Court File No. 09-8302-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION PURSUANT
TO 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

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

B E T W E E N:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

MOTION RECORD
(Returnable on a Date to be Determined)

July 12, 2010

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Lawyer for the Receiver, KPMG Inc.

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Lawyer for KPMG, Receiver of Belmont Dynamic Growth Fund

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Attn.: Mr. Ron Taggart

AND TO: **Accilent Capital Management Inc.**
370 King St. W.
Suite 807, Box 67
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Attn.: Mr. Dan Pembleton

AND TO: **Omniscope Advisors Inc.**
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Court File No. 09-8302-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

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

B E T W E E N:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

I N D E X

TAB	
1.	Notice of Motion, returnable on a date to be determined
2.	Notice of Cross Application of Daniel Nead and Omniscope Advisors Inc. in Court File No. CV-09-8227-00CL, dated July 29, 2009
A.	Affidavit of Daniel Nead, sworn July 28, 2009
3.	Draft Order

TAB 1

Court File No. 09-8302-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

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

B E T W E E N:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

NOTICE OF MOTION
(Returnable on a Date to be Determined)

The Receiver will make a motion to a judge presiding over the Commercial List on a date to be determined at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- [ ] in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- [ ] in writing as an opposed motion under subrule 37.12.1(4);
- [X] orally.

THE MOTION IS FOR:

(a) An order, in the form attached as Schedule A hereto, approving the agreement between the Receiver and The Vontobel Group ("**Vontobel**"), in respect of the proposed derivative action outlined in paragraph 1(f) of the Cross-Application filed in Court File No. CV-09-8227-00CL;

(b) An order approving the holding of funds paid from the Belmont Dynamic Segregated Portfolio (the "**Segregated Portfolio**"), in a reserve in Canada, pending determination of the Disputed Claim of the Counterparty or further Court order;

(c) Approval of the Receiver's Second Report, Supplement to the Second Report and Third Report, and activities to date; and

(d) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

(a) In the Appointment Order dated August 6, 2009, the Court provided that a proposed derivative action, outlined in an earlier application between the shareholders of Belmont Dynamic GP Inc., would be dealt with in the course of the receivership proceedings;

(b) The matters in issue in the proposed derivative action were redemption requests made by Vontobel in respect of seed capital invested in the Segregated Portfolio. Two redemption requests were made.

(c) The first redemption request was made on or about May 9, 2008, and payment was rendered in the amount of approximately US$2 million on or about August 4, 2008, based on the June 30, 2008 NAV (the "**First Redemption Request**");

(d) The second redemption request was made on or about August 5, 2008 (the "**Second Redemption Request**") for settlement as of October 30, 2008, using the September 30, 2008 NAV. No amounts have been paid to Vontobel with respect to the Second Redemption Request;

(e) The proposed derivative action called into question, *inter alia*, whether Vontobel should be paid pursuant to either redemption request in priority to distributions to any other stakeholders in the Segregated Portfolio;

(f) Following the appointment of the Receiver, Vontobel entered into discussions with the Receiver and agreed not to take any further steps in respect of the Second Redemption Request while those discussions were ongoing;

(g) The Receiver and Vontobel have reached terms of a proposed resolution in respect of the First and Second Redemption Requests and the proposed derivative action;

(h) The Receiver considers the agreement to be a fair and reasonable resolution to the proposed derivative action;

(i) The resolution of Vontobel's claim is a necessary and important step towards the flow of funds from the Segregated Portfolio through to the Belmont Dynamic Growth Fund and its stakeholders;

(j) Upon approval of the Vontobel settlement, funds are available to be paid from the Segregated Portfolio. The Receiver seeks the implementation of a reserve, which would permit the funds to be repatriated to Canada, and held pending determination of the Disputed Claim of the Counterparty and/or further Court order;

(k) Paragraph 42 of the Appointment Order;

(l) Section 249(2) of the *Business Corporations Act*, R.S.O. 1990 c. B.16, as amended; and

(m) Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) The Appointment Order, dated August 6, 2009;

(b) The First Report of the Receiver, dated October 19, 2009;

(c) The Second Report of the Receiver, dated April 30, 2010;

(d) The Supplement to the Second Report of the Receiver, dated May 14, 2010;

(e) The Third Report of the Receiver, dated June 21, 2010;

(f) The Cross-Application materials in Court File No.: CV-09-8227-00CL; and

(g) Such further and other material as counsel submits and this Honourable Court accepts.

July 12, 2010

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Elizabeth Pillon LSUC#: 35638M
Tel: (416) 869-5623
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Lawyer for the Receiver, KPMG Inc.

TO: The Attached Service List

SCHEDULE A

Court File No. 09-8302-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	_____DAY, THE ___
	)	
JUSTICE	)	DAY OF _____, 2010

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

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

B E T W E E N:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

O R D E R

THIS MOTION, made by the Receiver of Belmont Dynamic Growth Fund, for an order approving the terms of the proposed settlement (the "Vontobel Settlement") between the Receiver and The Vontobel Group ("Vontobel"), as described in the Third Report of the Receiver, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Second Report of the Receiver, the Supplement to the Second Report, the Third Report of the Receiver, and on hearing the submissions of counsel for the Receiver, Harcourt Investment Consulting AG and Peter Fanconi, Vontobel, National Bank of Canada and National Bank of Canada (Global)

Limited c/o National Bank of Canada, Omniscope Advisors Inc. and Daniel Nead, and the Applicants, and on being advised that notice has been provided to the Service List:

1. THIS COURT ORDERS AND DECLARES that the Vontobel Settlement, as described in the Third Report of the Receiver, is hereby approved pursuant to section 249(2) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Vontobel Settlement.

2. THIS COURT ORDERS AND DECLARES that the Vontobel Settlement is, for all stakeholders, a fair and reasonable resolution of the proposed derivative action outlined in paragraph 1(f) of the Cross-Application in Court File No. CV-09-8227-00CL.

3. THIS COURT ORDERS that payments available to be made from the Belmont Dynamic Segregated Portfolio shall be paid to the Receiver and held in a reserve fund pending determination of the Disputed Claim of the Counterparty or further Court order. The payment of and holding of the reserve fund as contemplated herein is without prejudice to the rights of potential claimants and the Receiver in respect of the reserve funds.

4. THIS COURT ORDERS that the Second Report, the Supplement to the Second Report and the Third Report, and the activities of the Receiver as described therein are hereby authorized and approved.

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or Cayman Islands to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary

or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

_____

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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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

NOTICE OF MOTION
(RETURNABLE ON A DATE TO BE DETERMINED)

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Lawyers for the Receiver, KPMG Inc.

TAB 2

Court File No: CV-09-8227-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

DANIEL NEAD and OMNISCOPE ADVISORS INC.

Cross Applicants

- and -

BELMONT DYNAMIC GROWTH FUND, BELMONT DYNAMIC GP INC., HARCOURT INVESTMENT CONSULTING AG and PETER FANCONI

Cross Respondents

APPLICATION UNDER sections 246 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended

NOTICE OF CROSS APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario, on September 23, 2009 as a cross-application to the application of Harcourt Investment Consulting AG and Peter Fanconi, pursuant to the Order of the Honourable Justice Cumming dated July 6, 2009.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer, or where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES LEGAL AID MAY BE AVAILABLE BY CONTACTING A LOCAL LEGAL AID OFFICE.

Dated: July 29, 2009 Issued by: _____

Local Registrar
Christina Irwin
Registrar, Superior Court of Justice

Address of court office: 330 University Avenue
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Toronto, Ontario

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Barristers
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Matthew Wilton

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Lawyers for the Respondents, Peter Fanconi and Harcourt Investment Consulting AG

CROSS APPLICATION

1. The Applicants by Cross-Application (the "Cross Applicants") make a counter application for:

(a) an order declaring that, through the conduct of the Respondent by Counter Application (the "Cross Respondent") Peter Fanconi ("Fanconi"):

i) the acts and omissions of the Cross Respondents have been or are threatened to be carried out or effected in a manner,

ii) the business or affairs of the Cross Respondent, Belmont Dynamic GP Inc. ("Belmont GP"), have been or are threatened to be carried on or conducted in a manner, or

iii) the powers of Fanconi, as director of Belmont GP, have been or are threatened to be exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Cross Applicants within the meaning of subsection 248(2) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA");

(b) an order under subparagraph 248(3)(e) of the OBCA removing Fanconi as director of Belmont GP;

(c) an order compensating Omniscope for the fees and expenses incurred to date in respect of the unwinding of the Belmont Fund and management services related to the unwinding on a *quantum meruit* basis in the amount of $450 per hour, plus GST, pursuant to invoices to be submitted to Belmont GP;

(d) an order compensating Omniscope for the fees and expenses to be incurred in the future in respect of the unwinding of the Belmont Fund and management services related to the unwinding in the amount of $450 per hour, plus GST, pursuant to invoices to be submitted to Belmont GP;

(e) in the alternative to paragraph (d), an order under subsection 248(2) of the OBCA directing Belmont GP to call and hold a meeting of the limited partners of the Belmont Dynamic Growth Fund (the "Belmont Fund") for the purpose of considering a special resolution authorizing the dissolution of the Belmont Fund, and appointing Omniscope Advisors Inc. ("Omniscope") as the liquidator of the Belmont Fund and in that capacity is responsible for completing the orderly liquidation of the Belmont Fund, including responsibility for the management of the remaining assets and the Belmont Fund;

(f) an order under section 246 of the OBCA granting leave to Omniscope to commence and prosecute a derivative action in the name, and on behalf of, Belmont GP, against Fanconi, Harcourt Investment Consulting AG and Vontobel Holding AG (the "Proposed Defendants"), and in that respect granting leave to Omniscope to issue and serve on the Proposed Defendants, a statement of claim substantially in the form attached as Schedule "A" to this notice of application;

(g) an interim order under subsection 246(3) of the OBCA declaring that it is not expedient for Omniscope to provide notice as prescribed by subsection 246(2) of the OBCA;

(h) an declaration that, pursuant to sections 7.2 and 8.8 of the Limited Partnership Agreement (as defined herein) and section 5.2 of Belmont GP's By-Laws, Nead is entitled to be indemnified and/or reimbursed by Belmont GP and correspondingly the Belmont Fund for the liabilities, costs and expenses incurred by him in connection with this proceeding and the derivative action;

(i) substantial indemnity costs; and

(j) such further and other relief as to this Honourable Court appears just.

2. The grounds for the counter-application are:

The Parties

(a) The Cross Respondent, Belmont GP, is a corporation incorporated pursuant to the laws of Ontario.

(b) The Cross Applicant, Daniel Nead ("Nead"), is an individual residing in the City of Toronto. Nead is a director of Belmont GP, and is registered with the Ontario Securities Commission ("OSC") as a Limited Market Dealer.

(c) The Cross Applicant, Omniscope Advisors Inc. ("Omniscope"), is incorporated under the laws of Ontario and has its head office in Toronto. Omniscope is controlled by Nead and is registered with the OSC as a Limited Market Dealer. It holds 100 common shares of Belmont GP, representing 50 percent of the issued and outstanding Belmont GP common shares.

(d) The Cross Respondent, Harcourt Investment Consulting AG ("Harcourt"), is a corporation based in Zurich, Switzerland. Harcourt holds 100 common shares of

Belmont GP, representing 50 percent of the issued and outstanding Belmont GP common shares. Vontobel Holding AG ("Vontobel Holding"), an affiliate of the Vontobel Group, the Swiss financial institution, controls Harcourt.

(e) The Cross Respondent, Peter Fanconi ("Fanconi"), is an individual residing in Zurich, Switzerland. Fanconi is a director of Belmont GP. He is also a director of Harcourt and of the Vontobel Group.

(f) The Cross Respondent the Belmont Fund is a limited partnership under the Ontario *Limited Partnerships Act*. Nead provides investor advisory services to the Belmont Fund through Accilent Capital Management Inc. ("Accilent"). Accilent is registered by the OSC as an Investment Counsel/Portfolio Manager and a Limited Market Dealer.

Structure of Belmont Fund

(g) The Belmont Fund is comprised of a general partner, Belmont GP, and a number of limited partners (the "Limited Partners"). The relationship between Belmont GP and the Belmont Fund is governed by a limited partnership agreement dated June 9, 2006 (the "Limited Partnership Agreement").

(h) The Limited Partners of the Belmont Fund are "accredited investors" (as that term is defined in Ontario securities law).

(i) As general partner, Belmont GP is responsible for the management and operations of the Belmont Fund.

(j) The objective of the Belmont Fund is to provide investors the return on the Belmont Dynamic Growth Segregated Portfolio (the "Underlying Fund"), a leveraged fund of hedge funds managed by Harcourt. The returns of the Belmont Fund are derived from the Underlying Fund using a tax efficient derivative structure, which is summarized as follows:

i) the Belmont Fund's offering proceeds are invested in a basket of Canadian common shares, all of which constitute "Canadian securities", as defined in section 39 of the *Income Tax Act* (Canada);

ii) the Belmont Fund entered into a forward purchase and sale agreement (the "Forward") with National Bank of Canada (Global) Limited ("NBCG") as the counterparty;

iii) pursuant to the Forward, NBCG agrees to purchase the share basket from the Belmont Fund on the Forward maturity date (the "Forward Maturity Date") for an amount in US dollars that is equal to the value of a notional investment in participating shares of the Underlying Fund at the time of, and in an amount equal to, the Belmont Fund's offering proceeds (the "Notional Investment"); and

iv) the Forward may be pre-settled in whole or in part prior to the Forward Maturity Date in order to permit the Belmont Fund to fund periodic redemptions by Limited Partners, administration fees and other ongoing expenses of the Belmont Fund. When the Forward is pre-settled, the

Notional Investment in the Underlying Fund will be reduced proportionately.

Vontobel Holding Invests Seed Capital in Underlying Fund

(k) In connection with the establishment of the Belmont Fund, Fanconi and Harcourt agreed that Harcourt, through its holding company Vontobel Holding, would contribute $5 million in seed capital to the Belmont Fund. Without this seed capital, the Belmont Fund would have been unable to carry out its investment objective, which is described by the Belmont Fund's offering memorandum as generating "absolute returns which are not correlated to global equity or bond markets".

(l) Contrary to the understanding and expectations of Belmont GP and the Limited Partners, Vontobel Holding contributed seed capital to the Underlying Fund, and not the Belmont Fund. For reasons that follow, this enabled Vontobel Holding to seek financial advantages not available to the Limited Partners.

Fund Management

(m) From the inception of the Belmont Fund, Nead undertook complete responsibility for the establishment, operation and management of Belmont GP. Such responsibilities include, *inter alia*, engaging and overseeing the Belmont Fund's auditors, PricewaterhouseCoopers LLP ("PwC") and its custodian, Citigroup Fund Services Canada Inc. ("Citigroup"), and providing instructions to NBCG. Fanconi did not undertake any of these responsibilities or perform any of these duties. In fact, Fanconi is unable to trade in securities on behalf of the Belmont

Fund, which trading includes providing instructions to NBCG respecting the basket of "Canadian securities", because he is not registered in any capacity under Ontario securities law.

(n) Under Harcourt's management of the Underlying Fund, the value of the assets in the Underlying Fund have eroded substantially by current market conditions, in part due to their exposure to global equity and global credit and credit-based markets. This was reflected in adverse changes to the net asset value (the "NAV") of the Underlying Fund after June 2008.

(o) The impact of global market conditions on the Underlying Fund were especially significant due to the illiquidity of the holdings, which comprised exclusively of units in hedge funds.

(p) Due to the illiquidity of the Underlying Fund, in or about June 2008 there appear to have been insufficient liquid assets in the Belmont Fund to satisfy a small redemption request by a Limited Partner. Other redemption requests by the Limited Partners have been received but not fulfilled.

Vontobel Holding's $2 Million Redemption

(q) Notwithstanding the serious liquidity (and concomitant net asset value) issues faced by the Belmont Fund from about June 2008, Vontobel Holding submitted a redemption request for $2 million to Citco Fund Services (Europe) BV ("Citco"), the administrator of the Underlying Fund, on August 5, 2008 (the "Vontobel Request").

(r) On September 30, 2008, the Vontobel Request was complied with and $2 million was redeemed. This action by Vontobel Holding significantly impaired the value and liquidity of the Belmont Fund.

(s) Neither the Vontobel Request nor the fact that Citco acceded to this request was disclosed to the Limited Partners or to Nead before it occurred.

(t) Fanconi, as the Harcourt representative responsible for the Underlying Fund, and Harcourt, took the initiative to make the Vontobel Request, or knowingly participated in the decision to make it. In this regard, (i) Fanconi has acted in breach of his duties to Belmont GP in contravention of section 134 of the OBCA, and (ii) Fanconi and Harcourt have breached their duties to the Belmont Fund.

Underlying Fund Liquidation

(u) In or around October 2008, due to the poor performance of the Underlying Fund caused by prevailing market conditions at that time, Harcourt decided to liquidate the Underlying Fund.

(v) On October 31, 2008, on the basis of Harcourt's decision, Citco notified the shareholders of the Underlying Fund that it would be put into compulsory redemption.

(w) Harcourt's decision had an immediate impact on the Belmont Fund. Nead and Fanconi notified RBC Dominion Securities (the dealer that introduced the Limited Partners to the Belmont Fund) that the Belmont Fund's assets would need to be liquidated, and accordingly there would be a compulsory redemption of all

outstanding units of the Belmont Fund. The purpose of the compulsory redemption was to ensure that the assets of the Underlying Fund and the overlying Canadian derivatives structure would be unwound in an orderly manner such that all Limited Partners would receive an equal share of the proceeds of liquidation on a pro-rata basis.

(x) Nead and Fanconi agreed that unless redemptions were conducted in an orderly manner, certain Limited Partners would be advantaged to the detriment of others.

Belmont GP's Role in Facilitating the Unwind of the Belmont Fund

(y) Following the announcement of the Underlying Fund's liquidation in October 2008, Belmont GP has undertaken to coordinate and oversee the orderly unwind of the Belmont Fund. Nead has and continues to carry out the duties of Belmont GP in respect of the unwind as an officer and director of Belmont GP. Belmont GP has retained the services of Omniscope in the unwind when necessary.

(z) Notwithstanding the time and expense incurred in respect of the unwind, Fanconi and Harcourt have opposed permitting Belmont GP to compensate Omniscope for the provision of the unwind services, although these services are essential to the orderly unwinding of the Belmont Fund, and in particular its derivative structure. Nead and Omniscope are entitled to be compensated for services provided to the Belmont Fund on a *quantum meruit* basis:

i) there was never any intention that the unwind services would be performed gratuitously;

ii) the unwind services had to be performed, Nead was the only person who could perform them for Belmont GP, and Nead was not acting officiously in doing so;

iii) Fanconi and Harcourt acquiesced to Nead and Omniscope performing the unwind services on behalf of Belmont GP;

iv) Belmont GP and the Limited Partners have derived significant benefit from Nead and Omniscope's performance of the unwind services; and

v) to date, neither Nead nor Omniscope have received any compensation whatsoever for the unwind services that have been provided, and that continue to be provided to date.

Suspicions That Fanconi and Harcourt Not Acting in Best Interests of Limited Partners

(aa) In or around late December 2008, Nead began to suspect that Fanconi and Harcourt had not disclosed that they had engaged in certain actions in respect of the Underlying Fund which were, or would be, prejudicial of the Underlying Fund, and accordingly not in the best interest of the Limited Partners.

(bb) Harcourt attempted to schedule a directors' meeting in January 2009. Nead had been informed by legal counsel to the Belmont Fund that Fanconi could use his casting vote as Chair of the board of directors of Belmont GP to remove Nead as a director, although that legal advice was not correct. Nead felt that it was not in the best interests of the Limited Partners that he be removed as a director at that stage. Accordingly, Nead declined to attend the January 2009 directors' meeting.

(cc) Nead's suspicions in respect of harmful actions undertaken by Fanconi and Harcourt were confirmed when Fanconi and Harcourt finally provided NBCG with the Underlying Fund's liquidation schedule in January 2009 (the "Liquidation Schedule"). Nead had two concerns with the Liquidation Schedule: (i) it contains a redemption of $2,262,900 which is prioritized above all other liquidation proceeds; and (ii) it extends until 2011 or longer.

Vontobel Holdings' $2.3 Million Redemption Request

(dd) Notwithstanding that an orderly liquidation of the Underlying Fund and unwinding of the Canadian derivative structure has been underway since October 2008, Nead learned that Vontobel Holding made another redemption request to Citco on September 30, 2008 for $2.3 million, which Harcourt intended to honour in priority to all other investors in the Underlying Fund (the "Second Vontobel Request"). In fact, this was the $2,262,900 amount which was, according to the Liquidation Schedule, to be redeemed in priority to all other liquidation funds as described above.

(ee) The Second Vontobel Request was not disclosed to the Limited Partners or to Nead.

(ff) The Second Vontobel Request would not have been possible had Vontobel Holding contributed its seed capital to the Belmont Fund and not the Underlying Fund.

(gg) The Second Vontobel Request encompasses the remainder of the seed capital invested by Vontobel Holding in the Underlying Fund.

(hh) The Second Vontobel Request has not yet been acceded to by Citco. Nevertheless, Fanconi, as the Harcourt representative responsible for the Underlying Fund, and Harcourt took the initiative to make the Second Vontobel Request, or knowingly participated in the decision to make it. In this regard, (i) Fanconi has acted in breach of his duties to Belmont GP in contravention of section 134 of the OBCA (ii) Harcourt and Fanconi have breached their duties to the Belmont Fund. In addition, the asset position of the Belmont Fund will be further impaired to the prejudice of the Limited Partners and Harcourt stands to obtain a significant benefit that will result in a corresponding prejudice to the Limited Partners.

(ii) Pursuant to the Offering Memorandum, upon dissolution Belmont GP is obligated to distribute on a *pro rata* basis 99.999% of the remaining assets of the Belmont Fund, after provision for payment of debts and liabilities of the Belmont Fund and liquidation expenses. If Harcourt honours the Second Vontobel Request, such a *pro rata* distribution will be impossible.

(jj) In July 2009, Harcourt advised NBCG that the Second Vontobel Request may be made *pari passu* with payments to NBCG on account of costs that NBCG incurred as a result of the settlement of the Forward, but that all payments to Vontobel Holding would be calculated on the basis of the September 30, 2008 NAV, which is substantially higher than the NAV calculation to be used for the redemption of the Limited Partner's units in the Belmont Fund.

(kk) Fanconi and Harcourt have taken the steps set out herein so as to ensure that neither Nead nor Omniscope has the financial resources to ensure, on behalf of the Limited Partners, that the Second Vontobel Request is not redeemed to the detriment of the Belmont Fund and the Limited Partners.

Oppressive Conduct

(ll) Nead and Omniscope at all times had a reasonable expectation that they would not be put in a position of providing services to Belmont GP without compensation. Contrary to these reasonable expectations, the Respondent Fanconi has taken active steps to prevent Nead and Omniscope from recouperating any reasonable fee or expense from Belmont GP. In those circumstances, Fanconi should have no further role in determining whether and how much Nead and Omniscope should receive from Belmont GP, and in the event that this compensation is not available from the Belmont Fund, Fanconi ought to be required to pay it himself.

(mm) As the representative of a 50 percent shareholder of Belmont GP, Nead has an equitable right to participate in the management of the company. Therefore Fanconi's efforts, both prior to and in the course of these proceedings, to remove Nead as a director of Belmont GP constitute oppression.

(nn) One of the key objectives of Belmont GP was to ensure that the Belmont Fund was sufficiently capitalized so that it could achieve its objectives. By causing Vontobel Holding to make the Vontobel Request and the Second Vontobel Request, Fanconi has acted entirely contrary to this vital corporate objective and

therefore has exercised his powers in a manner that is oppressive and unduly prejudicial to the interests of Nead and Omniscope.

Relief Sought

(oo) As a consequence of Fanconi's conduct, he is not fit to serve as a director of Belmont GP and if the deadlock between Nead and Fanconi cannot be resolved through removal of Fanconi as a director of Belmont GP, then, in the alternative, it is necessary for leave to be granted to Omniscope to commence legal proceedings against Fanconi, Harcourt and Vontobel Holding for the return of the proceeds of the Vontobel Request and the Second Vontobel Request.

(pp) Omniscope is acting in good faith insofar as it proposes to bring the derivative action for the benefit of Belmont GP, and, by extension, the Belmont Fund and its Limited Partners.

(qq) Although the OBCA generally requires that notice be given to the Board of Directors before seeking leave to commence a derivative action, doing so would be pointless because Belmont GP is deadlocked and one of the proposed defendants has, owing to his casting vote, control of the Board.

(rr) It appears to be in the best interests of Belmont GP, the Belmont Fund and the Limited Partners that the proposed derivative action be brought and prosecuted.

(ss) Since Omniscope, under the direction of Nead, has already undertaken management of the Belmont Fund, it is appropriate that either Belmont GP is appointed as liquidator in accordance with the Limited Partnership Agreement, or,

if the deadlock between Nead and Fanconi cannot be resolved, Omniscope be appointed liquidator on the basis that Fanconi is not qualified to undertake the function because he has played no role in the management of Belmont GP and because of his breaches of fiduciary duty as set out above.

(tt) Sections 134, 136, 246 and 248 of the OBCA;

(uu) rules 14.02, 14.05(2), 38.01(1) and 38.03(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

(vv) such further and other grounds as counsel may advise and this Honourable Court permit.

3. The following documentary evidence will be used at the hearing of the application:

(a) the affidavit of Daniel Nead, sworn July 28, 2009, and the exhibits thereto;

(b) such further and other materials as counsel may advise and this Honourable Court permit.

Date: July 28, 2009

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SCHEDULE "A"

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

BELMONT DYNAMIC GP INC.

Plaintiff

- and -

PETER FANCONI,
HARCOURT INVESTMENT CONSULTING AG and
VONTOBEL HOLDING AG

Defendants

Action commenced pursuant to s. 236 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE: _____

Issued by _____
Local Registrar

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AND TO: **HARCOURT INVESTMENT CONSULTING AG**
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AND TO: **VONTOBEL HOLDING AG**
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CLAIM

1. THE PLAINTIFF CLAIMS:

(a) a declaration that the First Redemption Request and the Second Redemption Request, as defined below, are invalid;

(b) an order requiring the defendants to return to the Belmont Dynamic Growth Fund (the "Belmont Fund") all amounts paid to the defendant Vontobel Holding AG ("Vontobel Holding") pursuant to the First Redemption Request (as defined below) together with compound interest at Vontobel Holding's prime lending rate;

(c) an order prohibiting the defendants from taking any steps to pursue to redemption of its investment in the Underlying Fund (as defined below) pursuant to the Second Redemption Request (also as defined below);

(d) in the alternative to paragraph (c) above, an order requiring the defendants to return to the Belmont Fund all amounts paid to Vontobel Holding pursuant to the Second Redemption Request (as defined below) together with compound interest at Vontobel Holding's prime lending rate;

(e) in the alternative to paragraphs (a), (b), (c) and (d) above, compensation or damages in equity for facilitating breach of fiduciary duty, and knowing or reckless participation in breach of fiduciary duty, and knowing or reckless receipt of property obtained in breach of fiduciary duty;

(f) in the alternative to paragraph (e) above, an order for the disgorgement to the plaintiff of all profits or other benefits occasioned by the wrongful conduct of the defendants;

(g) compound interest on equitable principles;

(h) in the alternative to (f), pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C43;

(i) costs on a substantial indemnity basis; and

(j) such further and other relief as counsel may advise or this Honourable Court may see fit.

The Parties

2. The plaintiff Belmont Dynamic GP Inc. ("Belmont GP") is incorporated under the laws of Ontario. Belmont GP carries on business in Toronto, Ontario as the general partner of the Belmont Dynamic Growth Fund (the "Belmont Fund"), a limited partnership under the *Limited Partnerships Act.*

3. Belmont GP has two directors, each with equal voting rights, and two shareholders, each holding a 50 percent interest in the issued and outstanding shares of the company.

4. The defendant Harcourt Investment Consulting AG ("Harcourt") is based in Zurich, Switzerland. Harcourt holds a 50 percent interest in the issued and outstanding common shares of Belmont GP.

5. Harcourt is the manager of the Underlying Fund (as described and defined below).

6. The defendant Vontobel Holding AG ("Vontobel Holding"), an affiliate of the Swiss financial institution the Vontobel Group, controls Harcourt.

7. The defendant Peter Fanconi ("Fanconi") resides in Zurich, Switzerland and is one of Belmont GP's two directors. Fanconi was, at times material, the President and Chief Executive Officer of Harcourt. Fanconi became a director of the Vontobel Group in or about February 2009.

8. Fanconi was the representative of Harcourt and the Vontobel Group ultimately responsible for the Belmont Fund, and the Vontobel Group's investment in the Underlying Fund (as described and defined below).

9. Daniel Nead ("Nead") is Belmont GP's other director. Nead resides in Toronto, Ontario. Omniscope Advisors Inc. ("Omniscope") holds the other 50 percent interest in the issued and outstanding shares of Belmont GP. Omniscope carries on business in Toronto, Ontario and is controlled by Nead.

The Belmont Fund

10. The Belmont Fund was established pursuant to a limited partnership agreement dated June 9, 2006 (the "Limited Partnership Agreement"). It is comprised of Belmont GP, the general partner, and a number of limited partners (the "Limited Partners") who are "accredited investors" (as that term is described in Ontario securities law) and are the unit holders in the Belmont Fund.

11. Pursuant to section 8 of the Limited Partnership Agreement, Belmont GP is responsible for the day-to-day business of the Belmont Fund, including monitoring the Belmont Fund's investment portfolio and selecting the investment advisor.

12. The objective of the Belmont Fund, pursuant to the Amended and Restated Confidential Offering Memorandum (the "Offering Memorandum"), is to provide investors the return on the Belmont Dynamic Growth Segregated Portfolio (the "Underlying Fund"), a leveraged fund of hedge funds existing as a segregated portfolio of Belmont SPC, a segregated portfolio company organized under the laws of the Cayman Islands.

13. The returns of the Belmont Fund are derived from the Underlying Fund using a tax efficient derivative structure, which, as set out in Offering Memorandum, was structured as follows:

(a) the Belmont Fund's offering proceeds were invested in a basket of Canadian common shares, all of which constituted "Canadian securities", as defined in section 39 of the *Income Tax Act* (Canada);

(b) the Belmont Fund entered into a forward purchase and sale agreement (the "Forward") with National Bank of Canada (Global) Limited ("NBCG") as the counterparty;

(c) pursuant to the Forward, NBCG agreed to purchase the share basket from the Belmont Fund on the Forward maturity date (the "Forward Maturity Date") for an amount in US dollars that is equal to the value of a notional investment in

participating shares of the Underlying Fund at the time of, and in an amount equal to, the Belmont Fund's offering proceeds (the "Notional Investment"); and

(d) the Forward could be pre-settled in whole or in part prior to the Forward Maturity Date in order to permit the Belmont Fund to fund periodic redemptions by Limited Partners, administration fees and other ongoing expenses of the Belmont Fund. If the Forward was pre-settled, the Notional Investment in the Underlying Fund would be reduced proportionately.

14. Notwithstanding the overlay of the tax-efficient structure of the Belmont Fund over the Underlying Fund, Harcourt manages the Limited Partners' assets through the Underlying Fund. The complete dependency of the Belmont Fund on the performance and liquidity of the Underlying Fund renders the investors in the Belmont Fund vulnerable to the unilateral exercise of decision-making power by Harcourt and Fanconi. This dependency arises obviously and necessarily from the conception and implementation of the fund on fund structure.

15. Harcourt and Fanconi therefore owe fiduciary duties to the Belmont Fund. Fanconi owes these duties to the Belmont Fund both as a representative of Harcourt and as a director of Belmont GP.

16. The investors in the Belmont Fund have placed complete trust, confidence and reliance in Harcourt and Fanconi. Harcourt and Fanconi, in soliciting investments in the Belmont Fund and encouraging others to do so, have accepted this obligation of trust and confidence and its corresponding obligation to exercise their powers for the benefit of the investors in the Belmont Fund, and not in furtherance of other interests.

Vontobel Holding's Seed Capital Investment

17. When the Belmont Fund was established, Fanconi and Harcourt agreed with Belmont GP that Harcourt, through its holding company Vontobel Holding, would contribute $5 million in seed capital to the Belmont Fund. This seed capital was, and continued to be, essential to the viability of the Belmont Fund. The investment objective of the Belmont Fund and the Underlying Fund could not be achieved without the seed capital.

18. In view of the importance of the seed capital, both in terms of the viability of the Belmont Fund and the Underlying Fund and as support for Harcourt's commitment to the Belmont Fund, Fanconi assured prospective Limited Partners at a series of meetings that Harcourt intended to invest the seed capital in the Belmont Fund.

19. Contrary to their agreement and to the expectations of Belmont GP and the Limited Partners, Vontobel Holding did not contribute the seed capital to the Belmont Fund, but invested these assets in the Underlying Fund. For reasons that follow, this has enabled Vontobel Holding to attempt to remove its seed capital ahead of the Limited Partners at favourable net asset values ("NAV") instead of on a *pari passu* basis.

20. Nead and the Limited Partners were unaware that Vontobel Holding had not contributed the seed capital to the Belmont Fund, but had invested these assets in the Underlying Fund. Fanconi and Harcourt had knowledge of Vontobel Holding's investment in the Underlying Fund and in fact caused this investment to be made in the manner described above.

Problems with the Underlying Fund

21. The Underlying Fund had substantial exposure to global equity, credit and credit-based markets. As a result, the performance of the Underlying Fund was adversely affected by

deteriorating global market conditions in the summer and fall of 2008, and accordingly the NAV of the Underlying Fund declined materially beginning in June 2008. During this period, the liquidity of the investments held in the Underlying Fund became increasingly constrained and impaired.

22. As a result of adverse market conditions and the illiquidity of the Underlying Fund, Harcourt was unable or unwilling to satisfy a $45,000 redemption request made by a Limited Partner in about June 2008.

23. As the manager of the Underlying Fund and the entity responsible for its portfolio investments, Harcourt, and correspondingly Fanconi and Vontobel Holding, had access to all pertinent information regarding the assets in the Underlying Fund from time to time, including the nature of these assets, their value and liquidity. Given that there was no published market for the investments of the Underlying Fund, none of this information was available, or made available, to the Limited Partners.

24. As fiduciaries, Harcourt and Fanconi were not free to use this information to benefit themselves or third parties affiliated with them. Vontobel Holding, knowing as it did that any communication of such information to it could only arise through a breach of Harcourt and Fanconi's fiduciary duties to the Belmont Fund, was not free to accept the benefit of early access to information concerning the status of the Underlying Fund and redeem its units in the Underlying Fund at an advantageous NAV. Vontobel Holding has accordingly been unjustly enriched by achieving an early and advantageous exit from the Underlying Fund by using information that it knew had been conveyed to it in breach of fiduciary duty.

25. Moreover, the arrangements among Harcourt, Fanconi and Vontobel Holding culminating in Vontobel Holding's planned exit from the Underlying Fund was in fact part of a deliberate and concerted effort among Fanconi, Harcourt and Vontobel Holding to achieve this objective. Because these efforts necessarily, and to the knowledge of Vontobel Holding, involved Fanconi and Harcourt breaching their fiduciary duties to the Belmont Fund, Vontobel Holding is liable as a party to those breaches or for knowingly assisting in or participating in those breaches.

The First Redemption Request

26. On or about August 5, 2008, Vontobel Holding submitted a redemption request for $2 million to Citco Fund Services (Europe) BV ("Citco"), the administrator of the Underlying Fund (the "First Redemption Request"). At the time that the First Redemption Request was made, Vontobel Holding, through Harcourt and Fanconi, was possessed of material information respecting the performance of the Underlying Fund and its portfolio investments that was not available to the Limited Partners, or for that matter, to Nead.

27. Neither Nead nor the Limited Partners was made aware of the First Redemption Request at the time it was made. In fact, Nead did not discover that the First Redemption Request had been made until in or about May 2009.

28. As the representatives of Vontobel Holding responsible for the establishment and oversight of the Belmont Fund and the Underlying Fund and Vontobel Holding's investment in the Underlying Fund, Fanconi and Harcourt caused Vontobel Holding to make the First Redemption Request. In so doing, Harcourt and Fanconi are in a position of irresolvable conflict. The decision to facilitate the First Redemption Request for the benefit of Vontobel

Holding detrimentally affected the Belmont Fund, to which Harcourt and Fanconi owed fiduciary duties, in a vital aspect of its undertaking. The Belmont Fund is entitled to expect that Harcourt and Fanconi will not assist a related party in making a redemption request that will severely impair the liquidity of the Underlying Fund and therefore impair the liquidity of the Belmont Fund to the detriment of its investors.

29. Harcourt and Citco honoured the First Redemption Request on September 30, 2008, and paid Vontobel Holding $2 million from the Underlying Fund, despite the valuation and liquidity issues faced by the Belmont Fund from about June 2008.

30. The value and liquidity of the Belmont Fund was further impaired as a result of the payment of $2 million to Vontobel Holding pursuant to the First Redemption Request.

The Second Redemption Request

31. On or about September 30, 2008, Vontobel Holding submitted a second redemption request to Citco, this time for $2.3 million (the "Second Redemption Request").

32. The Second Redemption Request encompasses the remainder of the seed capital invested by Vontobel Holding in the Underlying Fund.

33. Vontobel Holding could not have pursued the Second Redemption Request had it contributed its seed capital to the Belmont Fund and not the Underlying Fund, because it would have had to share *pari passu* with the Limited Partners. By September 2008, a number of Limited Partners had submitted redemption requests that would not and could not be fulfilled.

Belmont Fund Liquidation

34. In or around the beginning of October 2008, shortly after the Second Redemption Request was made, Harcourt had decided to liquidate the Underlying Fund and suspend redemptions in the Belmont Fund as a result of the poor performance of the Underlying Fund and the increasing illiquidity of the investments in the Underlying Fund.

35. Citco informed investors of Harcourt's decision on or about October 31, 2008.

36. As a result of Harcourt's decision to liquidate the Underlying Fund and suspend redemptions in the Belmont Fund:

(a) NBCG terminated the foreign exchange hedge as contemplated by the Offering Memorandum. This has resulted in substantial losses to the Limited Partners because the Underlying Fund holds US dollar investments and the Belmont Fund's assets are denominated in Canadian dollars, and the Canadian dollar has continued to rise;

(b) the Belmont Fund suspended the determination of its NAV at the November 28, 2008 NAV. The November 28, 2008 NAV was a historic low for the Belmont Fund;

(c) Belmont GP advised the Limited Partners that all units of the Belmont Fund must be redeemed at the historically low November 28, 2008 NAV;

(d) Belmont GP advised the Limited Partners that the Belmont Fund needed to be unwound in an orderly fashion, and therefore all redemptions by Limited Partners were suspended; and

(e) Fanconi and Nead were in agreement that unless redemptions of units of the Belmont Fund were conducted on an orderly basis, certain Limited Partners could be advantaged to the detriment of others because more readily saleable assets would be more easily disposed of at more advantageous prices due to the general illiquidity of the investments in the Underlying Fund.

The Ogier Letter

37. Citco has not yet acceded to the Second Redemption Request.

38. Nead, the Limited Partners and NBCG did not learn of Harcourt's intention to make the Second Redemption Request until several months after it had been made.

39. In or around May 2009, at Nead's request, NBCG retained Ogier, a Cayman Islands law firm, to provide an opinion as to whether Harcourt's intended actions with respect to the Second Redemption Request were lawful.

40. On May 27, 2009, Ogier wrote to the directors of Belmont SPC, expressing concerns regarding the Second Redemption Request and seeking further information (the "Ogier Letter"). The Ogier Letter, *inter alia*, raised the following issues:

(a) the decision to close down the Underlying Fund must have been considered by Harcourt before it was announced by Citco on October 31, 2008;

(b) Vontobel Holding submitted the Second Redemption Request shortly before Harcourt caused Citco to communicate the decision to close down the Underlying Fund to investors;

(c) it is relevant whether Harcourt knew, or ought to have known, that the viability of the Underlying Fund was in question at the time Vontobel Holding provided notice of the Second Redemption Request; and

(d) it is also relevant whether Vontobel Holding knew that the Underlying Fund was being liquidated before the Limited Partners knew.

41. The Ogier Letter, *inter alia*, stated that Harcourt has a fiduciary duty to take into account what is in the best interest of all shareholders, not just one of them, and accordingly the Second Redemption Request should not be honoured if it arises out of a breach of fiduciary duties. In any event, even if the Second Redemption Request is not made a result of a breach of fiduciary duty, it is unlawful in the Cayman Islands to allow a seed investor to redeem ahead of all other investors (i.e. the Limited Partners).

42. Notwithstanding the issues raised and opinions expressed in the Ogier Letter, Harcourt informed NBCG in or about July 2009 that it intended to pursue the Second Redemption Request. Earlier, Harcourt suggested to NBCG that payments satisfying the Second Redemption Request would be made *pari passu* with payments to NBCG on account of costs that NBCG incurred as a result of the settlement of the Forward, but that all payments to Vontobel Holding would be calculated on the basis of the September 30, 2008 NAV, which is substantially higher than the historically low November 28, 2008 NAV calculation to be used for the redemption of the Limited Partners' units in the Belmont Fund.

Breach of Fiduciary Duty, Knowing Assistance and Knowing Receipt

The Redemption Requests

43. Fanconi, as the Harcourt representative responsible for the Underlying Fund, and Harcourt, took the initiative to make the First Redemption Request, or knowingly participated in the decision to make it. Fanconi also knew that Vontobel Holding was taking advantage of an opportunity not available to the Limited Partners that would have a significant adverse impact on the value and liquidity of the Belmont Fund and would thereby prejudice the Belmont Fund in vital aspects of its undertaking. In this regard, Fanconi and Harcourt acted in breach of their fiduciary duties to Belmont GP and the Belmont Fund.

44. Fanconi, as the Harcourt representative responsible for the Underlying Fund, and Harcourt, took the initiative to make the Second Redemption Request, or knowingly participated in the decision to make it. In this regard, Fanconi and Harcourt acted in breach of their fiduciary duties to Belmont GP and the Belmont Fund.

45. Fanconi, as the Harcourt representative responsible for the Underlying Fund, and Harcourt, will be in breach of their fiduciary duties to Belmont GP and the Belmont Fund if the Second Redemption Request is honoured at the September 30, 2008 NAV. Should this be acceded to, Vontobel Holding will be paid out at a NAV that is greater than the liquidation NAV, to which the Limited Partners are subject.

Confidential Information

46. Fanconi, as Harcourt's representative responsible for the Underlying Fund, and Harcourt, had access to more current and frequent information pertaining to the effect the prevailing market conditions were having on the NAV of the Underlying Fund than Belmont GP

or the Limited Partners. Fanconi and Harcourt also had access to information regarding the decision to liquidate the Underlying Fund several weeks before this information was provided to Belmont GP and the Limited Partners. This information constitutes confidential information of Harcourt and the Underlying Fund (the "Confidential Information").

47. Fanconi and Harcourt disclosed the Confidential Information to Vontobel Holding, and thereby placed Vontobel Holding in a better position to consider whether to exit from the Underlying Fund by seeking to redeem its seed capital investment than the Limited Partners. In this regard, Fanconi and Harcourt acted in breach of their fiduciary duties to Belmont GP and the Belmont Fund.

48. Vontobel Holding knowingly received, and made use of, the Confidential Information to its benefit by (i) investing its $5 million seed capital in the Underlying Fund as opposed to the Belmont Fund; (ii) requesting and receiving $2 million pursuant to the First Redemption Request; and (iii) requesting $2.3 million pursuant to the Second Redemption Request.

49. Vontobel Holding knew or ought to have known that it had received this information on account of a breach of Fanconi and Harcourt's fiduciary duties not to put the interests of the seed investor ahead of the interests of the Limited Partners.

Consequences of Breach of Fiduciary Duty, Knowing Assistance and Knowing Receipt

50. The breaches of fiduciary duty by Harcourt and Fanconi, and assisted in by Vontobel Holding have caused direct financial losses to the Belmont Fund.

51. Furthermore, the plaintiff states that Harcourt, Fanconi and Vontobel Holding are liable to the Belmont Fund to disgorge all profits or other benefits occasioned by their wrongful conduct.

Service Outside Ontario

52. If necessary, the plaintiff will serve the statement of claim on the defendants outside Ontario. The plaintiff relies on Rules 17.02(a), (g) and (h) of the *Rules of Civil Procedure*.

53. The plaintiff proposes that this action be tried at Toronto.

Date: July 29, 2009

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BELMONT DYNAMIC GP INC. - and - **PETER FANCONI et al.**

Plaintiff Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

STATEMENT OF CLAIM

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DANIEL NEAD et al. - and - BELMONT DYNAMIC GP INC. et al.

Applicants Respondents

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

NOTICE OF CROSS APPLICATION

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TAB A

Court File No: CV-09-8227-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

DANIEL NEAD and OMNISCOPE ADVISORS INC.

Cross Applicants

- and -

BELMONT DYNAMIC GROWTH FUND, BELMONT DYNAMIC GP INC., HARCOURT INVESTMENT CONSULTING AG and PETER FANCONI

Cross Respondents

AFFIDAVIT OF DANIEL NEAD
(Sworn July 28, 2009)

I, Daniel Nead, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a director and officer of the Respondent/Applicant by Cross Application, Omniscope Advisors Inc. ("Omniscope"), and a director and officer of the Applicant/Respondent by Cross Application, Belmont Dynamic GP Inc. ("Belmont GP"), and as such have knowledge of the matters to which I hereinafter depose. Where matters are stated as being based on information, I have stated the source of my information and that fact of my belief.

2. I have read the affidavit of Peter Fanconi, sworn June 5, 2009 (the "Fanconi Affidavit").

Background

3. Belmont GP is incorporated under the laws of Ontario. Peter Fanconi ("Fanconi") and I are the directors of Belmont GP with equal voting rights. Attached hereto and marked as Exhibit "A" are the Articles of Incorporation of Belmont GP, and attached hereto and marked as Exhibit "B" are the By-Laws of Belmont GP.

4. Belmont GP has two shareholders, Harcourt Investment Consulting AG ("Harcourt") and Omniscope, each holding a 50 percent interest in the issued and outstanding common shares of the company. Attached hereto and marked as Exhibit "C" are the Subscriptions for Shares of Belmont GP.

5. Harcourt is based in Zurich, Switzerland. Vontobel Holding AG ("Vontobel Holding"), an affiliate of the Swiss financial institution the Vontobel Group, controls Harcourt. Fanconi resides in Zurich, Switzerland and is a director of Harcourt as well as the Vontobel Group. Attached hereto and marked as Exhibit "D" is a Harcourt press release dated February 19, 2009 stating that Fanconi is a director of both Harcourt and the Vontobel Group. Fanconi was the representative of Harcourt and the Vontobel Group ultimately responsible for the Belmont Fund, and Vontobel Holding's investment in the Underlying Fund (as described and defined below).

6. Omniscope is incorporated under the laws of Ontario, and is registered with the Ontario Securities Commission (the "OSC") as a Limited Market Dealer. I am an officer and director and the controlling shareholder of Omniscope.

7. I am registered with the Ontario Securities Commission (the "OSC") as a Limited Market Dealer. With supervision from Accilent Capital Management Inc. ("Accilent"), I perform portfolio management services for the Belmont Dynamic Growth Fund (as defined below).

The Belmont Fund

8. The Belmont Dynamic Growth Fund (the "Belmont Fund") was established as a limited partnership under the *Limited Partnerships Act* pursuant to a limited partnership agreement dated June 9, 2006 (the "Limited Partnership Agreement"). A copy of the Limited Partnership Agreement is attached hereto and marked as Exhibit "E".

9. The Belmont Fund is comprised of the general partner, Belmont GP, and a number of limited partners (the "Limited Partners"). The Limited Partners are "accredited investors" (as that term is described in Ontario securities law) and are the unit holders (i.e the investors) in the Belmont Fund.

10. Belmont GP is responsible for managing the day-to-day business of the Belmont Fund, including monitoring the Belmont Fund's investment portfolio and selecting, overseeing and assessing the services provided by the investment advisor.

11. The Belmont Fund's investment advisor is Accilent, a corporation incorporated under the laws of Ontario and registered by the OSC as a Limited Market Dealer and an Investment Counsel/Portfolio Manager. As stated, I provide investment management services to the Belmont Fund, subject to Accilent's supervision.

12. The objective of the Belmont Fund is to provide investors the return on the Belmont Dynamic Growth Segregated Portfolio (the "Underlying Fund"), a leveraged fund of hedge funds existing as a segregated portfolio of Belmont SPC, a segregated portfolio company organized under the laws of the Cayman Islands. Harcourt manages the Underlying Fund.

13. The returns of the Belmont Fund are derived from the Underlying Fund using a tax efficient derivative structure, which, as set out in the Amended and Restated Confidential Offering Memorandum of the Belmont Fund (the "Offering Memorandum"), attached hereto and marked as Exhibit "F", was structured as follows:

(i) the Belmont Fund's offering proceeds were invested in a basket of Canadian common shares, all of which constituted "Canadian securities", as defined in section 39 of the *Income Tax Act* (Canada);

(ii) the Belmont Fund entered into a forward purchase and sale agreement (the "Forward") with National Bank of Canada (Global) Limited ("NBCG") as the counterparty;

(iii) pursuant to the Forward, NBCG agreed to purchase the share basket from the Belmont Fund on the Forward maturity date (the "Forward Maturity Date") for an amount in US dollars that is equal to the value of a notional investment in participating shares of the Underlying Fund at the time of, and in an amount equal to, the Belmont Fund's offering proceeds (the "Notional Investment"); and

(iv) the Forward could be pre-settled in whole or in part prior to the Forward Maturity Date in order to permit the Belmont Fund to fund periodic redemptions by Limited Partners, administration fees and other ongoing expenses of the Belmont Fund. If the Forward was pre-settled, the Notional Investment in the Underlying Fund would be reduced proportionately.

Management of the Belmont Fund

14. Since the Belmont Fund's inception in August 2006, I have undertaken all of Belmont GP's management duties pursuant to provisions 8.2 and 8.3 of the Limited Partnership Act, attached hereto as Exhibit "E". Fanconi has performed none of these duties. Specifically, I have:

(a) negotiated and continue to negotiate contracts and other arrangements with third-party service providers, including:

(i) PricewaterhouseCoopers LLP ("PwC"), which was retained as auditor for the Belmont Fund. Attached hereto and marked as Exhibit "G" is an example of the many engagement letters sent to Belmont GP by PwC in respect of their audit services. In all instances, these letters were addressed to, and dealt with by, me on behalf of Belmont GP;

(ii) Citigroup Fund Services Canada, Inc. ("Citigroup"), which was retained as custodian for the Belmont Fund. Attached hereto and marked as Exhibit "H" is a letter from Citigroup addressed to me on behalf of Belmont GP, in respect of their custodian services. Attached hereto and marked as Exhibit "I" is the Administrative Services Agreement dated June 1, 2006 (the "Citigroup Agreement"), which governs the relationship between Citigroup, Belmont GP and the Belmont Fund, and which arose as a result of my efforts in evaluating the services offered by Citigroup and negotiating the Citigroup Agreement, which pertains to numerous obligations respecting the Belmont Fund, each of which I have had to oversee and manage;

(iii) made the initial and ongoing arrangements with FundSERV respecting the collection, assembly and transmission of financial information regarding the Belmont Fund;

(b) overseen the activities of PwC and Citigroup, to ensure that they are acting in the best interests of the Belmont Fund, and in compliance with regulatory requirements. Attached hereto and marked as Exhibit "J" is an example of the many letters I sent to PwC on behalf of Belmont GP, providing information required by PwC for audits of the Belmont Fund. Attached hereto and marked as Exhibit "K" is a letter from Citigroup regarding their custodian services. In all instances, these letters were addressed to, and dealt with by, me on behalf of Belmont GP;

(c) subject to Accilent's supervision, performed Accilent's duties as the Belmont Fund's investment advisor;

(d) ensured that Belmont GP's tax returns were prepared and filed each year and that required income tax information was provided to the Limited Partners pertaining to their investment in the Belmont Fund; and

(e) retained and instructed legal counsel on behalf of the Belmont Fund and Belmont GP.

15. In addition to the specific duties described above, I have undertaken the general responsibilities of the management of the Belmont Fund including essentially all Canadian business of behalf of Belmont GP.

16. I have also undertaken various responsibilities on behalf of Belmont GP with supervision from Accilent, a registered Investment Counsel/Portfolio Manager. I engage in ongoing

communications with NBCG and provide instructions concerning the Forward and respecting the basket of "Canadian securities" in which the Belmont Fund is invested. Accilent supervises my undertakings in this regard. My understanding is that these discussions and instructions constitute acts in furtherance of trade in the securities held in the Canadian basket of securities, and therefore Belmont's duties in respect of these matters can only be performed with supervision from Accilent on account of its registration from the OSC.

17. Shahen Mirakian of McMillan LLP ("Mirakian"), counsel to Belmont GP and the Belmont Fund, described the duties I have undertaken to perform on behalf of Belmont GP in an email dated November 11, 2008, which is attached hereto and marked as Exhibit "L".

18. Fanconi has not undertaken any of the responsibilities or performed any of the duties described above, or any of the management duties of the Belmont Fund, in part because he is unable to engage in duties for which registration from the OSC is required, and is not registered in any capacity under Ontario securities law. Furthermore, because Fanconi is located in Europe, it is impractical for him to carry out the Canadian operations of Belmont GP.

Problems with the Underlying Fund

19. When the Belmont Fund was established, Fanconi and Harcourt agreed that Harcourt, through its holding company Vontobel Holding, would contribute $5 million in seed capital to the Belmont Fund. Without this seed capital, the Belmont Fund would have been unable to carry out its investment objective, which is described by the Offering Memorandum attached at Exhibit "F" as generating "absolute returns which are not correlated to global equity or bond markets", because there would be insufficient assets to achieve the scale necessary to implement a diversity of single strategy investments and cover the administration costs of the fund on fund structure.

20. Fanconi and I, along with other senior Harcourt representatives, attended numerous meetings with prospective investors during the course of which Fanconi assured these investors that Harcourt was fully committed to the Belmont Fund and that Harcourt would be contributing the $5 million in seed capital so as to ensure that it had a sufficient capital base to achieve its objectives.

21. It was my understanding and that of the Limited Partners that Vontobel Holding would contribute the seed capital to the Belmont Fund. However, contrary to that expectation, and without notice to the Limited Partners, the seed capital was contributed to the Underlying Fund instead. In the meetings that Fanconi and I, along with other senior Harcourt representatives, attended with prospective investors, Fanconi never told them that Harcourt's capital contribution would not be made directly to the Belmont Fund and would instead be made to the Underlying Fund.

22. Under Harcourt's management, the value of the assets in the Underlying Fund have eroded substantially to the detriment of the Belmont Fund and leading to the eventual liquidation of the Underlying Fund, as described herein.

23. The performance of the Underlying Fund, which had exposure both to global equity and, more significantly in the context of the Underlying Fund, global credit and credit-based markets, suffered significantly from the global market conditions that began to prevail last summer. This is reflected in adverse changes to the net asset value ("NAV") of the Underlying Fund after June 2008. Of course, Harcourt and Fanconi were intimately aware of the ongoing effect of adverse market conditions on the Underlying Fund throughout the summer and fall of 2008. Attached hereto as Exhibit "M" are performance updates of the Underlying Fund for September and October 2008, and attached hereto as Exhibit "N" is a document prepared by NBCG which shows, at pages 6 and 7, the NAV of the Belmont Fund since inception.

24. The impact of global market conditions on the Underlying Fund were especially significant due to the illiquidity of the holdings, which comprised exclusively units in hedge funds. The strategies that were employed by the Belmont Fund involved illiquid investments that cannot be readily converted into cash.

25. Due to the illiquidity of the Underlying Fund and deteriorating market conditions, in or around June 2008 there appears to have been insufficient liquid assets in the Belmont Fund to satisfy a small redemption request by a Limited Partner. Of course, and as is customary, because NBCG fully hedges its exposure to the Belmont Fund through investments in the Underlying Fund, and has no other obligations to pre-settle the Forward in favour of the Limited Partners, illiquidity in the Underlying Fund would have made it impossible for this redemption request to be satisfied. Attached hereto and marked as Exhibits "O" and "P" are a series of emails in which RBC Dominion Securities, the representative for a Limited Partner who has requested a $45,000.00 redemption, made inquiries of Harcourt regarding why the redemption request was never complied with. Harcourt's response is that the redemption would not be fulfilled.

26. Between June and October 2008, redemption requests were made to Harcourt by several Limited Partners that have not been fulfilled, but instead will be redeemed in the course of the liquidation described herein. Attached hereto and marked as Exhibit "Q" is a list provided by Citigroup of those requests made but not acceded to by certain Limited Partners, my understanding being that all of these were made prior to October 31, 2008.

Vontobel Holding's $2 Million Redemption

27. Notwithstanding the liquidity and valuation issues faced by the Belmont Fund from about June 2008, Harcourt submitted a redemption request for $2 million on behalf of Vontobel

Holding to Citco Fund Services (Europe) BV ("Citco"), the administrator of the Underlying Fund, on August 5, 2008 (the "Vontobel Request"). Neither I nor, to my knowledge, anyone else responsible for the Belmont Fund, apart from Fanconi, was made aware of the Vontobel Request at the time that it was made. Fanconi must have been aware of the Vontobel Request at the time it was made. Attached hereto and marked as Exhibit "R" is an email dated May 12, 2009 from Rob Vosbeek, Executive Director and COO of Harcourt ("Vosbeek") to myself, Fanconi, and legal counsel for Belmont GP, Harcourt and Omniscope, explaining the seed money redemptions made by Vontobel Holding, including the Vontobel Request on August 5, 2008.

28. Before the Vontobel Request was complied with on September 30, 2008, Vontobel Holding owned approximately 14 percent of the Underlying Fund's assets. The remainder of the Underlying Fund is entirely held by the Limited Partners through the NBCG Forward. This is partly explained in Vosbeek's email dated May 12, 2009 at Exhibit "R". When the Vontobel Request was complied with and the $2 million was redeemed on September 30, 2008, the value and liquidity of the Belmont Fund were significantly impaired.

29. Fanconi encouraged me to continue marketing the Belmont Fund in Canada after the Vontobel Request was redeemed on September 30, 2008. I did not know at the time that Vontobel Holding had withdrawn $2 million pursuant to the Vontobel Request. Fanconi emailed me on October 19, 2008, several weeks after the Vontobel Request had been redeemed, and encouraged me to focus on generating assets under management ("AuM") for the Belmont Fund:

> "Furthermore I ask you to elaborate the potential for customized mandates with inst. Investors [sic], since this will be the only relief mid term to generate AuM and liquidity for you respectively."

30. I responded to Fanconi's email on October 20, 2008 in part as follows:

> "Looking at the bigger picture, I agree that the most important thing right now is the quality of service that our existing investors are receiving. To that end I look forward to our call this week. I think that we can seize this opportunity to distinguish ourselves and strengthen our market position, which could pay handsome dividends to Harcourt when the market turns."

A copy of this email exchange is attached hereto and marked as Exhibit "S".

Underlying Fund Liquidation

31. In or around October 2008, due to the poor performance of the Underlying Fund caused by prevailing market conditions at that time, Harcourt decided to liquidate the Underlying Fund. Fanconi and other representatives of Harcourt advised me in or around October 2008 that Harcourt was giving serious consideration to unwinding the Belmont Fund due to the market conditions, poor performance of the Underlying Fund and liquidity issues as described above.

32. On October 31, 2008, on the basis of Harcourt's decision, Citco notified the shareholders of the Underlying Fund "that the continued operation of the [Underlying Fund] was no longer viable and that steps should be taken to realise the its [sic] underlying assets and to close down the [Underlying Fund]." Citco further advised that the shares of the Underlying Fund would be compulsorily redeemed. Citco's letter is attached hereto and marked as Exhibit "T".

33. This decision had an immediate impact on the Belmont Fund. Fanconi and I advised RBC Dominion Securities (the dealer that introduced the Limited Partners to the Belmont Fund) that, because the Belmont Fund's performance is linked to the performance of the Underlying Fund, the liquidation of the Underlying Fund ultimately caused NBCG as the counterparty to terminate the foreign exchange hedge as contemplated in the Offering Memorandum (attached as Exhibit "E"), and caused the Belmont Fund to suspend the determination of its NAV.

34. Fanconi and I sent a letter to the Limited Partners advising them that, pursuant to section 8.1 of the Limited Partnership Agreement, the Belmont Fund would be redeeming all units and processing redemptions at the November 28, 2008 NAV. A copy of the draft of the letter which was sent to the Limited Partners is attached hereto and marked as Exhibit "U".

35. The Belmont Fund must accordingly be unwound in an orderly fashion to protect the Limited Partners to the greatest extent possible. Pursuant to the Offering Memorandum, attached hereto as Exhibit "E", upon dissolution of the Belmont Fund, Belmont GP is obligated to distribute on a *pro rata* basis 99.999 percent of the remaining assets of the Belmont Fund, after provision for payment of debts and liabilities of the Belmont Fund and liquidation expenses.

36. Fanconi and I agreed that unless redemptions were conducted on an orderly basis, certain Limited Partners could be advantaged to the detriment of others because more readily saleable assets would be more easily disposed of at more advantageous prices due to the general illiquidity of the investments in the Underlying Fund.

Belmont GP's Role in Facilitating the Unwind of the Belmont Fund

37. The Fanconi Affidavit suggests that I unilaterally appointed Omniscope and myself to act as liquidators of the Belmont Fund. That was never the case. Since Harcourt's announcement in October 2008 of the Underlying Fund's liquidation, Belmont GP has undertaken to coordinate and oversee the orderly unwind of the Belmont Fund. I have, and continue to date to, carry out the duties of Belmont GP in respect of the unwind as an officer and director of Belmont GP. Belmont GP has retained the services of Omniscope in the unwind when necessary.

38. It was never my intention to act in this capacity personally, nor did I advise Fanconi that I was doing so. I took on the leadership role in respect of the unwind for Belmont GP because

(i) I felt that it was Belmont GP's duty to do so, and (ii) Fanconi did not undertake, and has never undertaken, any responsibility of the Canadian operations of Belmont GP or the Belmont Fund. In short, I was simply carrying on as I had always done and in a manner that the Limited Partners expected me to.

39. Furthermore, at no time prior to swearing the Fanconi Affidavit did Fanconi ever indicate that he was opposed to Belmont GP undertaking the role of unwinding the Belmont Fund through services performed by Omniscope and myself.

40. To date, I have performed a number of services in respect of this matter which support Belmont GP's obligation to maximize value to the Limited Partners by ensuring that the unwind is undertaken in a timely and orderly fashion. Since Citco's announcement regarding Harcourt's decision to liquidate the Underlying Fund, I have undertaken the following services:

(a) demanded that Harcourt provide transparency in the liquidation of the Underlying Fund to benefit the Limited Partners, in particular by demanding information regarding what steps must be taken in the liquidation and when they will be taken, and when funds will be available for distribution to the Limited Partners. Attached hereto and marked as Exhibit "V" are several emails that I sent to Vosbeek and Fanconi attempting to coordinate conference calls and extract information regarding a liquidation schedule. Attached hereto and marked as Exhibit "W" are several emails that I sent to Vosbeek and Fanconi regarding the distribution of funds to investors;

(b) worked with NBCG to ensure that Harcourt provided increased transparency to the Limited Partners by seeking and obtaining information regarding the NAV, the

liquidation schedules and the distribution of funds, as demonstrated by the emails dated March 17, April 21, and April 30, 2009, attached hereto as Exhibit "X";

(c) worked with Citigroup to ensure that the Belmont Fund continued to meet its tax filing obligations, as demonstrated by the email dated March 19, 2009, attached hereto as Exhibit "Y";

(d) worked with PwC regarding the Belmont Fund's financial statements and attempted to hold a conference call with Fanconi to discuss them, as demonstrated by the email dated March 16, 2009, attached hereto as Exhibit "Z";

(e) negotiated an amendment to the Citigroup Agreement (the "Citigroup Amended Agreement"), whereby Citigroup agreed to extend the contract term from May 31, 2009 to September 30, 2009 to allow for the orderly unwind of the Belmont Fund and liquidation of the Underlying Fund. Attached hereto and marked as Exhibit "AA" is a copy of the Citigroup Amended Agreement; and

(f) managed the ongoing necessary adjustments of the basket of "Canadian securities" that arose as a result of the pre-settlement of the Forward. Attached hereto and marked as Exhibit "BB" are a series of communications between myself and NBCG with respect to the share basket modifications. In all cases, I executed the share basket adjustment confirmations on behalf of Belmont GP.

(collectively, the "Unwind Services").

Belmont GP Entitled to Compensation for the Services Relating to the Unwind of the Belmont Fund

41. The Fanconi Affidavit states that it was never intended that earnings or profits would be made from the Belmont Fund's unwinding. While it is obvious that the raison d'etre of the Belmont Fund was not to oversee its unwinding, it was also never the intention that I would be providing services relating to the unwind of the Belmont Fund gratuitously.

42. The Fanconi Affidavit suggests that I expected "significant remuneration" for the Unwind Services. While I believe that I am entitled to be compensated for the work that I have done, I never had any intention of seeking to recover an unreasonable or unjustified sum in respect of the Unwind Services.

43. In April 2009, when these issues came to a head, I took a step to determine a reasonable quantum of fees and expenses to claim in respect of the Unwind Services. I sought out and obtained written and verbal estimates from providers of liquidation services, who indicated that $500 to $800 is a reasonable benchmark for an hourly rate in Toronto. I verified with an independent source that unwinding a complex structure, such as that of the Belmont Fund, could (i) require additional time of the liquidator (and therefore would add to the cost of the liquidation) to deal with the complex issues; and (ii) dictate that a higher compensation rate be paid.

44. Prior to that, in or around November 2008, I had been asked by counsel to Belmont GP and PwC to provide an amount for the Unwind Services, and I estimated it to be $450,000. It was acknowledged by Mirakian and PwC that this was a complex unwind that would require a significant investment in time and effort.

45. At all times, Fanconi and Harcourt had knowledge of and acquiesced to my performance of the Unwind Services on behalf of Belmont GP. Specifically, Fanconi and Harcourt, or one of them, were always copied on my correspondence in respect of the Unwind Services I carried out. Fanconi and Harcourt were aware that I was seeking compensation for the Unwind Services and did not communicate any desire that a third party carry out the unwinding on behalf of Belmont GP, or that a third party be appointed as liquidator in place of Belmont GP. In fact, as described herein, all communications and discussions in respect of the Unwind Services focussed on the quantum of compensation as opposed to Belmont GP's actual entitlement to compensation.

46. The Fanconi Affidavit states that I am "holding the Fund hostage" by seeking payment for the Unwind Services. This is not the case. I have at all times acted in the best interests of the Limited Partners and the Belmont Fund. I have continued to carry out the Unwind Services for Belmont GP to the best of my ability, despite the ongoing discussions with Fanconi and Harcourt regarding compensation and the growing tension between us. Attached hereto and marked as Exhibit "CC" is a letter I sent to Citigroup, NBCG, PwC, RBC and Fanconi with an outline of the unwind requirements and each party's responsibilities. At all times, as described above, I was in effect "quarterbacking" the unwind efforts on behalf of Belmont GP.

47. Belmont GP and the Limited Partners have derived a significant benefit from the Unwind Services, and from the services which I continue to carry out to date in respect of the unwinding. To date, neither I nor Omniscope have received any compensation whatsoever for the Unwind Services nor any of the services that Omniscope and I continue to provide to date.

Suspicions That Fanconi and Harcourt Not Acting in Best Interests of Limited Partners

48. The Fanconi Affidavit states that I have refused to co-operate in the dissolution of the Belmont Fund. This is not the case. I am not, and have never been, opposed to the unwinding or dissolution of the Belmont Fund. In fact, I have made every effort to work with Harcourt, Fanconi and Belmont GP to ensure that the unwind process is undertaken in a manner that protects the best interests of the Limited Partners. In addition, I worked with Fanconi on behalf of Belmont GP to call a special meeting of the Limited Partners (the "Special Meeting") in order to expedite the unwind process by formally dissolving the Belmont Fund.

49. In the time leading up to calling the Special Meeting, while Mirakian was preparing and revising a draft information circular for the Special Meeting, there was open and active discussion between myself, Fanconi and Harcourt regarding the fees I had claimed for the Unwind Services. In particular, Vosbeek informed me that Harcourt intended to seek advice from PwC in respect of the appropriate quantum of fees to be charged, as stated in his email dated December 16, 2008, attached hereto and marked as Exhibit "DD". Furthermore, Fanconi acknowledged that Belmont GP is entitled to charge the Belmont Fund for the legitimate expenses of the liquidation, and indicated that "the overall estimated amount has been set at $200k", as stated in his email dated December 18, 2008 and attached hereto as Exhibit "EE".

50. On December 22, 2008, Vosbeek sought to schedule a directors' meeting between myself and Fanconi, to be held by conference call on December 24, 2008. I had a vacation planned over the Christmas holiday, including on December 24, 2008, and accordingly was unavailable for the meeting. I informed Vosbeek that I would be away, and suggested that we reschedule for the first week of January 2009 in the email attached hereto and marked as Exhibit "FF". The Fanconi Affidavit suggests that I refused to attend this meeting in order to frustrate the unwind process. It

was not my intention or motive, however, to avoid the meeting or frustrate the unwind process. I was simply unavailable on the date suggested by Vosbeek.

51. In or around late December 2008, I began to feel that Fanconi was communicating directly to Mirakian and RBC, and thereby cutting me out of the information loop with respect to the unwinding and the operations of Belmont GP. I made efforts to encourage open communication, including by my email to Vosbeek on December 22, 2008, attached hereto as Exhibit "FF", wherein I informed Vosbeek that "I emailed Peter earlier today hoping we could connect in order to continue our discussion from Friday past re outstanding GP issues. I have yet to hear back from him."

52. Furthermore, I felt that Fanconi and Harcourt had not disclosed that they had engaged in certain actions in respect of the Underlying Fund which were, or would be, prejudicial to the Underlying Fund, and accordingly not in the best interests of the Limited Partners.

53. In or about the beginning of January 2009, I was informed by Mirakian that I should not attend any directors' meetings, because Fanconi intended to remove me as a director of Belmont GP, and could do so at a directors' meeting with his casting vote as Chair of the Board of Directors. Although now I understand that this advice might not have been correct, at the time I felt that it was not in the best interests of the Limited Partners that I be removed as a director of Belmont GP at that stage.

54. On January 5, 2009, Vosbeek sought to schedule a directors' meeting to be held by conference call on January 7, 2009. By return email, I asked Vosbeek to advise me as to the purpose of the meeting so that I could seek advice as to whether my attendance was necessary or appropriate. Vosbeek responded, stating that "we need to resolve the issue with regards to the liquidation expenses to be included in the Belmont Dynamic Growth Fund Notice of Meeting and Information

Circular." On the basis of the advice I received from Mirakian, I informed Vosbeek that I would not be attending a directors' meeting on the basis of my fiduciary duty as director of Belmont GP. A copy of this email exchange is attached hereto and marked as Exhibit "GG".

55. My concerns regarding Harcourt and Fanconi's actions continued to grow throughout January 2009. I did not receive a response from Fanconi regarding liquidation fees, but more importantly, I continued to believe that Fanconi and Harcourt were cutting me out of communications with Mirakian and RBC. Furthermore, I believed that Vontobel Holding was attempting to withdraw its seed money ahead of all other investors, and that Harcourt was attempting to cover this up by having the Limited Partners pass a resolution to put the Belmont Fund into a formal wind-up process. My concerns arose in part because Harcourt delayed providing NBCG with its liquidation schedule until many weeks after it had been requested, as described herein. As is explained in greater detail herein, my suspicions were accurate in this regard.

56. The relationship between myself and Fanconi began to break down in January 2009, in part because I did not trust that he was acting in the best interests of the Limited Partners. I emailed Fanconi on January 20, 2009 to express my disappointment that he had ignored my messages in respect of the liquidation fees and asked that he resume normal communications "in order to expeditiously resolve and bring closure to the attendant matters." A copy of this email is attached hereto and marked as Exhibit "HH".

57. Fanconi responded by email on January 20, 2009. In his email, attached hereto and marked as Exhibit "II", Fanconi said that he and/or Vosbeek had been "at all times in contact with the parties involved", and suggested that he had attempted to resolve the outstanding matters between him and me by seeking to schedule board of directors meetings.

58. I was dissatisfied with Fanconi's response to my email because I felt that he was not being candid about his communications with me. Furthermore, I was still concerned that he intended to have me removed as a director of Belmont GP by calling a directors' meeting and using his casting vote against me, although I since have learned that this was not possible. Accordingly, I responded on January 20, 2009 by the email attached hereto and marked as Exhibit "JJ". I informed Fanconi of my suspicions that he and Harcourt were attempting to cover up behaviour that is contrary to the best interests of investors.

59. My communications with Fanconi on January 20, 2009 were at all times motivated by my fiduciary duty towards the Limited Partners. My primary concern, despite Fanconi's suggestions to the contrary in the Fanconi Affidavit, was not my fees for the unwinding. I believe that Fanconi and Harcourt have focussed on the issue of liquidation fees in order to detract attention from their own conduct.

Suspicions Confirmed by Liquidation Schedule

60. My suspicions in respect of harmful actions undertaken by Fanconi and Harcourt were confirmed when Fanconi and Harcourt finally provided NBCG with the liquidation schedule of the Underlying Fund in January 2009, which was then provided to me. A copy of the liquidation schedule is attached hereto and marked as Exhibit "KK" (the "Liquidation Schedule"). I had been requesting a schedule from Harcourt since November 2008, as set out in the emails attached hereto as Exhibit "V".

61. The Liquidation Schedule contains a redemption of $2,262,900 which is prioritized above all other liquidation proceeds. I later confirmed, as described herein, that this amount represents a second redemption request made by Vontobel Holding which Harcourt intended to

honour at a higher NAV than that available to the Limited Partners, in a manner which would be prejudicial to the Belmont Fund and harmful to the Limited Partners.

62. The Liquidation Schedule also extends until 2011, or later. This is an extremely slow timeframe, and aroused further concerns on my part that Harcourt is putting its own interests ahead of those of the Limited Partners.

Fanconi's Withholding of Management Fees

63. The Fanconi Affidavit states that Belmont GP is not entitled to be compensated for management fees incurred by myself and Omniscope in respect of the management of the Belmont Fund, because such fees were advanced to me in respect of the Introducing Broker Agreement dated April 4, 2008 (the "IB Agreement"), attached as Exhibit "S" to the Fanconi Affidavit. This is not the case. The IB Agreement is between myself and Alternative Investment Solutions Limited, an affiliate of Harcourt and the Vontobel Group, in order that I may solicit sales in particular investments. The IB Agreement does not contemplate that the advances made to me pursuant to the IB Agreement are related to, or in lieu of, payments for the administrative or management expenses incurred by Belmont GP in carrying out its Canadian operations. Attached hereto and marked as Exhibit "LL" is an email I sent to Fanconi in November 2008 explaining my entitlement to compensation for administrative work done outside the scope of the IB Agreement for the Belmont Fund.

Personal Liquidity

64. The Fanconi Affidavit suggests that I am seeking to recover fees that I am not entitled to as a result of my personal financial circumstances. This is untrue and insulting. I sought financial assistance from Harcourt to improve Omniscope's liquidity in order that Omniscope and I could

continue to carry out the day-to-day operations of the Belmont Fund on behalf of Belmont GP, as Omniscope and I had been doing since the inception of the Belmont Fund.

65. On October 15, 2008, I wrote to Fanconi and requested an advance of US $100,000 from Harcourt in order to continue to manage the day-to-day activities of the Belmont Fund, and to continue relationship building on behalf of Harcourt. A copy of this letter is attached hereto and marked as Exhibit "MM".

66. Following the October 15, 2008 letter, Fanconi and I exchanged several emails wherein he informed me that Harcourt was unable to provide the advance I had requested. A copy of this email exchange is attached hereto and marked as Exhibit "NN".

67. On November 15, 2008 I wrote to Philipp Cottier ("Cottier"), a member of Harcourt's Investment Committee, seeking his support for my request that Harcourt advance funds. I informed Cottier, as I had Fanconi, that the funds were required so that Omniscope could continue to carry out the Belmont Fund's daily operations. A copy of this letter is attached hereto and marked as Exhibit "OO".

Harcourt Should Not be Liquidator

68. The Fanconi Affidavit suggests that Harcourt should be appointed as liquidator of the Belmont Fund. Given Fanconi and Harcourt's actions in respect of the First Vontobel Request and the Second Vontobel Request, described in more detail herein, it would not be in the Limited Partners' best interests that Harcourt act as liquidator.

Vontobel Holding's $2.3 Million Request

69. In or about May 2009, I learned that Vontobel Holding had made another redemption request to Citco on or about September 30, 2008 for nearly $2.3 million (the "Second Vontobel Request"). I also learned that Harcourt intended to honour the Second Vontobel Request in priority to all other investors in the Underlying Fund. In fact, this was the $2,262,900 amount which was, according to the Liquidation Schedule attached hereto as Exhibit "KK", to be redeemed in priority to all other liquidation funds as described above.

70. I was concerned about the prejudicial effect that honouring the Second Vontobel Request would have on the Belmont Fund, and the corresponding harm it would cause to the Limited Partners. I discussed my concerns at length with Nicolas Patard of NBCG ("Patard"), and encouraged NBCG to seek further information and clarification from Harcourt in order to provide more transparency to the liquidation process.

71. On May 6, 2009, NBCG wrote to Harcourt regarding the Second Vontobel Request, expressing various concerns. The letter, attached hereto and marked as Exhibit "PP", which refers to the Underlying Fund as the "Company", states in part as follows:

> "We understand that the Company intends to pay a shareholder approximately US $2.3 million in respect of a redemption request made on or about September 30, 2008. We also understand that, shortly after having received such redemption request, the Company elected to liquidate its assets and effect a compulsory redemption of its outstanding shares.
>
> ...
>
> "Honouring such a redemption request as if there had been no subsequent liquidation decision results in advantaging a party whose redemption is honoured early on. In these circumstances, the redeeming shareholder would be paid out at a NAV which is greater than the liquidation NAV and would receive all its redemptions

> proceeds first out of the Company's most liquid assets not over the years it will take to liquidate the Company's illiquid assets. The remaining shareholders also bear the ongoing costs of the liquidation. We believe all shareholders, including those whose redemptions have been delayed because of such liquidations, should be treated on a pro-rata basis to ensure fair and equal treatment."

72. Harcourt responded to NBCG's letter with the email dated May 12, 2009, attached as Exhibit "R" hereto. In this email, Vosbeek states in part that the decision to redeem the seed money was made more than four months before the liquidation of the Underlying Fund was decided and announced. No back-up documentation was provided in this regard, despite Vosbeek's suggestion that such documents existed.

73. Vosbeek's May 12, 2009 response was wholly unsatisfactory and provided limited clarity and comfort to the Limited Partners. I engaged in protracted discussions with Patard regarding Harcourt's response, and encouraged NBCG to retain counsel in the Cayman Islands, where the Underlying Fund is located, to provide an opinion as to whether Harcourt's intended actions in respect of the Second Vontobel Request were lawful. Attached hereto and marked as Exhibit "QQ" are a series of emails exchanged between NBCG, McMillan and myself in this regard.

74. At my instigation, NBCG retained Ogier, a Cayman Islands law firm, to provide a legal opinion regarding the Second Vontobel Request. On May 27, 2009 Ogier wrote to the directors of Belmont SPC, expressing their concerns regarding the Second Vontobel Request and seeking further information. Attached hereto and marked as Exhibit "RR" is an email from Patard attaching NBCG's letter.

75. Ogier's letter describes the issues raised by the Second Vontobel Request, and makes particular reference to case law in the Cayman Islands which provides that the Second Vontobel

Request should not be honoured until the redemption process as a whole has been completed. In this regard, the letter states, in part:

> "An orderly closing down of the Portfolio, in the best interest of all the shareholders, can only be achieved by suspension of payment of proceeds to the seed investor, and payment out to the seed investor and all other shareholders, at the same time or times, as assets are realised, in order to give effect to the winding down of Portfolio in a way which is fair and equitable to all shareholders. To pay out the seed investor in cash, leaving remaining investors to await the realisation of illiquid assets, subject to the vicissitudes of the market, cannot be fair or right."

76. On July 9, 2009 I was advised by Patard that Harcourt intends to honour the Second Vontobel Request on a pro-rata basis with compensation owed to NBCG which arose from losses incurred by the pre-settlement of the Forward. Harcourt had informed Patard that there was approximately US $1.5 million in the Underlying Fund, and 20% of that amount would be withdrawn by Vontobel Holding at the NAV which existed in September 2008. Patard's email in this regard is attached hereto and marked as Exhibit "SS".

77. I responded to Patard and Fanconi by email on July 9, 2009, a copy of which is attached as Exhibit "SS", as follows:

> "Nic, I want to state for the record that I strenuously disagree with the proposal set out in your e-mail below particularly as it relates to the September '08 Vontobel redemption because it is not in the best interests of the limited partners and inconsistent with the duties that are owed to them".

78. Fanconi indicated that he supports the redemption process suggested by Patard in his email dated July 10, 2009, attached hereto as Exhibit "SS".

79. On July 14, 2009 Vosbeek sent an email to Patard pertaining to distributions of the liquidation proceeds. He states as follows:

> "Nic,
> As discussed I was supposed to give you a value of the distribution. There is some delay, because in the opinion of the lawyers of the administrator (Citco) the September 30 redemption should be paid before any other distributions. We are setting up a conference call with the Fund's legal council [sic] to clarify. Will keep you posted."

80. I responded to Vosbeek's email as follows:

> "Nic,
> For the reasons expressed in my email to you of July 9, 2009, I do not believe that it would be in the best interests of the Limited Partners that the September 30 redemption take priority over their redemptions."

A copy of this email exchange is attached hereto and marked as Exhibit "TT".

81. This information is directly contradictory to information that Harcourt has been providing to RBC Dominion Securities. Attached hereto and marked as Exhibit "UU" is a copy of an email from Vosbeek to Jacques Alarie of RBC, stating that a payment to the shareholders will be made that amounts to approximately 8% of the current value owed to the shareholders.

82. On July 24, 2009 Vosbeek informed Patard of Harcourt's intention to pay the Second Vontobel Request before other distributions would be made. Vosbeek attached a revised liquidation schedule which reflects this intention. A copy of the email and attachment are attached hereto and marked as Exhibit "VV".

83. Patard expressed concern on behalf of NBCG in respect of Harcourt's decision as follows:

> "The decision to pay the September redemption first goes against the conclusion of the legal analysis NBCG had done and apparently against your own conclusion to pay pro-rata.
>
> Could you offer a more detailed explanation on why Harcourt changed its mind?"

84. On July 27, 2009 Vosbeek informed Patard that Harcourt intended to provide a detailed communication in respect of its decision "in the next few days". A copy of this email exchange is attached hereto and marked as Exhibit "WW".

Derivative Action

85. Although I understand that the *Business Corporations Act* (Ontario) generally requires that notice be given to the Board of Directors before seeking leave to commence a derivative action, I believe there would be no point in doing so in this case for the simple reason that Belmont GP is deadlocked and one of the proposed defendants has, owing to his casting vote, control of the Board.

86. Omniscope brings the application for leave to commence a derivative action in good faith. Omniscope seeks to bring the derivative action for the return to the Belmont Fund of the seed money that Vontobel Holding has redeemed, or will redeem, to the detriment of the Limited Partners, or in the alternative, for damages for breach of fiduciary duty. To that extent, Omniscope's interests are entirely consistent with Belmont GP's interest.

87. Based on the foregoing, I believe that the proposed derivative action would be in the best interests of Belmont GP.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 28th day of July 2009.

S Babin

A Commissioner for Taking Affidavits Etc.

S. Babin

DANIEL NEAD

TAB 3

Court File No. 09-8302-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	_____DAY, THE ___
	)	
JUSTICE	)	DAY OF _____, 2010

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

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

B E T W E E N:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

O R D E R

THIS MOTION, made by the Receiver of Belmont Dynamic Growth Fund, for an order approving the terms of the proposed settlement (the "Vontobel Settlement") between the Receiver and The Vontobel Group ("Vontobel"), as described in the Third Report of the Receiver, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Second Report of the Receiver, the Supplement to the Second Report, the Third Report of the Receiver, and on hearing the submissions of counsel for the Receiver, Harcourt Investment Consulting AG and Peter Fanconi, Vontobel, National Bank of Canada and National Bank of Canada (Global)

Limited c/o National Bank of Canada, Omniscope Advisors Inc. and Daniel Nead, and the Applicants, and on being advised that notice has been provided to the Service List:

1. THIS COURT ORDERS AND DECLARES that the Vontobel Settlement, as described in the Third Report of the Receiver, is hereby approved pursuant to section 249(2) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Vontobel Settlement.

2. THIS COURT ORDERS AND DECLARES that the Vontobel Settlement is, for all stakeholders, a fair and reasonable resolution of the proposed derivative action outlined in paragraph 1(f) of the Cross-Application in Court File No. CV-09-8227-00CL.

3. THIS COURT ORDERS that payments available to be made from the Belmont Dynamic Segregated Portfolio shall be paid to the Receiver and held in a reserve fund pending determination of the Disputed Claim of the Counterparty or further Court order. The payment of and holding of the reserve fund as contemplated herein is without prejudice to the rights of potential claimants and the Receiver in respect of the reserve funds.

4. THIS COURT ORDERS that the Second Report, the Supplement to the Second Report and the Third Report, and the activities of the Receiver as described therein are hereby authorized and approved.

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or Cayman Islands to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary

or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

_____

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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Lawyers for the Receiver, KPMG Inc.

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

Proceeding commenced at Toronto

MOTION RECORD
(Returnable on a Date to be Determined)

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