



ASIC

Australian Securities & Investments Commission

REPORT 247

Market assessment report: Eurex Frankfurt AG

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About this report

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

This assessment covers the period 11 March 2010 to 3 March 2011 (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 on 10 March 2004.

| Report number | Report date |
|---------------|----------------|
| REP 212 | July 2010 |
| REP 169 | September 2009 |
| REP 146 | December 2008 |
| REP 96 | June 2007 |
| REP 74 | May 2006 |
| REP 48 | July 2005 |

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Key findings and recommendations

Key findings

- 1 ASIC is satisfied that during the assessment period EFAG had adequate arrangements for the operation and 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 arrangements for the operation and supervision of its market in accordance with its obligations under s792A(c) of the Corporations Act.

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, 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 On 1 August 2010, ASIC took over responsibility for supervising Australia's domestic licensed markets from market operators. As a consequence, amendments were made to the obligations contained in s792A(c) of the Corporations Act. These amendments apply to both domestic and overseas market operators.
- 4 Before the transfer of market supervision, under s792A(c) a market licensee was required to have adequate arrangements for supervising its market, including arrangements for handling conflicts, monitoring the conduct of participants, and enforcing compliance with the market's operating rules.
- 5 Following the transfer of supervision to ASIC, a market licensee is required to have adequate arrangements for operating its market, including arrangements for handling conflicts and monitoring and enforcing compliance with the market's operating rules.
- 6 More broadly, overseas market operators (such as EFAG) continue to be subject to the existing supervisory obligations in their home jurisdiction. The home regulator of EFAG is the Exchange Supervisory Authority (ESA) of the State of Hesse. Further details of the regulation of EFAG in Germany are discussed at paragraphs 12–13. Should there be any significant changes to the regulation of EFAG in Germany, EFAG is required to notify ASIC under s792B(4).
- 7 ASIC is required to assess how well a market licensee complies with its obligations under s792A(c) at least once a year: s794C(2). 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).
- 8 This report covers the period 11 March 2010 to 3 March 2011.

Background

- 9 EFAG's Australian 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.
- 10 Eurex's annual trading volume for 2010 was 1.9 billion contracts traded, up 12% on 2009 (1.7 billion contracts). In 2010, the most traded segment by volume was the equity index derivatives, with a total volume of 805.1 million contracts.
- 11 We note that during the assessment period, as publicly notified, EFAG's parent company Deutsche Boerse have held merger talks with NYSE Euronext about a possible merger between the two entities. ASIC intends to keep abreast of any development in this space and has been advised by EFAG that the proposal does not affect EFAG's ability to comply with its obligations as a market licensee.

Regulation of EFAG in Germany

- 12 EFAG is authorised to operate Eurex as an exchange under the German Exchange Act (Exchange Act/Boersengesetz) pursuant to a decision of the Exchange Supervisory Authority (ESA) of the State of Hesse on 2 December 1998.
- 13 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.

Regulation of EFAG in Australia

- 14 EFAG was registered under Div 2 of Pt 5B.2 of the Corporations Act as a foreign company on 19 June 2002.
- 15 EFAG was granted an Australian market licence for its electronic trading platform under s795B(2) of the Corporations Act on 10 March 2004.
- 16 EFAG requires all Australian participants to hold (or to be exempt from holding) an Australian financial services (AFS) licence, permitting them to trade in the products that can be dealt with on EFAG's market.
- 17 A copy of EFAG's market licence is available on ASIC's website at www.asic.gov.au/markets.

Our methodology

Our assessment process

- 18 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.
- 19 We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a market licensee has in place in accordance with its obligations under s792A(c) of the Corporations Act at the time of the assessment; and
 - identify issues, which in our view need, or may need, to be addressed to ensure ongoing compliance.

What we focused on for this assessment

- 20 Our focus in this assessment was to review how well EFAG complied with its ongoing obligations under its Australian market licence and the Corporations Act.

What we considered

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

Communication with the foreign regulator

- 22 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.
- 23 We have received confirmation from the ESA that it is not aware of any information or instances indicating the inadequacy of EFAG's supervisory arrangements.

Consultation

- 24 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

We have considered the adequacy of EFAG's arrangements for the operation and supervision of 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.

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

We do not have any recommendations to make about EFAG's arrangements for the operation and supervision of its market.

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

Supervisory arrangements

- 25 We conclude that during the assessment period EFAG had adequate arrangements for the operation and supervision of its market in accordance with its obligations under s792A(c) of the Corporations Act.
- 26 Our conclusion is based on the following observations drawn from information gathered during the assessment process, 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 did not change during the assessment period;
 - the ESA confirmed that EFAG remains in good standing as an exchange in Germany and that there was no disciplinary action taken against EFAG during the assessment period; 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

- 27 A description of EFAG's supervisory arrangements for handling conflicts of interest is set out at section 2.1 of *Market assessment report: Eurex Frankfurt AG* (REP 48), issued in July 2005. This was our first annual assessment of EFAG.
- 28 We are not aware of any conflicts of interest 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.
- 29 On the basis of information available to ASIC and information provided by EFAG and the ESA, ASIC is satisfied that during the assessment period EFAG had adequate arrangements for handling conflicts of interest.

Monitoring the market and conduct of participants

- 30 A description of EFAG's arrangements for monitoring the conduct of participants on or in relation to the market is set out at section 2.1 of REP 48.
- 31 EFAG ensures that the market is fair, orderly and transparent according to the provisions in the German Exchange Act and the Eurex Exchange Rules. There have been no changes to EFAG's arrangements for monitoring the market and the conduct of participants since our last annual assessment.
- 32 There were no investigations into Australian participants carried out during the course of the assessment period.
- 33 On the basis of information available to ASIC and information provided by EFAG and the ESA, ASIC is satisfied that during the assessment period EFAG had adequate arrangements for monitoring the market and the conduct of participants.

Enforcing compliance with market operating rules

- 34 A description of EFAG's supervisory arrangements for enforcing compliance with the market's operating rules is set out at section 2.1 of REP 48.
- 35 During the assessment period there was no disciplinary action taken by EFAG in relation to a breach of EFAG's operating rules involving any Australian market participants.
- 36 On the basis of information available to ASIC and information provided by EFAG and the ESA, ASIC is satisfied that during the assessment period EFAG had adequate arrangements for enforcing compliance with its operating rules.

Regulation of EFAG in Germany

- 37 We received information from the ESA about the regulation of EFAG during the assessment period.
- 38 The ESA stated that there have been no reviews or on-site assessments of EFAG since 1 January 2010 and no surveillance or any disciplinary action has been taken against EFAG.
- 39 The ESA has advised us that it is not aware of any information or instances indicating the inadequacy of EFAG's supervisory arrangements. The ESA has confirmed that Eurex remains in good standing as an exchange.

Reporting obligations

Annual regulatory report

- 40 We note that EFAG lodged its annual regulatory report (as required under s792F) with ASIC in a timely manner with the required information.

Reports required by market licence

- 41 We also note that EFAG lodged its six-monthly reports with us on time and these contained the information required.

Rule amendments

- 42 EFAG has provided notices on rule changes in a timely manner and with sufficient information to satisfy s793D(3).

Conclusion

- 43 Based on this assessment, we do not have any recommendations to make about EFAG's arrangements for the operation and supervision of its market.

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 Note: This is a definition contained in s761A of the Corporations Act. |
| 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 |
| 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 |
| market licensee | Holder of an Australian market licence |
| Pt 5.2 | A part of the Corporations Act (in this example numbered 5.2) |
| s794C (for example) | A section of the Corporations Act (in this example, numbered 794C), unless otherwise specified |