



ASIC

Australian Securities & Investments Commission

REPORT 187

Market assessment report: Bloomberg Tradebook Australia Pty Ltd

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About this report

This report summarises ASIC's third 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 November 2008 to 31 July 2009 (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.

Report number	Date released
REP 164	July 2009
REP 115	February 2008

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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 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 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 a licensee 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 November 2008 to 31 July 2009 (the assessment period).

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 Outside of Australia, the Bloomberg Tradebook entities are regulated in a number of jurisdictions worldwide, including the United States (alternative trading system), Hong Kong (automated trading services), and Singapore (recognised markets operator). Bloomberg Tradebook LLC in the United States is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and as a member of the Financial Industry Regulatory Authority (FINRA). Similarly, Bloomberg Tradebook Europe Limited is regulated as a broker-dealer by the Financial Services Authority (FSA) in the United Kingdom.

9 BTA was granted an Australian market licence on 15 November 2006 to operate seven markets 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/markets.

10 The participants in the BTA markets are wholesale clients as defined in s761G of the Corporations Act. As at 31 July 2009, BTA had 95 Australian participants operating on its markets.

11 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 2008 to 30 June 2009 was \$69,378 billion. The turnover for foreign exchange and interest rate derivatives in the Australian OTC financial markets for the same period was \$55,960 billion.¹

12 Following the assessment period, we advised the Minister in relation to an application to vary BTA's Australian market licence by adding a new market known as Bloomberg Tradebook FX, which will allow for trading in spot foreign exchange and foreign exchange derivatives. The licence variation

¹ Australian Financial Markets Association (AFMA), *2009 Australian Financial Markets Report*, p. 2.

application also includes the deletion of the reference to Bloomberg PowerMatch FX System, which ceased operation in February 2009.

13 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;
- 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

14 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.

15 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

16 As this was our third 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

- 17 In conducting our assessment, we considered:
- BTA's annual regulatory report for the period 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 2008 to 31 December 2008 and 1 January 2009 to 30 June 2009, provided by BTA to ASIC as required under s8 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;
 - information we received from meetings with BTA;
 - BTA's responses to our questions and requisitions about how it is meeting certain obligations under the Corporations Act; and
 - BTA's application to vary its Australian market licence.

Consultation

- 18 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 markets are adequate, including arrangements for:

- handling conflicts between its commercial interests and the need to ensure that the markets are fair, orderly and transparent;
- monitoring the conduct of participants on or in relation to the markets; and
- enforcing compliance with the markets' operating rules.

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

We have made one observation based on our assessment concerning BTA's conflicts handling arrangements.

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

Supervisory arrangements

- 19 We conclude that BTA has adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c).
- 20 Our conclusion is based on the present operating conditions of the markets, including the trading volumes, financial products traded, types of participants and the following observations drawn from information gathered during 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.
- 21 BTA's supervisory work is primarily undertaken by its Local Compliance Officer, who is based in Hong Kong, and two Australian-based Responsible Managers (sales representatives also have supervisory obligations in so far as reporting any suspicious trading to the Local Compliance Officer). The Local Compliance Officer is responsible for handling compliance and market supervision. One of the Responsible Managers is also BTA's office manager and has day-to-day responsibility for BTA's compliance with its obligations under the Corporations Act and conditions of its Australian market licence (and AFS licence). The second Responsible Manager is a

sales and marketing manager and will take up the role of the office manager in the absence of the office manager.

- 22 In summary, BTA's supervisory arrangements comprise three key elements. Firstly, the Local Compliance Officer ensures that consistent supervisory decisions and outcomes are reached. Secondly, BTA can receive complaints from participants about the actions of other participants, which it will investigate and take disciplinary action if necessary. Finally, BTA will review price alerts provided to it by the Bloomberg compliance team based in the United States for unusual trading in US equities on its markets.

Managing conflicts of interest

- 23 BTA's market supervisory document, *Bloomberg Tradebook Australia Pty Ltd Market Supervisory Arrangements*, identifies the conflicts of interest that may arise for BTA and the specific arrangements it has for dealing with any conflicts. These details are summarised in Section B of the report on our second annual assessment of BTA (REP 164), issued in July 2009.

- 24 We believe that the involvement of a sales and marketing manager undertaking supervisory work could give rise to a potential conflict of interest, and the situation should be closely monitored by the Local Compliance Officer.

- 25 We note that BTA currently monitors this potential conflict situation in the following way:

- the Local Compliance Officer maintains regular contact with both Responsible Managers;
- the Responsible Managers are not in a position to single-handedly decide on enabling or disabling a participant's access to the BTA markets; and
- there are prescribed checks and systems in place, including compliance approvals for new accounts and ongoing due diligence on participants.

- 26 We plan to review BTA's handling of its conflicts of interest further in the next assessment. We note that during the assessment period no issues in relation to BTA's conflicts handling were apparent.

- 27 We are satisfied that BTA has adequate arrangements for handling conflicts of interest.

Monitoring the markets and conduct of participants

- 28 Details of how BTA monitors the conduct of its participants and how participants gain access to BTA's markets are set out in its market

supervisory document referred to in paragraph 23 above. These arrangements were also set out in Section B of REP 164.

- 29 Risk rating assessments are performed by the Bloomberg compliance team before any participants are granted access to the BTA markets. Regardless of whether a participant is rated as 'low-risk' or 'high-risk', the compliance team will monitor news and credit changes on participants on an ongoing basis, and risk ratings will be adjusted accordingly. For high-risk participants, the focus of such reviews will be on whether these participants should remain as participants to the BTA markets.
- 30 For trading involving products other than US equities, BTA relies on the participants involved in the trade to resolve any trading issues among themselves as a first step. BTA will, nevertheless, investigate any suspected breaches of its operating rules should they come to its attention, and take appropriate action.
- 31 For the trading of US equities, BTA uses an electronic monitoring system whereby alerts are generated for significant or potentially unusual price movements. This system is monitored by a Bloomberg surveillance team, which is part of the US-based compliance team. The surveillance team reviews exception trade reports conducted over the Bloomberg Tradebook system on a daily basis. Reviews involving possible violations of best execution and limit order display, odd-lot executions, etc. are conducted by compliance.
- 32 Particular attention is given to high-risk participants in relation to their trading, as they are considered potentially more likely to engage in manipulative trading. High-risk participants are also assessed on risks based on their business type, country, type of products, clientele, transaction types and services requested. If any high-risk clients and/or compliance violations are identified by the Bloomberg compliance team, these are then discussed at the weekly global compliance meeting. Amongst the attendees at this meeting is the BTA Local Compliance Officer.
- 33 As a result of these global compliance meetings, BTA will be notified of any alerts and/or compliance violations that may arise in relation to trading on its markets, thereby allowing it to commence an investigation where necessary.
- 34 During the assessment period, no trading and/or compliance violations were raised which warranted investigation by BTA. Furthermore, there were no participants deemed to be high-risk.
- 35 We are satisfied that BTA has adequate arrangements for monitoring its markets and the conduct of its participants.

Enforcing compliance with the operating rules

- 36 A description of how BTA enforces compliance with its operating rules is set out in Section B of REP 164.
- 37 During the assessment period, BTA did not make any changes to its operating rules.
- 38 BTA also informed us that no breach or potential breach of the operating rules was identified. During our assessment, we did not find any evidence to suggest otherwise.
- 39 We are satisfied that BTA has adequate arrangements for enforcing compliance with its operating rules.

Resources

- 40 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.
- 41 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

- 42 BTA has sufficient financial resources to supervise and operate the markets.

Technological resources

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

Human resources

- 44 During the assessment period, there were no changes to key senior personnel, namely the Responsible Managers or Local Compliance Officer.
- 45 We consider BTA has sufficient human resources for operating and supervising the markets.

Conclusion

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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 of the Corporations Act that authorises a person who carries out a financial services business to provide financial services
ASIC	Australian Securities and Investments Commission
Australian market licence	Australian market licence under s791A of the Corporations Act
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 licensee	Holder of an Australian market licence
s794C (for example)	A section of the Corporations Act (in this example numbered 794C)