February 14, 2005

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
Canberra ACT 2600

Subject; Inquiry Into Regulation Of Timeshare Industry

Dear Mr/Madam Secretary:

The American Resort Development Association (ARDA) is a Washington, D.C. - based trade association representing the vacation ownership and resort development industries. ARDA today has nearly 1,000 members in the U.S. and overseas. ARDA's diverse membership includes companies with interests in vacation ownership resorts, community development, fractional ownership, camp resorts, land development, second homes and resort communities. Members range from small, privately held firms to publicly traded companies and international corporations.

ARDA has been asked to present its views concerning the relative merits of regulating the marketing and sale of interests in resort properties on the federal or state levels. In short, the experience of our members has demonstrated conclusively that a single federal regulatory scheme promotes greater compliance, affords greater consumer protections, achieves greater operational efficiency, and encourages greater development of underserved regions than the far more cumbersome alternative of state-by-state regulation.

Timeshare is one of the fastest growing segments of the hospitality industry. Worldwide timeshare sales in 2002 exceeded 9.4 billion. Worldwide, 6.7 million consumers own timeshare. In addition, the industry represents 5,425 resorts worldwide with locations in 95 countries.

As you know, the United States, like Australia, is a federal system of government, in which the national and state governments often share concurrent jurisdiction over a wide range of commercial transactions and economic matters. The United States Constitution expressly confers upon the federal Congress the authority to regulate interstate commerce, a concept which courts have construed quite broadly.

Historically, the regulation of commerce in the U.S. initially was conducted on the state level, which was appropriate in an era when most commercial activity had an exclusively local nexus. However, that regulatory model proved ill-suited to emerging sectors of the economy which necessarily operated on a national, or even international, basis.

At first, states sought to accommodate those new economic realities by adopting uniform laws which permitted businesses to operate within and among many states without subjecting themselves to a vast array of different, and perhaps conflicting, legal rules. The principal example of that effort to conform state laws is the Uniform Commercial Code, which continues to govern many everyday commercial transactions. Yet numerous states have failed to resist the temptation to tinker with the uniform laws, often for political reasons unrelated to consumer protection or other valid policy concerns, thus adding greatly to the compliance burden for businesses, but not helping consumers. In addition, even supposedly uniform state laws have proven to be an inadequate basis upon which to regulate certain industries which are characterized by either great geographic breadth, rapid evolution, or both. Individual states are hard pressed to regulate businesses whose activities take place among many jurisdictions, and, in turn, those businesses are hard pressed to conduct their activities, many of which lack a clear nexus to a specific jurisdiction, in accordance with multiple, possibly inconsistent, state laws. Furthermore, rapidly evolving businesses present a constantly changing set of legal issues with which the various legal systems of each individual state simply cannot all keep pace.

In recent years, the United States increasingly has addressed the unique regulatory issues presented by geographically diverse and rapidly evolving industries by developing federal rules governing those industries which preempt similar state laws. That trend, first evident in the regulation of railroads, accelerated markedly with the Employee Retirement Income Security Act of 1974, which applied to the employment practices of most large employers, and has since extended to many of the most prominent sectors of the American economy, including, in many crucial aspects, the resort and tourism industry.

Few industries are as geographically diverse or as rapidly evolving as the resort industry. Unlike most products, which are marketed, purchased and consumed locally, the resort industry offers a product that, by necessity, is typically utilized far away from the purchaser's home, and is often marketed from still another jurisdiction. Also, the pace of innovation and change in the resort industry is ever-evolving. ARDA was established in 1969, and in the intervening decades, our industry has changed beyond recognition in almost every respect, from the range of resort options we offer, the means through which we service our customers, and the growing role of multinational businesses. I am also pleased to note that the ethical standards by which our members abide are more stringent than ever, and industry self-regulation is increasingly rigorous.

Promoting legal compliance is central to ARDA's mission, and of vital importance to our members. Toward that end, the experience of our members has demonstrated conclusively that a single federal regulatory scheme promotes greater compliance, affords greater consumer protections, achieves greater operational efficiency, and encourages greater development of underserved regions than the far more cumbersome alternative of state-by-state regulation. Our members have found that individual state laws rarely serve a public policy goal that could not be better achieved through responsible federal regulation. Instead, idiosyncratic state laws often serve merely as a trap for the unwary, in which technical violations can trigger disproportionate penalties. Even if the businesses fully comply with state laws, doing so can generate excessive costs that benefit no one. That compliance burden can present a significant impediment to doing business in a jurisdiction, particularly areas that are small and underserved, and present little opportunity for immediate investment returns.

A uniform set of federal consumer protections which would preempt state laws would seem particularly appropriate for Australia's resort industry because of the country's unique demographic characteristics and patterns of development. If the industry is to expand into the less developed portions of the country, it is likely to do so incrementally, and the returns on new investments there, particularly given the lack of existing infrastructure, are likely to be modest to nonexistent in the intermediate term. In view of those limited returns, any additional costs which are imposed on the industry are likely to present a disproportionate impediment to new economic activity. Specifically, if the resort industry is subjected to a whole new regulatory scheme as a consequence of making even a modest investment in a less developed jurisdiction, that will be a significant disincentive to investing there at all. Alternatively, if the resort developers were subject only to uniform federal consumer protection

standards which preempted state laws, there would be no regulatory impediment whatsoever to making the desired investments.

Thank you for permitting ARDA to express its views on this important matter. Should you have any questions, or if I may be of assistance in any way, please do not hesitate to contact me at 202.371.6700.

Very truly yours,

Howard C. Nusbaum
President