

**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

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

**FACTUM OF THE APPLICANTS
(returnable October 21, 2009)**

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Malcolm M. Mercer LSUC# 23812W
Tel: (416) 601-7659

James D. Gage LSUC#: 34676I
Tel: 416-601-7539

Heather L. Meredith LSUC# 48354R
Tel: (416) 601-8342
Fax: (416) 868-0673

Lawyers for the Applicant

**ONTARIO
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PART I - INTRODUCTION

1. Belmont Dynamic Growth Fund (the “Belmont Fund”) is a limited partnership with 135 limited partners (the “Limited Partners”). The Belmont Fund has incurred significant losses and there does not appear to be any real dispute that it should be dissolved.
2. The Belmont Fund entered into certain forward contracts to obtain exposure to the returns of an underlying fund. However, the value of the partnership units in the Belmont Fund has declined for some time and, since at least October 2008, it was clear that the underlying fund to which the Belmont Fund was exposed was no longer viable. Indeed, redemptions in the underlying fund have been suspended.
3. At this point, any prospect of recovery of the losses incurred on the Belmont Fund partnership units remains uncertain. Still, until the Belmont Fund is dissolved, it continues to incur fees and expenses, which are further eroding the remaining equity for the Limited Partners.
4. In December, 2008, the general partner of the Belmont Fund, Belmont Dynamic GP Inc. (the “General Partner”), prepared a draft notice of a special meeting to consider the dissolution of the Belmont Fund. However, the meeting was never convened because of an impasse that is alleged to have developed between the two shareholders of the General Partner, which is the subject of a separate court proceeding.
5. The need for dissolution of the Belmont Fund does not appear to be disputed by the shareholders of the General Partner. However, the deadlock caused by the shareholder dispute

has meant that the General Partner has not taken the necessary steps to dissolve the Belmont Fund as required.

6. With costs continuing to mount and the General Partner deadlocked, the Applicant, a Limited Partner of the Belmont Fund obtained an order appointing KPMG Inc. as receiver and manager (the "Receiver") over the assets, undertakings and properties of the Belmont Fund.

7. The Applicant now brings this application for, among other things, dissolution of the Belmont Fund pursuant to the *Partnerships Act*, effective upon the filing of a certificate by the Receiver.

8. The Applicant is supported in this application by the Receiver, by RBC Phillips, Hager & North Investment Counsel Inc. ("RBC PH&N IC"), which acts as the portfolio manager for 126 of the 135 Limited Partners, and by RBC Dominion Securities Inc. ("RBCDS"), which acts as portfolio manager or maintains brokerage accounts for the remaining 9 Limited Partners.

9. The support of RBC PH&N IC is particularly significant since it has authority to vote securities sufficient to dissolve the Belmont Fund. RBC PH&N IC is supportive of this process because of the benefits of a Court-supervised process.

10. In all of the circumstances, it is just and equitable that the Belmont Fund be dissolved. The dispute between the two shareholders of the General Partner should not be permitted to continue to prevent the Limited Partners from having access to their funds through a proper dissolution.

PART II - THE FACTS

A. The Parties

11. The Belmont Fund is an investment fund that was established as a limited partnership pursuant to a Limited Partnership Agreement (the “LP Agreement”) between the General Partner and the Limited Partners.¹

12. The Belmont Fund entered into certain forward contracts, which allowed it to obtain exposure to the returns of the Belmont Dynamic Growth Segregated Portfolio (the “Underlying Fund”) without having a direct interest in the Underlying Fund.²

13. RBC PH&N IC acts as the portfolio manager for 126 of the 135 Limited Partners (the “Managed Account Partners”) and its affiliate, RBCDS acts as portfolio manager for 4 of Limited Partners and maintains brokerage accounts for the remaining 5 Limited Partners (together, the “RBCDS Partners”).³

14. The following chart sets out the different units of the Belmont Fund as well as the present ownership of those units:

Class of limited partnership units ⁴	Intended Buyer ⁵	Managed Account Partners ⁶	RBCDS Partners ⁷
Class AC (CDN)	Clients of registered dealers	100%	
Class AU (USD)	Clients of registered dealers	There are no AU units outstanding	
Class FC (CDN)	All other investors	98.26%	1.74%
Class FU (USD)	All other investors	48.70%	51.3%

¹ Affidavit of Robert Craig McDonald, sworn July 30, 2009, Motion Record of the Applicant (“Motion Record”), Tab 2 (“McDonald Affidavit”) at para. 8; Limited Partnership Agreement, Motion Record, Tab 2(A).

² McDonald Affidavit, para.

³ McDonald Affidavit, para. 1.

⁴ McDonald Affidavit, paras. 21-22.

⁵ McDonald Affidavit, paras. 23-24.

⁶ McDonald Affidavit, para. 49.

⁷ McDonald Affidavit, para. 50.

15. The General Partner, an Ontario corporation, acts as manager of the Belmont Fund.⁸ The only shareholders of the General Partner are Harcourt Investment Consulting AG (“Harcourt”) and Omniscope Advisors Inc. (“Omniscope”), each of which own 50% of the outstanding common shares of the General Partner.⁹

16. Harcourt, one of two shareholders of the General Partner, is a portfolio management firm based in Zurich, Switzerland, that advises the Underlying Fund.¹⁰

17. Omniscope carries on the business of a securities dealer and is wholly owned by Mr. Daniel Nead, who is also the sole director and officer of Omniscope.¹¹

B. Losses and Mounting Costs

18. The value of partnership units in the Belmont Fund has declined since August, 2006: the net asset value of a Class AC Unit has declined from its original net asset value of CDN \$100 to CDN \$64.10 on September 30, 2008, the last date on which a net asset value was published for the units. The net asset value of a Class FC Unit and a Class FU Unit has declined from CDN \$100 and US \$100 to CDN \$71.82 and US \$72.93, respectively, during this same period.¹²

19. In October, 2008, Harcourt advised RBC PH&N IC that the Underlying Fund was no longer viable due primarily to the relatively recent turmoil in the financial markets. Harcourt advised that steps would therefore be taken to dissolve the Belmont Fund.¹³

20. The Limited Partners have incurred losses as a result of the declining value of the partnership units. The prospect of any recovery of such losses remains uncertain.¹⁴

21. Despite such losses, the Belmont Fund continues to incur fees and expenses including:

⁸ McDonald Affidavit, para. 10.

⁹ McDonald Affidavit, para. 12.

¹⁰ McDonald Affidavit, paras. 13 and 15.

¹¹ McDonald Affidavit, paras. 16-17.

¹² McDonald Affidavit, para. 51.

¹³ McDonald Affidavit, para. 51.

¹⁴ McDonald Affidavit, para. 51.

- (a) An administration fee payable to the General Partner for the services it provides to the Belmont Fund.¹⁵
- (b) A monthly management fee and performance fee payable to Harcourt for the investment management services it provides to the Underlying Fund.¹⁶
- (c) A fee payable to the counterparty on the forward contracts, payable by the Belmont Fund monthly in arrears.¹⁷
- (d) Other expenses incurred in the ordinary course of the administration and operation of the Fund, including, without limitation, custodian, audit and legal fees, related administration fees and the cost of providing information to Limited Partners.¹⁸

22. As long as the Belmont Fund continues to incur such fees and expenses, the remaining equity of the Limited Partners in the Belmont Fund is being eroded.

23. Moreover, redemptions in the Underlying Fund have been suspended due to redemption suspensions by the hedge funds underlying the Underlying Fund. Accordingly, the Limited Partners have been and continue to be prevented from redeeming partnership units in the Belmont Fund.¹⁹

24. The combined effect is that, unable to redeem the partnership units, the Limited Partners are unable to redeploy funds invested in the Belmont Fund in an attempt to recover losses incurred. Instead, their funds are trapped and subject to continuing erosion as a result of the fees and expenses that continue to be charged and paid to the benefit of the General Partner and Harcourt, among others.²⁰

¹⁵ McDonald Affidavit, para. 41.

¹⁶ McDonald Affidavit, paras. 42-45.

¹⁷ McDonald Affidavit, para. 46.

¹⁸ McDonald Affidavit, para. 47.

¹⁹ McDonald Affidavit, para. 51.

²⁰ McDonald Affidavit, para. 51.

C. Previous Attempt to Dissolve Partnership

25. In December, 2008, the General Partner provided RBC PH&N IC with a draft notice of a special meeting of Limited Partners that was to be convened to consider and approve the dissolution of the Belmont Fund and the appointment of a receiver.²¹

26. However, the meeting was never convened because of an “impasse” that is alleged to have developed between Harcourt and the other shareholder of the General Partner, which has become the subject of a court proceeding.²²

27. The separate court proceeding involves an application that has been made by Harcourt against, among others, the Belmont Fund, the General Partner and Omniscope for relief, including an order to approve steps to commence the dissolution of the Belmont Fund.²³

28. Similarly, in their cross-application against Harcourt, among others, Daniel Nead and Omniscope seek alternative relief including an order directing the General Partner to hold a meeting of the Limited Partners to consider a special resolution authorizing the dissolution of the Belmont Fund.²⁴

D. Events Since Receivership Order: Receivership and Notice

29. On August 6, 2009, by order of Justice Mesbur, KPMG Inc. was appointed as Receiver (the “Receivership Order”).

30. The Receivership Order provided for notice of the Receivership Order and the Application to be provided in accordance with the method set out in the McDonald Affidavit. This included a notice letter from RBC PH&N IC to the Limited Partners.²⁵

31. Notice was provided to the Limited Partners in accordance with the terms of the Receivership Order. To date, no objection has been received to the course of action contemplated in this application by either RBC PH&N IC or the Receiver. Indeed, the only

²¹ McDonald Affidavit, para. 51.

²² McDonald Affidavit, para. 51.

²³ McDonald Affidavit, para. 51; Supplementary Motion Record of the Applicant, Tab 1.

²⁴ Supplementary Motion Record of the Applicant, Tab 3.

feedback received from the Limited Partners has been positive feedback, supportive of this application.²⁶

32. The Receiver has been making progress in its work to identify and realize upon the assets of the Belmont Fund as described in the Receiver's Report.²⁷

PART III - ISSUE

33. The main issue on this application is whether it is just and equitable to dissolve the Belmont Fund.

PART IV - THE LAW

A. Dissolution: Just and Equitable

34. Pursuant to section 10 of the *Limited Partnerships Act*, R.S.O. 1990, c. L.16 a limited partner has the same rights as a general partner "to obtain dissolution of the limited partnership by court order".

35. Pursuant to section 8 of the *Limited Partnerships Act*, the rights and powers of a general partner are the same as those of partner in a partnership without limited partners (a "Partner"), except for certain limitations that are unrelated to dissolution.

36. One of the rights and powers of a Partner pursuant to section 35 of the *Partnerships Act*, R.S.O. 1990, c. P.5, is the right to make an application for the dissolution of the partnership.

37. Accordingly, a limited partner may make an application to the court for the dissolution of the limited partnership pursuant to section 35 of the *Partnerships Act*.

38. Section 35 of the *Partnerships Act* provides that on application of a partner, the court may order the dissolution of the partnership when, among other things, "circumstances have

²⁵ Receivership Order, paras. 26-33; McDonald Affidavit paras. 58-62.

²⁶ Report of KPMG (the "Receiver's Report").

²⁷ Receiver's Report.

arisen that in the opinion of the court render it just and equitable that the partnership be dissolved”.

39. In determining whether to exercise discretion to order the dissolution of a partnership on this basis, the words “just and equitable” are to be given broad interpretation. Whether dissolution is just and equitable depends in large part on the facts of each case.²⁸

40. In the recent case of *Ellerforth Investments Limited v. Typhon Group Limited*,²⁹ the Court was guided by the following passage from *Lindley & Banks on Partnership*, 17th ed. (London: Sweet & Maxwell, 1995) at p.726:

“...an order [for dissolution of a partnership on the ground that it is just and equitable] is likely to be made if, for whatever reason, the objects for which the partnership was formed can no longer be attained, either at all or in the manner originally contemplated by the partners, and a dissolution cannot be obtained on one of the other grounds.”

41. It is just and equitable and in the best interests of the Limited Partners to dissolve the Belmont Fund having regard to the circumstances in this case, including:

- (a) Since August, 2006, the net asset value of the partnership units has declined.
- (b) The prospect for any recovery of such losses remains uncertain.
- (c) Despite such losses, the Belmont Fund continues to incur fees and expenses.
- (d) In October, 2008, Harcourt advised RBC PH&N IC that the Belmont Fund was no longer viable and that steps would therefore be taken to dissolve the Belmont Fund.
- (e) The General Partner took steps to call a special meeting to approve the dissolution of the Belmont Fund; however, the meeting was never been convened because of an “impasse” that developed between the shareholders of the General Partner.

²⁸ *Rogers v. Agincourt Holdings Ltd.* (1976), 14 O.R. (2d) 489 (Ont. C.A.) at 493; *Ellerforth Investments Limited v. Typhon Group Limited*, 2009 Canlii 46640 (O.S.C.J.) at para. 35.

²⁹ *Ibid.*, at para. 44.

- (f) Each of Omniscop and Harcourt seek dissolution of the Belmont Fund as part of the relief sought on the separate court proceeding between them.
- (g) The Limited Partners are unable to redeem their partnership units in the Belmont Fund because redemptions in the Underlying Fund have been suspended. They are, therefore, unable have access to these funds to make alternate investments in an attempt to recover losses incurred by them.
- (h) The Receiver has been making progress in creating a plan for the realization of the assets of the Belmont Fund. This includes: reviewing the assets of the Belmont Fund, including its economic interest in the Underlying Fund; reviewing the priority of claims in the Underlying Fund; and identifying and quantifying the claims against the Belmont Fund in relation to which the Receiver will be presenting to the Court its recommendations for a claims process. Dissolution will be effective only upon the filing of the Receiver's Certificate.
- (i) Any party with a concern regarding distribution of funds will be able to raise those concerns when the Receiver seeks Court approval of any proposed distribution of funds.

42. The circumstances set out above make it just and equitable to dissolve the limited partnership.

B. RBC PH&N IC Entitled to Approve Dissolution

43. Separate and apart from this application, RBC PH&N IC would be entitled to approve dissolution of the Belmont Fund pursuant to investment management agreements with Limited Partners and the terms of the LP Agreement.

44. The discretionary authority that each Managed Account Partner has granted RBC PH&N IC includes the authority to vote securities that are held in the portfolio that is being managed by RBC PH&N IC on behalf of the Managed Account Partner.³⁰

45. Section 15 of the Investment Management Agreement provides, in part, that unless instructed otherwise by the Managed Account Partner, in writing, RBC PH&N IC is granted all powers and authority necessary to vote any securities in the portfolio or to consent to any reorganization of any issuer of securities in the portfolio in such manner as RBC PH&N IC deems appropriate.³¹

46. As a result of the discretionary authority that has been granted to RBC PH&N IC by section 15 of the Investment Management Agreement, RBC PH&N IC is authorized to approve the dissolution of the Belmont Fund and to appoint a receiver and liquidator of the assets of the Belmont Fund pursuant to section 12.2 of the LP Agreement.

On the date of the approval of the dissolution of the [Belmont Fund] by a Special Resolution, the General Partner (or such other Person as may be appointed by Ordinary Resolution of the Limited Partners) shall act as a receiver and liquidator of the assets of the [Belmont Fund] ...³²

47. The term "Special Resolution" is defined in section 1.1 (54) of the LP Agreement to mean:

- (a) a resolution approved by more than 75% of the votes cast in person or by proxy at a duly constituted meeting of Limited Partners or class of Limited Partners or at any adjournment thereof, called in accordance with this [LP Agreement]; or
- (b) a written resolution in one or more counterparts signed by Limited Partners holding in the aggregate more than 75% of the aggregate number of outstanding

³⁰ McDonald Affidavit, para. 52.

³¹ McDonald Affidavit, para. 52.

³² McDonald Affidavit, para. 53.

Units³³, or where the resolution concerns only a particular class of Units, 75% of the aggregate number of outstanding Units of that class.³⁴

48. The term “Ordinary Resolution” is defined in a similar way in section 1.1 (39) of the LP Agreement to mean:

- (a) a resolution approved by more than 50% of the votes cast in person or by proxy at a duly constituted meeting of Limited Partners or class of Limited Partners or at any adjournment thereof called in accordance with this [LP Agreement]; or
- (b) a written resolution in one or more counterparts signed by Limited Partners holding in the aggregate more than 50% of the aggregate number of outstanding Units or where the resolution concerns only a particular class of Units, 75% of the aggregate number of outstanding Units of that class.³⁵

49. As a result, RBC PH&N IC could approve the dissolution of the Belmont Fund whether such approval was given by means of votes cast at a duly constituted meeting of Limited Partners or by means of written resolutions signed on behalf of the Managed Account Partners.³⁶

50. The fact that a result similar to the order sought could be achieved by RBC PH&N IC contractually also suggests that it is just and equitable to dissolve the Belmont Fund as requested in this application. This is particularly the case since the order requested would achieve this result through the Court process, which provides transparency and court supervision and is in the best interests of the Limited Partners and other stakeholders.

C. Receiver’s Power

51. In paragraph 4 of the Receivership Order, the Court ordered that “until further order of this Court at the return of this Application or otherwise, the Receiver shall not terminate or

³³ The term “Units” is defined in section 1.1 (58) of the LP Agreement to mean the Class AC Units, the Class AU Units, the Class FC Units and the Class FU Units.

³⁴ McDonald Affidavit, para. 54.

³⁵ McDonald Affidavit, para. 55.

³⁶ McDonald Affidavit, para. 57.

consent to the termination of any Forward Contract³⁷ or sell or otherwise dispose of any material portion of the Property.”

52. The restriction in paragraph 4, which imposed a limitation on the powers otherwise found in the model receivership order, was included by the Applicant in the draft Receivership Order to suspend the authority of the Receiver to terminate the Forward Contract (the principal asset of the Belmont Fund) between the appointment of the Receiver and the hearing of this application for dissolution. The intention was to provide the Limited Partners and General Partner with an opportunity to receive notice of the proposed dissolution hearing and to make submissions in respect of the proposed dissolution before any irrevocable steps were taken in respect of the Forward Contract.³⁸

53. As set out in the Receiver’s Report, the Limited Partners and the General Partner have received notice in accordance with the notice provisions set out in the Receivership Order and there has been no objection to the dissolution by any Limited Partner, who collectively are entitled to 99.999% of the income and losses of the partnership in accordance with the LP Agreement.³⁹

54. Having provided this opportunity for objections, the Applicant now seeks to have this restriction on the power of the Receiver lifted. This will allow the Receiver to properly and effectively complete the realization process, including allowing the Receiver to make arrangements to realize on the Belmont Fund’s principal asset, the Forward Contract, if deemed appropriate by the Receiver.

55. With the lifting of the restriction in paragraph 4 of the Receivership Order, the Receiver shall have the authority and direction needed to effect the interim steps required to effect the dissolution of the Belmont Fund. The Receiver may also seek the advice and direction of the Court in the course of undertaking the interim steps and at such time as it is prepared to recommend and seek authority to distribute the assets of the Belmont Fund to the various stakeholders.

³⁷ Defined in the McDonald Affidavit at para. 29.

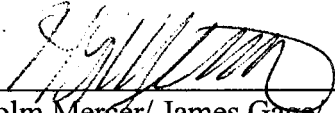
³⁸ McDonald Affidavit, para. 68(b).

³⁹ LP Agreement, Motion Record, Tab 2(A), p.21 (Motion Record p.58).

PART V - ORDER REQUESTED

56. Accordingly, the Applicant requests an Order:
- (a) Dissolving the Belmont Fund upon the filing of a Receiver's certificate by the Receiver;
 - (b) Amending the Receivership Order by deleting paragraph 4 of the Receivership Order, so that the Receiver is expressly empowered and authorized to terminate or consent to the termination of any Forward Contract and to sell or otherwise dispose of any material portion of the Property where the Receiver considers it necessary or desirable to do so;
 - (c) Declaring that the Receiver may seek the advice and direction of this Court in respect of the carrying out of this Order and any matters to be undertaken in effecting the dissolution of the Belmont Dynamic Growth Fund; and
 - (d) Such further and other relief as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of October, 2009.



Malcolm Mercer/ James Gage/
Heather Meredith
McCarthy Tétrault LLP
Lawyers for the Applicant

Schedule "A"

LIST OF AUTHORITIES

1. *Rogers v. Agincourt Holdings Ltd.* (1976), 14 O.R. (2d) 489 (Ont. C.A.)
2. *Ellerforth Investments Limited v. Typhon Group Limited*, 2009 Canlii 46640 (O.S.C.J.)

Schedule "B"
RELEVANT STATUTES

Partnerships Act

35. On application by a partner, the court may order a dissolution of the partnership,
- (a) when a partner is found mentally incompetent by inquisition or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his or her committee or litigation guardian or person having title to intervene as by any other partner;
 - (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing the partner's part of the partnership contract;
 - (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
 - (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with the partner;
 - (e) when the business of the partnership can only be carried on at a loss; or
 - (f) when in any case circumstances have arisen that in the opinion of the court render it just and equitable that the partnership be dissolved. R.S.O. 1990, c. P.5, s. 35.

Limited Partnerships Act

8. A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to,
- (a) do any act in contravention of the partnership agreement;
 - (b) do any act which makes it impossible to carry on the ordinary business of the limited partnership;
 - (c) consent to a judgment against the limited partnership;
 - (d) possess limited partnership property, or assign any rights in specific partnership property, for other than a partnership purpose;
 - (e) admit a person as a general partner;
 - (f) admit a person as a limited partner, unless the right to do so is given in the partnership agreement; or
 - (g) continue the business of the limited partnership on the death, retirement or mental incompetence of a general partner or dissolution of a corporate general partner, unless the right to do so is given in the partnership agreement. R.S.O. 1990, c. L.16, s. 8.

10. A limited partner has the same right as a general partner,
 - (a) to inspect and make copies of or take extracts from the limited partnership books at all times;
 - (b) to be given, on demand, true and full information concerning all matters affecting the limited partnership, and to be given a complete and formal account of the partnership affairs; and
 - (c) to obtain dissolution of the limited partnership by court order. R.S.O. 1990, c. L.16, s. 10.

JAMES HAGGERTY HARRIS
Applicant

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited partnership
Respondent

Court File No: 09-8302-00CL

ONTARIO
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COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF THE APPLICANT

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Malcolm M. Mercer LSUC#: 23812W
Tel: (416) 601-7659

James D. Gage LSUC#: 34676I
Tel: 416-601-7539

Heather L. Meredith LSUC#: 48354R
Tel: 416-601-8342
Fax: 416-868-0673

Lawyers for the Applicant
#698932

**ONTARIO
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THE HONOURABLE M) WEDNESDAY, THE 21st DAY
)
JUSTICE) OF OCTOBER, 2009

IN THE MATTER OF AN APPLICATION PURSUANT
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BETWEEN:

JAMES HAGGERTY HARRIS

Applicant/Moving Party

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

ORDER

THIS APPLICATION, made by the Applicant for the relief set out in the Notice of Application, including dissolution of the Belmont Dynamic Growth Fund, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the Notice of Application, (ii) the Motion Record of the Applicant, including the affidavit of Robert Craig McDonald sworn July 30, 2009 and the Exhibits thereto; (iii) the Supplementary Motion Record of the Applicant, and (iv) the first report of KPMG Inc. (the “Receiver”); and on hearing the submissions of counsel for the Applicant, counsel for Harcourt Investment Consulting AG and Peter Fanconi, counsel for Omniscope

Advisors Inc. and Daniel Nead, counsel for National Bank of Canada (Global) Limited and National Bank of Canada, and counsel for the Receiver, with no one else appearing,

1. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined will have the meaning given to them in the Order of Justice Mesbur dated August 6, 2009 (the “**Receivership Order**”).

2. THIS COURT ORDERS that the Receivership Order is amended by deleting paragraph 4 of the Receivership Order, so that the Receiver is hereby expressly empowered and authorized to terminate or consent to the termination of any Forward Contract and to sell or otherwise dispose of any material portion of the Property where the Receiver considers it necessary or desirable to do so.

3. THIS COURT ORDERS AND DECLARES that, upon the filing of a Receiver’s certificate by the Receiver substantially in the form attached as Schedule “A” hereto, the Belmont Dynamic Growth Fund is dissolved.

4. THIS COURT ORDERS that the Receiver may seek the advice and direction of this Court in respect of the carrying out of this Order and any matters to be undertaken in effecting the dissolution of the Belmont Dynamic Growth Fund.

SCHEDULE "A"

Court File No. 09-8302-00CL

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SUPERIOR COURT OF JUSTICE
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BETWEEN:

JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited partnership

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. KPMG Inc. is the receiver and manager (the "Receiver") of all of the assets, undertakings and properties of Belmont Dynamic Growth Fund (the "Belmont Fund") appointed by order of the Ontario Superior Court of Justice (the "Court") dated the 6th day of August, 2009 and amended on October 21, 2009.

B. By order dated October 21, 2009, the Court ordered the Belmont Fund dissolved upon the filing of a Receiver's Certificate (the "Dissolution Order").

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the process of realizing upon the assets of the Belmont Fund;

2. The Receiver has applied the property realized in payment of the debts and liabilities of the Belmont Fund and has distributed the surplus assets in final settlement of the accounts of the partners of the Belmont Fund in accordance with the *Partnership Act* (Ontario);

3. Pursuant to paragraph 3 of the Dissolution Order, as a result of the filing of this Certificate with the Court, the Belmont Fund is dissolved.

DATED THE _____ day of _____, 2009.

**KPMG Inc., solely in its capacity
as Receiver of the Property (as defined in the
Order), and not in its personal capacity**

Per: _____

Name:

Title:

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 -
COMMERCIAL LIST**

Proceeding commenced at [Toronto](#)

ORDER

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Malcolm M. Mercer LSUC#: 23812W
Tel: (416) 601-7659

James D. Gage LSUC#: 34676I
Tel: 416-601-7539

Heather L. Meredith LSUC#: 48354R
Tel: 416-601-8342
Fax: 416-868-0673

Lawyers for the [Applicant/Moving Party](#)
#699228

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM) THURSDAY, THE 6th DAY
)
JUSTICE MESBUR) OF AUGUST, 2009

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

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/Moving Party

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario limited partnership

Respondent

AMENDED ORDER

THIS MOTION, made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "**CJA**") appointing KPMG Inc. as receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of Belmont Dynamic Growth Fund, an Ontario limited partnership (the "**Debtor**") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING (i) the Notice of Application, (ii) the Notice of Motion, (iii) the affidavit of Robert Craig McDonald sworn July 30, 2009 and the Exhibits thereto (the “**McDonald Affidavit**”), and (iv) the consent of KPMG Inc. to act as the Receiver; and on hearing the submissions of counsel for the Applicant, counsel for Harcourt Investment Consulting AG (“**Harcourt**”) and Peter Fanconi (“**Fanconi**”), counsel for Omniscope Advisors Inc. and Daniel Nead, counsel for National Bank of Canada (Global) Limited and National Bank of Canada, and counsel for the proposed Receiver, with no one else appearing although duly served,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application, Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, KPMG Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), including, without limitation, all such assets, undertakings and properties which are owned, held or controlled by Belmont Dynamic GP Inc. on behalf of the Debtor in trust or otherwise in its capacity as general partner of the Debtor (“**Debtor GP**”) or which are held by any Person (as defined herein) in trust for, or otherwise for, for the benefit of the Debtor.

RECEIVER'S POWERS

3. THIS COURT ORDERS that, subject to paragraph 4, the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to exercise all rights with respect to the Property as if the Receiver was the absolute owner thereof and, for greater certainty, such rights and the powers and authority set out below in this paragraph 3 will extend to all amounts owing to, all

agreements entered into with, all licences issued to, and all other Property owned, held or controlled by, the Debtor GP in its capacity as general partner of the Debtor;

- (b) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (c) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property and backing up or copying of electronic records to safeguard them, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (d) to manage, operate and carry on the business of the Debtor with a view to winding down its operation, realizing on the Property and distributing the proceeds to the Persons (as defined in paragraph 5 below) entitled thereto (the “**Wind Down**”), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, and cease to perform any contracts of the Debtor;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other Persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (f) to purchase goods and services in connection with the Wind Down;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce the rights of the Debtor in respect of any forward contracts (“**Forward Contracts**”) and other investments;

- (h) to settle, extend or compromise any indebtedness owing to the Debtor and to negotiate the settlement or termination of any agreements to which the Debtor is a party, including, without limitation, any Forward Contracts;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with RBC Phillips, Hager & North Investment Counsel Inc. (“**RBC PH&N IC**”), RBC Dominion Securities Inc. (“**RBCDS**” and collectively with RBC PH&N IC, “**RBC**”), the limited partners of the Debtor (the “**Limited Partners**”), the Debtor GP, Harcourt and Fanconi, Omniscope and Nead and such other affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, including the Wind Down, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor and the Debtor GP, and without interference from any other Person.

~~4. THIS COURT ORDERS that, until further order of this Court at the return of this Application or otherwise, the Receiver shall not terminate or consent to the termination of any Forward Contract or sell or otherwise dispose of any material portion of the Property.~~

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor and all of its current and former partners, including without limitation the Debtor GP, (ii) all of the Debtor's and Debtor GP's current and former shareholders, officers, employees, agents, accountants, legal counsel and all other persons acting on its instructions or behalf, (iii) Accilent Capital Management Inc., Harcourt, Omniscope Advisors Inc. and their respective officers, directors and affiliates, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. All Persons shall cooperate with and assist the Receiver in respect of information relating to the Property.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor or the Receiver or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all investment advisory, administration and other partnership services, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained without the written consent of the Receiver or until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

ELIGIBLE FINANCIAL CONTRACTS

13. THIS COURT ORDERS that, notwithstanding anything else contained herein:
- (a) for the purposes of this paragraph, the terms “eligible financial contract” and “financial collateral” will have the meanings given to them by the *Bankruptcy and Insolvency Act* (Canada);
 - (b) a Person (the “**Counterparty**”) that has entered into an eligible financial contract with the Debtor prior to the date hereof may exercise any right of termination, netting or set-off and may deal with any financial collateral held in respect of the eligible financial contract, in each case in accordance with the provisions of the eligible financial contract, provided that any net claim or net termination value owing by the Debtor after any dealing with financial collateral permitted hereby will be subject to paragraph 9 and the other provisions of this Order; and

- (c) the Receiver's Charge and the Receiver's Borrowings Charge (as defined in paragraphs 19 and 22, respectively) will rank subsequent in priority to any security interest of a Counterparty in financial collateral held in respect of an eligible financial contract with the Debtor.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not

complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel (including fees and disbursements incurred up to and including the date of this Order), incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge, subject to paragraph 13, on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Receiver's Charge**").

20. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from Royal Bank of Canada or an affiliate thereof by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and subject to paragraph 13.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

NOTICE OF THIS ORDER AND DISSOLUTION HEARING

26. THIS COURT ORDERS and directs that the return date for the hearing of the Application in respect of the dissolution of the Debtor and certain related relief (the "**Dissolution Hearing**") shall be August 27, 2009, or such other date as is set by the Court upon motion by the Applicant.

27. THIS COURT ORDERS that, unless otherwise provided herein or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings (other than the Applicant and the Receiver) unless such Person has served a Notice of Appearance on the solicitors for the Applicant and the Receiver and has filed such notice with this Court (such Persons, together with the Applicant and the Receiver, the "**Service List**").

28. THIS COURT ORDERS that the Receiver shall send a copy of this Order to the Debtor and the Debtor GP by prepaid ordinary mail or courier within 3 days after the date hereof.

29. THIS COURT ORDERS that the form of notice to Limited Partners of the making of this Order and the Dissolution Hearing attached as Exhibit "F" to the McDonald Affidavit (the "**Notice to LPs**") is approved and RBC is authorized and directed to send such notice to each Limited Partner.

30. THIS COURT ORDERS that:

- (a) the manner of service of the Application Record on the Debtor and the Debtor GP as described in the McDonald Affidavit constitutes good and sufficient service of notice of this Application and the Dissolution Hearing on the Debtor and the Debtor GP, and except as provided in paragraph 28 no other form of notice or service need be made to the Debtor or the Debtor GP and no other materials need be served upon the Debtor or the Debtor GP in respect of these proceedings, including the Dissolution Hearing, unless the Debtor or the Debtor GP serves a Notice of Appearance as set out in paragraph 27 hereof.
- (b) delivery of the Notice to LPs in accordance with paragraph 29 hereof shall constitute good and sufficient service of notice of the Dissolution Hearing on all Limited Partners, and no other form of notice or service need be made and no other materials need be served in respect of the Dissolution Hearing,

except that the Applicants shall also serve the Service List with any additional materials to be used in support of the Dissolution Hearing.

31. THIS COURT ORDERS that in the event the Dissolution Hearing is adjourned, only those Persons on the Service List are required to be served with notice of the adjourned date.

32. THIS COURT ORDERS that any Person who wishes to oppose the relief sought at the Dissolution Hearing shall serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used to oppose such relief at least three days before the date set for the Dissolution Hearing, or such shorter time as the Court, by order, may allow.

33. THIS COURT ORDERS that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at <http://www.kpmg.ca/en/services/advisory/ta/creditorlink.html> (the "**Website**").

REPORTING TO LIMITED PARTNERS

34. THIS COURT ORDERS that the Receiver may report from time to time to the Limited Partners on the progress of the Wind Down and other matters relating to the receivership in such manner as the Receiver, in consultation with RBC, consider appropriate (including, without limitation, through correspondence provided by RBC to its clients who are Limited Partners that enclose such reports or that is otherwise in form and content satisfactory to the Receiver).

GENERAL

35. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

36. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

37. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere, including, without limitation, the 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.

38. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

39. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

40. THIS ORDER is without prejudice to the right of any interested person to return to court on August 21, 2009 to seek to vary any provision of this order including the appointment of the

Receiver. To that end, a 3-hour appointment on the Commercial List has been booked for August 21, 2009. If anyone intends to come back for this purpose, they will:

- (1) provide notice to the Applicant and the Receiver by August 14, 2009; and
- (2) deliver their motion materials in support of any requested change by the close of business on August 18, 2009.

41. The provisions of paragraph 40 of this order will be mentioned in the notice letter referred to in paragraph 29 of this order.

42. Nothing in this order will operate as a stay to the relief sought in paragraphs 1(c), (e), (f), (h) and (i) of the Harcourt Application in Court File #CV-09-8227. The Receiver is to be added to the Service List in that application. As far as the Nead/Omniscope cross-application in CV-09-8227 is concerned, (a) the claim for fees will be dealt with in this receivership if a final order is made; and (b) the claim to commence a derivative action will be considered by the court on the return of this application on August 27, 2009

Schedule "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KPMG Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Belmont Dynamic Growth Fund appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the 6th day of August, 2009 (the "**Order**") made in an action having Court file number 09-8308-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order) having the priority set out in the Order, but subject to the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KPMG Inc., solely in its capacity
as Receiver of the Property (as defined in the
Order), and not in its personal capacity

Per: _____

Name:

Title:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

ORDER

McCarthy Tétrault LLP
Suite 5300
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1E6

Malcolm M. Mercer LSUC#: 23812W
Tel: (416) 601-7659
Fax: (416) 868-0673
Email: mmerc@mcCarthy.ca

James D. Gage LSUC#: 34676I
Tel: (416) 601-7539
Fax: (416) 868-0673
Email: jgage@mcCarthy.ca

Solicitors for the Debtors
DOCS# 459794v.9