

## Compensation Arrangements for Financial Market

### IMB Share Trading Facility

Participants in IMB's share trading facility include persons who may be retail or wholesale clients. In addition, some participants in the IMB share trading facility will fit the following description:

- a participant in the market, in effecting transactions through the market, will provide financial services for persons as retail clients; and
- in connection with the provision of those financial services, those persons will or may give money or other property, or authority over property, to those participants.

IMB is not a member of the Securities Exchange Guarantee Corporation, and must therefore have in place compensation arrangements for the market that are approved by ASIC in accordance with Division 3 of Part 7.5 of the *Corporations Act 2001*.

This document sets out details to support IMB's application for an Australian Market Licence. In particular, this document sets out the following:

- information in relation to the proposed compensation arrangements required by regulation 7.5.14 of the *Corporations Regulation 2001*; and
- proposed compensation rules ("the Rules").

The share trading facility is not a facility covered by Division 4 of Part 7.5 of the *Corporations Act 2001*.

The Compensation Rules will be made available on IMB's internet website (located at [www.imb.com.au](http://www.imb.com.au)) and in IMB Sales Centres.

# IMB Share Trading Facility

## Details of Compensation Arrangements

### References:

- Corporations Regulations 2001  
Regulation 7.5.14
- Corporations Act 2001  
Section 885B

### **Corporations Regulations 2001 Regulation 7.5.14**

**(a) The services and products provided by the financial market, and participants connected with the financial market.**

The service provided by the IMB financial market (“the Market”) is a facility through which participants can buy and sell ordinary permanent shares in IMB, which are the only products able to be traded on the Market.

The participants connected with the Market are persons allowed to directly participate in the Market under the Market’s Operating Rules. This includes retail and wholesale clients, including some nominee clients, who buy and sell shares on the financial market.

**(b) The sources of all funds to be used for compensation.**

IMB proposes to source all funds to be used for claims made under the compensation arrangements from an irrevocable letter of credit issued by Westpac Banking Corporation in favour of IMB solely for the purpose of the compensation fund arrangements of the IMB Share Trading Facility.

**(c) The proposed minimum amount of cover, and how that amount has been calculated.**

IMB proposes a minimum cover amount of \$1 million. This amount has been calculated taking into account the following matters:

- The total number of ordinary IMB shares currently on issue is approx. 39,000,000.
- Annual share trading volumes have been equivalent to approximately 5% of all ordinary shares on issue. A \$1 million source of funding for the compensation fund will therefore represent in excess of 15% of all annual trading.
- The maximum permissible shareholding is limited to 5% of all ordinary shares on issue, in accordance with IMB’s constitution. Therefore, no shareholder can hold more than approx. 2,000,000 shares.

- The current trading value of IMB shares is approximately \$3.15, thus a parcel of 2,000,000 shares could potentially be valued at \$6,300,000.
- Therefore, a nominee company's total holding is valued at a maximum of approximately \$6,300,000 at any one time.
- A nominee company may act for more than 1 client at any one time, including both retail and wholesale clients.
- Any nominee company's client who enters into a transaction with a market value of more than \$500,000 is not a retail client of that nominee company (refer to section 761G(7)(a) and section 761G(10)).
- The Rules provide compensation for retail clients only, in circumstances where the retail client directly instructs the nominee company to invest in IMB shares through the IMB share trading facility.
- IMB has not been made aware of any potential claims in its trading history, spanning 15 years.
- The nominee companies who purchase IMB shares are required to hold their own Australian Financial Services Licence which would provide compensation arrangements for their clients in the first instance.
- There are currently 8 nominee companies listed on IMB's share register who hold 30,000 shares or more.

**(d) The number of markets to which the compensation arrangements are intended to apply.**

IMB will be operating a single market under its Australian Market Licence (**AML**).

**(e) Details of any arrangement between the market operator and any other person associated with the operation of the compensation arrangement.**

As noted above at (b), IMB will maintain an irrevocable letter of credit in the amount of \$1 million with Westpac Banking Corporation. No other third parties will be involved in the operation or administration of the compensation arrangements. The compensation arrangements will be administered internally by IMB, as described in (g) below.

**(f) Details of the payments that will be able to be made, in accordance with the compensation arrangements, that will not be payments required by the Act or another law.**

Generally, IMB does not intend to make any payments if those payments would not be payments required by the Act or any other law. However, IMB may, from time to time, make small ex gratia payments to affected claimants in order to settle any ongoing matters.

**(g) The names of the persons responsible for the administration and monitoring functions mentioned in paragraphs 885I (1) (a), (b) and (c) of the Act, and details of the financial, technological and other resources to be used for those purposes.**

Overall responsibility for the compensation arrangements will be held by the Executive Group and the Board of IMB Ltd.

All claims received in accordance with the Rules will be required to be submitted to the Company Secretary. It will be the responsibility of the Executive Group and/or the Board of IMB to delegate to an appropriate staff member/group to investigate and make a determination on any such claims submitted to the Company Secretary.

The Company Secretary, with the assistance of the Manager Legal Services, will monitor compliance with the compensation arrangements as set out in the Rules and report any breaches of the arrangements to the Audit and Risk Management Committee of the Board of Directors of IMB.

The administration of the compensation arrangements will be monitored in the following ways:

- when appropriate (for example, where directed by the Company Secretary, where there has been any dispute in relation to the claim, or where the value of the claim is significant compared to other claims made against the fund), the Manager Legal Services will review claims to ensure that all determinations made have been made in accordance with the Rules and the Corporations Act. If any breaches are identified, these will be reported to the Audit and Risk Management Committee at the Committee's first quarterly meeting following identification of the breach, or sooner if deemed appropriate because of the significance of the breach.
- the Manager Internal Audit will perform an annual review of claims assessed during the previous 12 months to ensure these have been administered in compliance with the Rules and will report the findings from this review (including any breaches) to the Audit and Risk Management Committee.

The Company Secretary will be responsible for monitoring the adequacy of the Rules that are in place. The Company Secretary will report to the Audit and Risk Management Committee on an annual basis on the adequacy of the arrangements. Any recommendations for changes to the Rules will be considered by the Board. It will be the responsibility of the Board to take steps to implement any changes considered necessary.

**(h) The name of the proposed auditor of the accounts relating to the compensation arrangements.**

The compensation fund account held for the purpose of IMB's compensation arrangements will be audited by IMB's Internal Audit Department and externally audited by KPMG as part of the regular audit cycle for IMB.

**(i) The way in which the compensation arrangements will be monitored to ensure that they comply with the Act and these Regulations.**

The Legal Services Department, as part of normal procedures, will keep abreast of any changes in the law which affect the operation of the share trading facility, including any changes impacting on the Rules to ensure they continue to comply with the Act and Regulations. From time to time, when considered necessary, the Legal Services department will recommend to the Audit and Risk Management Committee that changes should be made to the compensation arrangements.

The Audit and Risk Management Committee will ensure that any necessary changes are reported to the Board. The Board will then be responsible for ensuring that changes are made to the Rules.

**(j) The way in which the compensation arrangements will be monitored to ensure that they are adequate.**

On an annual basis, or more frequently where deemed necessary, the Executive Group will review all claims made under the Rules. If the Executive Group believes that the arrangements in place for compensation are no longer adequate to cover the number and value of claims made under the Rules, the Executive Group will report to the Audit and Risk Management Committee. The report will contain any recommendations for changes to be made to the Rules to ensure that the arrangements remain adequate.

The Audit and Risk Management Committee will ensure that any necessary changes are reported to the Board. The Board will then be responsible for ensuring that the changes are made to the Rules.

# IMB Share Trading Facility Compensation Rules

## 1. Introduction

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- 1.1 These Compensation Rules are made pursuant to Part 7.5 of the Act.
- 1.2 The Compensation Rules form part of the compensation arrangements IMB has put in place in relation to its Market and are binding on IMB and participants in the Market in accordance with section 883A of the Act.
- 1.3 Under the Act, these Compensation Rules have the effect of a contract under seal between IMB and each participant in the Market under which:
  - (a) each participant covenants with IMB to observe these Compensation Rules and to perform obligations these Compensation Rules purport to impose on participants; and
  - (b) IMB covenants with each participant to observe these Compensation Rules and to perform the obligations these Compensation Rules purport to impose on IMB.
- 1.4 IMB will make these Compensation Rules available on its website and at IMB Sales Centres.

## 2. Definitions

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**Act** means the *Corporations Act 2001* and any amendments, re-enactments or replacements of that Act.

**Aggrieved Person** is defined in Rule 3.1.

**Board** means the board of directors of IMB.

**Financial Market** means a facility described by section 767A of the Act and includes the Market.

**IMB** means IMB Ltd.

**Licence** means the Australian Market Licence (numbered 237391) held by IMB Ltd.

**Loss** means a loss described by Rule 3.2.

**Market** means the IMB share trading facility operated in accordance with the Licence held by IMB Ltd.

**Operating Rules** mean the “Operating Rules – IMB Share Market” which apply to all Participants in the Market.

**Participant** means a person who is allowed to directly participate in the Market under the Market's Operating Rules.

**Person** means a Retail Client on whose behalf a Participant transacts through the Market.

**Regulations** means the *Corporations Regulations 2001* and any amendments, re-enactments or replacements of those Regulations.

**Retail Client** has the meaning given by section 761G of the Act or any amendments, re-enactments or replacements of that section.

**Rules** means these IMB Share Trading Facility Compensation Rules.

**Share** means an ordinary share in the capital of IMB.

### **3. Entitlement to claim for losses**

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3.1 If a Person suffers a Loss described by Rule 3.2, that Person is an Aggrieved Person.

3.2 Subject to Rule 3.3, these Rules apply to losses of a kind described in the following paragraphs:

- (a) a Person gave money or other property, or authority over property, to another person:
  - (i) who was a Participant in the Market at the time; or
  - (ii) who the Person reasonably believed to be a Participant in the Market at that time and who was a Participant in the Market at some earlier time; and
- (b) the money or other property, or the authority, was given to the Participant in connection with effecting a transaction, or proposed transaction, covered by the provisions of the Operating Rules; and
- (c) the effecting of the transaction through the Market constitutes or would constitute the provision of a financial service to the Person as a Retail Client; and
- (d) the Person suffers a loss because of:
  - (i) if the Person gave the Participant money or other property – the defalcation or fraudulent misuse of the money or other property by the Participant; or
  - (ii) if the Person gave the Participant authority over property – the fraudulent misuse of that authority by the Participant.

3.3 These Rules do not apply to any losses of a kind described below:

- (a) If, in relation to a loss suffered by a Person:
  - (i) the requirements of Rule 3.2 are satisfied in relation to a Participant in 2 or more Financial Markets; and

- (ii) the Person did not (expressly or impliedly) instruct the Participant to use a particular one of those Financial Markets; and
- (iii) it is not reasonably apparent from the usual business practice of the Participant which of those Financial Markets the Participant would use when acting for the person;

the loss is not a loss to which Rule 3.2 applies;

(b) If, in relation to a loss suffered by a Person:

- (i) the requirements of Rule 3.2 are satisfied in relation to a Participant and a Financial Market; and
- (ii) the loss is also connected with a Financial Market to which Division 4 of Part 7.5 of the Act applies; and
- (iii) the Person did not (expressly or impliedly) instruct the Participant to use a particular one of those Financial Markets; and
- (iv) it is not reasonably apparent from the usual business practice of the Participant which of those Financial Markets the Participant would use when acting for the person,

the loss is not a loss to which Rule 3.2 applies;

(c) If, in relation to a loss suffered by a Person:

- (i) the transaction referred to in Rule 3.2(b) could have been effected otherwise than through a Financial Market; and
- (ii) the Person did not (expressly or impliedly) instruct the Participant concerned to effect the transaction through a Financial Market; and
- (iii) it is not reasonably apparent from the usual business practice of the Participant that the transaction would be effected through a Financial Market,

the loss is not a loss to which Rule 3.2 applies.

3.4 An Aggrieved Person is entitled to make a claim for compensation from IMB in accordance with these Rules.

3.5 A claim by an Aggrieved Person relating to an alleged Loss caused by defalcation or fraudulent misuse may be allowed even if:

- (a) the Participant against whom the defalcation or misuse is alleged has not been convicted or prosecuted; and
- (b) the evidence on which the claim is allowed would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse.



#### **4. Amount of Compensation**

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- 4.1 Subject to Rules 4.2, 4.3 and 4.4, the amount of compensation to be paid by IMB to an Aggrieved Person in respect of a claim allowed under Rule 6 is calculated as the sum of:
- (a) the actual pecuniary loss suffered by the Aggrieved Person, calculated by reference to the market value of any relevant assets or liabilities as at the date on which the Loss was suffered; and
  - (b) the Aggrieved Person's reasonable costs of, and disbursements incidental to, the making and proof of the claim; and
  - (c) interest at the rate of 5% (or such other rate as prescribed under the Regulations from time to time) on the amount of the actual pecuniary loss, or so much of that loss as from time to time has not been compensated by an instalment or instalments of compensation, in respect of the period starting on the day when the Loss was suffered and ending on the day when the compensation, or the last instalment of compensation, is paid.
- 4.2 The amount of compensation payable by IMB to an Aggrieved Person under Rule 4.1 is reduced by reference to any right of set-off available to the Aggrieved Person.
- 4.3 The maximum amount of compensation to be awarded is \$500,000 per claim.
- 4.4 If at any time there are insufficient funds to meet in full all claims allowed by IMB under the compensation arrangements, IMB may, notwithstanding any other provision of these Rules, prioritise claims, or apportion the available funds between claims on any basis that it considers to be fair and reasonable in the circumstances, having regard to the following principles:
- Priority of claims will be determined by reference to the date on which the Loss was suffered;
  - The funds will be applied first in satisfaction of the claim made relating to Losses suffered on the earliest date, then subsequently in satisfaction of claims made relating to Losses suffered after that date in order of when the Losses were incurred;
  - If agreed with the Aggrieved Person, a claim may be paid to the Aggrieved Person by instalments.

#### **5. Method of payment of compensation**

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- 5.1 Any compensation determined to be payable in accordance with these Rules will be paid by IMB to the Aggrieved Person in a lump sum payment. The payment will be made within 30 days of notification of a determination to allow the claim made by IMB under Rule 6. The payment will be made by cheque or direct credit to the account of the Aggrieved Person.

#### **6. Making and determination of claims**

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- 6.1 If a Person believes that they have suffered a Loss of a type described in Rule 3 and intends to make a claim against IMB, that Person must notify IMB in writing of that claim

within 6 months of the Person becoming aware of the Loss. The notification of the claim must:

- (a) be addressed to the Company Secretary of IMB and delivered in person or by pre-paid mail to IMB's registered office;
- (b) set out full particulars of the event or series of events giving rise to the claim;
- (c) describe the loss suffered and how the amount claimed has been calculated; and
- (d) be signed by the claimant.

6.2 On receipt of a valid claim under Rule 6.1, IMB will provide a written confirmation to the Person making the claim that the claim will be determined by IMB in accordance with these Rules. The written confirmation will provide the Person with an estimate of the amount of time required to make a determination.

6.3 The Directors, CEO or Company Secretary of IMB or a person to whom the relevant authority for the purposes of these Rules has been delegated, will determine whether any claim made by any Person is a Loss to which these Rules apply. IMB must make a determination within 90 days of becoming aware of a Loss under Rule 6.1.

6.4 For the purpose of determining the claim, IMB may require the Person making the claim to provide further evidence of the claim. The Person must provide the further evidence requested. IMB may in its discretion make a determination that a claim is disallowed if a Person fails to provide any of the further evidence requested.

6.5 After being notified of a claim and before making a determination, IMB may at its discretion require a Person to pay money, or transfer other property, in relation to a right of subrogation, in support of a claim. If requested, the Person must pay any money or transfer any property required. IMB may in its discretion make a determination that a claim is disallowed if a Person unreasonably fails to pay any money or transfer any property required.

6.6 After being notified of a claim and before making a determination, IMB may require a Person to exercise a right of set-off available to that Person. If required, the Person must exercise that right of set-off. IMB may in its discretion make a determination that a claim is disallowed if a Person fails to exercise that right of set-off.

6.7 IMB may in its discretion determine that a claim is partially allowed where the Aggrieved Person has recovered any amount of the Loss from any other source.

6.8 IMB will notify a Person of IMB's determination in relation to a claim in writing.

6.9 If:

- (a) a Person has made a claim for compensation under these Rules, and IMB has determined that the claim is allowed; and

- (b) that Person makes or has made another claim under these Rules in respect of the same Loss,

that other claim is not allowed.

## **7. Source of funds**

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- 7.1 IMB will not be liable to pay compensation under these Rules from any source of funds other than the source identified in the Licence conditions.
- 7.2 If the holder of the funds is required to make a payment to an Aggrieved Person in accordance with Rule 4, the holder of the funds shall use the source of funds identified in the Licence conditions to make the payment, and IMB shall then pay to the holder of the funds an amount equal to the payment to ensure that the source of funds is replenished within 7 days.
- 7.3 IMB will ensure that the source of funds identified in the Licence conditions is maintained at all times while these Rules are in operation, and for a period of 12 months after these Rules cease under Rule 9.

## **8. Changes to Rules**

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- 8.1 IMB may, by resolution of the Board, make amendments to these Rules. The resolution making the amendment will come into effect on the date that the resolution is made, or on any later date specified in the resolution.

## **9. Cessation of Rules**

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- 9.1 If IMB ceases (for whatever reason) to be required under its Licence conditions to have Rules in place, IMB may cease operation of the Rules in accordance with this Rule.

IMB may, by resolution of the Board, cease the operation of these Rules. The resolution to cease operation will come into effect on the date that the resolution is made, or on any later date specified in the resolution.

## **10. Accrued rights**

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- 10.1 If these Rules cease to operate, the rights of any Person to make a claim under the Rules for a Loss suffered during the time that the Rules were in operation is not affected. Any claim made by a Person in relation to such a Loss will be determined by IMB in accordance with these Rules as if the Rules were still in operation.