

## Misconduct and Fraud related to Timbercorp and Peter Holt

By HNAB Action Group – EdSH31.10.14 (Pt 2 amendment 28.5.15)

A: Loan Applications / Agreements as supplied by Timbercorp Finance and related Documents	Relevance to responsibility of Timbercorp and its sales representative Peter Holt
1. If you were given SOAs, PDSs or documentation it was after you had signed as an afterthought and it was dismissed as just technical information that had already been explained to you as was Holt's role: you were never encouraged to read it or seek independent legal advice. Responses to questions took advantage of the level of your lack of financial literacy and your trust in expertise.	<ul style="list-style-type: none"> <li>• Failure of due diligence</li> <li>• Failure of disclosure obligations</li> <li>• Advantage taken of trust in expertise of accountant / adviser and duty of care</li> </ul>
2. You were led to understand you were purchasing outright a certain number of units (e.g. woodlots or avolots etc.) with no mention of a loan and were not sent a copy of the completed documents from either Timbercorp or Holt. Some people did not even know they were being placed in a project at all.	<ul style="list-style-type: none"> <li>• No means to know a loan even existed or, if you did, of its terms and conditions (if you could understand) OR be alerted to discrepancies in information provided by accountant / adviser</li> </ul>
3. You were not advised that a copy of the completed Loan Application or the Approval (or SOA, PDS etc.) should have been provided to you by the accountant / adviser so you did not have the expectation of it. You sought these professional services because you did not have the understanding, skills or expertise yourself.	<ul style="list-style-type: none"> <li>• No means to determine if a supposed borrower knew about the loan application OR approval to be alerted to discrepancies about information provided by accountant / adviser</li> </ul>
4. You may know you were entering a loan but not that subsequent loans for additional 'stages' were being signed up for too with your one signature (e.g. 2006 Avocado project which had a 'Stage 2' for 2007 and 'Stage 3' for 2008 resulting in refinancing and new loans taken out) authorised by a POA you did not know about.	<ul style="list-style-type: none"> <li>• No means to know a loan even existed</li> <li>• No discussion, agreement or informed consent to give POA</li> <li>• Fraud</li> </ul>
5. Disclosure of the existence of, or specifics related to management, maintenance, lease and insurance fees was not provided prior to signing to enter a project.	<ul style="list-style-type: none"> <li>• Failure of disclosure obligations</li> </ul>
6. Information containing obligations and undertaking by which the borrower is bound was not provided prior to loan being established or typically at all even after.	<ul style="list-style-type: none"> <li>• Breach of duty of care to obligations of disclosure</li> </ul>
7. There is no mention in Loan Agreement or Terms and Conditions of security for the loan other than the crop.	<ul style="list-style-type: none"> <li>• Failure in duty of care to obligations of disclosure</li> </ul>
8. Assets and Liabilities were completely missing or falsified in Applications (even including other agribusiness as an asset when existence of loans made these liabilities).	<ul style="list-style-type: none"> <li>• Failure of due diligence</li> <li>• Fraud</li> </ul>

<p>9. The Application was not shown to you complete (as “other data had to be finalised”) but either only partial, or typically only the page requiring your signature.</p>	<ul style="list-style-type: none"> <li>• Advantage taken of trust in expertise of accountant / adviser and duty of care</li> </ul>
<p>10. Handwriting on Applications indicates the ‘borrower’ has only filled in the signature and others have added data – after the signature was required with assurances that updated financials had to be finalized.</p>	<ul style="list-style-type: none"> <li>• Lack of transparency</li> <li>• Advantage taken of trust in expertise of accountant / adviser and duty of care of both TC and its representative</li> </ul>
<p>11. False witnesses for Applications e.g. a Holt staffer – which is a conflict of interests - or someone you never met or heard of (possibly within Timbercorp or a friend of Holt’s who benefitted financially?).</p>	<ul style="list-style-type: none"> <li>• Breach of privacy</li> <li>• Lack of transparency</li> <li>• Advantage taken of trust</li> </ul>
<p>12. Your signature is on documents you have not seen so therefore it has been forged, scanned in, or a page you did sign has been attached to adulterated documents.</p>	<ul style="list-style-type: none"> <li>• Fraud</li> <li>• Deception</li> </ul>
<p>13. You did not know Loan Agreements should be signed by both parties and they were not: Approval letters (of your ‘successful’ Application) followed Applications and were sent to Holt only.</p>	<ul style="list-style-type: none"> <li>• Breach of duty of care, ethics and corporate governance</li> <li>• Lack of transparency</li> </ul>
<p>14. The Loan Agreement is signed by, Robert Hance, (as Executive Director or CEO), the same person in joint capacity as lender and borrower or by the same person as your supposed authorized attorney.</p>	<ul style="list-style-type: none"> <li>• Blurred roles; no separation</li> <li>• POA not disclosed or informed consent sought</li> </ul>
<p>15. Correspondence was addressed to Holt’s office from Timbercorp and not direct to ‘growers / investors’ or to ‘borrowers’ – this was represented to you as necessary to enable the accountant / adviser to manage investments and handle related technical, financial and legal concerns.</p>	<ul style="list-style-type: none"> <li>• Lack of transparency</li> <li>• Advantage taken of trust in expertise of accountant / adviser and duty of care of both TC and its representative</li> </ul>
<p>16. Timbercorp Finance (TFPL) deems an investment with Timbercorp (TSL) is established once TFPL approves the loan. TSL does not issue a certificate or such: the Loan Approval is the “proof”. Letterhead for loan confirmation / approval is at times from (TSL) with (TFPL) mentioned only in fine print at the bottom of the page and at other times from TFPL.</p>	<ul style="list-style-type: none"> <li>• Concern about the so-called ‘separation’ of powers</li> <li>• Lack of transparency</li> </ul>
<p>17. Application titles blur lines between TSL and TFPL e.g. “Timbercorp 2007 Ongoing Finance Package”.</p>	<ul style="list-style-type: none"> <li>• Concern about the so-called ‘separation’ of powers</li> </ul>
<p>18. Application clearly states that applicants / borrowers must include a “total financial position” – yet the document is typically blank, incomplete or contains inaccurate or false data. [See policy in 2006 Timbercorp</p>	<ul style="list-style-type: none"> <li>• Acceptance of applications that did not fulfil TC’s own requirements</li> <li>• No duty of care to ensure</li> </ul>

Projects Special Finance Package (section 8, p 1).]	borrowers can service loan
19. Other than applicant's name and address all other contact details are for Holt's office.	<ul style="list-style-type: none"> <li>• Lack of transparency</li> <li>• Advantage taken of trust</li> </ul>
20. On requesting copies of Loan Applications and Approvals after the failure of the poorly run M+K class action and Appeal (which did not focus on key issues), Applications had pages without numbers, or omitted pages within a numbered sequence (e.g. an Application goes from 'Page 7' to 'Page 9' with no number 8; or Page 5 to Page 9 with no page 6, 7 or 8 followed by four (4) pages marked 'page 9' each with different content, as if sequential).	<ul style="list-style-type: none"> <li>• Suggests pages can be substituted, inserted, omitted to serve particular agenda</li> <li>• Failure in duty of care</li> <li>• Deception and possibly fraud</li> </ul>
21. On requesting copies of Loan Applications and Approvals (since the failure of class action) the precise <i>same loan emailed weeks later</i> by a different person contained different page/s.	<ul style="list-style-type: none"> <li>• Suggests an original loan document does not exist or one is collated on request</li> <li>• Concern re authenticity or further fraud</li> </ul>
22. TFPL deny association with Holt but exchanged personal details about clients and paid commissions so either relied on Holt's verbal information and *ignored their own lending criteria and professional lending practices. (* confirmed by former Timbercorp employee Andrew Peterson)	<ul style="list-style-type: none"> <li>• Breach of privacy possibly</li> <li>• Failure in duty of care</li> </ul>
23. Much of this occurred in more than 1 loan where you had more than 1 and to all known Holt victims.	<ul style="list-style-type: none"> <li>• Systematic design to defraud</li> </ul>
24. Accelerated incentives by way of yet higher commissions were paid to accountants / advisers acting as sales representatives in the lead up to Timbercorp's collapse.	<ul style="list-style-type: none"> <li>• Failure in duty of care</li> <li>• Fraud</li> </ul>
25. Despite Timbercorp's knowledge in 2008 of its financial problems and imminent collapse, it proceeded with loans (e.g. '2008 - Stage 3' of 2006 Avocado project).	<ul style="list-style-type: none"> <li>• Failure in duty of care</li> <li>• Fraud</li> </ul>
<b>B: Claims and Assurances by Peter Holt and associates</b>	<b>Relevance to the responsibility of Holt as a representative of TC</b>
<p>1. MIS agribusiness, including Timbercorp, were "government endorsed*" which meant the government promoted these as solid, worthwhile investments. Evidence by way of newspaper articles was presented.</p> <p>*It emerged after the GFC this merely meant the ATO had issued a product ruling for tax credits and in no way assessed legitimacy of the product (which 'investors' were somehow meant to ascertain).</p>	<ul style="list-style-type: none"> <li>• Inaccurate and fraudulent</li> <li>• Manipulation and betrayal of trust</li> </ul>
2. MIS was a win-win as it benefited the Australian economy, farmers and investors with sustainable, ethical forestry and horticultural products and supported micro-businesses by delaying tax payment to harvest.	<ul style="list-style-type: none"> <li>• Inaccurate and possibly fraudulent</li> <li>• Likely a manipulation and betrayal of trust</li> </ul>

<p>3. MIS was a vastly superior alternative to superannuation which had worked well for our parents' generation but would fail to provide for the increased numbers as our generation aged and retired.</p>	<ul style="list-style-type: none"> <li>• Inaccurate and fraudulent</li> </ul>
<p>4. The government encouraged people to enter MIS by making these "tax effectives" in offering tax deductions with the tax paid on harvest of the agribusiness.</p>	<ul style="list-style-type: none"> <li>• A stretch of the facts</li> <li>• Manipulation and betrayal of trust</li> </ul>
<p>5. On discovery of loans that you had not known existed it was reinforced that the point of professional expert advice was to assist with confusion about financial matters beyond your understanding and you felt grateful for Holt and embarrassed and foolish for what you were encouraged to believe was your misunderstanding.</p>	<ul style="list-style-type: none"> <li>• Manipulation and betrayal of trust</li> </ul>
<p>6. When you did not know a PDS, SOA, Loan Approval or copy of Loan Application should have been provided, and requested clarification or some form of representation of your financial position, you were given reasons for delay (e.g. very busy; software update; new special program arriving shortly) and told not to worry as all was in order. Ethical expertise was reassured by Holt's former job at ATO, numerous qualifications on display, considerable network in financial industry and apparent high regard by numerous colleagues. <b><i>The clincher was concern you were being unreasonable as you would not understand complex financial documents anyhow which is why you sought accountancy and / or financial advice in the first place.</i></b></p>	<ul style="list-style-type: none"> <li>• Manipulation and betrayal of trust</li> <li>• Failure of due diligence and duty of care</li> <li>• Breach of professional ethics and obligations</li> <li>• Failure of disclosure</li> </ul>
<p>7. Holt showed newspaper clippings, graphs, computer data, his own and family members' portfolios to reassure you that he had assessed the value of the agribusiness and reinforced these were very safe, conservative, blue-chip investment strategies. You were not told these were high risk strategies, suitable for high-end earners who were sophisticated investors looking for measures to reduce tax mainly and did not care if the projects failed.</p>	<ul style="list-style-type: none"> <li>• Manipulation and betrayal of trust</li> <li>• Failure of due diligence and duty of care</li> <li>• Breach of professional ethics and obligations</li> <li>• Failure of disclosure</li> </ul>
<p>8. Holt claimed he only made money when the investment he put you in made money: this suggested he was paid on harvest when you received your return and not that upfront commissions, trailing fees and other kick-backs meant he made money regardless, thus was motivated to put you in loans - and discourage investments that did not provide such benefits to him e.g. property, super.</p>	<ul style="list-style-type: none"> <li>• Failed in duty of care to disclose</li> <li>• Deceptive and misleading at best</li> </ul>
<p>9. Holt claimed your residential property should never be placed at risk yet did so, not <i>disclosing a loan</i> or that the lender could sell the property in the event of default by a corporate borrower (ie. when in the name of a Trust).</p>	<ul style="list-style-type: none"> <li>• Failed in duty of care to disclose</li> <li>• Misrepresentation and deception</li> </ul>

<p>10. The firm had a Compliance Manager whose job was to ensure all was in order. There are reports that the CM admitted after the GFC exposed the misconduct and fraud that there was “something wrong” but soon after was no longer employed by Holt.</p>	<ul style="list-style-type: none"> <li>• An abysmal failure of competence or further deception</li> </ul>
<p>11. You believed your accountant / adviser was operating on your behalf, aware of your circumstances, goals, capacity to service loans and level of risk aversion. You trusted assurances and did not know the professional you hired was effectively a sales representative for MIS in recommending these investments, motivated by greed.</p>	<ul style="list-style-type: none"> <li>• Breach of Corporations Act and duty of care</li> </ul>

## KEY CONCERNS

- 1) Timbercorp failed to meet its own application policies and guidelines thus failed in its duty of care to responsible lending. It also failed to provide full and complete copies of someone’s file on request despite, in S11 of Finance Package Application under ‘Privacy Statement’ listing that as an applicant: *“You may access, correct or update any personal information we hold about you...”*. This further reinforces misleading, deceptive and/or irresponsible lending practices.
  
- 2) Ironically, people attempting to settle fraudulent loans are required to substantiate their personal affairs in extensive and minute detail yet at the time of approving loans, Timbercorp saw it appropriate to do so, on the basis of only a name and signature (and it appears their association with Holt). The contrast between what Timbercorp accepted in Loan Applications is extreme in comparison with what the liquidator, KordaMentha, requires for proposals to “settle debts” where we are required to provide:
  - a 15 page Statutory Declaration with questions regarding financial position including dealings over the past 5 years, income, forecast income, detailed monthly budget
  - bank statements for the past 6 months
  - the last 3 tax returns
  - business financial statements
  - details regarding business trading entities
  - copies of statements relating to superannuation and life insurance.
  
- 3) Timbercorp accepted Applications from Peter Holt and his office and paid him commissions, including offering accelerated exorbitant rates of around 15%, over the already very high rate, in order to incentivize his office to put more clients in loans to give Timbercorp greater cash flow.

- 4) An in-house Timbercorp authorized representative who is directly employed performs no different a role to an external accountant / adviser paid via commissions to recommend the product who is thus acting as a sales representative for Timbercorp – this is in direct conflict to Holt’s office which promoted its role of providing “independent” accountancy / financial advice solely for the client’s best interests.
- 5) KordaMentha itself reported on the secret buffer crops planted to boost yields to skew data presented to ‘investors’. KordaMentha is aware that Timbercorp ignored farmers’ reports of certain land being unsuitable for various crops or plantations. It may know that management fees were charged even when no crop had been planted yet to manage.
- 6) Although a gross lack of transparency has occurred involving outright fraud committed against victims (who are euphemistically described by the related parties as ‘borrowers / growers / investors / clients’), they are being required to meet supposed financial “obligations”.
- 7) The failure of the regulatory and legal systems to protect victims from sophisticated white collar crime has been further compounded by a poorly run class action by Macpherson and Kelley that did not address core concerns of Holt victims - and having been lost, provides the green light legally for the Liquidator to pursue people to collect on loans obtained through alleged fraud and misconduct and, over 5 years after the Timbercorp turmoil began, causing more people to lose their homes, be placed into crippling debt or bankrupted and traumatized further.
- 8) The pattern occurring to former clients of Peter Holt and his associates suggests that not only did he breach regulatory guidelines and professional ethics for financial advantage but that TFPL was complicit. Mr Andrew Peterson, a former manager at Timbercorp (and financial adviser) has informed us that *Applications provided by Holt were automatically approved without even being looked at*. Lenders (e.g. ANZ) financing TFPL are therefore responsible if they failed to determine, or alternatively if they knew, the operation was not ethical or meeting appropriate standards.
- 9) When Timbercorp encountered difficulties and the exorbitant accelerated rate (on already substantial commissions) was offered by TFPL to those who operated as sales representatives, this suggests that ‘borrowers’ were used as finance “mules” for TSL to raise monies from within to keep afloat. This has the hallmarks of a non-recourse loan whereby an entity lends to itself. Rogue advisers and greedy investment managers appear to have operated a scheme of dodgy deals under the watch of – and alerts to – the regulator. These people seek to deny their greed and / or responsibility by blaming innocent ‘investors’ and falsely representing the understanding given to us and therefore our agreement to ‘invest’. They further refuse to respond to our concerns and even deny notification of misconduct once it was exposed.
- 10) An accountant / financial adviser has access to clients without sufficient knowledge to choose investments, or to know what questions to ask, or what should be provided to ascertain he or she is acting on their interests as professed. Holt victims lost all money paid to Timbercorp and had no rights to any money from the schemes. Corporate Governance is grossly inadequate with constitution documents and contracts written to effectively exclude the “grower/borrower”

from any rights while being forced to accept all risk and obligations including payment of seemingly arbitrarily determined amounts invoiced (i.e. no clarification of how they were arrived at) and no meaningful oversight of this yet it can be demanded through court.

- 11) ASIC and FOS determined that the advice given to Holt victims was inappropriate and unlawful. The basis of his Ban from ASIC was due to being influenced by very high commissions for agribusiness products and failing to comply with numerous financial services laws.
- 12) In the pursuit of extracting further money, the language KordaMentha uses ignores and denies the reality of misconduct towards victims having been placed in loans fraudulently: it refers to an “offer” and a 15% “discount” as if it is providing a generous benefit or assistance (due to penalty interest it is actually demanding at least 85% extra). *In the scenario of a thief having stolen your possessions, if he or she sent someone to extract more from you, then suggested you should give more yet again because you refused to comply, and then suggests they will offer to take a bit less to help you, they would be arrested. If located, your possessions would be returned. Compensation for the protracted and torrid ordeal would be deemed reasonable.* Yet theft by keystroke or pen does not treat white collar criminals the same way. The victim has very little rights or recourse – there is nowhere to go for adequate advice and help; lawyers typically don’t understand the complexity if you can afford them; measures exist to protect the adviser, lender and product issuer that thwart litigation.
- 13) Further, loan debts have more than doubled since Timbercorp collapsed in 2009 due to penalty interest rates (of 13.2%) for discontinuing to make repayments (advised by lawyers and also elected by some on discovery of the fraud) so, to date, people are effectively being asked to pay more than twice the remainder at collapse of their fraudulently acquired debt. Restitution or compensation for losses due to misconduct and fraud is treated by KordaMentha and ANZ as if it does not exist as an issue. It is likely in many cases that the amount now being sought by KordaMentha (after 5 years since Timbercorp’s collapse) for repayment of outstanding loans exceeds the total amount that would have been repayable over the entire term (10 years).
- 14) Kordamentha’s lawyers, Mills Oakley, assert that Holt is not an authorized representative of TC or TFPL yet Timbercorp accepted Loan Applications\* from him, paid commissions - and moreover, specifically seeks to offer protection from future action against him (as an adviser) under KordaMentha’s settlement agreement. Contrary to Mills Oakley assertion, Holt confirms in his own written SoA that he is “*authorised and competent to use*” several product providers and specifically lists Timbercorp, among others which he also recommended. (*\*Andrew Peterson, a former manager at Timbercorp, reports applications from Holt were automatically approved.*)
- 15) KordaMentha has a conflict of interest: on the one hand they are to seek a commercial outcome for recovery of monies deemed to be owed but on the other hand, the longer they are engaged, the greater their income – it is to their financial advantage to prolong the process.
- 16) It is possible that the fees paid to the liquidator, KordaMentha, after 5 years of engagement, exceed the total debt that was owed to Timbercorp and its creditors, the largest being ANZ.

## CONCLUSION

In summary, having securitized Timbercorp loans, ANZ\* has a responsibility to consider the unethical lending practices of Timbercorp, the apparent breach of Privacy, the lack of due diligence in assessing loans, the lack of disclosure regarding financial obligations and failure to meet reasonable responsible lending standards to the extent and degree that complicity in fraud is apparent.

ANZ provided shareholders money to Timbercorp Finance and thus has responsibility to them as well as victims of misconduct and fraud either because it was negligent and failed to perform due diligence to be assured of Timbercorp's operation or else, it was complicit in the misconduct.

ANZ is hiding behind KordaMentha in refusing to meet with victims or respond to our concerns.

Life-savings, homes and retirements have been stolen from us and the protracted severe distress of many years has seriously impacted health, relationships, work and well-being, in addition to plans for retirement. People are left without a home, decimated financially, in crippling debt or bankrupt.

As the largest creditor, the ANZ has the power and authority to provide guidance to the liquidator with regard to the collectability of loans. Current debt should be waived and repayments made to those who have settled.

ANZ also has responsibility to provide restitution for losses of money paid for loans acquired through misconduct and to pay compensation for rolling consequences and immeasurable distress.

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\*It appears disingenuous for the ANZ bank to try to distance itself from the process of loan recovery. In the class action against Timbercorp (Woodcroft-Brown v Timbercorp Securities Limited (in liq) & Ors [2011] VSC 427 (1 September 2011), paragraph 338) it reads:

"TFL loaned money to an investor... once the first payment on the loan had been made by the investor grower, the loan qualified for securitisation; the purchaser of the loan book (in later years, ANZ)... Notes were issued by ANZ to TFL... Notes were issued by ANZ in respect of the remaining 75% value of the loan... throughout this process, TFL still managed and collected the loans despite the securitisation arrangements, and collected fees from ANZ for doing so."

The following links to the Decision regarding the class action:

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2011/427.html?stem=0&synonyms=0&query=S%20C1%202009%209807>