

20 December 2016

Ms Leanne Damary
Senior Lawyer, Investment Managers and Superannuation
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

Dear Ms Damary,

Submission regarding ASIC Consultation Paper 272: "Remaking ASIC class orders on time-sharing schemes"

The Credit and Investments Ombudsman (**CIO**) welcomes the opportunity to comment on the proposals contained in ASIC's Consultation Paper 272 "Remaking ASIC class orders on time-sharing schemes".

CIO has no specific comment on ASIC's proposal to remake the class orders. However, ASIC has also sought feedback on "*whether amendments are required to current requirements to improve consumer protections, including in relation to cooling-off, disclosure and sales practices.*"

We note that time-share schemes are considered "financial products" within the meaning of the Corporations Act 2001, and that persons recommending that a consumer purchase an interest in a time-share scheme are therefore considered to be providing "financial product advice" to the consumer. Promoters of time-share schemes are also therefore required to comply with the legislative and regulatory requirements applying to providers of financial product advice.

A very common feature of many complaints made by consumers to CIO regarding time-share schemes is the need to obtain a loan to finance the purchase of the recommended interest in the scheme. The finance for such loans is provided by an Australian Credit Licensee (**ACL**) related to the time-share promoter, and the application for this finance is generally made at the time the consumer agrees to purchase the interest in the scheme. The consumer then provides their financial details to the related ACL at a later date to allow the ACL to assess the consumer's application for the loan.

It would appear that the above process results in the time-share promoter providing financial product advice to the consumer to purchase an interest in the scheme, before the promoter knows whether the consumer can afford the necessary loan.

ASIC's Regulatory Guide 175 "Licensing: Financial Product Advisers — Conduct and disclosure" (**RG 175**) states that where advice relates to financial products with an

investment component, the advice provider should consider the consumer's capacity to service any loan used to acquire the financial product.¹ However, as a time-share scheme does not comprise an "investment" component as such, ASIC may consider that this guidance should not apply to the above process.

We would welcome any clarification that ASIC may wish to provide on the obligations of promoters providing financial product advice to consumers regarding time-share schemes in circumstances where the consumer will be required to obtain a loan to purchase the recommended interest in the scheme.

If you would like further information about our experience with time-share providers and practices, please feel free to contact Mr Craig Osland on (02) 9273 8464.

Sincerely,

A handwritten signature in black ink that reads "Raj Venga". The signature is written in a cursive, slightly slanted style.

Raj Venga
Chief Executive Officer and Ombudsman

¹ RG 175.287.