



ASIC

Australian Securities & Investments Commission

REPORT 74

Market assessment report: Eurex Frankfurt AG

May 2006



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Annual assessment (s794C) report

Eurex Frankfurt AG
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Executive summary

This report summarises ASIC's second assessment under section 794C of the *Corporations Act 2001* (Act) of compliance by Eurex Frankfurt AG ("EFAG") with its obligations under section 792A(c) of the Act. We also assessed EFAG's compliance with some of its reporting obligations under the Act. This report describes our assessment, conclusions and recommendations.

Compliance by EFAG

We conclude that EFAG 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 operating rules.

EFAG has made substantial and satisfactory progress in addressing matters we raised in our last report.

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.

Section 1: Background

1.1 EFAG and the market

EFAG was granted an Australian market licence on 10 March 2004. The licence permits EFAG to operate its market, Eurex Deutschland ("Eurex"), in this jurisdiction. Eurex is an electronic trading platform through which EFAG's futures and options on futures contracts are traded. EFAG has advised that it currently has one Australian participant connected to Eurex. The operation of the market in this jurisdiction is subject to Part 7.2 of the Act.

Regulation of EFAG in Germany

Eurex continues to be a public law entity approved in the State of Hesse, Germany, as a public exchange under the German federal Exchange Act. EFAG is approved to operate Eurex as an exchange under the German federal Exchange Act pursuant to the decision of the Exchange Supervisory Authority ("ESA") dated 2 December 1998.

In the State of Hesse, where Eurex is based, the ESA supervises Eurex under the German Exchange Act. The ESA has a wide range of powers.

Regulation of EFAG in Australia

EFAG's Australian market licence was granted under s795B(2) of the Act, which lists criteria for granting a market licence to an overseas-based operator. These criteria include a requirement that the regulatory regime of the home country is sufficiently equivalent in terms of investor protection and market integrity outcomes to the Australian regulatory regime. Consequently, our approach to regulating overseas-based markets places a degree of reliance on the regulatory regime imposed by the home regulator of that market.

While EFAG is required to comply with each of its obligations under the Act and any conditions imposed on its licence, ASIC necessarily relies to some extent on the regulation of Eurex undertaken by ESA to be satisfied that EFAG is complying with its Australian obligations.

ASIC and the German Federal Financial Supervisory Agency (Bundesanstalt für Finanzdienstleistungsaufsicht) (BaFin) continue to be party to a memoranda of understanding concerning consultation, cooperation and exchange of information. BaFin is the German regulatory authority that has exclusive responsibility for ensuring co-operation with competent supervisory authorities of other countries both within and outside the European Union upon request and to the extent necessary for such authorities to discharge their obligations.

1.2 The assessment process

ASIC's role

Section 794C of the Act requires ASIC to determine how well a licensee is complying with its obligations under s792A(c) of the Act to supervise its market. The assessment must consider whether the licensee has adequate arrangements for supervising the market, including arrangements for handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the market it operates is a fair, orderly and transparent market.

Section 794C(1) of the Act permits ASIC to extend the scope of its annual assessment to the licensee's compliance with any or all of its obligations under Chapter 7 of the Act. We have extended the scope of our assessment to consider EFAG's compliance with some of its reporting obligations under the Act.

Assessment process

Our assessment of EFAG was based on information that ASIC had at hand, and information obtained from EFAG and from BaFin.

Specifically, in conducting our assessment under s794C, we:

- analysed information received from and about EFAG in the ordinary course of our dealings with EFAG;
- reviewed EFAG's 2004 annual report under s792F of the Act.
- sought additional information from EFAG and BaFin for the purpose of this assessment; and
- considered how well EFAG might comply with its obligations in the future.

Section 2: Observations

2.1 EFAG is meeting its obligations under section 792A(c)

After making our assessment, ASIC concludes that EFAG has adequate arrangements for the supervision of its market in accordance with its obligations under section 792A(c) of the Act based on the following observations drawn from information gathered during the assessment process:

1. EFAG confirmed to ASIC that its arrangements for supervising the market have not changed in any material way from the description provided in the previous annual reporting period;
2. BaFin and ESA have indicated that they presently have no information which would cause it to suspect or conclude that the EFAG has not been meeting its supervisory obligations in operating Eurex; and
3. During our assessment, nothing came to our attention to suggest that the supervisory arrangements were not operating properly.

2.2 Other observations

Regulation of EFAG in Germany

EFAG's authorisations and permissions to operate its market have not changed. Eurex remains designated as a public exchange under the German Exchange Act and continues to meet its self-regulatory obligations.

BaFin have confirmed that ESA provided no information or instances indicating that EFAG or Eurex were not adequately meeting their regulatory requirements under the Act in relation to supervision of the market. On site risk assessments of Eurex have been conducted on a routine basis by ESA. During 2005 no surveillance or disciplinary action was taken against EFAG or Eurex by ESA.

Reporting obligations

In our first assessment report of EFAG we noted some issues with EFAG's compliance with its reporting obligations. ASIC has seen considerable improvement in EFAG's compliance with its reporting obligations and acknowledges that EFAG provided the following reports and notices in an adequate and timely manner during this assessment period.

Reports required by licence

Section 14 of EFAG's market licence requires EFAG to lodge with ASIC a report within thirty day's of the end of each reporting period that provides information about the volumes traded on Eurex by Australian participants, the proportion of all worldwide trade on the market that was originated by Australian participants, and lists all Australian participants.

ASIC acknowledges that EFAG provided the reports in a timely manner and with sufficient information to satisfy EFAG's obligation.

Operating rule changes

Section 793D(3) of the Act requires EFAG to provide ASIC with a written notice if a change is made to the rules of the market as soon as practicable after the change is made.

ASIC acknowledges that EFAG has provided notices in relation to rule changes in a timely manner and with sufficient information to satisfy EFAG's obligation.

Section 3: Recommendations

Based on this assessment, ASIC does not have any recommendations to make in relation to EFAG's current supervisory arrangements.