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Landmark Case Provides a Road Map for a Dual-Class Collapse

A Canadian case decided today is destined to become a landmark decision on the difficult issue of comparative fairness in change-of-control transactions involving collapse of two classes of stock into a single class.

In Magna International, Ontario Superior Court No. CV-10-8738-00CL, major institutional shareholders attacked the restructure of Magna from a dual-class to a single-class stock capitalization. The investment bank retained by the special committee of directors did not give a fairness opinion. (Major investment banks generally do not give "comparative" fairness opinions.) The special committee did not make a recommendation to the shareholders. The high-vote shares received a date-of-announcement premium of 1,800% and the low-vote shares suffered an 11.7% dilution; each far larger than any Canadian or U.S. precedent transaction. Announcement of the proposal for the dual-class collapse was well received by the market with a material increase in the low-vote share price, despite the dilution. A proxy statement for the shareholder meeting called to consider the transaction was approved by the Ontario Securities Commission as satisfying requirements for full disclosure of the facts relevant to the shareholder decision. At the meeting, 75% of the low-vote stock voted to approve the transaction.

The Magna transaction and the Court's decision provide a clear road map for a company's directors, and the investment bankers and lawyers advising them, in a dual-class restructure to create a single class of stock. They also provide interesting facts and analysis that may be of use in other types of change-of-control dual-class transactions.

Martin Lipton