

2007 BCSECCOM 580

September 17, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act s. 114(2) Issuer Bids - Exemption from Issuer Bid Requirements - The issuer is making an issuer bid under a modified Dutch auction - It cannot disclose that it will take up and pay for shares deposited on a pro rata basis or the total number of shares it will acquire under the bid - The issuer is disclosing the maximum amount it will spend under the bid, and the minimum and maximum amount it will pay for shares tendered; as a result, the potential for confusion is minimal

Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with an issuer bid for its outstanding securities - A liquid market for the issuer's securities exists prior to the bid; after the bid, there will be a market for the issuer's securities that is not materially less liquid than before the bid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105(g), and 114(2)

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

Form 62-903F, Item 2 & Item 9

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,
Nova Scotia, New Brunswick and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Magna International Inc.
(the Filer)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of each of the Jurisdictions (the Legislation) that, in connection with the proposed purchase by the Filer of a portion of its outstanding Class A Subordinate Voting Shares (the Class A Shares) pursuant to an issuer bid (the Offer), the Filer be exempt from the requirements in the Legislation:

- (a) to take-up and pay for securities proportionately according to the number of securities deposited by each securityholder;
 - (b) to provide disclosure in the issuer bid circular dated August 13, 2007 and filed on SEDAR, as amended by a notice of variation dated September 6, 2007 (the Circular) of such proportionate take-up and payment;
 - (c) to state the number of securities sought under the Offer (the Number of Securities Requirement); and
 - (d) except in New Brunswick, Ontario and Québec, obtain a valuation of the Class A Shares and provide disclosure in the Circular of the valuation, or a summary of the valuation (the Valuation Requirement);
- (collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

The decision is based on the following facts represented by the Filer:

1. the Filer is a corporation governed by the *Business Corporations Act* (Ontario); the registered and head office of the Filer is located at 337 Magna Drive, Aurora, Ontario, L4G 7K1;

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2. the Filer is a reporting issuer or the equivalent in each of the provinces and territories of Canada and is not on the list of reporting issuers in default maintained by the securities regulatory authority of any such jurisdiction;
3. the authorized share capital of the Filer consists of an unlimited number of Class A Shares, 1,412,341 Class B Shares and 99,760,000 Preference Shares, issuable in series, all with no par value. As of July 16, 2007, a total of 109,463,768 Class A Shares and 1,092,933 Class B Shares were outstanding; no Preference Shares have been issued or are outstanding;
4. the Class A Shares and Class B Shares are listed and posted for trading on the TSX under the trading symbols "MG.A" and "MG.B", respectively; the Class A Shares are also listed and posted for trading on the New York Stock Exchange (NYSE) under the trading symbol "MGA"; on August 2, 2007 the closing price of the Class A Shares on the TSX was \$90.43 per Class A Share and, on such date, the Class A Shares had an aggregate market value of approximately \$9.9 billion, based on such closing price;
5. to the Filer's knowledge, no person or company holds more than 10% of the issued and outstanding Class A Shares; following completion of the investment in the Filer indirectly by Russian Machines and its wholly-owned subsidiary Veleron Holding B.V. (the Transaction) and prior to the completion of the Offer, M Unicar Inc. will hold, indirectly, 20,605,000 Class A Shares representing approximately 16% of the then issued and outstanding Class A Shares;
6. the Filer wishes to purchase outstanding Class A Shares through the Offer by way of the Circular prepared by the Filer and mailed to each Shareholder; the Filer anticipates using substantially all of the proceeds received from the issuance of 20 million Class A Shares pursuant to the Transaction to fund the acquisition of Class A Shares tendered to the Offer and accepted for purchase;
7. as specified in the Circular, the Filer is conducting the Offer under a Dutch Auction procedure as follows:
 - (a) the maximum dollar amount (the Specified Amount) that it intends to spend under the Offer is US\$1,536,600,000;
 - (b) the range of prices (the Range), being a range of prices of not more than US\$91.50 (the Maximum Price) per Class A Shares and not less than US\$76.50 (the Minimum Price) per Class A Share within which the Filer is willing to repurchase its Class A Shares under the Offer;

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- (c) the maximum number of 20,086,274 Class A Shares that the Filer will take up under the Offer;
- (d) a Shareholder wishing to tender to the Offer may tender all or a portion of its Class A Shares either pursuant to an Auction Tender (defined in subparagraph 7(e) below) or a Purchase Price Tender (defined in subparagraph 7(f) below);
- (e) in an Auction Tender, a Shareholder will be able to specify the lowest price within the Range at which it is willing to tender its Class A Shares and may deposit such Class A Shares at any price within the Range, in increments of a pre-determined amount per Class A Share;
- (f) in a Purchase Price Tender, a Shareholder who tenders Class A Shares but who has not made an Auction Tender will be deemed to have tendered such Class A Shares at the Purchase Price determined in accordance with subparagraph 7(h) below;
- (g) the Filer will accept for purchase without pro ration all Class A Shares deposited by any Shareholder who holds an odd lot (less than 100 Class A Shares), provided that such Shareholder deposits all of such Class A Shares at or below the Purchase Price;
- (h) the Purchase Price for all Class A Shares acquired by the Filer under the Offer will be determined based upon the number of Class A Shares tendered at each price within the Range and will be the lowest price within the Range that will enable the Filer to purchase the maximum number of deposited Class A Shares up to a maximum of 20,086,274 Class A Shares for an aggregate purchase price not exceeding the Specified Amount, with each Purchase Price Tender being considered a tender at the Minimum Price for the purpose of calculating the Purchase Price;
- (i) subject to pro ration, in the event of an Over-Subscription as contemplated in subparagraph 7(j) below, all Class A Shares tendered for purchase at or below the Purchase Price, whether through an Auction Tender or a Purchase Price Tender, will be taken up and paid for at the Purchase Price;
- (j) in the event of an Over-Subscription, all Class A Shares tendered will be purchased on a *pro rata* basis, except that, as described in subparagraph 7(g) above, Odd Lots will not be subject to pro ration;

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- (k) all Class A Shares tendered pursuant to Auction Tenders at prices within the Range but above the Purchase Price will not be purchased by the Filer and will be returned to the tendering Shareholders;
 - (l) all Class A Shares tendered by Shareholders who specify a tender price for such tendered Class A Shares that is below the Minimum Price or above the Maximum Price will be considered to have been improperly tendered, will be excluded from the determination of the Purchase Price, will not be purchased by the Filer and will be returned to the tendering Shareholders;
 - (m) all Class A Shares tendered by Shareholders who fail to specify any tender price for such tendered Class A Shares will be considered to have tendered such Class A Shares pursuant to a Purchase Price Tender;
 - (n) tendering Shareholders who make either an Auction Tender or a Purchase Price Tender but who fail to specify the number of Class A Shares that they wish to tender will be considered to have tendered all Class A Shares held by such Shareholder; and
 - (o) in the event of an under-subscription and extension of the Offer by the Filer, and an Over-Subscription due to tenders received during the extension, the Filer will pro rate only among tenders received during such extension and after the original expiration date;
8. the Circular discloses the mechanics for the take-up and payment for, or the return of, Class A Shares tendered as described in paragraph 7 above; the Circular states that, by tendering Class A Shares at the Minimum Price pursuant to an Auction Tender, a Shareholder can reasonably expect that the Class A Shares so tendered will be purchased at the Purchase Price, subject to pro ration as described in paragraph 7 above;
9. there are published markets for the Class A Shares, being the TSX and the NYSE and during the period of 12 months ended May 10, 2007:
- (a) the number of outstanding Class A Shares was at all times at least 5,000,000, excluding Class A Shares beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties to the Filer and Class A Shares that were not freely tradeable;
 - (b) the aggregate trading volume of the Class A Shares on the NYSE, being the published market on which the Class A Shares are principally traded, was at least 1,000,000 Class A Shares;

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- (c) there were at least 1,000 trades in Class A Shares on the NYSE; and
 - (d) the aggregate trading value of the Class A Shares on the NYSE was at least Cdn.\$15,000,000 (being the aggregate trading volume of the Class A Shares on the NYSE multiplied by the average price per Class A Share during the period);
10. the market value of the Class A Shares on the NYSE, as determined in accordance with Rule 61-501 and Regulation Q-27 was at least Cdn.\$75,000,000 for the calendar month of May 2007;
 11. the US\$1,536,600,000 of its Class A Shares that the Filer has offered to repurchase represents approximately 13% of the Filer's market capitalization on May 10, 2007;
 12. in accordance with Rule 61-501 and Regulation Q-27, the Circular discloses the facts supporting the conclusion that the Class A Shares meet the test for a "liquid market" and that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of the Class A Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time that the Offer was made and the Filer intends to rely on the exemptions from the Valuation Requirement in section 3.4(3) of Rule 61-501 and Regulation Q-27 (the Presumption of Liquid Market Exemptions);
 13. the Filer cannot comply with the Number of Securities Requirement because it cannot specify the number of Class A Shares it will acquire under the procedure described in paragraph 7 above;
 14. prior to the expiry of the Offer, all information regarding the number of Class A Shares tendered, and the prices at which such Class A Shares are tendered, will be kept confidential, and the Filer's selected depositary for the Offer will be directed by the Filer to maintain such confidentiality until the Purchase Price has been determined; and
 15. the Circular:
 - (a) discloses the mechanics for the take-up and payment for, or the return of, Class A Shares as described above;
 - (b) explains that, by tendering Class A Shares at the Minimum Price, a Shareholder can reasonably expect that the Class A Shares so tendered

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will be purchased at the Purchase Price, subject to pro ration as described above;

- (c) describes the background to the Offer;
- (d) except to the extent exemptive relief is granted by this decision, contains the disclosure prescribed by the Legislation for issuer bids; and
- (e) describes the review and approval process adopted by the board of directors of the Filer for the Offer, including any materially contrary view or abstention by a director.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers pursuant to the Legislation is that the Requested Relief is granted, provided that:

- (a) Class A Shares deposited under the Offer and not withdrawn are taken up and paid for, or returned to Shareholders, in the manner described in paragraph 7 above; and
- (b) for the Valuation Requirement, the Filer can rely on the Presumption of Liquid Market Exemptions.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission