

**USA CAPITAL DIVERSIFIED TRUST DEED FUND COMMITTEE**  
**FREQUENTLY ASKED QUESTIONS REGARDING**  
**DEBTORS' MOTION TO DISTRIBUTE FUNDS<sup>1</sup>**

**July 28, 2006**

**What relief are the debtors seeking in their distribution motion?**

On July 7, 2006, the debtors filed a motion requesting bankruptcy court authority to distribute to direct lenders, funds that the debtors have collected and are holding in their collection account. Since the April 13, 2006 bankruptcy petition date, the debtors have not made any distributions from the collection account to any direct lender. As of April 13th, the collection account held approximately \$9 million. The debtors reported that, as of June 30, 2006, the balance in the collection account was approximately \$93 million. For details regarding the \$93 million, please see the debtors' Loan Status Report as of June 30, 2006, which can be found on the Diversified Committee's website <http://usacapdtdf.bmcgroup.com> at the tab entitled *Latest Summary Reports*.

In their distribution motion, the debtors seek bankruptcy court permission to distribute to direct lenders approximately \$65 million of the funds held in the collection account. The debtors also request that, after deducting certain servicing fees and other fees, costs and adjustments described in the motion, they be permitted to make monthly distributions to direct lenders from loan payments made to USA Commercial Mortgage as loan servicer. With respect to the two Funds, the Diversified Fund and the First Trust Deed Fund, both of which are direct lenders, the debtors also request that the Funds be permitted to make monthly distributions to Fund members based on their pro rata ownership interest in their respective fund, if monies are available for distribution.

Copies of the distribution motion and all related pleadings, including the response filed by the Diversified Committee (discussed below), are available on the Diversified Committee's website <http://usacapdtdf.bmcgroup.com> under the tabs entitled *Documents* and *Key Pleadings*.

**Who will receive distributions if the distribution motion is approved?**

The debtors have requested that the bulk of the proposed \$65 million distribution from the collection account be distributed to the direct lenders. The First Trust Deed Fund will receive approximately \$1.8 million of that amount. As described in further detail below, the debtors have determined that the Diversified Fund is not entitled to a distribution at this time.

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<sup>1</sup> This FAQ has been prepared by the Diversified Committee's professionals. The information contained here is based on publicly available information and has been summarized for the benefit of the Diversified Fund's constituents. For more detailed information regarding the distribution motion, please review the pleadings filed with the bankruptcy court by the debtors, the Diversified Committee and other interested parties. To the extent any information contained here is based on public statements by the debtors, the Diversified Committee neither adopts such statements nor guarantees their accuracy.

### **How did the debtors determine who should be entitled to receive a distribution?**

Prior to the petition date, the debtors made regular monthly payments to investors regardless of whether the underlying loan was performing or non-performing. As a result of this practice, some investors received interest payments to which they were not entitled.

By now, all direct lenders should have received statements from the debtors which indicate whether, as of June 30, 2006 (and also as of the April 13, 2006 petition date), the debtors believe each direct lender is owed principal or interest in connection with the loans in which the direct lender invested, or whether the debtors believe that the direct lender instead was overpaid and therefore owes principal or interest to the debtors. The debtors propose to pay those direct lenders whose investor statements reflect a positive balance on Line 12 of the investor statement entitled Net Amount Currently Due to (From) Lender.

Because investors in the Diversified Fund are not themselves direct lenders, the statements sent to Diversified Fund members are different than those received by direct lenders and, instead, reflect what the debtors believe is the percentage of ownership of the Diversified Fund on account of each member's investment in the Diversified Fund. Samples of the direct lender and Fund member statements can be viewed on the Diversified Committee's website <http://usacaptdf.bmcgroup.com> under the tab entitled *Latest Summary Reports*.

The Diversified Fund, as a direct lender, has received its investor statement as of April 13, 2006 but has not yet received its June 30, 2006 statement. The Diversified Committee is following up with the debtors regarding the status of its June 30 statement. As of April 13, the debtors had calculated that the Diversified Fund had been overpaid and, therefore, that the Diversified Fund *owes* principal and interest of approximately \$4.5 million to the debtors. However, it appears from statements contained in the supplement to the distribution motion filed on July 17, 2006, that the debtors have calculated that the Diversified Fund has a negative balance of approximately \$3 million as of June 30, 2006. Due to this negative balance, the debtors have stated that the Diversified Fund will not receive any distribution at this time.

A copy of the Diversified Fund's April 13 investor statement for all loans, and a summary of the debtors' calculation, is available for viewing on the Diversified Committee's website <http://usacaptdf.bmcgroup.com> under the tab entitled *Latest Summary Reports*. The Diversified Committee will post the June 30 investor statement when it has been received from the debtors.

### **Did the Diversified Committee file a response to the distribution motion?**

Yes. On July 27, 2006, the Diversified Committee filed a limited opposition to the distribution motion. Although the distribution motion does not contemplate any payment to the Diversified Fund at this time, with \$93 million in the collections account, and thousands of investors who have not received any payments since the debtors' bankruptcy filing, the Diversified Committee believes that a significant distribution is necessary and appropriate, and that the bankruptcy court ultimately will approve some amount of distribution to investors.

That said, the Diversified Committee does not believe that it is fair and just for the Diversified Fund to bear the entire burden of the debtors' fraudulent Ponzi scheme while thousands of other direct lenders are paid in full on their original investments. As described in detail in the Diversified Committee's response, the bankruptcy court should establish a far larger holdback amount in order to enable the Diversified Fund to further research the facts and the law, and then to present to the court its case for equalizing the ultimate distribution to all investors.

The Diversified Committee has proposed that the distribution be limited to 90% of the amounts proposed by the debtors on account of interest payments and 25% of the amounts proposed by the debtors on account of principal payments. The Diversified Committee also asserts that, before any distribution is made to direct lenders, the Diversified Fund should receive an offsetting credit for the \$18.9 million in loan repayments that USA Commercial Mortgage confiscated from the Diversified Fund between February and December of 2004, undoubtedly for the purpose of paying direct lenders whose borrowers failed to pay interest.

The Diversified Committee is not asking the bankruptcy court to determine the proper characterization and treatment of direct lenders as part of the distribution motion. Rather, it requests the bankruptcy court to preserve its ability to decide that issue later by being conservative in the amount of the distribution. For example, if the distribution is made, and it later is determined that the amounts distributed should have been allocated to direct lenders differently, it could be impractical or impossible to try to bring those monies back into the estate to be properly redistributed.

### **Where can I find a copy of the Diversified Committee's response?**

Copies of the debtors' distribution motion and all related pleadings, including the response filed by the Diversified Committee, are available on the Diversified Committee's website <http://usacapdtf.bmcgroup.com> under the tabs entitled *Documents* and *Key Pleadings*.

### **When is the hearing on the distribution motion?**

The distribution motion will be heard by the bankruptcy court on **August 4, 2006 at 9:30 a.m.**

### **May I attend the hearing?**

Yes. You have two options for attending the hearing:

In Person: You are free to attend in person at the Foley Federal Building, 300 Las Vegas Boulevard South, Third Floor (Courtroom #1), Las Vegas, Nevada.

By Telephone: If you cannot attend in person, you may attend by telephone by dialing 1-888-311-9051, then Passcode 30084. Please note that you will only be able to listen, and will not be permitted to speak by telephone. Please also note that the number of telephone lines available may be limited. For the most current information about the hearing, please check the *General Calendar* tab on the Diversified Committee's website <http://usacapdtf.bmcgroup.com>.