

# Information for Timbercorp growers

Timbercorp Securities Ltd (TSL) was an Australian financial services licensee and the responsible entity of 33 registered managed investment schemes. The Timbercorp Group raised more than \$2 billion from 18,500 growers since 1992 for investment in agribusiness projects.

On 23 April 2009 the directors of TSL, its ASX-listed parent Timbercorp Limited (Timbercorp) and around 40 other associated entities appointed partners of KordaMentha as voluntary administrators of the companies. KordaMentha was appointed as liquidators of TSL on 29 June 2009.

Further information about the liquidation of TSL (and associated entities), actions taken in relation to each of the managed investment schemes and information for borrowers of Timbercorp Finance Pty Ltd can be found on the website of KordaMentha at [www.kordamentha.com.au](http://www.kordamentha.com.au).

## ASIC's investigations

ASIC conducted an investigation into the collapse of TSL. ASIC assessed the conduct of TSL, and other financial services providers, in relation to the marketing and operation of TSL's registered managed investment schemes.

ASIC's investigation concluded there was no systemic mis-selling of the TSL schemes by financial advisers warranting enforcement action by ASIC. However as a result of these investigations and our investigations into the collapse of the Great Southern group ASIC did require a number of Australian financial services licensees to write to clients where there were indicators of potentially inappropriate advice. The letters to affected clients explained how to make a complaint in connection with the advice provided including information about the licensee's internal dispute resolution (IDR) process and the external dispute resolution (EDR) process.

Further, as a result of ASIC's inquiries into these collapses, one licensee provided an undertaking to ASIC that it would immediately cease to provide financial services to retail clients while a number of licensees introduced new training programs for its financial advisers.

ASIC also investigated allegations against the directors of Timbercorp entities, with a focus on whether any past actions of directors breached s180 (directors' duty of care and diligence) and s184 (directors' duty to act in good faith).

ASIC determined to take no further action as a result of our investigations.

In deciding what matters to pursue and what enforcement action to take, if any, ASIC considers a range of factors. Prior to spending public monies on commencing proceedings there needs to be sufficient evidence to prove allegations of misconduct in a form that is admissible in court. ASIC also assesses whether there are other actions that investors might be able to take on their own behalf, such as class actions.

In relation to the financiers of Timbercorp, no evidence has been provided to ASIC suggesting that there were breaches of lending procedures. If it receives such information, ASIC will review the information and determine whether an investigation is appropriate.

Further information regarding ASIC's approach to enforcement is contained in Information Sheet 151 ASIC's approach to enforcement ([INFO 151](#)).

## Peter Raymond Holt, Holt Norman & Co Pty Ltd

Peter Raymond Holt has been identified as financial adviser who heavily promoted TSL schemes to his clients. Mr Holt was a director and authorised representative of Holt Norman & Co Pty Ltd (Holt Norman & Co) and the Responsible Officer of Holt Norman & Co's Australian financial services (AFS) licence. ASIC cancelled the AFS licence of Holt Norman & Co on 19 September 2012.

In September 2012, ASIC banned Mr Holt from providing financial services for 3 years after ASIC found that, among other things, Mr Holt failed to have a reasonable basis for the advice he gave to retail clients. ASIC considered that the approach taken was the most appropriate based on the specific set of facts of this matter and the evidence that was available to establish those facts at that time (see [12-236MR](#)).

Bannings are a protective type of regulatory activity. They are not a punishment for misconduct. The principles and procedures we adopt for these hearings are set out in Regulatory Guide 8 *Hearings practice manual* ([RG 8](#)) at [www.asic.gov.au/hearingsmanual](http://www.asic.gov.au/hearingsmanual).

In some cases the Corporations Act specifies whether a banning hearing is to be conducted in private. In such instances we have no discretion and the hearing will be held in private. As a result, ASIC's banning decision cannot be made public, however we generally publicise the outcomes of hearings.

## What is ASIC's ongoing role?

TSL remains as responsible entity of the schemes. ASIC is monitoring the continued discharge by TSL of its duties as responsible entity (including its duty to prefer the interests of growers over its own corporate interests where they conflict) under the administration. We will continue to monitor the administration and review the reports provided by KordaMentha.

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