

BORGWARNER INC  
Form 10-Q  
October 25, 2018  
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington D.C. 20549  
FORM 10-Q  
QUARTERLY REPORT  
(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the quarterly period ended September 30, 2018

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 1-12162  
BORGWARNER INC.

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(Exact name of registrant as specified in its charter)

Delaware 13-3404508  
State or other jurisdiction of (I.R.S. Employer  
Incorporation or organization Identification No.)

3850 Hamlin Road, Auburn Hills, Michigan 48326  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (248) 754-9200

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES  NO

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

YES  NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

YES  NO

As of October 19, 2018, the registrant had 208,272,716 shares of voting common stock outstanding.

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BORGWARNER INC.

FORM 10-Q

THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2018

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## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements

BORGWARNER INC. AND CONSOLIDATED SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)

(in millions)	September 30, 2018	December 31, 2017
<b>ASSETS</b>		
Cash	\$ 361.8	\$ 545.3
Receivables, net	2,061.1	2,018.9
Inventories, net	810.3	766.3
Prepayments and other current assets	192.9	145.4
Assets held for sale	64.5	67.3
Total current assets	3,490.6	3,543.2
Property, plant and equipment, net	2,827.8	2,863.8
Investments and other long-term receivables	610.3	547.4
Goodwill	1,856.5	1,881.8
Other intangible assets, net	450.1	492.7
Other non-current assets	481.1	458.7
Total assets	\$9,716.4	\$9,787.6
<b>LIABILITIES AND EQUITY</b>		
Notes payable and other short-term debt	\$ 50.7	\$ 84.6
Accounts payable and accrued expenses	2,009.2	2,270.3
Income taxes payable	9.8	40.8
Liabilities held for sale	29.9	29.5
Total current liabilities	2,099.6	2,425.2
Long-term debt	2,085.6	2,103.7
Other non-current liabilities:		
Asbestos-related liabilities	739.7	775.7
Retirement-related liabilities	269.4	301.6
Other	351.9	355.5
Total other non-current liabilities	1,361.0	1,432.8
Common stock	2.5	2.5
Capital in excess of par value	1,127.1	1,118.7
Retained earnings	5,127.3	4,531.0
Accumulated other comprehensive loss	(609.2 )	(490.0 )
Common stock held in treasury	(1,581.3 )	(1,445.4 )
Total BorgWarner Inc. stockholders' equity	4,066.4	3,716.8
Noncontrolling interest	103.8	109.1
Total equity	4,170.2	3,825.9
Total liabilities and equity	\$9,716.4	\$9,787.6

See accompanying Notes to Condensed Consolidated Financial Statements.



Table of ContentsBORGWARNER INC. AND CONSOLIDATED SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

(in millions, except share and per share amounts)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
Net sales	\$2,478.5	\$2,416.2	\$ 7,956.8	\$ 7,212.9
Cost of sales	1,962.9	1,894.6	6,270.2	5,662.1
Gross profit	515.6	521.6	1,686.6	1,550.8
Selling, general and administrative expenses	230.5	225.0	719.9	659.1
Other expense, net	7.1	22.0	42.4	27.5
Operating income	278.0	274.6	924.3	864.2
Equity in affiliates' earnings, net of tax	(15.2 )	(14.4 )	(38.4 )	(38.5 )
Interest income	(1.5 )	(1.3 )	(4.4 )	(4.2 )
Interest expense and finance charges	14.4	17.6	45.4	53.6
Other postretirement income	(2.4 )	(1.3 )	Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing	

minutes of  
the meetings  
of the board  
of directors  
at the time  
such action  
occurred or  
immediately  
after such  
absent  
director  
receives  
notice of the  
unlawful  
acts.

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The above provisions of the DGCL are nonexclusive.

Our amended and restated certificate of incorporation provides that we shall indemnify our directors against liability to the corporation or stockholders to the fullest extent permissible under the DGCL. Our amended and restated bylaws provide that we shall indemnify our directors, officers and those serving at the request of the corporation to the fullest extent permissible under the DGCL, including in circumstances in which indemnification is otherwise discretionary under the DGCL. We also maintain director and officer

liability  
insurance.  
These  
indemnification  
provisions  
are  
sufficiently  
broad to  
permit  
indemnification  
of our  
officers and  
directors for  
liabilities,  
including  
reimbursement  
of expenses  
incurred,  
arising under  
the  
Securities  
Act.

The selling  
stockholders  
have agreed  
to indemnify  
us in certain  
circumstances  
against  
certain  
liabilities,  
including  
liabilities  
under the  
Securities  
Act,  
including  
liabilities  
under the  
Securities  
Act up to the  
net amount  
received by  
such selling  
stockholder  
from the sale  
of securities  
covered by  
such  
registration  
statement.

The  
limitation of  
liability and  
indemnification  
provisions in  
our amended  
and restated  
certificate of  
incorporation



and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Inssofar as indemnification for liabilities arising under the Securities Act may be

permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore, unenforceable.

There is currently no pending material litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought.

See also the undertakings set out in response to Item 17.

**ITEM 16. Exhibits.**

(a) Exhibits.

3.1 Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1

- to the  
Company's  
Registration  
Statement on  
Form S-1  
(File No.  
333-144405)  
filed with the  
Securities and  
Exchange  
Commission  
on August 17,  
2007).
- 3.2 Amended and  
Restated  
Bylaws  
(incorporated  
by reference  
to Exhibit 3.2  
to the  
Company's  
Registration  
Statement on  
Form S-1  
(File No.  
333-144405)  
filed with the  
Securities and  
Exchange  
Commission  
on August 17,  
2007).
- 4.1 Specimen  
Common  
Stock  
Certificate  
(incorporated  
by reference  
to Exhibit 4.1  
to the  
Company's  
Registration  
Statement on  
Form S-1  
(File No.  
333-144405)  
filed with the  
Securities and  
Exchange  
Commission  
on October  
11, 2007).
- 4.2 Third  
Amended and  
Restated  
Registration  
Rights  
Agreement  
between Ulta  
Salon,

Cosmetics &  
Fragrance,  
Inc. and the  
stockholders  
party thereto  
(incorporated  
by reference  
to Exhibit 4.2  
to the  
Company's  
Registration  
Statement on  
Form S-1  
(File No.  
333-144405)  
filed with the  
Securities and  
Exchange  
Commission  
on August 17,  
2007).

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- 4.3 Stockholder Rights Agreement (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-1 (File No. 333-144405) filed with the Securities and Exchange Commission on August 17, 2007).
- 5.1\* Opinion of Latham & Watkins LLP.
- 23.1\* Consent of Independent Registered Public Accounting Firm.
- 23.3\* Consent of Latham & Watkins LLP (included in Exhibit 5.1).
- 24.1\* Power of Attorney (included on the signature page hereto).

\* Filed herewith  
**ITEM 17.**  
***Undertakings.***

We hereby undertake:

1. To file, during any period in which offers or sales are being made,

a  
post-effective  
amendment  
to this  
registration  
statement:

(i) to include  
any  
prospectus  
required by  
Section 10(a)(3)  
of the  
Securities  
Act;

(ii) to reflect  
in the  
prospectus  
any facts or  
events  
arising after  
the effective  
date of the  
registration  
statement (or  
the most  
recent  
post-effective  
amendment  
thereof)  
which,  
individually  
or in the  
aggregate,  
represent a  
fundamental  
change in  
the  
information  
set forth in  
the  
registration  
statement.  
Notwithstanding  
the  
foregoing,  
any increase  
or decrease  
in volume of  
securities  
offered (if  
the total  
dollar value  
of securities  
offered  
would not  
exceed that  
which was  
registered)  
and any  
deviation

from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by us pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.*

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to



the securities  
offered  
therein, and  
the offering  
of such  
securities at  
that time  
shall be  
deemed to  
be the initial  
*bona fide*  
offering  
thereof.

3. To  
remove from  
registration  
by means of  
a  
post-effective  
amendment  
any of the  
securities  
being  
registered  
which  
remain  
unsold at the  
termination  
of the  
offering.

4. That, for  
the purpose  
of  
determining  
liability  
under the  
Securities  
Act to any  
purchaser:

(i) each  
prospectus  
filed by us  
pursuant to  
Rule  
424(b)(3)  
shall be  
deemed to  
be part of  
the  
registration  
statement as  
of the date  
the filed  
prospectus  
was deemed  
part of and  
included in  
the

registration  
statement;  
and

(ii) each  
prospectus  
required to  
be filed  
pursuant to  
Rule  
424(b)(2),  
(b)(5), or  
(b)(7) as part  
of a  
registration  
statement in  
reliance on  
Rule 430B  
relating to  
an offering  
made  
pursuant to  
Rule  
415(a)(1)(i),  
(vii) or  
(x) for the

purpose of  
providing  
the  
information  
required by  
Section 10(a)  
of the  
Securities  
Act shall be  
deemed to  
be part of  
and included  
in the  
registration  
statement as  
of the earlier  
of the date  
such form of  
prospectus is  
first used  
after

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effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or a prospectus that is part of the

registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

5. That, for the purpose of determining our liability under the Securities Act to any purchaser in the initial distribution of the securities, we undertake that in a primary offering of

our securities pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, we will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of ours relating to the offering required to be filed pursuant to Rule 424;

(ii) any free writing prospectus relating to the offering prepared by or on behalf of us or used or referred to by us;

(iii) the portion of any other

free writing  
prospectus  
relating to  
the offering  
containing  
material  
information  
about us or  
our  
securities  
provided by  
or on behalf  
of us; and

(iv) any  
other  
communication  
that is an  
offer in the  
offering  
made by us  
to the  
purchaser.

We hereby  
undertake  
that, for  
purposes of  
determining  
any liability  
under the  
Securities  
Act, each  
filing of our  
annual  
report  
pursuant to  
Section 13(a)  
or 15(d) of  
the  
Exchange  
Act (and,  
where  
applicable,  
each filing  
of an  
employee  
benefit plan's  
annual  
report  
pursuant to  
Section 15(d)  
of the  
Exchange  
Act) that is  
incorporated  
by reference  
in the  
registration  
statement  
shall be  
deemed to

be a new  
registration  
statement  
relating to  
the securities  
offered  
therein, and  
the offering  
of such  
securities at  
that time  
shall be  
deemed to  
be the initial  
*bona fide*  
offering  
thereof.

Inssofar as  
indemnification  
for liabilities  
arising under  
the  
Securities  
Act may be  
permitted to  
our  
directors,  
officers and  
controlling  
persons  
pursuant to  
the  
foregoing  
provisions,  
or otherwise,  
we have  
been advised  
that in the  
opinion of  
the SEC  
such  
indemnification  
is against  
public policy  
as expressed  
in the  
Securities  
Act and is,  
therefore,  
unenforceable.  
In the event  
that a claim  
for  
indemnification  
against such  
liabilities  
(other than  
the payment  
by us of  
expenses  
incurred or

paid by one of our directors, officers or controlling persons in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act, Ulta Salon, Cosmetics & Fragrance, Inc. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Bolingbrook, State of Illinois, on May 7, 2012.

**ULTA  
SALON,  
COSMETICS  
&  
FRAGRANCE,  
INC.**

By: /s/ Gregg  
R. Bodnar  
Gregg R.  
Bodnar  
Chief  
Financial  
Officer  
and

Assistant  
Secretary  
**POWER  
OF  
ATTORNEY**

KNOW  
ALL  
PERSONS  
BY THESE  
PRESENTS,  
that each  
person  
whose  
signature  
appears  
below  
hereby  
constitutes  
and appoints  
Gregg R.  
Bodnar and  
Robert S.  
Guttman,  
and each of  
them acting  
individually,  
as his or her  
true and  
lawful  
attorneys-in-fact  
and agents,  
each with  
full power of  
substitution,  
for him or  
her in any  
and all  
capacities, to  
sign any and  
all  
amendments  
to this  
registration  
statement,  
including  
post-effective  
amendments  
or any  
abbreviated  
registration  
statement  
and any  
amendments  
thereto filed  
pursuant to  
Rule 462(b)  
increasing  
the number  
of securities  
for which  
registration

is sought,  
and to file  
the same,  
with all  
exhibits  
thereto and  
other  
documents  
in  
connection  
therewith,  
with the  
SEC,  
granting  
unto said  
attorneys-in-fact  
and agents,  
with full  
power of  
each to act  
alone, full  
power and  
authority to  
do and  
perform  
each and  
every act  
and thing  
requisite and  
necessary to  
be done in  
connection  
therewith, as  
fully for all  
intents and  
purposes as  
he or she  
might or  
could do in  
person,  
hereby  
ratifying and  
confirming  
all that said  
attorneys-in-fact  
and agents,  
or his, her or  
their  
substitute or  
substitutes,  
may  
lawfully do  
or cause to  
be done by  
virtue  
hereof.

Pursuant to  
the  
requirements  
of the  
Securities

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Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

/s/ Carl S. Rubin President, Chief May 7, 2012

Carl S. Rubin Executive Officer and Director

*(Principal Executive Officer)*

/s/ Gregg R. Bodnar Chief Financial Officer and Assistant Secretary May 7, 2012

Gregg R. Bodnar

*(Principal Financial and Accounting Officer)*

/s/ Dennis K. Eck Chairman of the Board of Directors May 7, 2012

Dennis K. Eck

/s/ Robert F. DiRomualdo Director May 7, 2012

Robert F. DiRomualdo

/s/ Lorna E. Nagler Director May 7, 2012

Lorna E. Nagler

/s/ Catherine A. Halligan Director May 7, 2012

Catherine A.  
Halligan

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/s/ Charles Heilbronn Director May 7, 2012

Charles Heilbronn

/s/ Charles J. Philippin Director May 7, 2012

Charles J. Philippin

/s/ Kenneth T. Stevens Director May 7, 2012

Kenneth T. Stevens

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EXHIBITS**

- 3.1 Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1 (File No. 333-144405) filed with the Securities and Exchange Commission on August 17, 2007).
- 3.2 Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1 (File No. 333-144405) filed with the Securities and Exchange Commission on August 17, 2007).
- 4.1 Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1

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- (File No. 333-144405) filed with the Securities and Exchange Commission on October 11, 2007).
- 4.2 Third Amended and Restated Registration Rights Agreement between Ulta Salon, Cosmetics & Fragrance, Inc. and the stockholders party thereto (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-1 (File No. 333-144405) filed with the Securities and Exchange Commission on August 17, 2007).
- 4.3 Stockholder Rights Agreement (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-1 (File No. 333-144405) filed with the Securities and Exchange Commission on August 17, 2007).
- 5.1\* Opinion of Latham & Watkins LLP.
- 23.1\*



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Consent of  
Independent  
Registered  
Public  
Accounting  
Firm.

23.3\* Consent of  
Latham &  
Watkins LLP  
(included in  
Exhibit 5.1).

24.1\* Power of  
Attorney  
(included on  
the signature  
page hereto).

\* Filed  
herewith