



**ASIC**

Australian Securities & Investments Commission

**REPORT 163**

# **Market assessment report: Yieldbroker Pty Limited**

**ACN 092 250 345**

July 2009

## **About this report**

This report summaries ASIC's fifth annual assessment of Yieldbroker Pty Limited (Yieldbroker) under s794C of the *Corporations Act 2001* (Cth) (Corporations Act).

This assessment covers the period 1 July 2007 to 30 June 2008 (assessment period).

### 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 Yieldbroker

Yieldbroker was granted an Australian market licence on 3 February 2004.

Report number	Date released
REP 45	June 2005
REP 60	October 2005
REP 87	November 2006
REP 114	February 2008

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## Key findings and recommendations

### Key findings

- 1 ASIC is satisfied that Yieldbroker has:
  - adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act; and
  - sufficient resources to operate its markets properly and for the required supervisory arrangements to be provided under s792A(d) of the Corporations Act.

### Recommendations

- 2 We do not have any recommendations to make in relation to Yieldbroker's current supervisory arrangements.

## A The assessment

### Key points

ASIC conducts annual assessments of market licensees, such as Yieldbroker, because it is required to do so under s794C of the Corporations Act.

The scope of our assessment must include the obligations found in s792A(c), 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 licensee's performance, market intelligence and other things to form a view of how well the licensee has operated its market.

### Purpose and scope

- 3 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.
- 4 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year: s794C(2).
- 5 In addition, we are permitted to extend the scope of our assessment to review how well Yieldbroker complies with any or all of its obligations under Ch 7: s794C(1). As such, we have examined whether Yieldbroker has sufficient financial, technological and human resources to comply with its obligations under s792A(d).

### Background

- 6 Yieldbroker was granted an Australian market licence (market licence) on 3 February 2004. A copy of Yieldbroker's market licence is available on ASIC's website at [www.asic.gov.au/markets](http://www.asic.gov.au/markets).

- 7 Yieldbroker’s market licence permits it to operate two markets—the Dealer-to-Client market and Interdealer market. Both markets are electronic platforms which facilitate trading in bonds and debentures. Current products traded on the markets include Australian government and semi-government bonds, corporate bonds, Floating Rate Notes, and New Zealand government bonds.
- 8 In the over-the-counter financial markets, the total turnover of Australian government debt securities and non-government debt securities for the 2007–2008 financial year was \$716 billion and \$637 billion, respectively.<sup>1</sup>
- 9 The Dealer-to-Client market allows participants known as clients to request quotes from participants known as dealers. The Interdealer market allows dealer participants to trade directly with each other on a principal-to-principal basis.
- 10 The participants in Yieldbroker’s markets either hold an Australian financial services (AFS) licence or are professional investors.

## Our methodology

### Our assessment process

- 11 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.
- 12 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 that in our view need, or may need, to be addressed to ensure ongoing compliance.

### What we focused on for this assessment

- 13 Our focus in this assessment was to review:
- any changes in Yieldbroker’s operations from the previous year’s assessment;
  - Yieldbroker’s supervisory procedures including, in particular, its arrangements for managing conflicts of interest; and

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<sup>1</sup> Australian Financial Markets Association, *2008 Australian Financial Markets Report*, p. 2.

- whether Yieldbroker has adequate resources.

### **What we considered**

14 In conducting our assessment we:

- analysed information we received from and about Yieldbroker in the ordinary course of our dealings with Yieldbroker, including Yieldbroker's annual regulatory report required under s792F;
- reviewed Yieldbroker's audited financial statement for the year ended 30 June 2008;
- reviewed information from the media, Yieldbroker's website and other sources;
- reviewed operational records relating to the conduct of the markets, including Yieldbroker's supervisory responsibilities; and
- considered the operation of the markets throughout the period.

### **Consultation**

15 Our findings are set out in Section B of this report. Yieldbroker has had the opportunity to view and comment on the factual accuracy of a draft version of this report. Where appropriate, our findings in Section B reflect Yieldbroker's clarifications.

## B Our observations for Yieldbroker

### Key points

We consider that Yieldbroker's arrangements for supervising its markets are adequate, including arrangements for:

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

Yieldbroker did not make any substantial changes to its supervisory arrangements during the assessment period.

We do not have any recommendations to make in relation to Yieldbroker's current supervisory arrangements.

We also note that Yieldbroker has complied with its reporting obligations under the Corporations Act.

### Supervisory arrangements

- 16 We conclude that Yieldbroker has:
- adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c); and
  - sufficient resources to operate its markets properly and for the required supervisory arrangements to be provided under s792A(d).
- 17 This conclusion is based on the following observations drawn from information gathered during our assessment process and our observations from our ongoing correspondence with Yieldbroker:
- Yieldbroker's supervisory arrangements did not change during the assessment period. Its framework for supervision includes:
    - a Compliance Officer with responsibility for the day-to-day supervision of the markets and participants, as well as investigative and disciplinary powers;
    - a Compliance Committee to oversee supervision and conduct disciplinary hearings; and
    - the disciplinary powers of the Board;

- participation in the markets is restricted to professional participants who, it is reasonable to assume, understand the risks involved and have the resources to adequately represent and protect their own interests;
- under Yieldbroker's licence and operating rules participants can only trade on their own behalf or on behalf of clients who are not retail clients;
- no serious market failures or disruptions have come to our attention; and
- during the assessment period no information came to our attention to suggest that the supervisory arrangements in place were not operating properly.

### **Managing conflicts of interest**

- 18 Yieldbroker's operating rules, written policies and procedures detail how it manages conflicts between its supervisory and commercial interests, including:
- the Compliance Officer is disconnected from commercial decision making and reports directly to the Board of Directors;
  - the Compliance Committee must have a majority of members who are neither directors of Yieldbroker nor of its participants;
  - decisions of the Compliance Committee are determined by a majority vote; and
  - it maintains a conflict of interest register to record all conflict of interest situations and the actions taken.
- 19 No conflict of interest events were identified during the assessment period.

### **Monitoring the conduct of participants**

- 20 The Compliance Officer monitors the conduct of participants using Yieldbroker's own monitoring software, which monitors all trade activity in real time.
- 21 On a weekly basis the Compliance Officer reviews all price information and trading information and investigates any evidence of contravention of the operating rules. The Compliance Officer may then make a recommendation to the Board or Compliance Committee to take disciplinary action.
- 22 The Compliance Committee only convenes when the Compliance Officer makes a referral to it for disciplinary action to be taken. As the Compliance Officer made no referrals, the Committee did not convene during the assessment period.

23 Yieldbroker did not identify any conduct which was found to contravene the operating rules during the assessment period.

### **Enforcing compliance with the operating rules**

24 Yieldbroker did not make any substantial changes to the way in which it enforces compliance with its operating rules during the assessment period.

25 In gaining entry to the markets, participants undertake to comply with the Participation Deed, operating rules, the Corporations Act, Australian Financial Markets Association (AFMA) and other market conventions, and any directions issued by ASIC to Yieldbroker. Participants also undertake to access and use the system in a manner which is honest, fair and efficient so as to promote the ongoing protection of the market integrity.

26 Where a participant has breached the operating rules, the Compliance Officer must take disciplinary action against the participant by issuing a warning or fine.

27 The Compliance Officer may also make a recommendation to the Compliance Committee to issue a fine, suspend or terminate the participant's right to access the markets, remove the participant's current pricing references from the system, and/or notify ASIC.

## **Resources**

28 We are satisfied that Yieldbroker has sufficient financial, technological and human resources for the required supervisory arrangements to be provided.

### **Financial**

29 Yieldbroker provided us with an audited financial statement for the year ended 30 June 2008. We have reviewed Yieldbroker's annual financial statements and are satisfied that Yieldbroker has sufficient financial resources for its supervisory arrangements.

30 Yieldbroker's financial resources are derived from:

- participation fees on dealers in the Dealer-to-Client market;
- since March 2008, fees from all trades on the Interdealer market; and
- a small income from distribution of indicative price data.

31 During the assessment period two additional shareholders purchased shares in Yieldbroker. Subsequently, on 1 August 2008, one other shareholder purchased a shareholding. Yieldbroker is now owned in equal shares by seven financial institutions.

## Technological

- 32 Yieldbroker's technical resources comprise various leased and owned hardware assets, software applications and processes for trading and system auditing, monitoring and reporting. The current technology has coped with existing volumes on the markets.
- 33 Yieldbroker periodically reviews system security to identify and resolve any significant risks. Yieldbroker has submitted that this review process ensures that activity on its system is always secured in line with industry expectations. Yieldbroker has also submitted that wherever practical Yieldbroker's security-accredited hosting company has responsibility for perimeter security of the system and uses a variety of tools such as an Intruder Detection System and subscription to industry security bulletins. Yieldbroker has advised that its help desk staff monitor and review system logins.

## Human

- 34 Yieldbroker has employed staff in various capacities for commercial, supervisory and technological functions.
- 35 There has been no significant change to the roles or individuals filling positions in either the commercial or compliance areas of Yieldbroker.
- 36 Yieldbroker continues to outsource some aspects of its business to external vendors.

## Conclusion

- 37 ASIC is satisfied that Yieldbroker has:
- adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c); and
  - sufficient resources to operate its markets properly and for the required supervisory arrangements to be provided under s792A(d).

## Key terms

Term	Meaning in this document
AFMA	Australian Financial Markets Association
AFS licence	An Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services
ASIC	Australian Securities and Investments Commission
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
market licence	An Australian market licence under s795B that authorises a person to operate a financial market
market licensee	A person who holds a market licence under s795B
Yieldbroker	Yieldbroker Pty Ltd
s794C (for example)	A section of the Corporations Act (in this example, numbered 794C)