



ASIC

Australian Securities & Investments Commission

REPORT 171

Market assessment report: IMB Limited

ACN 087 651 974

August 2009

About this report

This report summarises ASIC's 4th annual assessment of IMB Limited (IMBL) under s794C of the *Corporations Act 2001* (Cth) (Corporations Act).

This assessment covers the period 19 January 2008 to 9 June 2009 (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 IMBL

IMBL was granted an Australian market licence on 8 July 2005.

Report number	Date released
REP 148	January 2009
REP 100	September 2007
REP 86	October 2006

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Key findings and recommendations

Key findings

- 1 ASIC is satisfied that IMBL has:
 - adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c) of the Corporations Act;
 - adequate arrangements for the supervision of its clearing and settlement facility in accordance with its obligations under s821A(c) of the Corporations Act; and
 - sufficient resources to operate its market and clearing and settlement facility properly and for the required supervisory arrangements to be provided under s792A(d) s821A(d) of the Corporations Act.

Recommendations

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

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 assessment of clearing and settlement facility licensees under s823C.

The scope of our assessment must always 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 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.
- 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 a licensee 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 IMBL's compliance with s792A(d) and 821A(d), specifically, the obligation to have sufficient resources to operate the market and clearing and settlement facility properly.
- 6 This reports covers the period from 19 January 2008 to 9 June 2009 (the assessment period), although we have had regard to subsequent developments. The 18-month review period for this assessment is due to ASIC conducting the last assessment on IMBL over a much shorter assessment period of six months: see REP 148.

Background

- 7 IMBL is an authorised deposit-taking institution (ADI) under the *Banking Act 1959* (Cth) and is regulated by APRA. In addition to holding an Australian market licence and clearing and settlement facility (CS facility) licence, it holds an Australian financial services licence (AFS licence) that permits IMBL to carry on a financial services business in deposit and payment products, general insurance products, life risk insurance products and retirement savings account products. This assessment of IMBL does not cover IMBL's compliance with its AFS licence obligations.
- 8 IMBL was granted an Australian market licence and a CS facility licence in July 2005. The licences are available for viewing at www.asic.gov.au/markets.
- 9 The market and CS facility is operated by the Shares Trading team (which currently has 10 members and sits in the Banking Services department). The team is located within IMBL's head office in Wollongong and is led by the Market Supervisor who is responsible for the day-to-day running of the market and CS facility. With the exception of one share trading officer, none of the other employees in the shares trading team have exclusive responsibilities over the market, but rather are rotated in and out of the role.
- 10 To trade on IMBL's market a member needs to have a transaction account and a share trading account. IMBL shareholders and market users are predominantly retail investors.
- 11 At the time of the assessment IMBL had 39,912,000 shares on issue. The total volume traded on the IMBL market during the assessment period was 2,091,018 shares, with a monthly average of 191,000 shares. The total value of shares traded during the assessment period was \$6,252,908, with a monthly average of \$594,680. The total number of share trades during the assessment period was 1001.
- 12 IMBL operates a CS facility which is provided only in respect of IMBL shares. The extent of IMBL's clearing and settlement functions is limited to facilitating 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 the Share Trading team generates share certificates.
- 13 The 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. Accordingly IMBL is not required to meet these standards.
- 14 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.

Our methodology

Our assessment process

- 15 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.
- 16 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

- 17 The focus of this assessment is to assess changes made (if any) to IMBL's supervisory arrangements in relation to its market and CS facility. In addition we also reviewed and assessed the adequacy of resources devoted to the operation and supervision of the market and CS facility.

What we considered

- 18 In conducting our assessment we:
- reviewed the previous section 794C and 823C annual assessment report (REP 148);
 - reviewed the 2008 annual regulatory report provided by IMBL to ASIC as required under s792F and 821E;
 - reviewed information we received from and about IMBL in the ordinary course of our dealing with IMBL as a market and CS facility licensee;
 - checked publicly available information on IMBL's website, including share prices, media releases, market announcements and policies and procedures;

- undertook a media review on IMBL;
- reviewed IMBL's responses to our questionnaire; and
- reviewed IMBL's financial statements at 31 December 2008.

Consultation

- 19 Our findings are set out in Section B of this report. IMBL 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 IMBL's clarifications.

B Our observations for IMBL

Key points

We have considered the adequacy of IMBL's arrangements and resources for supervising its market including:

- 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.

IMBL 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 IMBL's current supervisory arrangements.

Supervisory arrangements

- 20 We are satisfied that IMBL has adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c).

Managing conflicts of interest

- 21 IMBL has identified the following as possible areas of conflict of interest flowing from operating a market in its own shares:
- conflict between IMBL's interest in reducing costs to its business generally and its duty as a licensee to run a fair, orderly and transparent market;
 - the potential for staff and their associates to trade ahead of other participants on the basis of an informational advantage by virtue of their employment or association with IMBL; and
 - conflict that may arise due to staff and director ownership of IMBL shares, these interests have the potential to adversely affect the policing of disclosure obligations imposed by the market licence.
- 22 There are no new or additional conflict of interest situations identified.
- 23 IMBL has procedures in place to monitor and manage conflict of interest situations that may arise in relation to the market and CS facility. IMBL mitigates the risks associated with conflict situations by:

- 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 directors and selected employees to make an annual declaration of their current shareholdings and those of their related entities;
- flagging staff orders to prevent them being loaded onto the system unless overridden by the Market Supervisor;
- logging all director trades in the Monitoring Log; and
- auditing staff trades to ensure no breaches of IMBL's share trading guidelines.

24 IMBL has indicated that no changes were made to the measures it uses to manage and mitigate conflict of interest situations.

25 Based on our review of all information at hand and information provided by IMBL, IMBL's arrangements for managing conflicts are adequate.

Continuous disclosure

26 The IMBL market only quotes one product, being IMBL ordinary shares, so it has no official list. As IMBL is not listed on an 'official list' as defined in the Corporations Act it is not a 'listed disclosing entity' as defined in the Corporations Act.

27 Accordingly, IMBL is not subject to statutory obligations to immediately disclose material developments that a reasonable investor would expect should be disclosed. However, it is a condition of IMBL's Australian market licence that it disclose all price-sensitive information in a timely manner. This information must be lodged with ASIC and made available on the IMBL website and at IMBL's branches.

28 IMBL has in place disclosure guidelines to meet its disclosure obligations with respect to the IMBL market. IMBL's executive committee meets once a week to discuss any matters that may need to be disclosed. Continuous disclosure is also discussed at the monthly board meeting.

29 Any matter that may require immediate disclosure can be raised with the Chief Executive and if necessary a special executive meeting is called so that a decision can be made about the appropriate level of disclosure.

30 To assess the extent to which IMBL has complied with this licence condition we analysed all the market announcements and general media releases published on IMBL's website during the assessment period and did not find any evidence that price sensitive information were not disclosed to the market on a timely basis.

31 We 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.

Complaints handling

32 IMBL handles market disputes in accordance with its share market dispute resolution policies, a copy of which is available at IMBL's website.

33 IMBL received one complaint during the assessment period. The complaint centred on a buy order being loaded into the FACTS system with the incorrect expiry date. The order was subsequently partially matched but at a higher price than what the buyer ideally wanted. IMBL rectify this matter by compensating the buyer for the financial loss suffered.

Monitoring the conduct of participants and trading activity

34 IMBL maintains a register in which it records all significant market incidents. The incidents recorded in this register relate to fluctuations in share price and corrective actions taken by IMBL's share trading staff.

35 In terms of notable share price movements (defined by IMBL as a movement in price of more than 5 cents) that occurred during the assessment period IMBL advised that all were a result of:

- shareholders depositing their holdings in an effort to gain quick access to funds, selling their parcel at a price that would ensure a match; or
- large disposals of shares due to sales by deceased estate; or
- fluctuations leading up to and following a dividend announcement.

Resources

36 We consider that IMBL has sufficient resources to operate its market properly and for the required supervisory arrangements to be provided under s792A(d).

37 IMBL advised that during the assessment period there were no significant changes to either the financial or technological resources used to operate and supervise the market and CS facility.

Financial resources

38 The operation of the market and CS facility forms only a small fraction of IMBL's general business activities and is low cost. IMBL generates income

from the market by levying an administration fee for each completed transaction. The main expenses associated with the market and CS facility are the employment costs for one full-time employee. Any shortfall between income and expenses directly associated with its market and CS facility is not considered material and can be easily absorbed by profits generated from IMBL's general banking and lending activities.

- 39 We reviewed the latest audited financial statements available from IMBL at the time of our assessment and consider that IMBL has sufficient revenues to cover the costs of operating its market and CS facility for the next 12-month period.

Technological resources

- 40 No changes were made to the FACTS system within the assessment period and IMBL advised that no future changes are proposed.

Human resources

- 41 During the assessment period an additional employee was appointed to the Banking Services department and was given appropriate training for their role with the market and CS facility.

Clearing and settlement

- 42 We are satisfied that IMBL has adequate arrangements for the supervision of its CS facility in accordance with its obligations under s821A(c) of the Corporations Act.
- 43 The CS facility operated by IMBL is limited and only involves the debiting and crediting of a buyer's and seller's transaction account.
- 44 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.
- 45 IMBL has indicated that there were no changes to the way it operates the CS facility. We are not aware of any changes to this facility and it continues to operate according to statutory requirements.

Conclusion

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

Key terms

Term	Meaning in this document
AFS licence	Australian financial services licence
ASIC	Australian Securities and Investments Commission
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	The <i>Corporations Act 2001</i> (Cth)
CS facility	clearing and settlement facility
IMBL	IMB Limited
s794C	A section of the Corporations Act (in this example, numbered 794C)