

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, January 4, 2021 1:02 PM
To: Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Request for Guidance - Timeshare Management Contracts

From: Walsh, Kathryn E.
Sent: Monday, January 4, 2021 1:01:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Request for Guidance - Timeshare Management Contracts

We agree that the management contracts could be incidental to the timeshare business as long as Target owns the properties it manages; however, the assets of the management business itself would not be incidental and must be valued as a non-exempt asset.

From: [REDACTED]
Sent: Monday, December 28, 2020 11:07:27 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for Guidance - Timeshare Management Contracts

Dear PNO Staff,

We hope you are enjoying the holidays. We would like to get your guidance regarding certain management contracts related to a timeshare business as described below.

Buyer is seeking to acquire 100% of the voting securities of a timeshare company ("Target") that engages primarily in the acquisition, development, management, and marketing of vacation ownership interests. Target sells vacation ownership interests (points) to consumers who are entitled to vacation in Target's developed and managed properties. We are identifying the non-exempt assets held by Target to determine if the non-exempt assets have a collective fair market value of less than \$94 million and Buyer's acquisition of Target would therefore qualify for the Section 802.4 exemption.

Timeshare assets are exempt. See the ABA Antitrust Section's Premerger Notification Practice Manual at # 113 ("With respect to an acquisition of timeshare facilities ... , the PNO has advised that such assets are exempt under either (1) Section 802.2(d) as an acquisition of 'residential properties' or (2) Section 802.2(e) as an acquisition of a hotel.") We understand from informal interpretation number 0608010 that the PNO "considers timeshare-related assets such as [cash and cash equivalents; inventory (that is, unsold units or points); and mortgages and installment contracts receivables associated with the sale of the points] to be exempt, either as incidental to the ownership of residential property (under 802.2(d)) or as incidental to the ownership of a hotel or motel (under 802.2(e))."

Incidental to developing properties and selling vacation ownership interests, Target provides management services to all of the properties in its portfolio. Many of these assets are owned by associations which are non-stock corporations whose interests are owned by Target and by Target's customers (those persons who have purchased points from the Target). In many of these associations, Target has the right to designate or appoint at least 50% of the association's members. In some of the associations, Target cannot designate or appoint at least 50% of the directors. Target has contracts to manage the realty of all such associations.

Our question is whether the PNO agrees that the Target's management contracts are exempt as either (1) incidental to the ownership of residential property (under 802.2(d)) or (2) incidental to the ownership of a hotel or motel (under 802.2(e)). Would all of Target's management contracts fit into one of these exemptions or only the management contracts related to the realty assets owned by the associations in which Target has the right to designate or appoint at least 50% of the directors?



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