



ASIC

Australian Securities & Investments Commission

REPORT 164

Market assessment report: Bloomberg Tradebook Australia Pty Ltd

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About this report

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

This assessment covers the period 1 September 2007 to 15 October 2008 (assessment period).

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 BTA

BTA was granted an Australian market licence on 15 November 2006.

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Key findings and recommendations

Key findings

- 1 ASIC is satisfied that BTA has:
 - adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act 2001 (Corporations Act); and
 - sufficient resources to operate its markets properly and for the required supervisory arrangements to be provided under s792A(d).

Recommendations

- 2 We do not have any recommendations to make in relation to BTA's current supervisory arrangements.

A The assessment

Key points

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

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

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

Purpose and scope

- 3 Under sections 792A(c), a market licensee is required to have adequate arrangements for supervising the market, including 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.
- 4 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year: s794C(2).
- 5 In addition, we are permitted to extend the scope of our assessment to review how well BTA complies with any or all of its obligations under Ch 7: s794C(1). In this instance, we extended the scope of the assessment to include a review of whether BTA had sufficient financial, technological and human resources to comply with its obligations under s792A(d).
- 6 This report covers the period from 1 September 2007 to 15 October 2008 (the assessment period), although we have had regard to subsequent developments.

Background

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

8 BTA was granted an Australian market licence on 15 November 2006, trading in:

- government bonds, semi-government bonds, corporate bonds and debentures;
- derivatives in relation to foreign exchange, securities, interest rates, credit and commodities;
- spot foreign exchange; and
- shares and interests in managed investment schemes listed on the New York Stock Exchange, NASDAQ or a National Securities Exchange.

A copy of BTA's Australian market licence is available on ASIC's website at www.asic.gov.au.

9 The participants in the BTA markets are wholesale clients as defined in s761G of the Corporations Act. As at 31 December 2008, BTA had 91 Australian participants operating on its markets.

10 The markets that BTA operate in Australia form part of a global network of electronic trading systems offered by other Bloomberg group entities in a number of overseas jurisdictions. The total turnover in the Australian Over-the-Counter (OTC) financial markets for 1 July 2007 to 30 June 2008 was \$79,576 billion. The turnover for foreign exchange and interest rate derivatives in the Australian OTC financial markets for the same period was \$60,469 billion.¹

11 Following the assessment period, BTA advised ASIC that it had ceased operating one of its markets, Bloomberg PowerMatch FX System. BTA's six remaining markets continue to operate in accordance with its licence conditions.

12 During the assessment period, in addition to an Australian market licence, BTA held an Australian financial services (AFS) licence, authorising it to deal in the following financial products for wholesale clients:

- derivatives;

¹ Australian Financial Markets Association (AFMA), *2008 Australian Financial Markets Report*, p. 2.

- foreign exchange contracts;
- debentures, stocks or bonds issued or proposed to be issued by a government;
- interests in managed investment schemes excluding investor directed portfolio services; and
- securities.

This assessment of BTA does not cover BTA's compliance with its AFS licence obligations.

Our methodology

Our assessment process

- 13 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.
- 14 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

- 15 As this was our second assessment of BTA, we were primarily interested in:
- any changes in BTA's operations from the previous year's assessment;
 - BTA's supervisory procedures including, in particular, its arrangements for managing conflicts of interest; and
 - whether BTA had adequate resources.

What we considered

- 16 In conducting our assessment, we considered:
- BTA's annual regulatory reports for the periods 1 January 2007 to 31 December 2007 and 1 January 2008 to 31 December 2008 provided by BTA to ASIC as required under s792F of the Corporations Act;

- BTA's audited financial accounts for the year ended 31 December 2008;
- BTA's six-monthly reports for the periods 1 July 2007 to 31 December 2007, 1 January 2008 to 30 June 2008 and 1 July 2008 to 31 December 2008 provided by BTA to ASIC as required under section 8 of BTA's Australian market licence conditions;
- information we received from and about BTA in the ordinary course of our dealings with BTA as a market licensee;
- information from the media and Bloomberg's own website; and
- BTA's responses to our questions and requisitions about how BTA is meeting certain obligations under the Corporations Act.

Consultation

- 17 Our findings are set out in Section B of this report. BTA has had the opportunity to view and comment on the factual accuracy of a draft version of this report. Where appropriate, our findings in Section B reflect BTA's clarifications.

B Our observations for BTA

Key points

We consider that BTA's arrangements for supervising its market are adequate, including arrangements for:

- handling conflicts between its commercial interests and the need 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.

BTA did not make any substantial changes to its supervisory arrangements during the assessment period.

We do not have any recommendations to make in relations to BTA's current supervisory arrangements.

Supervisory arrangements

18 We conclude that BTA has adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c).

19 Our conclusion is based on the present operating conditions of the markets, including the trading volumes, financial products traded, types of participants and the observations below drawn from information gathered during the formal part of our assessment process:

- BTA has sound market infrastructure (including technology) to support its obligation to maintain fair, orderly and transparent markets; and
- BTA has an adequate framework of operating rules and procedures in place to supervise the markets.

Managing conflicts of interest

20 In BTA's market supervisory document, *Bloomberg Tradebook Australia Pty Ltd Market Supervisory Arrangements*, the following conflicts of interest have been identified that may arise:

- the pursuit of BTA's commercial interest whilst at the same time enforcing compliance of its operating rules; and
- the promotion of BTA's business via its sales department whilst at the same time complying with BTA's requirement to report concerns to its Local Compliance Officer.

- 21 The market supervisory document states that no related bodies corporate of BTA will become a participant, nor does BTA act as a counterparty or perform any execution, clearing or settlement services for trades executed on its markets. BTA has indicated, however, that a related body corporate may provide executing broking services to participants trading through the Bloomberg Tradebook System. In such instances, receipt of fees will be disclosed to participants.
- 22 In terms of potential conflicts involving sales department staff, the supervisory arrangements state that it is the responsibility of sales staff to report any suspicious transactions to the Local Compliance Officer. Allowing suspicious transactions to occur may serve to damage the long-term viability of BTA's markets.
- 23 BTA does have specific arrangements for dealing with conflicts of interest, namely:
- no director, officer or related body corporate of BTA shall have any involvement in the decision making of a dispute between participants if that person has a conflicting interest (either personal or material);
 - if a conflict involves BTA (or a related body corporate) and a participant, BTA will refer the issues for review and recommendation to an independent adviser; and
 - to ensure that sales department staff do not allow their commercial interests to take precedence over their supervisory duties, BTA ensures that:
 - sales staff are not remunerated on a commission basis;
 - information obtained by sales staff from visiting a participant is recorded in a database;
 - the Local Compliance Officer reviews sales notes and email communications between sales staff and participants; and
 - customer assignments are changed by having multiple sales staff contact participants.
- 24 We are satisfied that these arrangements are adequate to manage any conflicts of interest that may arise from the operation of the market.

Monitoring conduct of participants

- 25 BTA's market supervisory document states that participants who trade on its markets are responsible for the prices they enter and the transactions they execute, as well as any errors that are made in connection with them. Furthermore, participants are responsible for ensuring that transactions are appropriately settled in a timely manner.

- 26 In accordance with the Market Operating Rules, participants are required to appoint a compliance officer who will be responsible for internal training and supervision of all staff that have permission to submit orders into BTA's markets. The compliance officer will also act as the primary contact point for BTA in any communication with a participant. In dealing with BTA, the compliance officer of a participant will be required to provide BTA with all reasonably requested information as well as access to all locations from which the participants accesses BTA's markets.
- 27 It is the responsibility of the BTA Responsible Manager, with assistance from the Local Compliance Officer, to supervise compliance with the Market Operating Rules.
- 28 Proposed participants seeking access to trade on any of BTA's markets will not be granted access until the Local Compliance Officer is satisfied that it meets BTA's eligibility criteria.
- 29 BTA conducts market surveillance of trading conducted by 'high risk' participants it considers may be more likely to engage in manipulative trading.
- 30 We are satisfied that BTA has adequate arrangements for monitoring the conduct of its participants with its Market Operating Rules.
- 31 In our previous assessment of BTA, we requested that BTA should update its market supervisory document to reflect changes in its supervisory arrangements. BTA has amended this document in line with our request and has provided us with a copy of it before we commenced this second assessment.

Continuity plan

- 32 In our previous assessment of BTA, we also requested that BTA should ensure that its business continuity plan (BCP) is regularly updated and includes a plan for communication with ASIC in case of an emergency so that we are fully informed about any impact of a contingency event on BTA's operations. BTA has amended its BCP in line with our request and has provided us with a copy of it before we commenced this second assessment.

Enforcing compliance with the operating rules

- 33 In situations where the Office Manager and/or the Local Compliance Officer become aware of any breaches of the Market Operating Rules by a participant, these will be brought to the attention of the BTA directors. The BTA directors will then be responsible for deciding whether the breach

should result in suspension of the participant or termination of the participant's access to the market(s).

34 In the event of persistent violations, a letter will be sent to the senior management of the participant advising that future violations could result in their access to BTA's markets being either suspended or terminated.

35 During the assessment period, BTA:

- made several changes to its Market Operating Rules in relation to customer agreements, the addendums to the agreements and a change in the executing broker for one of BTA's markets; and
- did not conduct any investigations in relation to breaches of the Market Operating Rules.

36 We are satisfied that BTA has adequate arrangements for enforcing compliance with its Market Operating Rules.

Resources

37 In our assessment, we have also reviewed the adequacy of BTA's resources (including financial, technological and human resources) to operate the markets properly and to provide adequate supervisory arrangements.

38 We conclude that BTA has sufficient resources to operate its markets properly and to provide the required supervisory arrangements in accordance with its obligations under s792A(d) of the Corporations Act.

Financial resources

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

Technological resources

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

Human resources

41 During the assessment period, there was a reduction in BTA's sales staff as well as a change in the Local Compliance Officer. However, we note that the Local Compliance Officer position, although based overseas, was always filled.

42 We consider BTA has sufficient human resources for operating and supervising the markets.

Conclusion

43 ASIC is satisfied that BTA has:

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

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services
ASIC	Australian Securities and Investments Commission
BTA	Bloomberg Tradebook Australia Pty Ltd
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	<i>Corporations Act 2001</i> (Cth)
market licence	An Australian market licence under s795B that authorises a person to operate a financial market
market licensee	A person who holds a market licence under s795B
s794C (for example)	A section of the Corporations Act (in this example, numbered 794C)