



**ASIC**

Australian Securities & Investments Commission

## REPORT 221

# Market assessment report: Bloomberg Tradebook Australia Pty Ltd

**ACN 091 542 077**

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### **About this report**

This report summarises ASIC's fourth 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 August 2009 to 30 June 2010 (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 BTA

BTA was granted an Australian market licence on 15 November 2006. The licence was varied with effect from 8 February 2010 to reflect the removal of one of its markets, and the addition of a new market.

Report number	Report date
REP 115	February 2008
REP 164	July 2009
REP 187	January 2010

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# Key findings and recommendations

## Key findings

- 1 ASIC is satisfied that Bloomberg Tradebook Australia Pty Ltd (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) of the Corporations Act.

## Recommendations

- 2 We do not have any recommendations to make about 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 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, 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 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). In this instance, we extended the scope of the assessment to include a review of whether BTA has sufficient financial, technological and human resources to comply with its obligations under s792A(d).
- 6 This report covers the period 1 August 2009 to 30 June 2010 (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, 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 and a variation to this licence was approved on 8 February 2010. BTA is licensed 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.
- 10 A copy of BTA’s Australian market licence is available on ASIC’s website at [www.asic.gov.au/markets](http://www.asic.gov.au/markets).
- 11 The participants in the BTA markets are wholesale clients as defined in s761G of the Corporations Act. As at 30 June 2010, BTA had 103 Australian participants operating on its markets.
- 12 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 2009 to 30 June 2010 was \$66,678 billion. The turnover for foreign exchange and interest rate derivatives in the Australian OTC financial markets for the same period was \$59,602 billion.<sup>1</sup>

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<sup>1</sup> Australian Financial Markets Association (AFMA), *2010 Australian Financial Markets Report*, p. 7.

- 13 During the assessment period, an application to vary BTA's market licence was granted on 8 February 2010. Accordingly, a new market named Bloomberg Tradebook FX, which allows trading in spot foreign exchange and foreign exchange derivatives, was added to the list of markets operated by BTA. The licence variation also included the deletion of the reference to Bloomberg PowerMatch FX System, which ceased operation in February 2009.
- 14 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.
- 15 This assessment of BTA does not cover BTA's compliance with its AFS licence obligations.

## Our methodology

### Our assessment process

- 16 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.
- 17 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

- 18 Our focus in this assessment was to review:
- 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

- 19 In conducting our assessment we considered:
- BTA's annual regulatory report for the period 1 January 2009 to 31 December 2009, provided by BTA to ASIC as required under s792F of the Corporations Act;
  - BTA's six-monthly reports for the periods 1 July 2009 to 31 December 2009 and 1 January 2010 to 30 June 2010, provided by BTA to ASIC as required under s8 of BTA's Australian market licence conditions;
  - BTA's audited financial accounts for the year ended 31 December 2009;
  - 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 the Bloomberg Tradebook website;
  - 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

- 20 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

### Key points

We have considered the adequacy of BTA's arrangements and resources 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.

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

We do not have any recommendations to make about either BTA's current supervisory arrangements or resources.

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

### Supervisory arrangements

- 21 We conclude 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) of the Corporations Act.
- 22 This conclusion is based on the following observations:
- the present operating conditions of the markets, including the trading volumes, financial products traded, and the types of participants;
  - BTA's sound market infrastructure (including technology) to support its obligation to maintain fair, orderly and transparent markets; and
  - BTA's adequate framework of operating rules and procedures in place to supervise the markets.
- 23 BTA's supervisory work is primarily undertaken by a Local Compliance Officer, who is based in Hong Kong and is responsible for monitoring compliance with all relevant regulatory requirements.

- 24 The day-to-day administration of BTA's obligations under the Corporations Act, the Corporations Regulations 2001 and the conditions of its Australian market licence (and AFS licence) are managed by two Australian-based Responsible Managers. This is in addition to their roles administering the business activities of BTA.
- 25 Sales representatives also have supervisory obligations in so far as reporting any perceived problems, issues, suspicious trading, or failures by participants to comply with the Market Operating Rules. Such issues will be reported to the Local Compliance Officer.

### **Managing conflicts of interest**

- 26 BTA's market supervisory document, *Bloomberg Tradebook Australia Pty Ltd Market Supervisory Arrangements*, recognises that there may be a perceived conflict of interest as the sales department and the business managers are also responsible for monitoring compliance with the operating rules in addition to their commercial functions. The manner in which BTA monitors this perceived conflict of interest was set out in Section B of *Market assessment report: Bloomberg Tradebook Australia Pty Ltd* (REP 187).
- 27 Section B of REP 187 also indicated that we would further review BTA's handling of any conflicts of interest as part of this assessment. After reviewing the situation, we note that there were no apparent conflicts of interest during the assessment period.
- 28 We are satisfied, therefore, that BTA has adequate arrangements for handling any conflicts of interest.

### **Monitoring the market and conduct of participants**

- 29 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 26 above.
- 30 The Local Compliance Officer will review documentation provided by a prospective participant before deciding whether or not to grant that participant access to BTA's markets. These checks ensure the prospective participant is a wholesale client (as required under s7 of BTA's Australian market licence conditions), satisfies a credit assessment (for the Bloomberg Tradebook System) and is not listed on financial blacklists such as those managed by the Office of Foreign Assets or Financial Crimes Enforcement Network. At the time these initial checks are performed, BTA will also assign a risk rating profile (i.e. 'low risk', 'medium risk' or 'high risk') to the applicant.

- 31 We were advised that, during the assessment period, BTA did not make any changes to the risk rating profiles of its participants, particularly in light of global financial events that took place during 2008–09. Section B of REP 187 details how BTA monitors its participants, and what action it will take in relation to participants rated as being high risk.
- 32 We note that several participants who had previously become inactive on BTA's markets were still listed as being active participants as at 30 June 2010. BTA advised that one of those participants had become inactive during the assessment period, and that it was the responsibility of Bloomberg Tradebook's global accounting team, which is based in the United States, to close the participant's accounts. BTA has also indicated that this was the first time that there had been a mismatch in its list of current participants and former participants.
- 33 According to BTA's market supervisory document referred to in paragraph 26 above, sales department staff will routinely keep in contact with participants to ensure that BTA's markets are functioning properly.
- 34 Subsequent to the assessment period, BTA has updated its market supervisory document to reflect arrangements for:
- sales department staff notifying the Local Compliance Officer if they become aware of any participants who are planning on closing their accounts; and
  - the Local Compliance Officer updating the list of participants in the event that a participant's account is closed as a result of non-compliance with the operating rules or through their own choice. Twice a year, the Local Compliance Officer will also confirm with sales department staff that the list of current participants is accurate.
- 35 Finally, BTA has confirmed that it suffered no disruption to trading or other consequences as a result of the 'Flash Crash' in the United States on 6 May 2010.
- 36 We are satisfied that BTA has adequate arrangements for monitoring its markets and the conduct of its participants.

### **Enforcing compliance with market operating rules**

- 37 During the assessment period, BTA made the following amendments to its operating rules:
- changes to customer agreements (which form part of BTA's operating rules) to reflect when participants are acting in a principal capacity when trading on one of BTA's markets; and
  - deletion of operating rules relating to Bloomberg PowerMatch FX System to be replaced with rules for Bloomberg Tradebook FX System.

38 BTA has advised that during the assessment period no breaches or apparent breaches of the operating rules were detected. As such, no investigations were conducted for compliance or regulatory purposes.

39 We are satisfied that BTA has adequate arrangements for enforcing compliance with its operating rules.

## Resources

40 We are satisfied that BTA has sufficient financial, technological and human resources for the required supervisory arrangements to be provided.

### Financial resources

41 BTA has sufficient financial resources to supervise and operate its markets.

### Technological resources

42 BTA has advised that its systems are continually being enhanced in line with new product developments and regulatory changes. Specifically, BTA's systems have been configured to automatically respond to market pauses introduced by the SEC as a result of the events on 6 May 2010.

43 We consider that BTA has adequate technological resources for operating and supervising its markets.

### 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 its markets.

## Conclusion

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

## 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 <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
ASIC	Australian Securities and Investments Commission
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	<i>Corporations Act 2001</i> (Cth), including regulations made for the purposes of that Act
market licensee	Holder of an Australian market licence
s794C (for example)	A section of the Corporations Act (in this example numbered 794C), unless otherwise specified
SEC	Securities and Exchange Commission