

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

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

September 11, 2012

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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 hereto as **Appendix B**.

Background to the Receivership

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**”) 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.
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 (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.

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, now known as Innocap Global Investment Management Ltd. (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 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.
7. The investment structure, including the Belmont Fund and the Segregated Portfolio, is defined as the “**Investment Structure**”.

The First Report to the Court

8. 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 C**. 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

9. 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 D**.

Third Report to the Court

10. 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 E**.

Fourth Report to the Court

11. The Receiver issued its Fourth Report to the Court on April 20, 2012 (the “**Fourth**

Report") and a Supplement to the Fourth Report on July 26, 2012 (the "**Supplemental Fourth Report**"). Copies of the Fourth Report and Supplemental Fourth Report (without attachments) are attached hereto as **Appendix F**. The Fourth Report and the Supplemental Fourth Report included an update on the financial position of the Segregated Portfolio and an update on the claims procedures, including the resolution of the Counterparty Claim (as defined herein) and the resolution of the Vontobel Redemption Claim (as defined in paragraph 63 of the Fourth Report).

PURPOSE OF FIFTH REPORT

12. The purpose of this Fifth Report to the Court dated September 11, 2012 (the "Fifth Report") is to provide information to this Honourable Court and the stakeholders. This report will:
- describe certain activities of the Receiver since the Fourth Report;
 - provide an update and overview of the financial position of the Segregated Portfolio; and
 - describe certain of the Receiver's next steps.

TERMS OF REFERENCE

13. The information contained in the Fifth 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 Fifth 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.
14. Unless otherwise noted, all dollar amounts referred to herein are expressed in CAD.
15. All capitalized terms used herein and not otherwise defined are as defined in the Fourth Report.

ACTIVITIES OF THE RECEIVER

16. 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) continuing to assess the investments of the Belmont Fund and its investments; and
- (iv) 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.

CASH POSITION OF THE BELMONT FUND

17. The Receiver 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, the Receiver does not anticipate having any 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 the flow of funds to the Belmont Fund.

SEGREGATED PORTFOLIO

18. 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.
19. The Segregated Portfolio is itself presently in wind-up, with Harcourt overseeing the winding-up. At the request of the Receiver, Harcourt continues to provide the Receiver with information with respect to the value and liquidity of the Segregated Portfolio and the Underlying Funds of Funds (as defined below).
20. The Receiver continues to be uncertain of the value, timing and entitlement to any potential recoveries from the Segregated Portfolio. A number of factors affect the value, timing and entitlement of any potential recoveries from the Segregated Portfolio. These factors include:
- (i) the value and timing of realizations from 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) the 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

21. The Receiver obtained from Harcourt the Estimated Net Asset Value Statement for the Segregated Portfolio as at July 31, 2012 on September 5, 2012 ("**July 2012 NAV**").

Statement). According to the July 2012 NAV Statement, which is attached as **Appendix G**, the net assets of the Segregated Portfolio were approximately US\$5.7 million (the “**July 2012 NAV**”).

22. The calculation of the July 2012 NAV assumes that the Second Redemption Request of approximately US\$2.3 million is to be paid to Vontobel (as defined in paragraph 10 of the Fourth Report) before any distributions to shareholders of the Segregated Portfolio. If Vontobel is not treated as a creditor with respect to the Second Redemption Request, based upon the July 2012 NAV Statement, the adjusted net asset value of the Segregated Portfolio is approximately US\$7.9 million (the “**Adjusted July 2012 NAV**”).
23. In the First Report, the Receiver provided a summary of the financial position of the Segregated Portfolio as at July 31, 2009. There has been a significant deterioration in the value of the Segregated Portfolio since July 2009. If it is assumed that Vontobel is not treated as a creditor with respect to the Second Redemption Request, the adjusted net asset value as at July 31, 2009 was approximately US\$12.4 million (the “**Adjusted July 2009 NAV**”) as compared to the Adjusted July 2012 NAV of approximately US\$7.9 million.
24. The following table provides summarized information from the July 2012 NAV Statement and the Net Asset Value Statements for the Segregated Portfolio as at February 29, 2012, and July 31, 2009.

| | July 31, 2012 (US\$000's) | February 29, 2012* (US\$000's) | July 31, 2009* (US\$000's) |
|---|------------------------------|--------------------------------------|----------------------------------|
| <i>Underlying Fund of Funds (cost)</i> | \$7,949 | \$8,461 | \$12,030 |
| Underlying Funds of Funds (market value) | \$1,663 | \$2,196 | \$9,166 |
| Cash ** | 5,443 | 5,387 | 1,716 |
| Receivable for investments sold | 0 | 0 | 349 |
| Receivable from ABL Fund | 828 | 828 | 1,248 |
| Payables and accrued expenses | (16) | (22) | (36) |
| Payables, including Vontobel Redemption Request | <u>(2,263)</u> | <u>(2,263)</u> | <u>(2,263)</u> |
| Net assets | 5,655 | 6,126 | 10,180 |
| Reversal of Second Redemption Request | 2,263 | 2,263 | 2,263 |
| Adjusted net assets | \$7,918 | \$8,389 | \$12,443 |
| Number of outstanding Class A shares, assuming Second Redemption Request is treated as a creditor balance** | 187,142.5472 | 187,142.5472 | 187,142.5472 |
| Number of outstanding Class B shares | 5,478.7870 | 5,478.7870 | 5,478.7870 |

* The presentation of the information in the columns for February 29, 2012 and the July 31, 2009 has been revised from the presentation in the Fourth Report.

** As at July 31, 2009, this balance includes both cash and cash equivalents and balances due from brokers.

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

25. 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.

Investments of the Segregated Portfolio

26. Harcourt has advised the Receiver that as at July 31, 2012, the Segregated Portfolio was invested in five funds of funds (the "**Underlying Funds of Funds**"). The Underlying Funds of Funds are in turn invested in a number of hedge funds. The market values for each of the Underlying Fund of Funds as at July 31, 2012 and February 29, 2012 are provided below.

| Fund Name | Market Value at July 31, 2012 US\$(000's) | Market Value at February 29, 2012 US\$(000's) | Market Value at July 29, 2012 US\$(000's) |
|---|--|--|--|
| BELMONT RX SPC CLASS LATAM 11/08 (the " RX LATAM Fund ") | \$213 | \$299 | |
| BELMONT RX SPC CLASS ASIA 11/08 (the " RX ASIA Fund ") | 59 | 68 | |
| BELMONT RX SPC CLASS FI 09/08 (the " RX FI 09/08 Fund ") | 42 | 43 | |
| BELMONT RX SPC CLASS FI 11/08 (the " RX FI 11/08 Fund ") | 238 | 516 | |
| Sub-total – RX Funds | 552 | 926 | |
| BELMONT ASSET BASED LENDING CLASS A (or Belmont Asset Based Lending Limited – in Official Liquidation) (the " ABL Fund ") | 1,111 | 1,270 | |
| Total Market Value | \$1,663 | \$2,196 | \$9,166 |

* The Receiver does not have the breakdown by each fund as at July 31, 2009.

27. The Receiver understands and cautions that the Underlying Funds of Funds are invested in illiquid investments for which it is difficult to obtain precise market values. Due to a number of factors, including the uncertainty of future events and the nature of the underlying investments, there can be no assurance that the current market values for the Underlying Funds of Funds will not later be reduced, or that the Underlying Funds of Funds will be able to liquidate their investment at that value or at any other amount.

The RX Funds

28. 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.

ABL Fund

29. The Receiver’s discussion and analysis of the ABL Fund and related matters is based upon the Receiver’s understanding of the information provided to the Receiver by the ABL Liquidators (as defined herein) and through conversations with representatives of the ABL Liquidators and Harcourt.
30. On October 27, 2008 a resolution was passed by the Board of Directors of the ABL Fund declaring a suspension of the calculation of the net asset value of all participating share classes in the ABL Fund. Similar to the Segregated Portfolio, the portfolio of the ABL Fund was adversely affected by the global financial crisis. In addition, the ABL Fund had underlying investments which were substantially affected by allegations of fraud. These investments were written down in September 2008. The ABL Liquidators have estimated that the expected realization for the ABL Fund may be less than thirty percent of the September 30, 2008 net asset value for the ABL Fund (the “**ABL September 2008 NAV**”), being the last net asset value available before the suspension of the net asset value calculation on October 27, 2008.
31. Pursuant to an application by an investor in the ABL Fund, Bear Sterns 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.
32. Certain investors in the Belmont ABL, including the Segregated Portfolio, filed notices with the ABL Fund prior to September 30, 2008 requesting the redemption of some or all of their shares effective September 30, 2008 (the “**September 2008 Redeemers**”). Certain September 2008 Redeemers, including the Segregated Portfolio, received a series of partial payments prior to the appointment of the ABL Liquidators. The September 2008 Redeemers were paid in part because the ABL Fund did not have sufficient liquidity to make full payment. Based upon the ABL September 2008 NAV, the total redemption request by the Segregated Portfolio as at September 30, 2008 was US\$2,000,000. Of this

amount, the Segregated Portfolio received US\$1,172,015 (the “**Potential Clawback Amount**”). The balance due to the Segregated Portfolio of US\$827,985 is shown as a receivable on the July 2012 NAV Statement for the Segregated Portfolio (the “**ABL Receivable**”).

33. The ABL Option Provider submitted a proof of debt with the ABL Liquidators claiming to be treated as a creditor of the ABL Fund for the full amount of its option plus interest (the “**Option Provider Claim**”). The ABL Liquidators sought sanction from the Grand Court to admit the Option Provider Claim (the “**ABL Application**”). Given the size of the Option Provider Claim and the expected realizable value for the ABL Fund in total, the ABL Liquidator estimated that, if the Option Provider were to be admitted in full as a creditor, there would be no future distributions to any investors in the ABL Fund, including the Segregated Portfolio. In addition, the ABL Liquidators advised the Receiver that there was the possibility that the Segregated Portfolio might have to repay some or all of the Potential Clawback Amount.
34. In November 2011, the Grand Court issued an order directing that the ABL Application should be treated as an application of the Option Provider, against a representative respondent, Finter Bank Zurich Ltd. (the “**Representative Respondent**”). The Representative Respondent is also an investor in the ABL Fund.
35. The ABL Application was heard by the Grand Court on July 11, 2012. On July 13, 2012, the Grand Court issued its Order for Directions and its Reasons for Order for Directions (the “**Option Provider Claim Order**”), wherein it ordered and directed that the Option Provider Claim be rejected. The Grand Court concluded that pursuant to the contract between the Option Provider and the ABL Fund, the Option Provider is not a creditor of the ABL Fund and the recourse of the Option Provider is limited to the redemption proceeds of the Class F shares of the ABL Fund. The Option Provider Claim Order is attached as **Appendix H**. The Receiver understands that the appeal period is over and that the Option Provider is not appealing the Option Provider Claim Order.
36. While this decision of the Grant Court does address one critical issue in the ABL Fund liquidation, a number of issues remain open (the “**ABL Issues**”). The ABL Issues, which include a determination as to which investors should be classified as redeemed investors, and the priority between creditors, redeemed investors and unredeemed investors, need to be addressed before any funds are distributed from the ABL Fund. As the ABL Liquidator continues to review the ABL Issues, the timing of any distributions from the ABL Fund to the Segregated Portfolio is uncertain.
37. The Adjusted July 2012 NAV for the Segregated Portfolio of approximately \$7.9 million includes net assets related to the ABL Fund totalling approximately US\$3.1 million (the “**Segregated Portfolio’s ABL Assets**”). This balance for the Segregated Portfolio’s ABL Assets includes:
 - (i) the Potential Clawback Amount of US\$1,172,015;

- (ii) the ABL Receivable of US\$827,985; and
- (iii) the market value of the Segregated Portfolio's share of the Underlying Funds held by the ABL Fund of approximately US\$1,111,000.

38. The Receiver cautions that under certain scenarios provided by the ABL Liquidator, the ultimate value of the Segregated Portfolio's ABL Assets could be nil. The ultimate value of the Segregated Portfolio's ABL Assets depends upon a number of factors, including the resolution of the ABL Issues and the ultimate total assets realized at the ABL Fund level.

Available Cash at the Segregated Portfolio

39. The cash position of the Segregated Portfolio was approximately US\$5.4 million as at July 31, 2012 (the "**July 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, and the expenses of the Segregated Portfolio. The Receiver understands from Harcourt that since the appointment of the Receiver no funds have been distributed to shareholders of the Segregated Portfolio, including Vontobel.
40. The July 2012 Cash Balance includes the Potential Clawback Amount of \$1,172,015.
41. The Receiver understands from Harcourt that the Segregated Portfolio has contributed 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. The Option Provider Claim Order provides that Harcourt is to be reimbursed from the ABL Fund for these costs.
42. Based upon the information available to the Receiver, the Receiver estimates that the cash currently available to be distributed by the Segregated Portfolio to its investors may be less than US\$4.2 million. This estimate is calculated by deducting the Potential Clawback Amount of US\$1,172,015 from the July 2012 Cash Balance of approximately US\$5.4 million. A further deduction may be required to provide for ongoing costs of the Segregated Portfolio.

FLOW OF FUNDS

43. The Receiver cautions that it is unclear what funds, if any, will be available to flow ultimately to the Belmont Fund from the Segregated Portfolio, or thereafter available to flow to other stakeholders of the Belmont Fund.
44. 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.

45. 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.
46. 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. The Counterparty Claim is the subject of a second mediation before Justice Campbell on September 13, 2012 (the “**September 13, 2012 Mediation**”).

NEXT STEPS

47. The Receiver’s first priority is to continue the mediation of the Counterparty Claim at the September 13, 2012 Mediation or failing which seek to have the claim determined.

RESPECTFULLY SUBMITTED,

Dated the 11th day of September, 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

Applicant

Respondent

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Proceeding commenced at Toronto

**FIFTH REPORT OF KPMG INC., RECEIVER
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