

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,  
an Ontario Limited Partnership

Respondent

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

**July 26, 2012**

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## INTRODUCTION

1. Pursuant to the Order of Madam Justice Mesbur of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2009 (the “**Appointment Order**”), KPMG Inc. was appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the “**Belmont Fund**”), an Ontario limited partnership, pursuant to section 101 of the *Courts of Justice Act*, RSO 1990 c.C.43. The Appointment Order was amended by Order of Madam Justice Hoy on October 21, 2009 (the “**Amended Appointment Order**”).
2. The Receiver issued its last report to the Court on April 20, 2012 (the “**Fourth Report**”). The Fourth Report provided updated information on the financial position of the Segregated Portfolio, the claims procedure and the Vontobel Redemption Claim.
3. Copies of all reports to the Court issued by the Receiver can be found at the Receiver’s website at: [www.kpmg.ca/belmontfund](http://www.kpmg.ca/belmontfund).

## PURPOSE OF THE SUPPLEMENT TO THE FOURTH REPORT

4. The Receiver attended before the Court on May 16, 2012 (the “**Case Management Conference**”). Justice Morawetz requested that within 60 to 90 days the date of the Case Management Conference that the Receiver file an update report to the Court.
5. The purpose of this Supplement to Fourth Report to the Court, dated July 26, 2012 (the “**Supplemental Fourth Report**”), is to provide information to this Honourable Court and the stakeholders. This report will provide:
  - an update on the resolution of the Counterparty Claim
  - an update on the resolution of the Vontobel Redemption Claim; and
  - describe certain of the Receiver’s next steps.

## TERMS OF REFERENCE

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

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

#### **FLOW OF FUNDS**

9. As described in the Fourth Report, from the Receiver's perspective, there are two fundamental issues that remain to be resolved in order that funds from the Segregated Portfolio can start to flow through to the Belmont Fund:
  - the Counterparty Claim; and
  - the Vontobel Redemption Claim.
10. The issues related to the Vontobel Redemption Claim have to be resolved prior to Vontobel and Harcourt agreeing to release any distributions from the Segregated Portfolio to the Belmont Fund.
11. The Counterparty Claim needs to be resolved in order to determine the quantum of the Counterparty Claim and whether some or all of the Counterparty Claim is paid prior to any funds flowing from the Belmont Fund through to the other stakeholders of the Belmont Fund.

#### **Counterparty Claim**

12. The Counterparty Claim is discussed in paragraphs 59 to 62 of the Fourth Report.
13. In an effort to resolve the Counterparty Claim the Receiver sought the assistance of Justice Campbell to act as mediator in respect of the claim. The Receiver together with representatives of the Counterparty attended before Justice Campbell on May 9, 2011 for the initial mediation date.
14. At the end of the first day of mediation, the parties adjourned to determine if any further offers would be exchanged and to determine if representatives of RBC and/or the Limited Partners would attend at the return of the mediation. Issues arose in respect of the attendance at the mediation. The Receiver understands that these issues have now been resolved.
15. As described in the Fourth Report, the Receiver believed that it and the Counterparty would benefit from a second round of mediation and requested the Court's ongoing assistance in this regard. The Receiver also reached out to the Counterparty and RBC in order to schedule a return date for the mediation.
16. At the Case Management Conference, the Counterparty and RBC indicated their preference to discuss the Counterparty Claim directly between themselves. The Receiver has contacted the Counterparty and RBC on a number of occasions since the Case Management Conference for an update on the discussions and to discuss options and timetables in respect of the continuation of the mediation or other options to resolve or have the Counterparty Claim determined. The Counterparty and RBC advised that they wanted some additional time to continue ongoing discussions between the two parties. The Receiver understands that the Counterparty and RBC have been discussing both structural and economic aspects of a resolution.

17. The Counterparty and RBC have advised the Receiver that while they have made some progress in their discussions to agree on a proposed settlement of the Counterparty Claim, they are still outstanding issues to be resolved. In light of timing considerations, the Receiver believes it is appropriate to move the discussions back in front of the mediator.
18. The Receiver canvassed dates with the Counterparty and RBC which coincide with the Court's earliest availability during the weeks of September 10<sup>th</sup> and 17<sup>th</sup>, 2012. The second round of mediation with Justice Campbell is scheduled for September 13, 2012 (the "September 2012 Mediation").

#### **Vontobel Redemption Claim**

19. The Vontobel Redemption Claim is discussed in paragraphs 63 to 69 of the Fourth Report. As discussed in the Fourth Report, the Receiver has had numerous discussions with Vontobel, RBC and the Counterparty regarding the initial flow of funds to the stakeholders of the Segregated Portfolio, and has worked toward a form of documentation to formalize any settlement that is reached. The Receiver's counsel circulated draft settlement documentation to Vontobel, the Counterparty and RBC for consideration and continues to follow up with the parties for comments in an effort to finalize any potential settlement and relevant documentation.
20. The Counterparty and RBC have requested time to pursue their discussions with respect to the Counterparty Claim before participating in further discussions with Vontobel. The Receiver is prepared to deal with the Counterparty Claim as a preliminary matter at the September 2012 Mediation as this may influence the number of participants necessary to the Vontobel Settlement discussion. However, the Receiver will ask Justice Campbell to deal with the Vontobel Redemption Claim as a secondary issue at the September 2012 Mediation so that all remaining issues can be addressed.

#### **NEXT STEPS**

21. The Receiver's first priority is to resolve the Counterparty Claim through the second round of mediation discussions or failing which seek to have the claim determined by the Court.
22. In addition, the Receiver shall seek to discuss and resolve if possible the Vontobel Redemption Claim at the September 2012 Mediation or failing which seek the Court's direction on this issue.

#### **RESPECTFULLY SUBMITTED,**

Dated the 26<sup>th</sup> day of July, 2012.

#### **KPMG INC.**

In its capacity as Court-appointed  
Receiver and Manager of  
Belmont Dynamic Growth Fund



Per: *Elizabeth J. Murphy*  
Vice-President

**JAMES HAGGERTY HARRIS**  
Applicant

**BELMONT DYNAMIC GROWTH  
FUND, an Ontario limited partnership**  
Respondent

Court File No: 09-8302-00CL

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

Proceeding commenced at Toronto

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

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Fax: (416) 861-0445

Lawyers for KPMG Inc.