



ASIC

Australian Securities & Investments Commission

REPORT 388

Market assessment report: Yieldbroker Pty Limited

ACN 092 250 345

April 2014

About this report

This assessment covers the period 1 October 2012 to 30 September 2013 (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 Yieldbroker

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

Report number	Report date
REP 333	March 2013
REP 267	November 2011
REP 228	January 2011
REP 189	January 2010
REP 163	July 2009
REP 114	February 2008
REP 87	November 2006
REP 60	October 2005
REP 45	June 2005

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Key findings and recommendations

Key findings

- 1 ASIC is satisfied that during the assessment period Yieldbroker had:
 - adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the *Corporations Act 2001* (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 about Yieldbroker's supervisory arrangements.

A The assessment

Key points

ASIC may conduct an assessment of a market licensee, such as Yieldbroker, under s794C(1) of the Corporations Act.

In conducting our assessment, we may assess how well a market licensee is complying with its obligations under s792A(c), but we can also 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 sources to form a view of how well the licensee has operated its market.

Scope

- 3 On 1 August 2010, the responsibility for supervising Australia's domestic licensed markets was transferred from the majority of domestic market licensees to ASIC. For these operators, the obligations under the Corporations Act to supervise their market were amended in recognition of this new arrangement.
- 4 The Corporations Act was also specifically amended to exclude a small number of licensed domestic market operators, including Yieldbroker, from this transfer. Yieldbroker and three other operators were excluded on the basis that they have certain distinguishing features. These include the requirement that only professional entities may be users of the market and that they may typically use the market for trading only over-the-counter type products. These are also requirements of ASIC's exempt professional markets policy, by which ASIC may consider recommending an exemption from the requirement to hold an Australian market licence.
- 5 As a result, Yieldbroker's supervisory obligations under the Corporations Act are unchanged and continue to require it to have adequate arrangements for supervising the markets, including arrangements for:
 - handling conflicts between its commercial interests and its 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 market's operating rules.
- 6 ASIC may assess how well a market licensee is complying with its obligations under s792A(c), and other obligations under Ch 7, specifically s792A(d). In keeping with standard practice, we extended the scope of the assessment to include a review of whether Yieldbroker had sufficient

financial, technological and human resources to comply with its obligations under s792A(d).

7 This report covers the period 1 October 2012 to 30 September 2013.

Approach to assessment

8 ASIC's current strategic framework focuses on three key priorities or outcomes. These are:

- confident and informed investors and financial consumers;
- fair and efficient financial markets; and
- efficient registration and licensing.

9 The first two of these are particularly important for licensed markets. In the context of Yieldbroker's markets, it is important to note that no retail investors are permitted to directly or indirectly use the markets. ASIC considers that markets that limit participation to professional entities are those in which users are typically already confident and informed. In these circumstances, for the market to be fair and efficient, a primary focus is on the reliability of the market's operation and the extent to which it meets the legitimate expectations of its users.

10 For that reason, our assessment of these types of professional markets focuses on a narrower sub-set of the key measures than we might otherwise use if the market permitted retail investors. To determine whether Yieldbroker has complied with its obligations to have adequate supervisory arrangements and adequate resourcing, we focus on:

- whether there have been any changes during the assessment period to the way Yieldbroker supervises its markets;
- the nature of any complaints made by market users to Yieldbroker or ASIC about the markets' operations and/or Yieldbroker's supervisory activities;
- the occurrence of any technological outages of Yieldbroker's markets or concerns about Yieldbroker's technological resources;
- any material changes in human resources dedicated to the operation and supervision of the markets which have given rise to concerns or complaints about supervision and/or conflict handling;
- the maintenance of information and data records to support the monitoring of participant conduct on or in relation to the markets, including monitoring order information and transactions effected through the markets (such as date, time, volume, price and parties); and

- whether Yieldbroker has adequate financial resources to continue to operate its financial markets.

Background

- 11 Yieldbroker was granted an Australian market licence on 3 February 2004. We have conducted nine assessments of Yieldbroker since its licence was granted. Yieldbroker is licensed to operate two markets: the Dealer & Client market and Interdealer market. Both markets are electronic platforms that facilitate trading in bonds and debentures. Current products traded on the markets include Australian government and semi-government bonds, consumer price index (CPI)-linked bonds, treasury notes, corporate bonds, floating rate notes, New Zealand government bonds, interest rate derivatives, and more recently, bank bills.
- 12 Yieldbroker's platform has an auction functionality (available to Dealer & Client market participants only) that is used by:
- the Australian Office of Financial Management for issuing Australian government treasury bonds, treasury indexed bonds and treasury notes;
 - the New Zealand Debt Management Office for issuing New Zealand government bonds and treasury bills;
 - the Reserve Bank of Australia to conduct long-end liquidity operations; and
 - a number of semi-government borrowers.
- 13 Participation in Yieldbroker's markets is restricted to professional investors trading on their own behalf or on behalf of anyone who is not a retail client.
- 14 Yieldbroker operates an electronic swap execution platform which currently facilitates trading in AUD denominated fix/floating interest rate swaps, overnight interest swaps, forward rate agreements, single currency basis swaps and London Interbank Offered Rate (LIBOR) basis swaps up to 30 year duration for the Interdealer market.
- 15 On 16 May 2013, The US Commodity and Futures Trading Commission (CFTC) finalised its Swap Execution Facility (SEF) Rules. The SEF Rules require anyone operating a platform for swap trading that provides pre-trade information and an execution mechanism for swap transactions to US persons, to register as a SEF. The SEF Rules are part of the regulatory changes introduced by the *Dodd-Frank Wall Street Reform and Consumer Protection Act (US)*.
- 16 On 27 September 2013, Yieldbroker provided the CFTC's Division of Market Oversight (DMO) with a draft SEF application, which DMO is in the process of reviewing, together with a draft no-action request contemplating an alternative compliance plan.

- 17 The CFTC has provided Yieldbroker with temporary no-action relief from the requirement to register as a SEF until the earlier of 15 May 2014 or the date upon which Yieldbroker achieves SEF registration status. This temporary no-action relief is contingent on Yieldbroker's satisfaction of a number of conditions. Throughout this process, ASIC's staff has been engaged in discussions with Yieldbroker and the CFTC.

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. We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a market licensee (such as Yieldbroker) had in place for supervising its markets 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.

Materials we reviewed

- 19 In conducting our assessment we considered:
- Yieldbroker's annual regulatory report for the period 1 July 2012 to 30 June 2013;
 - Yieldbroker's audited financial accounts for the year ended 30 June 2013;
 - information we received from and about Yieldbroker in the ordinary course of our dealings with Yieldbroker as a market licensee;
 - Yieldbroker's response to our notice dated 27 November 2013, under s30 of the *Australian Securities and Investments Commission Act 2001* to obtain information about how Yieldbroker is meeting certain obligations under the Corporations Act; and
 - information we received during our visit to Yieldbroker's office on 16 January 2014, where we conducted interviews with Yieldbroker's Chief Executive Officer and Company Secretary/Compliance Officer.

Consultation

- 20 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

Key points

We have considered the adequacy of Yieldbroker's arrangements and resources for supervising its markets, including arrangements for:

- handling conflicts between its commercial interests and its 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 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 about Yieldbroker's supervisory arrangements or resources.

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

Supervisory arrangements

- 21 We conclude that during the assessment period Yieldbroker had:
- adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act, including adequate arrangements for:
 - handling conflicts between its commercial interests and its 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, and
 - sufficient resources to operate its markets properly and for the required supervisory arrangements to be provided under s792A(d) of the Corporations Act.
- 22 This conclusion is based on our review of the measures that typically guide our assessment of Yieldbroker and like markets, being:
- there were no material changes to the way in which Yieldbroker supervised its markets;
 - there were no complaints made by market users to Yieldbroker or ASIC about the markets' operations or Yieldbroker's supervisory activities;
 - there were no technological outages of Yieldbroker's markets or concerns about Yieldbroker's technological resources;

- there were no material changes in human resources dedicated to the operation and supervision of the markets during the assessment period that gave rise to concerns or complaints about supervision and/or conflict handling;
- Yieldbroker maintains information and data records to support the monitoring of participant conduct on or in relation to the markets; and
- Yieldbroker's annual audited accounts indicate it has adequate financial resources to continue to operate its financial markets.

Supervisory function

23 Yieldbroker's supervisory work is primarily undertaken by Yieldbroker's Company Secretary/Compliance Officer as described in Section B of Report 267 *Market assessment report: Yieldbroker Pty Ltd (REP 267)* dated November 2011. These arrangements did not change during the assessment period.

Managing conflicts of interest

24 We have concluded that Yieldbroker had adequate arrangements for managing its conflicts of interest. A description of Yieldbroker's arrangements for handling conflicts of interest is set out in Section B of REP 267.

25 Yieldbroker maintains a conflicts of interest register, and according to this register there were no conflicts of interest identified during the assessment period. We note that Yieldbroker did not make any material changes to its conflict handling arrangements during the assessment period. We are not aware of any complaints made about Yieldbroker's conflict handling during the assessment period.

Supervising the markets and conduct of participants

26 Yieldbroker is also required to monitor the conduct of participants in relation to its markets. As at 30 June 2013, there were 103 authorised participants on Yieldbroker's Dealer & Client market, and 21 participants on the Interdealer market.

27 At paragraph 24 of REP 267 we discussed how Yieldbroker monitors its markets and the conduct of its participants. These arrangements have not changed during the assessment period.

28 During the assessment period Yieldbroker introduced an indicative pricing report. This report allows Yieldbroker to compare the indicative prices provided by Dealer participants to Yieldbroker, with the price at which Dealer participants actually traded, or indicated they would trade at in response to a request for quote. Any prices outside a certain tolerance were flagged to the

relevant compliance personnel at the Dealer institution for investigation. We reviewed the findings from this report and were advised by Yieldbroker that no unusual pricing patterns were identified. There were a number of reasons identified why there may be variances, such as price differences generally still being within the pricing range of participants, the illiquid nature of some products and prices moving more rapidly in volatile markets.

- 29 Other than the indicative pricing investigations noted above, Yieldbroker reported that no investigations were required to be carried out during the assessment period. Further, no disputes arose between participants, or between Yieldbroker and participants, regarding trading and compliance with the operating rules during the assessment period.

Enforcing compliance with market operating rules

- 30 Yieldbroker has confirmed that during the assessment period it did not identify any potential breaches of its operating rules requiring investigation and/or enforcement. In addition, there were no complaints made to Yieldbroker or to ASIC about the conduct of participants on Yieldbroker's markets.
- 31 Yieldbroker introduced a new trade cancellation policy in September 2013 following consultation with its participants. The policy provides for further clarity around the circumstances in which a trade cancellation may be referred to Yieldbroker for investigation in accordance with the operating rules.

Resources

- 32 We are satisfied that during the assessment period Yieldbroker had sufficient financial, technological and human resources for the required supervisory arrangements to be provided.

Financial resources

- 33 We have reviewed Yieldbroker's financial position and are satisfied that during the assessment period Yieldbroker had adequate financial resources to operate its markets.
- 34 During the assessment period, Yieldbroker was owned in equal shares by 12 large financial institutions.

Technological resources

- 35 During the assessment period, the trading platform had a high level of availability with no major system outages reported. We are not aware of any complaints from participants regarding Yieldbroker's trading platform.

Human resources

- 36 During the assessment period, Yieldbroker relied on its Company Secretary/Compliance Officer and Helpdesk staff to perform the required supervisory functions for the markets. The only notable change to the staffing level was the additional headcount to the Helpdesk. We are satisfied that this resourcing was adequate.

Conclusion

- 37 Based on this assessment, we do not have any recommendations to make about Yieldbroker's supervisory arrangements.

Key terms

Term	Meaning in this document
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
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