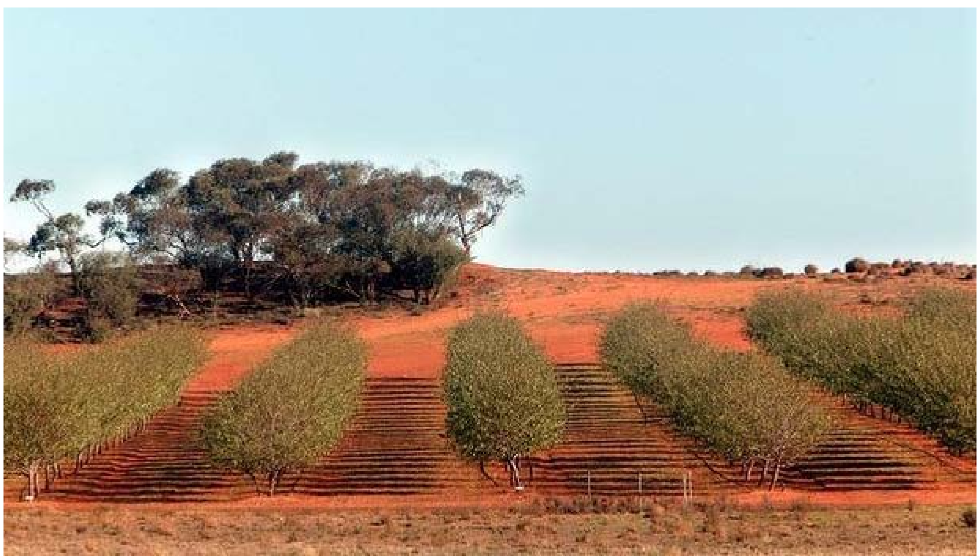
The Sydney Morning Herald
BusinessDay

Hard sales tactics behind Timbercorp revealed

December 13, 2014

Adele Ferguson and Ruth Williams



Those who invested in 2008 were among the worst hit. *Photo: Erin Jonasson*

- Alleged "fake debt ring" protected assets from angry investors
- Favoured few got back Timbercorp funds
- Timbercorp victims get four week reprieve

"Time to create some panic."

It was June, the peak selling season for Timbercorp's tax-effective agribusiness schemes, and consultant John Cockle was revving up his colleagues for an end-of-financial-year push.

"It is time to turn the screws inciting financial planners to crunch their accountants and accountants that write direct to you must rev up and go into overdrive like only the Collingwood Football Club can do. Go Pies!," Cockle wrote, in an email seen by Fairfax Media.

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"To support the urging you need to do over the next few days I would recommend Sol to send out an announcement on Friday early AM, mangoes, olives, selling fast, you need to move quickly to avoid missing out."

Sol was Sol Rabinowicz, Timbercorp's chief executive. For Timbercorp, the key to moving product, as so vividly demonstrated by Cockle's 2006 email, was "inciting" financial planners and accountants to push the schemes on their clients – with the help of fat commissions and a range of other lucrative inducements.

The devastating fallout from this strategy is only just now coming to a head, more than five years on.

Timbercorp, one of Australia's biggest managed investment scheme spruikers, flogged its agribusiness products to 18,500 investors before it toppled in 2009 with debts of $750 million. It had its own lending arm, Timbercorp Finance, which lent money to investors to sink into the schemes, then securitised and sold the loans, usually to ANZ.

Timbercorp's liquidator, KordaMentha, has issued hundreds of writs to investors demanding they repay Timbercorp Finance loans, as it races to beat the six-year statute of limitations next April. In some cases, the investors maintain they had no knowledge of the loans, which were set up by their financial advisers or accountants.

Revelations about Timbercorp's aggressive commission-driven sales and distribution machine helped shape the previous Labor government's reforms to financial advice,

Counting the cost

Each of the big banks and AMP own accounting and financial advice operations that sold big amounts of Timbercorp investments.

Westpac	
Securitor	$14.7m
Commonwealth Bank	
Financial Wisdom	$13.2m
Count Financial	$9.9m
ANZ Bank	
RI Advice	$12.9m
Sentry	$12.6m
Tandem	$3.8m
National Australia Bank	
Apogee	$2.87m
Meritum	$1.6m
AMP	
AMP Financial Planning	$27.9m
Hillross	$21.7m
Futuro	$4.3m*
Charter Financial Planning	$3.5m
AXA Financial Planning	$1.9m

*Part-owned by AMP
SOURCE: Internal Timbercorp documents

which were salvaged by cross-bench senators last month.

Timbercorp's directors have been unsuccessfully sued in an ill-fated class action mounted by M+K Lawyers.
The ANZ Bank, which bankrolled Timbercorp Finance, is under fire for its role in the debacle and is being urged to help broker settlements with the victims, who owe more than $390 million, much of it accrued interest and penalty rates.

And now, the financial planning sector is in the firing line, as it faces the threat of litigation by burnt clients.

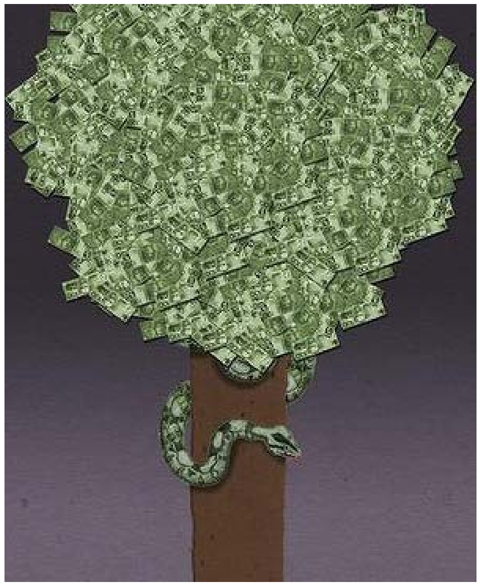

Illustration: Simon Bosch.

Legal action against financial planners has already begun in 25 cases linked to Timbercorp, according to law firm Slater and Gordon, which has spoken to 250 Timbercorp victims about the advice they received to invest in the company's products.

KordaMentha, acting for ANZ and other creditors, is offering a 15 per cent discount on investors' debts if they sign a waiver agreeing not to sue the liquidator, Timbercorp Finance or their financial advisers.

But KordaMentha, which has so far earned $23 million in fees from the Timbercorp liquidation, has since said it will take out the clause against suing financial planners "on a case-by-case basis" if requested.

Lawyer Mark Walter says some Timbercorp investors served writs by its liquidator KordaMentha, have, on Slater and Gordon's advice, filed third-party claims in the Supreme Court against their advisers – who would have earned substantial commissions on the allegedly poor advice.

"Attention has always been on the class action and it had to be dealt with before anyone would consider the adviser claims," he said.

In the years before its demise, Timbercorp was embroiled in a "commissions war" with Great Southern and other big players.

It meant that the most voracious sellers of the products – such as banned and bankrupt former financial planner Peter Holt – made millions.

Holt, whose clients are among those now facing massive debts on the rotten Timbercorp investments, was a Timbercorp favourite and trusted by his clients. The golf-mad Holt, an accountant by trade, still lives in a big home in Melbourne's leafy eastern suburbs. "I had been with him for many years and I thought that he was looking after my future," former client Naomi Halpern told the Senate last month.

Internal emails seen by Fairfax show the lengths to which the company would go to keep Holt and other favoured planners on side and selling.

One suggests offering Holt's firm, Holt Norman, "a kicker based on performance" – understood to be a special bonus commission on top of the standard 10 per cent paid by Timbercorp.

Holt Norman had achieved "incredible results", the consultant Cockle said in one email. But this "cannot be guaranteed next years as they chase dollars".

At one point, Cockle bemoaned that Timbercorp was "still not having the dollars required to really play the money game and compete with competitors that attack the hungry advisors and accountants".

A senate committee last month heard that some of the "bigger hitters" – planning and accounting groups – would demand more than 10 per cent to sell Timbercorp's products. "There would be subgroups getting 2 per cent or 2.5 per cent extra, on top of trips et cetera – take your pick," Andrew Peterson, the former general manager of distribution at Timbercorp, told the Senate.

And it was not just the commissions. In addition to the days at the races and the football, there were "professional development" days – thinly disguised Timbercorp marketing events – which would count towards financial adviser and accountants' professional accreditation requirements.

Emails seen by Fairfax Media show that Hillross, Retire Invest and Financial Wisdom were among the firms that attended such days.

Hillross is wholly owned by AMP, Retire Invest (now RI Advise) by ANZ and Financial Wisdom by the Commonwealth Bank. Indeed, Fairfax Media can reveal that financial planning and accounting operations partly or wholly owned by all four of the big banks and AMP were among the big sellers of Timbercorp products – and among the big reapers of commissions.

A database of every planner, dealer and accounting group that sold Timbercorp products, obtained by Fairfax Media, shows that groups owned by NAB sold more than $5 million of Timbercorp products, while Securitor, acquired by Westpac's BT division when it took over St George in 2008, sold $14.7 million worth.

Financial Wisdom sold $13.2 million and Count Financial, which CBA bought in 2011, wrote $9.9 million of business.

AMP Financial Planning moved $27.9 million, and Hillross, also owned by AMP, sold $21.7 million. AMP's Futuro and Charter Financial Planning also sold millions of dollars worth of Timbercorp products, while groups owned by ANZ, including RI Advice (formerly Retire Invest) and Sentry, sold almost $30 million worth.

In some cases, the big institutions only acquired the groups after Timbercorp's collapse; ANZ moved to full ownership of RI Advice in late 2009, and AMP first took a stake in Futuro in 2012.

ANZ, already in the spotlight over its bankrolling of Timbercorp's lending operation, has said it is reviewing the advice that planners at its groups gave to clients to relation to Timbercorp products.

Most of the banks and AMP each said they had received few, if any, complaints about the advice given by these groups. "We have had a very small number of complaints from customers with regard to agribusiness investment," an AMP spokesperson said. "Each time we investigate and examine the advice process and, to date, have found no cases of inappropriate advice."

CBA, limping in the wake of revelations of fraud and forgery in its financial planning operations, said the "vast majority" of its advice customers who had Timbercorp investments were clients of Financial Wisdom. It said it was not able to verify Fairfax's figures.

In the wake of the damning revelations about its financial planning operations, exposed by Fairfax Media and a whistleblower over the past two years, CBA has contacted 300,000 customers, offering to review their files if they have concerns about inappropriate advice.

CBA said it had received complaints from clients about Timbercorp advice but said it was "inappropriate" to discuss specific customers. One of the third-party counter-claims lodged by a Slater and Gordon client in the Supreme Court relates to CBA-owned Financial Wisdom.

It names two former Financial Wisdom advisers – Douglas Collins and former Victorian Liberal-turned-independent MP Geoff Shaw – and accuses Financial Wisdom of negligence and misleading or deceptive conduct.

The investor – who is being pursued by KordaMentha for $130,000 worth of debts on olive and almond projects, plus interest – argues the Timbercorp products were "not appropriate investments" and "not sufficiently secure to make it reasonable for [the client] to invest in any of them".

Collins declined to comment and Shaw did not return calls. CBA said it could not comment on matters before the courts.

Walter expects more litigation involving financial planners, as the statute of limitations deadline in April creeps closer.

"It wouldn't surprise me if there's a fair bit of further litigation revolving around financial planners," he says. "It has been a sleeper for a long time. Now we are getting to the end of the story, and there's a deadline, I expect it will focus people's minds."

Walter says some people could have strong claims against their financial planners, but "people just don't know they have any rights".

ASIC has said it reviewed almost 12,000 pieces of advice relating to Timbercorp and Great Southern to test whether it had been appropriate. It concluded there was no systemic mis-selling of the Timbercorp scheme.

One issue that consumed much of the focus of burnt Timbercorp investors was the ill-fated class action mounted by law firm M+K.

It pursued Timbercorp directors and bosses on behalf of investors, alleging conflicts of interest, breaches of directors' duties and misleading and deceptive conduct.

That action failed spectacularly, with the judge in the case lambasting the "scattergun" manner in which M+K had run the case. It then failed on appeal and then, in April this year, before the High Court.

That final loss in the courts was the starting gun for KordaMentha, which quickly began issuing writs on investment loans, plus interest. In the five years the class action took to resolve, interest and penalty rates continued to mercilessly accrue; in many cases, people's debts doubled.

Depending on how big their debts were, Timbercorp investors paid up to $58,000 for the initial trial period alone to be part of the class action.

The potentially more costly decision for the investors, however, was to stop making their loan repayments – on the advice of M+K.

"For every one of our clients who stopped payment and joined the group of Macpherson + Kelley clients challenging the validity of the Timbercorp loans, they have, in effect, simply spent just a few months worth of saved loan repayments as their contribution towards legal costs for the class action," M+K principal Ron Willemsen wrote to clients in 2012.

"By contributing such legal costs, you and your fellow borrowers have given yourselves the best chance possible of being released from liability to pay some or all of the Timbercorp Finance loans."

The debts have since massively expanded. To put it into perspective, when Timbercorp went under, 7511 borrowers owed $478 million in loans. More than $253 million of that debt was repaid, leaving $225 million. But that figure has ballooned to $481 million over the past five years – which is equivalent to more than $250 million in accrued interest payments.

In response to questions from Fairfax Media, M+K said its advice to its clients was privileged. "A law firm's duty is to act in the best interests of its clients, which we did in this matter," a spokeswoman said.

Fairfax Media has been told M+K collected more than $20 million in fees from the failed Timbercorp class action. It emerged on Thursday that this was how much money M+K received from investors in the Great Southern class action, which resulted in a settlement returning negligible funds to victims.

However, M+K said the $20 million figure was not correct in relation to Timbercorp. It declined to say how much it had earned, saying fees were confidential, agreed in advance and "for each client amounted to a fraction of the cost of taking on this case alone".

One Timbercorp investor, Alex Gulabovski, owed about $750,000 on his olive, almond, citrus and other investments when Timbercorp collapsed; his debt has now blown out to more than $1.4 million. He says he invested for the promised "annuity-style" income, not a tax break. "Timbercorp was built on bullshit," he notes.

Gulabovski said he spent more than $60,000 to be part of the class action.

He is now "totally disappointed" with how M+K handled the case. "Knowing what I know now, I regret being part of it," he said.

Burnt investors are weighing up their next move. The Agricultural Growers Action Group is trying to strike a collective deal with KordaMentha; its members are seeking a settlement of 45 cents in the dollar, which they argue is equivalent to resetting their loans to the amount owed when Timbercorp collapsed. "When we met KordaMentha in June, they complimented us on the work that we had done to build such a powerful business case and then proceeded to throw the offer in the bin, along with the lives of thousands of Timbercorp victims," group chairman Neil White said.

One of the group's members, Andrew Peterson, is a former Timbercorp head of sales who took out a Timbercorp Finance loan in the company's dying months. He gave evidence before the Timbercorp Senate hearing last month.

At that time, Timbercorp was quietly buying back projects from aggrieved or favoured investors – effectively allowing them to substantially wipe their debts.

By 2008, rumours were spreading that many of Timbercorp's agribusiness schemes were dramatically underperforming, and the share price had dived.

But Timbercorp's banks, including ANZ, were still on side. The hard sell continued.

In one email sent in June 2008 - 10 months before Timbercorp collapsed in a blaze of flames - Cockle begged the "most influential and highly remunerated team members" to dig deep and sink 15 per cent of their salary and bonuses into one of the projects.

"Please help me show the distribution team that you believe in your projects."

But Peterson was one of only a few senior executives to buy into that year's olive and almond schemes. He also bought Timbercorp shares in late 2008.

"If I had known what I know now, I would have walked out in July 2008," he told the Senate hearing.

In June 2008, Cockle was desperate. With less than two days before the deadline for horticultural projects and Timbercorp's olive and almond projects well below their sales targets, he warned if he did not get support, "I can't see myself wanting to continue to work as a consultant inside this organisation".

Cockle did not respond to emailed questions or phone calls from Fairfax Media.

Within 10 months, Timbercorp would be gone. Those who invested in 2008 would be among the worst hit. And the legal mess and financial anguish created in its wake continues.

On Thursday, Supreme Court judge Clyde Croft called for "compassion and understanding" for investors in Great Southern, which mirrored its rival Timbercorp in many ways. And he called for governments and legislators to consider carefully "the role and regulation of financial advisers" in the wake of the "tragic" collapse.

Buy-back bonanza

Some investors had their Timbercorp projects bought back, while others still owe hundreds of thousands of dollars.

The footballer

A former AFL premiership player had investments in Timbercorp's earliest almond and olive projects that were bought back in March 2009 – the month before Timbercorp collapsed – clearing his $20,000 loan.

The barrister

This Sydney silk reached a settlement with Timbercorp in 2007 after threatening to sue over an under-performing olive scheme. He had invested about $2 million.

The racing identity

This racing and corporate high-flyer owed $160,000 on a Timbercorp citrus project. His investment was bought back in January 2009 and his debt almost completely cleared.

The restaurateur

This Melbourne-based hospitality figure had her three-year-old olive projects bought back in 2006. Her loans of $67,000 were cleared.

The financial services executive

This corporate figure had a $77,000 citrus investment bought back in January 2009. The executive told Fairfax Media the transaction occurred at "arm's length".

The victims

Some 2714 ordinary investors have lost almost all equity in the projects and still owe $394 million. Hundreds have been served writs by Timbercorp's liquidators seeking repayment of the debts.