

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited Partnership

Respondent

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

August 23, 2010

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INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated August 6, 2006 (the "Appointment Order"), and amended on October 21, 2009 (the "Amended Appointment Order"), KPMG Inc. was appointed receiver and manager ("Receiver") of the assets, undertakings and properties of the Belmont Dynamic Growth Fund (the "Belmont Fund"), an Ontario limited partnership.
2. The Receiver's last Report to the Court was dated June 21, 2010 (the "Third Report"). The Receiver files this Supplemental Report to the Third Report (the "Supplemental Third Report") in order to inform the Court and stakeholders about certain developments with respect to the investments in the Segregated Portfolio and to address issues raised by the Counterparty with respect to any Counterparty Distribution. The Supplemental Third Report should be read in conjunction with the Third Report. The Supplemental Third Report will:
 - provide an update on certain matters pertaining to the investments in the Segregated Portfolio, specifically the cash balances received by the Segregated Portfolio from the ABL FUND;
 - in conjunction with the Third Report provide an evidentiary basis for the approval of the Minutes of Settlement for the Vontobel Settlement as described in the Third Report; and
 - provide clarification with respect to the Receiver's request that any distributions to the Counterparty from the Segregated Portfolio be paid to and held by the Receiver.

TERMS OF REFERENCE

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

DISTRIBUTIONS RECEIVED FROM ABL FUND

6. As described in paragraph 59 of the Third Report, the ABL FUND was placed into a court supervised liquidation proceeding in January 2010, with Stuart Sybersma and Ian Wight of Deloitte & Touche (“Deloitte”) in the Cayman Islands being appointed as Joint Official Liquidators of the ABL FUND by an Order of the Grand Court in the Cayman Islands on January 19, 2010.
7. On July 13, 2010, Harcourt advised the Receiver that Deloitte had issued a letter to direct shareholders or nominee shareholders in the Segregated Portfolio dated June 23, 2010 (the “Deloitte Letter”) regarding the ABL FUND. The Deloitte Letter, which is attached hereto as **Appendix A**, stated the following:

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

8. Harcourt advises the Receiver since the Deloitte letter no further information has been received from Deloitte on this issue, including information to substantiate the assertion that the payments were unlawful and liable to be returned. Nor has Deloitte provided anything further concerning its investigation.
9. In paragraph 60 of the Third Report the Receiver advised the Court that Harcourt was expecting a copy of Deloitte’s first report on the administration of the ABL FUND. Harcourt advises the Receiver that this report has not yet been presented to stakeholders of the ABL FUND.
10. The Receiver advised in paragraph 102 of the Third Report that upon approval of the Vontobel Settlement, Harcourt would be in a position to use the available cash at the Segregated Portfolio to make *pro rata* distributions to Vontobel, the Counterparty as a holder of Class A shares (“Counterparty Distributions”) and the Class B shareholders (the “Pro Rata Distributions”). Based on the March 31, 2010 Cash Balance of approximately US\$4.10 million, Harcourt anticipated that approximately US\$3.28 million would be available to be paid as an initial Counterparty Distribution.
11. Harcourt has advised the Receiver that between November 2008 and November 2009, the Segregated Portfolio received distributions of approximately US\$1.17 million from the ABL FUND (the “ABL Funds”). Assuming that the Vontobel Settlement is approved by this Court, Harcourt has advised the Receiver that pending the completion and resolution of the potential claim for the Post-October 2008 Payments, the amount currently available for a Pro Rata Distribution is approximately US\$2.9 million, calculated as the amount of the March

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

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

VONTOBEL SETTLEMENT – MINUTES OF SETTLEMENT

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

DISTRIBUTIONS FROM SEGREGATED PORTFOLIO

14. As discussed in paragraph 103 of the Third Report, the Receiver seeks an Order that any Counterparty Distributions be paid to and held by the Receiver (the “Reserve”). On August 18, 2010, National Bank of Canada (Global) Limited (“NBCG”) filed responding materials (the “NBCG Responding Materials”), including the Affidavit of Jayden Jones of Barbados. The NBCG Responding Materials speak to a number of issues, including disagreement with the Receiver’s request that any Counterparty Distributions be paid to the Receiver.
15. On August 23, 2010 on behalf of the Receiver, Stikeman Elliott LLP wrote to counsel for NBCG (the “August 23, 2010 Letter”) in response to these materials. The August 23, 2010 Letter is attached hereto as **Appendix C**.
16. The basis for the Receiver’s request to maintain the Reserve pending further Court Order is as follows:
 - the Forward Contracts do not contemplate various scenarios during a winding up process, and while the parties, and if necessary the Court, work their way through the issues the Receiver would prefer to hold the Reserve, in order that as neutral a result as possible is available to all relevant stakeholders;
 - the Receiver is seeking to preserve the assets and economic interests of the Belmont Fund;
 - issues remain in dispute between the parties, including the manner in which the Forward Contracts are to be interpreted; potential claims against the Reserve; the manner in which the Limited Partners should realize on the Forward Contracts; and the impact of distributions from the Segregated Portfolio on the value of the Forward Contracts (i.e. the Forward Price);

- while such issues are still in dispute, the Receiver seeks to have any available Counterparty Distributions repatriated to Canada, and held in the hands of a neutral Court Officer, subject to the Court's oversight; and
- by holding the Reserve, the Receiver does not intend to expropriate or alter the rights of the parties, or to put NBCG at risk. Instead the Receiver seeks to preserve those rights and interests pending a future determination and interpretation of the contractual arrangements on the basis of a complete record before the Court.

RESPECTFULLY SUBMITTED,

Dated the 23rd day of August, 2010.

KPMG INC.

In its capacity as Court-appointed
receiver and manager of
Belmont Dynamic Growth Fund

A handwritten signature in cursive script, appearing to read "Elizabeth Murphy".

Per: Elizabeth Murphy
Vice-President

JAMES HAGGERTY HARRIS

and

BELMONT DYNAMIC GROWTH

FUND, an Ontario limited partnership

Applicant

Respondent

Court File No: 09-8302-00CL

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

Proceeding commenced at Toronto

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

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