



ASIC

Australian Securities & Investments Commission

REPORT 208

Market assessment report: IMB Limited ACN 087 651 974

June 2010

About this report

This report summarises ASIC's 5th annual assessment of IMB Limited (IMBL) under s794C(2) and 823C(2) of the *Corporations Act 2001* (Cth) (Corporations Act).

This assessment covers the period 10 June 2009 to 24 February 2010 (assessment period).

This report does not address the Government announcement of 24 August 2009 on proposed structural changes to supervision of Australia's financial markets that come into effect in the third quarter of 2010.

IMBL will continue to have its current supervisory responsibilities for its market and clearing and settlement facility (CS facility) until at least 1 July 2010.

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 both an Australian market licence and an Australian clearing and settlement facility licence on 8 July 2005.

Report number	Date released
REP 171	August 2009
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) and 821A(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) and 821A(c), but we can include other Ch 7 and 8 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 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.
- 6 ASIC is required to assess how well a CS facility licensee complies with its obligations under s821A(c) at least once a year: s823C(2).
- 7 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

s794C(1) of Ch 7 and s823C(1) of Ch 8. 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 CS facility properly.

- 8 This report covers the period from 10 June 2009 to 24 February 2010 (the assessment period), although we have had regard to subsequent developments.

Background

- 9 IMBL is an authorised deposit-taking institution (ADI) under the *Banking Act 1959* (Cth) and is regulated by the Australian Prudential Regulation Authority (APRA). In addition to holding an Australian market licence and 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.
- 10 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.
- 11 The only class of financial products which can be dealt with on the IMBL market are ordinary shares in IMBL. IMBL's motivation for operating the market is to provide its members with a low-cost, simple and accessible platform for the trading of IMBL shares with other IMBL members. To become a member of IMBL, an individual must have a deposit or loan account with IMBL.
- 12 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.
- 13 The Share Trading team, which currently consists of nine members from the Banking Services department, operates the market and CS facility. The team 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 Share Trading team have exclusive responsibilities over the market, but are instead rotated in and out of the role.
- 14 At the time of the assessment, IMBL had 39,911,640 shares on issue. The total volume traded on the IMBL market during the assessment period was 1,570,865 shares, with a monthly average of 196,000 shares. The total value

of shares transacted on the IMBL market during the assessment period was \$4,732,326.08, with a monthly average of \$591,540. The total number of share trades during the assessment period was 519.

- 15 IMBL's CS facility is operated only in respect of IMBL shares. IMBL's clearing and settlement function is limited to facilitating the debiting and crediting of IMBL members' 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 the share certificates.
- 16 IMBL is not required to comply with the stability standards outlined in s827D of the Corporations Act, as IMBL does not settle more than \$100 million per year.
- 17 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 to make it available to the market. IMBL provides this information on its website and at IMBL's branches.

Our methodology

Our assessment process

- 18 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.
- 19 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

- 20 The focus of this assessment is to assess any changes made 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

- 21 In conducting our assessment we:
- reviewed the previous s794C and 823C annual assessment report (REP 171);
 - reviewed the 2009 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 2009.

Consultation

- 22 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

- 23 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

- 24 IMBL has identified the following as possible areas of conflicts 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, which has the potential to adversely affect the policing of disclosure obligations imposed by the market licence.
- 25 IMBL has arrangements in place to deal with conflicts of interest. Further information on these arrangements is contained in our last assessment report on IMBL (REP 171) at paragraph 23.

26 IMBL has indicated that no changes were made to its conflicts of interest arrangements.

27 Our review of all the information available to us indicates that IMBL's arrangements for managing conflicts of interest are adequate.

Continuous disclosure

28 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.

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

30 IMBL has in place policies and procedures in order to comply with its continuous disclosure obligations. Further information on IMBL's continuous disclosure policy and procedures is contained in our last assessment report on IMBL (REP 171) at paragraphs 28 and 29.

31 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 to suggest that price-sensitive information was not disclosed to the market on a timely basis.

32 Furthermore, to test IMBL's compliance with its continuous disclosure obligations, we conducted a search of various media sources to see if there was any information concerning IMBL which was not disclosed that potentially should have been. We did not find any information of this nature.

Complaints handling

33 IMBL has a share market dispute resolution policy to deal with market-related disputes; a copy is available on its website.

34 IMBL received several complaints during the assessment period. The complaints covered a number of issues, including the fees and stamp duty charged for multiple partial matches, and the loading of an order out of sequence resulting in a financial loss to an IMBL member. Others related to peripheral issues concerning the market.

35 All were resolved and IMBL indicated that none of the complainants sought further redress.

Monitoring the conduct of participants and trading activity

36 IMBL's main supervisory tool for the market is the Share Market Monitoring Log, which the Share Trading team uses to record actions taken or observations made in relation to:

- suspicious activity;
- market manipulation by a participant or IMBL;
- withdrawn orders;
- director trades;
- procedural errors/complaints; and
- fluctuations in the share price of 5 cents or more.

37 In terms of notable share price movements, there were 34 recorded incidents. IMBL's investigation into these reveal that in all cases the price movements occurred as a result of:

- members seeking quick access to funds or requiring the shares to be sold by a specified date, and therefore placing an order at a price that would ensure a match; or
- large disposals of shares due to sales by deceased estates; or
- as a result of fluctuations leading up to and following a dividend announcement.

Resources

38 We consider that IMBL has sufficient resources to operate its market and CS facility properly and for the required supervisory arrangements to be provided under s792A(d) and 821A(d).

39 IMBL advised that during the assessment period there were no significant changes to the financial, human or technological resources used to operate and supervise the market and CS facility. The only notable change was that one member of the Share Trading team was transferred to another department.

Financial resources

40 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 expenses associated with the market and CS facility are generally limited to the employment costs for one full-time employee and stationery expenses associated with the production of trade records and share certificates. Any shortfall between income and expenses directly associated with its market and CS facility is not considered material by IMBL and can be easily absorbed by profits generated from IMBL's general banking and lending activities.

- 41 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

- 42 No changes were made to FACTS within the assessment period and IMBL advised that no future changes are proposed.
- 43 There was one outage to FACTS during the assessment period. The outage caused a short delay in opening and closing an application of the system. The system returned to full operation within 5 minutes of the outage, so no suspension was deemed necessary by IMBL. IMBL investigated the incident and a solution was implemented to prevent future occurrences.

Human resources

- 44 As noted above, the only change to the resources devoted to the operation and supervision of the market and CS facility was the transfer of one member of the Share Trading team to another department.

Clearing and settlement

- 45 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.
- 46 The CS facility operated by IMBL is limited and only involves the debiting and crediting of a buyer's and seller's transaction account.
- 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 the Reserve Bank of Australia (RBA) under s827D of the Corporations Act.

- 48 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

- 49 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	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
ASIC	Australian Securities and Investments Commission
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	<i>Corporations Act 2001</i> (Cth), including regulations made for the purposes of that Act
CS facility	Clearing and settlement facility
IMBL	IMB Limited
market licensee	Holder of an Australian market licence
s794C (for example)	A section of the Corporations Act (in this example, numbered 794C), unless otherwise specified