



**ASIC**

Australian Securities & Investments Commission

## REPORT 148

# Market assessment report: IMB Limited

**ACN 087 651 974**

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### **About this report**

This report summarises ASIC's third assessment of IMB Limited (IMBL) under s794C and 823C of the *Corporations Act 2001* (Cth) (Corporations Act).

This assessment covers the period 21 May 2007 to 18 January 2008.

### 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.

### Previous reports on IMBL

IMBL was granted an Australian market licence and a clearing and settlement facility (CS facility) licence commencing 8 July 2005.

Report number	Date released
REP 86	October 2006
REP 100	September 2007

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## Key findings and recommendations

### Key findings

- 1 ASIC is satisfied that IMBL has adequate arrangements and resources for supervising its market and clearing and settlement facility in accordance with its obligations under s792A and 821A of the Corporations Act.

### Recommendations

- 2 ASIC does not have any recommendations arising from this assessment.

## A The assessment

### Key points

ASIC conducts annual assessments of market licensees, such as IMBL because it is required to do so under s794C of the Corporations Act. We also conduct annual assessments of CS facility licensees under s823C of the Corporations Act.

The scope of our assessment must include the obligations in s792A(c) (for market licensees) and 821A(c) (for CS facility licensees), but we can include other Ch 7 obligations too.

We use the licensee's self-assessment reports, information from our previous assessments, our observation of the licensees' performance, market intelligence and other things to form a view of how well the licensee has operated its market and CS facilities.

### Purpose and scope

- 3 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year: s794C(2).
- 4 Under s792A(c), a market licensee is required 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.
- 5 ASIC is also required to assess how well a CS facility licensee complies with its obligations in s821A(c) at least once a year: s823C.
- 6 Under s821A(c), a CS facility licensee is required 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.
- 7 In addition, s794C(1) and 823C(1) allow ASIC to review how well IMBL complies with any of its other obligations under Chapter 7, such as the

obligations in s792A(d) and 821A(d) requiring licensees to have sufficient resources to operate and supervise the market or CS facility.

- 8 We use 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

- 9 IMBL is a building society and an authorised deposit-taking institution (ADI) under the *Banking Act 1959* (Cth). IMBL has operated a market in its shares since 1989. IMBL was granted an Australian market licence and a CS facility licence in July 2005. The licences can be viewed at ASIC's website, [www.asic.gov.au](http://www.asic.gov.au).
- 10 In order to trade on the IMBL market it is necessary to become a member of IMBL by guarantee. This requires opening an IMBL savings account.
- 11 As at August 2008, IMBL had approximately 39 million shares on issue. The total volume / value traded on the IMBL market for the 2006 and 2007 calendar years was 2,051,236 shares / \$6,371,144 and 2,866,183 shares / \$9,668,406 respectively.
- 12 The majority of shareholders and market users are retail investors.
- 13 IMBL also operates its own CS facility, which involves the debiting and crediting of IMBL member transaction accounts following a share transaction. Once a share transaction is completed, IMBL's share trading system, known as FACTS, automatically updates the share registry and generates share certificates.
- 14 In May 2005 the Reserve Bank of Australia (RBA) amended its financial stability standards for securities settlement facilities pursuant to s827D of the Corporations Act, so that the standards now only apply to facilities settling more than \$100 million per year. This was done so that small CS facilities, which are unlikely to affect the overall stability of the Australian financial system, are not subject to unnecessary regulation. Accordingly, IMBL's CS facility does not need to comply with the RBA's financial stability standards.
- 15 IMBL is not a listed disclosing entity as defined in the Corporations Act; however, a condition in IMBL's market licence requires IMBL to disclose price-sensitive 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.

- 16 IMBL also holds an Australian financial services (AFS) licence 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

### Our assessment process

- 17 We use the formal assessment process to examine whether IMBL as a market and CS facility licensee has been complying, and continues to comply, with its supervisory obligations.
- 18 A market and CS facility licensee's obligations are ongoing. Whether it is likely to comply with its obligations in the future cannot be judged merely by reference to its past compliance. We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a licensee has in place for supervising its market and CS facility in accordance with its obligations under the Corporations Act at the time of the assessment; and
  - identify issues that in our view need, or may need, to be addressed to ensure ongoing compliance.

### What we considered

- 19 In conducting this assessment we reviewed:
- the 2007 annual regulatory report provided by IMBL to ASIC as required under s792F and 821E;
  - information we received from and about IMBL in the ordinary course of our dealing with IMBL as a market and CS facility licensee;
  - publicly available information on IMBL's website, including share prices, news releases, policies and procedures;
  - other publicly available information on IMBL; and
  - IMBL's response to a question and answer style letter concerning its supervisory arrangements, resources and activity.

### What we focused on for this assessment

- 20 In assessing IMBL's general compliance with its obligations to supervise its market and CS facility, we focused on whether IMBL had made any changes to its supervisory arrangements since our last assessment and how those

arrangements were working in practice. We also looked for any changes since our last assessment in resources devoted to the supervision of the market and CS facility and whether, accordingly, resources continued to be sufficient.

- 21        This assessment covers the period 21 May 2007 to 18 January 2008.
- 22        Historically we have conducted the assessment to cover an assessment period from May to May of consecutive calendar years. Pursuant to s794C and 823C of the Corporations Act, we must conduct an assessment of IMBL's market and CS facility at least once a year. We are required to commence the assessment on or before 8 July each calendar year because this is the date on which IMBL was licensed in 2005.
- 23        We decided to conduct an assessment in January 2008 to change the assessment period to January to January so that we can align the assessment period more closely to when we receive IMBL's regulatory report pursuant to s792F and 821E of the Corporations Act (due by 30 September). We intend that the next assessment will cover a period from January 2008 to January 2009.
- 24        At the time this report was published we were not aware of any information, subsequent to the assessment process this report is based on, that would change our overall findings and opinions.



## B Our observations and recommendations for IMBL

### Key points

We consider that 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.

We consider that IMBL's arrangements for supervising its respective CS 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.

We consider that the human, financial and technological resources devoted to the supervision of the market and CS facility are sufficient.

## Supervision arrangements

### Managing conflicts

- 25 The main conflicts of interest for IMBL in relation to its market remain:
- IMBL's commercial incentive to minimise the cost of supervising its market versus the need to provide a fair, orderly and transparent market; and
  - the possibility of staff members trading ahead of other market participants with information gained from their employment with IMBL.
- 26 IMBL has a number of measures in place to manage these conflicts of interest. These include:
- maintaining a conflict of interest register as required by IMBL's operating rules. The register records the details of significant holders of ordinary shares and the directors' commercial interests;

- requiring all directors and selected senior officers to complete a declaration of interest at least once a year;
- flagging all staff trades and requiring them to be approved by the Manager of Member Services prior to execution;
- tracking of staff trades via a monitoring log; and
- conducting an annual internal audit to ensure that there are no breaches of IMBL's share trading procedures.

27 IMBL indicated that there had been no changes from the previous assessment period to the way conflicts of interest are managed. We found no evidence to indicate that IMBL's measures for monitoring conflicts were ineffective.

### **Continuous disclosure**

28 IMBL is required by the conditions of its AML to disclose all price-sensitive information. The information must be lodged with ASIC and made available on the IMBL website.

29 In this assessment, we reviewed IMBL's policy and procedures for identifying price-sensitive developments and the process of announcing these to the market. IMBL advised that no changes were made during the assessment period to these policies and procedures. We found no evidence to suggest that these policies and procedures were not adequate.

30 We analysed the announcements made on the IMBL website and found that IMBL had made several announcements regarding an IMBL members' meeting on a proposal to change the wind-up rule in the constitution.

31 We also conducted a search of media and other sources to ascertain whether there was any price-sensitive information that was not disclosed to the market. No information of this nature was found.

### **Complaints handling**

32 Market disputes are handled according to IMBL's share market dispute resolution policies. The policies and accompanying procedures are available on the IMBL website and at IMBL branches.

33 During the assessment period, IMBL received one complaint, which related to an administration fee incorrectly levied on an off-market transfer. The transaction was between an individual and that individual's self-managed superannuation fund. It is IMBL's policy not to charge an administration fee for family/related entity transactions. IMBL resolved the complaint by refunding the fee.

## Monitoring the conduct of participants

- 34 IMBL maintains a register in which it records all significant market activities and incidents. During the assessment period there were four entries made in this register, three under ‘Suspicious Activity’ and one under ‘Market Manipulation’.
- 35 One of the incidents of suspicious activity occurred following an announcement from IMBL regarding the appointment of a new CEO on 5 September 2007. IMBL’s share price subsequently increased by 69 cents (20%). On investigation IMBL formed the view that the market might be misinformed on the basis of market speculation that IMBL was preparing to demutualise. A statement from the Chairman was released on 12 September 2007 to reassure shareholders that IMBL had no such plans and was committed to remaining a mutual organisation.
- 36 Further investigations into the other reported incidents relating to holders selling into an essentially illiquid market, causing the share price to fall, revealed no evidence of misconduct.
- 37 All incidents recorded in the register under ‘Suspicious Activity’ and ‘Market Manipulation’ are reported to the CEO and Company Secretary.
- 38 In our view, IMBL’s response to each of the aforementioned incidents was appropriate.

## Sufficiency of resources

- 39 In assessing the sufficiency of resources devoted by IMBL to its market and CS facility, we examined the level of activity on the market during the assessment period. Trading volume increased by 29% when compared to the same period for the 2006–2007 year (789 trades in 2007–2008 compared to 611 in 2006–2007).
- 40 Over the assessment period there was no change in the level of human resources involved in supervising the market and CS facility.
- 41 There were also no significant changes to either the financial or technological resources devoted to supervising the market and CS facility.
- 42 IMBL did make a minor enhancement to FACTS. A new information feed to the IMBL website was implemented, providing users with market depth information.
- 43 FACTS experienced a minor malfunction during the assessment period. The fault resulted in the loss of all user access to the system for a period of

10 minutes, and was due to the failure of a network device. IMBL has taken action to prevent a reoccurrence.

- 44      Given the size of the IMBL market (including the increases in trading volume), we are of the view that the human, financial and technological resources devoted to the supervision of the market and CS facility are adequate.

## **Clearing and settlement**

- 45      IMBL has advised that no changes were made to the way its CS facility operates or is supervised during the assessment period.
- 46      We have no recommendations about IMBL's CS facility.
- 47      As a securities settlement facility settling less than \$100 million annually, IMBL is not required to comply with the financial stability standards determined by RBA under s827D of the Corporations Act.

## Key terms

Term	Meaning in this document
AFS licence	Australian financial services licence
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> (Cth)
CS facility	clearing and settlement facility
IMBL	IMB Limited