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Illustration: Simon Bosch

Financial advisers made millions flogging Timbercorp. Now they are in the firing line as the fallout from the company's collapse continues. **Adele Ferguson and Ruth Williams** report, pages 8-10.

Aviation

Qantas flight deck in major reshuffle

■ Matt O'Sullivan

Qantas has made the biggest reshuffle of its senior executive team in several years that will result in the departure of the chief executives of its international and domestic operations.

As part of the rejig, Simon Hickey, the chief executive of Qantas' loss-making international operations, and Lyell Strambi, the boss of domestic, will both leave the airline in February.

The departure of Mr Strambi, who has had a long association with Qantas chief executive Alan Joyce, surprised observers.

He played a key role in hiring Mr Joyce to Ansett in the 1990s, while the Qantas boss later hired Mr Strambi from Richard Branson's Virgin Atlantic in 2008.

Andrew David, a former Tigerair Australia boss and Virgin executive, has continued his rapid rise at the airline, taking over from Mr Strambi as Qantas Domestic chief executive. Mr David was parachuted into the key role of running the day-to-day operations of both the Qantas domestic and international businesses in March after a stint at Jetstar.

The domestic operations of Qantas and its budget offshoot make the lion's share of the company's earnings.

Qantas chief financial officer Gareth Evans will take the reins as chief executive of the international division and freight. Mr Evans will be replaced in the position by his deputy, Tino La Spina.

The big reshuffle follows Qantas this week forecasting a first-half underlying pre-tax profit of up to \$350 million, which it has attributed largely to its so-called transformation plan. A plunge in oil prices and a truce in the capacity war with Virgin Australia in the domestic market has also helped the airline's fortunes.

■ Continued Page 10



MALCOLM MAIDEN

The corporate data hack on Sony Corp has been manna from heaven for social media and the celeb-sites that feed on it, but information technology bosses are not laughing.

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תודה רבה Terima Kasih
谢谢 Merci cảm ơn bạn

Wishing you a safe and happy holiday season.

We look forward to working with you in 2015.

CBRE

The hard sell that led to a hard fall

Focus has widened to advisers who told clients to invest in Timbercorp, write **Adele Ferguson** and **Ruth Williams**.

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.

"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, 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, 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, which were salvaged by cross-bench senators last month.

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.

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,

'It wouldn't surprise me if there's a fair bit of further litigation revolving around financial planners.'

Mark Walter

Timbercorp Finance or 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.

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 bankrupt and now banned financial adviser Peter Holt - made millions.

Holt, whose clients are among those now facing massive debts on the rotten Timbercorp investments, was a Timbercorp favourite. 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 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 favoured planners and certain dealer groups on side and selling.

At one point, the consultant 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 advisers 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 Advice) by ANZ and Financial Wisdom by the Commonwealth Bank. 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 acquired the groups after Timbercorp's collapse.

ANZ, already in the spotlight over its role in financing Timbercorp, has

Counting the cost

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



said it is reviewing the advice that planners at its groups gave to clients in relation to Timbercorp products.

Most of the banks and AMP each said they had received few, if any, complaints about the advice that was given by these groups, which were resolved.

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.

Walter expects more litigation

involving financial planners, as the statute of limitations deadline in April creeps closer.

"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 appropriateness. 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. In the five years the class action took to resolve, interest and penalty rates continued to mercilessly accrue; in many cases, people's debts almost doubled.

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

However the more costly decision for the investors was to stop making their loan repayments - on the advice of M+K.

M+K principal Ron Willemsen wrote to clients in 2012 advising them to stop making payments. "For every one of our clients who



Protestors gather ahead of the Senate hearing. Photo: Josh Robenstone.

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

Timbercorp victims get four-week respite from writs

Adele Ferguson
Ruth Williams

Thousands of victims of collapsed agribusiness spruiker Timbercorp have been given a four-week reprieve from the threat of being served a writ to repay a combined \$394 million in loans owed to creditors that include ANZ Bank.

Timbercorp's liquidator, KordaMentha, has also appointed former senior executive of Consumer Action Law Centre, Catriona Lowe, as an independent hardship advocate to help strike a "compassionate" deal for victims who are facing hardship after losing their life savings from shoddy advice to invest in the company's schemes.

But at least one Timbercorp investor says she refused to strike a deal because it involved a strict gag order on the terms of the settlement.

The actions come as a rising number of victims has lobbied politicians in recent months, saying they will be forced into bankruptcy - or worse - if they have to pay back the loans.

They also come as a Supreme Court judge has called for "compassion and understanding" in relation to investors in Timbercorp's failed rival Great Southern, following a class-action settlement that will return investors a negligible amount.

Timbercorp collapsed in April 2009 leaving a trail of destruction, with some investors having geared their houses to invest in the managed investment scheme spruiker that has been described as a "ponzi scheme".

More than half the loans have been repaid but the dollar value of those still outstanding has blown out to \$390 million due to accrued interest and penalty rates.

KordaMentha had been issuing up to 70 writs a week to Timbercorp investor growers to get in before a statute of limitations kicks in next year. Senator Sam Dastyari has been vocal in calling on KordaMentha and ANZ to go easy on the victims. He said suspending the writs was a step in the right direction but there still was a long way to go to reach an adequate outcome for victims. "If they think the problem will go away they are kidding themselves," he said.

The liquidator has set up a special scheme for hardship cases but only 7.3 per cent or 197 of the 2714 borrowers with outstanding loans have so far applied.

Ian and Meredith Byrne, who were forced to sell their home a few months ago and were recently served a writ, decided to apply for a hardship policy earlier this month.

Meredith told Fairfax Media



Timbercorp victims have lobbied politicians for support.

she decided to settle after appearing at a senate hearing last month. "After the hearing we went home and I was at the lowest point through this whole process I have ever been," she says. "The inquiry was positive but I felt I couldn't have it hanging over my head any longer. I needed to get on with my life," she says.

Meredith was a victim of banned and bankrupt financial planner Peter Holt, and during the hearing said her financial future had been "decimated". She says she still wants some justice but she decided to meet with KordaMentha partner Craig Shepard to apply for a hardship policy. "We decided to take a leap of faith and we have a favourable outcome, we can reclaim our lives," she says.

But the terms of settlement on hardship policies include that the deals remain confidential, a condition that does not sit well with members of the Holt Norman Ashman Baker (HNAB) support group. Member Susan Henry, a former trauma counsellor, said she had turned down a settlement offer that involved wiping her \$120,000 loan in return for signing a non-disclosure contract and relinquishing \$9000 owed to her by Timbercorp.

"I said that I would not agree because I did not want to be used to convey to people that I had paid money [even by relinquishing it] and make other victims think they should make a monetary proposal," she said. "I said I could not be bought and that truth and ethics are important to me. I said it was not reasonable they keep the funds owed to me, or try to silence me for their purposes and that I believe Holt victims are owed restitution and compensation... I won't be used."

KordaMentha's Andrew Ryan said confidentiality was a condition because each applicant had varying degrees of hardship.

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," he wrote.

"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 half was repaid, but the figure is still \$390 million, due to 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 the same amount of money that 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 included in 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

'A law firm's duty is to act in the best interests of its clients, which we did in this matter.'

M+K spokesperson

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 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.

The judge also called for governments and legislators to consider carefully "the role and regulation of financial advisers" in the wake of the "tragic" collapse.