

ANALYSIS OF NAMEPROTECTED:

NAME PROTECTED (NEWCO) was formed by and between NAME PROTECTED (a wholly-owned subsidiary of NAME PROTECTED, LP herinafter referred to as “INV”) and NAME PROTECTED, LLC pursuant to the provisions of the Limited Liability Company Agreement of NAME PROTECTED Associates, LP dated November 6, 1997 (the Agreement). NEWCO’s purpose is to acquire/ develop a portfolio of mid-level hotels and/ or investments in entities owning such properties.

This memo documents our understanding of the application of the provisions of FASB Interpretation No. 46R, *Consolidation of Variable Interest Entities (FIN 46 (R))*, to the investment NAME PROTECTED, LP (INV) has NEWCOested inNEWCO.

BACKGROUND:

INV contributed \$5,321,000 in cash upon formation with a commitment to fund up to an additional \$18,679,000 (pari passuwith the other member) for an 80% ownership interest in NEWCO. The other member, NAME PROTECTED LLC serves as the operating member and is responsible for carrying out the day to day operations and actions approved by the operating committee. Each member has 50% control of the management committee and accordingly the voting rights are not commensurate with the ownership (variable). Majority vote of the management committee is required to approve such actions as: sale or transfer of any or all of the company’s assets, financing or refinancing, plan and budget approvals and several detailed issues which clearly grant a participatory interest in the activities of NEWCO to both INV and the other member.

NEWCO is capitalized with the initial and future contributions from its members and is authorized to obtain project financing to the extent necessary to acquire, develop, and improve hotel properties. Section 3.05 of the Agreement states that “Members of the Company shall not be required to personally guarantee any financing obtained by the Company... and the Company hereby agrees to pay the cost of any letters of credit or other credit enhancements that may be required as a condition to obtaining financing”.

MEASUREMENT DATE:

The operations have fallen short of the lenders original underwriting. Consequently, INV has issued a guarantee. Such issuance indicates an event under FIN 46(R) ¶7 constituting an updated measurement date. Therefore our analysis of the applicability of FIN 46(R) considers the impacts of the guarantee.

SCOPE EXCLUSION:

Because the NEWCO platform “operates” hotels, the “business” exclusion will be considered for this deal. The business exclusion may not be used if the financial support of INV exceeds 50% of the financial support. NEWCO has been capitalized with 80% of the equity financing provided by NAMEPROTECTED. The business exclusion may not be applied based on our computation. No further consideration of the business exclusion is planned.

APPLICATION OF FIN 46R TO STRUCTURE NOTED ABOVE:

Section 5 of FIN 46R defines what is a “variable interest entity”. Pursuant to these provisions, the following compliance is necessary to NOT qualify as a VIE:

Criteria 1 5(a): The total equity investment at risk must be sufficient to permit the entity to finance its activities without additional subordinated financial support:

Fin 46R ¶7a requires that the determination be re-performed if “contractual arrangements are changed in a manner that changes the characteristics or adequacy of the entity’s equity investment at risk.” Despite the fact that the Agreement does not require any member to provide any guarantees or credit enhancements, INV has guaranteed loans entered by NEWCO. We deem this to require reassessment per above and also note that as the guarantee qualifies as subordinated financial support, thus disqualifying the exclusion requirement of 5a. Accordingly a probability weighted average cash flow analysis¹ was performed to determine which member shares the majority of the residual losses and returns; see Attachment A hereto.

1 The probability weighted cash flow analysis does not allocate any fees paid to either member as an expected loss or return pursuant to FIN 46R B18. Such fees are all deemed normal market rate fees for services provided, and are not tied to any of the cash flow distributions of each. Further such fees are treated as any other operating expense of the entity in priority of payment and a component of the reductions to available cash flow for distributions to members.

We have performed an analysis (attached hereto) utilizing 4 scenarios, under a CON 7 probability weighted average approach. Such analysis considered each of the partners as a separate variable interest, as well as the debt as its own separate variable interest. Based upon this analysis, INV is the primary beneficiary: absorbing 77% of variable losses and 78% of residual returns.

CONCLUSION:

NEWCO is a VIE, of which INV is the primary beneficiary. Consequently, **NEWCO shall be consolidated for all years presented**, which differs from its previous accounting treatment under the controls-based framework, as an equity investment.