



**ASIC**

Australian Securities & Investments Commission

**REPORT 312**

# **Market assessment report: Bloomberg Tradebook Australia Pty Ltd**

**ACN 091 542 077**

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## **About this report**

This assessment covers the period 1 July 2011 to 30 June 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 Bloomberg Tradebook Australia Pty Ltd (BTA)

BTA was granted an Australian market licence on 15 November 2006.

Report number	Report date
REP 284	May 2012
REP 221	October 2010
REP 187	January 2010
REP 164	July 2009
REP 115	February 2008

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# Key findings and recommendations

## Key findings

- 1 ASIC is satisfied that during the assessment period BTA had:
  - adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c) of the *Corporations Act 2001* (Corporations Act); and
  - sufficient resources to operate its market 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 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 On 1 August 2010, the responsibility for supervising Australia's domestic licensed markets was transferred from the majority of domestic market licensees to ASIC. For these operators, the obligations under the Corporations Act to supervise their market were amended in recognition of this new arrangement.
- 4 The Corporations Act was also specifically amended to exclude a small number of licensed domestic market operators, including BTA, from this transfer. BTA and three other operators were excluded on the basis that they have certain distinguishing features. These include the requirement that only professional entities may be users of the market and that they may typically use the market for trading only over-the-counter type products. These are also requirements of ASIC's exempt professional markets policy, by which ASIC may consider recommending an exemption from the requirement to hold an Australian market licence.
- 5 As a result, BTA's supervisory obligations under the Corporations Act are unchanged and continue to require it to have adequate arrangements for supervising the markets, including arrangements for:
  - handling conflicts between its commercial interests and its 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.
- 6 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 keeping with usual practice, 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).

7 This report covers the period 1 July 2011 to 30 June 2012.

## Approach to assessment

8 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.

9 The first two of these are particularly important for licensed markets. In the context of BTA's markets, it is important to note that no retail investors are permitted to directly or indirectly use the market. ASIC considers that markets that limit participation to professional entities are those in which users are typically already confident and informed. In these circumstances, for the market to be fair and efficient a primary focus is on the reliability of the market's operation and the extent to which it meets the legitimate expectations of its users.

10 For that reason, our assessment of these types of professional markets focuses on a narrower sub-set of the key measures than we might otherwise use if the market permitted retail investors. To determine whether BTA has complied with its obligations to have adequate supervisory arrangements and adequate resourcing, we focus on:

- whether there have been any changes during the assessment period to the way BTA supervises its markets;
- the nature of any complaints made by market users to BTA or ASIC about the markets' operations and/or BTA's supervisory activities;
- the occurrence of any technological outages of BTA's markets or concerns about BTA's technological resources;
- any material changes in human resources dedicated to the operation and supervision of the markets that have given rise to concerns or complaints about supervision and/or conflict handling;
- the maintenance of information and data records to support the monitoring of participant conduct on or in relation to the markets, including monitoring order information and transactions effected through the markets (such as date, time, volume price and parties); and
- whether BTA has adequate financial resources to continue to operate its financial markets.

## Background

- 11 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.
- 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.
- 13 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 an agency broker by the Financial Services Authority (FSA) in the United Kingdom and has a non-MiFID investment licence.
- 14 BTA was granted an Australian market licence on 15 November 2006 and a variation to this licence was approved on 8 February 2010. We have conducted five assessments of BTA since its licence was granted. BTA is licensed to operate six markets trading in a range of financial products, which are typically bi-laterally negotiated between professional entities, and which are not generally traded on public exchanges. These include:
- government bonds and semi-government bonds;
  - over-the-counter derivatives in relation to foreign exchange, securities, interest rates, credit and commodities; and
  - spot foreign exchange.
- 15 BTA also offers one market platform that enables trading by professional entities in shares and interests in managed investment schemes listed on some US exchanges.
- 16 During the assessment period, in addition to an Australian market licence, BTA held an Australian financial services (AFS) licence authorising it to carry out a financial services business to wholesale clients for certain financial products. Our assessment of BTA does not cover BTA’s compliance with its AFS licence obligations. However, ASIC confirms that no compliance breaches were reported for BTA’s AFS licence obligations during the assessment period.
- 17 A copy of BTA’s Australian market licence and the terms of its AFS licence are available on ASIC’s website at [www.asic.gov.au/markets](http://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. We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a market licensee (such as BTA) had in place for supervising its markets in accordance with its obligations under 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.
- 19 During the assessment period, BTA operated seven electronic markets all of which were 'professional' in nature as described in paragraph 4.

### Materials we reviewed

- 20 In conducting our assessment we considered:
- BTA's annual regulatory report for the period 1 January 2011 to 31 December 2011;
  - BTA's six-monthly reports for the periods 1 July 2011 to 31 December 2011 and 1 January 2012 to 30 June 2012;
  - BTA's audited financial accounts for the year ended 31 December 2011;
  - information we received from and about BTA in the ordinary course of our dealings with BTA as a market licensee (e.g. six-monthly reports);
  - information we obtained during an onsite visit to BTA's offices;
  - information from the media and the Bloomberg Tradebook website; and
  - BTA's responses to our questions and requisitions about how it is meeting certain obligations under the Corporations Act (e.g. the current assessment).

### Consultation

- 21 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 its commercial interests and its 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 do not have any recommendations to make about BTA's supervisory arrangements or resources.

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

### Supervisory arrangements

- 22 We conclude that during the assessment period BTA had:
- adequate arrangements for the supervision of its markets in accordance with its obligations under s792A(c) of the Corporations Act, including adequate arrangements for:
    - handling conflicts between its commercial interests and its 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; and
  - sufficient resources to operate its markets properly and for the required supervisory arrangements to be provided under s792A(d) of the Corporations Act.
- 23 This conclusion is based on our review of the measures that typically guide our assessment of BTA and like markets, being:
- there were no material changes to the way in which BTA supervised its markets;
  - there were no complaints made by market users to BTA or ASIC about the markets' operations or BTA's supervisory activities;

- there were no technological outages of BTA's markets or concerns about BTA's technological resources;
- there were no material changes in human resources dedicated to the operation and supervision of the markets during the assessment period that gave rise to concerns or complaints about supervision and/or conflict handling;
- BTA maintains information and data records to support the monitoring of participant conduct on or in relation to the markets; and
- BTA's annual audited accounts indicate it has adequate financial resources to continue to operate its financial markets.

### **Supervisory function**

- 24 BTA's supervisory work is primarily undertaken by the Responsible Managers and the Local Compliance Officer as described in Section B of Report 221 *Market assessment report: Bloomberg Tradebook Australia Pty Ltd* (REP 221), published in October 2010. These arrangements have not changed during this assessment period nor have they changed materially since BTA was granted its Australian market licence.

### **Managing conflicts of interest**

- 25 We have concluded that BTA had adequate arrangements for managing its conflicts of interest. Section B of Report 164 *Market assessment report: Bloomberg Tradebook Australia Pty Ltd* (REP 164), published in July 2009, contains a description of BTA's arrangements for handling conflicts of interest.
- 26 BTA has reported that no conflicts of interest were identified during the assessment period. We note that BTA did not make any material changes to its conflict handling arrangements during the assessment period nor has it made any material changes since its licence was granted. There were also no complaints made about BTA's conflict handling during the assessment period.

### **Supervising the markets and conduct of participants**

- 27 BTA is also required to monitor the conduct of participants in relation to its markets. As at 30 June 2012, BTA had 121 Australian participants operating on its markets.
- 28 In both REP 221 and Report 284 *Market assessment report: Bloomberg Tradebook Australia Pty Ltd* (REP 284), published in May 2012, we noted that several participants had not been deleted by BTA from the list of Australian participants. We also noted in REP 284 that BTA had committed itself to performing specific compliance checks semi-annually with its sales representatives or Responsible Managers to confirm the accuracy of the Australian participants list before submitting this list to ASIC.

- 29 As part of its semi-annual trade reporting obligation, BTA provided ASIC with the list of the Australian participants. These trade reports covered the periods 1 July 2011 to 31 December 2011 and 1 January 2012 to 30 June 2012. BTA also provided ASIC with a list of the Australian participants authorised to access BTA's markets during the assessment period. In all three instances, we did not find any problems with the list of Australian participants.
- 30 In addition to providing the list of the Australian participants, BTA provided ASIC with internal documents showing the checks that were undertaken by the Responsible Managers. Each Responsible Manager confirmed the accuracy of the Australian participants list.
- 31 In REP 284, we noted that we would closely monitor this issue in our next annual assessment of BTA and make appropriate recommendations where necessary. We consider the semi-annual trade reports and the internal documents referred to in paragraph 30 to be sufficient.
- 32 We are satisfied that, during the assessment period, BTA maintained an accurate list of the Australian participants authorised to access its markets as a result of improvements it made to checking this information. ASIC will nevertheless continue to review BTA's compliance with this obligation.
- 33 BTA reported that no investigations were required to be carried out during the assessment period. Further, no disputes arose between participants or between BTA and participants regarding trading and compliance with the operating rules during the assessment period.

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

- 34 BTA did not make any changes to its operating rules during the assessment period.
- 35 BTA has confirmed that during the assessment period it did not identify any potential breaches of its operating rules requiring investigation and/or enforcement. In addition, there were also no complaints made to BTA or to ASIC about the conduct of Australian participants on BTA's markets.

## **Resources**

- 36 We are satisfied that during the assessment period BTA had sufficient financial, technological and human resources for the required supervisory arrangements to be provided.

## Financial resources

37 BTA's financial position has remained relatively stable when compared with the corresponding figures for previous years. We note that BTA's retained profits and equity has steadily increased over the past four years, and BTA continues to receive funds from its affiliates—including its parent entity, Bloomberg L.P.—to meet its financial obligations.

38 In addition to reviewing BTA's financial position, we also considered its quarterly projections for the year ending 30 June 2013. These projections indicate that BTA will continue to be profitable for this period.

39 We are satisfied, therefore, that BTA has sufficient financial resources to supervise and operate its markets on the basis that it continues to be profitable.

## Technological resources

40 During the assessment period, no major system outages were reported and there were no complaints received from participants.

## Human resources

41 During the assessment period, the only change to BTA's key senior personnel was the employment of a new Responsible Manager. This change has been reflected in BTA's internal compliance documentation and organisational chart. The remaining key senior personnel (the Office Manager, the Local Compliance Officer and the other Responsible Managers) did not change.

42 BTA's Office Manager, who is responsible for monitoring staffing needs, considered that during the assessment period, with the employment of the new Responsible Manager, BTA had sufficient staff to carry out the roles. BTA's human resourcing has not changed significantly since it was granted a licence. Furthermore, no complaints were made by market users to either BTA or ASIC about BTA's level of human resourcing for the operation and supervision of the markets.

## Conclusion

43 Based on this assessment, we do not have any recommendations to make about BTA's 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  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
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), including regulations made for the purposes of that Act
FINRA	Financial Industry Regulation Authority
FSA	Financial Services Authority
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