



**ASIC**

Australian Securities & Investments Commission

**REPORT 47**

# **Market assessment report: Bendigo Stock Exchange Limited**

July 2005



**ASIC**

Australian Securities & Investments Commission

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## **Annual assessment (s794C) report**

**Bendigo Stock Exchange Limited**  
**ACN 087 708 898**

**July 2005**

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# Executive summary

This report is an assessment of compliance by Bendigo Stock Exchange Limited (BSX) with its obligations under s792A(c) of the *Corporations Act 2001 (Cth)* (Act). This is our third assessment of BSX.

Section 794C of the Act requires the Australian Securities & Investments Commission (ASIC) to assess how well a licensed market operator is complying with its obligations as the holder of a markets licence and in particular, whether a market operator has adequate arrangements for supervising the market it operates.

In this report we also consider the recommendations we made in last year's assessment. We comment on whether, and to what extent, BSX has acted to rectify the issues we identified.

## How we conducted this assessment

In conducting our assessment, we:

- reviewed the books and records of BSX; and
- interviewed BSX staff and directors.

We also considered BSX's Annual Regulatory Report 2003-2004, submitted to ASIC in accordance with s792F of the Act, and had regard to our ongoing interactions with BSX. We also considered how well BSX might comply with its obligations in the future.

## Compliance by BSX with statutory obligations

As at the time of our assessment and taking into account the size of operations of the BSX market, in ASIC's view BSX has adequate arrangements for supervising its market, including arrangements for:

- handling conflicts between its commercial interests and the need to ensure that the market operates in a fair, orderly and transparent manner;
- monitoring the conduct of participants in the market; and
- enforcing compliance with its listing rules and business market rules.

## Key observations and recommendations

Overall, we have concluded that BSX is complying with its statutory obligations under s792A(c) of the *Corporations Act*.

There are conflicts of interest present in BSX's current organisation. These conflicts take the form of a major shareholder with specific business interests in listing franchisees in a banking franchise network, in addition to a senior office holder who is also the principal of a BSX participant. BSX must maintain commensurately robust conflict handling arrangements to manage these issues. During the assessment, we identified some problems with the way in which the conflict handling arrangements are implemented. BSX has acknowledged our concerns and is taking steps to improve its arrangements. Following the merger with NSX Limited in April 2005, changes are being made to the boards of NSX and BSX group companies that should improve the current conflict handling arrangements.

During the assessment, we also identified some oversights in BSX's market supervision. Although we are of the view that these oversights were operational in nature and are not indicative of systemic problems in BSX's supervisory regime, practices in the affected areas of supervision should be reviewed to ensure that further problems are avoided. These issues are described in section 2.3 below.

We have also recommended that BSX review its rule framework to remove rules that it does not enforce because it considers them redundant.

# Section 1: Background

## 1.1 BSX Group

BSX is a wholly owned subsidiary of BSX Group Holdings Limited (BSX Group). The major shareholders of BSX Group as at the time of our visit were Bendigo Bank Ltd (Bendigo Bank), Computershare Ltd and Small Cap Holdings with 46.71%, 13.56% and 12.47% respectively. Bendigo Bank is also a key stakeholder in the listing of Bendigo Bank community banks.

## 1.2 Merger with NSX Limited

This assessment of BSX took place before the merger of BSX with NSX Limited in April 2005. A proposed merger was announced in December 2004. NSX Limited acquired all the shares in BSX Group, with NSX shares as consideration to BSX Group shareholders. The transaction took place following NSX member approval on 11 April 2005. The merger has fundamentally changed BSX's ownership structure. BSX Group is now a wholly owned subsidiary of NSX, which is listed on the Australian Stock Exchange Limited (ASX). We note that Bendigo Bank is NSX's largest shareholder with 11.8%, followed by Guinness Peat Group plc with 9.6%.

## 1.3 Market summary

At 1 June 2005, BSX had 24 listed entities and 3 participant brokers. In the financial year ended 30 June 2003 the value of securities traded on the BSX market was \$23,640. The value of securities traded in the financial year ended 30 June 2004 was \$3,850,636. This represents a substantial increase but is still a very low turnover figure for a retail equities market.

## 1.4 Community banks

The listing of community banks is a key element of BSX's growth strategy. Community bank branches are franchised businesses of Bendigo Bank. BSX listed its first two community banks in December 2002. This has subsequently grown to 15 (as at 1 June 2005). The largest of these - Logan Community Bank - listed after having raised \$3,200,000 from shareholders, although the average capital raising prior to listing is for \$500,000 to \$800,000 from between 200 to 500 shareholders.

The banking products offered by community bank branches are issued by Bendigo Bank. Each branch operates as a franchise of Bendigo Bank,

using the name, logo and system of operations of Bendigo Bank. The franchisees manage the community bank branches on behalf of Bendigo Bank, however all transactions with customers conducted through the community bank branches are effectively conducted with Bendigo Bank.

## 1.5 The assessment process

Section 794C(2) of the Act requires ASIC to assess whether BSX complies with its obligations in s792A(c) of the Act.

In addition, s794C(1) permits ASIC to extend the scope of its annual report to assess how well BSX complies with any or all of its obligations under Ch. 7 of the Act.

We have extended the scope of this report to consider whether BSX is complying with s792A(d), which requires an Australian market licensee to have sufficient resources both to operate the market properly and to provide the required supervisory arrangements.

In conducting our assessment, we took into account the matters set out in ASIC Policy Statement 172 'Australian market licences: Australian operators'. PS 172 explains how ASIC will assess how well a market licensee is complying with its obligations. This is ASIC's third s794C assessment of BSX. In this assessment we have considered BSX's adoption of ASIC's recommendation from its most previous assessment report. These were primarily related to the adequacy of BSX's conflict handling arrangements. The rest of our current assessment was concerned with assessing the adequacy of BSX's supervision generally pursuant to BSX's obligations under s792A(c)(ii) and s792A(c)(iii). To do this we looked at a number of distinct areas of supervisory activity undertaken by BSX in relation to its listed entities, participants and trading on its market.

In conducting our assessment under s794C, we:

- analysed information we received from and about BSX in the ordinary course of our dealings with the licensee, including BSX's annual regulatory report under s792F;
- reviewed information from the media, BSX's website, ASIC's complaints management records and other sources;
- scrutinised trading on BSX's market and reviewed media coverage of listed entities;
- interviewed a range of BSX personnel;
- reviewed BSX material produced under notice, including:
- files in relation to brokers and listed entities concerning their admission and ongoing compliance with the operating rules;

- agreements such as memoranda of understanding with stakeholders in BSX's market;
- board and board committee minutes, reports and charters; and
- supervisory policy and procedure documents.

Following receipt and analysis of books obtained under notice, we visited BSX offices in Melbourne from 2 to 4 March 2005 and spoke to BSX directors, management and staff. We have discussed the results of our assessment with BSX. This report incorporates BSX's comments on our findings.

## Section 2: Recommendations

### 2.1 Overall compliance

ASIC concludes that BSX has adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c) of the Act.

This conclusion is based on the following observations drawn from information gathered during the assessment process:

1. No serious market failures or disruptions came to our attention;
2. The BSX staff responsible for supervision at an operational level demonstrated a good understanding of and commitment to implementing BSX's supervisory obligations as an Australian market licensee;
3. BSX demonstrated a strong commitment to instilling in its listed entities, many of which are small and new to the public listing environment, a practical understanding of their obligations under the listing rules;
4. Supervision and monitoring of participants, listed entities and trading are guided by policies and procedures consistent with statutory obligations;
5. While certain exceptions were found during our review of BSX's supervisory activities, these were operational in nature and not in our mind indicative of systemic faults in BSX's supervisory regime; and
6. BSX has sufficient market infrastructure (including technology) to support its obligation to maintain a fair, orderly and transparent market.

### 2.2 Conflict handling arrangements

BSX Group separates its commercial and regulatory responsibilities by allocating responsibility for its license obligations to the board of BSX (the Australian market licensee). The BSX Group (the holding company) board has responsibility for business development issues. In our previous report we were concerned that BSX had not identified overarching or general conflicts of interest in its policy and procedures documentation and that responsibility for dealing with conflicts had been allocated to a subcommittee of the parent board, which had potentially conflicted members.

In our previous report we also recommended ways in which BSX might better achieve the intended separation, principally by making a board subcommittee comprised of independent directors responsible for identifying conflicts of interest, in addition to allowing the Markets Manager (BSX's chief regulatory officer) to report directly to the committee with any concerns about conflict issues.

BSX advised that it would make the identification of fundamental conflicts a responsibility of the BSX board, and that an independent non-executive director would have the task of providing a regular conflict report to the board. BSX also said that it would appoint another non-executive independent director to the BSX board.

The BSX board charter has been amended to include the roles of developing, identifying, monitoring and managing the conflicts of interest within BSX, and makes provision for a regular conflict report by an independent non-executive director. The Markets Manager is also now able to provide reports to the board independently.

The charter has also been amended to say that the BSX board should have a majority of directors who are not members of the BSX Group board. As at the time of our visit this was not the case. However, subsequently, the BSX chairman (Mr Michael McCartney) resigned from the BSX Group board, leaving the BSX board with a majority of non BSX Group directors.

During the assessment period a conflict report was produced identifying BSX's overarching conflicts, being the interests of Bendigo Bank as a shareholder and sponsor of BSX listings, the dual roles of Mr McCartney as a principal of a BSX participant, BSX chairman and member of BSX committees. The report also noted the inherent conflict for a financial market operator between its commercial interests and its regulatory responsibilities.

We do not object in principle to the design of BSX's conflict handling arrangements. However, in contrast with BSX's stated policy, another independent non-executive director had not been appointed to the board at the time of our visit and the BSX board chairman, rather than an independent non-executive director, had produced the conflict report.

BSX has had difficulty in attracting independent directors, and while it has been in discussions with various parties, the announcement of the proposed merger with NSX delayed an appointment.

BSX has manifest conflicts constituted by the role and potential influence of key stakeholders that have an interest in regulatory outcomes routinely decided by BSX. Two events that occurred during the assessment period

illustrate this conflict, and consequently, the need for robust arrangements.

Firstly, Bendigo Bank sought and obtained immunity from legal action by the Australian Competition and Consumer Commission under the third line forcing conduct provisions of the Trade Practices Act 1974 in June 2004. This was in relation to the obligation Bendigo Bank places on franchise community banks to apply for a BSX listing. Bendigo Bank has a memorandum of understanding with BSX (MOU) whereby Bendigo Bank and BSX have agreed to use their best endeavours to achieve the BSX listing of all community bank franchisees by August 2006. The MOU makes provision for standard listing fees for community banks and contains an agreement that standard waivers will be given by BSX to community banks to facilitate listing. The terms of the MOU also made provision for a payment from Bendigo Bank to BSX if a target number of community bank listings was not achieved by the end of August 2004.

Secondly, we identified a very favourable news article, apparently produced by BSX and posted on BSX's website, selectively quoting investment research prepared by Strategem Financial Group (Strategem). The BSX chairman is a director of Strategem. The research was about a BSX listed entity called Victorian Livestock Exchange Limited. Although the participant's contact details for further information were provided, the research was not published in full on the website, nor was the relationship between Strategem and the BSX chairman identified.

During our visit we advised BSX that we did not think that it is the role of an Australian market licensee to (effectively) provide stock recommendations, particularly in circumstances where there was no disclosure of the relationship between BSX and the research provider. Upon this issue being raised, BSX acknowledged ASIC's concern and the offending news item was immediately removed. We think however that this incident represents a manifestation of weaknesses in BSX's current conflict handling arrangements, as the conflict involved was not appropriately identified and dealt with in the first place.

Because BSX has strong conflicts, it must have robust conflict handling arrangements that work to avoid conflicts in practice as well as in theory. The arrangements BSX adopted following our previous recommendations were compromised in their implementation through the role of the chairman in producing the conflict report and the delay in appointing another independent member to the board. BSX should address this by acting on its policy of appointing another independent director and immediately selecting an alternative board member to provide a regular report to the board on issues relating to conflicts.

## Recommendation 1

BSX should act on its intention to appoint another independent non-executive director as well as immediately appoint another member of BSX's board to provide the board with the conflict report. The charter's choice of default person for the provision of this report should also be amended so that it does not revert to a director who is not independent.

In response to this issue, BSX has advised that Mr Frank Dunphy, who is a former managing director of BSX, and who BSX considers to be an independent non-executive director, has assumed the role of providing the board with the conflict report.

## 2.3 Overview of BSX supervision

Under s792A(c)(ii) of the Corporations Act, BSX must have adequate supervisory arrangements for 'monitoring the conduct of participants on or in relation to the market'. Under s792A(c)(iii) of the Act, BSX must have adequate supervisory arrangements for 'enforcing compliance with the market's operating rules'.

In order to make an assessment of BSX's compliance with its obligations pursuant to these sections, we selected specific areas of supervisory activity undertaken by BSX in relation to compliance by BSX listed entities and BSX participants with the operating rules, as well as its oversight of trading activity. We identified the relevant obligations in the rules and the applicable supervisory procedures BSX had in place for monitoring compliance. We then tested the effectiveness of BSX's practical implementation of these procedures.

### *Listed entities compliance with Listing Rule (LR) 3.1 – continuous disclosure*

Under LR 3.1, if an entity becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, it must immediately provide this information to BSX.

According to its procedures, one of the ways in which BSX monitors compliance by listed entities with this obligation is through a daily review of major newspapers and other publications for articles about listed entities. Articles about listed entities are examined for information that suggests a listed entity should have disclosed information to BSX and a comparison is made with the latest announcements. If, after assessing the article and recent announcements, it appears information should be disclosed to BSX, a query will be made to the entity.

We conducted a historical search of national and regional newspapers for the assessment period on nine out of the fourteen entities listed on the BSX as at 18 January 2005. The purpose of the search was to identify whether newsworthy items relating to a particular entity were noted in the media without corresponding disclosure to BSX. We also queried BSX's Markets Manager on BSX's practices and reviewed the correspondence files of the nine entities.

In regard to the media coverage given, we matched this to listed entity announcements or were otherwise satisfied that the media articles would not give rise to disclosure obligations under the rules. BSX does not check regional newspapers on the same basis vis a vis its review of national daily newspapers. Given the coverage most BSX listed entities are likely to receive in national newspapers is typically low, the review of national newspapers is an imperfect control measure. However, we note the practical difficulty BSX would have in covering all of the regional media that could be possibly relevant to BSX entities. In recognition of this problem, BSX has recently instituted monitoring using the media facility of internet search engine Google that does have some coverage of regional press.

We also looked at BSX's supervision of unusual trading activity, movements in price or volume in the securities of a number of listed entities.

According to BSX's procedures, the trading records generated by the BSX trading system are analysed at the close of each trading session for unusual transactions or trading patterns. Transactions or trading patterns falling outside certain parameters trigger a manual inspection. A range of initial checks are then carried out to determine whether the 'alert' is explainable or should be examined further. These initial inquiries include checking announcements by the relevant entity to the market, speaking with relevant market participants and making initial inquiries of the relevant entity.

We reviewed trading in six of the fourteen BSX listed entities as at 18 January 2005. The purpose of the review was to identify any unusual trading patterns such as extraordinary price or volume movements where there was no underlying market announcement. We also queried BSX's Markets Manager on BSX's practice and reviewed the relevant listed entity correspondence files.

The Trading Manager reviews trading at end of day by manually inspecting each trade and emailing a summary to the Markets Manager for his review. Any suspect trading activity is examined further.

We queried trades in the securities of three entities that appeared to involve unusually large volumes. On discussion with the BSX Markets Manager it appeared that the trades had been adequately scrutinized by BSX and that no inappropriate conduct had been identified.

Apart from the trades identified by us, BSX queried two trades, involving unusual price movements. BSX made initial inquiries pursuant to its procedures and determined that neither circumstance warranted further investigation by BSX.

BSX does not keep a systematic permanent record of the daily email referred to above or file notes of queries and outcomes in relation to its scrutiny of market activity unless an exception has been followed up by way of correspondence to the entities concerned.

## **Recommendation 2**

We recommend that BSX should improve its record keeping in relation to its monitoring of trading activity on its market to provide an adequate audit trail of its activity in this area.

### *Listed entity compliance with periodic disclosure requirements*

Under LRs 3.3 and 3.5, an entity must provide BSX with a completed copy of Annexure 3A following the end of each half financial year and full financial year of the entity, respectively. Annexure 3A requires disclosure of pro forma half yearly and yearly financial information. It must be provided to BSX as soon as the information is available and in any event, within 75 days of the end of the relevant accounting period. Also under LRs 3.17 (a) to (n), an entity must include certain additional information in its annual report including details about corporate practices, shareholder spread and substantial holders.

According to BSX's procedures, the Listing Manager is responsible for ensuring that lodged annual report/disclosures are delivered to the BSX Accountant. The procedures detail what the BSX Accountant should do in respect to scrutinizing these disclosures.

We reviewed the correspondence and announcement files of ten of the fourteen listed BSX entities to ascertain what action had been taken by BSX for any untimely lodgement of half yearly and annual accounts (Annexure 3A) and any incorrect disclosure. We also reviewed the annual reports of eight of fourteen entities listed on BSX for compliance with the additional information requirements of LR 3.17.

There were three instances where BSX suspended entities for failing to lodge their half yearly results in the form of Annexure 3A. These instances were reported in BSX's s792F regulatory report for the period

ended 30 June 2004. The entities were reinstated following lodgement of the outstanding disclosures. Other instances were noted where entities had failed to lodge their half yearly financial statements with ASIC within the timeframes imposed by the Act. BSX acted by advising the entities of their obligations.

Our review noted a few exceptions in relation to the additional information requirements to be included in an entity's annual report pursuant to LR 3.17. The most significant of these related to a community bank that failed to disclose the information required by LR 3.17 in its entirety. On being made aware of this oversight at the time of ASIC's visit, BSX immediately acted to advise the entity that the disclosure was required. The entity made the required disclosure soon afterwards. The other two instances involved entities not advising whether they had an audit committee in accordance with LR 3.17(c).

Subsequent to our visit, BSX has taken action to suspend quotation of an entity's securities for failing to lodge Annexure 3A following the end of each half year.

Although these oversights were limited, the number of listed entities on BSX's market is comparatively small and BSX should be vigorous about compliance with the disclosure requirements in its rules.

### **Recommendation 3**

We recommend that BSX should review its supervisory practices in relation to listed entity compliance with BSX's periodic disclosure requirements.

#### *Processing of applications for admission of an entity to BSX's official list and for quotation of securities*

Chapter 1 of the LRs sets out the requirements that must be satisfied before an entity can be listed on the BSX. According to BSX's compliance and procedures manuals, the Markets Manager is responsible for listing applications and for making recommendations to the Listing Committee.

In particular the Markets Manager makes a determination about whether a listing application meets the listing rules threshold criteria. The Markets Manager then makes a recommendation to the Listings Committee as to whether the application should be accepted or rejected. If the Listings Committee accepts the application, a letter from the Markets Manager is sent to the entity advising that the application for listing has been successful.

We reviewed the process followed for all of the eight new listed entities during the assessment period (up to 18 January 2005). In particular, we reviewed the listing files to ensure that the applicable financial information required under the profits or assets test and shareholder spread information had been provided and satisfied the relevant listing rules. We also reviewed the practices followed by BSX with respect to the approval process to ensure that the BSX listing committee had made a determination and that a letter was sent to the entity advising of its success in obtaining a listing on BSX and that any outstanding issues had been followed up.

Our review of the relevant documents revealed that BSX had adhered to its written procedures regarding the vetting of applications and applied the admission criteria appropriately. Apart from the 4 community banks admitted during this period the remaining entities were admitted in accordance with the applicable financial listing rule criteria and spread criteria. The community banks admitted generally had the assets test requirement waived, and were admitted with less than \$500,000 NTA. However this is in line with BSX policy and BSX is progressing listing rule amendments to facilitate a community board that has a lower NTA threshold amongst other requirements for "community orientated" entities. This follows from a recommendation in our previous report that an appropriate listing rule framework should be introduced for community banks, and for other "community" business model listings, to remove the need to issue standard waivers. This recommendation and development of the framework is the subject of ongoing discussion between BSX and ASIC.

#### *Provision and content of annual accounts by BSX participants*

Under BSX Market Business Rules (BR) 2.6-2.8, a BSX broker must prepare accounts about its business for each financial year, that must be lodged not later than 2 months after year end. Under BR 2.18, a BSX broker must also prepare a schedule of its investments as at the end of the financial year and include the schedule with the accounts.

We reviewed the files of the three BSX brokers and interviewed the Markets Manager about BSX's processes. In practice the Trading Manager receives all the annual accounts lodged with BSX. He reviews all the information contained in the accounts at first instance, and if any problems are identified, he reports them to the Markets Manager.

No investment schedules were attached to the brokers' annual accounts contained in the files. The explanation received for this was that in the case of the one BSX participant that is also an ASX participant, BSX has an arrangement where it accepts the information lodged by the participant with ASX. The participant does not lodge an investment

schedule with the ASX as this is no longer a requirement of the ASX market rules. The remaining BSX participants had cash investments only and so the rule had not been strictly enforced by BSX. BSX also advised that it plans to remove this requirement from the rules in due course.

It appears that in practice BSX does not enforce this rule.

#### **Recommendation 4**

BSX should review its operating rule framework and in particular the requirements regarding information and documents that BSX participants must lodge with BSX to remove rules that BSX considers to be redundant and does not enforce.

##### *Surplus liquid capital returns*

Under BR 3.1, a BSX broker must ensure that there is always surplus liquid capital in the business of the greater of \$50,000, or 5% of the BSX broker's adjusted liabilities. Surplus liquid capital requirements and aged debtor returns must be given to the BSX Accountant five business days after month end. The BSX Accountant examines:

- the timeliness of returns;
- the accuracy of calculations; and
- situations where a BSX broker is experiencing difficulties or may soon experience difficulties.

We reviewed the files relating to BSX brokers and interviewed the Markets Manager in relation to BSX's monitoring of this requirement.

In practice the Trading Manager receives the returns, checks them and forwards any problematic returns to the Markets Manager for review. The returns are not initialled to signify that the return has been checked although there was evidence that on one occasion BSX had queried the return of a broker. During the assessment period there was at times patchy compliance by brokers with the required timing of lodgements. One participant does not meet the requirement because it provides the same returns to BSX as it provides ASX after these have been provided to ASX. The returns of another participant had been frequently late over a period until June and July of 2004 when BSX undertook an audit of the broker. Since then, the participant's returns have been lodged in the time required by the rules. We noted that BSX is prepared to accept some divergence from the rules in this area because of the low volume of trading and BSX's faith in the capital position of its brokers. BSX is also cognisant that the brokers it directly supervises are small and that on

occasions the 5-day requirement in the rules is too tight because of occasional resource constraints.

The tolerance of ad hoc compliance in this area is especially risky and should be addressed by BSX.

### **Recommendation 5**

BSX should review its supervisory practices and business rules to ensure more rigorous participant compliance with BSX's capital liquidity requirements.

#### *Information sharing arrangements for shared participants*

We recommended in our previous report that formal arrangements with ASX to exchange capital liquidity information about shared participants should be negotiated. BSX has admitted an ASX participant as a BSX broker but relies in part on ASX's supervision of the participant's capital liquidity as a proxy for its own supervision. BSX has now signed a three-way memorandum of understanding (MOU) between NSX, ASX and itself. Each party is obliged to share information that may assist another party in the performance of its supervisory responsibilities.

This arrangement sufficiently addresses our previous recommendation.

#### *BSX participants' provision of insurance certificates of currency*

BSX brokers must take out insurance policies covering and indemnifying the BSX broker against liability for negligence, errors, omissions, misstatements, statutory warranties and indemnities, civil liability, infidelity of staff and loss, destruction or deprivation of cash, securities or other documents of title. Pursuant to BR 5.3(d), a BSX broker must provide BSX with a copy of a certificate of currency for each of its insurance policies within 14 business days after the end of each financial year.

We reviewed the files relating to BSX brokers to ascertain whether certificates of currency had been received and also whether they had been received in the time required by the rules. We also interviewed the Markets Manager about this area of supervision.

Two out of the three brokers had not produced the requisite certificates at all for the applicable financial year. The relevant brokers later produced these to the Markets Manager, after it had been brought to their attention during our visit. These omissions had not been identified in recent audits of the applicable brokers.

## Recommendation 6

BSX should review its supervisory practices concerning the insurance arrangements that BSX brokers must maintain.

### *Approval of authorised trading representatives*

Under BR 6.3, a BSX broker must appoint one or more authorised trading representatives, who must be approved by BSX. The BSX markets area is responsible for administering the approval processes. Pursuant to BR 6.6, applications for approval to appoint authorised trading representatives must be made to BSX in the form prescribed by BSX.

We reviewed the BSX's broker files to ascertain whether BSX's process for approving authorised trading representatives had been followed. We also interviewed the Markets Manager about practice in this area.

A broker must first send in a request to BSX for appointment and send a copy of the BR exam for marking. Passing a BR exam, with a pass of at least 80%, is effectively the only criterion for becoming an authorised trading representative. The Trading Manager informs the Markets Manager of the results, after which BSX advises the brokers that the nominated trading representatives have been approved.

Our review concluded that BSX procedures for approving trading representatives were followed during the assessment period.

## 2.4 Resources to operate the market and provide supervisory arrangements

Section 794C of the Act permits ASIC to extend the scope of its report to assess how well a licensee complies with other obligations under Ch 7 of the Act. In this assessment we also considered whether BSX meets s792A(d) of the Act, being the obligation to have sufficient resources for the operation of the market in a fair, orderly and transparent manner, including sufficient financial resources for the operation and supervision of the market. We limited our review to consideration of BSX Group's current financial position and in particular its ability to continue to operate the market. This is important as BSX has to date found it difficult to attract listings and trading turnover remains low.

We considered the consolidated financial statements of BSX Group and BSX for the year ended 30 June 2004, in addition to BSX Group's consolidated year to date cash flow statement for the quarters ending 30 September 2004 and 31 December 2004. A review of these documents did not reveal any specific concerns about the current funding arrangements of BSX. The annual financial statements of both entities

have been prepared using the going concern basis of accounting. The directors deemed this appropriate because of the continuing support of shareholders.

Following NSX Limited's acquisition of BSX, BSX has confirmed that BSX is now funded by NSX. BSX continues to report its cash position to ASIC on a quarterly basis.

## **2.5 BSX response to recommendations**

This report incorporates BSX's comments about ASIC's findings. BSX has partially addressed recommendation 1 with the appointment of Mr Dunphy; however BSX has not as yet detailed to ASIC the measures it will adopt to address the remaining recommendations. We were advised that these matters are to be considered by BSX's board once this report had been finalised.