



ASIC

Australian Securities & Investments Commission

REPORT 157

Market assessment: National Stock Exchange of Australia Limited

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About this report

This report summarises ASIC's sixth assessment of National Stock Exchange of Australia Limited (NSEAL) under s794C of the *Corporations Act 2001* (Corporations Act). It covers the period from 8 March 2007 to 2 March 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 NSEAL

The Stock Exchange of Newcastle Ltd was granted an Australian market licence (AML) commencing 8 March 2002. The AML was varied with effect 31 March 2004 and again from 20 December 2006, including noting the change of name of the licensee to National Stock Exchange of Australia Limited (NSEAL).

Report number	Date released
N/A	November 2003
REP 36	December 2004
REP 42	June 2005
REP 82	September 2006
REP 118	March 2008

Contents

Key findings and recommendations	4
Key findings	4
Recommendations and agreed actions	4
A The assessment.....	5
Purpose and scope	5
Our methodology	7
B Our observations and recommendations for NSEAL	9
Governance of supervisory obligations	9
Nominated advisers	12
Monitoring of disclosure	14
Surveillance for market abuse	15
Participant supervision.....	16
Resources.....	17
Response to 2007 assessment recommendations	18
Key terms	20

Key findings and recommendations

Key findings

- 1 ASIC is satisfied that NSEAL has adequate arrangements and sufficient resources for supervising its market under s792A(c) of the Corporations Act.

Recommendations and agreed actions

- 2 We have made the following recommendations to assist NSEAL to adequately manage the handling of its conflicts of interest, and to improve the NSEAL board's oversight of NSEAL's supervisory activities and arrangements overall.
- 3 NSEAL has agreed, for consistency with a BSX Limited agreed action in ASIC Report 151 published 9 April 2009, that:
 - The NSEAL Board will take steps to ensure that it is kept informed of NSEAL's supervisory activities so that it is able to make an assessment about whether NSEAL is meeting its obligation to have adequate supervisory arrangements. In particular, the NSEAL board will now receive a more detailed report from the compliance committee on a biannual basis.
 - In addition the compliance committee will:
 - request and be given more detailed information about NSEAL's supervisory activities and results by defining and agreeing on the information to be given to the committee;
 - at its regular meetings, assess whether NSEAL's supervisory policies and procedures are being adhered to and NSEAL's compliance plan is being followed; and
 - formally report to the NSEAL board on NSEAL's supervisory activities, the outcomes of those activities and the adequacy of NSEAL's supervisory arrangements in general. Such reports will include whether policies and procedures are adequate, whether staff is following policies and procedures and whether participants are complying with the operating rules.
- 4 NSEAL should require that any nominated adviser (NOMAD) with a business or other relationship with an NSEAL-listed disclosing entity or its directors that may have the potential to compromise its regulatory obligation to NSEAL should be asked to explain how it manages its conflicts of interest. NSEAL should make any response available to the market.

A The assessment

Key points

ASIC conducts annual assessments of market licensees because it is required to do so under s794C of the Corporations Act. We also conduct annual assessments of clearing and settlement facility licensees under s823C.

The scope of our assessment must include the obligations found in s792A(c), but we can include other Chapter 7 obligations too.

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

Purpose and scope

- 5 Under s792A(c), a market licensee is required to have adequate arrangements for supervising the market, including 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.
- 6 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year: s792(2).
- 7 In addition we are permitted to extend the scope of our assessment to review how well a market complies with any or all of its obligations under Ch 7: s794C(1). In this instance we extended the scope of the assessment to include a review of NSEAL's compliance with s792A(d), specifically, the obligation to have sufficient financial resources to operate the market properly and to provide the required supervisory arrangements.
- 8 This report covers the period 8 March 2007 to 2 March 2008 (the review period) although we also had regard to subsequent developments.

Background

- 9 The NSEAL Australian market licence permits NSEAL to operate a market in the financial products described on its licence. The Stock Exchange of Newcastle Ltd was granted an Australian market licence commencing 8 March 2002. The market licence was varied with effect 31 March 2004 and again from 20 December 2006, including noting the change of name of the licensee to National Stock Exchange of Australia Limited (NSEAL). A copy of NSEAL's market licence is available on ASIC's website at www.asic.gov.au/markets.
- 10 From the time this report was commenced, continuing through to the finalisation of this report, the number of total listings on NSEAL market has grown. In June 2007, 50 equity and debt securities were quoted on the market. At June 2008, 61 different securities were quoted. In June 2007, NSEAL had 10 participants. By June 2008 it had 13 (14 for the year).
- 11 Trade executions have rarely been more than 10 per day. Over the period covered by the report, monthly trading declined. In March 2007, the month of highest trading for the NSEAL market, there were 286 executed trades (\$3,312,076). In March 2008 there were 72 trades (\$745,237). In calendar year 2007 average trade size was 51,811 securities. In 2008, it was 39,096.
- 12 NSEAL uses OMX NASDAQ NETS system for trading, ASX Settlement and Transfer Corporation Pty Ltd (ASTC) CHESS system for T+3 settlement and the SMARTS system (provided by the SMARTS Group) for market surveillance.
- 13 NSEAL is a wholly owned subsidiary of NSXL, a company listed on the Australian Securities Exchange. NSXL also controls another company holding an Australian market licence: Bendigo Stock Exchange Limited (BSX). The most recent ASIC assessment report on BSX was published on the ASIC website on 9 April 2009 (Report 151: *Market assessment report: Bendigo Stock Exchange Limited* (REP 151)).
- 14 In addition to operating the BSX and NSEAL licensed markets for financial products described in those two licences, NSEAL's parent, NSXL, operates a market for taxi licences and, from 19 October 2007, a market for water interests. Neither the taxi licences nor the water interests constitute a financial product at law.
- 15 NSEAL has also established a number of differentiated market segments based on discrete geographical or other descriptors. Some of these segments are marketed as 'exchanges', although the promoters and NSXL are prohibited from using the term 'stock exchange' to refer to the segments individually. For clarity, all NSEAL-traded financial products are subject to the requirements of a single operating rules book and are within the ambit of NSEAL's Australian market licence granted 8 March 2002. NSEAL is also

planning to establish a market segment for listing environmentally sustainable companies.

- 16 To list on NSEAL an issuer must appoint a nominated adviser (NOMAD) from a list of NSEAL-approved stockbrokers, bankers, lawyers or other similar organisations. The NOMAD's role is to guide the issuer's directors on their responsibilities and obligations under the market's operating rules. NSEAL also has provision to discipline NOMADs that fail to perform their obligations to NSEAL.

Our methodology

Our assessment process

- 17 A market 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.
- 18 We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a market licensee has in place for supervising its market in accordance with its obligations under the Corporations Act at the time of the assessment; and
 - identify issues, which in our view need, or may need, to be addressed to ensure ongoing compliance.

What we focused on for this assessment

- 19 Our assessment reviewed how NSEAL responded to the issues we identified with its supervisory arrangements in our previous assessment. In our last assessment report we made recommendations about improving the effectiveness of NOMADs' complementary supervision of NSEAL-listed entities' disclosure obligations.
- 20 We also examined governance structures to better ensure the licensee's directors received information of any development that would require them to make enquiry. In effect, we checked to see that sufficient information was being provided by NSEAL management to the licensee board to fix it with knowledge of relevant supervisory decisions made by its delegates. This examination involved checking that the two committees charged with making key supervisory decisions were reporting sufficient information to the NSEAL board about supervisory outcomes; that the committees were themselves fully informed by NSEAL staff of all information relevant to the decisions they were required to make; and that the committees discharged

their duties objectively and without undue influence from the commercial side of NSEAL's business.

What we considered

- 21 In conducting our assessment we:
- analysed information we received from and about NSEAL in the ordinary course of our dealings with the licensee, including NSEAL's annual regulatory report required under s792F;
 - reviewed information from the media, NSEAL's website, ASIC's complaints management records and other sources;
 - considered the operation of the market throughout the period, in particular in relation to issues of disclosure and trading;
 - interviewed NSEAL personnel; and
 - reviewed policies and procedures for the conduct of NSEAL markets in general and their supervisory responsibilities in particular.
- 22 From 3 March 2008 to 6 March 2008 we attended the offices of NSEAL and its holding company, NSXL, in Newcastle. During this on-site phase of the assessment we reviewed NSEAL operational records and spoke to NSEAL personnel and management. We had regard to matters that came to our attention after 6 March 2008. We note that an extraordinary general meeting has been requisitioned for 27 May 2009. We will monitor the outcomes of this meeting.
- 23 Completion of this report was delayed until we finalised the 2008 BSX assessment report referred to in paragraph 13. This is so a common agreed action could be included in both this report and the 2008 BSX assessment report.

Consultation

- 24 NSEAL has had the opportunity to comment on the factual accuracy of draft versions of this report. Where appropriate, this final report reflects NSEAL's clarifications.

B Our observations and recommendations for NSEAL

Key points

We consider NSEAL'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 have made a number of observations and recommendations based on our assessment. In summary we think that there are improvements which could be made to the governance of NSEAL's supervisory obligations, the transparency of NSEAL's disciplinary activity and to independence requirements for nominated advisers.

Governance of supervisory obligations

- 25 On 30 June 2006, NSXL introduced a committee structure common to both the NSXL group Australian market licence holders: NSEAL and BSX. The committee structure consists of two separate bodies that serve both the NSEAL and BSX markets: the listing and admissions committee and the compliance committee. Both committees are made up of externally engaged members the majority of which are independent of the NSXL group, its participants, its listed entities and other commercial stakeholders.

Listing and admissions committee

- 26 The listing and admissions committee is responsible for assessing and approving applications by entities for admission to the NSEAL official list and, where appropriate, approve applications to be recognised as a NSEAL broker or NOMAD.
- 27 During our assessment, we examined all applications for NSEAL listing presented in the 12 months previously to the listing and admissions committee.
- 28 NSEAL's listing rules (LR) set out the requirements that an entity must satisfy before it can be listed on NSEAL.

29 We reviewed the listing process to ensure that applicants for listing satisfied the shareholder spread tests under the LR, and considered whether NSEAL followed its listing procedures for determining suitability.

30 The management analyses forwarded to the committee for its review were thorough and involved more than a 'box-ticking' approach. The listing and admissions committee undertook its functions in an appropriate manner and in accordance with its stated charter. We concluded that the listings and admissions committee was making supervisory decisions that were not adversely affected by commercial or other non-supervisory considerations.

Compliance committee

31 According to its charter, the compliance committee's primary objective is to undertake compliance and surveillance functions as delegated by the NSXL board. In relation to the NSEAL market, it also assesses and where appropriate, grants requests for waivers from the NSEAL operating rules. Most waiver applications are generated as a consequence of the initial application for listing.

32 Under the compliance committee charter, its chairman—the compliance officer—is responsible for:

- reviewing and setting supervisory policies and procedures;
- updating rules;
- reviewing participant compliance;
- preparing regulatory reports for ASIC; and
- reviewing NOMAD certifications.

The compliance officer also produces a compliance plan and prepares biannual compliance reports for the NSXL group board.

33 The compliance committee charter also states that the compliance officer, who is the chair of the committee,

Has primary responsibility to deal with day to day compliance issues referred by the General Manager and as appropriate will seek advice from all other members of the committee as required.

The compliance officer submits biannual reports on NSEAL compliance to the NSEAL board.

34 During the review period the compliance committee held meetings where formal minutes were taken. On other occasions that it met, the compliance committee convened on an ad hoc circular resolution basis to consider waiver applications. The committee attended to significant matters in a timely way; we had no sense that consideration of important supervisory developments were postponed to fit timetable demands.

- 35 NSEAL shares supervisory structures and staff with BSX. Although we concluded in the past that BSX supervisory arrangements were not adequate and/or that its arrangements needed to be significantly improved (such improvement having substantially now occurred: refer to ASIC REP 141 (2006 assessment) and REP 151 (2007–2008 assessment)), we have been satisfied that NSEAL has adequate arrangements. In our analysis this is due to a number of factors including an apparent greater operational focus on NSEAL’s market relative to BSX’s market within the NSXL group.
- 36 We believe that both the market boards, that is the boards of NSEAL and BSX, need to be better apprised of the supervisory activity occurring on each market, so as to be in a position to assure themselves of the adequacy of the supervisory arrangements in general. For this reason, despite greater ASIC confidence with the board oversight of the NSEAL market, the NSEAL and BSX assessment reports share a common agreed action in relation to board oversight of supervisory activity.

Agreed Action 1: Supervisory arrangements

For consistency across the NSEAL and BSX licences, the NSEAL board should take steps to ensure that it is kept informed of NSEAL’s supervisory activities so it is able to make an assessment about whether NSEAL is meeting its obligation to have adequate supervisory arrangements.

In addition the compliance committee will:

- request and be given more detailed information about NSEAL’s supervisory activities and results by defining and agreeing the information to be given to the committee;
- at its regular meetings assess whether NSEAL’s supervisory policies and procedures are being adhered to and NSEAL’s compliance plan is being followed; and
- formally report to the NSEAL board on NSEAL’s supervisory activities, the outcomes of those activities and the adequacy of NSEAL’s supervisory arrangements in general. Such reports are to include whether policies and procedures are adequate, whether staff is following policies and procedures and whether participants are complying with the operating rules.

Conflict handling arrangements

- 37 Generally, we consider NSEAL has adequate arrangements to manage its conflicts.
- 38 The usual practice adopted by exchanges to deal with conflicts of interest is to prevent commercial staff having any communication with supervisory staff that is designed to affect a pending supervisory decision. This is generally achieved using ‘information barriers’ that permit contact to be

- managed, improper interventions to be identified and wrongdoers disciplined.
- 39 At this stage in the development of the NSEAL market it is not practicable for the NSXL group to impose physical and managerial information barriers to separate supervisory and commercial functions. In previous annual assessments of NSEAL we have agreed that—provided the NSXL group board (which is co-extensive with the NSEAL board) and the CEO have no role in supervisory decision making—accountability for the decision to admit an entity to the NSEAL official list and to issue waivers from NSEAL’s operating rules rests with independent committees, this will be sufficient to manage adequately conflicts of interest.
- 40 As in previous years, our view is that if independence and adherence to proper procedure by the two supervisory committees can be demonstrated, this gives us assurance that NSEAL is meeting its obligation to have adequate arrangements to manage its conflicts of interest. We examined decisions made, and the processes followed, by the supervisory committees on admission and on-going continuous and periodic disclosure supervision and concluded they were satisfactory.
- 41 Despite this conclusion we have agreed with NSEAL that the NSEAL board will take steps to ensure that it is kept informed of NSEAL’s supervisory activities so it is able to make an assessment about whether NSEAL is meeting its obligation to have adequate supervisory arrangements. This agreed action has been included because NSXL does not have separate boards for its NSEAL and BSX subsidiaries and an agreed action in our assessment of BSX (REP 151) was that the board improve its oversight of BSX supervision. NSEAL agreed that board oversight policies and procedures should apply equally to the two markets so as not to create contradictions in standards applying equally to the two.

Nominated advisers

General oversight

- 42 NOMADs complement NSEAL’s supervision of its market. They are required to be available at all times to advise and guide the directors of an issuer as to their responsibilities and obligations to ensure the issuer complies with the NSEAL LR on an ongoing basis. Due to NSEAL actions taken in response to recommendations in our last report (see paragraphs 83 and 85 below), NOMADs’ roles are now clearer.
- 43 During the review period NSEAL concluded that no issues arose that required it to investigate a NOMAD’s performance.

Independence

- 44 NSEAL NOMADs are not required to be independent.
- 45 NSEAL's eligibility criteria for NOMADs require that the NOMAD show 'a degree of independence' from the listed entity that they are advising. NSEAL requires each NOMAD to certify annually that it continues to:
- meet the eligibility criteria; and
 - act independently, responsibly and in a professional manner in ensuring compliance with NSEAL's applicable rules and practice notes.
- 46 NOMADs have a supervisory role, not least because they may be disciplined under NSEAL's rules for not performing their advisory role with a particular issuer satisfactorily.
- 47 Although we found no evidence that NOMADs were not performing their obligations as a consequence of lack of complete independence, it is our view that NSEAL should consider further the question of whether a NOMAD with conflicts of interest is able to perform its role properly.
- 48 NSEAL continues to update its standard NOMAD attestations and other guidance material. NOMADs are presently obliged to submit an annual statement to NSEAL that attests that they act independently. NSEAL has defined 'independent' to mean that a NOMAD may not control, be controlled by or be under the same control as the issuer, with control defined as including the holding, directly or indirectly, of shares carrying 30% or more of the voting rights of a company. NSEAL notes in its guidance to NOMADs that a normal business relationship between the issuer and another company or part of the NOMAD's group will not usually bar a NOMAD from acting. NSEAL adds that where relationships exist that would give the NOMAD's group a material interest in the success of the flotation, new issue or other relevant transaction, such relationships may not be consistent with the independence undertaking.
- 49 We think more of the onus needs to be placed on the NOMAD to rebut any perception that its independence is compromised by a business or other relationship.
- 50 To this end, any NOMAD with a business or other relationship with a NSEAL-listed disclosing entity or its directors that may have the potential to compromise its regulatory obligation to NSEAL should be asked to explain how it manages its conflicts of interest. Responses should be published to the market.

Agreed Action 2: Independence of NOMADs

NSEAL should require that NOMADs be asked to explain on an on-going basis how they manage their conflicts of interest. NSEAL should make the response available to the market.

NSEAL has agreed that the Compliance Committee will expand the Conflicts of Interest question in the Nominated Adviser annual declaration that is sent to Nominated Advisers in July of each year. The annual declaration returns will then be lodged as an announcement for each issuer once received.

Monitoring of disclosure**Continuous disclosure**

- 51 NSEAL LR 6.4 and 6.5 require a listed disclosing entity to immediately provide information to NSEAL when it becomes aware of any information concerning it that a reasonable person would expect would have a material effect on the price or value of the entity's securities.
- 52 On the NSEAL official list most entities are thinly traded. This makes it difficult to identify whether a significant price movement—that is, a trade executed a long way from the previous market price—has resulted due to an unfair, and potentially illegally exploited knowledge asymmetry between the buyer and seller.
- 53 We examined cases where large price movements occurred and checked these against subsequent announcements, listed entity director trading, and media coverage to gauge whether NSEAL was devoting sufficient resources to investigating whether assurances from listed entities were truthful. In cases where there were large unexplained price movements within a short time period, NSEAL did seek an explanation of the listed entity. We were confident, too, that after-the-event checks were made by NSEAL to confirm that knowledge of material developments had not been withheld by disclosing entities in the particular cases examined.
- 54 During the period, NSEAL detected abnormal price movements and abnormal price queries were sent to 10 listed entities. The price queries resulted in further disclosure to the market.
- 55 NSEAL made one referral to ASIC for possible significant continuous disclosure contraventions of the Corporations Act. This referral concerned inadequate disclosure of financial status. As a result of ASIC investigations the entity released another audited annual report showing sufficiency of operations and, accordingly, it was subsequently re-admitted for quotation.

Periodic disclosure

- 56 Under the NSEAL LR, an entity must advise NSEAL of its financial results for each half-year and full financial year. Its procedures state that NSEAL pays particular attention to both the timeliness and substance of the information provided to it.
- 57 We sampled entities' compliance with the financial reporting lodgement deadlines imposed by NSEAL's rules. We noted that NSEAL proactively contacts listed entities when reporting deadlines are imminent and that the vast majority of entities met those deadlines. NSEAL appropriately suspended trading immediately in the securities of any that did not.
- 58 NSEAL undertakes reviews of all periodic annual financial reports to ensure they comply with the additional information requirements of its LR. NSEAL sent letters to entities where additional disclosure was required. These requisition letters were sent several months after lodgement of the reports. During an interview, NSEAL's company's manager said NSEAL recognised that periodic disclosure required that follow-up requisitions take place as soon as possible after receipt of financial reports. NSEAL advises that it is improving its timeliness for sending out these letters.
- 59 During the reporting period, five listed entities were suspended from trading due to late lodgement of half-yearly and/or full-year financial reports, and the action notified/referred for possible additional enforcement action to ASIC.
- 60 We have no recommendations concerning NSEAL's monitoring of disclosure obligations.

Surveillance for market abuse

- 61 NSEAL listed securities were monitored manually until May 2005. The sporadic trading of most stocks meant that this was feasible, since individual trades could be analysed at the time of execution. However, this manual monitoring was open to the possibility of human error, and was probably not going to be adequate in the event of increased trading volumes.
- 62 In May 2005, NSEAL upgraded its surveillance capabilities by implementing 'Compliance Explorer', a software product of Capital Markets CRC Limited, as its main tool for market trading surveillance. Further upgrades to this system were negotiated with the Capital Markets CRC Limited/SMARTS Group during this review period.
- 63 NSEAL's SMARTS surveillance monitors trading behaviour in real-time, and generates automatic alerts where trading falls outside certain pre-determined parameters. NSEAL specifies these parameters in its internal

written surveillance procedures, with responsibility for monitoring alerts resting with NSEAL's general manager.

- 64 As noted in paragraph 54 above, whenever an alert is triggered, this is investigated by surveillance staff who subsequently inform the general manager when necessary. If it is deemed necessary to query an entity regarding unusual trading behaviour, NSEAL writes to the company, which then has three days to respond. This correspondence is released to the market through NSEAL's website.
- 65 NSEAL has followed up such alerts with companies in the cases examined, enforcing the response window for companies, and released relevant correspondence to the market.
- 66 We have no recommendations concerning NSEAL's market surveillance.

Participant supervision

- 67 During the review period, there were 14 NSEAL participants. All NSEAL participants are required to maintain an on-going capital position of \$50,000 or 5% of adjusted liabilities whichever is greater. To monitor compliance, each participant is required to lodge surplus liquid funds financial statements each month (for the previous month) with the Exchange Examining Accountant (EEA), McCosker & Partners Pty Ltd. The EEA then provides a monthly report to the compliance committee.
- 68 The compliance committee is responsible for supervising participants, with the general manager of NSEAL overseeing the day-to-day monitoring of participants and the compliance officer responsible for conducting an annual review for each participant.
- 69 As part of its supervisory arrangements, NSEAL's compliance officer carries out a self-assessment program that involves sending out a questionnaire to all participants. The purpose is to understand the type of business operated or to be operated by the participant, what products and services the participant provides or is proposing to provide and what policies and procedures are in place to assist with ensuring compliance. Another purpose is to highlight areas that require further review.
- 70 NSEAL's program indicated that a small number of returns were lodged after the due date. The compliance officer reviewed the responses from participants, and an on-site visit was conducted of each. During his on-site visits, NSEAL's compliance officer reviewed the participant's responses to the questionnaire to ensure they were not merely reflexive and formulaic, spoke to staff members and examined systems, policies and procedures.

- 71 The information gathered from the questionnaire and on-site inspection was then used to assist the compliance officer to form a view on each participant's compliance or otherwise with NSEAL's business rules. A report was compiled on each participant's compliance, and these were inserted in the half-yearly compliance report to the board and CEO.
- 72 The EEA is required to conduct follow-ups on late returns. In addition to its monthly report to NSEAL, the EEA also provides a six-month report for the period ended June each year. The report gives the compliance committee a useful summary of participants' compliance with the reporting requirements as stipulated by the NSEAL business rules.
- 73 A report for the six-month period ended December each year is provided to NSEAL. This report is similar to the six-month report for June, but includes a summary of the on-site visits conducted by the EEA on a few selected participants.
- 74 There were no breaches of the business rules considered significant enough that disciplinary action was required. According to the monthly reports submitted, there were no breaches of the surplus liquid funds requirement. There were repeated submission delays from three participants, but administrative follow up action was sufficient to address this. We have no recommendations to make concerning the supervision of NSEAL participants.

Resources

- 75 We are satisfied that the financial, technological and human resources available to operate NSEAL's market are adequate, given the size of the market. The following paragraphs set out our key observations in respect of NSEAL's resources.

Technology

- 76 NSEAL contracts with OM for its OMX NASDAQ trading system, a system used in 40 other exchanges around the world, and with SMARTS for its surveillance system.

Human resources

- 77 Throughout the reporting period NSEAL retained between four and five salaried supervisory staff. In addition, it engaged the services of the compliance and listing and admissions committee members.

Financial resources

- 78 In August 2007, NSXL had \$10.2 million in cash reserves. The group's 2008 consolidated loss before income tax of \$2.37 million reduced this cash balance to \$8.5 million. As at March 2008, provided expenses are contained, NSXL retains sufficient capital to fund the operation of its NSEAL market. We will continue to closely monitor the adequacy of NSEAL resources.

Response to 2007 assessment recommendations

- 79 We made three recommendations in our 2007 annual assessment of NSEAL.

Recommendation 1: Supervisory activities be reported to compliance committee

- 80 Supervisory activities should be reported to the compliance committee given their significant oversight responsibility. We recommended that the compliance committee meet on a more frequent basis and take formal minutes.

NSEAL response

- 81 Compliance committee meetings are now formally minuted. NSEAL is of the view that with only 30 companies listed on its market, the combination of formal meetings, email, telephone and office visits by the compliance officer are deemed sufficient. NSEAL agrees that it needs to continue to review the requirement for meetings and is committed to hold more meetings as workload increases.

Recommendation 2: Closer scrutiny of role of NOMADs

- 82 We recommended NSEAL supervision should pay closer scrutiny to the role of nominated advisers (NOMADs). NSEAL should consider issuing an additional guidance note to NOMADs stating NSEAL expectations of NOMAD frequency of consultation and anticipatory interventions with their client issuer(s).

NSEAL response

- 83 NSEAL produced more policy documentation for NOMADs. It commenced the process to update its NOMAD handbook and development of a practice note to cover all areas of NOMAD responsibility. To encourage action by NOMADs, NSEAL now copies to NOMADs price queries that are sent to listed companies for which they are responsible.

Recommendation 3: NOMADs be independent on continuing basis

- 84 We recommended NSEAL should require that all NSEAL-approved NOMADs are independent of the companies that contract them to be their adviser in relation to market obligations on a continuing basis. A NOMAD should be required to demonstrate to NSEAL that both it and its executives are independent from the NSEAL companies for which it acts such that there is no reasonable basis for impugning the NOMAD's independence.

NSEAL response

- 85 NSEAL scrutinised NOMAD annual declarations of independence. NSEAL sent to all NOMADs its Nominated Adviser Annual Statement, appendix A of which requires the NOMAD to declare it is still in compliance with NSEAL's independence criteria. NSEAL examined the returns of those NOMADs that were involved in promoting new listings to ensure that those concerned were effectively managing their conflicts. As most NOMADs are law and accounting firms, NSEAL places reliance on the self-regulatory bodies of these professions that ensure they act in accordance with professional ethics and standards.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
BSX	Bendigo Stock Exchange Limited
Corporations Act	The <i>Corporations Act 2001 (Cth)</i>
LR	listing rule
NOMAD	nominated adviser
NSEAL	National Stock Exchange of Australia Limited
NSXL	NSX Limited
review period	the period from 8 March 2007 to 2 March 2008