



ASIC

Australian Securities & Investments Commission

REPORT 91

Market assessment report: ICAP Europe Limited

February 2007



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Australian Securities & Investments Commission

Annual assessment (s794C) report

ICAP Europe Limited
ARBN 101 624 953

February 2007

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Executive summary

This report summarises ASIC's third assessment under section 794C of the *Corporations Act 2001* (the Act) of compliance by ICAP Europe Limited (IEL) with its obligations to supervise its market known as FRA-CROSS under section 792A(c) of the Act. This report describes our assessment and conclusions.

Compliance by IEL

We conclude that IEL had, during the assessment period, 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 operating rules.

Our approach

ASIC uses the formal assessment process to examine whether a market licensee has been and is continuing to meet its supervisory obligations. We also use the process to identify areas where improvements may be needed to enable the licensee to meet its obligations in the future.

IEL terminated its FRA-CROSS service on 13 November 2006. In this case, ASIC uses the formal assessment process to examine whether the market licensee continued to meet its supervisory obligations until the termination date.

Section 1: Background

1.1 IEL and the market

IEL was granted an Australian market licence on 23 December 2003. The licence permitted IEL to operate its market known as FRA-Cross in this jurisdiction. FRA-Cross was an electronic trading system in forward rate agreements. ASIC has been responsible for regulating the market in this jurisdiction under Part 7.2 of the Corporations Act.

The market was not a public market and operated as a closed system in accordance with the market rules and procedures.

Regulation of IEL

During the assessment period, IEL has continued to be subject to the supervision and regulation of the Financial Services Authority (FSA) in the United Kingdom, and has been granted permission under the Alternative Trading Systems regime of the FSA as described in ASIC's June 2005 assessment report of IEL.

While IEL was required to comply with each of its obligations under the Corporations Act and any conditions imposed on its licence, ASIC has continued to rely (to some extent) on the regulation of IEL and FRA-Cross undertaken by the FSA to be satisfied that IEL has been complying with its Australian obligations.

In this regard we note that ASIC continues to have an effective cooperative relationship with FSA under a Memorandum of Understanding entered into by ASIC and FSA dated 24 June 2002. ASIC and the FSA are also signatories to the IOSCO Multilateral Memorandum of Understanding.

1.2 The assessment process

How we conducted this assessment

Our assessment of IEL in the reporting period to December 2006 is based on information that ASIC has at hand, and information obtained from IEL and from FSA. Specifically, in conducting our assessment under section 794C of the Act, we:

- analysed information received from and about IEL in the ordinary course of our dealings with IEL;
- reviewed IEL's most recent annual report, IEL's annual regulatory report under section 792F, and their six-monthly market reports under section 9 of IEL's market licence;

- sought additional information from IEL for the purpose of this assessment; and
- obtained information from the FSA about the market and IEL.

Section 2: Observations

2.1 Supervision of the market

During the reporting period, IEL had a number of ongoing obligations under the Corporations Act, including the requirements under section 792A to ensure, to the extent that is reasonably practicable to do so, that the FRA-Cross market was a fair, orderly and transparent market.

In particular, section 792A(c) of the Corporations Act required that IEL had adequate arrangements for supervising the FRA-Cross market. Subsection 792A(c)(i) required that IEL had adequate arrangements for handling conflicts between its commercial interests and the need for it to ensure that the market operated in a fair, orderly and transparent way; subsection 792A(c)(ii) required that IEL had adequate arrangements for monitoring the conduct of participants on or in relation to the market; and subsection 792A(c)(iii) required that IEL had adequate arrangements for enforcing compliance with the market's operating rules.

After making our assessment, ASIC concludes that IEL has had adequate arrangements for the supervision of its market in accordance with its obligations under section 792A(c) of the Corporations Act. ASIC's conclusion is based on the following observations:

1. IEL's arrangements for supervising its market, as described under their Australian market licence, continued to satisfy the requirements under section 792A of the Corporations Act;
2. IEL has confirmed to ASIC that the arrangements for supervising the market did not change in any material way from the description provided in the previous annual reporting period;
3. FSA confirmed that it has had no concerns with IEL's supervision of FRA-Cross; and
4. During our assessment, nothing came to our attention to suggest that the supervisory arrangements had not been operating properly.

2.2 Other observations

Regulation of FRA-Cross in the United Kingdom

As part of its assessment of IEL, ASIC sought information from FSA about FSA's regulation of IEL during the assessment period. The FSA has not advised ASIC of any concerns regarding IEL's supervisory arrangements.

IEL's permissions and requirements that applied with regards to the regulation of Alternative Trading Systems did not change, and the FSA

has not taken any disciplinary action against IEL during this reporting period.

Reporting obligations

Annual regulatory report

IEL lodged its section 792F annual regulatory report for the period 1 April 2005 to 31 March 2006 with ASIC on 5 July 2006.

General obligations

With reference to the obligations set down under section 792A (see section 2.1 of this report), IEL reported that its supervisory arrangements in place during the reporting period to address these requirements had not materially changed since IEL was granted an Australian market licence on 23 December 2003. IEL also reported that the FSA had not highlighted any particular regulatory or compliance concerns, nor had any disciplinary action been taken against them by FSA in relation to services provided under the Australian market licence.

Reports required by licence

Under section 9 of its market licence, IEL was required to lodge reports with ASIC every six months that provided information about the volumes traded on FRA-Cross in Australia and globally, and list all Australian participants. ASIC notes that the section 9 reports were lodged within the required period, and that the reports contained the information as required under the licence.

Section 3: Recommendations

IEL terminated its FRA-CROSS service on 13 November 2006. Therefore, ASIC has not made any recommendations concerning IEL's structure or arrangements going forward as a result of this assessment.