



ASIC

Australian Securities & Investments Commission

REPORT 249

Market assessment report: IMB Ltd

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About this report

This report summarises ASIC's sixth annual assessment of IMB Ltd (IMB) under s794C and 823C of the *Corporations Act 2001* (Cth) (Corporations Act).

This assessment covers the period 25 February 2010 to 25 February 2011 (the 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 IMB

IMB was granted an Australian market licence (market licence) on 8 July 2005.

Report number	Report date
REP 208	June 2010
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 during the assessment period IMB had:
 - adequate arrangements for the operation and 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 (CS facility) in accordance with its obligations under s821A(c) of the Corporations Act; and
 - sufficient resources to comply with its obligations under s792A(d) and 821A(d) of the Corporations Act.

Recommendations

- 2 We do not have any recommendations to make about IMB's arrangements and resources for the operation of its market and for the supervision of its CS facility in accordance with its obligations under the Corporations Act.

A The assessment

Key points

ASIC conducts annual assessments of market licensees, such as IMB, because it must do so under s794C of the Corporations Act. We are also required to conduct annual assessments of CS 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 On 1 August 2010, ASIC took over responsibility for supervising Australia's domestic licensed markets from market operators. ASIC now supervises IMB's market using the ASIC Market Integrity Rules (IMB Market) 2010 (effective 1 August 2010).
- 4 Before the transfer of market supervision, under s792A(c) a market licensee such as IMB was required to have adequate arrangements for supervising its market, including arrangements for handling conflicts, monitoring the conduct of participants, and enforcing compliance with the market's operating rules.
- 5 Following the transfer of supervision to ASIC, a market licensee (such as IMB) is required to have adequate arrangements for operating its market, including arrangements for handling conflicts, and monitoring and enforcing compliance with the market's operating rules.
- 6 ASIC is required to assess how well a market licensee complies with its obligations under s792A(c) at least once a year: s794C(2). For this assessment of IMB, we have taken into account the fact that IMB's obligations under s792A(c) changed during the assessment period.
- 7 Under s821A(c), a CS facility licensee must 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.

- 8 ASIC must assess how well a CS facility licensee complies with its obligations under s821A(c) at least once a year: s823C(2).
- 9 In addition, in accordance with s794C(1) and 823C(1), 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 and Ch 8 respectively. In this instance, we extended the scope of the assessment to include a review of whether IMB had sufficient financial, technological and human resources to comply with its obligations under s792A(d) and 821A(d).
- 10 This report covers the period 25 February 2010 to 25 February 2011.

Background

- 11 IMB 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 a market licence and a CS facility licence, it holds an Australian financial services (AFS) licence that permits IMB 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 IMB does not cover IMB's compliance with its AFS licence obligations.
- 12 We granted IMB a market licence and a CS facility licence in July 2005. The licences are available for viewing at www.asic.gov.au/markets.
- 13 The only class of financial products that can be dealt with on the IMB market are ordinary shares in IMB. IMB's motivation for operating the market is to provide its members with a low-cost, simple and accessible platform for the trading of IMB shares with other IMB members. To become a member of IMB, an individual must have a deposit or loan account with IMB.
- 14 To trade on IMB's market, a member needs to have a transaction account and a share trading account. IMB shareholders and market users are predominantly retail investors.
- 15 The Share Trading team, which currently consists of ten members from the Banking Services department, operates the market and CS facility. The team is led by the Market Manager, 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.
- 16 At the time of the assessment, IMB had approximately 39.9 million shares on issue. The total volume traded on the IMB market during the assessment

period was approximately 1.9 million shares, with a monthly average of 159,327 shares. The total value of shares transacted on the IMB market during the assessment period was approximately \$6.8 million, with a monthly average of \$566,898. The total number of share trades during the assessment period was 685.

- 17 IMB's CS facility is operated only for IMB shares. IMB's clearing and settlement function is limited to facilitating the debiting and crediting of IMB members' transaction accounts following a share transaction. Once a share transaction is completed, IMB's share trading system, known as FACTS, automatically updates the share registry and the Share Trading team generates the share certificates.
- 18 IMB is not required to comply with the stability standards outlined in s827D of the Corporations Act because IMB does not settle more than \$100 million per year.
- 19 IMB is not a listed disclosing entity, as defined in the Corporations Act; however, a condition of IMB's market licence requires IMB to disclose price-sensitive information to ASIC and to make it available to the market. IMB provides this information on its website and at IMB's branches.

Our methodology

Our assessment process

- 20 A 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.
- 21 We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a licensee has in place in accordance with its obligations under s792A(c) and 821A(c) of 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

- 22 The focus of this assessment was to assess any changes made to IMB's arrangements for the operation and supervision of 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

- 23 In conducting our assessment we:
- reviewed the previous assessment report, *Market assessment report: IMB Limited* (REP 208);
 - reviewed the 2010 annual regulatory report provided by IMB to ASIC, as required under s792F and 821E;
 - reviewed information we received from and about IMB in the ordinary course of our dealing with IMB as a market and CS facility licensee;
 - checked publicly available information on IMB's website, including share prices, media releases, market announcements, and policies and procedures;
 - undertook a media review of IMB;
 - reviewed IMB's responses to our questionnaire;
 - reviewed materials issued under notice; and
 - reviewed IMB's financial statements for the half year ending 31 December 2010.

Consultation

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

B Our observations

Key points

We have considered the adequacy of IMB's arrangements and resources for the operation and supervision of its market and CS facility, 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 and the facility's services are provided in a fair and effective way;
- monitoring the conduct of participants on or in relation to the market; and
- enforcing compliance with the operating rules of the market and CS facility.

We do not have any recommendations to make about IMB's arrangements and resources for the operation of its market and for the supervision of its CS facility.

We also note that IMB has complied with its market licence and CS facility licence reporting obligations under the Corporations Act.

Supervisory arrangements

- 25 We conclude that during the assessment period IMB had:
- adequate arrangements for the operation and supervision of its market in accordance with its obligations under s792A(c) of the Corporations Act;
 - adequate arrangements for the supervision of its CS facility in accordance with its obligations under s821A(c) of the Corporations Act; and
 - sufficient resources to comply with its obligations under s792A(d) and 821A(d) of the Corporations Act.

Managing conflicts of interest

- 26 IMB has identified the following as possible areas of conflicts of interest flowing from operating a market in its own shares:
- conflict between IMB's interest in reducing costs to its business generally and its duty as a market 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 IMB; and
- conflict that may arise due to staff and director ownership of IMB shares, which has the potential to adversely affect the policing of disclosure obligations imposed by the market licence.

27 IMB has arrangements in place to deal with conflicts of interest. Further information on these arrangements is contained in *Market assessment report: IMB Limited* (REP 171), our 2009 assessment report on IMB, at paragraph 23.

28 IMB has indicated that no changes were made to its conflicts of interest arrangements during the assessment period.

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

Continuous disclosure

30 The IMB market only quotes one product, being IMB ordinary shares, so it has no official list. As IMB 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.

31 Accordingly, IMB 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 IMB's market licence that all price-sensitive information must be lodged with ASIC and made available on its website and at IMB's branches in a timely manner.

32 IMB has in place policies and procedures in order to comply with its continuous disclosure obligations. Further information on IMB's continuous disclosure policy and procedures is contained in REP 171 at paragraphs 28–29.

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

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

Complaints handling

- 35 IMB has a share market dispute resolution policy to deal with market-related disputes; a copy is available on its website.
- 36 IMB received two complaints during the assessment period. The complaints involved the fees and stamp duty charged for multiple partial matches and a transfer request being loaded as a buy/sell order due to staff error, resulting in a financial loss to an IMB member.
- 37 Both were resolved and IMB indicated that none of the complainants sought further redress.

Monitoring the market and conduct of participants

- 38 IMB'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 about:
- suspicious activity;
 - market manipulation by a participant or IMB;
 - withdrawn orders;
 - director trades;
 - procedural errors and complaints; and
 - fluctuations in the share price of 5 cents or more.
- 39 In terms of notable share price movements, there were 80 recorded incidents in the assessment period. IMB'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;
 - large disposals of shares due to sales by deceased estates; or
 - as a result of fluctuations leading up to and following a dividend announcement.

Clearing and settlement

- 40 We are satisfied that during the assessment period, IMB had adequate arrangements and sufficient resources for the supervision of its CS facility in accordance with its obligations under s821A(c) and (d) of the Corporations Act.

- 41 The CS facility operated by IMB is limited and only involves the debiting and crediting of a buyer's and seller's transaction account.
- 42 As a securities settlement facility that settles less than \$100 million annually, IMB is not required to comply with the financial stability standards determined by the Reserve Bank of Australia (RBA) under s827D of the Corporations Act.
- 43 IMB has indicated that during the assessment period 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.

Resources

- 44 We are satisfied that during the assessment period IMB had sufficient financial, technological and human resources to comply with its obligations under s792A(d) and 821A(d) of the Corporations Act.
- 45 IMB advised that during the assessment period there were no significant changes to the financial, technological or human resources used to operate and supervise the market and CS facility. The only notable change to human resources was the addition of one staff member to the Share Trading team.

Financial resources

- 46 The operation of the market and CS facility forms only a small fraction of IMB's general business activities and is low cost. IMB 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 IMB and can be easily absorbed by profits generated from IMB's general banking and lending activities.
- 47 We reviewed the latest audited financial statements available from IMB at the time of our assessment and consider that IMB has sufficient revenues to cover the costs of operating its market and CS facility for the next 12-month period.

Technological resources

- 48 No changes were made to FACTS within the assessment period and IMB advised that no future changes are proposed.
- 49 There were no outages to FACTS during the assessment period.

Human resources

- 50 During the assessment period, an additional employee was appointed and was given appropriate training for their role with the market and CS facility.

Conclusion

- 51 Based on this assessment, we do not have any recommendations to make about IMB's arrangements and resources for the operation of its market and for the supervision of its CS facility.

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution
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.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Market Integrity Rules (IMB)	ASIC Market Integrity Rules (IMB Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on the IMB market
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
FACTS	IMB's share trading system
IMB	IMB Ltd
market licensee	Holder of an Australian market licence
RBA	Reserve Bank of Australia
REP 171 (for example)	An ASIC report (in this example numbered 171)
s794C (for example)	A section of the Corporations Act (in this example, numbered 794C), unless otherwise specified