



ASIC

Australian Securities & Investments Commission

REPORT 115

Market assessment report: Bloomberg Tradebook Australia Pty Ltd ACN 091 542 077

February 2008

About this report

This report summarises ASIC's first annual assessment of Bloomberg Tradebook Australia Pty Ltd (BTA) under s794C of the *Corporations Act 2001* (Cth) (Corporations Act).

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.

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Key findings and observations

Key findings

- 1 ASIC is satisfied that BTA has adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act.

Observations

- 2 ASIC does not have any recommendations to make in relation to BTA's current supervisory arrangements.
- 3 However, ASIC has identified the following opportunities for improvement:
 - BTA should ensure that its business continuity plan (BCP) is regularly updated and includes a communication plan with ASIC in case of emergency so that ASIC is kept fully informed about any impact of a contingency event on BTA's operation; and
 - BTA should update its market supervisory arrangements, an internal document that sets out the procedures used by BTA to supervise its markets, to reflect the changes in supervisory arrangements.

A The assessment

Key points

ASIC conducts annual assessments of market licensees, such as BTA because it is required to do so under s794C of the Corporations Act.

The scope of our assessment must always include the obligations found in s792A(c), but we can include other Chapter 7 obligations too.

ASIC uses the licensee's self-assessment reports, information from its previous assessments if applicable, ASIC's observation of the licensees' performance, market intelligence and other things to form a view of how well the licensee(s) have operated its markets.

Purpose and scope

- 4 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year (s792C(2)).
- 5 A market licensee is required to have adequate arrangements for supervising the market (under s792A) including for:
 - handling conflicts between the commercial interests of the licensee and the need for the licensee 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.
- 6 In addition, we are permitted to extend the scope of our assessment to review how well BTA complies with any or all of its obligations under Chapter 7 (s794C(1)).

Background

- 7 BTA is a wholly owned subsidiary of Bloomberg L.P., a privately owned entity formed in the US. Bloomberg L.P., together with its related companies, operates an integrated electronic platform that provides news, data and analytics services worldwide. The group also provides electronic trading services to the customers of that platform if they meet the relevant admission criteria.

- 8 The markets that BTA operates in Australia form part of a global network of electronic trading systems offered by other Bloomberg group entities in a number of overseas jurisdictions.
- 9 BTA was granted an Australian market licence (AML) on 15 November 2006 to operate seven markets trading in:
- government bonds, semi-government bonds, corporate bonds and debentures;
 - derivatives in relation to foreign exchange, securities, interest rates, credit and commodities;
 - spot foreign exchange; and
 - shares and interests in managed investment schemes listed on the New York Stock Exchange, Nasdaq or a National Securities Exchange.
- 10 The participants in the BTA markets are wholesale clients as described in section 7 of their AML. A copy of BTA's AML is available on ASIC's website at www.asic.gov.au.
- 11 During the assessment period, in addition to an AML, BTA held an Australian financial services (AFS) licence authorising it to carry on a financial services business to wholesale clients in relation to certain financial products. This assessment of BTA does not cover BTA's compliance with its AFS licence obligations.

Our methodology

Our assessment process

- 12 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.
- 13 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 considered

- 14 In conducting our assessment we considered:

- BTA's annual regulatory report for the period 15 November 2006 to 31 December 2006 provided by BTA to ASIC as required under s792F of the Corporations Act;
- BTA's 6-monthly reports for the periods 15 November 2006 to 31 December 2006 and 1 January 2007 to 30 June 2007 provided by BTA to ASIC as required under section 8 of BTA's AML conditions;
- information we received from and about BTA in the ordinary course of our dealings with BTA as a market licensee;
- information from the media and Bloomberg's website;
- BTA's response to our notice under s30 of the *Australian Securities and Investment Commission Act 2001* (Cth) to obtain information about how BTA is meeting certain obligations under the Corporations Act;
- information we received during our visit of BTA's office in Sydney between 24 and 28 September 2007, where we reviewed BTA's operational records and conducted interviews with BTA's personnel and management; and
- information we received during a demonstration of the markets at BTA's office in Sydney.

Consultation

- 15 BTA has had the opportunity to view and comment on the findings and recommendations contained in a draft version of this report. Where appropriate, this final report reflects BTA's responses.

What we focused on for this assessment

- 16 As this was our first assessment of BTA, we were primarily interested in:
- understanding how BTA operates its markets and carries out its supervisory functions on a day-to-day basis including in particular, its arrangements with respect to conflict of interest;
 - how BTA's actual operations compare with the information supplied in its AML application;
 - the procedures BTA has put in place with respect to its supervisory functions; and
 - whether BTA had sufficient technological, financial and human resources to comply with its obligations under s792A(d).

B Our observations

Key points

As part of this assessment ASIC has considered the adequacy of BTA's arrangements for supervising its markets, including arrangements for:

- handling conflicts between the commercial interests of the market licensee and the need for the market licensee 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.

ASIC has also considered BTA's compliance with its reporting obligations under the Corporations Act.

ASIC's assessment has produced a number of observations and key findings. BTA has responded to ASIC's assessment in a constructive manner by making or planning improvements.

Supervisory arrangements

- 17 After conducting our assessment ASIC is satisfied that BTA has adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act.
- 18 Our conclusion is based on the present operating conditions of the markets, including the trading volumes, financial products traded, types of participants and the observations below drawn from information gathered during the formal part of our assessment process:
 - BTA has good market infrastructure (including technology) to support its obligation to maintain fair, orderly and transparent markets;
 - BTA has an adequate framework of operating rules and procedures in place to supervise the markets; and
 - during the course of our interviews, the Local Compliance Officer demonstrated an understanding of his supervisory role and of the operations of the markets.
- 19 We also take note that the BTA markets have only been granted an AML for 12 months and the development of the markets has required some revision of procedures regarding its supervisory arrangements.

Contingency plan

- 20 We observed that BTA's BCP dated August 2005 had not been updated since 2005. We further observed that the BCP contained procedures on how to communicate with the other regulatory authority but did not include a plan on communication with ASIC in case of emergency.
- 21 We suggest that BTA should regularly update its BCP and include a communication plan with ASIC in case of emergency so that ASIC is kept fully informed about the impact of any contingency event on BTA's operation. BTA has agreed to our suggestions and updated its BCP accordingly.

Presence of compliance personnel at periodic meetings

- 22 In its AML application, BTA submitted that compliance personnel would be required to attend certain regular meetings for compliance purposes. From our assessment, we observed that instead of attending the meetings, the relevant compliance personnel use an alternative means to fulfil their compliance responsibility.
- 23 In response to our query regarding the deviation from the market supervisory arrangements, BTA advised that the alternative means carried out by the relevant compliance personnel achieves the same compliance objective.
- 24 We accept BTA's explanation and consider that the change in the arrangements does not adversely affect the efficacy of BTA's supervisory arrangements or BTA's ability to address compliance issues in a timely manner.
- 25 BTA has updated the market supervisory arrangements to reflect the change in the supervisory arrangements.

Managing conflicts of interest

- 26 The market supervisory arrangements state that, as one of the measures to manage conflicts of interest that may arise from the operation of the markets, BTA will:
- assign multiple sales representatives to handle each account; and
 - periodically rotate the sales representatives assigned to an account.
- 27 During the course of our assessment, we noted that though multiple sales representatives are assigned to an account, BTA does not rotate its sales representatives as stated in the market supervisory arrangements.

- 28 BTA advised that sales representatives rotation is not necessary for the purpose of managing conflicts of interest as the intended outcomes are achieved through the compliance department which:
- controls access to the markets (i.e. ensuring compliance with admission criteria);
 - reviews sales notes entered by sales representatives; and
 - reviews email communications between sales representatives and clients.
- 29 Further, BTA's sales staff are prohibited from any trading on the markets as they do not have access to the system to either place orders for clients or view these orders.
- 30 We are satisfied that these arrangements are adequate to manage any conflicts of interest that may arise from the operation of the market.
- 31 BTA has updated its market supervisory arrangements to reflect the current procedures.

Resources

- 32 In our assessment, we have also reviewed the adequacy of BTA's resources (including human, technical and financial resources) to operate the markets properly and to provide adequate supervisory arrangements.
- 33 We conclude that BTA has sufficient resources to operate its markets properly and to provide the required supervisory arrangements in accordance with its obligations under s792A(d) of the Corporations Act.

Technical resources

- 34 The current technology has coped with existing volumes on the markets and no serious market disruptions have occurred.

Financial resources

- 35 BTA has generated sufficient revenue to cover the costs of operating the markets.

Human resources

- 36 BTA has sufficient human resources for operating and supervising the markets.

Conclusion

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We conclude that BTA has:

- adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act; and
- sufficient resources to operate its markets properly and to provide the required supervisory arrangements in accordance with its obligations under s792A(d) of the Corporations Act.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B
AML	An Australian market licence under s795B
ASIC	Australian Securities and Investments Commission
BCP	business continuity plan
BTA	Bloomberg Tradebook Australia Pty Ltd
Corporations Act	The Corporations Act 2001(Cth)