



ASIC

Australian Securities & Investments Commission

REPORT 100

**Market assessment report:
IMB Limited**

ACN 087 651 974

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About this report

This report summarises ASIC's second assessment of IMB Limited under s794C and s823C of the Corporations Act 2001.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

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Key Findings & Recommendations

Key Findings

IMB Limited (IMBL) has adequate arrangements to supervise its market and clearing and settlement facility.

Recommendations

ASIC does not have any recommendations to make about IMBL arising from this assessment. IMBL has implemented the recommendations set out in ASIC's 2006 annual assessment report.

A The Assessment

Key points

ASIC conducts annual assessments of market licensees, such as IMBL because it is required to do so under section 794C of the Act. We also conduct annual assessments of clearing and settlement facility licensees under section 823C of the Act.

The scope of our assessment must include the obligations found in sections 792A(c) and 821A(c) for market licensees and clearing and settlement facility licensees respectively, but we can include other Chapter 7 obligations too.

ASIC uses the licensee's self assessment reports, information from its previous assessments, ASIC's observation of the licensees' performance, market intelligence and other things to form a view of how well the licensee have operated its market and clearing and settlement facilities respectively.

Purpose and Scope

Section 794C requires ASIC to assess how well a market licensee complies with its obligations in s792A(c) at least once a year.

Section 792A(c) requires a market licensee to have adequate arrangements for supervising the market including arrangements for:

- handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the market is fair, orderly and transparent;
- monitoring the conduct of participants on or in relation to the market; and
- enforcing compliance with the market's operating rules.

Section 823C requires ASIC to assess how well a clearing and settlement facility (CSF) licensee complies with its obligations in s821A(c) at least once a year.

Section 821A(c) requires a CSF licensee to have adequate arrangements for supervising the facility including arrangements for:

- handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the facility's services are provided in a fair and effective way; and

- enforcing compliance with the facility's operating rules.

In addition, s794C(1) & s823C(1) allows ASIC to review how well IMBL complies with any of its other obligations under Chapter 7 such as for example s792A(d) and s821A(d) requiring licensees to have sufficient resources to operate and supervise the market or CSF respectively.

ASIC uses the formal assessment process to examine whether a licensee has been and is continuing to meet its supervisory obligations. We also use the process to identify areas where improvements may be needed to enable the licensee to meet its obligations in the future.

Background

IMBL is a building society and an authorised deposit taking institution (ADI) under the Banking Act 1959(Cth). IMBL has operated a market for its shares since 1989. IMBL was granted an Australian Market Licence (AML) and a CSF licence in July 2005. The licences can be viewed at ASIC's website.

IMBL is not a listing entity as defined in the Act and therefore not obligated to immediately disclose material developments to investors. However an AML condition requires IMBL to disclose such information to ASIC and also make it available to the market. The information is made available on IMBL's website and at IMBL's branches. IMBL also holds an Australian Financial Services licence (AFSL) authorising it to carry on a financial service business in deposit and payment products, general insurance products, life insurance products and retirement savings account products.

Our Methodology

ASIC takes a holistic approach when conducting an assessment. Our views are formed from a combination of processes, which include the ongoing interaction we have with IMBL in our role as the regulator of financial markets and information we gathered specifically for the assessment.

In doing this assessment we:

- reviewed the 2006 annual regulatory report provided by IMBL to ASIC as required under s792F of the Act;

- checked publicly available information on IMBL website, including trading, news releases and IMBL's policies and procedures;
- checked other publicly available information on IMBL;
- reviewed material received under a notice served pursuant to the ASIC Act 2001; and
- reviewed IMBL's response to a letter we sent to IMBL requesting information about how IMBL operates and supervises its market and CSF.

Focus of this assessment

In addition to assessing IMBL's general compliance with its obligations to supervise its market and CSF, in this assessment we focussed on how IMBL responded to the observations and recommendations from our 2006 assessment report. We also looked for any significant changes since our previous assessment in the way the market and CSF was being operated and supervised.

B Our Observations & Recommendations

Key points

ASIC considers IMBL's arrangements for supervising its market are adequate, including arrangements for:

- handling conflicts between the commercial interests of the market licensee and the need for the market licensee to ensure that the market is fair, orderly and transparent;
- monitoring the conduct of participants on or in relation to the market; and
- enforcing compliance with the market's operating rules.

ASIC considers IMBL's arrangements for supervising its respective clearing and settlement facility are adequate, including arrangements for:

- handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the facility's services are provided in a fair and effective way; and
- enforcing compliance with the facility's operating rules.

Supervision

Arrangements for handling conflicts

IMBL maintains a 'Conflict of Interest' Register that identifies and assesses the impact conflicts of interest may have in its operation of the market and CSF.

Amongst these, the most significant are perhaps:

- IMBL's commercial incentive to minimise the cost of supervising the market, vis a vis the objective of ensuring a fair, orderly and transparent market; and
- staff trading of IMBL stock.

IMBL has the following arrangements in place to manage these conflicts.

In relation to the conflict between IMBL's commercial and supervisory objectives the Manager of Member Services monitors the market on a daily basis to ensure that the resources available are adequate to operate and

supervise the market. In addition internal audits are conducted annually to gauge the orderly operation of the market.

In relation to the conflicts that may arise because of trading in IMBL stock by staff, firstly directors and selected officers of IMBL are required to periodically make a declaration of interest. The register records staff members' shareholdings and other commercial interests that include any management or directorship roles in IMBL subsidiaries or other companies.

Secondly the Manager of Member Services must clear any staff orders before they are entered into the market. IMBL has in place a flagging system that identifies staff orders in the order entry process.

ASIC conducted a review of IMBL's conflict of interest register and a number of the controls designed to mitigate conflicts of interest. We found no evidence to suggest that the controls were not effective. ASIC did not become aware of any significant manifestation of conflicts of interest occurring during the assessment period.

Continuous disclosure

One of the conditions on IMBL's market licence is the obligation to disclose all price sensitive information to ASIC and the market as soon as IMBL becomes aware of such information. IMBL has in place continuous disclosure policies and procedures to ensure compliance with this condition.

IMBL's weekly executive meeting considers whether any information is considered price sensitive and should be brought to the IMBL board of directors' attention. The board will decide at its monthly meeting whether any information brought to their attention needs disclosure. If immediate disclosure is required or a disclosure matter occurs before the board meeting, the CEO is to be notified. A special executive meeting is called and if agreed the matter is then referred to the chairman of the board for a decision on the appropriate level of disclosure.

As part of our assessment we reviewed IMBL's policies and procedures for identifying price sensitive developments and the process of announcing these to the market. We also reviewed the board minutes over the assessment period and noted that the board had not deemed any information to be price sensitive.

ASIC conducted a search of various media to see whether any information concerning IMBL was not disclosed that potentially should have been. No such information was discovered.

In ASIC's last assessment of IMBL, we observed that although IMBL had policies and procedures for continuous disclosure, there were no procedures to deal with market suspension and trading halts. IMBL has since adopted

appropriate procedures for this purpose and has updated its share working procedures and continuous disclosure guidelines and procedures to reflect this. The IMBL website has also been updated with a notice informing participants of circumstances when IMBL may suspend the market.

ASIC also conducted a review of market announcements made on IMBL's website. In particular we assessed how well IMBL informed the market about proposed changes to IMBL's constitution dealing with the equalisation of rights of shareholders and other members in the event of the organisation being wound up. Other members are depositors who are members by guarantee.

IMBL had received several complaints regarding the proposed changes and most centred on the independent report published by KPMG Corporate Finance (Aust) Pty Limited (KPMG) as commissioned by IMBL's board to assess the merits of the proposal. IMBL made this report publicly available on its website following a member's request. Furthermore to address some members' concerns that adequate time was not given to consider the KPMG report, IMBL's board decided to postpone the special general meeting to vote on the proposal until 25 June 2007. The notice of postponement was posted on the website, public notices published in the major newspapers and letters sent out to all eligible voting members.

We examined board minutes, dates in which announcements were made and correspondence sent to members. ASIC found no evidence to suggest that information surrounding the proposed changes were not communicated on a timely manner to all members.

Complaints handling

During the assessment period IMBL had received several complaints from members, a few of which related directly to the operation of the market and others regarding the proposed changes to the IMBL Constitution.

Disputes are handled according to IMBL's share market dispute resolution policies. Copies of the policies and procedures are made available on IMBL's website and at IMBL's branches.

A complaint was received from a member for an order not being matched. The member's cheque had not cleared and subsequently not matched at the nominated price. IMBL's written response explained the requirement to have sufficient cleared funds before an order is matched, and that IMBL staff completed the transaction according to IMBL's product disclosure statements and share market operating rules. Incidents are recorded on a system called 'Complaintrack'.

We conducted a review of the processes followed in respect of each complaint and found IMBL to be adhering to its procedures.

Monitoring potential market abuse and documentation of supervisory decisions

In last years report ASIC recommended that IMBL should maintain a central register of all matters raised with supervisors by staff operating the market and CSF which may identify a breach of the operating rules or market abuse of any kind. ASIC said that the register should note action taken as a consequence, including references to file records retained on individual participant or policy files, and should record whether the matter either has been referred to ASIC in accordance with s792B(2)(c) of the Act, or has been notified to ASIC following disciplinary action by IMBL under the market's operating rules.

A register was setup in October 2006 with the Manager of Member Services responsible for maintaining it. We reviewed the register and found it to contain information as suggested in our recommendation. We cross-referenced some of the entries with other documents produced such as member's complaint letters and internal correspondence between staff. ASIC found no evidence to suggest any of the reported incidents needed referral to ASIC.

Sufficiency of Resources

We reviewed the current resources made available by IMBL to operate and supervise the market and CSF. There were no significant changes to the human, financial and technological resources applied to the market over the assessment period. ASIC is not aware of any significant system outages or failures occurring during the assessment period.

The IMBL market has experienced an increase in trading volume during most months of the review period in comparison to the equivalent months for 2006. By way of comparison, taking the half yearly figures for trades cleared and settled, for the period 1 January 2006 to 30 June 2006 the figure was 1,117,924 compared to 1,473,703 for the same period in 2007, a 32% increase. Notwithstanding this increase, we found no evidence to suggest that additional resources are needed.

Clearing and Settlement

Shareholders who wish to trade on the IMBL market must be a member by guarantee of IMBL. Shareholders must also have a share trading account; this records shareholders details, shareholding and transactions conducted. In addition to the share trading account a savings account called a 'trading account' is required to effect settlement. Participants wishing to buy shares must have sufficient funds to cover the purchase price plus any other transaction costs.

The operating rules stipulate that sell orders will not be loaded onto the system if the shares are encumbered. IMBL informed ASIC that during the assessment period it has implemented a system fix to ensure shareholders have sufficient funds to settle trades before an order is accepted. ASIC is not aware of any changes to this facility and it continues to operate according to statutory requirements. We make no recommendations in regards to IMBL's CSF.

IMBL is not required to comply with s827D of the Act due to changes the RBA made to the stability standards, which applies to securities settlement facilities to exempt facilities settling less than \$100 million annually.

Key terms

Term	Meaning in this document
The Act	The Corporations Act 2001 (Cth)
AFSL	Australian Financial Services Licence
AML	Australian Market Licence
ASIC	Australian Securities and Investments Commission
CSF	Clearing and Settlement Facility
IMB	IMB Limited
KPMG	Klynveld Peat Marwick and Goerdeler Corporate Finance (Aust) Pty Limited