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7 **UNITED STATES BANKRUPTCY COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9 **SAN FERNANDO VALLEY DIVISION**

10 In re: )  
11 MERUELO MADDUX PROPERTIES, INC., )  
et al, )  
12 Debtors and Debtors-in-Possession. )

Case No.: 1:09-bk-13356-KT

Chapter 11

**CHINATRUST BANK'S  
OBJECTION TO DEBTORS' FIRST  
AMENDED DISCLOSURE  
STATEMENT**

13  
14 Affects Merco Group - 3185 E. Washington  
Blvd, LLC

Date: March 19, 2010

Time: 9:30 a.m.

Place: Courtroom 301  
21041 Burbank Blvd.  
Woodland Hills, CA

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19 Chinatrust Bank (U.S.A.) ("Chinatrust" or "Bank") objects to approval of the  
20 Debtors' First Amended Disclosure Statement ("DS") on the grounds that the DS  
21 fails to provide adequate information, and describes a plan that on its face is not  
22 confirmable.  
23

24 The term "adequate information" is defined in Bankruptcy Code § 1125(a)(1).  
25 The Court has an independent obligation to determine whether a disclosure  
26 statement contains "adequate information." See, *In re Eastern Maine Electric*

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1 *Cooperative, Inc.*, 125 B.R. 329, 333 (Bankr. ME 1991) and *In re Cardinal*  
2 *Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990).

3 Additionally, a disclosure statement must be examined to determine whether  
4 it describes a plan that is so “fatally flawed” that confirmation is “impossible.” *Eastern*  
5 *Maine Electric, Id.* at 333. A court is authorized at the disclosure statement hearing  
6 to address legal issues that determine whether a plan can be confirmed. See, *In re*  
7 *Moorpark Adventure*, 161 B.R. 254, 256-58 (Bankr. C.D. Cal. 1993).

9 A disclosure statement should not be approved where the plan it describes  
10 displays fatal deficiencies or the stark absence of good faith. *In re Dakota Rail, Inc.*  
11 104 B.R. 138, 144 (Bankr. D. Minn. 1989).

## 12 I. SPECIFIC OBJECTIONS.<sup>1</sup>

### 13 1. Improper Classification of Claims Among the Debtor Estates.

14 The Debtors appear to have arbitrarily assigned unsecured creditors to  
15 certain debtor entities without a clear basis for such assignment. Whether this is  
16 done in order to properly create an impaired consenting class for each debtor cannot  
17 be determined without further information, making this a disclosure statement issue.  
18 This is also an issue that needs to be resolved prior to the vote on the plans so as to  
19 avoid having strangers to a particular entity vote a claim for confirmation of that  
20 entity’s plan.  
21  
22

23 The following is an example of this problem using the entity: Merco Group -  
24 3185 E. Washington Blvd, LLC (“3185”). The general unsecured claims against the  
25 3185 entity are described in Disclosure Statement (“DS”) Ex. H.5, page 153. There  
26

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<sup>1</sup> Chinatrust also joins in the objections of the remaining secured creditors to the DS.

1 are just two creditors listed who are not insiders: L.P. Carreras & Associates, Inc.  
2 (“Carreras”) and Mike Martinez. Neither creditor was listed in the bankruptcy  
3 schedules for 3185. Nor did either creditor file a Proof of Claim (“POC”) in the 3185  
4 case. So how are these creditors of 3185?  
5

6 Carreras did file a POC in the main MMPI case (i.e. 09-13356 KT) for  
7 \$39,710. The Carreras claim listed in the DS for 3185 is in the amount of \$652. Is  
8 this claim supposed to be part of the MMPI POC? On what basis was this assigned  
9 to 3185? This information should be disclosed in the DS.

10 Martinez does not appear to have filed a POC in the MMPI case. So where  
11 does this claim come from and how is it a claim against 3185? Further, if these are  
12 not proper claims in the 3185 case, Chinatrust should be afforded the opportunity to  
13 object to Carreras and Martinez being allowed to vote to confirm a plan for 3185,  
14 ideally prior to conducting the voting.  
15

16 **2. Illegal Cramdown Interest Rate.**

17 The Plan treats Chinatrust and other secured creditors similarly; their loans  
18 are extended for 7 years (unless they accept the Plan, then there is only a 5 year  
19 extension) and they are paid monthly with interest only from the Plan Effective Date.  
20 The Debtors propose a cram down interest rate of 4.00%.<sup>2</sup> While the interest rate  
21 determination is normally made in connection with confirmation, It is doubtful that the  
22 Court will confirm a plan with that low of a rate. And if the Debtors are required to  
23 pay a more market rate of interest, it appear that their Plan will be rendered  
24  
25

26 \_\_\_\_\_  
<sup>2</sup> In contrast, Chinatrust’s Note provides for interest at the non-default rate of 6.93%.

1 unfeasible as it is unclear whether there is enough cash to make payments at higher  
2 interest rates.

3 The determination of the appropriate cram down interest rate was  
4 complicated by the Supreme Court case of *Till v. SCS Credit Corp.*, 541 U.S. 465,  
5 124 S.Ct. 1951, 158 L.Ed.2d 787 (2004). *Till* involved a chapter 13 debtor, and  
6 proposed a formula that starts with the prime rate as reported in the daily press and  
7 makes an upward adjustment based on evidence of the estate's circumstances, the  
8 nature of the security, and the duration and feasibility of the reorganization plan. (*Till*,  
9 541 U.S. 465, 479). The *Till* court approved a cram down rate of prime plus 1.5%,  
10 The opinion, however, cited with approval the fact that other courts starting from the  
11 prime rate "have generally approved adjustments of 1% to 3%." (*Till*, 541 U.S. at  
12 480).  
13  
14

15 The current prime rate according to Barron's <sup>3</sup> is 3.25%. Adding 1-3% would  
16 make the appropriate the cram down between 4.25% and 6.25%, significantly higher  
17 than the Debtors' proposed 4.00%.

18 In the wake of *Till*, courts hearing chapter 11 cases have not necessarily  
19 followed the formula approach of *Till*, because the plurality noted that "there is no  
20 readily apparent Chapter 13 'cramdown market rate of interest.'" (*Id.* at 476 n. 14).  
21 This follows from the fact that "[b]ecause every cramdown loan is imposed by a court  
22 over the objection of the secured creditor, there is no free market of willing  
23 cramdown lenders." *Id.* But the same is not true in the Chapter 11 context, as  
24 numerous lenders advertise financing for Chapter 11 debtors in possession. Thus,  
25  
26

<sup>3</sup> [http://online.barrons.com/mdc/public/page/9\\_3010.html?refresh=on](http://online.barrons.com/mdc/public/page/9_3010.html?refresh=on).

1 when picking a cramdown rate in a Chapter 11 case, it might make sense to ask  
2 what rate an efficient market would produce. (Id.) This footnote suggests that a  
3 formula approach like the one adopted by the plurality is not required in the Chapter  
4 11 context.

5  
6 The first court to address *Till's* application in the chapter 11 context was *In re*  
7 *Prussia Associates*, 322 B.R. 572, 589 (Bankr. E.D. Pa. 2005). *Prussia* applied a  
8 cramdown interest rate of prime plus 1.5%. (*Prussia, Id.* at 591-592).

9  
10 *In re American Home Patient, Inc.*, 420 F.3d 559 (6<sup>th</sup> Cir. 2005) the court  
11 declined to blindly adopt *Till's* endorsement of the formula approach for Chapter 13  
12 cases in the Chapter 11 context. Rather, the Court followed Footnote 14 of the  
13 opinion, which offered the guiding principle that "when picking a cramdown rate in a  
14 Chapter 11 case, it might make sense to ask what rate an efficient market would  
15 produce." (*Till*, 541 U.S. at 476 n. 14, 124 S.Ct. 1951). This means that the market  
16 rate should be applied in Chapter 11 cases where there exists an efficient market.  
17 (*American Home, Id.* 420 F.3d 559, 568).

18  
19 Following the market rate approach, the Circuit Court in *American Home*  
20 approved of the methodology of the bankruptcy court that resulted in a cramdown  
21 rate of 6.785% by taking the interest rate on a six-year Treasury note plus 3.5%.  
22 (*American Home*, at 562).

23 The same Barron's web site, *supra*, lists the 5-year treasury rate as 2.409%.  
24 Adding 3.5% results in a cramdown rate of 6.091%. A rate that, if approved in this  
25 case, is substantially higher than what the Debtors offer and could render Debtors'  
26 plan not feasible. Because this interest rate issue is so material to the possible

1 success of the plan, the Court should make a determination of the appropriate  
2 cramdown rate before confirmation.

3 **II. CONCLUSION**

4 For the reasons set forth above, Chinatrust respectfully requests that the  
5 Debtors' First Amended Disclosure Statement not be approved at this time, and / or  
6 the Court should decide the proper cram down interest rates and claim classification  
7 before creditors are asked to vote on the plan.  
8

9 DATED: March 12, 2010.

ROUTH CRABTREE OLSEN, P.S.

10 By: /s/ Steven K. Linkon  
11 Steven K. Linkon,  
12 Attorney for Chinatrust Bank  
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In re: <b>MERUELO MADDUX PROPERTIES, INC., et al.</b>	CHAPTER 11  Debtor(s). CASE NUMBER 1:09-bk-13356-KT
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### PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Routh Crabtree Olsen, P.S., 3535 Factoria Boulevard SE, Suite 200, Bellevue, WA 98006

A true and correct copy of the foregoing document described as Chinatrust Bank's Objection to Debtors' First Amended Disclosure Statement will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On March 12, 2010, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

**See Attached Service List re Notice of Electronic Filing**

Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On March 12, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

By U.S. Mail

Hon. Kathleen Thompson, U.S. Bankruptcy Court, 21041 Burbank Blvd., Suite 305, Woodland Hills, CA 91367

Service information continued on attached page

**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on March 12, 2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

<u>March 12, 2010</u> Date	<u>Annalisa Provence</u> Type Name	<u>/s/</u> Signature
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In re:  
MERUELO MADDUX PROPERTIES, INC., et al.

Debtor(s).

CHAPTER 11

CASE NUMBER 1:09-bk-13356-KT

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In re:  
MERUELO MADDUX PROPERTIES, INC., et al.

Debtor(s).

CHAPTER 11

CASE NUMBER 1:09-bk-13356-KT

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