

# ATHOC Submission to ASIC

## Consultation Paper 272 – Remaking ASIC class orders on time-sharing schemes

---

### **The Australian Timeshare and Holiday Ownership Council**

The Australian Timeshare and Holiday Ownership Council (**ATHOC**) is a not-for-profit industry body established in 1994 to represent all interests involved in the Australian timeshare industry, and to work toward national industry best practice.

ATHOC operates nationally with an elected board representing a range of membership categories covering resorts, timeshare owners, developers and promoters, marketers, exchange companies and organisations providing professional advice to the timeshare industry.

ATHOC aims to foster a high standard of ethics and adherence to industry best practice amongst its members and to maintain good standing with all stakeholders (by requiring its members to abide by a code of ethics and a code of practice), to continually promote the benefits of the industry and to protect the goodwill of both members and consumers, and to assist members to achieve growth and profitability.

ATHOC's members include AFS licensees who operate registered timeshare schemes, including the Accor Vacation Club, Classic Holidays, Marriott Vacation Club, ULTIQA and Wyndham Vacation Resorts Asia Pacific.

ATHOC's submission is formally endorsed by the Accor Vacation Club, Marriott Vacation Club, ULTIQA and Wyndham Vacation Resorts Asia Pacific (in each case as the submission relates to points-based timeshare schemes) and by Classic Holidays (in relation to the entire submission). ATHOC has also consulted with timeshare resort members who operate pursuant to relief granted by ASIC regarding the submission on proposal D1.

ATHOC welcomes ASIC's review of the relief currently applying to the timeshare scheme industry and is pleased to provide its submission on Consultation Paper 272. ATHOC is happy to discuss any details of its submission with ASIC.

## Submissions

### Proposal B1

To preserve its effect beyond the sunset date of 1 April 2017, we propose to continue the relief currently given by [CO 00/2460] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at [www.legislation.gov.au](http://www.legislation.gov.au) by clicking on the following direct link: [CO 00/2460].

The changes proposed are to:

- (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;
- (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);
- (c) reflect current drafting practice and update the format of the current document;
- (d) simplify the drafting to give greater clarity;
- (e) update legislative references and definitions; and
- (f) correct any minor drafting errors.

### ASIC question

#### B1Q1

Do you rely on the relief in [CO 00/2460]? Are you aware of widespread reliance on [CO 00/2460]?

### Our response

ATHOC members who are responsible entities of registered timeshare managed investment schemes do rely on the relief in CO 00/2460 and only value scheme property where the responsible entity has reasonable grounds to believe that a valuation is in the best interests of members or is necessary for fairness to all members, rather than the position applying under section 601FC(1)(j) which requires scheme property to be valued at regular intervals appropriate to the nature of the property. As far as ATHOC is aware, the CO 00/2460 relief is widely relied upon as it is utilised by all of ATHOC's members who are responsible entities.

#### B1Q2

Do you agree with the proposal to continue the relief in [CO 00/2460] and with the terms of the relief? If not, please provide reasons.

ATHOC agrees with the proposal to continue the relief in the form set out in section 6 of ASIC Corporations (Time-Sharing Scheme) Instrument 2016/XX (**Instrument**), including the requirement that the relief is only available if the timeshare scheme is not promoted as a means of generating a financial return (other than by a rental pool).

ASIC question	Our response
<p><b>B1Q3</b> Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p>	<p>ATHOC considers that continuation of the existing relief will ensure that timeshare schemes (and consequently their members) do not incur unnecessary valuation costs which may be the case if the relief is not continued and responsible entities are required to obtain regular valuations of real property (and other assets) owned by timeshare schemes. Further, there is no demonstrable benefit that would be given to consumers if valuations were obtained as participation in a timeshare scheme is not promoted for financial return.</p>
<p><b>B1Q4</b> Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p>	<p>No. ATHOC does not consider any consumer protection issues have arisen with the relief to date (which has been in place since 2000) and does not consider its continuation will raise any consumer protection issues.</p>
<p><b>B1Q5</b> Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p>	<p>ATHOC does not consider any additional protections are required or necessary to assist consumers.</p>

## Proposal B2

To preserve its effect beyond the sunset date of 1 April 2017, we propose to continue the relief currently given by [CO 02/315] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at [www.legislation.gov.au](http://www.legislation.gov.au) by clicking on the following direct link: [CO 02/315].

The changes proposed are to:

- (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;
- (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);
- (c) remove conditions that duplicate the AFS licence conditions under PF 209;
- (d) reflect current drafting practice and update the format of the current document;
- (e) simplify the drafting to give greater clarity;
- (f) update legislative references and definitions; and

(g) correct any minor drafting errors.

### ASIC question

### Our response

#### B2Q1

Do you rely on the relief in [CO 02/315]? Are you aware of widespread reliance on [CO 02/315]?

All of ATHOC's members who are responsible entities rely on the relief in CO 02/315. As ATHOC's members comprise the responsible entities of Australia's largest registered timeshare schemes, ATHOC considers reliance on the relief is widespread.

#### B2Q2

Do you agree with the proposal to continue the relief in [CO 02/315] and with the terms of the relief? If not, please provide reasons.

ATHOC supports the proposal to continue the relief, the proposed terms of the new relief in section 7 of the Instrument, the removal of conditions which duplicate AFS licence conditions and the requirement that the relief is only available if a timeshare scheme is not promoted as a means of generating a financial return (other than by way of a rental pool).

#### B2Q3

Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

There would be considerable costs for responsible entities if the relief is not continued as existing registered timeshare schemes have operated for many years in reliance on the relief and such relief is reflected in the constitutions of registered timeshare schemes. While ATHOC's members have not undertaken an exercise of quantifying the cost if the relief is not continued, these costs would be significant and detrimental to timeshare members. Further, there would be no additional benefits to consumers if this relief is not continued and restrictions would be imposed on pricing changes which are generally based upon consumer demand for the product.

#### B2Q4

Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

Given the timeshare industry has been operating in reliance upon the relief since its grant in 2002 (and similarly which applied prior to the current relief), ATHOC does not consider continuing such relief raises any consumer protection issues.

#### B2Q5

Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.

ATHOC does not consider any additional protections are required to assist consumers given the relief has been successfully operating for a number of years. ATHOC also supports ASIC's proposal to restrict the relief to timeshare schemes which have not been promoted as a means of generating a financial return (other than by way of a rental pool).

### Proposal B3

To preserve its effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 03/104] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at [www.legislation.gov.au](http://www.legislation.gov.au) by clicking on the following direct link: [CO 03/104].

The changes proposed are to:

- (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;
- (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);
- (c) reflect current drafting practice and update the format of the current document;
- (d) simplify the drafting to give greater clarity;
- (e) update legislative references and definitions; and
- (f) correct any minor drafting errors.

### ASIC question

### Our response

#### B3Q1

Do you rely on the relief in [CO 03/104]? Are you aware of widespread reliance on [CO 03/104]?

All ATHOC members who are responsible entities rely on the relief in CO 03/104. As ATHOC members include the responsible entities of Australia's largest registered timeshare schemes, ATHOC considers reliance on the relief is widespread.

#### B3Q2

Do you agree with the proposal to continue the relief in [CO 03/104] and with the terms of the relief? If not, please provide reasons.

ATHOC agrees with the proposal to continue the relief in CO 03/104 and on the terms of the updated relief proposed by ASIC in the Instrument (including the restriction for the relief to only be available if the timeshare scheme is not promoted as a means of generating a financial return (other than by way of a rental pool)).

#### B3Q3

In relation to the price that the interest is sold for:

- (a) Should the responsible entity be required to sell the forfeited interest following the approach outlined for shares in s254Q of the Corporations Act (other than s254Q(1), (9) and (13))—that is, a public auction process?
- (b) Should the current requirement for the responsible entity to sell the interests using the price specified in the PDS (if issued in the last 12 months) or at a fair market price be retained?

ATHOC recommends that the current requirement for a responsible entity to sell forfeited memberships for the price specified in the PDS (if issued in the last 12 months) or at a fair market price be retained. This requirement enables ATHOC's responsible entity members to facilitate the sale of forfeited memberships via the same sales process as memberships in the schemes are sold. This results in forfeited memberships being sold in a timely manner after forfeiture and for the same price and with the same sales costs as apply to all membership sales.

ATHOC does not support forfeited memberships being sold via the public auction process outlined in section 254Q of the Corporations Act (other than subsections (1), (9) and (13)). ATHOC, based on consultation with its responsible entity members, believes the best outcome for forfeited members is for the membership to be sold for the PDS 'price', as this can be facilitated by selling forfeited memberships via the usual membership sales process, or at a fair market value.

ATHOC submits that adopting a public auction process, which involves advertising in a newspaper, is unlikely to result in the sale of forfeited memberships as there would be a very limited number of

ASIC question	Our response
<p>(c) Is there an alternative sale process that is preferable to the above? Please provide details.</p>	<p>consumers perusing newspapers or other similar mediums with the intention of purchasing forfeited memberships and there is limited demand for secondary products. Further, if the sale of a forfeited membership is not successful via public auction and further memberships are forfeited, it may result in forfeited memberships taking a long time to sell, with costs (such as interest on levies and, if applicable, interest on finance) continuing to accrue for the forfeited member which will ultimately reduce the residual payment (if any) they receive or result in the remaining members becoming responsible for these costs.</p> <p>Also, if the public auction process does not result in a sale ATHOC considers the likely outcome is for the forfeited memberships to be sold in the manner in which they are currently sold (i.e. for the price offered under the current PDS via the usual sales process) although the forfeited member will be worse off due to delays and additional sales costs, given the responsible entity will have attempted to sell the forfeited membership via public auction (and incurred costs in doing so) and the passage of time will have increased the amount owed by the forfeited member to the scheme (and, if applicable, a financier).</p> <p>ATHOC submits the current forfeiture process is the preferred option and there are no alternate forfeiture processes which are preferable.</p>
<p><b>B3Q4</b> Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p>	<p>ATHOC does not consider any costs will arise (which will be beneficial for responsible entities and scheme members) from continuing the current relief (as modified) as responsible entities have policies and procedures in place which reflect the existing requirements and the current requirements are also incorporated in the constitutions of registered timeshare schemes.</p> <p>Implementing a public auction process would result in significant additional costs for responsible entities as they will need to modify scheme constitutions to provide for such process (as constitutions stipulate the current process), which would require convening a members' meeting (and, for some timeshare schemes, this will necessitate printing and sending a notice of meeting to in excess of 50,000 members), and develop new forfeiture policies and procedures to facilitate public auction.</p> <p>Additionally, current members of registered timeshare schemes who purchased their membership under a PDS were informed of the requirement for the responsible entity to sell a forfeited membership for the price specified in the PDS (if issued in the last 12 months) or at a fair market price (as such disclosure is a requirement of the current relief). Therefore, changing the forfeiture process may be detrimental to those members or, if a transitional period was introduced with only memberships issued after a certain date being subject to a public auction forfeiture process, result in two different forfeiture processes which would be confusing and detrimental to members.</p>

ASIC question	Our response
	<p>Further, for the reasons discussed at B3Q3, ATHOC believes the public auction process will increase the cost of the forfeiture process and such costs will ultimately be borne by forfeited members to their detriment.</p>
<p><b>B3Q5</b> Does this approach raise any consumer protection issues? If so, please provide reasons.</p>	<p>No, ATHOC considers continuation of the current relief appropriately protects consumers' interests as requiring forfeited memberships to be sold at the 'PDS price' maximises the sales price and facilitates the timely sale of the forfeited memberships by enabling forfeited memberships to be sold via the usual sale process.</p> <p>Further, the existing relief permits the responsible entity to recover any reasonable costs of sale and reasonable administrative costs from the forfeiture proceeds (in addition to amounts owing to the scheme, such as outstanding levies, or owing to any financier). It is appropriate for such costs to be borne by the forfeited member and not by the scheme, and therefore other members.</p> <p>Also, selling a forfeited membership in the same manner and via the same process as memberships are sold (which the current relief facilitates by requiring memberships to be sold at the 'PDS price'), ensures that the sales costs (such as commissions) incurred in selling a forfeited membership are the same as those incurred in the sale of memberships generally (given, from the sales representative's perspective, there is no differentiation between the sale of a forfeited membership or 'other' membership).</p>
<p><b>B3Q6</b> Are there any additional protections to assist consumers that we should include in the relief (e.g. should there be a restriction on any payments being required to be made by members after they have forfeited an interest or are any additional disclosures required to assist consumers)? If so, please provide reasons.</p>	<p>ATHOC does not consider any additional consumer protections are required.</p> <p>The current relief requires the PDS to disclose to consumers the order in which the proceeds from the sale of a forfeited membership are applied. Also, whilst a forfeited member may continue to accrue levies and costs between default and sale of the forfeited membership (and not have access to accommodation) it is beneficial for members as a whole for forfeited memberships to accrue such amounts until the sale. Ideally, these costs would be recovered from the member whose interests have been forfeited rather than by the remaining members. ATHOC notes that where those amounts cannot be recovered from the forfeited member, then they will be borne by the other members, and ATHOC notes that the introduction of any new sales process (such as a public auction) which could delay the sale of the forfeited interests only increases the likelihood that the remaining members will ultimately bear the costs of the unpaid levies of the defaulting member.</p>

## Proposal B4

We propose to:

- (a) for existing operators of a rental pool that rely on [CO 02/237]—reduce the frequency of the audit of the trust account from twice a year to once a year and provide transitional relief to effectively continue the relief under [CO 02/237] for those operators (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at [www.legislation.gov.au](http://www.legislation.gov.au) by clicking on the following direct link: [CO 02/237]); and
  - (b) repeal [CO 02/237] unless we receive feedback that the relief is still necessary for the operation of new rental pools.
- Note: Given the transitional relief proposed, the repeal will not affect existing operators relying on [CO 02/237].

### ASIC question

### Our response

#### B4Q1

Do you agree with the proposal to provide transitional relief to existing operators of rental pools relying on [CO 02/237]? If not, please provide reasons.

ATHOC agrees with ASIC's proposal to provide transitional relief to existing operators of rental pools relying on CO 02/237 and to facilitate new relief on a case by case basis.

#### B4Q2

Do you agree with the proposal in the transitional relief to reduce the frequency of the audits of the trust account? If not, please provide reasons.

ATHOC supports ASIC's proposal to reduce the frequency of trust account audits to annually rather than six monthly. ATHOC notes that an annual audit requirement of the trust account, rather than six monthly, is consistent with the requirements applying to trust accounts maintained by real estate agents, body corporates/owners corporations and lawyers and does not believe there is any justification for continuing to impose a more onerous audit requirement on rental pool operators.

#### B4Q3

Do you agree with the proposal to repeal [CO 02/237]? If not, please provide reasons.

ATHOC agrees with the proposal to repeal CO 02/237 with further relief to be granted on a case by case basis.

#### B4Q4

Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

ATHOC has consulted with its members and believe changing the audit obligation from six monthly to annually will save audit and related fees of approximately \$1,750 to \$5,000 per year which will be beneficial for members who participate in such rental pools.



#### B4Q5

Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

ATHOC does not believe ASIC's proposed approach raises any consumer protection issues and considers the benefit to members of cost savings by reducing the audit frequency outweigh any potential risk with the trust account audit being undertaken annually.

### Proposal B5

We propose to:

- (a) for entities that are dealing in interests or operating a registered time-sharing scheme—incorporate the template cooling-off statement, currently in PF 208, into the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper); and
- (b) simplify the drafting of the template cooling-off statement in the new instrument to give greater clarity to consumers about how to exercise their cooling-off rights.

Note: For exempt time-sharing schemes, we are proposing to retain PF 208, but to amend it to reflect the simplified template cooling-off statement: see proposal D1.

### ASIC question

#### B5Q1

Do you agree with our proposal to incorporate the template cooling-off statement under PF 208 into the new instrument for entities that are dealing in interests or operating a registered time-sharing scheme? If not, please give reasons.

### Our response

ATHOC supports the proposal to revise the template cooling-off statement, given it has not been updated since originally issued in 2001.

Further, ATHOC supports ASIC's proposed new template cooling-off statement subject to the following comments:

- (a) **single page** - the cooling-off statement and confirmation should be contained on a single page to ensure the confirmation signed by consumers is directly below the cooling-off statement (and explanation of cooling-off rights) they are confirming they have received. The documentation provided to consumers, such as product disclosure statements and application forms, are generally printed double sided and this would likely to be the case with a two page cooling-off statement. ATHOC considers the cooling-off statement could be printed on a single page and still be clearly and promptly brought to the attention of consumers by reducing the margins in the current draft template. Further, similar to the regime adopted by the Government for simple managed investment scheme product disclosure statements, ASIC could mandate that the headings and other statements in the cooling-off statement are of particular font size as a means of ensuring a one page cooling-off statement and confirmation was in appropriate format for consumers;

ASIC question	Our response
	<p>(b) <b>title</b> – the heading ‘Confirmation that you have kept a copy of the cooling-off statement’ should be changed to ‘Confirmation that you have received a copy of the cooling-off statement’. While timeshare operators and dealers can ensure consumers are provided with the cooling-off statement confirmation, it is up to the consumer to decide whether to keep such documentation; and</p> <p>(c) <b>suggested amendments</b> – change ‘You can get back all the money you paid by signing the notice set out below within the time limit and sending it to:’ to ‘You can get back all the money you paid by signing and returning the notice below within the time limit to:’ to clarify that the notice must be signed and returned within the cooling-off period and not just signed within that period.</p>
<p><b>B5Q2</b></p> <p>Do you think a different template or approach would better assist consumers to understand their cooling-off rights? If so, please provide your suggestions.</p>	<p>ATHOC considers the template proposed by ASIC will, subject to ATHOC’s comments above, provide the necessary and appropriate information to consumers for them to understand their cooling-off rights.</p> <p>ATHOC notes the cooling-off process still assumes the consumer will sign and return a paper copy of notice. ATHOC recommends that ASIC clarify that the licensee can facilitate a consumer exercising their cooling-off rights electronically. For example, a licensee may wish to allow consumers to exercise their cooling-off rights by emailing the notice to the licensee or the licensee may provide a website which a consumer can access to exercise their cooling-off rights.</p> <p>ATHOC considers it is the best interests of consumers to facilitate the provision of a cooling-off notice in hard copy or electronically to recognise the preferred mode of communication differs between consumers and, for an increasing proportion of consumers, their preferred means of transacting is electronically. The ability for consumers to sign and return the notice by post would still be a mandatory ‘default’ option (i.e. consumers must have this right) but a licensee could elect to provide other means by which notice could be given.</p> <p>ATHOC also proposes that licensees have the option of including in the cooling-off statement the means by which monies can be repaid to the consumer. For example, a licensee could include a statement on the cooling-off notice that the consumer requests the monies be refunded by being credited to the credit card or debit card they used to make the payment (provided, if such payment was rejected, the licensee would then send a cheque to the consumer).</p>

## Proposal B6

We propose to:

- (a) consolidate all of the conditions for AFS licensees that operate registered time-sharing schemes and incorporate them in the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper);
- (b) modify the Corporations Act to introduce notional s912AE, which outlines the obligations on AFS licensees that operate registered time-sharing schemes, and make the following amendments to the existing obligations:
  - (i) impose obligations on the responsible entity in relation to the provision of a PDS, application form and cooling-off rights in respect of the issue or sale of an interest. Where there is a PDS for the interest, we also propose to continue to impose these obligations on AFS licensees that deal in interests in registered time-sharing schemes under either the licence conditions or the new instrument;
  - (ii) require that the responsible entity must take all reasonable steps to ensure that its associates comply with the AFS licensee requirements in relation to the provision of a PDS, application and cooling-off rights if an associate offers to sell an interest;
  - (iii) if the responsible entity facilitates financing for the applicant to acquire an interest, require that any amounts paid to the responsible entity in connection with the financing be repaid on exercise of cooling-off rights by the applicant;
  - (iv) if financial product advice is provided to a retail client orally in relation to the acquisition of an interest, require that the responsible entity does not issue or sell to a person unless the oral advice includes an explanation of the cooling-off rights available and the fees and costs payable to acquire an interest;
  - (v) apply the current conditions that apply to charges and levies to interests held by both the responsible entity and its associates;
  - (vi) apply the current conditions that apply to handling of purchase money to money paid to the responsible entity or its associates;
  - (vii) clarify that the 30% limit on deposits for the purchase or issue of an interest in a time-sharing scheme only applies where the scheme interest being acquired relates to property development, or part of a property development, which is not ready for occupation; and
  - (viii) remove the need to keep records in relation to cooling-off statements provided in circumstances where the person does not acquire an interest in the scheme (records would still be required to be maintained for those people who acquire an interest and exercise their cooling-off rights).

### ASIC question

#### **B6Q1**

Do you agree with our proposal to include the conditions for AFS licensees that operate registered time-sharing schemes in the new instrument? If not, please provide reasons.

### Our response

ATHOC supports ASIC's proposal to consolidate all AFS licence conditions relating to timeshare schemes into the Instrument. This will ensure consistency in the requirements applying to all licensees who are authorised to operate, or deal in the interests of, registered timeshare schemes.

**B6Q2**

Do you agree with our proposal to also continue to impose obligations in relation to the provision of a PDS, application form and cooling-off rights on AFS licensees that deal in interests in time-sharing schemes? If not, please provide reasons.

ATHOC supports the continuation of ASIC's policy of imposing obligations on AFS licensees who deal in timeshare scheme interests in relation to providing a PDS, application form and cooling-off rights (subject to ATHOC's submission at B6Q3 below regarding some of ASIC's proposed amendments to the existing obligations).

**B6Q3**

Do you agree with the amendments proposed to the existing obligations? If not, please provide reasons.

ATHOC's comments on ASIC's proposed amendments to the existing obligations are as follows:

**Conduct of associates – supported with modification**

ATHOC generally supports the obligation for a responsible entity to take all reasonable steps to ensure its associates comply with the cooling-off requirements where they are selling interests in the scheme which they own. However, the definition of 'associates' in the Corporations Act is very broad and, for example, includes directors and company secretaries. Accordingly, if a director held a membership in a timeshare scheme for personal use and sought to transfer that membership, ASIC's proposed section 912AE(4) will require the responsible entity to ensure the director provides the purchaser a PDS and cooling-off statement and offers a cooling-off period.

ATHOC proposes that ASIC revise section 912AE(4) so it only applies to associates involved in the business of selling timeshare scheme memberships or, alternatively, to exclude circumstances where the associate has held the timeshare scheme membership for personal use.

ATHOC also supports extending the responsible entity's obligation to pay the same continuing charges and levies as members to also apply to the responsible entity's associates.

**Refund of all money if cooling-off rights are exercised – supported with modification**

ATHOC supports ASIC's proposal to continue the obligation to, upon exercise of cooling-off rights, return to the consumer all money paid to the responsible entity (or the seller, if another person) for the acquisition of the timeshare membership including any administrative or other fees.

However, ATHOC does not support ASIC's proposal to extend this obligation to moneys paid by consumers for financing of the timeshare membership where the responsible entity or seller has facilitated the financing.

All of ATHOC's members who are responsible entities would be deemed to facilitate the financing of timeshare scheme memberships. This is because they offer consumers the opportunity to speak to a financier's credit representative if the timeshare sales representative recommends the consumer purchase a membership and the consumer indicates they would like to discuss financing options.

However, the financier is a separate entity to the AFS licensee and, for the majority of ATHOC's responsible entity members, is not part of the same corporate group as the responsible entity.

Accordingly, while a responsible entity may work in conjunction with a financier, they generally do not have the ability to control the financier or dictate terms to them and ATHOC does not consider it reasonable for ASIC to impose requirements for the responsible entity to ensure the financier refunds moneys paid where the responsible entity does not have the ability to require the financier to do so.

**Additional requirements on advice and content of cooling-off statement – not supported**

ATHOC does not support the requirement for a responsible entity to ensure, if financial product advice is provided orally to a consumer in relation to the issue or sale of timeshare scheme memberships, an explanation of cooling-off rights and fees and costs is also provided verbally.

ATHOC notes that the PDS already provide consumers with details of the fees and costs of being a member of timeshare schemes, which is consistent with the requirements applying to all other registered managed investment schemes. Further, as personal financial product advice is provided in the course of sale of timeshare memberships to consumers, consumers are also provided with a statement of advice which, among other matters, discloses the cost of the membership and that ongoing fees and costs are payable. Consumers are also provided with a separate cooling-off statement (which is an ASIC template) that the consumer is required to acknowledge receiving. ATHOC considers these existing mechanisms clearly and adequately bring to a consumer's attention the cooling-off rights and the ongoing fees and charges payable. In relation to cooling-off, ATHOC considers that this is supported by the rate of cooling-off by timeshare purchasers, which is currently approximately between 20% and 30% of all consumers who purchase a membership.

ATHOC's key concern with proposing a requirement to provide a verbal explanation is that it is difficult for a responsible entity or a timeshare reseller to prove that such verbal explanation was given. Even if the representative made a contemporaneous record and the consumer was required, for example, on the application form to acknowledge being given such explanation, this will not prove that it was provided.

A responsible entity would need to record every sales presentation and client meeting which would constitute a considerable cost to the responsible entity as well as raise privacy concerns for consumers. ATHOC is further concerned that if the consumer did allege that such verbal explanation was not given, the responsible entity was not able to prove it was (assuming they did not record every sales presentation) and the complaint escalated to an EDRS, the EDRS would essentially be asked to decide whose recollection it prefers to believe.

To the extent ASIC proceeds with its oral explanation requirement, we suggest the reference in section 912AE(3)(a)(ii) to 'kept' be changed to 'received'.

**The 30% limit on deposits – supported with modification**

ATHOC supports ASIC's proposal to clarify that the 30% limit on deposits only applies if the membership

being acquired relates to a property development, or part of a property development, which is not ready for occupation (i.e. it only applies where the membership being sold relates specifically to a property under development).

However, ATHOC is concerned that the proposed drafting of section 912AE(6) may not achieve ASIC's intentions. Specifically, as currently drafted, section 912AE(6)(a) appears to prevent all timeshare responsible entities from dealing with money received from consumers until the requirements of paragraph (i) and (ii) are satisfied (even where those requirements are not applicable as there is no real property which the member is to acquire and the membership does not relate to construction of a property). ATHOC suggests ASIC revise section 912AE(6) to make it clear that it only operates for responsible entities where the circumstances in paragraphs (a)(i) and (ii) are intended to apply (in which case consumer funds could only be applied once (a)(i) and (ii) are satisfied).

ATHOC also requests that ASIC deal specifically with the conflict created by the application of section 1017E which concerns the payment of money into an application money account pending the issue of a financial product. The time-share industry operates differently from other areas of the financial services industry and for that reason, ASIC has established a different regime which enables the acceptance and retention of deposits pending completion of development of a property. This regime conflicts with the existing section 1017E requirements and ATHOC suggests that ASIC should ensure that the deposit regime contemplated by section 912AE(6) should take priority over that provision.

#### **Record keeping of cooling-off statements - supported**

ATHOC supports ASIC's proposal that licensees should only be required to maintain a record of those persons who have been provided a cooling-off statement and who purchase a membership in the scheme, rather than the current requirement that a record be maintained of all persons who receive a cooling-off statement (i.e. all persons who attended a presentation).

ATHOC considers a transitional period of 12 months is required to enable responsible entities to comply with amendments to the existing obligations. This time frame will enable responsible entities to determine the changes required, update policies, procedures and provide training to sales representatives.

#### **B6Q4**

Is any transitional period required to comply with the amendments to the existing obligations? If so, please provide reasons.

### **B6Q5**

Please describe your experience with how time-sharing interests are sold. Please give details about the steps involved, including details of any financing arrangements facilitated by the responsible entity to acquire an interest.

While the steps involved in the sale of timeshare scheme memberships differ between ATHOC's members, the process is broadly as follows:

- (a) a consumer is offered an incentive to attend a presentation for the timeshare scheme. The consumer may be a guest at a hotel or resort who has expressed an interest in being contacted to discuss the timeshare scheme, a guest of a hotel or resort who is approached by an on-site sales representative or a consumer in other locations (for example, theme parks or other holiday locations) who is approached by a sales representative. The incentive is typically discount accommodation at a hotel or resort but may also comprise gifts (such as vouchers or appliances). In each case, it is made clear to the consumer that a condition of the discounted accommodation or receiving the gift is attending a presentation on the timeshare scheme;
- (b) the consumer attends a presentation. This may involve a group presentation summarising the key features of the scheme followed by a *'one on one'* meeting with sales representatives, if the consumer is interested in exploring the scheme further, or a *'one on one'* meeting with sales representatives;
- (c) if the consumer meets the responsible entity's/timeshare seller's criteria and the timeshare scheme is appropriate for the consumer given their holiday needs and objectives, the sales representative recommends the consumer purchase a membership in the scheme (and the appropriate level of membership) and provides the consumer with a statement of advice (in addition to the PDS, application form, cooling-off statement and financial services guide previously provided);
- (d) if the consumer wishes to proceed with the purchase, a sales representative will ask the consumer if they would like to discuss potential finance options for funding the purchase of the timeshare membership. If the consumer wishes to do so, they then meet with a credit representative of a financier who discusses their financial position to determine if they qualify and are suitable for financing. If the consumer does not require finance, they proceed to purchase membership. If the consumer does wish to explore finance and meets the credit requirements, the credit representative assists the consumer to apply for a loan and the sales representative assists the consumer apply to purchase the timeshare scheme membership. Any finance is provided by a credit licensee which is separate to the responsible entity and this distinction is made clear to the consumer. The finance is consumer credit and the financiers are subject to the laws which apply to the provision of consumer credit (including the application of responsible lending criteria).

**B6Q6**

Do the sales practices involve any unsolicited meetings or telephone calls? If so, should any additional restrictions or obligations be imposed on licensees in relation to these practices to ensure that consumers understand what they are being offered and are not misled?

ATHOC does not consider the sales practices of its members involve any unsolicited meetings or telephone calls. While incentives or inducements are provided to consumers to attend timeshare scheme presentations, ATHOC believes its members clearly disclose to consumers that the inducement (i.e. discount accommodation or gift) is conditional upon the consumer attending a timeshare presentation.

There is no obligation on the consumer to utilise the accommodation or accept a gift or, if they do so and attend the timeshare presentation, to purchase a timeshare scheme membership and only approximately 10% to 15% of attendees purchase a timeshare membership. Further, consumers who decide to purchase a membership have cooling-off rights and, as mentioned at question B6Q3, the rate of cooling-off is approximately 20% to 30% of all sales.

Therefore, ATHOC considers that it is very clear to consumers that they are attending a sales presentation on a timeshare scheme. ATHOC has consulted its members and there have been /very few complaints relating to consumers not understanding the presentation or meeting they attended, as a condition of their discounted accommodation or gift, was in relation to the sale of timeshare.

Accordingly, ATHOC considers that the existing arrangements adequately protect consumers' rights and no additional restrictions or obligations are required.

**B6Q7**

In relation to the current cooling-off rights:

- (a) Do you think the cooling-off rights based on consumers having to opt out to cool off are working?
- (b) Where the interest is acquired during a period when the applicant was accommodated at the property, should the cooling-off period only commence when the licensee knows or ought to know the applicant would return to their usual residence?
- (c) If the applicant has questions, should the cooling-off period stop and start afresh from the time that the further information has been provided by the licensee to the

ATHOC considers the cooling-off rights, which give consumers the option to opt out, are working. This is evidenced by the rate of cooling-off within the timeshare industry, which is approximately 20% to 30% of timeshare sales.

ATHOC does not agree that, where a consumer purchases the timeshare membership while staying at a hotel or resort, the cooling-off period should only commence when the licensee knows or ought to know the applicant returns to their usual residence. It would be difficult to determine when the consumer was travelling home, would require validation and additional administration to monitor. ATHOC believes this would be difficult to implement and result in different cooling-off periods for different consumers, which creates uncertainty for both the consumer and licensee. In addition, the licensee will not be privy to the movements of the consumer who may choose to extend their return date and could be subject to the consumer determining the commencement date.

Such proposal would require consumers' cooling-off periods to be manually entered in the licensee's system rather than automatically determined based on the sale date and may necessitate the cooling-off statement being tailored for each purchaser. These circumstances create a risk of cooling-off periods being incorrectly represented and applied as well as uncertainty for sales representatives to determine whether a consumer is proceeding with the purchase.

ATHOC submits that a key aspect of a robust and effective cooling-off regime is certainty and



applicant?

- (d) Should the cooling-off rights alternatively be on an opt-in basis—that is, an applicant is deemed to have exercised their cooling-off rights if they do not provide an additional written confirmation to the licensee within a prescribed period?
- (e) What are the optimal cooling-off arrangements, taking into account the needs of consumers and operators, and how time-sharing interests are sold?

consistency as this ensures the cooling-off rights are clearly understood by both the consumer and licensee.

Similarly, ATHOC strongly objects to a proposal for cooling-off rights to be an opt-in basis which requires the applicant to provide a written confirmation that they wish to proceed within the prescribed period. Such obligation would be significantly detrimental to the timeshare industry and therefore the broader holiday and tourism economy. Responsible entities would have to devote significant additional resources to the sales process to follow up consumers and the cooling-off rates would increase due to consumer apathy and consumers failing to return the opt-in notices on time or correctly signed and completed (rather than due to consumers deciding they do not wish to proceed). Higher cooling-off rates would also increase turnover of timeshare sales staff due to lower remuneration (as a result of reduced completed sales) which again increases costs for licensees and may impact the quality of advice provided to consumers.

These costs would, at least partially, be met by increasing the cost of timeshare memberships to consumers and will further impact sales. A reduction in timeshare sales is also detrimental for existing timeshare members as timeshare schemes rely on the introduction of new members to provide additional accommodation for use by members (thereby enhancing their timeshare experience).

ATHOC submits the current cooling-off procedures strike an appropriate balance between protecting the interests of consumers from potential pressure selling tactics and the commercial interests of licensees in selling timeshare, and current cooling-off rates demonstrate the existing cooling-off arrangements are working and consumers' interests are adequately protected.

Further, while there may be a small number of consumers who may have intended to exercise cooling-off rights but failed to do so within the cooling-off period, ATHOC's view is that an opt-in regime is an unnecessary and unreasonable reaction to protect the interests of a very small proportion of timeshare purchasers who fail to take action to exercise their cooling-off rights and is outweighed by the considerable cost and detriment an opt-in regime would cause to the timeshare industry and the broader economy.

Responsible entities and other licensees have IDR schemes which can appropriately consider any concerns raised by those consumers who fail to cool-off within the time period and who are genuinely disengaged and do not want to proceed with membership in the timeshare schemes.

In addition, where potential scheme members are obtaining finance to assist with the purchase, the processing of the finance application can take more than 7 days whilst the financier complies with their responsible lending obligations including the collection of supporting evidence of income. A consumer is able to notify the financier at any time prior to the provision of finance that they do not want to continue with the finance and subsequently the purchase will not proceed.

Also, ATHOC supports the continuation of the distinction in cooling-off periods between ATHOC and non-ATHOC members, being a seven day cooling-off period for ATHOC members and a 14 day cooling-off period for non-ATHOC members, given ATHOC members are subject to a code of ethics and have demonstrated a commitment to appropriate sales and disclosure practices.

### **B6Q8**

Should the current requirement to give full particulars of the composition and calculation of all continuing charges and levies to members be replaced with an obligation to provide members with the annual budget, together with a summary of key expense categories and the percentage of expenditure for each category, with the levy notice? If not, please provide reasons and outline the information about future charges and levies that would best assist consumers.

ATHOC supports ASIC's proposal to require a responsible entity to provide all members, at least annually, particulars of a composition and calculation of continuing charges and levies, rather than '*full details*' as is currently the case under CO 02/315 and condition 48(b) of PF 209. ATHOC understands this will enable responsible entities to disclose to members continuing charges and levies and describe key components of the levies and their calculation.

However, ATHOC recommends that the requirement to provide members with an annual budget be amended to mirror the current requirements for responsible entities to give a timeshare scheme's annual financial statements to members. Specifically, a responsible entity should be able to satisfy its obligation to give members an annual budget by allowing members to elect to receive a hard copy or electronic copy of the annual budget, or make it available online, with the default position being that the annual budget is made available to members free of charge (if the member does not make an election or elects not to receive the hard or electronic copy). ATHOC submits such arrangements will ensure the annual budget is provided (either in hard copy or electronically) to those members who actually desire a copy and is otherwise available to all members who do not request to be sent a copy.

### **B6Q9**

Should actual administrative costs incurred be able to be deducted from the money refunded to the applicant on exercise of cooling-off rights by the applicant? If not, please provide reasons. If yes, please outline the type and amount of any costs that would be deducted.

ATHOC does not consider it necessary for actual administrative costs to be deducted from the money refunded to applicants on exercise of cooling-off rights. This is because the quantum of such administrative costs is reasonably low (the average 'hard cost' is \$359 per purchase) and the benefit to consumers in the industry of informing consumers that all money paid for the timeshare will be refunded (rather than explaining the types of costs which would be withheld and updating disclosure of the processes to facilitate this) outweighs the detriment to responsible entities of bearing such administrative costs.

### **B6Q10**

Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

It will likely be necessary to update disclosure documents, update statements of advice templates and financial services guides, revise training policies and procedures and provide training to existing sales representatives in order to implement ASIC's proposals and such costs are estimated to be at least in excess of \$50,000 (comprising \$12,500 to \$15,000 to reprint the PDS (as some responsible entities print PDSs in bulk), \$10,000 for legal fees and \$30,000 for staff training and travel). The implementation of a 12 month transitional period will assist to minimise the impact of these costs on responsible entities' businesses.

Further, imposing an opt-in basis for cooling-off rights would have a significant adverse impact on

responsible entities and the timeshare industry generally. While difficult to quantify, these costs would be significant.

### **B6Q11**

Does this approach raise any consumer protection issues? If so, please provide reasons.

ATHOC considers, subject to the comments and modifications outlined at B6Q3 and B6Q4, the approach reflected in the draft Instrument (as distinct from the questions at B6Q7) does not raise any consumer protection issues and adequately balances the interests of consumers in purchasing timeshare with the interests of licensees in operate a timeshare business.

As noted at B6Q3, ATHOC does not support the following proposals:

- (a) that the responsible entity to ensure that, upon exercise of cooling-off rights, any financing amounts are repaid; and
- (b) to provide an oral explanation of cooling-off rights and fees and charges,

as ATHOC considers that these proposals are unduly onerous, unreasonable and create uncertainty for responsible entities.

### **B6Q12**

Are there any additional protections to assist consumers that we should include as obligations (e.g. in relation to: hawking; sales practices; deposits; financing arrangements; use and expiry of points; or disclosure of key information such as the ability to resell or exit the scheme)? If so, please provide reasons.

ATHOC considers the protections outlined in the draft Instrument, subject to the comments and submissions at B6Q3 and B6Q4, adequately balance the necessity to protect consumer interests with the commercial needs of timeshare businesses (including the costs of operating such businesses) and no additional protections are required.

## **Proposal B7**

To promote comparability and consumer understanding, we propose to modify the enhanced fee disclosure requirements that apply to the responsible entity and to incorporate the modifications in the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper) by requiring disclosure of the following information in a separate section of the PDS (which may include the loose-leaf price list) in a form we will prescribe:

- (a) the consideration to acquire the interest;
- (b) the levies payable by a member;
- (c) any other fees or costs payable by members in connection with their interest or to obtain access to accommodation;
- (d) if the responsible entity takes any steps to facilitate finance to the member to acquire the interest:
  - (i) any upfront payments required to obtain the finance; and

- (ii) information on the ongoing financing costs such as the range of interest rates and loan terms that are available (subject to finance approval);
- (e) an example of the annual costs a member could be paying on average for a typical accommodation (including with financing, if financing is facilitated) over a 10-year period for their interest; and
- (f) the periodic statement content that will be provided to investors for each reporting period.

ASIC question	Our response
<p><b>B7Q1</b></p> <p>Do you agree with the proposal? If not, please provide reasons.</p>	<p>ATHOC generally supports ASIC’s proposal to modify the enhanced fee disclosure requirements and adopt a tailored regime for timeshare schemes, given the current enhanced fee disclosure requirements are designed for investment products and not particularly suitable for a lifestyle or holiday product such as timeshare.</p> <p>However, ATHOC has the following concerns and comments with ASIC’s proposals.</p> <p><b>Price template - location</b></p> <p>While ATHOC is supportive of the price template to facilitate consistent disclosure in timeshare scheme PDSs of the price of membership, ATHOC submits that the price template should be in a stand alone section of the PDS and not included in the fees and costs section (and ATHOC notes that sub-regulation 7.9.16N(1) will still apply, which would require the section containing the price template to be headed ‘Fees and other costs’).</p> <p>While timeshare is not an investment product, the purchase price of membership is still a capital cost paid by consumers to acquire an interest in the scheme (with such interest representing a proportionate, beneficial interest in the assets of the scheme). The purchase price of a membership is not a fee or cost and ATHOC considers it would be misleading and confusing to consumers for ASIC to propose describing it as such (which will be the effect of including the price template in the section of a PDS which contains information about fees and costs and which is entitled ‘Fees and other costs’). Accordingly, ATHOC recommends the price template be included in a separate section of the PDS.</p> <p><b>Price template – content</b></p> <p>ASIC proposes that the price template for a points-based scheme include ‘<i>an example of a typical accommodation using the points of a typical timeshare</i>’. Points-based timeshare schemes offer a wide variety of accommodation and the points required to use scheme accommodation will depend upon location, standard, time of year, size and other factors. Accordingly, ATHOC contends there is no ‘typical accommodation’ and the use of such phrase will be potentially misleading and confusing to consumers. ATHOC recommends the description ‘typical’ be removed and the instructions on how to complete the template mention the responsible entity can provide an example or examples of scheme accommodation which can be booked for the relevant number of points.</p>

ASIC question	Our response
	<p>Some ATHOC members have commented that the concepts of 'typical accommodation' and 'typical timeshare' are contrary to previous directions from ASIC to include examples in the PDS of all different resorts and different seasons to demonstrate the range of differences in points required for accommodation and how/when they can be used.</p> <p>Similarly, points-based timeshare schemes may offer a number of membership classes in a single PDS and offer different types of memberships under separate PDSs (for example, a right to use membership which enables a member to purchase usage or accommodation points to book accommodation and a traditional membership where a member receives an annual allocation of usage or accommodation points). Accordingly, ATHOC is concerned that a description of a membership as 'typical timeshare' may be misleading and confusing to consumers. ATHOC recommends that the concept of 'typical timeshare' be replaced with a requirement for the responsible entity to provide an example for the class of membership offered under that PDS which has the greatest number of members.</p> <p>Further, ATHOC considers that the price per additional point amount should be included in a stand alone table rather than a column of the price template. This is because the price per additional point typically varies depending upon the level of membership to which a consumer is upgrading. For example, the cost per point to upgrade from a current membership level to the next membership level will be different to the cost per point for upgrading from the current membership level to the highest membership level (i.e. the cost to a member of upgrading from the lowest to the highest level of membership in a single transaction may be less than if a member moved up each level of membership over a period of time until they reached the highest level of membership).</p> <p>While clause 206 of ASIC's proposed schedule 10 acknowledges, by way of example, that the 'price per additional point' column could be divided into four sub-columns, ATHOC is concerned this will result in the price template ceasing to be clear, concise and effective because a considerable amount of information will be squeezed into a number of columns. In ATHOC's view, the preferred approach is for this information to be provided in a stand alone table (or, at least, for the responsible entity to have the option to do so. For example, the price per additional point column could direct the consumer to a table or paragraph below the price template which provides the breakdown of the purchase price for additional points).</p> <p><b>Price template – interval-based programs</b></p> <p>Clause 208 of proposed schedule 10 provides examples of how column 2 ('Interval') is to be completed for the price template for interval-based programs. ATHOC considers the floating time example is confusing. The fixed time example provides specific dates which are to be included in column 2 (with column 1 to identify the weeks). However, the equivalent example for floating time refers to week</p>

ASIC question	Our response
	<p>numbers instead of dates. Given column 1 of the template is required to disclose weeks, ATHOC suggests the example for floating time should also include specific date ranges.</p> <p>Further, as fixed and floating weeks often change from year to year due to different school holiday and Easter periods the table, as proposed by ASIC, would contain numerous date ranges to cover fixed and floating weeks over a five year period and such volume of information will result in the table being unclear, confusing and not beneficial or effective for consumers. ATHOC submits that preparing the template on an annual season basis (i.e. with reference to Easter period, Christmas period, school holiday periods, etc.) would be clearer and easier to understand for consumers than dates over a five year period.</p> <p><b>Other fees and costs template – financing costs</b></p> <p>ATHOC submits that including any financing costs in the other fees and costs template is not clear, concise and effective disclosure and will result in the template confusing, and potentially misleading, consumers for the following reasons:</p> <ul style="list-style-type: none"> <li>(a) <i>duplication of information already provided</i> – as ASIC acknowledges in paragraph 70 of Consultation Paper 272, consumers who apply for finance to assist fund the purchase of a membership already receive detailed information about the cost and terms of the loan offered from the financier in accordance with the requirements of the National Credit Code. Duplicating the provision of such information is not clear, concise and effective disclosure and may also confuse consumers if they perceive that two different financing costs are payable – those relating to consumer finance being obtained from the financier (as disclosed by the financier) and other finance costs which correspond to membership of the timeshare scheme;</li> <li>(b) <i>financing costs and terms differ between borrowers (as fees, interest rates and loan terms may vary between applicants based on their credit profile and the amount borrowed)</i> – the up front finance costs, ongoing finance costs, interest rate and loan term will need to be shown as a variety of ranges in the PDS, particularly for interest rates and loan terms. Therefore, the actual costs, interest and loan term applying to a specific consumer will be disclosed by the financier whereas the PDS will contain general information and ranges. This circumstance reinforces ATHOC’s concern that such information may be confusing and misleading to consumers (even with ASIC’s disclaimer at the bottom of the template). Also, though the template mentions that financing costs are current at the time of the PDS, ATHOC is concerned that changes (specifically, increases) in financier fees or interest rates will necessitate the reissue of a PDS or issue of a supplementary PDS by the responsible entity (at a cost to the scheme and consequently members) and impose a de facto obligation on the responsible entity to</li> </ul>

ASIC question	Our response
	<p>continually monitor and disclose information which is outside its control; and</p> <p>(c) <i>financing costs not relevant for all members</i> – while ATHOC’s responsible entity members will be considered to facilitate finance (given the sales representatives refer consumers to a financier if the consumer is interested in obtaining finance to assist fund the membership purchase cost), not all consumers obtain finance as approximately 45% to 70% of timeshare sales are financed. Therefore, the inclusion of the financing costs information as an ongoing cost of membership in the PDS will be irrelevant and potentially confusing to those members as, despite ASIC’s proposed disclaimer, consumers may mistakenly conclude that there are financing costs associated with being a member of a scheme. Further, ATHOC’s responsible entity members would include the financing costs information in all PDSs given to consumers as they will not prepare a finance and non-finance version of the PDS due to the costs of doing so and the risk of a consumer potentially being given the wrong PDS.</p> <p>Accordingly, the other fees and costs template should not include financing costs and consequently the corresponding definitions relating to financing be deleted from clause 101 of proposed schedule 10.</p> <p>ATHOC recommends, rather than disclosing financing costs as a fee or cost of membership in the other fees and costs template, (where relevant) the responsible entity could disclose in the additional explanation of fees and costs section that, where finance is obtained to facilitate the purchase of a membership, the fees and costs associated with such finance will be disclosed by the financier.</p> <p><b>Forfeiture fee</b></p> <p>ATHOC recommends that the other fees and costs template not include a forfeiture fee. ATHOC is concerned that this may indicate to consumers that such forfeiture fee (where applicable) is the only cost payable in connection with a forfeiture. To avoid such perception, the template would need to explain to consumers that a forfeiture fee is in addition to sales and administrative costs, outstanding levies and outstanding finance amounts which would also be deducted from the proceeds for sale for forfeited membership before the balance (if any) is paid to the member.</p> <p>However, including this information in the template is contrary to the purpose of the template of providing clear, concise and comparable disclosure of fees. Further, a forfeiture fee is not payable by a member in connection with the use of the membership, it only applies if a member ceases to comply with their membership obligations (i.e. a member who complies with their obligations will not incur any forfeiture fee from their membership of the scheme).</p> <p>ATHOC notes that the proposed additional explanation of fees and costs section is required to include information about forfeiture. ATHOC submits this would be a more appropriate place to disclose the</p>

ASIC question	Our response
	<p>forfeiture fee to ensure all information about forfeiture is contained in the same place.</p> <p><b>Example of annual costs template</b></p> <p>Please refer to B7Q8 below.</p>
<p><b>B7Q2</b></p> <p>Please provide details of any costs or benefits that may result from the proposal. If possible, please quantify.</p>	<p>ATHOC considers that appropriately tailoring the enhanced fee disclosure requirements to timeshare will be beneficial for consumers by ensuring information about fees and costs is disclosed in a relevant manner which will assist in such disclosure being clear and concise and effective.</p> <p>ATHOC acknowledges there will be costs of implementing the enhanced fee disclosure requirements, primarily the costs of updating and reprinting PDSs, but considers that, with an appropriate transitional period (refer to Question B7Q12 below), these costs will not be onerous and the changes required could be managed as part of the periodic PDS review and update process.</p>
<p><b>B7Q3</b></p> <p>Do you agree with the terms used to describe the fees and costs and the definitions? If not, please provide reasons.</p>	<p>ATHOC's comments on the terms used and definitions are as follows.</p> <p><b>Minor amendments</b></p> <p>ATHOC recommends the following amendments (as shown in underline or strikethrough) to the definitions in clause 101 of proposed schedule 10 (in addition to deletion of the definitions relating to finance as discussed at B7Q1):</p> <p><i><b>Levies</b> means an amount paid or payable for the maintenance of scheme property, <u>operating the scheme and other services relating to the scheme.</u></i></p> <p><i><b>Points</b> in relation to a time-sharing scheme, means a unit of measurement for the amount payable for the use of the property to which the property relates <del>and associated fees and charges.</del></i></p> <p><i><b>Points-based program</b> means a time-sharing scheme where members exchange points for the right to use property to which the time-sharing scheme relates <del>for an interval.</del></i></p> <p><b>Accommodation usage fee</b></p> <p>ATHOC recommends the definition of accommodation usage fee be amended to only capture amounts paid or payable to use scheme accommodation. Points-based timeshare schemes facilitate members being able to exchange their usage points via external exchange companies or other providers to book accommodation in other timeshare schemes, book cruises, car hire, airplane tickets, etc. These benefits are optional, do not have to be used by members and are not provided by the scheme.</p> <p>Further, the arrangements and fees applying to the utilisation of such arrangements vary considerably depending upon the program (for example, some exchange companies may charge an exchange fee whereas the use of points to book cruise accommodation may require a combination of points and cash)</p>



ASIC question	Our response
	<p>and therefore could not effectively or clearly be disclosed in the other fees and costs template.</p> <p>Additionally, ATHOC notes that clause 218(h) of proposed schedule 10 requires details of fees and costs of optional programs offered to members to be disclosed in the additional explanation of fees and costs section. Therefore, ATHOC’s proposal simply clarifies that the fees and costs of optional programs should be disclosed in the additional explanation of fees and costs section and not in the other fees and costs template.</p> <p><b>Additional explanation of fees and costs</b></p> <p>ATHOC recommends that clause 218(a)(v) be deleted. This clause requires the information about levies to include the following:</p> <p><i>‘if a levy is expected to occur in the future, an explanation of the purpose of the levy and the key assumptions’.</i></p> <p>Given levies are a recurring annual cost and used to meet the expenses of operating a scheme, the fees and costs section will already disclose this information, along with the manner in which the levy is calculated.</p> <p>Alternatively, if (a)(v) is intended to capture special levies, ATHOC recommends ASIC re-word it to refer to disclosure of levies other than annual levies, which a responsible entity has the power to charge and include a description of the circumstances in which this may occur. Generally, responsible entities do not anticipate charging special levies and therefore special levies would not constitute ‘a levy expected to occur in the future’.</p> <p>Further, ATHOC recommends ASIC delete paragraph 218(d) as such disclosure is not particularly relevant for timeshare schemes and such information, as it relates to levies, is already covered by paragraph 218(a). For example, a responsible entity will typically determine the levy each year and such levy may change from year to year (subject to any restriction in the constitution).</p> <p>ATHOC also recommends ASIC include a definition of additional services (which are referred to in clause 218(f)).</p>
<p><b>B7Q4</b></p> <p>Are there any additional fees or costs that should be included in the template for fees and costs? If so, please provide details.</p>	<p>ATHOC does not consider there are any other additional fees and costs that should be included in the template for fees and costs, and reiterates the comments at B7Q1 and B7Q3 regarding changes to the requirements proposed by ASIC.</p>

**B7Q5**

Do you think a different standardised format or template for information on the purchase price, levies, and fees and costs would better assist consumers to understand the costs of acquiring a time-sharing interest? If so, please provide your suggestions.

ATHOC considers that the standardised template for purchase price, levies and fees and costs proposed by ASIC is suitable, subject to our comments at B7Q1 and B7Q3.

**B7Q6**

Is there any other information you think would be useful to include in the additional explanation of fees and costs? If so, please provide details.

ATHOC does not consider there is any other information which would be useful or material to consumers to include in the additional explanation of fees and costs, other than as suggested at B7Q3.

**B7Q7**

Is there another example of annual costs that you think would better illustrate to consumers the costs of acquiring a time-sharing interest? If so, please provide details.

ATHOC supports the proposal for an example of annual costs table which is tailored for timeshare and included in timeshare scheme PDSs. However, ATHOC has some concerns with the templates proposed by ASIC (for both points-based programs and interval-based programs) as detailed below.

**10 year period – not clear, concise and effective**

ATHOC's general comment is that it considers that having an example of annual costs for a 10 year period will be confusing and of little benefit to consumers. Also, the example places an emphasis (incorrectly) on timeshare membership as a financial, rather than lifestyle, decision. The assumptions underlying the example, including that levies will not change, the member will use the same accommodation each year and the maximum interest rate will not change, are unrealistic which results in the example producing a contrived outcome which is of little benefit to consumers.

Specifically, ATHOC considers that requiring the example of annual costs to cover 10 years is potentially confusing and misleading for consumers for the following reasons:

- (a) it may create an impression for consumers that ongoing fees and costs will only be incurred for a period of 10 years, rather than for the duration of the member's membership in the scheme . ATHOC proposes that an example of annual costs for a period of one year accompanied by disclosure that annual levies and other costs will be payable for as long as the consumer is a member of the scheme (along with a description of how the levy is calculated and restrictions on increasing the levy) will be more accurate, clearer and more easily understood by consumers; and
- (b) ATHOC is concerned the assumptions and parameters underlying the example are unrealistic and will result in the example being inaccurate, not reflective of actual outcomes and potentially

misleading. Specifically, the example assumes the annual levy does not change over the 10 years which is an unrealistic assumption. However, as the levy is a product of the budgeted costs of operating the scheme for the year (and often subject to limits in the constitution on the amount by which levies can be increased), responsible entities would not have a reasonable basis for forecasting actual levies per year for the next 10 years.

Further, the example is to include a reasonable amount of any expected additional levies averaged over 10 years. Presumably, 'additional levies' is intended to capture special levies, being levies which are charged in addition to annual levies to cover unexpected cost which have not been captured in the annual budget. Given special or additional levies are intended to capture unexpected and unforeseen costs which the scheme has not expected and allowed for, it is unlikely there will be any 'expected additional levies' to include in the example and nor would any such levies be considered an expected or recurring cost.

#### **Inclusion of purchase price and annual costs**

Clause 219 of proposed schedule 10 states that the cost includes the purchase price along with estimated levies and other amounts payable. However, the example is intended to illustrate to a consumer the ongoing cost of timeshare membership per year on average of the first 10 years. The purchase price is a capital amount, is not a fee or cost and is only incurred when the member joins the scheme (or purchases additional points). Further, the consumer's membership in the scheme (for which they have paid the purchase price) continues for the duration of their membership which will typically be longer than 10 years. It is confusing and misleading to include the purchase price in the example of annual costs given it is not a fee or cost and is not recurring.

It is also unclear as to how ASIC proposes the purchase cost be included in the 'amount' per year. If the entire purchase cost is included in this amount, it will grossly overstate the average annual cost (as the purchase price is only paid once) and result in the amount being incorrect and misleading. Conversely, if the purchase price is notionally amortised over the 10 year period so that the 'amount' per year includes 10% of the purchase price, the example will also be misleading by creating an impression that the purchase price is payable over 10 years which is not the case as it is payable upon joining the scheme.

#### **Financing costs**

For the same reasons provided at B7Q1, an example of annual costs should not include financing costs because:

- (a) not all consumers obtain financing even where it is facilitated. Including both the 'with financing' and 'without financing' tables may create the impression (given consumers who do not require finance may not have even discussed financing options with a credit representative)

that finance is a cost of membership of the scheme which is not the case;

- (b) if a consumer does obtain finance, the costs of finance, including the loan term and interest rate, for that specific consumer will be disclosed by the financier. Requiring the example of annual costs to include the maximum interest rate available and the maximum amount borrowed will overstate the financing cost for members who have a lower interest rate or shorter term and confuse those consumers as the financing cost disclosed in the PDS will be different from those disclosed by the financier. Further, the inclusion of ASIC's proposed disclaimer may not adequately address such confusion;
- (c) though clause 223 requires the maximum interest rate and term applying at the date of the PDS to be used to determine financing costs, where the interest rate is variable or otherwise changes, the information contained in the PDS may become outdated very quickly (and the disclaimer to the example does not disclose that the rates and terms are current as at the PDS date). It would be unreasonable to require responsible entities to update the PDS when maximum interest rates or loan terms change (particularly, as responsible entities do not determine rates or terms and are changed without notice to the responsible entity) and, if the interest rates increases, the responsible entity would be unable to rely on the relief in CO 03/217 to update this information via its website. Conversely, if the maximum interest rate and term changes, the financing costs used for the example may be overstated or understated at the time the consumer is given the PDS resulting in the example being incorrect and potentially misleading;
- (d) the finance product is a completely separate product from the timeshare scheme and is provided by a financier who is a separate entity to the responsible entity (and often not a related body corporate). Accordingly, requiring such information to be included in the example of annual costs creates a misleading impression for consumers that the responsible entity is responsible for, or can control, the provision of finance or that finance is part of the timeshare scheme. ATHOC considers it is important for consumers to understand finance is provided by a financier and is separate from membership of the timeshare scheme which is operated by the responsible entity and including finance costs in the example of annual costs erodes this separate and blurs the distinction between the finance product and the timeshare scheme; and
- (e) the loan is generally repaid in full within 10 years and a template based on a 10 year time frame will not highlight to members the benefits post-repayment of the finance (namely, owning an unencumbered membership which offers a variety of holiday accommodations for the payment of an annual levy) which will continue for the duration of their membership.

### **Typical accommodation in typical timeshare**

As stated in B7Q1, ATHOC considers it is misleading to suggest there is typical accommodation or typical timeshare and to describe accommodation or timeshare memberships as such. ATHOC recommends the example of annual costs require that the accommodation example (or one of the examples) provided in the levies template is also used for the purposes of an example of annual costs. Similarly, the class of membership upon which the annual costs example is based should be the same as that used in the levies template.

### **Ongoing costs**

ATHOC also recommends ASIC provide further guidance on what constitutes ongoing costs for the purposes of the example of annual costs. ATHOC expects ongoing costs will comprise accommodation costs (if any) relating to the accommodation example and, for the 'with financing' example (if ATHOC's recommendation to exclude financing costs is not adopted), accommodation costs and financing costs. If ATHOC's understanding is correct, ATHOC recommends the examples be revised to use the same terminology for these ongoing costs (i.e. accommodation usage fees and ongoing financing costs) as contained in the other fees and costs template.

### **Upfront fees**

It is also unclear as to how any upfront fees would be disclosed in the example of annual costs (such as any establishment fee). ATHOC assumes such amounts are to be excluded given they are a one-off cost, and not incurred each year, but notes the example does not deal with such amounts (other than a passing reference to financing fees in clause 223(4)). If, as recommended by ATHOC, the example of annual costs is based on one year, the example could include disclosure below the table to inform consumers that establishment fees may also be payable (which is consistent with the example of annual fees and costs template for other registered managed investment schemes).

### **B7Q8**

Do you agree with 10 years as the timeframe for the example of the annual costs or do you think another timeframe is more useful? If so, please specify the timeframe and provide reasons.

ATHOC does not agree the 10 year time frame is appropriate for the reasons outlined in B7Q7, specifically, that it may create an impression to consumers that ongoing fees and costs will only be incurred over a period of 10 years and the assumptions underlying the average annual cost calculation are contrived and result in an outcome being produced which is unrealistic and therefore of little value or benefit for consumers. Further, a 10 year period fails to take into account the increased benefits the consumer enjoys the longer the membership is held.

ATHOC submits that, consistent with other registered managed investment schemes, a more useful example is over a one year period as proposed at B7Q7.

**B7Q9**

Do you agree with the template for the periodic statement for disclosure of fees and costs during the reporting period? If not, please provide reasons.

ATHOC supports the adoption of a tailored fees and costs table for inclusion in periodic statements for timeshare schemes, subject to the comments at B7Q1 in relation to the levies template and other fees and costs template for the PDS, namely excluding financing costs and forfeiture fees

**B7Q10**

Are there any additional items that should be included in the periodic statement for disclosure of fees and costs (e.g. in the circumstance of a forfeited interest)? If so, please provide details.

ATHOC does not consider any additional items should be included in the periodic statement for the disclosure of fees and costs.

**B7Q11**

Are there any additional requirements relating to fees and costs or information about fees and costs that would assist consumers? If so, please provide details.

Apart from the comments above, ATHOC does not consider any other additional requirements relating to fees and costs disclosure would assist consumers and the tailored enhanced fee disclosure requirements proposed by ASIC, subject to the changes recommended by ATHOC, will provide consumers with the information about fees and costs necessary for consumers to decide whether to purchase membership in a timeshare scheme.

**B7Q12**

What transitional period is required to comply with the proposal? Please provide reasons.

ATHOC considers that 12 months is a reasonable transitional period to enable responsible entities to prepare the new templates and update their PDSs. This transitional period will enable such update to be incorporated as part of the regular PDS review rather than responsible entities having to undertake an additional review and update of the PDS (which would incur additional printing, design and legal costs, along with potentially needing to destroy existing stock of printed PDSs).

**B7Q13**

Should there be an additional transitional period for Class Order [CO 14/1252] Disclosing fees and costs in Product Disclosure Statements and periodic statements for time-sharing schemes during the transition period for the proposal? If so, please provide reasons.

ATHOC supports an additional transitional period for CO 14/1252 for timeshare schemes given the proposal to adopt tailored enhanced fee disclosure requirements for timeshare schemes. While ATHOC does not expect the changes proposed by CO 14/1252 will significantly impact timeshare schemes, it does believe it would be an unnecessary cost for entities to continue to evaluate the impact of the class order on current PDSs and periodic statements where such amendments will cease to apply to timeshare schemes where the tailored enhanced fee disclosure requirements are implemented.

## Proposal C1

We propose to make the following amendments to [CO 13/760]:

- (a) expand the definition of 'special custody assets' to cover the assets of points-based time-sharing schemes comprising interests in real property and interests in other time-sharing schemes that are registered or are an exempt time-sharing scheme; and
- (b) reduce the frequency of audits of the trust account as required in paragraph (g) of the definition of 'special custody assets' from twice a year to once a year.

### ASIC question

### Our response

#### C1Q1

Do you agree with the proposal to expand the definition of special custody assets? If not, please provide reasons.

ATHOC supports ASIC's proposal to extend the definition of special custody assets though, as explained at C1Q2, recommends the definition of special custody asset be expanded beyond what ASIC proposes. ATHOC considers ASIC's policy underlying the characterisation of levies and real property of timeshare schemes as special custody assets, as outlined in paragraph 76 of Consultation Paper 272, applies equally to interests in real property and in other timeshare schemes.

#### C1Q2

Are there any other assets of time-sharing schemes that you consider should be included in the definition of special custody assets? If so, please provide reasons.

As the draft Instrument provides that the relief it grants is only available to timeshare schemes which are not promoted as a means of generating a financial return other than by way of a rental pool, ATHOC submits that any assets of such timeshare schemes should be special custody assets (as ASIC's policy outlined in paragraph 76 of Consultation Paper 272 is applicable to any asset of a timeshare scheme and it is not necessary to distinguish between different types of assets).

If ASIC does not agree with this proposal, ATHOC recommends the following additional changes to the definition of special custody assets.

ATHOC considers the levies category should be expanded to include other cash held by the timesharing scheme and general insurance products which are maintained by the responsible entity to insure scheme property.

ATHOC notes that cash may include amounts received from the renting of unused accommodation to the public. These amounts may be applied toward meeting scheme costs and expenses and therefore reduce annual levies charged to members.

While such cash qualifies as a special custody asset under other categories, including it in the levies category will enable the cash to be held in a trust account which is audited annually (rather than half-yearly).

**C1Q3**

Do you agree with the proposal to reduce the frequency of the audit of the trust account? If not, please provide reasons.

ATHOC supports the proposal to reduce the frequency of the trust account audit to annually and, as mentioned in B4Q2, notes this is consistent with the audit requirements applying to comparable trust accounts.

**C1Q4**

Do you think an audit of the points for points-based schemes should also be included in the annual audit? If not, please provide reasons.

ATHOC is supportive of an audit of points for points-based schemes, where such audit is intended to assess whether the points value of scheme accommodation exceeds the total points issued to members and that, where applicable, each member's annual points allocation has been issued in accordance with the requirements of the constitution.

ATHOC would not support, and does not believe ASIC is suggesting, a points audit which involves an auditor reviewing the points value attributed to scheme accommodation during the applicable financial year as this process involves a consideration of the location, amenities, standard, etc. of the accommodation and the auditor of the scheme is unlikely to have the property skills and expertise to undertake this function.

**C1Q5**

Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

While ATHOC acknowledges this proposal will increase annual audit costs, it does not consider such cost would be significant for timeshare schemes. Further, a points audit would provide comfort to members that the points system (which requires points issued, or available for issue, to members reflects the points value of accommodation) is being appropriately managed. Further, such increased audit costs are likely to be offset by the reduction in audit costs as a result of the levies account being subject to an annual, rather than half yearly, audit.

**C1Q6**

Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

ATHOC considers the amendments proposed by ASIC are beneficial for consumers. In particular, the reduction in audit frequency of the trust account will produce a costs saving for the benefit of timeshare scheme members (and such benefit will significantly outweigh any residual risk with reducing the audit frequency) and a points audit will provide consumers with additional comfort regarding the management of the points system.

**Proposal D1**

We propose to:

- (a) withdraw PF 205, PF 206 and PF 207 and instead consider any new applications seeking relief similar to these pro formas, and the terms of any relief, on a case-by-case basis;

Note: PF 205, PF 206 and PF 207 are available in ASIC Digest but not on our website, and so the current versions are attached to this paper for reference as Attachments 2, 3 and 4, respectively.



- (b) following writing to existing operators relying on case-by-case relief based on PF 206 and PF 207, make the following amendments to the relief granted:
- (i) for existing operators relying on relief based on PF 206—a reduction in the frequency of the audit of the trust account from twice a year to once a year;
  - (ii) for existing operators relying on relief based on PF 206 and PF 207—an increase in the voting and ownership restrictions from 10% to 20% on the following conditions: at least 90% of the interests have been issued; the increase and consequential amendments to the constitution are approved by a special resolution of members; and, where the scheme offers forfeited interests for sale, they are first offered to other members before being acquired by the operator, manager, promoter, developer or an associate of them; and
  - (iii) for existing operators relying on relief based on PF 206 and PF 207—a restriction on a member voting where the member is the operator, manager, promoter, developer or an associate of them, and has an interest in a resolution other than in their capacity as a member; and
- (c) update PF 208 so that it only applies to exempt time-sharing schemes and simplify the drafting (at Attachment 5 to this consultation paper).
- Note: We are proposing to include the template cooling-off statement for registered time-sharing schemes in ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX: see proposal B5.

ASIC question	Our response
<p><b>D1Q1</b></p> <p>Do you agree with proposal D1(a) to consider new applications seeking relief similar to that under PF 205, PF 206 and PF 207 (and the terms of any relief) on a case-by-case basis? If not, please provide reasons.</p>	<p>ATHOC agrees with ASIC’s proposal to consider new applications seeking relief similar to that under PF205, PF206 and PF207 on a case-by-case basis as ATHOC agrees there is likely to be limited, if any, new applications for such relief.</p>
<p><b>D1Q2</b></p> <p>Do you agree with our approach in proposal D1(a) to make amendments to case-by-case relief granted based on PF 206 and PF 207 following writing to existing operators relying on the relief? If not, please provide reasons.</p>	<p>ATHOC agrees with ASIC’s approach to make amendments to case-by-case relief by writing to existing operators. This will enable those operators to determine whether they wish to continue to operate under their current relief or adopt the amendments proposed by ASIC.</p>
<p><b>D1Q3</b></p> <p>Do you agree with proposal D1(b)(i) to reduce the frequency of the audit of the trust account under PF 206? If not, please provide reasons.</p>	<p>ATHOC agrees with proposal D1(b)(i) to reduce the frequency of trust account audits from half yearly to annually.</p>

ASIC question	Our response
<p><b>D1Q4</b></p> <p>Do you agree with proposal D1(b)(ii) to increase the voting and ownership restrictions under PF 206 and PF 207 from 10% to 20%? If not, please provide reasons and comment on what might be a more appropriate percentage.</p>	<p>ATHOC recommends, rather than increasing the voting threshold from 10% to 20%, the voting threshold be removed and any acquisition of interests in such timeshare companies be governed by the general takeover provisions (which enable a member and its associates to acquire up to 20% and, subsequently, any further acquisitions would need to be pursuant to an exemption (i.e. the creep provision) or under a takeover offer which ATHOC considers is unlikely to occur). This will have the benefit of potentially providing an ongoing market for the purchase of interests from existing or forfeited members over a period of time (as a member with an ownership interest of 20% or more can increase their interest by 3% every six months).</p> <p>The removal of such ownership and voting restrictions could be supported, and the interests of other members protected, by:</p> <ul style="list-style-type: none"> <li>(a) an obligation for the scheme to first offer forfeited memberships to existing members before being purchased by a member who has an interest in the scheme of 10% or greater; and</li> <li>(b) a voting restriction which prevents any member who has an ownership of 10% or greater from voting interests representing more than 10% of the interests in the scheme on any resolution in which they have an interest other than as a member.</li> </ul>
<p><b>D1Q5</b></p> <p>Do you agree with proposal D1(b)(iii) to include a voting restriction to manage conflicts? If not, please provide reasons.</p>	<p>ATHOC does not support proposal D1(b)(iii) on the terms proposed by ASIC. The original intention of the voting restrictions was to prevent an unregistered or grandfathered timeshare scheme from being controlled by a member (<b>related member</b>) who is, or is an associate of a person, involved in developing, operating, promoting or managing the scheme. However, it was not the intention to prohibit such persons from exercising voting rights altogether.</p> <p>The voting restrictions should strike a balance between enabling related members to exercise their legitimate rights as a member and protecting unrelated members from a related member acting in a manner which is detrimental to unrelated members. ATHOC's concern with prohibiting a related member from voting on any resolution in which they have an interest other than as a member is that it unreasonably restricts related members from exercising their membership rights. For example, such restriction may prevent a related member from voting on a resolution to appoint a nominee as a director where unrelated members would legitimately expect a related member with a significant holding to have a nominee on the board.</p> <p>ATHOC's preference is to restrict voting by related members on such resolutions to no more than 10% of voting power. ATHOC considers this proposal strikes an equitable balance between related members being able to exercise membership rights while still protecting the interests of unrelated members. Imposing limits on voting power but not ownership levels (which will be governed by the takeover</p>

ASIC question	Our response
	<p>provisions) as ATHOC recommends will continue to foster the secondary market for the purchase of memberships while protecting the interests of unrelated members from the scheme being controlled by a related member.</p> <p>If ASIC proceeds with an increase in voting ownerships and restrictions conditional upon a related member being prohibited from voting on any resolution in which they have interest other than as a member, related members may:</p> <ul style="list-style-type: none"> <li>(a) not support the proposed changes and vote against them which may make it difficult for the necessary special resolution to be passed to take advantage of the modified relief (given general member apathy) to the detriment of the continued operation of the scheme; or</li> <li>(b) related members may cease purchasing further memberships, which is contrary to the intention of revising the current voting and ownership restrictions and detrimental to the continued operation of such schemes.</li> </ul>
<p><b>D1Q6</b> Do you agree with the proposed amendments to PF 208 in proposal D1(c)? If not, please provide reasons.</p>	<p>ATHOC supports the proposed amendments to the cooling-off statement and confirmation for exempt title-based schemes, subject to the those comments at B5Q1 made in relation to the cooling-off statement and confirmation as it will apply to registered timeshare schemes.</p>
<p><b>D1Q7</b> Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p>	<p>The reduction in the frequency of the audit of the trust account from twice a year to annually will reduce audit costs for those operators which will be beneficial for the members of those schemes (who ultimately fund such costs via payment of levies).</p> <p>ATHOC also considers that modification to the voting and ownership restrictions, specifically in the manner proposed by ATHOC at D1Q4, will assist to ensure the continued viability of those grandfathered schemes by facilitating a market for the purchase of forfeited memberships in a manner which ensures the interests of existing members are protected. However, ATHOC is unable to quantify such costs as it will depend on a case by case basis.</p>
<p><b>D1Q8</b> Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p>	<p>ATHOC considers that the proposal outlined at D1Q4 adequately protects consumers' interests (particularly the interests of non-related members) while facilitating the ongoing viability of those exempt schemes. Also, requiring the adoption of the revised voting and ownership restrictions to be approved by special resolution of members adequately protects consumers' interests by enabling members to decide whether or not they wish to implement the proposed changes.</p>

**D1Q9**

Are there any additional protections to assist consumers that we should include in the relief based on PF 206 and PF 207 or the cooling-off statement in PF 208? If so, please provide reasons.

ATHOC does not consider any additional protections are required.

**Proposal E1**

We propose to update RG 160 to:

- (a) reflect consistency with the changes to the class orders, pro formas, AFS licence conditions, the financial requirements of responsible entities and the enhanced fee disclosure requirements;
- (b) update legislative and policy references and definitions;
- (c) provide additional guidance on our expectations for compliance with the Corporations Act and the Australian Securities and Investments Commission Act 2001 (ASIC Act) based on our experiences with time-sharing schemes;
- (d) amend the statement in RG 160.54 that the income from rental pools is used primarily to offset against scheme levies;
- (e) clarify that the applicant must sign the cooling-off statement in a form approved by ASIC;
- (f) clarify that the AFS licensee obligations for the responsible entity to pay the same charges for any unsold interests as members would be required to pay includes ensuring that another person as agent makes the payment; and
- (g) remove references to granting relief from the managed investment and licensing provisions (and further extending the transition period) to time-sharing schemes regulated under the prescribed interest provisions of the old Corporations Law (now repealed).

We are also proposing to maintain our current approach to the resale of interests in a time-sharing scheme (see RG 160.86–RG 160.91) and to non-accommodation-based time-sharing schemes (see Section D of RG 160).

**ASIC question****E1Q1**

Is our guidance in RG 160 on time-sharing schemes helpful in understanding obligations under the Corporations Act and our approach to granting substantive relief from the obligations?

**Our response**

ATHOC considers ASIC's guidance in RG160 is useful for timeshare scheme operators and sellers in understanding their obligations under the Corporations Act and relevant relief and strongly supports ASIC's proposal to update RG160.

**E1Q2**

Do you agree with the proposed amendments to the guidance? If not, please provide reasons.

While ATHOC is broadly supportive of ASIC updating RG160 in the manner proposed at proposal E1, ATHOC notes that, as stated at paragraph 94 of CP 272, ASIC will provide guidance of its expectations regarding promotional material and provision of financial product advice (including in relation to compliance with the best interests duty and related obligations), and conduct in approaching consumers. Given ASIC has not previously provided guidance in these areas, ATHOC requests and strongly encourages ASIC to consult with industry prior to publishing such guidance.

**E1Q3**

Do you agree with the proposal to maintain the current approach in RG 160 for the resale of interests in a time-sharing scheme? If not, please provide reasons.

ATHOC agrees with ASIC's proposal to maintain the current approach in RG160 for the resale of interests in timeshare schemes.

**E1Q4**

Do you agree with the proposal to maintain the current approach in RG 160 for non-accommodation-based time-sharing schemes? If not, please provide reasons.

ATHOC agrees with ASIC's proposal to maintain the current approach in RG160 for non-accommodation based timeshare schemes, that is granting relief on a case-by-case basis having regard to the factors outlined in RG160.98.

**E1Q5**

Is there any additional guidance we should provide in RG 160?

ATHOC considers ASIC may need to provide further guidance on its expectations around fees and costs disclosure, once the tailored enhanced fee disclosure requirements are finalised.

**E1Q6**

Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

ATHOC considers updating RG160 and providing guidance on matters which are not currently addressed will be beneficial for the timeshare industry by providing greater certainty for participants on ASIC's expectations regarding compliance with their obligations.