



ASIC

Australian Securities & Investments Commission

REPORT 169

Market assessment report: Eurex Frankfurt AG

ARBN 100 999 764

September 2009

About this report

This report summarises ASIC's fifth annual assessment of Eurex Frankfurt AG (EFAG) under s794C of the *Corporations Act 2001* (Cth) (Corporations Act).

This assessment covers the period March 2008 to March 2009 (the 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 EFAG

EFAG was granted an Australian market licence for an overseas market that commenced on 10 March 2004.

Report number	Date released
REP 48	July 2005
REP 74	May 2006
REP 96	June 2007
REP 146	December 2008

Contents

Key findings and recommendations	4
A The assessment.....	5
Purpose and scope.....	5
Background.....	5
Our methodology	6
B Our observations	8
Supervisory arrangements.....	8
Regulation of EFAG in Germany	9
Reporting obligations	10
Conclusion	10
Key terms	11

Key findings and recommendations

Key findings

- 1 ASIC is satisfied that EFAG has adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c) of the Corporations Act.

Recommendations

- 2 We do not have any recommendations to make about EFAG's current supervisory arrangements.

A The assessment

Key points

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

The scope of our assessment must always 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, ASIC's observation of the licensee's performance, market intelligence and other things to form a view of how well the licensee has operated its market.

Purpose and scope

- 3 Under s792A(c), a market licensee is required to have 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 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 under 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 a licensee complies with any or all of its obligations under Ch 7: s794C(1).
- 6 This report covers the period from March 2008 to March 2009 (the assessment period), although we have had regard to subsequent developments.

Background

- 7 EFAG was granted an Australian market licence for an overseas market operator on 10 March 2004. A copy of EFAG's market licence is available on ASIC's website at www.asic.gov.au/markets.

- 8 EFAG's market licence permits it to operate its financial market, Eurex Deutschland (Eurex), in Australia. Eurex provides an electronic trading platform that facilitates trading in futures and options on futures contracts.
- 9 EFAG requires all Australian participants to hold an Australian financial services (AFS) licence permitting them to trade in products of the same kind as those that can be dealt with on the market, unless the participant is exempt under Australian law from the requirement to hold an AFS licence to participate in the market. There are currently two Australian market participants and no Australian clearing participants of EFAG.
- 10 EFAG is authorised to operate Eurex as an exchange under the German federal Exchange Act (Exchange Act/Boersengesetz) pursuant to a decision of the Exchange Supervisory Authority (ESA) of the State of Hesse on 2 December 1998.
- 11 Eurex is a public law entity approved in the State of Hesse, Germany, as a public exchange under the Exchange Act. Eurex is supervised by the ESA under the Exchange Act.

Our methodology

Our assessment process

- 12 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.
- 13 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

- 14 Our focus in this assessment was to review how well EFAG complied with its ongoing supervisory and reporting obligations under its Australian market licence and the Corporations Act. The assessment covered the period from March 2008 to March 2009.

What we considered

- 15 In conducting our assessment we:
- analysed information we received from and about EFAG in the ordinary course of our dealings with the licensee, including EFAG's annual regulatory report required under s792F;
 - reviewed information from the media, EFAG's website and other sources;
 - reviewed EFAG's six-monthly regulatory reports to ASIC;
 - sought additional information from EFAG for the purpose of this assessment; and
 - obtained information from the ESA.

Communication with the foreign regulator

- 16 In assessing an overseas licensee's compliance with its obligations under s792A(c) of the Corporations Act, we place a degree of reliance on statements by the licensee's home regulator in regard to the standing of the licensee.
- 17 EFAG is assessed as a low impact firm by the ESA, which impacts on the level of supervision carried out by the ESA. We have received confirmation from the ESA that they are not aware of any information or instances indicating the inadequacy of EFAG's supervisory arrangements.

Consultation

- 18 Our findings are set out in Section B of this report. EFAG 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 EFAG's clarifications.

B Our observations

Key points

As part of this assessment, we have considered the adequacy of EFAG's arrangements for supervising its market including:

- 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.

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

We also note that EFAG has complied with its reporting obligations under the Corporations Act.

Supervisory arrangements

- 19 We conclude that EFAG has adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c).
- 20 This conclusion is based on the following observations drawn from information gathered during the assessment process and our ongoing correspondence with EFAG, and the present operating conditions (including trading volumes and financial products traded on the market):
- EFAG confirmed that the arrangements for supervising the market have not changed during the previous reporting period;
 - the ESA confirmed that Eurex remains in good standing as an exchange, and that there were no disciplinary actions taken against EFAG; and
 - during the assessment period nothing came to our attention to suggest that EFAG's supervisory arrangements were not operating properly.

Managing conflicts of interest

- 21 A description of EFAG's supervisory arrangements for handling conflicts of interest is set out at section 2.1 of our report on our first annual assessment of EFAG (REP 48), issued in July 2005.
- 22 Based on our review of all information at hand and information provided by EFAG and the ESA, it appears that EFAG continues to have adequate

arrangements for handling conflicts of interest. Further, we are not aware of any conflicts of interest events occurring during the assessment period. The ESA has no information that would cause it to suspect or conclude that EFAG has not been meeting its arrangements for handling conflicts.

Market and participant supervision

- 23 A description of EFAG's supervisory arrangements for monitoring the conduct of participants on or in relation to the market is set out at section 2.1 of our report on our first annual assessment of EFAG (REP 48), issued in July 2005.
- 24 Based on our review of all information on-hand and information provided by EFAG and the ESA, ASIC is satisfied EFAG has adequate arrangements for monitoring the conduct of participants given the nature of the market it operates.
- 25 There were no investigations carried out into Australian participants during the course of the assessment period.

Compliance with market operating rules

- 26 A description of EFAG's supervisory arrangements for enforcing compliance with the market's operating rules is set out at section 2.1 of our report on our first annual assessment of EFAG (REP 48), issued in July 2005.
- 27 We note that EFAG's arrangements for enforcing compliance with the operating rules have not changed since our last annual assessment (reported in REP 146, issued December 2008).
- 28 No event has been brought to our attention where an Australian participant has breached EFAG's operating rules.
- 29 Based on our review of all information on-hand and information provided by EFAG and the ESA, ASIC is satisfied EFAG has adequate arrangements for enforcing compliance with its operating rules.

Regulation of EFAG in Germany

- 30 We received information from the ESA about the regulation of EFAG during the assessment period.
- 31 The ESA has advised us that it is not aware of any information or instances indicating the inadequacy of EFAG's supervisory arrangements. Further, the

ESA advised it has not taken any disciplinary action against EFAG during this reporting period.

- 32 Eurex remains in good standing as an exchange. It has told us that there were no reviews or on-site risk assessments of EFAG and no surveillance or disciplinary action taken against EFAG.

Reporting obligations

Annual regulatory report

- 33 We note that EFAG lodged its annual regulatory report for the 2008 year within the required period and provided sufficient information to satisfy its obligation.

Reports required by market licence

- 34 We also note that EFAG lodged with us the six-monthly reports required under its market licence. Their reports were lodged with us by the required time and contained the information prescribed in section 7 of the market licence.
- 35 The six-monthly regulatory reports contain details of the volumes traded on the market in Australia and globally, and list all Australian market participants.

Rule amendments

- 36 EFAG has provided notices on rule changes in a timely manner and with sufficient information to satisfy s793D(3) of the Corporations Act.

Conclusion

- 37 Based on this assessment, we do not have any recommendations to make about EFAG's current supervisory arrangements.

Key terms

Term	Meaning in this document
AFS licence	Australian financial services licence under s911A
Australian market licence	Australian market licence under s791A
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> (Cth)
EFAG	Eurex Frankfurt AG
ESA	Exchange Supervisory Authority of the State of Hesse
Eurex	Eurex Deutschland, a financial market providing an electronic trading platform that facilitates trading in futures and options on futures contracts
s794C	A section of the Corporations Act (in this example numbered 794C)