PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Inquiry into Regulation of the Timeshare Industry

On 8 December 2004, the Parliamentary Joint Committee on Corporations and Financial Services resolved to inquire into the regulation of the time share industry in Australia, with specific reference to:

- the effectiveness of the current regulatory arrangements for the time-share industry under the *Corporations Act 2001*, including:
    - whether the current regulatory arrangements are confusing to consumers and inhibit the development of industry;
    - whether the current regulatory arrangements place an undue compliance cost on industry;
    - whether the current regulatory arrangements are effective in protecting consumers of time share products.
- advantages and disadvantages of possible models for reform of the regulatory arrangements applying to the time share industry, including:
    - self-regulation of the industry on a national basis;
    - alternatives to coverage under the *Corporations Act 2001*, either by separate Commonwealth legislation or state and territory legislation

Response to terms of reference
by
Associate Professor Mike Dempsey of Griffith University.

In summary, the rationale of Tier 1 (Securities and Investments) compliance is that of equipping purveyors of such financial products with a fundamental understanding of what they are communicating to the public (and for which they may have a commission incentive to "sell"). To say that "time-share" does not constitute an "investment" is to miss the truth that purchasers of time-share products are typically in a very significant sense "investing" in their future. The typically significant amounts of money (upwards of $20,000) committed at contract are not for immediate "consumption", they are "forward looking" – which is to say, "invested" for the future. A point that should be recognised is that availing of a time-share opportunity with a view to taking future holiday vocations *does not a priori* offer the optimal mechanism for laying the foundations for taking such holiday vocations. This is because all financial decisions carry with them an opportunity cost. That is to say, if such monies had *not* been committed to a time-share opportunity, they would have been available to be invested in alternative investment opportunities. Hence understanding of a time-share opportunity requires an understanding of "investment" alternatives. For this reason it appears axiomatic that purveyors of time-share instruments who wish to be accredited with a sense of "professionalism" have an

understanding of the nature of risk and return as they might relate to making a meaningful assessment of the client who is considering choosing a time-share product.

In our view, therefore, the Tier 1 level covers at a most fundamental level an appropriate knowledge base for professional communication with a client who has shown interest in a time-share product.

In addition, compliance at the Tier 1 level requires that those who interact with the public have a clear understanding of their legal requirements, in particular in respect of providing a client with the "Financial Services Guide" (FSG) and the "Product Disclosure Statement" (PDS). Without a full compliance to the required provision of such statements, a client may find themselves undertaking a significant financial commitment at a level of significant ignorance.

Having a "registered" training organisation (RTO) – which has arms-length independence – hold a degree of responsibility for conducting the training of personnel who promote time-share products – in regards to requiring both a fundamental understanding of the nature of time-share products as well as attendant disclosure responsibilities (at a most elementary level, it must be said) - is clearly more, rather than less likely, to promote an integrated approach to the level of professionalism in the time-share industry as the public may expect.

By seeking to raise the educational standards of its personnel in the above regards, a body should expect to benefit in its promotion to the public. In contrast, to withdraw into Level 2 compliance – which is conducted "in house" with no arms-length surveillance – might well be viewed by the public as the body seeking to reduce rather than highlight the transparency of its operations.

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