



**ASIC**

Australian Securities & Investments Commission

**REPORT 306**

# **Market assessment report: Eurex Frankfurt AG**

**ARBN 100 999 764**

September 2012

## **About this report**

This assessment covers the period 4 March 2011 to 1 March 2012 (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 Eurex Frankfurt AG (EFAG)

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

Report number	Report date
REP 247	August 2011
REP 212	July 2010
REP 169	September 2009
REP 146	December 2008
REP 96	June 2007
REP 74	May 2006
REP 48	July 2005

## The assessment

### Key points

ASIC is satisfied that Eurex Frankfurt AG (EFAG) has adequate arrangements for operating its market in accordance with its obligations under s792A(c) of the *Corporations Act 2001* (Corporations Act). We do not have any recommendations to make about these arrangements.

## Scope

- 1 Under s792A(c)<sup>1</sup> a market licensee is required to have adequate arrangements for operating its market, including arrangements for:
  - handling conflicts between its commercial interests and the need to ensure that the market is fair, orderly and transparent; and
  - monitoring and enforcing compliance with the market's operating rules.
- 2 ASIC is required to assess how well a market licensee complies with its obligations under s792A(c) at least once a year: s794C(2). ASIC is permitted to extend the scope of its assessment to review how well a licensee complies with any or all of its obligations under Ch 7.

## Approach to assessment

- 3 EFAG is one of a small number of financial market operators that are licensed to operate in Australia under the foreign licensing arrangements in the Corporations Act: s795B(2).
- 4 Under the arrangements in s795B(2), a foreign financial market may be permitted to operate in this country if the operation of the market in its home jurisdiction is subject to requirements and supervision that are sufficiently equivalent to those that apply to financial markets in Australia.
- 5 In assessing whether a market's home jurisdiction satisfies this requirement, we focus on whether that jurisdiction achieves sufficiently equivalent investor protection and market integrity outcomes to those achieved for comparable domestic markets.
- 6 In addition, as a condition of EFAG's market licence, Australian-based clients of participants of EFAG's market must be first notified that EFAG is regulated primarily under the regulatory regime of Germany.

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<sup>1</sup> In this report, references to legislation (e.g. s792A(c), Ch 7, Pt 5B.2) are references to the Corporations Act, unless otherwise specified.

- 7 ASIC's current strategic framework focuses on three key priorities or outcomes. These are:
- confident and informed investors and financial consumers;
  - fair and efficient financial markets; and
  - efficient registration and licensing.
- The first two priorities are particularly important for licensed markets.
- 8 In the context of foreign licensed markets, the importance placed on the regulatory arrangements in the operator's home jurisdiction means that in assessing whether our strategic priorities are being met, our primary focus is on the extent to which EFAG continues to satisfy the regulatory requirements of that home regime. We also consider whether there have been any significant changes to that regulatory regime.
- 9 For that reason, our assessment of these types of markets focuses on a narrower subset of the key measures than we might otherwise use if the market was a comparable domestic licensed market. To determine whether EFAG has complied with its obligations to have adequate arrangements for operating its market, we focused on:
- information provided by EFAG's home regulator about:
    - the standing of EFAG;
    - any disciplinary action taken against EFAG; and
    - any reviews or on-site risk assessments of EFAG;
  - information provided by EFAG about whether:
    - there have been any significant changes to the regulatory regime in the home jurisdiction (as required by s792B(4)(b));
    - EFAG has taken any disciplinary action against Australian participants; and
    - EFAG's arrangements for operating the market changed; and
  - whether ASIC has received any complaints about the operation of the market.

## Background

- 10 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.
- 11 Eurex's annual trading volume for 2011 was 2.04 billion contracts traded, an increase of 7% compared to 2010 (1.9 billion contracts). In 2011, the most traded segment with a total volume of 959.8 million contracts was the European equity index derivatives.

- 12 In June 2011, Deutsche Börse AG, SIX Group AG and SIX Swiss Exchange AG signed an agreement for a transaction which was to make Deutsche Börse AG the sole owner of Eurex Zurich AG (the holding company of EFAG). The closing of this transaction took place on 30 April 2012. EFAG confirmed that the change in Eurex's ownership structure will have no implications for Eurex's market operations in Australia or in its home jurisdiction.

### **Regulation of EFAG in Australia**

- 13 EFAG was registered under Div 2 of Pt 5B.2 as a foreign company in Australia on 19 June 2002.
- 14 EFAG was granted an Australian market licence to operate its electronic trading platform on 10 March 2004, under the foreign licensing arrangements in the Corporations Act. A copy of EFAG's market licence is available on the ASIC website at [www.asic.gov.au/markets](http://www.asic.gov.au/markets).
- 15 EFAG requires all Australian participants to hold (or 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.

### **Regulation of EFAG in Germany and other jurisdictions**

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

- 18 We use the assessment process to reach conclusions about the adequacy of the arrangements a market licensee had in place for operating its market in accordance with its obligations, and to identify issues that in our view need (or may need) to be addressed to ensure ongoing compliance.
- 19 In conducting our assessment we considered:
- information from the ESA about EFAG;
  - information we received from and about EFAG in the ordinary course of our dealings with EFAG, including information sought from EFAG for the purpose of this assessment;

- EFAG's:
    - annual regulatory report required under s792F;
    - six-monthly licence conditions report; and
    - financial report for the year ended 31 December 2011; and
  - information from the media, EFAG's website and other sources.
- 20 EFAG has had the opportunity to view and comment on the factual accuracy of a draft version of this report. Where appropriate, our findings reflect EFAG's clarifications.

## Our observations

### Arrangements for operating the market

- 21 We conclude that during the assessment period EFAG had adequate arrangements for the operation of its market in accordance with its obligations under s792A(c).
- 22 Our conclusion is based on our review of the measures that typically guide our assessment of EFAG and like markets, being:
- the ESA confirmed that EFAG remains in good standing as an exchange in Germany. The ESA also confirmed that there was no disciplinary action taken against EFAG during the assessment period;
  - during the assessment period, EFAG did not notify us of any significant changes to the regulatory regime in its home jurisdiction;
  - EFAG confirmed that during the assessment period:
    - EFAG did not take any disciplinary action against any Australian participants; and
    - EFAG's arrangements for operating the market did not change; and
  - during the assessment period, we did not receive any complaints about the operation of the market.

### Reporting obligations

- 23 We note that EFAG lodged its annual regulatory report (as required under s792F) with ASIC in a timely manner with the required information.
- 24 We also note that EFAG lodged its six-monthly reports with us on time and these contained the information required.
- 25 EFAG has provided notices on rule changes in a timely manner and with sufficient information to satisfy s793D(3).