the holders of the Subordinate Voting Shares in the event of a change of control transaction involving the purchase of the Class B Shares;

- there is no "sunset" provision under the terms of the Class B Shares pursuant to which the dual class share structure otherwise would terminate as of a specified date;

- the terms of the Transaction Agreement;

- each of Magna and the Stronach Trust retains the right to terminate the Transaction Agreement if it reasonably concludes, after discussions with the other parties to the Transaction Agreement, that shareholder approval of the Arrangement Resolution is unlikely to be received or if the Final Order is unlikely to be received before August 31, 2010;

- the Stronach Trust has agreed to support the Proposal, subject to approval by the holders of the Subordinate Voting Shares, and has confirmed that it is not willing to consider or support any alternative transaction at this time;

- the Stronach Trust has advised that, if the Arrangement is not implemented, it is content with maintaining the status quo;

- if the Proposal is not pursued, there is no assurance that any further proposal to eliminate the dual class share structure of Magna would be forthcoming;

- the Amended Consulting Agreements will provide certainty to Magna and to shareholders as to the term, scope and financial terms of Mr. Stronach's continued involvement with Magna;

- the purchase price for the assets that comprise the E-Car Partnership would be equal to fair market value as determined by mutual agreement taking into account the valuation work conducted by PwC for the Special Committee;

- the E-Car Partnership would mitigate the risks and expenditures that Magna would otherwise make in order to pursue the vehicle electrification business and, at the same

time, provide Magna with a substantial equity stake in the business and afford Magna preferred supplier status; and

- the Proposal is exempt from the formal valuation and minority approval requirements of MI 61-101.

In addition to the foregoing, the Special Committee considered advice from its independent legal and financial advisors, as well as Magna's legal advisors.

The Special Committee did not make any recommendation with respect to the Proposal, including as to the fairness of the Arrangement to Magna, its Shareholders or other stakeholders or as to how Shareholders should vote their Subordinate Voting Shares with respect to the Arrangement Resolution. The Special Committee is not making any such recommendation for a number of reasons, including those set out below:

- while the Proposal, if implemented, would result in the elimination of Magna's dual class share structure, certain of the benefits that may arise as a result were not capable of being quantified in advance, including the potential increase in the trading value of the Subordinate Voting Shares if the Proposal is implemented;

- advice from CIBC that, if Magna's potential purchase for cancellation of all of the outstanding Class B Shares in consideration for a combination of 9,000,000 newly-issued Subordinate Voting Shares and $300 million in cash were implemented, the dilution to the holders of Subordinate Voting Shares (disregarding the impact of any potential change in the trading multiple for the Subordinate Voting Shares as a result of the change in the capital structure) would be significantly greater than was the case for other historical transactions in which dual class share structures were collapsed. The historical transactions reviewed by CIBC were similar in some respects, but not identical, to the proposed repurchase of the Class B Shares; pursuant to the terms of its engagement with the Special Committee, CIBC did not provide a fairness opinion, adequacy opinion or formal valuation; and

- the unique circumstances of Magna and its relationship with its founder, Mr. Stronach, and the value placed on that relationship, including Mr. Stronach's influence on the culture and key operating principles on which Magna was founded, including the Corporate Constitution, and the significant growth and development of Magna since the implementation of Magna's dual class share structure.

In view of the numerous factors considered in connection with its evaluation of the Proposal, the Special Committee did not find it practicable to, and did not, quantify or otherwise attempt to assign relative weight to specific factors in reaching its conclusions. The foregoing discussion of the information and factors considered and evaluated by the Special Committee is not exhaustive of all factors considered and evaluated by the Special Committee. The conclusions of the Special Committee were made after considering the totality of the information and factors.

Determination of the Magna Board

The Magna Board has determined that it is in the best interests of Magna to submit the Arrangement Resolution to a vote of the Shareholders. In making this determination, Messrs. Stronach and Walker and Ms. Belinda Stronach, having declared their interests in the Arrangement due to their direct or indirect interests in the Stronach Trust, abstained from voting. At a meeting of the Magna Board held on May 5, 2010, the Magna Board authorized Magna to enter into the Transaction Agreement. The Transaction Agreement was entered into before the opening of trading on the TSX and the NYSE on May 6, 2010.

In accordance with the report of the Special Committee, the Magna Board has authorized the submission of the Arrangement Resolution to a vote of the Shareholders. Shareholders should carefully review and consider the Arrangement and the considerations identified by the Special Committee and the Magna Board, as described above under "Factors Considered by the Special Committee", and reach their own conclusions as to whether to vote for or against the Arrangement Resolution.

The Magna Board makes no recommendation as to how Shareholders should vote in respect of the Arrangement Resolution."