Court File No. 09-8302-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# FIRST REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**October 19, 2009**

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## I. INTRODUCTION AND BACKGROUND

1. Pursuant to the Order of the Honourable Madam Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2009 (the "Appointment Order"), KPMG Inc. was appointed receiver and manager ("Receiver") of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the "Belmont Fund"), an Ontario limited partnership. A copy of the Appointment Order, which among other things, sets out the powers of the Receiver is attached hereto as **Appendix A**. James Haggerty Harris (the "Applicant") made the application pursuant to section 101 of the *Courts of Justice Act*, RSO 1990 c.C.43.

2. The Appointment Order was without prejudice to the right of any interested person to return to court on August 21, 2009 (the "Comeback Hearing") to seek to alter any term of the Appointment Order, including the appointment of the Receiver. If any parties intended to come back for this purpose, they were to provide written notice to the Applicant and the Receiver by August 14, 2009; and deliver their motion materials by the close of business on August 18, 2009. As described below, the Receiver had discussions with Harcourt Investment Consulting AG ("Harcourt") and Omniscope Advisors Inc. ("Omniscope"), and their respective legal counsel, with respect to certain issues potentially to be addressed at the Comeback Hearing. Subsequent to the discussions, the Receiver was advised that neither Harcourt nor Omniscope intended to pursue a motion at the Comeback Hearing.

3. In its Application, the Applicant also sought a Court-supervised dissolution of the Belmont Fund (the "Fund Dissolution"). The Fund Dissolution is to be the subject of a separate court hearing (the "Dissolution Hearing"). The Appointment Order directed that the return date for the hearing of the application in respect of the Dissolution Hearing and certain relief as required would be August 27, 2009, or such other date as is set by the Court upon motion by the Applicant. On August 26, 2009, this Honourable Court adjourned the Dissolution Hearing to a date to be scheduled and approved by the Court in the fall of 2009. A copy of the endorsement is attached hereto as **Appendix B**.

4. The Appointment Order also provides that until further order of this Honourable Court at the Dissolution Hearing or otherwise, the Receiver shall not terminate or consent to the termination of any forward contract or sell or otherwise dispose of any material portion of the Property.

5. The Receiver is relying upon records and information available from the Belmont Fund and from third parties. The Receiver's review of this information does not encompass an audit of the financial position or operating results of the Belmont Fund. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the administration of the receivership. The Receiver may refine or alter its observations as further information is obtained or is brought to its attention after the date of this report.

6. Capitalized terms not defined in this report are as defined in the Appointment Order. All references to dollars are in Canadian currency unless otherwise noted.

***Background to the Receivership***

7. The Belmont Fund is an investment fund established as a limited partnership under the laws of Ontario pursuant to an agreement between Belmont Dynamic GP Inc., as general partner (the "General Partner"), and the limited partners (the "Limited Partners" or "Unitholders") of the Belmont Fund dated June 9, 2006 (the "Limited Partnership Agreement"). The Limited Partners are accredited investors and are the unitholders in the Belmont Fund. Unitholders purchased units in either of Canadian dollars ("CAD") or in US dollars ("USD"). The General Partner is responsible for managing day-to-day business of the Belmont Fund.

8. The only undertaking of the Belmont Fund was the investment of its assets. The objective of the Belmont Fund is to provide investors with the return on the Belmont Dynamic Segregated Portfolio ("Segregated Portfolio") of hedge funds existing as a segregated portfolio of Belmont SPC, a segregated portfolio company organized under the laws of the Cayman Islands. The Segregated Portfolio's investment objective is to invest on a leveraged basis in specialized fund of hedge funds managed by Harcourt. Harcourt is the Investment Advisor to the Segregated Portfolio. Alternative Investments Management Ltd, a Barbadian Company affiliated with Harcourt, owns all of the voting shares of the Belmont SPC, and is also the investment manager of the Segregated Portfolio.

9. Exposure to the Segregated Portfolio is obtained by first using the proceeds from the sale of units in the Belmont Fund to acquire two baskets of Canadian common shares (the CAD Share Basket and USD Share Basket, collectively the "Share Baskets") and then entering into two forward purchase and sale agreements (the CAD Forward Contract and the USD Forward Contract, collectively, the "Forward Contracts") with National Bank of Canada (Global) Limited (the "Counterparty").

10. In accordance with the Forward Contracts, the Counterparty has agreed to pay to the Belmont Fund on the maturity date of the Forward Contracts (the "Forward Maturity Date") an amount equal to the redemption proceeds of a notional number of participating shares ("Participating Shares") in the Segregated Portfolio (the "Notional Number of Shares") in exchange for the delivery of the Share Baskets to the Counterparty by the Belmont Fund or an equivalent cash payment at the election of the Belmont Fund. As a result of the Forward Contracts, the Belmont Fund has exposure to the performance of the Segregated Portfolio but it has no direct interest in the Segregated Portfolio.

11. The investment structure, including the Belmont Fund and the Segregated Portfolio, is defined as the "Investment Structure".

12. Harcourt and Omniscope each hold 50% ownership of the outstanding common shares of the General Partner. Omniscope carries on the business of a securities dealer and is registered as a dealer in the category of limited market dealer under the *Securities Act (Ontario)*. Omniscope is wholly owned by Mr. Daniel Nead ("Nead"). Harcourt carries on business as a portfolio manager of funds of hedge

funds with its principal offices located in Zurich, Switzerland. Harcourt's principal shareholder is The Vontobel Group ("Vontobel"), a Swiss private bank headquartered in Zurich, Switzerland.

13. The General Partner has two directors with equal voting rights: (1) Nead, a resident Canadian; and (2) Peter Fanconi ("Fanconi") a resident of Switzerland. Nead is also President and Secretary of the General Partner. Fanconi is Chief Executive Officer of the General Partner, director of Vontobel and former President and Chief Executive Officer of Harcourt.

14. There are 135 Limited Partners, of which 126 are clients of RBC Phillips, Hager & North Investment Counsel Inc. ("RBC PHN") and the remaining are clients of RBC Dominion Securities ("RBCDS"). RBC PHN and RBCDS are collectively referred to as "RBC".

15. On October 31, 2008 Citco Fund Services (Europe B.V.) ("Citco") wrote to the shareholders of the Segregated Portfolio (the "October 31, 2008 Citco Letter") advising that due to the ongoing financial crisis and its impact upon the investment industry, the directors of the Segregated Portfolio had deemed that the continued operation of the Segregated Portfolio was no longer viable and that steps should be taken to realize on the underlying assets of the Segregated Portfolio and to close it down (the "Segregated Portfolio Closing"). The letter also includes notice of a compulsory redemption of the shares in advance of the Segregated Portfolio Closing effective as of October 31, 2008. A copy of the October 31, 2008 Citco letter is attached as **Appendix C**.

16. The Receiver understands that at or around this time, Harcourt advised RBC that the Belmont Fund was no longer viable due to recent market turmoil and that steps would therefore be taken to dissolve the Belmont Fund. Further, the Receiver understands that Harcourt also advised RBC that the Limited Partners were unable to redeem their units of the Belmont Fund at that time because the direct and indirect underlying hedge fund holdings of the Segregated Portfolio that suspended the redemption of their units or shares and/or were gated, as the case may be.

17. In December, 2008, the General Partner provided RBC with a draft notice of a meeting of the Limited Partners. The meeting of the Limited Partners (the "Proposed Meeting") was to be held to consider and approve the dissolution of the Belmont Fund and to appoint the General Partner as the receiver and liquidator of the Belmont Fund in accordance with the terms and conditions of the Limited Partnership Agreement governing the operation of the Belmont Fund. The Proposed Meeting was not convened because of an "impasse" that developed between Harcourt and Omniscope.

18. This impasse has become the subject of a court proceeding involving an application for an oppression remedy under the *Business Corporations Act* (Ontario) that has been made by Harcourt against, among others, the Belmont Fund, the General Partner and Omniscope for the purpose of, among other things, dissolving the Belmont Fund (the "Oppression Application").

19. As a result of these developments, RBC was of the view that the dissolution of the Belmont Fund could not be completed by the General Partner. On July 30, 2009, RBC brought an application (the "Initial Application") to this Honourable Court to appoint the Receiver and for the Dissolution Hearing.

***Purpose of this Report***

20. The purpose of this first report of the Receiver (the "Report") is to provide this Honourable Court and the stakeholders of the Belmont Fund with a preliminary update on the activities of the Receiver since the date of the Appointment Order (the "Receivership Date") and on the process of the receivership generally. The Receiver seeks to implement a realization plan that is capable of satisfying the ultimate objective of distributing maximum value to the Limited Partners (the "Realization Plan").

21. This Report will describe:

- the Receiver's summary observations,
- an overview of the Investment Structure of the Belmont Fund and the Segregated Portfolio,
- the activities of the Receiver since the date of the Appointment Order,
- the assets and liabilities of the Belmont Fund and the Segregated Portfolio,
- certain issues with respect to certain Vontobel redemption requests from the Segregated Portfolio,
- certain issues arising from the loss incurred by the Counterparty on the termination of certain foreign exchange hedge contracts,
- the Receiver's recommended claims procedure, and
- certain of the Receiver's next steps.

22. This Report will provide the evidentiary basis in respect of the Dissolution Hearing by the Applicant, and the Receiver's request to implement a claims process to assist in the ultimate distribution to stakeholders of the Belmont Fund, enroute to the dissolution of the Belmont Fund.

***Summary Observations***

23. Based on its review of the information and documentation made available to date, the Receiver has following observations:

a. given the ongoing wind up efforts of the Segregated Portfolio, the Receiver is not yet in a position to report to the Court with respect to an estimated liquidation value of the Belmont Fund's assets, the timing required to realize on these assets, and timing of potential distributions to creditors and Unitholders;

b. there are no liquid assets currently held by the Belmont Fund, available to pay liabilities of the Belmont Fund or to distribute to Unitholders;

c. the principal assets of the Belmont Fund are the Forward Contracts, the value of which varies directly with the market value and return of the

Segregated Portfolio. As a result, the value of the Belmont Fund is tied to the value and potential recovery from the Segregated Portfolio; and

d. the Receiver continues to be uncertain of the value, timing and entitlement to any potential recoveries from the Segregated Portfolio, for a number of reasons, including:

   i. while there is cash of approximately US$2.1 million at the Segregated Portfolio level, the liquidation schedules for the Segregated Portfolio prepared by Harcourt estimate that approximately US$10.6 million will be recovered by the fund over the next three years. The Receiver observes that given the uncertainties in the financial markets, this estimate is subject to change and that any changes could be material;

   ii. the priority of payments from the Segregated Portfolio has not yet been determined. Matters to be resolved included the priority of payments pursuant to redemption requests made by Vontobel in May and August 2008 and the priority of payment for the loss incurred by the Counterparty as a result of the unwind of a foreign exchange contract loss put in place pursuant to the Forward Contracts;

   iii. the Receiver has been in discussions with Vontobel, which purchased invested in the Segregated Portfolio, about the priority of payment of its two redemption requests made in 2008. Discussions with Harcourt and Vontobel are ongoing and are cooperative; and

   iv. the Receiver has also been in discussions with the Counterparty with respect to the Forward Contracts to determine the size of the alleged foreign exchange loss incurred by the Counterparty on the termination of certain foreign exchange contracts by the Counterparty and to determine the legal basis for paying any such loss, including the priority of payment. Discussions with the Counterparty are ongoing and are cooperative.

24. The Receiver continues to meet with stakeholders and to investigate the Investment Structure. The Receiver plans to make further recommendations and may seek further instruction from the Court after the date of this Report.

## II. OVERVIEW OF THE INVESTMENT STRUCTURE OF THE BELMONT AND THE SEGREGATED PORTFOLIO

*Investment Structure*

25. The material contracts of the Investment Structure include the Limited Partnership Agreement and the Forward Contracts. The Limited Partnership Agreement is attached as **Appendix D**. The Forward Contracts are attached as **Appendix E**.

26. Based on these documents and discussions with stakeholders, the Receiver understands the following to be the material elements of the Investment Structure

(an illustrated overview of the Investment Structure is presented in **Appendix F**, Belmont Dynamic Growth Fund Structure).

a) Units were sold by way of the Amended and Restated Confidential Offering Memorandum of the Belmont Fund (the "OM") to accredited investors in Canada. In consideration of their cash investment, a Limited Partner received units of the Belmont Fund. Four classes of units were offered for sale (the "Units"). Each unit represents an equal undivided interest in the net assets of the Belmont Fund attributable to the class of Units. The Class AC Units denominated in Canadian dollars, and the Class AU Units, denominated in US dollars, (collectively, the "Class A Units") were intended for sale to the clients of registered dealers. Class FC Units, denominated in Canadian dollars, and Class FU Units, denominated in US dollars (collectively, the "Class F Units") were intended for sale to all other investors. The Class AC Units and the Class FC Units are referred to as the "CAD Units", and the holders of the units as the "CAD Unitholders." The Class FC units and the Class FU units are referred to as the "USD Units", and the holders of the units as the "USD Unitholders." Collectively, the CAD Unitholders and the USD Unitholders are referred to as the Unitholders.

b) The proceeds raised from the Unitholders were used to purchase the Share Baskets, baskets of non-dividend-paying Canadian securities listed on the Toronto Stock Exchange, consisting of securities that constitute "Canadian securities" for purposes of section 39(6) of the *Income Tax Act (Canada).* The proceeds from the CAD Unitholders were invested in Canadian dollar denominated shares. The proceeds from the USD Unitholders were invested in US dollar denominated shares.

c) The Belmont Fund then entered into the Forward Contracts with the Counterparty. The CAD Forward Contract relates to the investment of the CAD Unitholders and the USD Forward Contract relates to the investment of the USD Unitholders. Certain material aspects of the Forward Contracts are summarized below:

    i) pursuant to the Forward Contracts, the Counterparty agrees to purchase the Share Baskets from the Belmont Fund on the Forward Maturity Date for an amount (the "Forward Price"), in US dollars, equal to the value of a notional investment, (the "Notional Investment") in Participating Shares made at the time of, and in an amount equal to, the proceeds from the sale of Units of the Belmont Fund (in the case of CAD Units, converted into US dollars);

    ii) pursuant to the Forward Contracts, the Counterparty is to pay to the Belmont Fund on the August 1, 2016, or such other date as may be agreed upon, the redemption proceeds of the Notional Number of Shares in exchange for delivery of the Share Baskets to the Counterparty by the Belmont Fund or an equivalent cash payment at the election of the Belmont Fund. In order to fund redemptions of Units by Unitholders and ongoing fees and expenses of the Fund, the

Forward Contracts may be partially settled by the Belmont Fund tendering to the Counterparty securities of the Share Baskets or, at the election of the Belmont Fund, in cash;

iii) under the terms of the Forward Contracts, the Belmont Fund and the Counterparty have agreed that their settlement obligations under the Forward Contracts with respect to the Share Baskets will be discharged by physical delivery of the securities in the Share Baskets by the Belmont Fund to the Counterparty against cash payment of the Forward Price or, at the election of the Belmont Fund, by the making of cash payments between the parties. The Forward Price may be more or less than the original subscription price of the Units. The Share Baskets have been pledged and are held by the Counterparty as security for the obligations of the Belmont Fund under the Forward Contracts; and

iv) under the Forward Contracts, the Forward Price may be reduced for all dividends and distributions declared on any securities in the Share Baskets securities and paid to the Belmont Fund as owner of the Share Baskets. If any dividends or distributions are to be received by the Belmont Fund, the Forward Contracts provides that replacement securities acceptable to the Counterparty may, at the Belmont Fund's option, be substituted for shares in respect of which the dividend or distribution has been declared to preserve the value of the Forward Contracts. Alternatively, the Belmont Fund may consider contributing additional securities to the Share Baskets or entering into additional forward, derivative or other transactions.

d) The Counterparty then executed a short sale (the "Short Sale") of securities equivalent to those comprising the Share Basket and used the proceeds from the Short Sale (the "Short Sale Proceeds") to acquire US dollar denominated Participating Shares. The number of Participating Shares that were acquired by the Counterparty using the Short Sale Proceeds is equal to the Notional Number of Shares.

e) The CAD Units are denominated in Canadian dollars, while the Segregated Portfolio is denominated in US dollars. Therefore, the CAD Units are exposed to the risk of unfavourable fluctuations in the rate of exchange between the Canadian dollar and the US dollar. This risk was managed through a foreign exchange currency hedge embedded in the Forward Contracts (the "FX Hedge").

f) 99.999% of the net income or loss from operations of the Belmont Fund for the fiscal year is to be allocated to the Limited Partners in proportion to the class and number of Units owned. Because the Belmont Fund is not a taxable entity, the Limited Partners are taxable on their pro rata share of the Belmont Fund's net investment income, as calculated for income tax purposes, regardless of whether any distributions have been made to the Limited Partner.

g) The General Partner is entitled to 0.0001% of the net income on loss from operations of the Belmont Fund.

h) The Segregated Portfolio is a sub-fund of the Belmont SPC. Two classes of Participating Shares have been issued by the Segregated Portfolio, Class A Shares and Class B Shares.

i) According to the financial statements for the Segregated Portfolio provided by Harcourt, at July 31, 2009, the total number of outstanding Class A Shares of the Segregated Portfolio was 187,142.5472 shares and the total number of Class B shares was 5,478.7870. The Receiver understands that the Counterparty is the holder of these Class A Shares and that the Class B shares are held by five different shareholders, all of which are represented by RBCDS.

j) Pursuant to the Forward Contracts, the Counterparty prepares, as required the Annex 5 – Final Confirmation of Upward Adjustment (the "Annex 5"), which confirms the number of the shares held by the Counterparty in the Segregated Portfolio. The most recent Annex 5, as at December 3, 2008 attributed to the Forward Contracts was 149,777.5751 Class A shares to the Canadian dollar forward agreement and 38,115.3399 Class A shares to the US dollar forward agreement, for a total of 187,892.9150 Class A shares. The Receiver continues to seek clarification of the difference for the number of outstanding Class A shares held by the Counterparty between the Annex 5 numbers and July 31, 2009 financial statements for the Segregated Portfolio.

k) In the event the Segregated Portfolio faces liquidity restrictions, the Segregated Portfolio may not be able to dispose of its investments through notional requests to redeem Participating Shares. In such circumstances, the Counterparty is permitted under the Forward Contracts to defer payment of any pre-settlement proceeds to the Belmont Fund (or, on the Forward Maturity Date, the Forward Price) to the extent of any outstanding amounts that would be payable on the proportional Notional Investment as of the pre-settlement date (or the Forward Maturity Date), including distributions or redemption proceeds that would be payable on the Participating Shares held in the Notional Investment. Therefore, the Counterparty may exercise the foregoing right to defer payments under the Forward Contracts which will result in the Belmont Fund's deferral of the payment of redemption proceeds in respect of Units that have been tendered for redemption.

l) The supplemental offering memorandum for the Segregated Portfolio provides that the Segregated Portfolio may leverage its investments. The Receiver understands that on November 21, 2007, the Segregated Portfolio purchased a call option (the "Call Option") from KBC Financial Products UK Limited, agent for KBC Investments Cayman Islands V Limited (collectively "KBC"), for the right to purchase a basket of hedge funds on the expiration of the Call Option. The Receiver understands that the Call Option leveraged the Segregated Portfolio with a multiple of approximately two times. On November 26, 2008, KBC exercised an early termination, pursuant to its rights under the Call Option, which resulted in the termination and settlement of the Call Option.

*Other Parties to the Structure*

27. The following is a brief description of any parties to the Investment Structure who have not been previously referenced:

- Citigroup Fund Services Canada Inc. ("Citigroup") – administrative services provider to the Belmont Fund;
- Accilent Capital Management Inc. ("Accilent") – investment advisory services provider to the Belmont Fund; and
- Citco Global Custody N.V. – custodian of the Segregated Portfolio.

## III. ACTIVITIES OF THE RECEIVER

28. Since the date of the Appointment Order, the Receiver has undertaken various actions including:

a) providing notice to various stakeholders pursuant to the Appointment Order;

b) establishing a dedicated web-site, email address and telephone number;

c) retaining legal counsel for the Receiver;

d) taking steps to locate and secure the books and records of the Belmont Fund;

e) identifying and generally safeguarding the known assets of the Belmont Fund;

f) meeting with parties to obtain background information in respect of the Belmont Fund, the Segregated Portfolio and certain events which occurred prior to the Receivership Date;

g) initiating and continuing to take steps to identify the assets of the Belmont Fund and develop the Realization Plan, including:

- communicating with the Counterparty regarding the Forward Contracts, including the termination of the FX Hedge, and the status of the Share Baskets;
- communicating with Harcourt regarding the Investment Structure, status and activities of the Segregated Portfolio, including redemption request activity of Vontobel;
- assessing the investment and financial structures of Belmont Fund and its investments;
- discussing with other financial institutions that are involved in the Investment Structure; and

- communicating with RBC and McCarthy Tétrault, legal counsel to RBC, regarding the receivership matters.

h) communicating with key stakeholders regarding the Comeback Hearing and resolution of the same on a consensual basis;

i) reviewing and authorizing rebalancing transactions of the Share Baskets; and

j) assessment and development of a proposed claims process in respect of the claims against the Belmont Fund.

*Notice to the General Partner and the Limited Partners*

29. In accordance with the Appointment Order:

- the Receiver mailed a copy of the Appointment Order to the General Partner on August 14, 2009; and

- the Receiver confirmed the delivery of notice to the Limited Partners from provided by RBC, in accordance the Appointment Order, on August 6 and 7, 2009. Copies of the notices sent by RBC are attached hereto as **Appendix G**.

*Communications with Stakeholders*

30. The Receiver has established a website where all Orders issued by this Honourable Court in this matter, and other information, will be posted and updated regularly. The webpage can be found at www.kpmg.ca/belmontfund.

31. In addition, the Receiver has established a dedicated telephone line and email address to receive inquiries from any interested parties. To date, the Receiver has received a limited number of inquiries with respect to the general status of the receivership. The Receiver has contacted or attempted to contact these interested parties. The Receiver has not received or indirectly heard of any objections from any of the Limited Partner with respect to the actions of RBC to undertake the Initial Application, including seeking the appointment of the Receiver.

*Retention of Legal Counsel*

32. Upon appointment, the Receiver retained Stikeman Elliott LLP of Toronto, Ontario as its legal counsel.

*Books and Records*

33. Since the date of the Appointment Order, the Receiver has had discussions with Nead, who the Receiver understood to be the primary custodian of the Belmont Fund's books and records with respect to the property and business affairs of the Belmont Fund. On August 8, 2009, the Receiver attended the offices of Nead at 357 Bay Street, Suite 800, Toronto, Ontario (also the principal address of the Belmont Fund) to meet with Nead and take possession and control of the Belmont Fund's books and records. Nead informed the Receiver that certain of the books and records of the Belmont Fund were being held by certain service providers and

advisors to the Belmont Fund and General Partner. Subsequently, the Receiver had further discussions with Nead regarding the activities of the Belmont Fund and the existence of any other books and records of the Belmont Fund. The Receiver continues to receive and review the information provided by and have discussions with Nead regarding the same, and continues to seek Nead's cooperation in ensuring that information in his possession is provided to the Receiver.

34. In addition, on August 11, 2009 the Receiver wrote to Harcourt with respect to the property and business affairs of the Belmont Fund and was informed that the books and records were substantially held by Nead.

35. Furthermore, the Receiver communicated with the following parties, all of which were identified by Nead as service providers or advisors to the Belmont Fund, to inform them of our appointment and request information regarding the existence of any books and records of the Belmont Fund in their possession:

- PricewaterhouseCoopers LLP ("PWC") – auditors of the Belmont Fund;
- McMillan LLP ("McMillan") – legal services provider to the Belmont Fund;
- Citigroup – administrative services provider to the Belmont Fund; and
- Accilent – investment advisory services provider to the Belmont Fund.

36. In summary, the Receiver received the following responses as at the date of this Report:

- PWC has informed the Receiver that it is not in the possession of any original books and records of the Belmont Fund;
- McMillan has provided the Receiver with electronic copies of certain agreements, contracts and other relevant documents of the Belmont Fund and General Partner with respect to activities of the Belmont Fund;
- The Receiver has been in correspondence with Citigroup since the Receivership Date in order to determine what information and records Citigroup has and what services Citigroup has been providing to the Belmont Fund. The Receiver has obtained limited information from Citigroup including summary information with respect to the Unitholders, portfolio activity and net asset value calculations. The Receiver understands that the Administrative Services Agreement between Citigroup, the General Partner and the Belmont Fund recently expired. On October 16, 2009, the Receiver discussed with Citigroup the scope of services provided by Citigroup. Given that the Receiver expects on an ongoing basis to be responsible for paying the liabilities of the Belmont Fund and for any future distributions to Unitholders, Citigroup and the Receiver have agreed that the Administrative Services Agreement does not need to be continued.
- Once a client is no longer to be active on Citigroup's system, it is Citigroup's practice to under take a deconversion process and send all of its

original documents, both in paper and electronic form, to the client. Citigroup has asked the Receiver to confirm that the Receiver will not be requiring the services, pursuant to the Administrative Services Agreement, of Citigroup. Upon receipt of this letter, Citigroup will begin its deconversion process with respect to the Belmont Fund. The Receiver further understands that upon receipt of the letter from the Receiver, that all of the Citigroup books and records should be send to the Receiver within two weeks.

- Accilent has informed the Receiver that it is not in possession of any of the Belmont Fund's books and records.

37. The Receiver continues to have discussions with the above mentioned parties, and others as required, as new information is received. The Receiver also continues to gather and review information and records relating to the Belmont Fund.

***Identifying Assets of the Belmont Fund***

38. According to the OM, the only investments of the Belmont Fund are to be the Share Baskets, the Forward Contracts, and cash and cash equivalents.

39. As previously discussed, the Share Baskets are pledged to the Counterparty. The principal asset of the Belmont Fund is the Forward Contracts. The value of the Forward Contracts is based on the market value of the Notional Investment. Therefore, the value of the Forward Contracts varies directly with the market value and return of the Segregated Portfolio. As a result, the value of the Belmont Fund is tied to the value of and potential recovery from the Segregated Fund.

40. As at the Receivership Date there was no cash held by the Belmont Fund. The Receiver understands that there are no bank accounts registered in the name of the Belmont Fund. However, the General Partner maintained trust and commissions accounts (denominated in Canadian and US dollars) at Royal Bank of Canada, on behalf of the Belmont Fund. Citigroup has informed the Receiver that these accounts were frozen by Royal Bank of Canada due to inactivity and mounting service fees. As the Receivership Date, the balances in these accounts were nominal.

41. The Receiver continues to compile information in respect of the value of the assets of the Belmont Fund, as well as the underlying value of the Segregated Portfolio, as well as potential claims against the fund, as outlined in greater detail below.

***Meeting with Various Parties to Obtain Background Information Regarding the Belmont Fund and the Segregated Portfolio***

42. The Receiver communicated with a variety of parties since its appointment to seek background information regarding the Belmont Fund and the Segregated Portfolio. This has permitted the Receiver to assess what assets exist and what actions must be undertaken in order to be in a position to ultimately repatriate the value to the Belmont Fund and distribute such value to the Unitholders of the Belmont Fund. These discussion and actions are discussed in further detail below.

43. Since the date of the Appointment Order, the Receiver has reviewed documents and held discussions with Nead, the Counterparty, RBC and other key stakeholders to discuss the property and business affairs of the Belmont Fund.

44. Given the indirect interest of the Belmont Fund in the value of the Segregated Portfolio, the Receiver has also undertaken steps to review the structure and value of the Segregated Portfolio. The Receiver has had discussions with the following parties, to inform them of our appointment, and request information regarding the Segregated Portfolio:

- Harcourt – in its capacity as portfolio advisor to the Segregated Portfolio; and
- Citco – administrator of the Segregated Portfolio.

45. The Receiver has communicated with the Cayman Islands regulatory authority (the "Cayman Regulator") with respect to our appointment as Receiver and disclosed the Belmont Funds' relationship with the Segregated Portfolio, which is under the authority of the Cayman Regulator.

46. The Cayman Regulator subsequently responded requesting of the Receiver any further information with respect to breaches or adverse conditions with respect to Belmont SPC which become known to the Receiver. The Receiver will continue to communicate with and update the Cayman Regulator as appropriate during the course of the Receivership.

47. In summary, the Receiver received the following responses as at the date of this Report:

- The Receiver has had several discussions and email exchanges with Harcourt regarding the Belmont Fund and the Segregated Portfolio since the date of the Appointment Order. Harcourt has provided the Receiver with relevant agreements and other information schedules specifically relating to the Segregated Portfolio, including but not limited to liquidity analysis, redemption activity and the termination of the Call Option. The Receiver continues to review the information provided and have discussions with Harcourt regarding the same.
- Citco has not responded directly to the Receiver. However, Harcourt has agreed to liaise with Citco regarding specific information requests made by the Receiver.
- In addition to seeking background information in respect of the Segregated Portfolio, the Receiver has identified potential areas which may affect the underlying value of the Segregated Portfolio and therefore the value of the Belmont Fund: a) the redemption requests by Vontobel; and b) the Foreign exchange loss claimed by the Counterparty. The Receiver continues to investigate, discuss and seek potential resolution of these issues.
- The Receiver has also expressed concerns regarding potential actions which could be detrimental to the value of the Belmont Fund to Harcourt, specifically

the potential payment of a redemption request to Vontobel. In response, Harcourt has confirmed that all redemption payments from the Segregated Portfolio have been frozen. Specifically, Harcourt has undertaken not make any payments on the Second Vontobel Redemption Request (as defined below). Harcourt also advises that no redemption requests were accepted after September 30, 2008 by the Segregated Portfolio.

***Resolution of Comeback Motion***

48. Prior to the date scheduled for the Comeback Hearing, the Receiver and its legal counsel had discussions with Harcourt and Omniscope, and their respective legal counsels, with respect to certain issues potentially to be addressed at the Comeback Hearing. Prior to the deadline prescribed by the Court, Harcourt advised the Receiver that it did not intend on pursuing any comeback motion at Comeback Hearing.

49. Initially, Omniscope raised specific concerns relating to (1) the portion of the Oppression Application relating to potential Vontobel redemption requests, (2) certain fees being claimed by Nead and/or Omniscope and the determination of such claims; and (3) clarification regarding the nature and extent of the Receiver's charge. The Receiver was able to confirm that first two issues were under consideration by the Receiver and would be addressed in due course during the administration of the receivership. The third issue was clarified to Omniscope's satisfaction. Subsequently, Omniscope advised the Receiver that it did not intend on pursuing a comeback motion without prejudice to seeking further direction on process and timing to review the fees claim. No other parties contacted the Receiver regarding the possible pursuit of a comeback motion.

***Share Baskets Transactions***

50. As previously discussed, proceeds from the Belmont Fund's offering of units were used to acquire the Share Baskets, which are pledged to the Counterparty subject to the Forward Contracts.

51. On August 17, 2009, the Counterparty advised the Receiver that Kinross Gold Corporation shares ("Kinross") a security held in both the CAD and USD Share Baskets, had declared a dividend, and at the ex-dividend date of September 21, 2009, would cease to be a Canadian Security for the purposes of subsection 39(6) of the *Income Tax Act* (Canada). The Counterparty requested that in both the CAD and USD Share Baskets that the Kinross shares be replace with Teck Cominco B shares ("Teck") (the " Teck Substitution"). The intent of the Teck Substitution was to remove the Kinross shares from the Belmont Fund before the ex-dividend date and substitute with a comparable investment. Substitution of shares is governed by the Forward Contracts, specifically, Section 7 Adjustments and Extraordinary Events.

52. On September 4, 2009, the Receiver approved the Teck Substitution. From both the CAD and USD Share Baskets, 8,322 and 25,535 shares respectively, of Kinross shares were sold. For both the CAD and USD Share Baskets, 7,516 and 23,028 shares respectively, of Teck shares were purchased. The transaction resulted in a

realized capital gains of approximately $275,000. Pursuant to the OM, any net income or loss from operations, including realized and unrealized gains/losses on investments are to be allocated to Limited Partners on an annual basis. The Receiver will determine the appropriateness tax treatment of the gain arising from the Teck Substitution and will report, as necessary, to the Unitholders and the General Partner.

53. The Receiver has not reviewed any prior share substitutions in the Share Baskets. According to Citigroup, there is a cumulative net capital loss of approximately $1.3 million as a result of similar basket change transactions since inception of the Belmont Fund. The Receiver will follow-up with the Counterparty to determine if, in addition to the Teck Substitution, there are net gains/losses on investments that need to be reported to the Unitholders and the General Partner.

## IV. THE BELMONT FUND

*Assets*

54. As outlined above, the value of the Belmont Fund is derived from the Share Baskets, the Forward Contracts, and cash and cash equivalents, and indirectly the market value and return of the Segregated Portfolio. As a result, the value of the Belmont Fund is tied to the value of and potential recovery from the Segregated Portfolio (as further described herein).

55. As outlined above, the Share Baskets are pledged to the Counterparty. The principal asset of the Belmont Fund is the Forward Contracts. The value of the Forward Contracts is based on the market value of the Notional Investment. Therefore, the value of the Forward Contracts varies directly with the market value and return of the Segregated Portfolio. As a result, the value of the Belmont Fund is tied to the value of and potential recovery from the Segregated Portfolio.

***Unitholdings in the Belmont Fund and Liabilities of the Belmont Fund***

56. The Receiver continues to be uncertain of the total liabilities of the Belmont Fund with respect to the Unitholders, and creditors and other claimants ("the Creditors"). The Receiver has not determined any reasons not to rely on the books, records and client statements of RBC (the "RBC Unitholder Records") to determine the amounts invested by the Unitholders, including the number of Units held, the Receiver is of the view that the most effective method of determining the Creditor liabilities is to implement a claims procedure, as further described herein.

57. Based on the records available to the Receiver from RBC and Citigroup, the Receiver has identified that the number of units held by the Unitholders at the Receivership Date were as follows:

| Class of Units | Number of units | Initial investment ('000s) |
|---|---|---|

| | | |
|---|---|---|
| Class AC (CDN) | 4,500.0 | $450.0 |
| Class FC (CDN) | 152,958.9 | $16,496.7 |
| Class FU (USD) | 38,123.3 | $4,040.0 |

58. While the Limited Partnership Agreement provides that the General Partner may acquire Units in the Belmont Fund, it is the Receiver's understanding that the General Partner does not hold any Units.

59. The Receiver understands that the Belmont Fund's liabilities may include amounts owed to certain service providers or parties in the Investment Structure.

60. The OM describes the following fees and costs which are the responsibility of the Belmont Fund:

- a monthly administration fee to be paid to the General Partner (the "Administration Fee") to compensate the General Partner for the costs incurred in administering the Belmont Fund and to pay any applicable trailer fees or other dealer compensation fees;
- a annual fee due to the Counterparty, payable quarterly in arrears (the "Forward Fee");
- costs associated with the FX Hedge (the "FX Hedge costs"); and
- other expenses incurred in the ordinary course of the administration of the fund, including but not limited to, custodian, audit, legal, advisory and other related administration fees.

61. On October 16, 2009, Citigroup advised the Receiver that it has not received payment for its administrative services rendered for at least one year. The amount owing to Citigroup has not yet been confirmed by the Receiver.

62. In addition, the Receiver understands that the Belmont Fund may also have amounts owing to creditors with respect to unpaid trailer fees. The balances outstanding have not yet been confirmed by the Receiver.

63. In addition, the Receiver has received a claim from Nead/Ominiscope for $558,799.58 for fees and expenses. The Receiver is reviewing the claim and will incorporate this claim into the claims procedure proposed below.

64. At this time, the Receiver is only in a position to identify potential claims and the potential priorities of those claims against the Belmont Fund; however, the Receiver does not have funds available to satisfy any amounts due to Unitholders and Creditors at this time, pending the repatriation of value from the Segregated Portfolio to the Belmont Fund.

*Net Asset Value ("NAV")*

65. As discussed above the Receiver continues to be uncertain about the value of the total assets of the Belmont Fund and the amount of the total liabilities of the Belmont Fund. As a result, the Receiver is not in a position to calculate a NAV for the Belmont Fund.

66. The most recent NAV for the Belmont Fund was calculated by the Citigroup as at September 30, 2008. The table below is a summary of the September 30, 2008 NAV calculated by Citigroup for each class of Unitholder:

| September 30, 2008 | Total net assets value ('000s) | Number of units | NAV per unit |
|---|---|---|---|
| Class AC (CAD) | $288.4 | 4,500.0 | $64.09 |
| Class FC (CAD) | $10,984.7 | 152,958.8 | $71.81 |
| Class FU (USD) | $2,780.2 | 38,123.2 | $72.92 |

67. **The Receiver observes that the September 30, 2008 NAV for the Belmont Fund is not necessarily indicative of the ultimate realizations available to the Unitholders, and that the current NAV for the Belmont Fund may be significantly less than the September 30, 2008 NAV.** The principal asset of the Belmont Fund is the Forwards Contracts, the value which varies directly with the market value and return of the Segregated Portfolio. Based upon information provided by Harcourt, the NAV of the Class A Shares of Segregated Portfolio (the "Class A NAV") has fluctuated significantly since August 31, 2008. For example,

- at August 31, 2008, the Class A NAV was approximately US$21.3 million;
- at February 28, 2009, approximately US$12.8 million; and
- at July 31, 2009, approximately US$10.2 million.

The Receiver had not recalculated the Class A NAV calculation; however, it is worth noting that the Receiver understands that the Class A NAV calculation above reflect the Second Vontobel Redemption Request (as defined and further described below) as a liability of the Segregated Portfolio, therefore reducing the NAV. Should the Second Vontobel Redemption Request be withdrawn, this will have an effect on the Class A NAV, and ultimately the NAV at the Belmont Fund level.

68. The most recent audited financial statements for the Belmont Fund are for the period ending December 31, 2007, attached hereto as **Appendix H**.

## V. THE SEGREGATED PORTFOLIO

***Segregated Portfolio Closing and Realization of Assets of Segregated Portfolio***

69. Harcourt is overseeing the winding up of the Segregated Portfolio. Further to this, Harcourt provided the Receiver with a liquidity analysis which extends to the fourth quarter 2011 and beyond. The Receiver has requested regular updates in respect of the windup of the Segregated Portfolio and continues to collect any relevant supporting information with request to liquidity of the Underlying Funds of Funds (as defined below) from Harcourt.

70. The Segregated Portfolio is invested in various fee-free classes of specialized funds of hedge funds that are also managed by Harcourt (the "Underlying Funds of Funds"). The Receiver understands that the Segregated Portfolio was invested in the following fund of funds as at July 2009:

- Belmont Asset Based Lending Ltd. Belmont Asset Based Lending Ltd,
- Belmont Asia Ltd. Nov08-Redemption Share Class,
- Belmont Fixed Income Sep08-Redemption Share Class,
- Belmont Fixed Income Nov08-Redemption Share Class,
- Belmont Fixed Income Dec-08-Redemption Share Class, and
- Belmont Latin America Ltd. Nov08-Redemption Share Class.

71. The Receiver obtained the July 31, 2009 financial statements for the Segregated Portfolio from Harcourt on September 24, 2009, which are attached as **Appendix I**. According to these financial statements the NAV of the Segregated Portfolio as at June 30, 2009 is US$10,180,024, calculated as follows:

| | |
|---|---|
| Fund Investments (Cost $12,030,420) | US$ 9,615,920 |
| Cash | 655 |
| Dues from Brokers | 1,714,803 |
| Receivable for sold investments | 349,062 |
| Receivable from Belmont ABL | 1,247,985 |
| Total Assets | 12,478,424 |
| Less payables and accrued expenses | (35,500) |
| Payable to Vontobel for Repurchase of Participating Shares * | (2,262,900) |
| Net Assets | US$ 10,180,024 |

*The July 31, 2009 financial statement treat the Second Vontobel Redemption Request payable to Vontobel of $2,262,900 is the amount Harcourt says is payable to Vontobel for the Second Vontobel Redemption Request. As discussed above, the Receiver observes that the treatment and priority of payment of the Second Vontobel Redemption Request will affect the ultimate realization for the Unitholders

72. As at July 31, 2009, the reported total value of the Class A shares was approximately US$9.9 million. The total value of the Class B shares was approximately US$250,000.

73. As at August 21, 2009, as a result of distributions from the funds underlying the Segregated Portfolio, the total cash held in the Segregated Portfolio had increased to approximately US$2.1 million, from US$655,000 at July 31, 2009. The Receiver obtained confirmation of the cash balance from Citco.

74. For the investment management services that Harcourt provides to the Segregated Portfolio, Harcourt is entitled to receive a monthly management fee and a performance fee based on a percentage of the Segregated Portfolio's NAV, which the Receiver understands is calculated based on the equity in the Segregated Portfolio and is not based on the leveraged value of the Segregated Portfolio.

75. Subject to certain requirements, the Segregated Portfolio is to pay Harcourt a performance fee which is based on a percentage and is calculated and paid quarterly (the "Performance Fee"). The Receiver understands that where a net shortfall amounts arises in a subsequent fiscal year, Harcourt is not required to return the Performance Fee paid in respect of a prior period. Harcourt has advised the Receiver that no Performance Fees are outstanding and that given the financial performance of the Segregated Portfolio, Harcourt does not expect to earn any Performance Fees in the future.

***Additional issues which may affect underlying values of Segregated Portfolio and therefore the Belmont Fund***

76. The Receiver has, to date, identified two potential areas which may affect the underlying values of the Segregated Portfolio and the Belmont Fund, and which the Receiver continues to investigate:

    a) the Vontobel redemption requests; and

    b) the alleged foreign exchange hedge loss claimed by the Counterparty.

***Vontobel Seed Capital and Redemption Requests***

77. In August 2006, Vontobel invested seed capital in the Segregated Portfolio, with a subscription of 50,000 Class A Shares for US$5 million (the "Seed Capital'). The Receiver understands from discussions with Harcourt that they invested the Seed Capital around the time that the Investment Structure was set up. An objective of investing the Seed Capital was to increase the asset base of the Investment Structure to spread out the costs of the Investment Structure. Harcourt further advised the Receiver that the objective of spreading out the costs of the Investment Structure and did not depend on whether the Seed Capital was invested in the Segregated Portfolio or in the Belmont Fund. Harcourt further advised the Receiver that, generally speaking, seed money injections into any particular investment fund by Vontobel are removed as once the investment fund reaches a size to support the cost structure of the fund.

78. Harcourt advised the Receiver that sometime in May 2008 that Vontobel made the decision to withdraw the Seed Capital from the Segregated Portfolio. The decision was made to withdraw the Seed Capital in two installments. Further to this, Vontobel submitted a redemption request to Citco for 20,000 of its Class A shares

on May 9, 2008 (the "First Vontobel Redemption Request") to be redeemed using June 30, 2008 as the NAV date. The Receiver has received confirmation of the First Vontobel Redemption Request from Harcourt which is attached hereto as **Appendix J**. The Receiver understands from Harcourt that US$2 million was paid to Vontobel on August 4, 2008.

79. Based on documents provided by Harcourt, the Receiver understands that on June 23, 2008, Vontobel requested that the custodian for its shares in the Segregated Portfolio, SIS SegaInterSettle AG ("SIS"), make a redemption request for the balance of Vontobel's investment in the Segregated Portfolio (the "Second Vontobel Redemption Request") for a trade date at the end of September. SIS placed the Second Vontobel Redemption Request to Citco on August 5, 2008. The confirmation for the Second Vontobel Redemption Request from Citco dated August 5, 2008, attached hereto as **Appendix K**, indicates that the trade date was to be October 1, 2008, based on the September 30, 2008 NAV for the Segregated Portfolio, with a settlement date of October 30, 2008. Based on information provided by Harcourt, with the September 30, 2008 NAV of approximately US$75.43 per unit, the redemption amount claimed by Vontobel is US$2,262,900, which would result in a loss by Vontobel of approximately US$700,000 on its US$2 million investment.

80. The Receiver understands that no amounts have been paid to Vontobel with respect to the Second Vontobel Redemption Request. As previously mentioned, Harcourt has confirmed that all redemption payments have been frozen and pending discussions with the Receiver has undertaken not to pursue receiving payment of the Second Vontobel Redemption Request. If Vontobel had been paid out for the Second Vontobel Redemption Request, based on the September 30, 2008 NAV for the Belmont Fund of approximately US$75.43 per unit, it would have received US$2,262,900.

81. The two Vontobel redemption requests were the subject of a proposed derivative claim within the Oppression Application (the "Redemption Claim Application"). In the Appointment Order, the Court ordered that the Redemption Claim Application was to be addressed by the Receiver and the Court hearing the Dissolution Hearing. The Receiver continues to investigate the claims in the Redemption Claim Application and is in discussions with Harcourt and Vontobel with respect to a potential resolution thereof. Matters being discussed between the Receiver and Harcourt include the priority of any amounts due, if any, to Vontobel with respect to the Second Vontobel Redemption Request, including:

    i. whether Vontobel should be paid US$2,262,900 from the Segregated Portfolio for the repurchase of its Class A shares pursuant to the Second Vontobel Redemption Requests in priority to any distributions to any other shareholders in the Segregated Portfolio;

    ii. whether the timing of the Vontobel request results in Vontobel being considered a creditor versus holding an equity position as a holder of Class A Shares, at the date of the decision to wind up the Segregated Portfolio; or

iii. whether Vontobel should be considered to still hold 30,000 Class A shares and receive distributions from the Segregated Portfolio on a *pari passu* basis with other shareholders in the Segregated Portfolio.

82. The Receiver believes that the ongoing discussions with Harcourt and Vontobel in respect of the redemption requests are productive and seeks to continue discussions as well as its ongoing investigation. The Receiver shall continue to update the Court in respect of the Redemption Claim Application.

***Unwind of the FX Hedge and Counterparty's claim to foreign exchange loss***

83. On April 22, 2009, the Counterparty terminated the FX Hedge as contemplated by the OM ("FX Termination") based on the occurrence of a triggering event. The Counterparty advises the Receiver that it suffered a loss on termination of the foreign exchange hedge totaling approximately US$2.5 million (the "FX Loss").

84. The Receiver and legal counsel for RBC met with representatives of the Counterparty on August 31, 2009 at which time the Counterparty explained the mechanics of the calculation of the FX Loss. The Receiver has also received supporting documents from the Counterparty to support the calculation of the loss on the termination of the FX Hedge.

85. The Counterparty has settled US$2.5 million to its counterparty to the FX hedge (the "FX Hedge Counterparty"). In the normal course, the Counterparty would sell shares in the Segregated Portfolio to raise the funds to settle with the FX Hedge Counterparty, by sending a redemption request to the Segregated Portfolio to redeem sufficient shares to receive US$2.5 million. The Counterparty advises the Receiver, however, that it did not submit a redemption request for the FX Termination.

86. The Receiver continues to collect and review information with respect to priorities associated with the loss on termination of the foreign exchange hedge and is not yet in a position to present its view in this matter. The Receiver is continuing its review of this issue, as well as continuing discussion with the Counterparty in respect of potential determination and/or resolution of this issue, and will continue to update the Court in respect of its progress in addressing this issue. Matters which the Receiver continues to investigate include:

a. whether the Counterparty is entitled to be reimbursed for the FX Loss, and if so whether the Counterparty is to be reimbursed in cash or with Participating Shares:

b. if the Counterparty is to be reimbursed with Participating Shares, what is the appropriate number of shares;

c. if the Counterparty is to be reimbursed in cash, what is an appropriate amount and what is the Counterparty's priority for payment; and,

d. determine the impact of the FX Loss on the Unitholders, in particular the CAD Unitholders. As discussed above, the FX Hedge was placed to reduce the foreign exchange risk of the CAD Unitholders.

## VII. CLAIMS PROCEDURE

***Creditors and Other Claimants***

87. The Receiver is of the view that it is advisable and prudent to implement a claims procedure as soon as possible in order to

- identify and quantify the claims of creditors and other claims against the Belmont Fund as at the Receivership Date;
- eliminate the need to go back to Court at a future date to have a claims procedure put in place; and
- to be in a position to expedite any distribution of the Belmont Fund's assets to the creditors/claimants and Limited Partners at the appropriate time.

88. The Receiver recommends that creditors and any other claimants complete a prescribed proof of claim form ("Proof of Claim") in a format similar to that utilized in a bankruptcy proceeding, substantially in the form attached to the draft Order attached to the Motion Record.

89. The Receiver shall send a Proof of Claim form, and any other materials as the Receiver considers necessary or appropriate, to each of the Belmont Fund's known creditors.

90. The Receiver shall publish a notice to creditors and any other claimants against the Belmont Fund, substantially in the form attached to the draft Order attached to the Motion Record, on the Receiver's website at www.kpmg.ca/belmontfund and in the following publications on one occasion: (1) The Globe & Mail (National Edition); and (2) La Presse.

91. The Receiver shall send a copy of the Proof of Claim, and any other materials as the Receiver considers necessary or appropriate, to any other party upon a request of such materials as soon as practicable.

92. The Receiver recommends that this Honourable Court establish a claims bar date of 4:00 p.m. (Eastern Standard Time) on December 5, 2009 for the filing of Proofs of Claim with the Receiver, failing which, all claims against the Companies are forever barred and extinguished.

93. The Receiver may disallow any proof of claim of a creditor or claimant, in whole or in part, by issuing a Notice of Disallowance, substantially in the form attached to the draft Order attached to the Motion Record. The Receiver will issue its Notices of Disallowance prior to any distribution.

94. Any claimant may appeal any disallowance of its claim by delivering a Notice of Appeal, substantially in the form attached to the draft Order attached to the Motion Record, within 30 calendar days from the receipt of a Notice of Disallowance failing which, the claim will be forever barred and extinguished.

*Unitholders*

95. The Limited Partners will not be required to submit a Proof of Claim in respect of their claims as unitholders of the Belmont Fund. With respect to the equity claims of and on behalf of Unitholders, in lieu of requiring formal proofs of claims to be filed by the Unitholders in respect of their equity claims, the Receiver intends to rely on RBC Unitholder Records. If required, the Receiver may seek further advice and direction of the Court in respect of Unitholders' claims.

96. RBC is to send to all Unitholders a notice, substantially in the form attached as **Appendix L** ("Unitholder Notice"), to each Unitholder within fourteen calendar days of this Order. The Unitholder Notice advises the Unitholders that they are not being requested by the Receiver to submit a proof of claim to the Receiver with respect to their investment in the Belmont Fund and that the Receiver is relying upon the RBC Unitholder Records. Unitholders are further advised that if they wish details of the information relating to their units, as submitted to the Receiver by RBC, they are to contact either the Receiver or RBC.

97. The Receiver believes it is appropriate to rely on the RBC Unitholder Records for the following reasons:

    a. RBC sends a client statement, which include details of the number of units held, to each Unitholders on a monthly and/or quarterly basis. Unitholders have the opportunity to report any discrepancies to RBC;

    b. RBC has historically reconciled its RBC Unitholder Records with the quarterly and monthly reports prepared by the fund administrator and/or custodian, which include information as to the units held by each unitholder; and

    c. through the Unitholder Notice, the Unitholders are being advised that the Receiver is relying upon the RBC Unitholder Records.

## VIII. NEXT STEPS

*Dissolution Hearing*

98. The Dissolution Hearing was originally scheduled for August 27, 2009. At the request of the Receiver, with the consent of RBC the hearing was postponed in order that the Receiver be given additional time to accumulate and review relevant information and prepare options for the Dissolution Hearing. The Dissolution Hearing is now returnable October 21, 2009.

99. The order to be sought during the Dissolution Hearing (the "Dissolution Order") seeks to permit the Fund Dissolution to be effected upon the filing by the Receiver of a certificate that confirms that the Receiver has completed its realization on all of the Belmont Fund's property and distributed the proceeds of such realization to the persons entitled to receive such distributions.

100. Prior to being in a position to issue such a certificate, the Receiver will have to complete a number of tasks in respect of the realization of the Belmont Fund, including but not limited to:

a. finalizing a review of the financial position of the Belmont Fund and the Segregated Portfolio;

b. completing determinations and/or resolutions in respect of the Vontobel redemption request and the Counterparty's foreign exchange loss claim;

c. determining what steps must be required to repatriate the funds from the Segregated Portfolio, once available;

d. determining whether such repatriation will be effected through the use of the Forward Contracts presently in place, or through the collapse of such contracts, whereby the Belmont Fund could be a direct holder of Participating Shares, thereby removing the Counterparty from the Investment Structure. Such a determination will required a review of potential fee/cost savings, tax consequences and other matters that are associated with a decision to collapse the Forwards Contracts; and

e. calling for and determination of any claims against the Belmont Fund, and the priorities associated with such claims.

101. As part of its mandate in determining the next steps required to effect the dissolution of the Belmont Fund, it would benefit the Receiver to have the restriction previously imposed in paragraph 4 of the Appointment Order lifted, such that the Receiver shall have the authority and direction needed to effect the interim steps required to effect the dissolution of the Belmont Fund.

102. The Receiver may also seek the advice and direction of the Court in the course of undertaking the interim steps and will also return to the Court at such time as it is prepared to recommend and seek authority to distribute the assets of the Belmont Fund to the various stakeholders.

**RESPECTFULLY SUBMITTED,**

Dated the 19th day of October, 2009.

**KPMG INC.**
In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund

| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
|---|---|---|---|
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIRST REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND**

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Court File No. 09-8302-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# SECOND REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**April 30, 2010**

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## LIST OF APPENDICES

## INTRODUCTION

### Appointment of the Receiver

1. Pursuant to the Order of the Honourable Madam Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2009 (the "Appointment Order"), KPMG Inc. was appointed receiver and manager (the "Receiver") of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the "Belmont Fund"), an Ontario limited partnership. A copy of the Appointment Order, which among other things, sets out the powers of the Receiver is attached hereto as **Appendix A**. James Haggerty Harris (the "Applicant") made the application pursuant to section 101 of the *Courts of Justice Act*, RSO 1990 c.C.43.

2. The Appointment Order was amended by Order of the Honourable Madam Justice Hoy on October 21, 2009 (the "Amended Appointment Order"), a copy of which is attached as **Appendix B**.

### Background

3. The Belmont Fund is an investment fund established as a limited partnership under the laws of Ontario pursuant to an agreement between Belmont Dynamic GP Inc., as general partner (the "General Partner"), and the limited partners (the "Limited Partners" or "Unitholders") of the Belmont Fund dated June 9, 2006 (the "Limited Partnership Agreement" or "LPA")). The Limited Partners are accredited investors and are the unitholders in the Belmont Fund. Unitholders purchased units denominated in either of Canadian dollars or in US dollars. The General Partner was responsible for managing the day-to-day business of the Belmont Fund.

4. The only undertaking of the Belmont Fund was the investment of its assets. The objective of the Belmont Fund was to provide investors with the return on the Belmont Dynamic Segregated Portfolio ("Segregated Portfolio") of hedge funds existing as a segregated portfolio of Belmont SPC, a segregated portfolio company organized under the laws of the Cayman Islands. The Segregated Portfolio's investments were made on a leveraged basis in specialized fund of hedge funds managed by Harcourt Investment Consulting AG ("Harcourt"). Harcourt is the Investment Advisor to the Segregated Portfolio. Alternative Investments Management Ltd, a Barbadian Company affiliated with Harcourt, owns all of the voting shares of the Belmont SPC, and is also the investment manager of the Segregated Portfolio.

5. Exposure to the Segregated Portfolio is obtained by first using the proceeds from the sale of units in the Belmont Fund to acquire two baskets of Canadian common shares (the CAD Share Basket and USD Share Basket, collectively, the "Share Baskets") and then entering into two forward purchase and sale agreements (the CAD Forward Contract and the USD Forward Contract, collectively, the "Forward Contracts") with National Bank of Canada (Global) Limited (the "Counterparty").

6. In accordance with the Forward Contracts, the Counterparty has agreed to pay to the Belmont Fund on the maturity date of the Forward Contracts (the "Forward Maturity Date") an amount equal to the redemption proceeds of a notional number of participating

shares ("Participating Shares") in the Segregated Portfolio (the "Notional Number of Shares") in exchange for the delivery of the Share Baskets to the Counterparty by the Belmont Fund or an equivalent cash payment at the election of the Belmont Fund. As a result of the Forward Contracts, the Belmont Fund has exposure to the performance of the Segregated Portfolio but it has no direct interest in the Segregated Portfolio.

7. The investment structure, including the Belmont Fund and the Segregated Portfolio, is defined as the "Investment Structure".

8. Harcourt and Omniscope Advisors Inc. ("Omniscope") each hold 50% ownership of the outstanding common shares of the General Partner. Omniscope carries on the business of a securities dealer and is registered as a dealer in the category of limited market dealer under the *Securities Act* (Ontario). Omniscope is wholly owned by Mr. Daniel Nead ("Nead"). Harcourt carries on business as a portfolio manager of funds of hedge funds with its principal offices located in Zurich, Switzerland. Harcourt's principal shareholder is The Vontobel Group ("Vontobel"), a Swiss private bank headquartered in Zurich, Switzerland.

9. The General Partner has two directors with equal voting rights: (1) Nead, a resident Canadian; and (2) Peter Fanconi ("Fanconi") a resident of Switzerland. Nead is also President and Secretary of the General Partner. Fanconi is Chief Executive Officer of the General Partner, a director of Vontobel and former President and Chief Executive Officer of Harcourt.

10. There are 135 Limited Partners, of which 126 are clients of RBC Phillips, Hager & North Investment Counsel Inc. ("RBC PHN") and the remaining are clients of RBC Dominion Securities ("RBCDS"). RBC PHN and RBCDS are collectively referred to as "RBC".

11. On October 31, 2008 Citco Fund Services (Europe B.V.) ("Citco"), the administrator of the Segregated Portfolio, wrote to the shareholders of the Segregated Portfolio advising that due to the ongoing financial crisis and its impact upon the investment industry, the directors of the Segregated Portfolio had deemed that the continued operation of the Segregated Portfolio was no longer viable and that steps should be taken to realize on the underlying assets of the Segregated Portfolio and to close it down (the "Segregated Portfolio Closing"). The letter also included notice of a compulsory redemption of the shares in advance of the Segregated Portfolio Closing effective as of October 31, 2008.

12. The Receiver understands that at or around October 31, 2008, Harcourt advised RBC that the Belmont Fund was no longer viable due to recent market turmoil and that steps would therefore be taken to dissolve the Belmont Fund. Further, the Receiver understands that Harcourt also advised RBC that the Limited Partners were unable to redeem their units of the Belmont Fund at that time because the direct and indirect underlying hedge fund holdings of the Segregated Portfolio had suspended the redemption of their units or shares and/or were gated, as the case may be.

13. In December, 2008, the General Partner provided RBC with a draft notice of a meeting of the Limited Partners (the "Proposed Meeting"). The Proposed Meeting was to be held to consider and approve the dissolution of the Belmont Fund and to appoint the General Partner as the receiver and liquidator of the Belmont Fund in accordance with the terms and conditions of the LPA governing the operation of the Belmont Fund. The Proposed

Meeting was not convened because of an "impasse" that developed between Harcourt and Omniscope.

14. This impasse became the subject of a court proceeding involving an application for an oppression remedy under the *Business Corporations Act* (Ontario) that has been made by Harcourt against, among others, the Belmont Fund, the General Partner and Omniscope for the purpose of, among other things, dissolving the Belmont Fund (the "Harcourt Application"). In a cross application to the Harcourt Application (the "Nead/Omniscope Application") the cross applicants, Nead and Omniscope, sought, *inter alia*, a claim for fees and an order pursuant to the *Business Corporations Act* (Ontario) granting leave to Omniscope to commence a derivative action on behalf of the General Partner against Fanconi, Harcourt and Vontobel. No action has been taken in these matters since the appointment of the Receiver.

15. As a result of the above developments, RBC was of the view that the dissolution of the Belmont Fund could not be completed by the General Partner. On July 30, 2009, RBC brought an application to this Honourable Court to appoint the Receiver and for the Dissolution Hearing.

## PURPOSE OF REPORT

16. The purpose of this Second Report to the Court dated April 30, 2010 (the "Second Report") is to provide this Honourable Court and the stakeholders of the Belmont Fund with an update on certain of the Receiver's activities since the First Report of the Receiver dated October 19, 2009 (the "First Report'), including.:

    (i) the status of the legal proceedings since the First Report;

    (ii) an update on the claims process procedure; and

    (iii) an overview of the Receiver's request to implement a claims determination process in respect of disputed claims.

17. A copy of the First Report (without attachments) is attached hereto as **Appendix C**.

## TERMS OF REFERENCE

18. The information contained in this Second Report has been obtained from the books and records and other information made available to the Receiver from the Belmont Fund and from third parties, including the General Partner. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver or KPMG LLP nor has it necessarily been prepared in accordance with generally accepted accounting principles. The reader is cautioned that this report may not disclose all significant matters about the Belmont Fund. Accordingly, the Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein. The Receiver reserves the right to refine or amend its comments and/or finding as further information is obtained or is brought to its attention subsequent to the date of the Second Report.

19. Unless otherwise note, all dollar amounts referred to herein are expressed in Canadian dollars.

20. All capitalized terms used herein and not otherwise defined are as defined in the First Report and/or as defined in the Appointment Order or Amended Appointment Order.

## LEGAL PROCEEDINGS

### Appointment Order

21. The Appointment Order did not stay the relief sought in the Harcourt Application. With respect to the Nead/Omniscope Application, the Application Order provided that the claim for fees was to be dealt with in the Receivership and the claim to commence a derivative action was to be considered and addressed by the Receiver at a later date.

22. The Appointment Order was without prejudice to the right of any interested person to return to court on August 21, 2009 (the "Comeback Hearing") to seek to alter any term of the Appointment Order, including the appointment of the Receiver. If any parties intended to come back for this purpose, they were to provide written notice to the Applicant and the Receiver by August 14, 2009. While the Receiver had discussions with Harcourt and Omniscope, and their respective legal counsel, with respect to certain issues potentially to be addressed at the Comeback Hearing, no interested person pursued a motion at the Comeback Hearing.

23. A Court-supervised dissolution of the Belmont Fund (the "Fund Dissolution") was sought as part of the original application of the Applicant. The Fund Dissolution was to be the subject of a separate court hearing (the "Dissolution Hearing"). The Appointment Order directed that the return date for the hearing of the application in respect of the Dissolution Hearing and certain relief as required would be August 27, 2009, or such other date as set by the Court upon motion by the Applicant. On August 26, 2009, this Honourable Court adjourned the Dissolution Hearing to a date to be scheduled and approved by the Court in the fall of 2009.

24. The Appointment Order also provided that until further Order of this Honourable Court at the Dissolution Hearing or otherwise, the Receiver shall not terminate or consent to the termination of any forward contract or sell or otherwise dispose of any material portion of the Property.

25. As previously indicated, the Dissolution Hearing was originally scheduled for August 27, 2009. At the request of the Receiver, with the consent of RBC, the Dissolution Hearing was postponed in order that the Receiver be given additional time to accumulate and review relevant information and prepare options for the Dissolution Hearing. The Dissolution Hearing was heard on October 21, 2009.

26. At the Dissolution Hearing on October 21, 2009, the Honourable Madame Justice Hoy of the Ontario Superior Court of Justice (Commercial List) made the Amended Appointment Order providing that:

    (i) the Belmont Fund shall be dissolved upon the Receiver filing a certificate confirming that the Receiver has completed its realization on all of the Belmont

Fund's property and distributed the proceeds of such realization in accordance with the *Partnership Act* (Ontario); and

(ii) the Appointment Order be amended by deleting Paragraph 4 so the Receiver was expressly empowered and authorized to terminate or consent to the termination of any Forward Contract and to sell or otherwise dispose of any material portion of the Property where the Receiver considers it necessary or desirable to do so.

27. The Service List was provided with notice of the Dissolution Hearing and a copy of the First Report. There was no opposition to the relief sought by any party. Specifically, none of Harcourt, Omniscope or the Counterparty opposed the relief sought.

28. As described in the First Report, prior to being in a position to issue a certificate that the Belmont Fund may be dissolved, the Receiver will have to complete a number of tasks in respect of the realization of the Belmont Fund, including but not limited to:

(i) finalizing a review of the financial position of the Belmont Fund and the Segregated Portfolio;

(ii) completing determinations and/or resolutions in respect of the Vontobel redemption requests and the Counterparty's foreign exchange loss claim and any outstanding disputed claims;

(iii) determining what steps must be required to repatriate the funds from the Segregated Portfolio, once available; and

(iv) determining whether such repatriation will be effected through the use of the Forward Contracts presently in place, or through the collapse of such contracts, whereby the Belmont Fund could be a direct holder of Participating Shares, thereby removing the Counterparty from the Investment Structure. Such a determination will required a review of potential fee/cost savings, tax consequences and other matters that are associated with a decision to collapse the Forwards Contracts.

**Claims Procedure Order**

29. On October 21, 2009, this Honourable Court granted an Order setting out a claims identification process to identify pre-receivership claims (the "Claims Procedure Order"). The Claims Procedure Order is attached hereto as **Appendix D.**

30. The Claims Procedure Order established a claims bar date of 4:00 p.m. (Eastern Standard Time) on December 5, 2009 ("Claims Bar Date") for the filing of Proofs of Claim with the Receiver.

31. In addition, among other things, the Claims Procedure Order provides that:

(i) the Limited Partners are not required to submit Proofs of Claim with respect to their Unitholders' claims. For purposes of determining the Unitholders' claims, the Receiver can rely on the books and records and statements maintained by RBC.

(ii) the Receiver may disallow any Proofs of Claim in whole or in part by delivering a Notice of Revision or Disallowance;

(iii) upon receipt of a Notice of Revision or Disallowance, any creditor who chose to dispute the revision or disallowance of its claims shall do so by delivery of a Notice of Dispute within 30 calendar days from the receipt of the Notice of Revision or Disallowance, failing which the amount of the claim as outlined in the Notice of Revision or Disallowance shall be deemed binding for distribution and all other purposes; and

(iv) the applicable procedures for determining any claims disputed pursuant to a Notice of Dispute shall be established by further Order of the Court.

**First Reporting Letter to Investors**

32. The Receiver has reported to Unitholders by way of a reporting letter to investors, dated February 24, 2010 (the "First Reporting Letter"). The First Reporting Letter, attached as **Appendix E**, has been posted on the Receiver's website at www.kpmg.ca/belmontfund/.

**UPDATE ON CLAIMS PROCEDURE**

**Creditor Claims**

33. In accordance with the Claims Procedure Order, the Receiver:

(i) published a notice to creditors and any other claimants against the Belmont Fund in the Globe and Mail (National Edition) and La Presse (copies of which are attached as **Appendix F**) on October 30, 2009; and

(ii) mailed packages containing a Proof of Claim and instruction letter for completing the Proof of Claim (the "Claims Materials") to each of the eight parties who had been identified by the Receiver as potential creditors of the Belmont Fund.

34. The results of the creditor claims process conducted by the Receiver to date are summarized below. Amounts denominated in US dollars have been converted to Canadian dollars at a rate of Cdn$1.0759 = US$1, as provided for in the Claims Procedure Order.

| Creditor Type | Count | Amount Claimed | Count | Allowed Amount | Count | Disputed Amount | Count | Unresolved |
|---|---|---|---|---|---|---|---|---|
| Secured | 1 | $ 3,248,891.75 | n/a | n/a | 1 | $ 3,248,891.75 | n/a | n/a |
| Unsecured | 6 | 780,980.72 | 4 | 179,402.64 | 1 | 558,799.58 | 1 | 25,271.08 |
| Contingent | 1 | TBD | n/a | n/a | n/a | n/a | 1 | Unknown |
| **Total** | **8** | **$ 4,029,872.47** | **4** | **$ 179,402.64** | **2** | **$ 3,807,691.33** | **2** | **$ 25,271.08** |

35. As indicated above, the Receiver has:

(i) received eight Proofs of Claim, including one secured claim and one contingent claim (the "Pre-Receivership Claims);

(ii) reviewed the Pre-Receivership Claims and corresponded with the appropriate claimants, as required, to obtain clarification and additional supporting information;

(iii) issued Notices of Revision or Disallowance to five claimants, one of whom was subsequently allowed in whole and two of whom have filed Notices of Dispute (the "Disputed Claims");

(iv) allowed four claims totaling $179,402.64;

(v) received two additional claims after the initial Claims Bar Date (one unsecured claim and one contingent claim), as further described below, and the Receiver has sought further information in respect of these claims; and

(vi) with respect to the remaining Disputed Claims, the Receiver is seeking a claims determination process as further described herein.

**Unitholder Claims**

36. With respect to the investments of the Unitholders, the Claims Procedure Order provides that Unitholders were not required to submit Proofs of Claim. Through a notice to Unitholders, dated October 26, 2009 and issued by RBC to all Unitholders, RBC advised that the Receiver is relying upon the RBC's unitholder records and that Unitholders are not required to file a Proof of Claim (the "Unitholder Notice"). In the Unitholder Notice, sample copies attached herein as **Appendix G**, Unitholders were invited to contact either RBC or the Receiver if they wished further information about their unitholdings as provided by RBC to the Receiver.

37. The Receiver has not received any information which indicates that it should not rely upon the RBC's unitholder records.

**Admitted Claims**

38. To date, the Receiver has allowed the following four claims totaling $179,402.64:

(i) an unsecured claim of $120,388.65 from Citigroup for monthly administrative service charges including interest charges, for the period from January 1, 2009 to August 6, 2009.

(ii) an unsecured claim of $48,079.10 from Accilent for monthly advisory service fees including interest and penalties, for the period July 1, 2008 to August 6, 2009;

(iv) an unsecured claim of $8,963.05 from McMillan for legal services provided prior to August 6, 2009; and

(iv) an unsecured claim of $1,971.84 from Fundserv for services provided prior to August 6, 2009.

**Claims Received after the Claims Bar Date**

39. In reviewing the Omniscope Claim (defined below in paragraph 43), the Receiver concluded that certain of the amounts sought, in respect of advisory and legal fees, were duplicative and dealt with by claims which were filed directly by the respective parties, and/or in the Receiver's view were more appropriately dealt with in a direct claim filed by such parties (specifically the General Partner and Borden Ladner Gervais LLP ("BLG") as opposed to inclusion in the Omniscope Claim. As such, the Receiver permitted these two parties the opportunity to submit claims for further consideration after the initial Claims Bar Date.

40. On March 26, 2010, Nead, on behalf of the General Partner, submitted a Proof of Claim for administrative fees with the final amount to be determined (the "GP Claim"). The Receiver has requested that all details for the claim be submitted by April 30, 2010.

41. On April 15, 1010, BLG submitted a Proof of Claim in respect of legal fees provided to or on behalf of the Belmont Fund (the "BLG Claim"). The Receiver has sought further particulars of the BLG claim. It may be necessary to have this claim resolved together with the Omniscope Claim.

**Disputed Claims**

42. At this time, there are two Disputed Claims, filed by Omniscope and Nead and the Counterparty.

A. Omniscope Claim

43. Omniscope and Nead filed a claim (the "Omniscope Claim") in the aggregate amount of $558,799.58, in respect of liquidator's fees (the "Omniscope Liquidator Fee"), advisory fees due and outstanding to Accilent and legal fees due and outstanding to three legal firms.

44. On March 12, 2010, the Receiver issued a Notice of Revision or Disallowance disallowing the Omniscope Claim in whole (the "Omniscope Disallowance Notice").

45. While the Receiver disallowed the portion of the Omniscope Claim relating to the Omniscope Liquidator Fee, the Omniscope Disallowance Notice provided that the Receiver would permit the submission of claims for consideration by the Receiver from i) the General Partner for administrative costs due to the General Partner from the Belmont Fund and ii) from BLG for legal services charges incurred on behalf of the Belmont Fund.

46. On March 26, 2010, Omniscope and Nead submitted to the Receiver a Notice of Dispute of Disallowance or Revision of Claim ("Omniscope Notice of Dispute"). The parties have been unable to resolve the Omniscope Claim to date and as such it will be necessary to implement a dispute resolution mechanism for this claim.

B. Counterparty Claim

47. On December 4, 2009, the Counterparty submitted, on a without prejudice basis, a secured claim (the "Counterparty Claim") of $456,699.34 and US$2,595,215.55 in aggregate, for:

    (i) an alleged realized loss suffered from the termination of the F/X Hedge (the "F/X Loss");

    (ii) accrued and future Forward Fees to August 1, 2016;

    (iii) funding costs of the alleged F/X Loss; and

    (iv) legal fees incurred.

48. On March 12, 2010, the Receiver issued a Notice of Revision or Disallowance ("Counterparty Revision Notice") which revised the Counterparty Claim in part as follows:

    (i) allowed the accrued Forward Fees as at the date of the receivership, subject to confirmation of how the amount claimed was calculated. The Receiver awaits details of the Counterparty's calculations in this regard; and

    (ii) disallowed the cash reimbursement of the alleged F/X Loss, funding costs of the alleged F/X Loss and the legal fees incurred. The Receiver confirmed it would permit the reimbursement of the F/X Loss by way of units in the Segregated Portfolio, subject to the determination of the final quantum of the F/X loss.

49. On April 9, 2010, the Counterparty submitted a Notice of Dispute of Disallowance or Revision of Claim ("Counterparty Notice of Dispute").

50. In the First Report, the Receiver described the unwind of the F/X Hedge and the Counterparty's claim to the F/X Loss. Since the First Report, the Receiver has continued its review of this matter, including continued discussions with the Counterparty in respect of potential determination and/or resolution of this issue. The parties have been unable to resolve this claim to date and as such it will be necessary to implement a dispute resolution mechanism for this claim.

## PROPOSED PROCESS FOR ADVANCING THE DISPUTED CLAIMS

51. The Claims Procedure Order was silent on a dispute resolution process should a claimant and the Receiver be unable to resolve a claim. The Receiver is of the view that it is appropriate to seek direction from the Court on a proposed process to resolve any Disputed Claims (the "Claims Determination Process") as soon as possible in order to reach a final determination of all potential claims against the Belmont Fund.

52. Given the limited number of disputed claims to be resolved in this matter and the nature of those claims, the Receiver seeks the Court's assistance in reviewing and adjudicating upon the Disputed Claims. The Receiver proposes setting the procedure and scheduling of each Disputed Claim in discussion with the relevant claimant. If the Receiver and claimant are unable to finalize such terms and resolve the claim, they shall seek the Court's direction on a resolution or determination of the Disclaimed Claim.

53. A copy of the proposed Order approving and implementing the Claims Determination Process (the "Claims Determination Order") is attached as **Appendix H**. The draft Claims Determination Order also provides for the Court's involvement, if required, to address any of the remaining claims that may require adjudication (ie. the General Partner and BLG claims). The Receiver is confident it can reach consensus on procedures to address dispute resolution with these remaining parties; however, if the Receiver is unable to do so, the parties will seek an appointment with the Court to resolve such mechanics and scheduling issues.

54. An issue has arisen in respect of requests by certain stakeholders for disclosure of other claimant's disputed claim materials and information. The Receiver contemplates that some stakeholders may also seek to participate in the hearing of a Disputed Claim filed by another claimant. The Receiver is reluctant to disclose information in respect of a particular claim, or agree to a party's standing in a hearing of the Disputed Claim, without the relevant claimant's consent or a Court Order.

55. In this Receivership, there are parties who have expressed interest to the Receiver in respect of other claims filed and such individuals or parties may have relevant information to provide in respect of a Disputed Claim. The Receiver envisions that it may be necessary for it to call evidence in respect of certain Disputed Claims and as such it may be necessary to ask for certain individuals or parties to be witnesses at an upcoming hearing.

56. The Receiver has considered the requests for disclosure and the potential request for standing at a hearing, and recommends the following process to address disclosure and standing issues:

- in advance of a hearing of a Disputed Claim, the Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute will be circulated to the Service List and any claimant who has filed a Proof of Claim; and
- no other disclosure in respect of the individual claim shall be provided by the Receiver to a third party other than:
    - to the extent such disclosure is required to assist a potential witness to be called by the Receiver, to participate in a hearing of a Disputed Claim;
    - with the consent of the relevant claimant; or
    - further Court Order.

57. In respect of a party seeking to participate in the hearing of a Disputed Claim, any party, other than the claimant or a witness for the Receiver or claimant, shall be required to seek the claimant and Receiver's consent, or a Court Order, to participate at the hearing.

## SUMMARY AND CONCLUSIONS

58. The Receiver requests that this Honourable Court make an Order:

(i) approving the activities of the Receiver with respect to the claims procedure as described in this Second Report; and

(ii) authorizing the proposed Claims Determination Order.

**RESPECTFULLY SUBMITTED,**

Dated the 30th day of April, 2010.

**KPMG INC.**
In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund

*Per:* *Elizabeth Murphy*
*Vice-President*

| | | | |
|---|---|---|---|
| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND**

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Court File No. 09-8302-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# SUPPLEMENT TO SECOND REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**May 14, 2010**

**Introduction**

1. The Receiver files this Supplement to Second Report in response to the Affidavit of Paul J. Martin sworn May 11, 2010 (the "Martin Affidavit") and the issues raised therein by Harcourt Investment Consulting AG and Peter Fanconi ("Harcourt"). All capitalized terms not defined herein are as defined in the Receiver's Second Report, dated April 30, 2010 (the "Second Report").

2. As outlined in the Second Report, there are essentially four remaining Disputed Claims that may require determination, (i) the Omniscope Claim; (ii) the GP Claim; (iii) the BLG Claim; and (iv) the Counterparty Claim. The Receiver is seeking a Claims Determination process to be implemented which will assist in reaching a final resolution of each of these claims, if the parties and Receiver are unable to otherwise resolve the claims. The Receiver has circulated to Omniscope and the Counterparty, a proposed process and timeline for determination of their respective Disputed Claims, which involves exchange of reports, affidavits, factums and a hearing before the Court. The procedures and timelines have not yet been finalized.

3. If the Disputed Claims (in particular the Omniscope Claim and Counterparty Claim) are resolved prior to a hearing, it is the Receiver's intention to seek approval of any resolution.

4. The Receiver has proposed a form of Order which it believes will provide flexibility to the Court, the Receiver and Claimant to have the Disputed Claims determined, and which provides for an interested party to seek to have standing in a hearing, should they not otherwise be invited to participate in the hearing by either the Receiver and/or the Claimant.

5. In the context of this particular receivership proceeding, the Receiver acknowledges that there have been a relatively small number of persons who have been actively involved with these proceedings, specifically Harcourt, Nead/Omniscope, the Counterparty, and RBC on behalf of the Limited Partners of the Belmont Fund (collectively the "Parties"). It has become clear to the Receiver that the history between some of the Parties was difficult and adversarial, and that there remain ongoing difficulties between some of the Parties.

**Information to be provided to Receiver**

6. Throughout these proceedings the Receiver has been in contact with the Parties. The Parties have taken on an active role in the proceedings, some more than others. During the course of its mandate, the Receiver has asked the Parties for background information in respect of the Belmont Fund and Segregated Portfolio to determine the history of the Belmont Fund and the potential value and recovery to the Limited Partners. Pursuant to paragraph 5 and 6 of the Appointment Order, there is an ongoing duty to provide access to information and cooperate with the Receiver, and the Receiver expects that the Parties have and will continue to satisfy these obligations.

7. In respect of the claims filed pursuant to the Claims Procedure Order, throughout these proceedings certain of the Parties have expressed interest in the claims filed by other Parties, in addition to their own filed claims. In reviewing claims, the Receiver looked first to the available books and records of the Belmont Fund and other publicly filed information (for example the Application Materials filed by Omniscope and Harcourt) to obtain background information. In certain circumstances, the Receiver has found it necessary to consult with certain of the Parties in the course of investigating a claim, for example as outlined in

paragraphs 41 and 42 of the Martin Affidavit. Throughout the Proceedings, the Receiver has also gratuitously received information from certain of the Parties in respect of various claims filed. For example, without prompting by the Receiver, Harcourt provided the Receiver with the letters attached as Exhibits K and Q to the Martin Affidavit, wherein Harcourt outlines its view of certain filed claims.

8. Should any party believe that it has relevant information to provide to the Receiver in respect of the receivership proceedings it has and remains available to the individual or party to provide this information. The Receiver expects such cooperation from the Parties, particularly in respect of paragraphs 5 and 6 of the Appointment Order. There is no need for the parties to delay providing such information, or to do so only in formal Court filings.

**GP Claim**

9. At the time the claim was filed by General Partner, the Receiver sought to ensure that both shareholders of the General Partner were aware of the claim. As noted in the cover note accompanying the disclosure of the GP Claim to Harcourt (Exhibit P to the Martin Affidavit), "...as a shareholder of the Belmont GP, the Receiver will keep Harcourt updated as and when there are developments on the Belmont GP Claim." Going forward, as an equal shareholder and a director of General Partner, the Receiver believes that Harcourt should be adequately informed in respect of the GP Claim and the Receiver intends to consult and confer with Omniscope and Harcourt equally in respect of this claim. The Receiver does not believe there is a need for a specific Order in this respect.

**Harcourt Motion**

10. In respect of the balance of the Disputed Claims, in its materials and draft Order, Harcourt raises three requests:

    (i) disclosure;

    (ii) involvement in setting of the Claims Determination Process; and

    (iii) standing at the hearing of the Disputed Claims.

11. These issues were first raised with the Receiver in the letter dated April 7, 2010 (Exhibit L to the Martin Affidavit). The Receiver disagreed with the contents of the letter in respect of the historical recounting of conversations between counsel. The Receiver also disagreed with the request for disclosure and standing as posed by Harcourt and as such the Receiver asked Harcourt to withdraw and reconsider the letter. The Receiver then received a second letter on April 20, 2010 (Exhibit M to the Martin Affidavit) wherein Harcourt continued to seek disclosure and standing.

**Disclosure Request**

12. Harcourt's disclosure request is as follows:

> "all relevant, non-privileged documents you have (including Notices of Disallowance and Notices of Dispute and all communications with other parties on these issues, including email communications and non-privileged

communications between your offices and the Receiver on these subjects) so that we can be in a position to advise our client". (Exhibit M to the Martin Affidavit)

13. The Receiver has recommended in its draft form of Order that copies of the Notice of Motion in respect of the Disputed Claim, Proofs of Claim, Notices of Revision or Disallowance and Notices of Dispute (the "Claims Documents") would be forwarded to the service list. The service list includes each of the Parties, and any party who has filed a Proof of Claim. This level of disclosure is broader than is often provided in claims processes involving insolvency or bankruptcy proceedings, but given the limited number of claimants involved and the limited number of potentially interested Parties, the Receiver thinks this is appropriate given the circumstances.

14. As part of the Claims Determination Process, the Receiver envisions that it may require affidavits from certain related parties (including, for example, Harcourt). As outlined in the draft Claims Determination Order, should a Party become involved as a potential witness, further disclosure may be provided to the party "as may be required to assist with their participation in the hearing of the Disputed Claims".

15. The Receiver does not believe it is necessary or appropriate to provide the level of disclosure requested by Harcourt. By reviewing the Claims Documents, any third party will have adequate information to determine the remaining issues and whether the third party has relevant information it wishes to disclose, to the Receiver and/or the Court relating to these issues.

16. The Receiver is concerned that providing the level of disclosure sought by Harcourt may interfere with the Receiver's role as the party responsible for determining, adjudicating and potentially resolving claims into the estate.

17. The Receiver is also concerned that providing such disclosure will harm future discussions and negotiations between the Receiver and Claimants. (*Ravelston Corp.* Re 2007 Carswell Ont 661 at para 49, 50, 52 (SCJ) (Comm List)), (Tab 2))

18. While the Receiver seeks to maintain a fair and transparent process throughout these proceedings, it is the Receiver's view that such disclosure may potentially be prejudicial to other stakeholders, especially given the litigious history between certain parties. On this basis, the Receiver believes that all claimants should be treated the same and the additional disclosure requested of the Court is not appropriate in the circumstances.

**Involvement in setting Claims Determination Process**

19. It has been the Receiver's experience in this proceeding that simple scheduling of motions has proven to be overly complicated. The Receiver's preference is therefore to provide that the Receiver and each Claimant shall determine the timeline and process for determining each Claimant's Disputed Claim.

**Standing**

20. On the issue of standing, the Receiver proposed in the draft Order that this issue would be left to the Judge hearing the Disputed Claim. This will permit the Parties to await

"invitation" by any of the Receiver or Claimant to the hearing (as a witness), before determining if a request for formal standing is required.

21. On the issue of standing, the Courts have offered some guidance in the context of Receivership proceedings: In the Afton Foods Justice Spies notes that although claimants may be indirectly impacted by the Court's decision, they may not have standing to intervene on interpretation issues before the Court. (*Afton Food Group Ltd.* Re 2006 Carswell Ont 3002 (SCJ) at para 16, (Tab 3))

22. Finally, while the potential number of interested parties in this case is small, the Receiver is concerned of the precedential affect that an Order such as that sought by Harcourt, will have (for example, on larger claims procedures or ones heard before a Claims Officer in an arbitration type setting).

**Draft Form of Order**

23. The Receiver has received comments from the Counterparty in respect of proposed changes to the draft Form of Order (attached as Appendix A). The Receiver is agreeable to the requested changes sought by the Counterparty

**RESPECTFULLY SUBMITTED,**

Dated the 14th day of May, 2010.

**KPMG INC.**
In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund

*Per:* *Elizabeth Murphy*
*Vice-President*

| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
|---|---|---|---|
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND**

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Court File No. 09-8302-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# THIRD REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**June 21, 2010**

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## APPENDICES

## INTRODUCTION

### Appointment of the Receiver

1. Pursuant to the Order of Madam Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2009 (the "Appointment Order"), KPMG Inc. was appointed receiver and manager (the "Receiver") of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the "Belmont Fund"), an Ontario limited partnership. A copy of the Appointment Order, which among other things, sets out the powers of the Receiver is attached hereto as **Appendix A**. James Haggerty Harris (the "Applicant") made the application pursuant to section 101 of the *Courts of Justice Act*, RSO 1990 c.C.43.

2. The Appointment Order provided that until further order of this Honourable Court at the Dissolution Hearing or otherwise, the Receiver shall not terminate or consent to the termination of any forward contract or sell or otherwise dispose of any material portion of the property of the Belmont Fund. The Appointment Order was amended by Order of Madam Justice Hoy on October 21, 2009 (the "Amended Appointment Order") by deleting Paragraph 4 of the initial Appointment Order, so the Receiver was empowered and authorized to terminate or consent to the termination of any forward contract and to sell or otherwise dispose of any material portion of the property of the Belmont Fund where the Receiver considers it necessary or desirable to do so. A copy of the Amended Appointment Order is attached as **Appendix B**.

3. The Appointment Order was made without prejudice to the right of any interested person to return to court on August 21, 2009 (the "Comeback Hearing") to seek to alter any term of the Appointment Order, including the appointment of the Receiver. If any parties intended to come back for this purpose, they were to provide written notice to the Applicant and the Receiver by August 14, 2009. While the Receiver had discussions with Harcourt Investment Consulting AG ("Harcourt") and Omniscope Advisors Inc. ("Omniscope"), and their respective legal counsels, with respect to certain issues potentially to be addressed at the Comeback Hearing, no interested person pursued a motion at the Comeback Hearing.

4. In its Application, the Applicant also sought a Court-supervised dissolution of the Belmont Fund (the "Fund Dissolution"). The Fund Dissolution was to be the subject of a separate court hearing (the "Dissolution Hearing"). The Appointment Order directed that the return date for the hearing of the application in respect of the Dissolution Hearing and certain relief as required would be August 27, 2009, or such other date as is set by the Court upon motion by the Applicant. On August 26, 2009, this Honourable Court adjourned the Dissolution Hearing to a date to be scheduled and approved by the Court.

5. At the Dissolution Hearing on October 21, 2009, Madame Justice Hoy of the Ontario Superior Court of Justice (Commercial List) issued the Amended Appointment Order which also provided that the Belmont Fund shall be dissolved upon the Receiver filing a certificate confirming that the Receiver has completed its realization on all of the Belmont Fund's property and distributed the proceeds of such realization in accordance with the Partnership Act.

6. On October 21, 2009, the Receiver also sought and received an Order setting out a claims identification process to identify claims of the creditors of the Belmont Fund (the "Claims Procedure Order"). The Claims Procedure Order is attached hereto as **Appendix C.**

7. On May 17, 2010, the Receiver also sought and received an Order setting out a resolution process for disputed claims pursuant to the Claims Procedure Order (the "Claims Determination Order"). The Claims Determination Order is attached hereto as **Appendix D.**

**Background to the Receivership**

8. The Belmont Fund is an investment fund established as a limited partnership under the laws of Ontario pursuant to an agreement between Belmont Dynamic GP Inc., as general partner (the "General Partner"), and the limited partners (the "Limited Partners" or "Unitholders") of the Belmont Fund dated June 9, 2006 (the "Limited Partnership Agreement"). The Limited Partners are accredited investors and are the unitholders in the Belmont Fund. Unitholders purchased units in either of Canadian dollars ("CAD") or in US dollars ("US$"). The General Partner was responsible for managing the day-to-day business of the Belmont Fund.

9. The only undertaking of the Belmont Fund was the investment of its assets. The objective of the Belmont Fund was to provide investors with the return on the Belmont Dynamic Segregated Portfolio (the "Segregated Portfolio") of hedge funds existing as a segregated portfolio of Belmont SPC, a segregated portfolio company organized under the laws of the Cayman Islands. The Segregated Portfolio's investment objective is to invest on a leveraged basis in specialized fund of hedge funds managed by Harcourt. Harcourt is the investment advisor to the Segregated Portfolio. Alternative Investments Management Ltd, a Barbadian Company affiliated with Harcourt, owns all of the voting shares of the Belmont SPC, and is also the investment manager of the Segregated Portfolio.

10. Exposure to the Segregated Portfolio is obtained by first using the proceeds from the sale of units in the Belmont Fund to acquire two baskets of Canadian common shares (the "CAD Share Basket" and "USD Share Basket", collectively the "Share Baskets") and then entering into two forward purchase and sale agreements (the "CAD Forward Contract" and the "USD Forward Contract", collectively, the "Forward Contracts") with National Bank of Canada (Global) Limited (the "Counterparty").

11. In accordance with the Forward Contracts, the Counterparty has agreed to pay to the Belmont Fund on the maturity date of the Forward Contracts an amount equal to the redemption proceeds of a notional number of participating shares ("Participating Shares") in the Segregated Portfolio in exchange for the delivery of the Share Baskets to the Counterparty by the Belmont Fund or an equivalent cash payment at the election of the Belmont Fund. As a result of the Forward Contracts, the Belmont Fund has exposure to the performance of the Segregated Portfolio but it has no direct interest in the Segregated Portfolio.

12. The investment structure, including the Belmont Fund and the Segregated Portfolio, is defined as the "Investment Structure".

13. Harcourt and Omniscope each hold 50% ownership of the outstanding common shares of the General Partner. Omniscope carries on the business of a securities dealer and is registered as a dealer in the category of limited market dealer under the *Securities Act (Ontario)*. Omniscope is wholly owned by Daniel Nead ("Nead"). Harcourt carries on business as a portfolio manager of funds of hedge funds with its principal offices located in Zurich, Switzerland. Harcourt's principal shareholder is The Vontobel Group ("Vontobel"), a Swiss private bank headquartered in Zurich, Switzerland.

14. The General Partner has two directors with equal voting rights: (1) Nead, a resident Canadian; and (2) Peter Fanconi ("Fanconi") a resident of Switzerland. Nead is also President and Secretary of the General Partner. Fanconi is Chief Executive Officer of the General Partner, Head of Private Banking at Vontobel and former President and Chief Executive Officer of Harcourt.

15. There are 135 Limited Partners, of which 126 are clients of RBC Phillips, Hager & North Investment Counsel Inc. ("RBC PHN") and the remaining are clients of RBC Dominion Securities ("RBCDS"). RBC PHN and RBCDS are collectively referred to as "RBC".

16. Due to the impact of the ongoing financial turmoil on the investment industry, on October 31, 2008 the directors of the Segregated Portfolio decided to compulsorily redeem all units or shares in the Segregated Portfolio in advance of closing down the Segregated Portfolio.

17. On October 31, 2008 Citco Fund Services (Europe B.V.) ("Citco") wrote to the shareholders of the Segregated Portfolio advising that the directors of the Segregated Portfolio had deemed that the continued operation of the Segregated Portfolio was no longer viable and that steps should be taken to realize on the underlying assets of the Segregated Portfolio and to close it down (the "Segregated Portfolio Closing"). The letter also included notice of a compulsory redemption of the shares in advance of the Segregated Portfolio Closing effective as of October 31, 2008 (the "Segregated Portfolio Closing Date").

18. The Receiver understands that at or around this time, Harcourt advised RBC that the Belmont Fund was no longer viable due to recent market turmoil and that steps would therefore be taken to dissolve the Belmont Fund. Further, the Receiver understands that Harcourt also advised RBC that the Limited Partners were unable to redeem their units of the Belmont Fund at that time because the direct and indirect underlying hedge fund holdings of the Segregated Portfolio had suspended the redemption of their units or shares and/or were gated, as the case may be.

19. In December, 2008, the General Partner provided RBC with a draft notice of a meeting of the Limited Partners. The meeting of the Limited Partners (the "Proposed Meeting") was to be held to consider and approve the dissolution of the Belmont Fund and to appoint the General Partner as the receiver and liquidator of the Belmont Fund in accordance with the terms and conditions of the Limited Partnership Agreement governing the operation of the Belmont Fund. The Proposed Meeting was not convened because of an "impasse" that developed between Harcourt and Omniscope.

20. This impasse has become the subject of a court proceeding under the *Business Corporations Act* (Ontario) that has been made by Harcourt against, among others, the

Belmont Fund, the General Partner and Omniscope for the purpose of, among other things, dissolving the Belmont Fund.

21. As a result of these developments, RBC was of the view that the dissolution of the Belmont Fund could not be completed by the General Partner. On July 30, 2009, RBC brought an application to this Honourable Court to appoint the Receiver and for the Dissolution Hearing.

**The First Report to the Court**

22. The Receiver filed its First Report to the Court dated October 19, 2009 (the "First Report"), a copy of which (without attachments) is attached hereto as **Appendix E.** The First Report provides a detailed overview of the Investment Structure and various issues addressed in these receivership proceedings, as well as support for the Claims Procedure Order which was sought at that time.

**First Report Letter to Investors**

23. On February 24, 2010, the Receiver issued its First Reporting Letter to Investors (the "First Letter") as attached in **Appendix F** to this Third Report. The purpose of the First Letter was to provide the Limited Partners with certain information, including that pertaining to the Segregated Portfolio regarding its investments and distributions, and updates on the claims process and certain tax matters.

**Second Report to the Court**

24. The Receiver filed its Second Report to the Court on April 30, 2010 (the "Second Report") and a Supplement to the Second Report on May 14, 2010 (the "Supplemental Second Report") in support of its motion to seek the Claims Determination Order. Copies of the Second Report and Supplemental Second Report (without attachments) are attached hereto as **Appendix G**.

**PURPOSE OF THIRD REPORT**

25. The purpose of this Third Report to the Court dated June 21, 2010 (the "Third Report") is to provide information to this Honourable Court and the stakeholders of the Belmont Fund with an update on the Receiver's activities since the First Report. This report will:

- describe activities of the Receiver;
- review of the Segregated Portfolio's financial position and estimated valuations;
- review of the redemption requests of Vontobel and proposed settlement of Derivative Application (as herein defined);
- review of funds held pending the resolution of the remaining disputed claims from the claims procedure (the "Disputed Claims"); and
- describe certain of the Receiver's next steps.

## TERMS OF REFERENCE

26. The information contained in the Third Report has been obtained from the books and records and other information made available to the Receiver from the Belmont Fund and from third parties, including the General Partner and Harcourt. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver or KPMG LLP nor has it necessarily been prepared in accordance with generally accepted accounting principles. The reader is cautioned that this report may not disclose all significant matters about the Belmont Fund. Accordingly, the Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein. The Receiver reserves the right to refine or amend its comments and/or finding as further information is obtained or is brought to its attention subsequent to the date of the Third Report. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the receivership.

27. Unless otherwise noted, all dollar amounts referred to herein are expressed in Canadian dollars.

28. All capitalized terms used herein and not otherwise defined are as defined in the First Report and Second Report and/or as defined in the Appointment Order and Amended Appointment Order.

## ACTIVITIES OF THE RECEIVER

29. Since the date of the First Report, the Receiver has undertaken various actions including:

    (i) various communications and discussions with stakeholders;

    (ii) preparing and mailing the First Letter;

    (iii) continuing to collect and take possession of the Belmont Fund's books and records;

    (iv) review and approval of Share Baskets transactions;

    (v) review of certain tax matters relating to the Belmont Fund and the General Partner;

    (vi) preparation of certain tax filings with respect to the Belmont Fund;

    (vii) continuing to assess the investment and financial structures of the Belmont Fund and its investments;

    (viii) continuing to compile and review information in respect of the value of the Belmont Fund, as well as the underlying value of the Segregated Portfolio, as well as potential claims against the Belmont Fund;

(ix) review of claims received pursuant to the Claims Procedure Order as described in the Second Report and the Supplemental Second Report;

(x) preparation of the Claim Determination Order;

(xi) continuing to investigate the claims in the Derivative Application and to hold discussions with Harcourt with respect to the priority of the redemption requests of Vontobel; and

(xii) addressing potential dissolution of the General Partner;

**Communications with Stakeholders**

30. The Receiver continues to monitor the Receiver's dedicated telephone line and email address for inquiries from any interested parties. To date, the Receiver has received a limited number of inquiries with respect to the general status of the receivership, the creditor claims process and certain tax matters. The Receiver has contacted these interested parties and understands that all material matters have been resolved or continue to be reviewed by the Receiver.

**Books and Records**

31. Since the date of the First Report, the Receiver has continued its efforts to gather and review information and records relating to the Belmont Fund, and the Receiver has continued to have discussions with relevant stakeholders as new information is received.

32. In December 2009, Citigroup Fund Services Canada Inc. ("Citigroup"), the Belmont Fund's administrative services provider, delivered to the Receiver a set of records which included the following:

(i) Net Asset Value ("NAV") statements;

(ii) Share Baskets transaction records;

(iii) account summaries; and

(iv) various other reports and supporting information.

33. Despite numerous inquiries of key stakeholders, including Nead and Citigroup, the Receiver has not obtained a complete set of books and records for the Belmont Fund. For instance, the Receiver has not obtained the information used to prepare the Prior T5013s (as defined in paragraph 45). In addition, the Receiver understands that financial statements for the year ended December 31, 2008 were not prepared. In the event that it would be necessary to prepare the 2008 financial statements, the Receiver has not been able to collect a complete set of records to support the preparation of such financial statements.

**Share Baskets Transactions**

34. As described in the First Report, proceeds raised from the Unitholders were used to purchase the Share Baskets of non-dividend-paying Canadian securities listed on the Toronto Stock Exchange, consisting of securities that constitute "Canadian securities" for purposes of section 39(6) of the *Income Tax Act (Canada)*. If any dividends or distribution are to be received by the Belmont Fund, the Forward Contracts provide that replacement securities acceptable to the Counterparty, may at the Belmont Fund's option, be substituted for shares in respect of which the dividend or distribution has been declared to preserve the value of the Forward Contracts (referred to as a the "Share Basket Rebalancing").

35. On February 12, 2010, the Counterparty advised the Receiver of proposed rebalancing transactions for each of the CDN and USD Share Baskets. The Receiver reviewed and approved the rebalancing and underlying transactions. The transactions in question resulted in realized capital losses of approximately $23,000.

36. On May 19, 2010, the Counterparty advised the Receiver of proposed rebalancing transactions for each of the CDN and USD Share Baskets. The Receiver reviewed and approved the rebalancing and underlying transactions. The transactions in question resulted in realized capital gains of approximately $1.1 million.

**The General Partner**

37. On October 20, 2009, Harcourt through its legal counsel notified the Receiver that the General Partner had received a notice of pending cancellation dated October 2, 2009 from the Ontario Ministry of Revenue as a result of non-compliance with the *Corporations Tax Act* (the "Notice of Pending Cancellation"). The Notice of Pending Cancellation provided thirty days from the date of issue for the General Partner to comply otherwise an Order to dissolve the company would be issued.

38. Given the potential adverse affects that a dissolution of the corporate general partner would have had on the limited partnership, the Receiver took the following steps:

- communicated with the stakeholders of the General Partner to determine the current status of the alleged non-compliance issues, and sought their assistance to ensure full compliance, in accordance with the Limited Partnership Agreement;

- communicated with the Ontario Ministry of Revenue, after receiving and submitting authorization for release of account information to the Receiver from a director of the General Partner, to determine the nature of the alleged non-compliance issues, next steps and requirements to bring the General Partner into compliance; and

- communicated with certain service providers to determine the current status of the alleged non-compliance issues and cost and timing required to bring the General Partner into compliance, if required.

39. On February 18, 2010, the Receiver through its legal counsel, requested the Ontario Ministry of Revenue to cease any further steps in respect of the Notice of Pending Cancellation on the basis that any involuntary dissolution of the General Partner may adversely impact the Belmont Fund and/or these receivership proceedings, and in light of the stay or proceedings granted in the Appointment Order.

40. On March 6, 2010, the Notice of Pending Cancellation was elevated to an impending cancellation of the General Partner by way of posting to The Ontario Gazette.

41. Following this publication, the Receiver through its legal counsel was able to contact the Ontario Ministry of Revenue directly to discuss the potential dissolution in the context of these receivership proceedings and the stay of proceedings. On April 8, 2010, the Ontario Ministry of Government Services informed the Receiver's legal counsel that the cancellation process had been withdrawn and the General Partner would remain with "active" status.

**The Belmont Fund – 2009 Year-end**

42. For the year ended December 31, 2009, the Receiver prepared and remitted to Canada Revenue Agency (the "CRA") a T5013 Summary, *Information Return of Partnership Income* and related information slips T5013, *Statement of Partnership Income* (the "2009 T5103s") (collectively referred to as the "2009 Return") and to Revenu Quebec the Form TP-600-V, *Partnership Information Return* and the related information slips RL-15, *Montants attribués aux membres d'une société de personnes* (the "2009 RL-15s") (collectively referred to as the "2009 Quebec Return"). In addition, for the year ended December 31, 2009 the Receiver sent to each person who was either a limited or general partner at December 31, 2009, a 2009 T5013 and, and if the Limited Partner was a Quebec resident, a 2009 RL-15.

43. The 2009 Return and the 2009 Quebec Return (the "2009 Returns") were prepared using available records and information of the Belmont Fund, including available information contained in prior filings with the CRA, supplemented by certain information obtained from third parties by the Receiver since its appointment as Receiver. In preparing the 2009 Returns, the Receiver did not carry out an audit nor was the Receiver in a position to formally verify the information obtained from the records of the Belmont Fund or from third parties.

44. Pursuant to the Limited Partnership Agreement for tax purposes, the income and losses of the Belmont Fund in respect of a fiscal year are to be allocated among the General Partner and the Limited Partners. In determining the income and losses of the Belmont Fund for the fiscal year ended 2009, the Receiver included the realized gains and losses from all of the Share Basket Rebalancing transactions in 2009. The information with respect to the list of 2009 Share Basket Rebalancing transactions was provided to the Receiver by the Counterparty.

45. For the years ended December 31, 2006, 2007 and 2008 (the "Prior Years"), the Receiver received copies of the previously filed T5013s (the "Prior T5013s) from Citigroup; however, the Receiver did not receive any of the supporting information used in the preparation of the Prior T5013s. For the Prior Years, the Receiver has no information

with respect to whether Limited Partners resident in Quebec received RL-15 slips (the "Prior RL Slips").

46. As discussed in paragraph 33, the Receiver has not obtained a complete set of financial records for the Belmont Fund. In particular, the Receiver has not obtained the information used to prepare the returns for the years prior to the year ending December 31, 2009 (the "Prior Returns"). Given the incomplete records available to the Receiver, the Receiver is also not in a position to confirm the accuracy of the Prior Returns. The Receiver has advised the Limited Partners that should there be any errors in the Prior Returns, that these errors may have been carried forward to the 2009 Returns.

## CASH POSITION OF THE BELMONT FUND

47. The Receiver currently holds no cash in its trust bank account relating to these proceedings. Since the date of the Appointment Order, the Receiver has not received any funds nor has the Receiver made any payments or distributions to any creditors/investors.

## SEGREGATED PORTFOLIO

48. As described in greater detail in the Receiver's First Report, the principal asset of the Belmont Fund is the Forward Contracts, the value of which varies directly with the market value and return of the Segregated Portfolio. As a result, the value of the Belmont Fund is tied to the value and potential recovery from the Segregated Portfolio.

49. The Segregated Portfolio is itself presently in wind-up, with Harcourt overseeing the winding-up. The Receiver has requested regular updates in respect of the wind-up of the Segregated Portfolio and continues to collect any relevant supporting information with request to the value and liquidity of the Underlying Funds of Funds (as defined below) from Harcourt.

50. A number of factors affect the value, timing and entitlement of any potential recoveries from the Segregated Portfolio. Two significant factors are a) the value and timing of realizations from the investments of the Segregated Portfolio and b) the priority of distributions from the Segregated Portfolio, in particular the Second Redemption Request (defined in paragraph 70) and the alleged foreign exchange loss claims by the Counterparty (the "Counterparty Claim"). Information with respect to the financial position and investments of the Segregated Portfolio is provided in paragraphs 51 to 67. The Second Redemption Request, including a proposed resolution, is discussed below beginning in paragraph 68. The Counterparty Claim is discussed in the Second Report and is being addressed through the Claims Determination Process.

### Financial Position of the Segregated Portfolio

51. The Receiver obtained from Harcourt the NAV statement for the Segregated Portfolio for March 31, 2010 on June 3, 2010 (the "March 2010 NAV Statement"). This is the most current NAV statement available to the Receiver. According to the March 2010 NAV Statement, which is attached as **Appendix H**, the net assets of the Segregated Portfolio before outstanding redemption requests as at March 31, 2010 were approximately US$12.1 million as at March 31, 2010 (the "March 2010 NAV"). **As**

**noted in the First Report, the Receiver continues to be uncertain of the value, timing and entitlement to any potential recoveries from the Segregated Portfolio.**

52. According to the NAV statement for the Segregated Portfolio for July 31, 2009 (the "July 2009 NAV Statement"), the net assets of the Segregated Portfolio before outstanding redemption requests were approximately US$12.4 million as at July 31, 2009 (the "July 2009 NAV"). The July 2009 NAV Statement is attached as **Appendix I.**

53. Harcourt has advised the Receiver that the July 2009 NAV and the March 2010 NAV are calculated as follows:

| | July 31, 2009 (US$ 000's) | March 31, 2010 (US$ 000's) |
|---|---|---|
| *Underlying Fund of Funds (cost)* | *$12,030* | *$10,290* |
| Underlying Fund of Funds (market value) | $9,166 | $7,281 |
| Cash * | 1,716 | 4,068 |
| Receivable for investments sold | 349 | 0 |
| Receivable from ABL FUND | 1,248 | 828 |
| Total Assets | 12,479 | 12,177 |
| Payables and accrued expenses | (36) | (40) |
| **Net assets before outstanding redemption requests** | **12,443** | **12,137** |
| Payable for fund shares repurchased ** | (2,263) | (2,263) |
| Net assets | $10,180 | $9,874 |
| | | |
| Number of outstanding Class A shares *** | 187,142.5472 | 187,142.5472 |
| NAV per Class A shares (US$) | $53.04 | $51.46 |
| Number of outstanding Class B shares | 5,478.7870 | 5,478.7870 |
| NAV per Class B shares (US$) | $46.23 | $44.54 |

* *The July 2009 and March 2010 NAV Statements include separate amounts for Cash and Cash Equivalents and Due from Brokers, which the Receiver has classified together as Cash. Harcourt has confirmed to the Receiver that both of these amounts are Cash.*

** *In the July 2009 and March 2010 NAV Statements, Vontobel is classified as a creditor for US$2,262,900, the Second Redemption Request Amount.*

*** *The number of outstanding Class A shares is net of the 30,000 shares which are part of the Second Redemption Request.*

54. If the 30,000 shares which are part of the Second Redemption Request were considered to still be outstanding Class A shares, the Receiver estimates that the NAV per Class A share would increase by approximately US$3 per share.

55. For the investment management services that Harcourt provides to the Segregated Portfolio, Harcourt is entitled to receive a monthly management fee and a performance fee based on a percentage of the Segregated Portfolio's NAV, which the Receiver

understands is calculated based on the equity in the Segregated Portfolio and is not based on the leveraged value of the Segregated Portfolio.

56. Subject to certain requirements, the Segregated Portfolio is to pay Harcourt a performance fee which is based on a percentage and is calculated and paid quarterly (the "Performance Fee"). The Receiver understands that where a net shortfall amounts arises in a subsequent fiscal year, Harcourt is not required to return the Performance Fee paid in respect of a prior period. Harcourt has advised the Receiver that no Performance Fees are outstanding and that given the financial performance of the Segregated Portfolio, Harcourt does not expect to earn any Performance Fees in the future.

**Investments of the Segregated Portfolio**

57. Harcourt has advised the Receiver that as at March 31, 2010, the Segregated Portfolio was invested in cash and the following five fund of hedge funds (the "Underlying Funds of Funds"):

| Fund Name | Market Value at March 31, 2010 US$ (000's) |
|---|---|
| BELMONT ASSET BASED LENDING CLASS A ("ABL FUND") | $3,603 |
| BELMONT RX SPC CLASS ASIA 11/08 ("RX ASIA FUND") | 560 |
| BELMONT RX SPC CLASS LATAM 11/08 ("RX LATAM FUND") | 1,012 |
| BELMONT RX SPC CLASS FI 09/08 ("RX FI 09/08 FUND") | 220 |
| BELMONT RX SPC CLASS FI 11/08 ("RX FI 11/08 FUND") | 1,886 |
| Total | $7,281 |

58. The Underlying Funds of Funds are in turn invested in hedge funds (the "Underlying Funds"). Harcourt has advised the Receiver that there are three basic types of investments held in the Underlying Funds:

    (i) fixed income instruments which are high yield with low subordinated positions;

    (ii) equity positions in small-cap companies which have not been able to obtain financing to buy out the existing investors; and

    (iii) private loans for which refinancing is not available.

59. The ABL FUND was placed into a court supervised liquidation proceeding in January 2010, with Stuart Sybersma and Ian Wight of Deloitte & Touche ("Deloitte") in the Cayman Islands being appointed as Joint Official Liquidators of the ABL FUND by an Order of the Grand Court in the Cayman Islands on January 19, 2010. Prior to this, the ABL FUND which was established by Harcourt, was being informally wound up by Harcourt. The Receiver learned of appointment of the Joint Official Liquidators from Harcourt in early May 2010. The Receiver understands from Harcourt that the liquidity provider to the ABL FUND sought the appointment of an official liquidator for the ABL FUND.

60. Based on a conversation with a representative of Deloitte, the Receiver understands that Deloitte is continuing to investigate the financial status of the ABL FUND and has not yet developed a realization or distribution plan for the ABL FUND. Harcourt advises the Receiver that the first report from Deloitte is expected to be available shortly.

61. The RX LATAM FUND, the RX ASIA FUND and the RX FI 09/08 and RX FI 11/08 FUNDS (the "RX Funds) are "side pockets" funds, established respectively from the following funds: BELMONT ASIA CLASS A, BELMONT LATIN AMERICA LTD. CLASS A and BELMONT FIXED INCOME LTD CLASS A. (the "Redeemed Funds"). A side pocket is a separate account created to include the illiquid assets of a particular hedge fund. Each time an investor redeemed from one of the Redeemed Funds the investor received the liquid part of its redemption in cash as well as a payment in kind in the form of units in one of the RX Funds.

62. Harcourt established and managed the Redeemed Funds. Harcourt continues to manage and oversee the liquidation of the RX Funds. The Receiver understands from Harcourt that Harcourt's approach to liquidating the RX Funds is to maximize the recovery from the Underlying Funds; therefore, to the extent it is reasonable, Harcourt's objective is to continue to hold the positions in the Underlying Funds until such time as the fund allows redemptions. It is not Harcourt's intention to "fire sale" the assets of the RX Funds in the secondary market. The Receiver understands from Harcourt that as liquidity is available in the RX Funds, distributions will be made on a *pro rata* basis to investors in the RX Funds, including the Segregated Portfolio.

**Cash Position of the Segregated Portfolio**

63. The cash position of the Segregated Portfolio was approximately US$4.1 million at March 31, 2010 (the "March 31, 2010 Cash Balance"). The cash position of the Segregated Portfolio at July 31, 2009 was approximately US$1.7 million. The principal reason for the change in the cash position has been the distribution of funds from each of the Underlying Fund of Funds.

64. The Receiver has been advised by Harcourt that the Segregated Portfolio has not received any payments from the ABL FUND since November 2009. Since March 31, 2010, the Segregated Portfolio has received cash distributions of approximately US$100,000 from the RX FI 09/08 and RX FI 11/08 FUNDS.

**Realization of Assets of the Segregated Portfolio**

65. In December 2009, Harcourt provided the Receiver with a liquidity analysis, dated September 30, 2009, which extended to November 2012 and beyond (the "Sept. 2009 Liquidity Analysis"). Based on the Sept. 2009 Liquidity Analysis, the estimated cash receipts to be available over time to the Segregated Portfolio, before ongoing costs of the Segregated Portfolio, was US$12.2 million (the "Sept. 2009 Estimated Cash Receipts"), with the cash on hand at September 30, 2009 being approximately US$2.3 million.

66. Based on the March 2010 NAV Statement the estimated cash receipts to be available over time (before ongoing costs of the Segregated Portfolio) is US$12.1 million (the "March 2010 Estimated Cash Receipts"). Approximately 33% (or US$4.1 million) of the March 2010 Estimated Cash Receipts is cash and the balance is largely in illiquid

investments. Approximately 37% (or US$4.4 million) of the March 2010 Estimated Cash Receipts is recoverable from the ABL FUND. In May 2010, Harcourt provided the Receiver with estimated payout schedules for the RX Funds as at March 31, 2010 (the "RX Payout Schedules"). Harcourt has not prepared an estimated payout schedule for the ABL FUND as Deloitte is now responsible for the liquidation of that fund. As a result, the timing of any distributions from the ABL FUND is uncertain.

67. The Receiver understands that the Sept. 2009 Liquidity Analysis and the RX Payout Schedules were prepared by Harcourt from information received directly or indirectly from the administrators of the Underlying Funds. The Receiver understands that Harcourt has limited ability to assess the accuracy of the valuations received directly or indirectly from the administrators or portfolio managers of the Underlying Funds. This is because, given the terms of the agreements between the Underlying Funds of Funds and the Underlying Funds, it is up to the discretion of the fund managers of the Underlying Funds as to whether they provide all detailed specifics about the underlying investments and the specific methods and processes used to value the investments of the Underlying Funds. In addition, the Underlying Funds are invested in illiquid investments for which it is difficult to obtain precise market values. Furthermore, the values received from the Underlying Funds' managers may consist of estimates only. Due to a number of factors, including the uncertainty of future events, there can be no assurance that the value at which an investment is recorded in the accounting records of a particular Underlying Fund at any particular time will not later be reduced, or that a fund will be able to liquidate the investment at that value or at any other amount.

## VONTOBEL REDEMPTION REQUESTS

### Vontobel Seed Capital and Redemption Requests

68. In August 2006, Vontobel invested seed capital in the Segregated Portfolio, with a subscription of 50,000 Class A shares for US$5 million (the "Seed Capital").

69. Harcourt advised the Receiver that in May 2008 Vontobel made the decision to withdraw the Seed Capital from the Segregated Portfolio. The decision was made to withdraw the Seed Capital in two instalments. Further to this, Vontobel submitted a redemption request to Citco for 20,000 of its shares on May 9, 2008 (the "First Redemption Request") to be redeemed using the June 30, 2008 NAV. The Receiver understands from Harcourt that approximately US$2 million was paid to Vontobel on August 4, 2008 and that 20,000 of the 50,000 shares in the Segregated Portfolio held by Vontobel were redeemed.

70. Based on documents provided by Harcourt, the Receiver understands that on June 23, 2008, Vontobel requested that the custodian for its shares in the Segregated Portfolio, SIS SegaInterSettle AG ("SIS"), make a redemption request for 30,000 shares held by Vontobel in the Segregated Portfolio (the "Second Redemption Request") for a trade date at the end of September. SIS placed the Second Redemption Request with Citco on August 5, 2008. The confirmation for the Second Redemption Request from Citco dated August 5, 2008 indicates that the trade date was to be October 1, 2008, based on the September 30, 2008 NAV for the Segregated Portfolio, with a settlement date of October 30, 2008.

71. Using the September 30, 2008 NAV of approximately US$75.43 per share (the "September NAV"), the amount claimed by Vontobel for the Second Redemption Request is US$2,262,900 (the "Second Redemption Request Amount"), which would have resulted in a loss by Vontobel of approximately US$700,000 on its US$3 million investment in 30,000 shares.

72. The Receiver understands that no amounts have been paid to Vontobel with respect to the Second Redemption Request. Harcourt has confirmed that any distributions (including outstanding redemption requests) from the Segregated Portfolio to shareholders of the Segregated Portfolio have been frozen and, pending discussions with the Receiver, Harcourt/Vontobel has undertaken not to pursue receiving payment of the Second Redemption Request.

**Vontobel Redemption Requests Disputes**

73. The First and Second Vontobel Redemption Requests (collectively, the "Vontobel Redemption Requests") were the subject of a proposed derivative claim within Court File No. CV-09-8227-00CL. In the cross application in Court File No. CV-09-8227-00CL (the "Derivative Application"), the cross applicants, Nead and Omniscope (the "Cross Applicants"), sought, *inter alia*, an Order pursuant to the *Business Corporations Act* (Ontario) granting leave to Omniscope to commence a derivative action on behalf of the General Partner against Fanconi, Harcourt and Vontobel (collectively the "Defendants"), in respect of, *inter alia*, the redemption requests.

74. The Cross Applicants sought leave to issue and serve a statement of claim requesting the following relief: (i) a declaration that the Vontobel Redemption Requests are invalid; (ii) an Order requiring the Defendants to return to the Belmont Fund all amounts paid to Vontobel pursuant to the First Redemption Request with interest; (iii) an Order prohibiting the Defendants from pursuing the Second Redemption Request or, in the alternative, an Order requiring the Defendants to return to the Belmont Fund all amounts paid to Vontobel pursuant to the Second Redemption Request with interest; (iv) in the alternative to (i), (ii) and (iii), compensation for facilitating, participating in, and receiving property obtained in, breach of fiduciary duty; and (v) in alternative to (iv), an Order for the disgorgement of all profits or other benefits occasioned by the Defendant's allegedly wrongful conduct.

75. In the Appointment Order, the Court ordered that the Derivative Application was to be dealt with by the Receiver and considered by the Court on the return of the Dissolution Hearing. This portion of the motion to address the potential of the Receiver pursuing the Derivative Application was addressed on a preliminary basis in the First Report and adjourned by an Order of the Court pending further discussions between Harcourt and the Receiver.

**Background of Vontobel Redemption Requests**

76. In the First Report the Receiver advised this Honourable Court that it was investigating the claims in the Derivative Application and holding discussions with Harcourt with respect to the priority of the Vontobel Redemption Requests. Since the First Report the Receiver has continued to investigate the background of the Vontobel Redemption Requests.

77. It was alleged in the Derivative Application that when the Belmont Fund was established, Fanconi, Harcourt and the General Partner agreed that Harcourt, through Vontobel, would invest the Seed Capital directly in the Belmont Fund; however, instead of buying units of the Belmont Fund, Vontobel invested in the Segregated Portfolio. The Receiver has not been provided any written confirmation from the Cross Applicants supporting their claim of an agreement that the Seed Capital was to be invested directly in the Belmont Fund. The Receiver understands from discussions with Harcourt that there was no agreement that the Seed Capital was to be invested in the Belmont Fund.

78. In addition, with respect to the Seed Capital, Harcourt advises the Receiver of the following:

(i) Harcourt/Vontobel normally uses seed capital to launch new products and that the amount of seed capital available to Harcourt was limited;

(ii) an objective of investing the Seed Capital at the launch of the Belmont Fund was to increase the asset base of the Investment Structure to spread out the costs of the Investment Structure; and

(iii) generally speaking, seed money injections into any particular investment fund by Harcourt/Vontobel are removed after a given investment fund reaches a size which supports the cost structure of the respective fund.

79. The Cross Applicants allege that Vontobel submitted the First Redemption Request to Citco on August 5, 2008, and that Vontobel received payment for the First Redemption Request on or about September 30, 2008. The Cross Applicants claim that this decision detrimentally affected the Belmont Fund. The Receiver has received supporting information from Harcourt that the First Redemption Request was made on May 9, 2008 and subsequently settled on August 4, 2008.

80. Harcourt has advised the Receiver that the decision to withdraw the Seed Capital was made in May 2008. The decision to withdraw the Seed Capital was made to allow Harcourt to use the Seed Capital in other projects. At the time the decision was made to request the redemptions of the Seed Capital, Harcourt advises that it did not have any knowledge or expectation of a decline in the value of the Segregated Portfolio or that the viability of the Segregated Portfolio was in question. Harcourt has also advised the Receiver that at the time the First Redemption Request was settled it did not have any knowledge or expectation of a decline in the per share value of the Segregated Portfolio or that the viability of the Segregated Portfolio was in question.

81. The following NAVs for the Class A shares of the Segregated Portfolio were taken from the monthly NAV statements for the Segregated Portfolio, provided to the Receiver by Harcourt.

| Month | NAV per Class A share (US$) |
|---|---|
| March 31, 2008 | 99.27 |
| April 30, 2008 | 99.65 |
| May 30, 2008 | 101.61 |
| June 30, 2008 | 101.17 |

| | |
|---|---|
| July 31, 2008 | 98.40 |
| August 31, 2008 | 95.35 |
| September 30, 2008 | 75.43 |
| October 31, 2008 | 67.06 |

82. In the Derivative Application, it was alleged that Vontobel submitted the Second Redemption Request on September 30, 2008. As discussed in paragraph 70, the Receiver understands that the request for the Second Redemption Request was made on August 5, 2008, with the decision to make the Second Redemption Request being made in May 2008. Harcourt has advised the Receiver that it decided to remove the Seed Capital in two transactions in order to lessen the impact on the liquidity of the Segregated Portfolio.

83. According to the Derivative Application, by investing directly in the Segregated Portfolio, Vontobel was able to remove its investment ahead of the Limited Partners, and at a favourable NAV. The Cross Applicants also allege that as fiduciaries of the Belmont Fund, Fanconi and Harcourt were not free to use pertinent information about the Segregated Portfolio, which was not available to the Limited Partners, to benefit themselves or third parties, including early redemption of the Seed Capital. In turn, Vontobel was not free to accept information delivered through a breach of fiduciary duty.

84. The Cross Applicants claim that Harcourt and Fanconi had access to pertinent information regarding market conditions and the Segregated Portfolio before the General Partner and the Limited Partners. It further alleges that confidential information was disclosed to Vontobel, which knowingly received and used such information to its benefit by investing directly in the Segregated Portfolio and submitting the Vontobel Redemption Requests. The breaches of fiduciary duty by Harcourt and Fanconi, and assisted in by Vontobel, caused direct financial loss to the Belmont Fund.

85. As noted in paragraph 53, in the July 2009 and March 2010 NAV Statements, Vontobel is classified as a creditor with respect to the Second Redemption Request Amount. Harcourt has advised the Receiver that it is Vontobel's position that:

- the Second Redemption Request was a valid redemption request for which the proceeds are to be calculated using the September 30, 2008 NAV;
- effective September 30, 2008 Vontobel ceased to be a shareholder of the Segregated Portfolio;
- effective September 30, 2008 Vontobel became a creditor of the Segregated Portfolio for the amount of the Second Redemption Request Amount; and
- as a creditor of the Segregated Portfolio, Vontobel is entitled to receive payment of the Second Redemption Request Amount in advance of any distributions to shareholders of the Segregated Portfolio.

86. The Receiver notes paragraph 19 of the Articles of Association for Belmont SPC which states that:

> *"Participating Shares of a Segregated Portfolio to be redeemed shall be deemed to be outstanding until and including the close of business on the day as at which the NAV of the Participating Shares of the relevant Segregated Portfolio is determined and after that time until paid the price thereof shall be deemed to be a liability of the Segregated Portfolio."*

87. In addition, Harcourt has advised the Receiver that if the directors of the Belmont Fund had not authorized the Leverage Provider Payment (defined below), the Second Redemption Request could have been paid in full on October 31, 2008. The cash balance in the Segregated Portfolio was US$2,710 as at September 30, 2008. During October 2008, there were significant transactions in the Segregated Portfolio, including receiving redemption requests from certain Underlying Funds of US$9.4 million and US$1.9 million on October 29, 2008 and October 31, 2008 respectively, and paying US$9.4 million to the leverage provider on October 31, 2008 (the "Leverage Provider Payment"). The closing cash balance of the Segregated Portfolio on October 31, 2008 was US$1.9 million (the "October 2008 Cash").

88. Harcourt advised the Receiver that there was no requirement or request to pay the Leverage Provider Payment ahead of the Second Redemption Request, and that Harcourt could have elected to pay the Second Redemption Request in full prior to the winding-up of the Segregated Portfolio. However, the directors of the Belmont Fund approved the payment of the Leverage Provider Payment in order to reduce risk in the Segregated Portfolio.

89. In addition to the Derivative Application that was sought by the Cross Applicants, correspondence was exchanged between Harcourt/Vontobel and the Counterparty (as shareholder in the Segregated Portfolio) in respect of the then proposed redemption requests. Attached hereto as **Appendix J** is a copy of the correspondence between the Counterparty and its Cayman counsel, Harcourt/Vontobel and Belmont SPC/Segregated Portfolio and its counsel in respect of the redemption requests. In this exchange, the Counterparty argued, *inter alia* that "all shareholders, including those whose redemptions have been delayed because of such liquidation, should be treated on a *pro rata* basis to ensure fair and equal treatment." In response, counsel for the Segregated Portfolio, noted that they had spoken with the directors of the Segregated Portfolio and took the position that the decision to redeem the seed capital was made before the decision to liquidate the Segregated Portfolio and the seed investor (Vontobel) did not have information about the Segregated Portfolio's performance unavailable to other investors.

90. The Receiver understands that Harcourt/Vontobel indicated that it would not agree to withdraw the Second Redemption Request, and took the position that Cayman law supported their claim that the timing of the Second Redemption Request elevated their claim to that of a creditor of the Segregated Portfolio and not a shareholder.

91. Notwithstanding this position, as noted above, upon the appointment of the Receiver, Harcourt/Vontobel agreed to take no further steps in respect of the Second Redemption Request while discussions were ongoing with the Receiver.

**Proposed Settlement with Vontobel and Harcourt**

92. The Receiver has reached a proposed agreement with Vontobel (the "Vontobel Settlement") which the Receiver believes is favourable to the estate. As discussed above, since its appointment the Receiver has continued to investigate the claims in the Derivative Application and to hold discussions with Harcourt with respect to the priority of the Vontobel Redemption Requests. Matters investigated and discussed included:

(i) Vontobel being considered to have redeemed its 30,000 Class A shares in the Segregated Portfolio effective September 30, 2008 and to be a creditor of the Segregated Portfolio as at September 30, 2008 for US$2,262,900 versus continuing to hold an equity position as a holder of Class A shares;

(ii) whether at the Segregated Portfolio Closing Date, Vontobel had an outstanding redemption request that was due prior to the decision to wind-up the Segregated Portfolio (a "Prior Outstanding Redemption Request");

(iii) in the event Vontobel had a Prior Outstanding Redemption Request, whether the full amount of the Prior Outstanding Redemption Request of US$2,262,900 should be paid in priority to any distributions to any other shareholders in the Segregated Portfolio, but after all other debts and liabilities of the Segregated Portfolio, and whether Vontobel's 30,000 shares should be cancelled, notwithstanding the winding-up of the Segregated Portfolio;

(iv) in the event Vontobel had a Prior Outstanding Redemption Request, whether Vontobel is entitled to proceeds in priority to any distributions to any other shareholders in the Segregated Portfolio to the extent that cash was available to the Segregated Portfolio to pay the Prior Outstanding Redemption Request after the date upon which the redemption was due to be effected and before the winding-up of the Segregated Portfolio commenced; or

(v) whether Vontobel should be considered to hold 30,000 Class A shares at the Segregated Portfolio Closing Date and be entitled to receive distributions from the Segregated Portfolio on a *pari passu* basis with other shareholders in the Segregated Portfolio.

93. The proposed resolution of the Derivative Application includes the following:

(i) Vontobel would withdraw the Second Redemption Request;

(ii) instead of a priority lump sum payment of US$2,262,900 from the Segregated Portfolio, Vontobel would receive payments over time, based on a predetermined percentage of funds made available from the Segregated Portfolio and a set amount of equivalent shares. Specifically, Vontobel would:

(a) be deemed to have redeemed approximately 25,188.9169 Class A shares (the "Deemed Redeemed Shares") and in payment for the Deemed Redeemed Shares to receive approximately 15.6% of any net cash receipts in the Segregated Portfolio (the "Vontobel Allocation") to be paid out on a *pari passu* basis with the shareholders of the Segregated Portfolio up to a maximum amount of US$1.9 million; and

(b) Vontobel would continue to hold the equivalent of approximately 4,811.0831 shares in the Segregated Portfolio (the "Remaining Shares") and to have rights in the distribution of surplus assets on the same basis as the other shareholders of the Segregated Portfolio;

(iii) costs would continue to be paid in the ordinary course from the funds available to the Segregated Portfolio;

(iv) the Receiver would not pursue the Derivative Application or claims therein. Specifically relating to the reversal of the First Redemption Request, which was made and settled prior to the commencement of these receivership proceedings, the monies paid to Vontobel in respect of the First Redemption Request would remain in its hands; and

(v) Harcourt would continue to provide ongoing cooperation with respect to the provision of information to the Receiver on a regular and timely basis.

94. The Vontobel Settlement was agreed in principle by the Receiver and Harcourt in December 2009 and was based upon the figures available to the parties when the resolution was reached, including the Sept. 2009 Estimated Cash Receipts.

95. The Vontobel Allocation of 15.6% was calculated based on the percentage that the October 31, 2008 Cash of US$1.9 million, the date on which the decision was made to wind-up the Segregated Portfolio, represents of the Sept. 2009 Estimated Cash Receipts of US$12.2 million.

96. The number of the Deemed Redeemed Shares was calculated by dividing US$1.9 million by the amount of the September 30, 2008 NAV of US$75.43. The Receiver understands that the September 30, 2008 NAV was finalized on October 30, 2008, and as such it is reasonable to use this NAV figure for purposes of estimating the potential claim in respect of the Second Redemption Request.

97. The number of the Remaining Shares of 4,811.0831 was calculated by subtracting the number of Deemed Redeemed Shares from the Second Redemption Request amount of 30,000 shares.

98. If the Vontobel Settlement is approved, based upon information provided by Harcourt the Receiver estimates that the total number of remaining shares in the Segregated Portfolio will be:

- the equivalent of approximately 191,953.6303 Class A shares, of which approximately 4,811.0831 shares are held by Vontobel; and

- 5,478.7870 Class B shares.

The Receiver notes that there is a discrepancy between the information received from Harcourt and from the Counterparty with respect to the number of Class A shares held by the Counterparty. According to the records of the Counterparty, the Counterparty holds 187,892.9150 shares, approximately 750 shares more than that reported by Harcourt to be outstanding. The Receiver needs to obtain additional information in order to understand the reason for the difference.

99. If the Vontobel Settlement is approved, based on the Sept. 2009 Estimated Cash Receipts, Harcourt would receive US$2.15 million over time, before ongoing costs of the Segregated Portfolio, consisting of approximately US$1.9 million in respect of the Vontobel Allocation and approximately US$250,000 in respect of the Remaining Shares. In the event the total realization for the Segregated Portfolio is less than US$12.2 million, Vontobel would receive less than US$2.15 million. In the event the total realization for the Segregated Portfolio is greater than US$12.2 million, Vontobel will receive a maximum of US$1.9 million for the Vontobel Allocation but has the potential to receive in excess of US$250,000 for the Remaining Shares.

100. Based on the March 31, 2010 Cash Balance of approximately US$4.10 million, before taking into consideration a reserve for ongoing costs of the Segregated Portfolio, approximately US$720,000 is available to be paid to Vontobel as an interim distribution, with US$640,000 relating to the Vontobel Allocation and US$80,000 for the Remaining Shares. The remaining US$3.38 million would be available to be distributed from the Segregated Portfolio.

101. The Receiver recommends the approval of the Vontobel Settlement by this Honourable Court for the following reasons:

(i) the Vontobel Settlement is fair and reasonable;

(ii) with respect to the First Redemption Request, the Receiver is of the view that further pursuit of the matter to recover any amounts already paid to Vontobel through litigation would not be cost effective. Our review of the timing and payment of the First Redemption Request suggests the request was made and settled prior to a decline in the value of the Segregated Portfolio;

(iii) there is litigation risk in respect of the Derivative Application, including that the evidence in support of the Derivative Application may not be satisfactory to prove the claims, and in the event Vontobel successfully defended the Derivative Application, Vontobel would be permitted to be paid the full Second Redemption Request Amount of US$2,262,900 in advance of other shareholders of the Segregated Portfolio;

(iv) with respect to the Second Redemption Request, the proposed settlement provides that Harcourt is effectively dealt with as a shareholder in the

Segregated Portfolio and would receive payments over time, thereby having the same payment risk as the other Class A and Class B shareholders. Vontobel would not receive priority payment for the Second Redemption Request out of the Segregated Portfolio's most liquid assets and shall bear equally with the other shareholders for the ongoing costs of the liquidation of the Segregated Portfolio. Had the Derivative Application been successful as it relates to the Second Redemption Request, Vontobel would have a received a priority payment of US$2,262,900;

(v) Vontobel will be paid on a *pro rata* basis with the Counterparty, Class A shareholder, and the Class B shareholders. Based upon the March 31, 2010 Cash Balance of approximately US$4.10 million, approximately US$720,000 is available as an initial distribution to Vontobel and the balance of approximately US$3.38 million is available to be distributed from the Segregated Portfolio;

(vi) by continuing to hold a stake in the Segregated Portfolio through shareholdings and a percentage of future recoveries, Vontobel continues to have a direct interest in the viability and recoveries available from the Segregated Portfolio;

(vii) based on the Sept. 2009 Estimated Cash Receipts, Harcourt will receive approximately US$2.15 million over time, thereby incurring a loss of approximately US$850,000 on its investment of US$3 million;

(viii) the costs and time delay involved in pursuing the Derivative Application, through full litigation proceedings would be cost prohibitive. Instead, in addressing this matter in Canada through these receivership proceedings, the Receiver has been able to reach a cost and time effective resolution for the estate;

(ix) the proposed resolution effectively puts the Belmont Fund and estate in the same position as if the Derivative Application had been successful in respect of the Second Redemption Request, with Vontobel sharing *pro rata* with other shareholders, instead of in priority to them;

(x) resolution of this issue permits the estate to be one step closer to a final determination of outstanding issues and ability to distribute funds to Limited Partners; and

(xi) RBC as representative of the Limited Partners supports this proposed settlement.

## HOLDING OF FUNDS PENDING RESOLUTION OF DISPUTED CLAIMS

102. As discussed above, Harcourt has advised the Receiver that pending resolution of the Second Redemption Request, Harcourt would not agree to the distribution of any cash on hand from the Segregated Portfolio, with the exception of ongoing expenses of the

Segregated Portfolio. Upon the approval of the Vontobel Settlement, Harcourt will be in a position to use the available cash at the Segregated Portfolio to make *pro rata* distributions to Vontobel, the Counterparty as a holder of Class A shares ("Counterparty Distributions") and the Class B shareholders.

103. The Receiver seeks an Order that the any Counterparty Distributions be paid to the Receiver and held pending a resolution of the Counterparty Claim. This will permit the funds to be repatriated to Canada and available for distribution as quickly as possible once the Disputed Claims have been resolved or determined. The Receiver seeks to hold the reserve in a manner that is without prejudice to the rights and claims of parties to the funds.

**NEXT STEPS**

104. The Receiver shall, among other things:

(i) continue to gather and review information from the stakeholders of the Belmont Fund with respect to the Belmont Fund, the Segregated Portfolio, the Disputed Claims and any other matters related to these receivership proceedings, as necessary;

(ii) continue to work towards a resolution of the Disputed Claims in accordance with the Claims Determination Order; and

(iii) report to the Limited Partners and the Court, and where necessary, seek further direction of the Court as required.

**SUMMARY AND CONCLUSIONS**

105. The Receiver requests that this Honourable Court make an Order:

(i) approving the activities of the Receiver as described in this Third Report;

(ii) authorizing the Receiver to proceed with the proposed Vontobel Settlement; and

(iii) authorizing any distributions to the Counterparty be paid to the Receiver and held pending a resolution of the Counterparty Claim.

**RESPECTFULLY SUBMITTED,**

Dated the 21st day of June, 2010.

**KPMG INC.**
In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund

*Per:* *Elizabeth J. Murphy*
*Vice-President*

| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
|---|---|---|---|
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

# THIRD REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

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Court File No. 09-8302-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# SUPPLEMENT TO THIRD REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**August 23, 2010**

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## LIST OF APPENDICES

## INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2006 (the "Appointment Order"), and amended on October 21, 2009 (the "Amended Appointment Order"), KPMG Inc. was appointed receiver and manager ("Receiver") of the assets, undertakings and properties of the Belmont Dynamic Growth Fund (the "Belmont Fund"), an Ontario limited partnership.

2. The Receiver's last Report to the Court was dated June 21, 2010 (the "Third Report"). The Receiver files this Supplemental Report to the Third Report (the "Supplemental Third Report") in order to inform the Court and stakeholders about certain developments with respect to the investments in the Segregated Portfolio and to address issues raised by the Counterparty with respect to any Counterparty Distribution. The Supplemental Third Report should be read in conjunction with the Third Report. The Supplemental Third Report will:

   - provide an update on certain matters pertaining to the investments in the Segregated Portfolio, specifically the cash balances received by the Segregated Portfolio from the ABL FUND;

   - in conjunction with the Third Report provide an evidentiary basis for the approval of the Minutes of Settlement for the Vontobel Settlement as described in the Third Report; and

   - provide clarification with respect to the Receiver's request that any distributions to the Counterparty from the Segregated Portfolio be paid to and held by the Receiver.

## TERMS OF REFERENCE

3. The information contained in the Supplemental Third Report has been obtained from the books and records and other information made available to the Receiver from the Belmont Fund and from third parties, including the General Partner and Harcourt. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver or KPMG LLP nor has it necessarily been prepared in accordance with generally accepted accounting principles. The reader is cautioned that this report may not disclose all significant matters about the Belmont Fund. Accordingly, the Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein. The Receiver reserves the right to refine or amend its comments and/or finding as further information is obtained or is brought to its attention subsequent to the date of the Supplemental Third Report. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the receivership.

4. Unless otherwise noted, all dollar amounts referred to herein are expressed in Canadian dollars.

5. All capitalized terms used herein and not otherwise defined are as defined in the Third Report.

**DISTRIBUTIONS RECEIVED FROM ABL FUND**

6. As described in paragraph 59 of the Third Report, the ABL FUND was placed into a court supervised liquidation proceeding in January 2010, with Stuart Sybersma and Ian Wight of Deloitte & Touche ("Deloitte") in the Cayman Islands being appointed as Joint Official Liquidators of the ABL FUND by an Order of the Grand Court in the Cayman Islands on January 19, 2010.

7. On July 13, 2010, Harcourt advised the Receiver that Deloitte had issued a letter to direct shareholders or nominee shareholders in the Segregated Portfolio dated June 23, 2010 (the "Deloitte Letter") regarding the ABL FUND. The Deloitte Letter, which is attached hereto as **Appendix A**, stated the following:

> *As you know, Ian Wright and Stuart Sybersma are appointed as the Joint Official Liquidators of the Fund. As part of the liquidation process, we have been investigating all payments made to investors after the date on which the Fund suspended redemptions (i.e. 27 October 2008). It appears that these payments may have been made in breach of the Fund's constitutional documents and in breach of the Cayman Islands Companies Law. If so, such payments would be unlawful returns of capital and liable to be repaid to the Fund. The purpose of this letter is to put you on notice that any payments you may have received from the Fund after 27 October 2008 may be liable to be returned to the Fund and, if not returned voluntarily, may be the subject of legal action against you. The liquidators' investigation is continuing and we shall revert to you in this regard in due course.*

8. Harcourt advises the Receiver since the Deloitte letter no further information has been received from Deloitte on this issue, including information to substantiate the assertion that the payments were unlawful and liable to be returned. Nor has Deloitte provided anything further concerning its investigation.

9. In paragraph 60 of the Third Report the Receiver advised the Court that Harcourt was expecting a copy of Deloitte's first report on the administration of the ABL FUND. Harcourt advises the Receiver that this report has not yet been presented to stakeholders of the ABL FUND.

10. The Receiver advised in paragraph 102 of the Third Report that upon approval of the Vontobel Settlement, Harcourt would be in a position to use the available cash at the Segregated Portfolio to make *pro rata* distributions to Vontobel, the Counterparty as a holder of Class A shares ("Counterparty Distributions") and the Class B shareholders (the "Pro Rata Distributions"). Based on the March 31, 2010 Cash Balance of approximately US$4.10 million, Harcourt anticipated that approximately US$3.28 million would be available to be paid as an initial Counterparty Distribution.

11. Harcourt has advised the Receiver that between November 2008 and November 2009, the Segregated Portfolio received distributions of approximately US$1.17 million from the ABL FUND (the "ABL Funds"). Assuming that the Vontobel Settlement is approved by this Court, Harcourt has advised the Receiver that pending the completion and resolution of the potential claim for the Post-October 2008 Payments, the amount currently available for a Pro Rata Distribution is approximately US$2.9 million, calculated as the amount of the March

31, 2010 Cash Balance of US$4.10 million less the amount of the ABL Funds of approximately US$1.17 million. Of the approximately US$2.93 million, approximately US$520,000 would be available to be paid to Vontobel as an initial interim distribution and approximately US$2.34 million would be available to be paid as an initial Counterparty Distribution.

12. Harcourt has advised the Receiver that the cash balance in the Segregated Portfolio as at August 23, 2010 is approximately US$4.3 million. The approximately US$200,000 received by the Segregated Portfolio since March 31, 2010 is to held by Harcourt as a reserve for costs incurred by the Segregated Portfolio in the ordinary course of business.

## VONTOBEL SETTLEMENT – MINUTES OF SETTLEMENT

13. In the draft order in respect of the August 25, 2010 motion, the Receiver sought approval to enter into further documentation in respect of the Vontobel Settlement. The Receiver has negotiated a form of Minutes of Settlement with Vontobel, a copy of which is attached at **Appendix B.**

## DISTRIBUTIONS FROM SEGREGATED PORTFOLIO

14. As discussed in paragraph 103 of the Third Report, the Receiver seeks an Order that any Counterparty Distributions be paid to and held by the Receiver (the "Reserve"). On August 18, 2010, National Bank of Canada (Global) Limited ("NBCG") filed responding materials (the "NBCG Responding Materials), including the Affidavit of Jayden Jones of Barbados. The NBCG Responding Materials speak to a number of issues, including disagreement with the Receiver's request that any Counterparty Distributions be paid to the Receiver.

15. On August 23, 2010 on behalf of the Receiver, Stikeman Elliott LLP wrote to counsel for NBCG (the "August 23, 2010 Letter") in response to these materials. The August 23, 2010 Letter is attached hereto as **Appendix C**.

16. The basis for the Receiver's request to maintain the Reserve pending further Court Order is as follows:

- the Forward Contracts do not contemplate various scenarios during a winding up process, and while the parties, and if necessary the Court, work their way through the issues the Receiver would prefer to hold the Reserve, in order that as neutral a result as possible is available to all relevant stakeholders;

- the Receiver is seeking to preserve the assets and economic interests of the Belmont Fund;

- issues remain in dispute between the parties, including the manner in which the Forward Contracts are to be interpreted; potential claims against the Reserve; the manner in which the Limited Partners should realize on the Forward Contracts; and the impact of distributions from the Segregated Portfolio on the value of the Forward Contracts (i.e. the Forward Price);

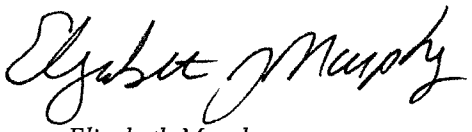
- while such issues are still in dispute, the Receiver seeks to have any available Counterparty Distributions repatriated to Canada, and held in the hands of a neutral Court Officer, subject to the Court's oversight; and

- by holding the Reserve, the Receiver does not intend to expropriate or alter the rights of the parties, or to put NBCG at risk. Instead the Receiver seeks to preserve those rights and interests pending a future determination and interpretation of the contractual arrangements on the basis of a complete record before the Court.

**RESPECTFULLY SUBMITTED,**

Dated the 23rd day of August, 2010.

**KPMG INC.**
In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund



*Per:* *Elizabeth Murphy*
*Vice-President*

| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
|---|---|---|---|
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENT TO THIRD REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND**

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Lawyers for KPMG Inc.

Court File No. 09-8302-00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# FOURTH REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**April 20, 2012**

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## APPENDICES

## INTRODUCTION

### Appointment of the Receiver

1. Pursuant to the Order of Madam Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2009 (the "**Appointment Order**"), KPMG Inc. was appointed receiver and manager (the "Receiver") of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the "**Belmont Fund**"), an Ontario limited partnership. A copy of the Appointment Order, which among other things, sets out the powers of the Receiver is attached hereto as **Appendix A**. James Haggerty Harris (the "**Applicant**") made the application pursuant to section 101 of the *Courts of Justice Act*, RSO 1990 c.C.43.

2. The Appointment Order provided that until further order of this Honourable Court at the Dissolution Hearing or otherwise, the Receiver shall not terminate or consent to the termination of any forward contract or sell or otherwise dispose of any material portion of the property of the Belmont Fund. The Appointment Order was amended by Order of Madam Justice Hoy on October 21, 2009 (the "**Amended Appointment Order**") by deleting Paragraph 4 of the initial Appointment Order, so the Receiver was empowered and authorized to terminate or consent to the termination of any forward contract and to sell or otherwise dispose of any material portion of the property of the Belmont Fund where the Receiver considers it necessary or desirable to do so. A copy of the Amended Appointment Order is attached as **Appendix B**.

3. On October 21, 2009, the Receiver also sought and received an Order setting out a claims identification process to identify claims of the creditors of the Belmont Fund (the "**Claims Procedure Order**"). The Claims Procedure Order is attached hereto as **Appendix C.**

4. On May 17, 2010, the Receiver sought and received an Order setting out a resolution process for disputed claims pursuant to the Claims Procedure Order (the "**Claims Determination Order**"). The Claims Determination Order is attached hereto as **Appendix D.**

### Background to the Receivership

5. The Belmont Fund is an investment fund established as a limited partnership under the laws of Ontario pursuant to an agreement between Belmont Dynamic GP Inc., as general partner (the "General Partner"), and the limited partners (the "**Limited Partners**") of the Belmont Fund dated June 9, 2006 (the "**Limited Partnership Agreement**"). The Limited Partners are accredited investors and are the unitholders in the Belmont Fund. Limited Partners purchased units in either of Canadian dollars ("**CAD**") or in US dollars ("**USD**"). The General Partner was responsible for managing the day-to-day business of the Belmont Fund.

6. The only undertaking of the Belmont Fund was the investment of its assets. The objective of the Belmont Fund was to provide investors with the return on the Belmont Dynamic Segregated Portfolio (the "**Segregated Portfolio**") of hedge funds existing as a segregated portfolio of Belmont SPC, a segregated portfolio company organized under

the laws of the Cayman Islands. The Segregated Portfolio's investment objective is to invest on a leveraged basis in specialized fund of hedge funds managed by Harcourt Investment Consulting AG ("**Harcourt**"). Harcourt is the investment advisor to the Segregated Portfolio. Alternative Investments Management Ltd, a Barbadian Company affiliated with Harcourt, owns all of the voting shares of the Belmont SPC, and is also the investment manager of the Segregated Portfolio.

7. Exposure to the Segregated Portfolio is obtained by first using the proceeds from the sale of units in the Belmont Fund to acquire two baskets of Canadian common shares (the "CAD Share Basket" and "USD Share Basket", collectively the "Share Baskets") and then entering into two forward purchase and sale agreements (the 'CAD Forward Contract' and the 'USD Forward Contract', collectively, the "**Forward Contracts**") with National Bank of Canada (Global) Limited, now known as Innocap Global Investment Management Ltd. (the "**Counterparty**").

8. In accordance with the Forward Contracts, the Counterparty has agreed to pay to the Belmont Fund on the maturity date of the Forward Contracts an amount equal to the redemption proceeds of a notional number of participating shares in the Segregated Portfolio in exchange for the delivery of the Share Baskets to the Counterparty by the Belmont Fund or an equivalent cash payment at the election of the Belmont Fund. As a result of the Forward Contracts, the Belmont Fund has exposure to the performance of the Segregated Portfolio but it has no direct interest in the Segregated Portfolio.

9. The investment structure, including the Belmont Fund and the Segregated Portfolio, is defined as the "**Investment Structure**".

10. Harcourt and Omniscope Advisors Inc ("**Omniscope**") each hold 50% ownership of the outstanding common shares of the General Partner. Omniscope carries on the business of a securities dealer and is registered as a dealer in the category of limited market dealer under the *Securities Act (Ontario)*. Omniscope is wholly owned by Daniel Nead ("**Nead**"). Harcourt carries on business as a portfolio manager of funds of hedge funds with its principal offices located in Zurich, Switzerland. Harcourt's principal shareholder is The Vontobel Group ("**Vontobel**"), a Swiss private bank headquartered in Zurich, Switzerland.

11. The General Partner has two directors with equal voting rights: (1) Nead, a resident Canadian; and (2) Peter Fanconi **("Fanconi")** a resident of Switzerland. Nead is also President and Secretary of the General Partner. Fanconi is Chief Executive Officer of the General Partner, Head of Private Banking at Vontobel and former President and Chief Executive Officer of Harcourt.

12. At the time of the initial filing there were 135 Limited Partners, of which 126 were clients of RBC Phillips, Hager & North Investment Counsel Inc. **("RBC PHN")** and the remaining were clients of RBC Dominion Securities **("RBCDS")**. RBC PHN and RBCDS are collectively referred to as **"RBC"**. As at the date of this report, the Receiver understands that RBC has purchased the units of 134 of the 135 Limited Partners.

**The First Report to the Court**

13. The Receiver issued its First Report to the Court dated October 19, 2009 (the "First Report"), a copy of which (without attachments) is attached hereto as **Appendix E.** The First Report provides a detailed overview of the Investment Structure and various issues addressed in these receivership proceedings, as well as support for the Claims Procedure Order which was sought at that time.

**Second Report to the Court**

14. The Receiver issued its Second Report to the Court on April 30, 2010 (the "Second Report") and a Supplement to the Second Report on May 14, 2010 (the "Supplemental Second Report") in support of its motion to seek the Claims Determination Order. Copies of the Second Report and Supplemental Second Report (without attachments) are attached hereto as **Appendix F**.

**Third Report to the Court**

15. The Receiver issued its Third Report to the Court on June 21, 2010 (the "Third Report") and a Supplement to the Third Report on August 23, 2010 (the "Supplemental Third Report") in support of its motion to seek the Claims Determination Order. Copies of the Third Report and Supplemental Third Report (without attachments) are attached hereto as **Appendix G**.

## PURPOSE OF FOURTH REPORT

16. The purpose of this Fourth Report to the Court dated April 20, 2012 (the "**Fourth Report**") is to provide information to this Honourable Court and the stakeholders. This report will:

- describe activities of the Receiver since the Second Report and Third Report;
- provide an overview of the financial position of the Segregated Portfolio;
- provide an update on the claims procedures;
- provide a update on the Vontobel redemption requests and status of the proposed settlement of Derivative Application (as herein defined); and
- describe certain of the Receiver's next steps.

## TERMS OF REFERENCE

17. The information contained in the Fourth Report has been obtained from the books and records and other information made available to the Receiver from the Belmont Fund and from third parties, including the General Partner and Harcourt. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver or KPMG LLP nor has it necessarily been prepared in accordance with generally accepted accounting principles. The reader is cautioned that

this report may not disclose all significant matters about the Belmont Fund. Accordingly, the Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein. The Receiver reserves the right to refine or amend its comments and/or finding as further information is obtained or is brought to its attention subsequent to the date of the Third Report. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the receivership.

18. Unless otherwise noted, all dollar amounts referred to herein are expressed in Canadian dollars.

19. All capitalized terms used herein and not otherwise defined are as defined in the Third Report.

## ACTIVITIES OF THE RECEIVER

20. Since the date of the Third Report, the Receiver has undertaken various actions including:

    (i) various communications and discussions with stakeholders;

    (ii) review and approval of Share Baskets transactions;

    (iii) preparation of certain tax filings with respect to the Belmont Fund;

    (iv) continuing to assess the investment and financial structures of the Belmont Fund and its investments;

    (v) continuing to compile and review information in respect of the value of the Belmont Fund, as well as the underlying value of the Segregated Portfolio, as well as potential claims against the Belmont Fund;

    (vi) review and settle claims received pursuant to the Claims Procedure Order and the Claims Determination Order, and conduct hearings as required in respect of disputed claims; and

    (vii) continuing to investigate the claims in the Derivative Application and Counterpart Claim as herein defined.

### Communications with Stakeholders

21. The Receiver continues to monitor the Receiver's dedicated telephone line and email address for inquiries from any interested parties. To date, the Receiver has received a limited number of inquiries with respect to the general status of the receivership, the creditor claims process and certain tax matters. The Receiver has contacted these interested parties and understands that all material matters have been resolved or continue to be reviewed by the Receiver.

**Share Baskets Transactions**

22. As described in the First Report, proceeds raised from the Limited Partners were used to purchase the CAD and USD Share Baskets of non-dividend-paying Canadian securities listed on the Toronto Stock Exchange, consisting of securities that constitute 'Canadian securities' for purposes of section 39(6) of the *Income Tax Act (Canada)*. If any dividends or distribution are to be received by the Belmont Fund, the Forward Contracts provide that replacement securities acceptable to the Counterparty, may at the Belmont Fund's option, be substituted for shares in respect of which the dividend or distribution has been declared to preserve the value of the Forward Contracts (referred to herein as a "**Share Basket Rebalancing**").

23. Since June 21, 2010, the date of the Third Report, the Counterparty has advised the Receiver of ten proposed rebalancing transactions for each of the CAD Share Basket and the USD Share Baskets – three Share Basket Rebalancings in 2010, five in 2011 and two in 2012. The Receiver reviewed the proposed Share Basket Rebalancing transactions prior to implementation.

**The Belmont Fund – Tax Returns and Slips**

24. Pursuant to the Limited Partnership Agreement, for tax purposes the income and losses of the Belmont Fund, including realized gains and losses from Share Basket Rebalancing transactions, in respect of a fiscal year are to be allocated to the General Partner and the Limited Partners.

25. The 2006, 2007, 2008, 2009 and 2010 Canada Revenue Agency ("**CRA**") filing requirements for a partnership such as the Belmont Fund provide that for each fiscal year a T5013 Summary, *Information Return of Partnership Income;* information slips T5013, *Statement of Partnership Income* ("**T5103s**"); and related schedules and forms (collectively referred to as the "**CRA Return**") be prepared and submitted to CRA, and that copies of the T5013s be sent to each of the Limited Partners and the General Partner by March 31 of the following calendar year.

26. The 2011 CRA filing requirements for a partnership such as the Belmont Fund provide that for the 2011 fiscal year a Form T5013 FIN, *Partnership Financial Return*; T5013s; and related schedules and forms (collectively referred to as the "**2011 CRA Return**") be prepared and submitted to CRA, and that copies of the T5013s be sent to each of the Limited Partners by March 31 of the following calendar year.

27. In addition, where any of the Limited Partners are resident in Quebec, the Revenu Québec filing requirements for a partnership such as the Belmont Fund provide that for each fiscal year the Form TP-600-V, *Partnership Information Return* and information slips Releve 15, *Montants attribués aux membres d'une société de personnes* ("**RL-15s**") (collectively referred to as the "**RQ Return**") be prepared and submitted to Revenu Québec and that RL-15s be submitted to each of the Limited Partners by March 31 of the following calendar year.

28. For the years ended December 31, 2006, 2007 and 2008 (the "**Prior Years**"), the Receiver received from Citigroup copies of the T5013s (the "**Prior T5013s**) filed with

CRA from Citigroup. For the Prior Years, the Receiver has no information with respect to whether Limited Partners resident in Quebec received RL-15 slips (the "**Prior RL Slips**"). The Receiver observed that that the T5013 for 2008 assumed nil net income or loss for the 2008 fiscal year, even though the Receiver understands that there were gains and losses realized from Share Basket Rebalancing transactions in 2008 and that there would have been expenses incurred during 2008 by the Belmont Fund.

29. Despite numerous inquiries of key stakeholders, the Receiver has not obtained a complete set of books and records for the Belmont Fund. For example, the Receiver has not obtained the information used to prepare the Prior T5013s. In addition, the Receiver understands that financial statements for the year ended December 31, 2008 were not prepared.

30. For the year ended December 31, 2009, the Receiver prepared and remitted to CRA the CRA Return and to Revenu Québec the RQ Return (the "**2009 Returns**"). In addition, the Receiver sent to each person who was either a limited or general partner as at December 31, 2009, a T5013 and a RL-15 for 2009. Given the incomplete records available to the Receiver, the Receiver is not in a position to confirm the accuracy of the returns for the Prior Years. The Receiver has advised the Limited Partners that should there be any errors in the Prior Returns, that these errors may have been carried forward to the 2009 Returns.

31. As described in the Third Report, the Receiver produced and remitted in March 2010 the CRA Return and the RQ Return for 2009. These returns were prepared using available records and information of the Belmont Fund, including available information contained in prior filings with the CRA, supplemented by certain information obtained from third parties by the Receiver since its appointment as Receiver. The Receiver advised the Limited Partners that should there be any errors in the Prior Returns, that these errors may have been carried forward to the 2009 Returns.

32. In 2010 and early 2011, based upon information available to the Receiver, the Receiver estimated the net loss for the Belmont Fund for the year ended December 31, 2008. As a result, in March 2011, the Receiver prepared and remitted revised CRA Returns and Quebec Returns for 2008 and 2009 (collectively, the "**Amended Returns**"). In March 2011, the Receiver prepared and remitted a CRA Return and a Revenu Québec Return for 2010 (the "**2010 Returns**"). The Receiver prepared and mailed to the Limited Partners T5013s and RL-15s for 2010, and revised T5013s and RL-15s for 2008 and 2009.

33. In March 2012, based upon information available to the Receiver, the Receiver prepared and remitted the 2011 CRA Return and RC Return for 2011 (collectively the **2011 Returns**), and in addition prepared and mailed to the Limited Partners the related T5013s and RL-15s.

34. In preparing the 2009 Returns, the Amended Returns, the 2010 Returns and the 2011 Returns the Receiver did not carry out an audit nor was the Receiver in a position to formally verify the information obtained from the records of the Belmont Fund or from third parties.

## STRUCTURE OF THE BELMONT FUND

35. As at discussed in paragraph 12, as at the date of this report, the Receiver understands that RBC has purchased the units of 134 of the 135 Limited Partners. These purchases occurred in 2011 and 2012.

## CASH POSITION OF THE BELMONT FUND

36. The Receiver currently holds no cash relating to these proceedings. Since the date of the Appointment Order, the Receiver has not received any funds nor has the Receiver made any payments or distributions to any creditors/investors. As outlined below, until such time as there is a resolution of the Vontobel Redemption Claim and the Counterparty Claim (as defined below), the Receiver does not have available funds for any stakeholders. To date, the Receiver's costs in these proceedings have been initially paid by the Applicant, subject to potential reimbursement upon flow of funds to the Belmont Fund.

## SEGREGATED PORTFOLIO

37. As described in greater detail in the Receiver's First Report, the principal assets of the Belmont Fund are the Forward Contracts, the values of which vary directly with the market value and return of the Segregated Portfolio. As a result, the value of the Belmont Fund is tied to the value and potential recovery from the Segregated Portfolio.

38. The Segregated Portfolio is itself presently in wind-up, with Harcourt overseeing the winding-up. The Receiver has requested regular updates in respect of the wind-up of the Segregated Portfolio and continues to collect any relevant supporting information with request to the value and liquidity of the Underlying Funds of Funds (as defined below) from Harcourt.

39. A number of factors affect the value, timing and entitlement of any potential recoveries from the Segregated Portfolio. Three significant factors are (i) the value and timing of realizations from the investments of the Segregated Portfolio; (ii) the priority of distributions from the Segregated Portfolio, in particular the Second Redemption Request (as defined in paragraph 70 of the Third Report); and (iii) priority of distribution and quantum of the alleged foreign exchange loss claims by the Counterparty (the "**Counterparty Claim**").

### Reported Financial Position of the Segregated Portfolio

40. The Receiver obtained from Harcourt the Net Asset Value ("**NAV**") Statement for the Segregated Portfolio as at February 28, 2012 on April 4, 2012 ("**February 2012 NAV Statement**"). This is the most current NAV statement available to the Receiver. According to the Feb. 2012 NAV Statement, which is attached as **Appendix H**, the net assets of the Segregated Portfolio were approximately US$6.1 million (the "**February 2012 NAV**"), and the net assets before outstanding **redemption requests** were **approximately US$8.4 million. As noted in the Third Re**port, the Receiver continues

to be uncertain of the value, timing and entitlement to any potential recoveries from the Segregated Portfolio.

41. As discussed in the Third Report, the net assets of the Segregated Portfolio before outstanding redemption requests were approximately US$ 12.1 million as at March 31, 2010 (the "**March 2010 NAV**") and US$12.4 million as at July 31, 2009 (the "**July 2009 NAV**").

42. Based upon the information provided to the Receiver the February 2012 NAV, the March 2010 NAV and the July 2009 NAV are calculated as follows:

| | February 28, 2012 (US$000's) | March 31, 2010 (US$000's) | July 31, 2009 (US$000's) |
|---|---|---|---|
| *Underlying Fund of Funds (cost)* | *$8,461* | *$10,290* | *$12,030* |
| Underlying Fund of Funds (market value) | $2,196 | $7,281 | $9,166 |
| Cash * | 5,387 | 4,068 | 1,716 |
| Receivable for investments sold | 0 | 0 | 349 |
| Receivable from ABL Fund | 828 | 828 | 1,248 |
| Other receivables and prepaid expenses | | | |
| Payables and accrued expenses | (22) | (40) | (36) |
| **Net assets before outstanding redemption requests** | 8,389 | 2,137 | 2,443 |
| Payable for fund shares repurchased ** | (2,263) | (2,263) | (2,263) |
| Net assets | $6,126 | $9,874 | $10,180 |
| Number of outstanding Class A shares *** | 187,142.5472 | 187,142.5472 | 187,142.5472 |
| NAV per Class A shares (US$) | $31.94 | $51.46 | $53.04 |
| Number of outstanding Class B shares | 5,478.7870 | 5,478.7870 | 5,478.7870 |
| NAV per Class B shares (US$) | $27.15 | $44.54 | $46.23 |

* *This balance includes both cash and cash equivalents and balances due from brokers.*

** *This balance relates to the Second Redemption Request purportedly due to Vontobel.*

*** *The number of outstanding Class A shares is net of the 30,000 shares which are part of the Second Redemption Request.*

43. For the investment management services that Harcourt provides to the Segregated Portfolio, Harcourt is entitled to receive a monthly management fee and a performance fee based on a percentage of the Segregated Portfolio's NAV. Historically, Harcourt has advised the Receiver that no Performance Fees are outstanding and that given the financial performance of the Segregated Portfolio, Harcourt does not expect to earn any Performance Fees in the future.

**Cash Position of the Segregated Portfolio**

44. The cash position of the Segregated Portfolio was approximately US$5.4 million as at February 28, 2012 (the "**February 2012 Cash Balance**"). The cash position of the Segregated Portfolio at July 31, 2009 was approximately US$1.7 million. The principal reason for the change in the cash position has been the distribution of funds from each of the Underlying Fund of Funds, as defined below, and the expenses of the Segregated Portfolio.

45. The February 2012 Cash Balance includes approximately US$1.2 million received from the Belmont ABL as part of the September 30 Payments defined in paragraph 51 (the "**Potential Clawback**"). The Potential Clawback may need to be repaid to the Belmont ABL, depending upon the resolution of certain litigation presently outstanding in the Cayman Islands. The ABL Fund and the related litigation are discussed below beginning in paragraph 49. The Receiver has been advised by Harcourt that the Segregated Portfolio has not received any payments from the ABL Fund since November 2009.

**Investments of the Segregated Portfolio**

46. Harcourt has advised the Receiver that as at February 28, 2012, the Segregated Portfolio was invested in the following five funds of funds (the "**Underlying Funds of Funds**"). The Underlying Funds of Funds are in turn invested in hedge funds (the "**Underlying Funds**"). For comparison purposes, the market values of the Underlying Fund of Funds as at February 28, 2012 and March 31, 2010 are provided below.

| Fund Name | Market Value at February 28, 2012 US$(000's) | Market Value at March 31, 2010 US$(000's) |
|---|---|---|
| | | |
| BELMONT RX SPC CLASS LATAM 11/08 ("**RX LATAM Fund**") | $298 | $1,012 |
| BELMONT RX SPC CLASS ASIA 11/08 ("**RX ASIA Fund**") | 68 | 560 |
| BELMONT RX SPC CLASS FI 09/08 ("**RX FI 09/08 Fund**") | 43 | 220 |
| BELMONT RX SPC CLASS FI 11/08 ("**RX FI 11/08 Fund**") | 516 | 1,886 |
| Sub-total | 926 | 3,678 |
| BELMONT ASSET BASED LENDING CLASS A ("**ABL Fund**") | 1,269 | 3,603 |
| Total Market Value | $2,195 | $7,281 |

47. The Receiver understands and cautions that the Underlying Funds are invested in illiquid investments for which it is difficult to obtain precise market values. Furthermore, the values received from the Underlying Funds' managers may consist of estimates only. Due to a number of factors, including the uncertainty of future events, there can be no assurance that the value at which an investment is recorded in the accounting records of a particular Underlying Fund at any particular time will not later be reduced, or that a fund will be able to liquidate the investment at that value or at any other amount.

**The RX Funds**

48. As discussed in the Third Report, the RX LATAM FUND, the RX ASIA FUND and the RX FI 09/08 and RX FI 11/08 FUNDS (the "**RX Funds**") are 'side pockets' funds. Harcourt continues to manage and oversee the liquidation of the RX Funds. The Receiver understands from Harcourt that as liquidity is available in the RX Funds, distributions will be made on a *pro rata* basis to investors in the RX Funds, including the Segregated Portfolio. However, Harcourt has advised that the positions remaining in the RX Funds are illiquid positions which are difficult to sell and that these funds are facing a general decline of asset quality creating an increase in the expected time it will take to realize these assets. In January 2012 Harcourt undertook an exercise to validate the underlying positions in the RX Funds. As a result Harcourt wrote down the market value of the Segregated Portfolio's investment in the RX Funds by $337,034 in January 2012.

**ABL Fund**

49. Pursuant to an application by the Bear Stearns Alternative Assets International Ltd (the "**ABL Option Provider**"), the ABL Fund was placed into a court supervised liquidation proceeding with Stuart Sybersma and Ian Wight of Deloitte & Touche in the Cayman Islands being appointed as Joint Official Liquidators of the ABL FUND (the "**ABL Liquidators**") by an Order of the Grand Court of the Cayman Islands ("**Grand Court**") on January 19, 2010. Prior to this, the ABL Fund which was established by Harcourt, was being informally wound up by Harcourt.

50. The ABL Liquidator has prepared three 'strictly privileged and confidential' reports for the purpose of informing the Grand Cayman Court, and creditors and shareholders of the ABL Fund (the "**ABL Reports**"). The ABL Liquidators have provided the ABL Reports to the Receiver; however, the ABL Liquidators haves not given the Receiver permission to share the ABL Reports with the stakeholders of the Belmont Fund.

51. Based upon the ABL Reports and conversations with representatives of the ABL Liquidator the Receiver understands the following:

- As part of their duties the ABL Liquidators have investigated whether the September 30, 2008 NAV for the ABL Fund ("**September 2008 ABL NAV**") had been calculated prior to the time of suspension of the ABL Fund in October 2008 and, if so, whether it had been calculated properly. This matter is relevant given that there were certain shareholders, including the Segregated Portfolio, who sought to redeem their investment effective with the September 30, 2008 redemption date ("**September 30 Redeemers**"). Certain September 30 Redeemers, including the Segregated Portfolio, received a series of partial payments prior to the appointment of the ABL Liquidators ("**September 30 Payments**"). The September 30 Redeemers were only paid in part because the ABL Fund did not have sufficient liquidity to make full payment. Based upon the September 30 ABL NAV, the total redemption request as at September 30, 2008 by the Segregated Portfolio was US$2,000,000. Of this, the Segregated Portfolio received US$1,172,015. The balance of US$827,985 is shown as a receivable on the Feb. 2012 NAV Statement.

- The ABL Liquidators continues to monitor and look for opportunities to monetize the investments of the ABL Fund. The ABL Liquidators are not seeking a rapid liquidation of all the positions in the ABL Fund; however, where the underlying value is

diminishing, the ABL Liquidators are prepared to exit positions through strategic sales, negotiated settlements and winding down of positions. Since their appointment, the ABL Liquidators has realized on certain positions. The ABL Liquidators anticipate that it will take several years to realize the full value of the ABL Fund.

- The ABL Liquidators sought sanction from the Grand Court to admit the Option Provider as an unsecured creditor for the full value of its option plus interest (the "**ABL Application**") The effect of the Option Provider being admitted as an unsecured creditor is that the Option Provider, along with any other unsecured creditors, will rank ahead of any "**Deferred Creditors**" and "**Unredeemed Shareholders**". The Receiver understands that the ABL Fund is either a Deferred Creditor or an Unredeemed Creditor. Given the size of the Option Provider's claim, if the Option Provider is successful in its application, and unless the realizations in the liquidation significantly exceed the current estimates, the unsecured creditors stand to receive all future distributions from the ABL Fund; there will be no funds available to distribute to the Deferred Creditors and the Unredeemed Shareholders. In addition, the September 30 Redeemers may have to repay some or all of the September 30 Payments. The Potential Clawback amount for the Segregated Portfolio is $1,172,015.

- In the event the Option Provider is not admitted as an unsecured creditor of the ABL Fund, it is the Receiver's understanding that funds may be available to flow to the Deferred Creditors and Unredeemed Shareholders. It is also the Receiver's understanding that the amount of the Potential Clawback may be applied as a credit against any future distributions due from the ABL Fund to the Segregated Portfolio. As a result, depending upon the ultimate realizations in the ABL Fund, there is still a risk of limited funds ultimately being available and that the Segregated Portfolio will have to repay some or all of the Potential Clawback.

- In November 2011, the Grand Court issued the "**November 2011 Order**" directing that the Application should be treated as an application of the Option Provider, as applicant, against a "**Representative Respondent**". The effect of the November 2011 Order is that the Representative Respondent is to represent all shareholders, including the September 30 Redeemers. The Grand Court further ordered that the ABL Liquidators should not take part in the Application on the basis that the issue to be decided was an issue between the Option Provider and the Representative Respondent. On application by the ABL Liquidators, the November 2011Order was varied to the extent that it "authorised" the ABL Liquidators to take no further part in the Application as opposed to excluding them.

- The ABL Application was initially listed to be heard in December 2011; however, the court dates were adjourned for a variety of reasons including the order referred to above. The ABL Application is now listed to be heard by the Grand Court on July 11 and 12, 2012.

52. The Receiver understands from Harcourt that the market value for the ABL Fund in the Sept. 2008 NAV Statement is based upon information provided by the ABL Liquidators. However, the market value for the ABL Fund has not been adjusted to reflect the possibility that the Option Provider will be admitted as an unsecured creditor of the ABL Fund and for the possibility that there will be no further recoveries for the Segregated Portfolio from the ABL Fund.

53. The Receiver further understands from Harcourt that the Segregated Portfolio is contributing toward the legal costs of the Representative Respondent. The Receiver has asked Harcourt to provide an estimate of the potential contribution to these legal costs.

## UPDATE ON CLAIMS PROCEDURE

54. The results of the creditor claims process conducted by the Receiver to date are summarized below. Amounts denominated in US dollars have been converted to Canadian dollars at a rate of $1.0759 = US$1, as provided for in the Claims Procedure Order.

### Summary of Creditor Claims Process

| Creditor Type | Claims Filed | | Admitted Claims | | Disputed Claims | |
|---|---|---|---|---|---|---|
| | No. | Amounts | | Amounts | | Amounts |
| Secured | 1 | $3,248,891.75 | - | - | 1 | $3,248,891.75 (1) |
| Unsecured | 6 | 780,980.72 | 6 | $269,177.64 (2) | - | - |
| Contingent | 1 | TBD | - | - | 1 | TBD (3) |

(1) Relates to the Counterparty Claim. See paragraph 59.

(2) The Omniscope Claim (see paragraph 56) was the subject of a Court hearing. Omniscope was awarded a direct claim of $83,475.

(3) Relates to the Belmont GP Claim. See paragraph 56.

55. There are currently two remaining claims filed in the claims process to be addressed.

Belmont GP Claim

56. The first remaining disputed claim is the claim was filed by Nead on March 26, 2010 (after the December 5, 2009 Claims Bar Date) purportedly on behalf of the General Partner (the "**Belmont GP Claim**"). The claim was submitted on "an alternative, without prejudice basis, in response to the contents of a Notice of Allowance of certain claims submitted for Omniscope Advisors, Inc." (the "**Omniscope Claim**")

57. The Receiver is advised by Harcourt, the 50% shareholder of the General Partner, that they did not support the filing of the claim. The Belmont GP Claim was not quantified nor were details or supporting documentation provided to the Receiver within the deadlines provided. Further, the Omniscope Claim was the subject of a Court hearing before Justice Morawetz in which Omniscope was awarded a direct claim of $83,475. As such, the Receiver concluded that the Belmont GP Claim was not being pursued.

58. Out of an abundance of caution, the Receiver issued a Notice of Disallowance on June 6, 2011. Nead filed a Notice of Appeal on July 7, 2011 purportedly on behalf of the General Partner. Harcourt has advised the Receiver that it does not support the filing of the Notice of Appeal. The Receiver has written to Nead to advise that it assumes the Notice of Appeal was not authorized to be initiated and that it will not be proceeding. Nead through his counsel expressed their disagreement but no additional details have been provided nor steps taken since August 2011 regarding the appeal. The Receiver proposes to treat the appeal as abandoned, and to disallow the Belmont GP Claim.

Counterparty Claim

59. The second remaining disputed claim is the Counterparty Claim.

60. In the Receiver's Second Report dated April 30, 2010 the Receiver described the Counterparty Claim for F/X Loss, accrued and future Forward Fees, funding costs of the F/X Loss and legal fees totalling $3,248,891.75 ($456,699.34 and US$2,595,215.55).

61. In an effort to resolve the Counterparty Claim the Receiver sought the assistance of Justice Campbell to act as mediator in respect of the claim. The Receiver together with representatives of the Counterparty attended before Justice Campbell on May 9, 2011 for the initial mediation date.

62. At the end of the first day of mediation, the parties adjourned to seek to determine if any further offers would be exchanged and in order to determine if representatives of RBC and/or the limited partners would attend at the return of the mediation. Issues arose in respect of the attendance at the mediation, which the Receiver now understands have been resolved. The Receiver believes that it and the Counterparty would benefit from a second round of mediation and has reached out to the Counterparty and RBC in order to schedule a return date for the mediation. The Receiver would appreciate the Court's ongoing assistance in this regard.

## FLOW OF FUNDS

63. From the Receiver's perspective, there are two fundamental issues that remain to be resolved in order that funds from the Segregated Portfolio can start to flow through to the Belmont Fund:

- the Counterparty Claim; and
- resolution of the Derivative Application as defined in paragraph 73 of the Third Report and allegations with respect to the Second Redemption Request (collectively, the "**Vontobel Redemption Claim**").

64. The Counterparty Claims needs to be resolved in order to determine the quantum of the Counterparty Claim and whether some or all of the Counterparty Claim is paid prior to any funds flowing from the Belmont Fund through to the other stakeholders of the Belmont Fund. The issues related to the Vontobel Redemption Claim have to be resolved prior to Vontobel and Harcourt agreeing to release any distributions from the Segregated Portfolio.

### Vontobel Redemption Claim

65. In the paragraph 72 of the Third Report, the Receiver defined and described the **Vontobel Redemption Requests** which were requests made by Vontobel to withdraw seed capital from the Segregated Portfolio in 2008. With reference to paragraph 42 of this report, Vontobel has not received payment for the Second Redemption Request.

66. At the time of preparing the Third Report, the Receiver had negotiated and sought Court approval for a resolution reached with Vontobel in respect of the Derivative Application which had been commenced prior to the Receivership and which included, inter alia, allegations in respect of the Vontobel Redemption Requests (the "**Vontobel Settlement**"). Immediately prior to the return of the scheduled motion on August 25, 2010, issues were raised in respect of the proposed Vontobel Settlement. These issues included the nature of releases sought by the directors of the Segregated Portfolio and the mechanics of the Receiver holding any funds which were available to flow to the Belmont Fund as a result of the resolution. The Counterparty had raised concerns as to which entity would hold the funds in a reserve account (the Receiver alone, the Counterparty alone or a joint account with both the Receiver and the Counterparty). The motion was adjourned to determine if the issues could be resolved.

67. The Receiver has had numerous discussions with Vontobel, RBC and the Counterparty regarding the outstanding issues impeding the initial flow of funds to the stakeholders of the Segregated Portfolio, and has worked toward a form of documentation necessary to formalize any settlement that is reached.

68. In addition to the necessary steps in negotiating the form of settlement, the underlying basis of the Vontobel Settlement was questioned as a result of issues that had been raised in the ABL Application referred to above. As a result of the nature of the allegations raised in the ABL Application (including with respect to whether the September 2008 ABL NAV had been properly calculated prior to the time suspension of the ABL Fund), the Receiver sought and is awaiting further information from Vontobel with respect to the nature of the redemption requests sought by Vontobel from the Segregated Portfolio.

69. The Receiver is seeking to arrange a meeting with Vontobel, RBC and the Counterparty to further the discussions and determine if a resolution remains available in respect of the Vontobel Redemption Claim. The Receiver will report back on the status of these discussions.

**Available Cash at Segregated Portfolio**

70. The Receiver cautions that at the present time it is unclear what, if any, funds will be available to flow ultimately to the Belmont Fund, or thereafter available to flow to other stakeholders of the Belmont Fund. The Receiver will continue to keep the stakeholders and the Court updated.

71. The Receiver estimates the available cash at the Segregated Portfolio (the "**Available Cash**") to be approximately US$3.7 million. This is determined by deducting the Potential Clawback of $US1.7 million from the February 2012 Cash Balance of US$5.4 million. A further deduction may be required to provide for ongoing costs of the Segregated Portfolio. While the net assets of the Segregated Portfolio before outstanding redemption requests were approximately $8.4 million as at February 28, 2012, the Receiver cautions that there is a high degree of uncertainty about any future cash recoveries, in particular from the ABL Fund.

**NEXT STEPS**

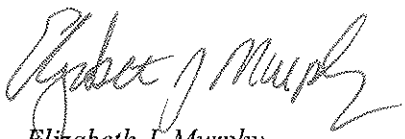
72. The Receiver's first priority is to seek a further mediation date or meeting date to resolve the Counterparty's claim or failing which seek to have the claim determined.

73. In addition the Receiver shall seek to discuss and resolve if possible the Vontobel redemption issues or failing which seek the Court's direction on this issue.

**RESPECTFULLY SUBMITTED,**

Dated the 20th day of April, 2012.

**KPMG INC.**
In its capacity as Court-appointed
Receiver and Manager of
Belmont Dynamic Growth Fund



*Per:* *Elizabeth J. Murphy*
*Vice-President*

| | | | |
|---|---|---|---|
| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

**FOURTH REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND**

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Court File No. 09-8302-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT RULE 14.05(2) OF THE ONTARIO *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, Reg. 194 AND SECTION 35 OF THE *PARTNERSHIPS ACT*, R.S.O, 1990. c. P.5

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and –

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

# SUPPLEMENT TO FOURTH REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

**July 26, 2012**

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## INTRODUCTION

1. Pursuant to the Order of Madam Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2009 (the "**Appointment Order**"), KPMG Inc. was appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the "**Belmont Fund**"), an Ontario limited partnership, pursuant to section 101 of the *Courts of Justice Act*, RSO 1990 c.C.43. The Appointment Order was amended by Order of Madam Justice Hoy on October 21, 2009 (the "**Amended Appointment Order**").

2. The Receiver issued its last report to the Court on April 20, 2012 (the **"Fourth Report**"). The Fourth Report provided updated information on the financial position of the Segregated Portfolio, the claims procedure and the Vontobel Redemption Claim.

3. Copies of all reports to the Court issued by the Receiver can be found at the Receiver's website at: www.kpmg.ca/belmontfund**.**

## PURPOSE OF THE SUPPLEMENT TO THE FOURTH REPORT

4. The Receiver attended before the Court on May 16, 2012 (the "**Case Management Conference**"). Justice Morawetz requested that within 60 to 90 days the date of the Case Management Conference that the Receiver file an update report to the Court.

5. The purpose of this Supplement to Fourth Report to the Court, dated July 26, 2012 (the "**Supplemental Fourth Report**"), is to provide information to this Honourable Court and the stakeholders. This report will provide:

   - an update on the resolution of the Counterparty Claim
   - an update on the resolution of the Vontobel Redemption Claim; and
   - describe certain of the Receiver's next steps.

## TERMS OF REFERENCE

6. The information contained in the Supplemental Fourth Report has been obtained from the books and records and other information made available to the Receiver from the Belmont Fund and from third parties. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver or KPMG LLP nor has it necessarily been prepared in accordance with generally accepted accounting principles. The reader is cautioned that this report may not disclose all significant matters about the Belmont Fund. Accordingly, the Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein. The Receiver reserves the right to refine or amend its comments and/or finding as further information is obtained or is brought to its attention subsequent to the date of the Supplemental Fourth Report. In addition, any financial information presented by the Receiver is preliminary and the Receiver is not yet in a position to project the outcome of the receivership.

7. Unless otherwise noted, all dollar amounts referred to herein are expressed in Canadian dollars.

8. All capitalized terms used herein and not otherwise defined are as defined in the Fourth Report.

**FLOW OF FUNDS**

9. As described in the Fourth Report, from the Receiver's perspective, there are two fundamental issues that remain to be resolved in order that funds from the Segregated Portfolio can start to flow through to the Belmont Fund:

   - the Counterparty Claim; and
   - the Vontobel Redemption Claim.

10. The issues related to the Vontobel Redemption Claim have to be resolved prior to Vontobel and Harcourt agreeing to release any distributions from the Segregated Portfolio to the Belmont Fund.

11. The Counterparty Claim needs to be resolved in order to determine the quantum of the Counterparty Claim and whether some or all of the Counterparty Claim is paid prior to any funds flowing from the Belmont Fund through to the other stakeholders of the Belmont Fund.

**Counterparty Claim**

12. The Counterparty Claim is discussed in paragraphs 59 to 62 of the Fourth Report.

13. In an effort to resolve the Counterparty Claim the Receiver sought the assistance of Justice Campbell to act as mediator in respect of the claim. The Receiver together with representatives of the Counterparty attended before Justice Campbell on May 9, 2011 for the initial mediation date.

14. At the end of the first day of mediation, the parties adjourned to determine if any further offers would be exchanged and to determine if representatives of RBC and/or the Limited Partners would attend at the return of the mediation. Issues arose in respect of the attendance at the mediation. The Receiver understands that these issues have now been resolved.

15. As described in the Fourth Report, the Receiver believed that it and the Counterparty would benefit from a second round of mediation and requested the Court's ongoing assistance in this regard. The Receiver also reached out to the Counterparty and RBC in order to schedule a return date for the mediation.

16. At the Case Management Conference, the Counterparty and RBC indicated their preference to discuss the Counterparty Claim directly between themselves. The Receiver has contacted the Counterparty and RBC on a number of occasions since the Case Management Conference for an update on the discussions and to discuss options and timetables in respect of the continuation of the mediation or other options to resolve or have the Counterparty Claim determined. The Counterparty and RBC advised that they wanted some additional time to continue ongoing discussions between the two parties. The Receiver understands that the Counterparty and RBC have been discussing both structural and economic aspects of a resolution.

17. The Counterparty and RBC have advised the Receiver that while they have made some progress in their discussions to agree on a proposed settlement of the Counterparty Claim, they are still outstanding issues to be resolved. In light of timing considerations, the Receiver believes it is appropriate to move the discussions back in front of the mediator.

18. The Receiver canvassed dates with the Counterparty and RBC which coincide with the Court's earliest availability during the weeks of September 10th and 17th, 2012. The second round of mediation with Justice Campbell is scheduled for September 13, 2012 (the "September 2012 Mediation").

**Vontobel Redemption Claim**

19. The Vontobel Redemption Claim is discussed in paragraphs 63 to 69 of the Fourth Report. As discussed in the Fourth Report, the Receiver has had numerous discussions with Vontobel, RBC and the Counterparty regarding the initial flow of funds to the stakeholders of the Segregated Portfolio, and has worked toward a form of documentation to formalize any settlement that is reached. The Receiver's counsel circulated draft settlement documentation to Vontobel, the Counterparty and RBC for consideration and continues to follow up with the parties for comments in an effort to finalize any potential settlement and relevant documentation.

20. The Counterparty and RBC have requested time to pursue their discussions with respect to the Counterparty Claim before participating in further discussions with Vontobel. The Receiver is prepared to deal with the Counterparty Claim as a preliminary matter at the September 2012 Mediation as this may influence the number of participants necessary to the Vontobel Settlement discussion. However, the Receiver will ask Justice Campbell to deal with the Vontobel Redemption Claim as a secondary issue at the September 2012 Mediation so that all remaining issues can be addressed.

**NEXT STEPS**

21. The Receiver's first priority is to resolve the Counterparty Claim through the second round of mediation discussions or failing which seek to have the claim determined by the Court.

22. In addition, the Receiver shall seek to discuss and resolve if possible the Vontobel Redemption Claim at the September 2012 Mediation or failing which seek the Court's direction on this issue.

**RESPECTFULLY SUBMITTED,**

Dated the 26th day of July, 2012.

**KPMG INC.**
In its capacity as Court-appointed
Receiver and Manager of
Belmont Dynamic Growth Fund

*Per:* *Elizabeth J. Murphy*
*Vice-President*

| JAMES HAGGERTY HARRIS | and | BELMONT DYNAMIC GROWTH FUND, an Ontario limited partnership | Court File No: 09-8302-00CL |
|---|---|---|---|
| Applicant | | Respondent | |

*ONTARIO*
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

# SUPPLEMENT TO FOURTH REPORT OF KPMG INC., RECEIVER AND MANAGER OF BELMONT DYNAMIC GROWTH FUND

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