



ASIC

Australian Securities & Investments Commission

REPORT 151

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

ACN 087 708 898

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About this report

This report summarises ASIC's fifth and sixth assessment of Bendigo Stock Exchange Limited (BSX) 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.

Previous reports on BSX

BSX was granted an Australian market licence commencing 8 March 2002. The licence was varied with effect 13 May 2004.

Report number	Date released
REP 35	November 2004
REP 47	July 2005
REP 141	March 2009 (finalised May 2007)

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Key findings and recommendations

Period covered

- 1 This report covers the period from March 2006 to February 2008 and combines the findings and recommendations of two annual assessments of BSX undertaken by ASIC. The 2007 assessment covered the period from March 2006 to February 2007 and the 2008 assessment covered the period from March 2007 to February 2008. This combined report also takes into account BSX's proposed or recent changes in practice that have been agreed to since the period of the 2007 and 2008 assessments. We decided to issue a combined report because it took us longer than expected to finalise our 2007 assessment.

Key findings

- 2 At the time we completed our 2007 and 2008 assessments, we concluded that BSX needed to significantly improve its arrangements for supervising its market if we were to be fully satisfied with the adequacy of those arrangements. We formed this view because:
 - the BSX board did not have arrangements in place to assure itself of the overall adequacy of BSX's supervisory arrangements;
 - the BSX Compliance Committee's monitoring of BSX's supervisory activities needed improvement; and
 - BSX had not sufficiently addressed recommendations made in our previous assessments concerning, in particular, the monitoring of listed entities' compliance with continuous disclosure requirements in BSX's listing rules, which was deficient.

However, in the period since we undertook our 2007 and 2008 assessments, BSX has enhanced its supervisory arrangements to the point where we believe it is meeting its statutory obligations under s792A(c)(ii) and (iii) of the Corporations Act. A focus of our next assessment will be to review how BSX's new supervisory arrangements are working in practice.

- 3 Both our 2007 and 2008 assessments found that BSX had adequate arrangements for handling conflicts between its commercial interests and the need to ensure that the market operates in a fair, orderly and transparent manner, as required by s792A(c)(i).
- 4 Our 2006 assessment report (REP 141) recommended that the Minister impose an additional requirement on BSX to preclude it from waiving its

listing rules to admit new community banks without an appropriate listing rule framework in place. The then Minister reserved his decision on this matter until he received the report for the next assessment period (i.e. the 2007 assessment report). This report was significantly delayed. However, as community bank listings have significantly slowed, we no longer believe that our 2006 assessment recommendation needs to be implemented. We will continue to monitor these circumstances.

Agreed actions

- 5 In previous assessment reports we provided recommendations to BSX. In this report we have presented our recommendations as ‘agreed actions’ because BSX has agreed to make these changes (in some cases, BSX has already made the changes). These actions are that:
- The BSX board will take steps to ensure that it is kept informed of BSX’s supervisory activities so that it is able to make an assessment about whether BSX is meeting its obligation to have adequate supervisory arrangements. In particular, the BSX board will now receive a more detailed report from the Compliance Committee on a biannual basis.
 - In addition the Compliance Committee will:
 - request and be given more detailed information about BSX’s supervisory activities and results by defining and agreeing on the information to be given to the committee;
 - at its regular meetings, assess whether BSX’s supervisory policies and procedures are being adhered to and BSX’s compliance plan is being followed; and
 - formally report to the BSX board on BSX’s supervisory activities, the outcomes of those activities and the adequacy of BSX’s supervisory arrangements in general. Such reports will include whether policies and procedures are adequate, whether staff are following policies and procedures and whether participants are complying with the operating rules.
 - BSX has issued a guidance note on profit forecasts and continuous disclosure responsibilities and has also agreed to undertake additional monitoring of companies with current forecasts in place.
 - BSX has amended its self-assessment questionnaire so that it is clear to participants of both BSX and National Stock Exchange of Australia Limited (NSEAL) which questions apply to each respective market. NSEAL is the holder of an Australian market licence and a subsidiary of BSX’s parent company, NSX Limited (NSXL).

A The assessment

Key points

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

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

We use the licensee's self-assessment reports, information from our previous assessments, our observation of the licensee's performance, market intelligence and other things to form a view of how well the licensee has operated its market.

Period covered

- 6 This report combines the findings and recommendations from our 2007 and 2008 assessments of BSX and covers the period March 2006 to February 2008. BSX was given a draft assessment report covering our 2007 assessment in August 2007. This draft contained findings and set out the actions we recommended that BSX should then take. A number of these draft recommendations are referred to in this report.

Purpose and scope

- 7 Under s792A(c), a market licensee is required to have adequate arrangements for supervising its market, including arrangements for:
- handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the market is fair, orderly and transparent;
 - monitoring the conduct of participants on or in relation to the market; and
 - enforcing compliance with the market's operating rules.
- 8 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year: s792C(2).
- 9 In addition, we are permitted to extend the scope of our assessment to review how well a licensee complies with any or all of its obligations under Ch 7: s794C(1).

Background

- 10 The BSX market licence permits BSX to operate a market in the financial products described on its licence, essentially being securities.
- 11 A copy of BSX's market licence is available on our website at www.asic.gov.au/markets.
- 12 BSX is a wholly owned subsidiary of NSXL, which is listed on the Australian Securities Exchange. NSEAL is also a wholly owned subsidiary of NSXL. Our assessment of NSEAL's market will be set out in a separate report.
- 13 As at 30 June 2008, BSX had three market participants and 60 listed entities across three listing boards, being the Property Board (3), Small to Medium Enterprise (SME) Board (3) and the Community Board (54). For the year ended 30 June 2008, BSX recorded 468 trades, with a total volume of 5,624,188 shares worth \$6,650,183 and two new listings, which were both on the Community Board. In that period trading in Community Board shares represented about 3% of turnover by value.
- 14 The listings on the Community Board (54) make up 90% of BSX's current listings by number. The entities listed on this board are small community-based enterprises operating Bendigo Bank Limited community bank franchises (community banks). The number of Community Banks deciding to list on BSX has fallen in recent years. There was only one listing in 2007, and only two in the 2008 year. At the same time, there has been an increase in the number of Community Banks relying on the application of the *Corporations (Low Volume Financial Markets) Exemption Notice 2003* administered by ASIC (Exemption Notice), which provides their shareholders with some liquidity in their shares. Fourteen have been registered since January 2007 up to October 2008.

Our methodology

Our assessment process

- 15 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.
- 16 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 that in our view need, or may need, to be addressed to ensure ongoing compliance.

What we focused on for this assessment

- 17 The focus of our 2007 and 2008 assessments was to review how BSX responded to the significant issues with its supervisory arrangements that we identified in our previous assessments.

What we considered

- 18 In conducting our assessments 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, our complaints management records and other sources;
 - considered the operation of the market throughout the period, in particular in relation to issues of disclosure and trading;
 - interviewed BSX personnel, including senior NSEAL and BSX management;
 - reviewed policies and procedures for the conduct of BSX markets in general and their supervisory responsibilities in particular; and
 - reviewed extensive material provided by BSX under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), including disciplinary and investigation files, internal reports and information collected by BSX on a continuous basis.
- 19 We attended the offices of BSX's ultimate holding company, NSXL, in Newcastle from 5 to 8 March 2007 (for our 2007 assessment) and from 3 to 6 March 2008 (for our 2008 assessment). During the onsite phase of our assessments, we reviewed BSX operational records and spoke to BSX and NSEAL personnel and management.

Consultation

- 20 BSX has had the opportunity to view and comment on the findings and recommendations contained in a draft version of this report. We sent BSX a draft report on 10 October 2008 following a meeting on 2 October 2008. BSX sent us their written comments on 22 October 2008. Where appropriate, this final report reflects BSX's responses and, specifically, its agreement to certain actions.

B Our observations and recommendations for BSX

Key points

We consider that at the time we undertook our 2007 and 2008 assessments, BSX's arrangements for supervising its market needed significant improvement if we were to be fully satisfied with their adequacy.

We formed this view because:

- the BSX board did not have the arrangements in place to assure itself about the overall adequacy of BSX's supervisory arrangements;
- the Compliance Committee's oversight of BSX's supervisory activities needed improvement; and
- in practice the supervision of listed entities in particular had been deficient in certain cases.

However, since our 2007 and 2008 assessments, BSX has enhanced its supervisory arrangements to the point where we believe it is meeting its statutory obligations under s792A(c)(ii) & (iii). A focus of our next assessment will be how these new supervisory arrangements are working in practice.

This section details observations from our 2007 and 2008 assessments as well as changes we have recommended and BSX has agreed to make.

We consider that BSX has adequate arrangements for handling conflicts between its commercial interests and its obligation under s792A(c)(i) to ensure that the market is fair, orderly and transparent.

2006 assessment recommendation: Listing rule framework

- 21 In previous assessment reports, we noted that BSX routinely waived admission criteria for the listing of community banks. We said that BSX should introduce an appropriate listing rule framework for these listings, to remove the need to issue standard waivers.
- 22 From October 2004 to June 2006, we considered a number of draft versions of the proposed rules but thought the proposals were problematic. This was largely because the proposed rules might permit entities without commercial substance to list. We also found the proposed rules problematic because they permitted entities to provide voting rights on a one vote per member basis, as opposed to one vote per share, and might be exploited by entities seeking to evade the market for control.

- 23 Our reservations about the inadequacy of the proposed listing rules for small community-based enterprises were reiterated in our 2006 assessment, which found that BSX's supervision of community banks had been deficient on a number of occasions, particularly with regard to disclosure.
- 24 In our 2006 assessment report (REP 141), we expressed the view that we had given BSX ample opportunity to address our concerns by making the necessary changes to its rules framework, and we noted that BSX had failed to do this in any substantive way. As a result, we made a recommendation in the report that the Minister impose an additional condition on BSX's market licence or issue a written direction (under s796A or 794A(1) respectively) to preclude BSX from waiving its rules to admit community entities until an appropriate listing rule framework was in place. In August 2007 we were advised that the then Minister chose to reserve his decision until such time as he had received our 2007 assessment report, which at that time was expected to be available in the near future. The report of the 2007 assessment was delayed, however, and has now been combined with the 2008 assessment in this report.
- 25 As noted in the 'Background' part of Section A of this report, community bank listings have significantly slowed and an increasing number of community banks have been applying for the benefit of the Exemption Notice. As a result, a major factor underlying our 2006 recommendation has changed and, on balance, we no longer believe that the recommendation needs to be implemented. We will continue to monitor these circumstances.

BSX's oversight of its supervisory arrangements

Ensuring adequate arrangements

- 26 The BSX board is accountable for BSX meeting its statutory obligations as an Australian market licence holder. To ensure this occurs, one responsibility of the board is to assure itself that BSX's supervisory arrangements are adequate.
- 27 Our 2006 assessment report recommended that BSX and NSXL implement communication arrangements to ensure that the BSX board had access to adequate information to assess BSX's compliance with its licence obligations. In response to this recommendation, the BSX board was restructured to provide common membership between the boards of BSX, NSXL and NSEAL.
- 28 Our 2006 assessment report also recommended that BSX review and clarify who had responsibility for monitoring particular parts of BSX's market. On 30 June 2006, BSX's committee structure was replaced with two new

committees, the Listing and Admissions Committee and the Compliance Committee. The committees consider both BSX and NSEAL supervisory matters.

Operation of the Compliance Committee

- 29 The Compliance Committee's primary objective is to undertake compliance and surveillance functions as delegated by the BSX board, including assessing and, where appropriate, granting requests for waivers from BSX's operating rules. It is also responsible for overseeing participant's compliance with the BSX operating rules.
- 30 During our 2007 assessment we noted that the Compliance Committee had considered waiver applications on a circular resolution basis. We saw no evidence that the Compliance Committee had considered any compliance and surveillance related matters or had been apprised of the results of such matters by supervisory staff. Further, we saw no evidence that the Compliance Committee had reported back to the BSX board on supervisory matters.
- 31 During our 2008 assessment we noted that the Compliance Committee met on five occasions.
- 32 Prior to 11 December 2007, when the Compliance Committee met it considered both NSEAL and BSX issues, which resulted in the committee focusing on NSEAL issues. However, for the 11 December 2007 meeting there was a separate agenda and minutes for BSX issues. We encourage the Compliance Committee to continue this separate consideration of BSX and NSEAL issues.
- 33 During our 2007 assessment we noted that the Compliance Committee was provided with only limited information regarding the supervisory activities and outcomes relevant to BSX. In contrast, the information provided for NSEAL was more detailed.
- 34 During the period of our 2007 and 2008 assessments, the chairman of the Compliance Committee prepared six-monthly compliance reports to the Compliance Committee. The compliance reports we reviewed were very brief (one page), and included very limited information about BSX's s792F annual regulatory report lodgement, reviews of BSX's policies and procedures and the compliance of BSX's broker participants with the business rules. In addition, the compliance reports did not evaluate the day-to-day supervision of the market by BSX and, in particular, did not give any assurance to the Compliance Committee that BSX's supervisory policies and procedures were being followed.
- 35 When the chairman was queried about the Compliance Committee's oversight of BSX's market, he stated that he has an informal chat with the

BSX General Manager about how the market is being monitored. We believe it is important that the chairman keeps himself informed about the day-to-day monitoring of the market, but we also consider that this process should be formalised and the outcome captured in the compliance report. BSX has informed us that the chairman of the Compliance Committee will now document appropriate conversations with supervisory staff on market supervisory issues.

36 During the 2008 assessment period, we noted that the Compliance Committee reviewed BSX's compliance plan, which details how BSX meets its compliance obligations. However, we also noted that the Compliance Committee had no process in place for monitoring BSX staff to ensure that the compliance plan is being adhered to.

37 Our 2008 assessment found no evidence that the Compliance Committee reported back to the BSX board about BSX's supervisory activities, the outcomes of these activities and the adequacy of the supervisory arrangements in general.

BSX board oversight

38 During our 2008 assessment, we found no evidence that the BSX board had actively considered the adequacy of BSX's supervisory arrangements.

39 We examined the BSX board's papers and noted that the board was provided with general information about BSX's market and its participants, such as information about suspensions, trading halts and outcomes of reviews of periodic disclosure. This information was very limited and the BSX board minutes did not demonstrate that the board had actively considered this information. Significantly, we found no evidence that the BSX board, as a whole, had received (or discussed) the compliance report prepared by the Compliance Committee chairman.

40 While the chairman of the Compliance Committee does have the capacity to approach the BSX board directly if necessary, he indicated that he did not have any direct contact with the BSX board during the 2008 assessment period.

41 Given the Compliance Committee's functions, as detailed in its charter, we believe that it should be more engaged with BSX's supervisory activities. We also believe that the BSX board should ensure that it is kept informed of BSX's supervisory activities so it is able to assess whether BSX is meeting its obligation to have adequate supervisory arrangements.

Agreed Action 1: Supervisory arrangements

The BSX board will take steps to ensure that it is kept informed of BSX's supervisory activities so it is able to make an assessment about whether BSX is meeting its obligation to have adequate supervisory arrangements. In particular, the BSX board will now receive a more detailed report from the Compliance Committee on a biannual basis.

In addition, the Compliance Committee will:

- request and be given more detailed information about BSX's supervisory activities and results by defining and agreeing on the information to be given to the committee;
- at its regular meetings, assess whether BSX's supervisory policies and procedures are being adhered to and BSX's compliance plan is being followed; and
- formally report to the BSX board on BSX's supervisory activities, the outcomes of those activities and the adequacy of BSX's supervisory arrangements in general. Such reports are to include whether policies and procedures are adequate, whether staff are following policies and procedures and whether participants are complying with the operating rules.

BSX's supervisory arrangements in practice

Listed entity supervision

Continuous disclosure

- 42 BSX Listing Rule 3.1 requires an entity to immediately provide information to BSX when it becomes aware of any information concerning the entity that a reasonable person would expect would have a material effect on the price or value of the entity's securities.
- 43 One area that a reasonable person would expect to require disclosure under this rule is material changes to an entity's forecast results contained in a prospectus.
- 44 As noted in the 'Background' part of Section A of this report, while the number of entities seeking a listing on BSX in the preceding two years has declined, previously listed entities had included several years of forecasts in their prospectuses at the time of listing. As a result, our review focused on assessing whether these entities had kept the market informed of material changes to these forecasts.
- 45 Our 2006 assessment (see REP 141) examined BSX's supervision of continuous disclosure by listed entities, specifically concentrating on disclosure regarding material changes in an entity's prospectus-based results

- forecast. We found that BSX did not identify where companies had failed to disclose material changes in forecast results. We recommended that BSX be more vigilant in monitoring continuous disclosure obligations, in particular where entities had released prospectus forecasts during the financial year. In response to our recommendation, BSX indicated that it would review its surveillance practices to address this issue.
- 46 Our 2007 assessment compared the reported results of 16 community bank entities with active prospectus forecasts. We found that eight of the entities had materially different reported results than the forecasts in their respective prospectuses, which BSX did not identify. The entities concerned did not announce the material divergence in their actual results from their forecasts, and accordingly we would have expected BSX to ask the entities why they failed to disclose the divergences. We also found no evidence of any change in surveillance practices being implemented by BSX.
- 47 Our draft 2007 assessment report recommended that BSX implement its revised surveillance practices for monitoring the disclosure of an entity's reported results where prospectus forecasts are current. BSX said that it was reviewing its procedures.
- 48 In our 2008 assessment we compared the actual reported results of 19 community bank entities with active prospectus forecasts to see if there had been any improvement in the way BSX supervises this kind of disclosure. We found that 15 of the 19 entities had materially different reported results than what was detailed in their respective prospectuses. A subsequent review of company announcements revealed only a small number of announcements about the discrepancies.
- 49 BSX should address the issue of entity non compliance with its disclosure requirements by more actively monitoring companies that have prospectus forecasts that are current and enforcing its listing rules where non-compliance has been demonstrated.

Agreed Action 2: Forecasts and continuous disclosure

BSX has issued a guidance note on profit forecasts and continuous disclosure responsibilities. The new guidance note has been circulated to BSX listed entities.

BSX has also agreed to undertake additional monitoring of companies with forecasts in place. More particularly, it has undertaken an analysis of forecasts on the market and will target those companies with existing 'live' forecasts for direct contact to remind them of their obligations.

Periodic disclosure

- 50 Under listing rules 3.3 and 3.6, a listed entity must provide BSX with a completed copy of Annexure 3A, which details its financial results for each half-year and full financial year.
- 51 Furthermore, listing rule 3.17 requires an entity to include certain additional information in its annual report, such as corporate governance practices, shareholder spread and substantial holders.
- 52 BSX procedures state that BSX pay particular attention to both the timeliness and substance of the information provided to it within the Annexure 3A and annual reports.

Financial reports: Listing Rules 3.3 and 3.6

- 53 BSX's listing rules say that if an entity is required to lodge annual financial reports with ASIC under the Corporations Act, then it must provide BSX with a copy of the annual financial documents it lodges with ASIC no later than the time it lodges them with ASIC. For our 2007 assessment, we analysed the lodgement patterns of the 55 BSX community bank entities listed on BSX at that time and found that 13 of the entities (i.e. 24%) had either not lodged the prescribed financial information with us within the prescribed timeframes or had lodged it with us but not with BSX, contrary to BSX listing rules.
- 54 In our 2008 assessment, we found that the majority of entities lodged the required periodic reports within the specified deadlines. Where they did not, we found that BSX acted appropriately in suspending an entity until such time as the required information was disclosed.

Additional disclosure requirements: Listing Rules 3.17(a)–(n)

- 55 BSX undertakes reviews of all periodic annual financial reports to ensure they comply with the additional information requirements of Listing Rules 3.17(a)–(n).
- 56 By way of background, in our 2006 assessment (see REP 141), we found that BSX was not timely in its follow-up of entities that did not provide the additional disclosure required by Listing Rules 3.17 (a)–(n) in their periodic reports. We recommended that BSX more vigorously enforce its periodic disclosure requirements, suspending entities if necessary.
- 57 During our 2007 assessment we noted that BSX sent letters to 14 entities whose disclosure did not accord with the disclosure requirements of Listing Rules 3.17 (a)–(n). While BSX compliance staff reviewed the majority of financial reports in early November 2006, BSX did not send requisition letters to these companies, in the majority of cases, until some four months

later in February 2007. At interview, BSX's Companies Manager noted the problem and acknowledged that BSX had not been timely enough in its follow-up action.

58 In our 2008 assessment we noted that the majority of the 21 entities we reviewed disclosed the necessary information. However, there were four exceptions, where entities failed to disclose in full all the information required by Listing Rule 3.17. This included one instance in which none of the required information was provided. BSX requested that the four entities supply the missing information but it did not suspend them.

Corporate governance: Listing Rule 3.17(c)

59 For our 2007 assessment, the corporate governance practice disclosures of 21 entities were reviewed and were mostly found to be lacking in detail. As a consequence, we recommended that BSX should issue a guidance note describing its expectations for corporate governance disclosure and to assist entity compliance.

60 With respect to BSX's monitoring of listed entity periodic disclosures, our draft 2007 assessment report recommended that BSX should review its policies and procedures to ensure that periodic disclosure was enforced on a timelier basis.

61 In response to our recommendations, BSX advised that it would review its procedures in this area and issue a guidance note to BSX entities.

62 During our 2008 assessment we reviewed the corporate governance practice disclosures of 21 entities and found that six of the 21 entities (29%) did not explicitly provide any details of their corporate governance practices, while the majority of the remaining entities did so, but only briefly.

63 At the time of our review, we noted that BSX still had not issued a guidance note concerning corporate governance disclosure, and as a result had not addressed our 2007 assessment recommendation. BSX indicated that it would look at doing immediately. Subsequently, on 14 March 2008, BSX issued a guidance note concerning compliance with listing rule 3.17(c).

64 Our 2008 assessment found that BSX's supervision of listed entity compliance with its periodic disclosure requirements had improved since our 2007 assessment. As a result, we make no recommendations about this.

Admission to the BSX official list

65 BSX's listing rules set out the requirements that an entity must satisfy before it can be listed on BSX. The BSX Companies Manager is responsible for assessing listing applications and for making recommendations to the Listing

and Admissions Committee, which has been delegated the power from the BSX board to determine listing applications.

- 66 As background, our 2006 assessment (see REP 141) identified some instances where BSX, contrary to its procedures and listing rules, had admitted entities without taking into consideration equity raising costs. As a result, we recommended that BSX be more vigilant in considering listing applications.
- 67 Our 2007 assessment reviewed the listing process for eight of the 20 entities that listed on BSX from March 2006 to February 2007. The focus of our review was to ensure that entities satisfied the profit/asset and shareholder spread tests under the listing rules, and to consider whether BSX followed its listing procedures, including taking into consideration equity raising costs.
- 68 BSX listing rules require that an entity have a minimum of \$500,000 in net tangible assets (NTA) before being admitted to BSX's official list. All of the 20 entities that listed on BSX from March 2006 were community banks. Seven were admitted with the NTA requirement waived. Two were admitted with a very low NTA of \$100,000 and \$113,000 respectively or about 20% of the normal threshold.
- 69 While the Listing and Admissions Committee decides listing applications, the Compliance Committee decides listing rule waivers. We queried how the Compliance Committee satisfied itself that these entities were appropriate to be listed using waivers, in light of their low level of NTA. BSX's Companies Manager advised that these entities were on the cusp of the range of companies that BSX would be prepared to list. A review of email correspondence between members of the Compliance Committee showed some concerns being noted about the low level of NTA. However, on balance, BSX's Companies Manager advised that the Compliance Committee had been comfortable in admitting these entities, since BSX had some prior experience with other small community banks that have prospered since listing.
- 70 NTA-based admission tests in BSX's listing rules act as a safeguard for entities and shareholders alike by filtering out entities without commercial substance from publicly listing. While BSX believes that the issue of waivers in these two instances did not detract from any perceived minimum standards, in our view BSX's decision to list entities using waivers of listing rules, in instances where entities have levels of NTA that are significantly lower than the minimum stipulated in its listing rules, detracts from these minimum standards and is contrary to the key principles upon which the BSX listing rules are based. BSX has proposed changes to its listing rules that will do away with a minimum NTA requirement.

- 71 Our draft 2007 assessment report recommended that BSX refrain from issuing waivers of the current listing rules to facilitate listing of entities that have very low levels of NTA.
- 72 Our 2008 assessment noted that only one entity was admitted to BSX's official list. Our review of this listing application revealed that the entity had been granted exemptions, but none concerning NTA. Furthermore, we found no issues with respect to BSX not following its own listing procedures. Consequently, we make no recommendations about this.

Participant supervision

Monitoring arrangements

- 73 The Corporations Act requires BSX to have adequate arrangements for monitoring participant conduct and enforcing compliance with its business rules.
- 74 By way of background, our 2006 assessment found that there was no ongoing monitoring of participants' compliance with BSX's business rules and no processes in place for monitoring or assessing the performance of areas of outsourced participant supervision. We recommended that the BSX board obtain updates on participant compliance with BSX business rules on a regular basis to satisfy itself that BSX is complying with its obligations under its Australian market licence. We also recommended that BSX review the terms of its outsourcing of certain aspects of its participant supervision to an external accounting firm, to ensure that BSX has adequate processes for monitoring the service provider's performance.
- 75 In response to these issues, BSX clarified that participant supervision was the responsibility of the joint BSX and NSEAL Compliance Committee, with day-to-day monitoring functions delegated to BSX's General Manager, BSX's Companies Manager and the Compliance Officer.
- 76 The Compliance Committee's charter says that it is responsible for reviewing and acting on surveillance reports escalated by management and the Compliance Officer. The charter also notes that the Compliance Officer can act independently of the Compliance Committee for day-to-day compliance, surveillance and activities and also report directly to the BSX board and/or ASIC if required.
- 77 During our 2007 assessment, we found no evidence of the Compliance Committee or the BSX board receiving updates on participant compliance with BSX business rules or any evidence of BSX having implemented any processes for monitoring the performance of outsourced participant supervisory functions.

- 78 Our draft 2007 assessment report recommended that BSX implement arrangements to ensure that the BSX board obtains updates from the Compliance Committee on participant-related compliance issues to enable the board to assess whether BSX is meeting its licence obligations.
- 79 Following our draft 2007 assessment recommendations, our 2008 assessment considered BSX board and Compliance Committee minutes and papers for evidence that the Compliance Committee and board were informed about participant compliance. We found that the Compliance Committee was informed about participant compliance issues, but the board only received limited information.
- 80 Agreed Action 1 (on page 13) deals with the substantive issues raised above concerning improvements to the monitoring arrangements of the BSX board and the Compliance Committee.

Self-assessment

- 81 Our 2008 assessment reviewed the self-assessment process BSX and NSEAL had jointly introduced to gauge participant compliance with BSX's (and NSEAL's) business rules. We noted that BSX's self assessment process consisted of a questionnaire, with participants given appropriately six weeks to respond to and return their completed questionnaires.
- 82 BSX's three participants are also participants of NSEAL. The same questionnaire is sent to all participants, whether they are participants of NSEAL only, or participants of both BSX and NSEAL. In our view, the wording of certain questions is problematic because in places it only makes explicit reference to NSEAL and the NSEAL business rules and does not refer to equivalent BSX rules.
- 83 In our draft 2008 report, we recommended that BSX should revise the self-assessment questionnaire so that it is clear to participants of both BSX and NSEAL to which market a question applies.

Agreed Action 3: Self-assessment questionnaire

BSX has amended its self-assessment questionnaire to clarify which questions are applicable to each respective market.

Surveillance of trading on BSX's market

- 84 In our draft 2006 assessment report we highlighted some deficiencies in BSX's surveillance of trading activity on its market, specifically in relation to price queries regarding community banks. As a result, we recommended that BSX review its practices. On 1 October 2006, BSX upgraded its surveillance capabilities by implementing Compliance Explorer, a software product of Capital Markets CRC Ltd.
- 85 In September 2007, BSX then adopted SMARTS as its main market surveillance tool. In an interview with the BSX General Manager, he indicated that the move to SMARTS occurred as a result of the decision by the provider of Compliance Explorer to wind down its service.
- 86 We note that there have been no significant problems concerning monitoring of trading following the upgrade to SMARTS. BSX has been vigilant in following up alerts with companies, enforcing the response window for companies and releasing relevant correspondence to the market. As a result, we have no recommendations about this.

Adequacy of resources

Agreement between NSXL and BSX

- 87 In our 2006 assessment (see REP 141) we recommended that NSXL and BSX put in place a formal written agreement about how NSXL will resource BSX and what supervisory services it would provide to BSX. Our 2007 assessment found that BSX did not address this recommendation.
- 88 While we noted that BSX's parent entity, NSXL, had over \$10 million in cash reserves and had indicated that it will continue to support BSX, we were of the view that this needed to be formalised. In response to this recommendation, we were advised that the board of NSXL had sought service arrangements between NSXL and BSX.
- 89 During our 2008 assessment we noted that, in response to our previous recommendations, the BSX board had resolved to create a service level agreement between NSXL and BSX.
- 90 At the time of our onsite visit, we were informed that the agreement was in draft form and had not been submitted to the BSX board for approval. The service level agreement is planned to include details concerning financial, technological and human support, setting service level agreement key performance indicators, charters for committees and requirements for committees to be resourced adequately.

- 91 Subsequently, in August 2008, NSXL and BSX executed a service level agreement formalising NSX's financial support of BSX. We will review the operation of this service level agreement in our next assessment of BSX.

Conflict handling arrangements

- 92 BSX has a statutory obligation to have adequate arrangements for handling conflicts between its commercial interests and the need to ensure that its market is a fair, orderly and transparent market.
- 93 Our 2007 and 2008 assessments reviewed BSX's arrangements for managing conflicts of interest and our conclusion for both assessments was that BSX had adequate arrangements for handling conflicts between its commercial interests and the need to ensure that the market operates in a fair, orderly and transparent manner.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
BSX	Bendigo Stock Exchange Limited
Corporations Act	<i>Corporations Act 2001</i>
NSEAL	National Stock Exchange of Australia Limited
NSXL	NSX Limited