

Partner
Writer

Tim Wiedman
Tehani Goonetilleke



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Email transmission

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email corporations.joint@aph.gov.au

Dear Sir or Madam

Future of Financial Advice reforms - submission

We refer to the *Corporations Amendment (Future of Financial Advice) Bill 2011* (Cth) and *Corporations Amendment (Further Future of Financial Advice) Bill 2011* (Cth) (collectively **Bills**).

We thank you for the opportunity to provide feedback on the proposed reforms and make this submission on behalf of A.P.V.C. Ltd ACN 093 228 141 the responsible entity of the Accord Vacation Club ARSN 094 718 108 (**Club**).

About the Club

- 1 The Club is a member of the Australian Timeshare and Holiday Ownership Council (**ATHOC**). The Club is a points-based timesharing scheme in which different classes of members hold different numbers of points, which are redeemed for holidays at 21 Club resorts or exchanged for holidays worldwide with an exchange provider.
- 2 The Club has a membership base of more than 28,000 members who enjoy the lifestyle benefits of being a member of the Club. The Club is part of the wider Accor Group, the largest hotel management group in the Pacific Region, whose brands include Sofitel, Pullman, MGallery, Grand Mercure, Novotel, Mercure, Ibis and All Seasons.

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Level 11 Central Plaza Two 66 Eagle Street Brisbane QLD 4000 | GPO Box 1855 Brisbane QLD 4001 Australia | **ABN** 42 721 345 951
Telephone +61 7 3233 8888 | **Fax** +61 7 3229 9949 | **Web** www.mccullough.com.au

Partners

Brett Heading
Peter McKnoulty
Guy Humble
James Peterson
Peter Kennedy
Susan O'Rourke
Rodney Bell
Ian Hazzard
Peter Stewart
Brad McCosker
Tony Cotter
Damien Clarke
Michael McCafferty

Dominic McGann
Bill Morrissey
Stuart Macnaughton
Brad Russell
Sean Robertson
Malcolm McBratney
Mark West
Matthew Burgess
Timothy Longwill
Diana Lohrsch
Patrick Holland
Trudy Naylor
Russell Thirgood
Derek Pocock

Reece Walker
Kristan Butler
Darren White
Kristen Podagiel
David Marschke
David Downie
Tim Wiedman
Michael Rochester
Hayden Bentley
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Matt Bradbury
Scott Whitla
Jeremy Kennedy
Paul McLachlan

Heather Watson
Cameron Dean
Janelle Moody
Troy Webb
Brendan Tobin
Michael Moy
Tim Hanmore

Special Counsel

Prof Jeff Mann AM
Peter Gill
Sophie Ward
Kim Trajer
Lisa Blumke
Neal Dallas
Danielle Natoli
Tim Sayer
Belinda Hughes
Andrew Muir
Charlotte Davis
Barbara Bogiatzis

Consultants

Kerry Prior AM
Tim Whitney
Michael Wynter
Prof Paul von Nessen
Prof Peter Little
Prof Myles McGregor-Lowndes OAM
Donald Palmer
Dr Amanda McBratney
Phillip Toyne
Gerard Thorpe
Lesleigh Mayes

- 3 Like other points-based holiday ownership schemes, sales of memberships in the Club are generated by members of the public attending sales presentations conducted by the Club's authorised representatives.
- 4 As disclosed in the sales presentations and the Club's product disclosure statement, a membership in the Club is not intended to generate a financial return or gain. Instead, membership in the Club is a lifestyle product, where value is derived from taking holidays over the life of the Club (which is 80 years).

Prohibition on 'conflicted' remuneration structures

- 5 We understand that the proposed reforms as detailed in the Bills will prohibit the payment of any form of conflict-based remuneration structures in connection with the provision of personal or general advice for retail financial products. This will include commissions, volume-based payments or payments made to advisers that are dependent upon meeting sales targets in relation to retail products or investments.
- 6 In effect, this will capture remuneration structures between timeshare companies and their sales centres that are dependent upon the volume of sales generated in the Club's products. It will also include salary structures that reward an authorised representative on a volume based system and bonuses that are dependent on sales targets being met.
- 7 We understand from ATHOC's discussions with ASIC that the proposed prohibition on commissions and volume-based remuneration are not intended to apply to the timeshare industry. However, in the event this is not the case, we make this submission for an exemption based on the reasons set out below.

No 'choice' of product

- 8 The Club's authorised representatives do not have a choice of products from which to select when advising customers, only a choice of levels of membership (number of points). There is only one type of timeshare managed investment scheme available for purchase, namely the Club. The Club's authorised representatives do not provide advice on, or recommend customers purchase, interests in the timeshare schemes of other operators.
- 9 The proposals in the Bills are grounded in the assumption that, when an adviser is remunerated by means of commission or on a volume basis, there is a conflict in the advisory process. That is, the adviser is financially incentivised to recommend one product over another, perhaps more suitable product, because he or she will receive a bigger salary, bonus or commission for selling that product.
- 10 In the case of timeshare, however, representatives employed exclusively by one issuer do not have a choice of products from which to select when advising clients. Most primary timeshare issuers in Australia only operate one scheme and there is only one type of timeshare managed investment scheme available for purchase.
- 11 These interests are not sold for the purpose of making a financial return. The authorised representatives do not offer any kind of financial planning or personal financial advice that consider all the relevant factors such as the client's investment aims and resources.
- 12 While we do give personal advice, tailored to how often customers holiday, where they like to holiday, how large their family is, how much they like to spend on holidays (and so on), this is not advice analogous to personal financial advice which would consider all the relevant factors such as

the client's investment aims and resources. Indeed, the various exemptions granted by ASIC to the timeshare industry is on the basis timeshare is not promoted as an investment.

- 13 Further, most product issuers allow members of a timeshare scheme, to purchase 'top-up' style credits. This enables members to have access to a wider range of vacation options within the scheme. In this scenario, there is no potential conflict involving the sale of interests in the timeshare scheme, as they are interests within the same scheme.

'Best interests' duty should already achieve the desired end

- 14 To the extent that there is an incentive for an authorised representative to recommend an interest in the timeshare scheme that is not suitable, we submit that the proposed statutory fiduciary duty should be sufficient to address and prevent this behaviour.
- 15 Specifically, the statutory fiduciary duty should prevent an authorised representative from recommending a retail client purchase a larger interest in the timeshare scheme than may be in the client's best interests.

Compliance benefits of paying commission

- 16 In the experience of the Club, paying modest commissions to authorised representatives is an important tool to encourage compliance and best practice.
- 17 The sale of timeshare is subject to a seven day cooling off period (or longer for licensees who are not members of ATHOC). The Club only pays commissions on completed (that is, non-rescinded) sales which are fully compliant with the Club's legal and compliance responsibilities. In effect, authorised representatives are discouraged from placing undue pressure on purchasers at the time of sale or otherwise making a recommendation or sale that is not in the interests of the client, as if a customer exercises their cooling-off rights, which is more likely to occur if the recommendation to acquire or the number of points recommended for purchase is not suitable for the customer, the authorised representative does not receive a commission.
- 18 Also, underlying the proposal to ban commissions is the idea that a representative will always recommend a larger purchase than is suitable for the purchaser, because their volume based remuneration encourages them to do so. However, in the Club's experience, the removal of commissions would create a greater temptation to our representatives by inadvertently creating a 'moral jeopardy' situation. In the Club's view, some people would like to have a lot of holidays, or expensive holidays, or overseas holidays. Those people may be well suited to one of the more expensive levels of membership and that is what a representative is trained to advise them to buy. Of course, the more expensive our recommendation, the less likely it is that a person will be able or inclined to buy it.
- 19 By including a modest commission as part of a representative's remuneration, the representative is incentivised to offer the appropriate level of membership in the hope that it will be purchased and they will receive a reward for the sale. Without a commission, the representative will not be rewarded for such a sale. In that case a representative may be tempted to make incorrect recommendations that everyone is suitable to purchase entry level but cheaper memberships which will not be suitable for the purchaser.

Adverse impacts of prohibiting commissions

- 20 If the proposals as provided in the Bills are passed in their current form and licensees are no longer allowed to reward staff financially according to their sales performance, this will have a potential adverse impact on the operations of the Club.

- 21 Being in the accommodation industry as opposed to the financial services industry, the Club must compete heavily with other sales industries which pay commissions and are not affected by the proposed reforms to employ the best sales staff. These proposed reforms will jeopardise the Club's ability to attract suitable sales staff and retain staff that may choose to take advantage of more favourable remuneration packages in other industries. The industry would stand to lose its best salespeople, many of whom have a strong connection and sound understanding of the industry and an excellent grasp of the product.
- 22 Further, the prohibition of commission-based remuneration structures would adversely impact the future growth of the Club and other timeshare schemes to the detriment of both existing members and the wider business community as there would be a reduction in the following:
- (a) future resort development;
 - (b) direct timeshare related employment jobs;
 - (c) indirect timeshare related employment jobs (community marketing employment);
 - (d) other businesses that rely on the timeshare industry (suppliers of goods and services that are supported by the timeshare industry);
 - (e) substantial taxable income and revenue lost; and
 - (f) tourism in general in Australia.

Discharge of 'best interests' duty

- 23 The Bills provide that, in discharging the best interests duty, among other matters, in recommending a financial product an adviser must:
- (a) conduct a reasonable investigation into the financial products that might achieve the client's objectives and meet the client's needs which would reasonably be considered as relevant to the advice provided; and
 - (b) assess the information gathered in the investigation.
- 24 As mentioned above, the Club's authorised representatives only provide advice on, or recommend customers acquire, interests in the Club. In making such recommendations, the authorised representative assesses the customer's holiday needs and objectives to ensure membership of the Club is appropriate for the customer and the number of points or type of membership recommended can achieve the customer's holiday objectives.
- 25 The Club's authorised representatives do not consider other timeshare schemes in providing advice to a customer and the customer would not expect the authorised representative to do so. Whilst the requirement to consider other financial products is only required where it would be relevant to the advice provided, we recommend the Bills clearly state that the obligation to consider other financial products does not apply to an adviser who only advises on the products of a single issuer.
- 26 In this circumstance, a more appropriate consumer protection mechanism is for the adviser to disclose to the customer that they have only considered the product or products offered by the issuer they act on behalf of.

On behalf of the Club, we urge the Government to exempt the timeshare industry from the proposed conflicted remuneration provisions and clarify that the obligation to consider other financial products does not apply to an adviser who only recommends one product or the products of a single issuer.

If you have any questions please contact us.

Yours sincerely

Tim Wiedman

Partner