



ASIC

Australian Securities & Investments Commission

REPORT 379

Market assessment report: Asia Pacific Exchange Limited

ACN 080 399 220

December 2013

About this report

This report relates to the period 1 January 2012 to 1 July 2013 (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 APX assessment reports

Asia Pacific Exchange Limited (APX) was granted an Australian market licence on 11 August 2004, under its registered name at the time, Australia Pacific Exchange Limited. Since then, variations to APX's market licence have been granted to:

- reflect the change to APX's current name, Asia Pacific Exchange Limited. This variation took effect from 8 April 2009;
- include an unconditional bank guarantee as a source of funds for APX's Division 3 compensation arrangements and to remove certain obsolete licence conditions. This variation took effect from 23 June 2010; and
- include conditions which relate to readiness, and financial and human resources. Certain parts of these conditions must be satisfied before the market recommences. APX also requested two minor changes to the licence conditions. This variation took effect from 22 April 2013.

There has been no operation of a market under the APX market licence since January 2009.

Report number	Report date
REP 307	September 2012
REP 239	May 2011
REP 199	June 2010
REP 166	August 2009

Report number	Report date
REP 154	April 2009
REP 116	January 2008
REP 90	February 2007
REP 61	November 2005

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Key findings and recommendations

Key findings

- 1 During the assessment period, there were no entities on the official list of Asia Pacific Exchange Limited (APX), and no trading occurred during this period. ASIC is satisfied that, in terms of the standards set out in the *Corporations Act 2001* (Corporations Act), APX had adequate arrangements in place for meeting its statutory obligations under s792A(c) of the Corporations Act, and the provision of those services was sufficiently resourced under s792A(d).

Recommendations

- 2 We do not have any recommendations to make about APX's arrangements or resources for operating and monitoring its market, as there were no entities on the official list and no trading on APX during the assessment period.

A The assessment

Key points

At the time of the assessment period, ASIC conducted annual assessments of market licensees, including APX, because it was required to do so under s794C of the Corporations Act.

The scope of our assessment must always include the obligations found in s792A(c), which require a market licensee to have adequate arrangements for operating the market, including adequate arrangements for handling conflicts and for monitoring and enforcing the market's operating rules. We can also include other Ch 7 obligations.

We use the market 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

ASIC's obligations

- 3 Under s794C(2) of the Corporations Act, ASIC is required to assess how well a market licensee is complying with its obligations under s792A(c).

Licensee's obligations

- 4 In line with our statutory obligations, we reviewed APX's arrangements for the operation and monitoring of its market under s792A(c). This includes its arrangements for handling conflicts and its arrangements for monitoring and enforcing compliance with the market's operating rules.
- 5 Under s794C(1), 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 of the Corporations Act. In keeping with our standard practice, we extended the scope of our assessment to include a review of whether APX had sufficient financial, technological and human resources to properly operate its facilities: see s792A(d).

Assessment period

- 6 Our assessment covers the period from 1 January 2012 to 1 July 2013.

Background

- 7 Our previous assessment of APX, published in 2012, describes the transfer of market supervision to ASIC on 1 August 2010: see Report 307 *Market assessment report: Asia Pacific Exchange Limited* (REP 307). Due to an inactive market during the assessment period, APX has not needed to practically implement any changes as a result of the transfer of market supervision to ASIC.
- 8 Despite being inactive during the assessment period, as a market licensee, APX continues to have:
- the overarching obligation to do all things necessary to ensure that its market operates, to the extent reasonably practicable to do so, in a manner that is fair, orderly and transparent; and
 - the same responsibilities in the critical area of its listing functions and for monitoring and enforcing its listing rules.
- 9 When APX relaunches its market, ASIC will supervise APX market participants' compliance with the new ASIC Market Integrity Rules (APX Market) 2013 (ASIC Market Integrity Rules (APX)). The new ASIC Market Integrity Rules (APX) are modelled on the current ASIC Market Integrity Rules (Chi-X Australia Market) 2011, which in turn were originally modelled on the ASIC Market Integrity Rules (ASX Market) 2010.
- 10 The transfer of supervision has not changed the important role that will be played by APX when trading recommences on its market, in ensuring fair and efficient markets and confident and informed investors, and in ensuring that APX meets its overarching statutory obligation to operate its market in a fair, orderly and transparent manner.
- 11 For example, APX is responsible for:
- (a) information technology (IT) issues and outages, which are critical to the fair, orderly and transparent operation of its market;
 - (b) the admission and ongoing monitoring of its market participants; and
 - (c) having in place adequate policies and procedures to assure itself that potential listed entities meet the admission requirements and their ongoing disclosure obligations.
- 12 Given the importance of these issues, APX's management of aspects like technology, risk and operations will receive greater focus in future assessment periods once the market recommences operation.

Approach to assessment

ASIC's strategic priorities

- 13 ASIC's current strategic framework focuses on three key strategic priorities or outcomes. These priorities are:
- fair and efficient financial markets;
 - confident and informed investors and financial consumers; and
 - efficient registration and licensing.
- 14 The first two priorities are particularly important for licensed markets. For example, appropriate resourcing is fundamental to ensuring that markets operate in an efficient manner. The adequate management and transparency of matters such as conflict handling arrangements are important to the fairness of the market.
- 15 Similarly, the effective monitoring and enforcement by a market operator of its continuous disclosure requirements is critical in ensuring that investors and consumers are confident and make informed decisions. For these reasons, we regard the assessment process as an important tool by which we continue to strive to meet our strategic outcomes.

Guiding principles

- 16 Our assessments are guided by certain principles that draw on the International Organization of Securities Commissions (IOSCO) *Objectives and principles of securities regulation*. The principles we use to guide assessments are:
- admission standards for issuers and participants are robust and administered in a fair and transparent way;
 - post-admission standards are robust and effectively monitored and enforced in a fair and transparent manner;
 - operating rules promote transparency to market users of material price and trading information;
 - the deterrence of unfair trading practices is supported by robust arrangements for detection and prevention, prompt referral to ASIC for possible enforcement action of significant contraventions of the Corporations Act and ASIC market integrity rules (where appropriate), and notifications to ASIC of disciplinary action taken by the market operator to enforce its contract-based operating rules;
 - conflicts are adequately managed; and
 - sufficient resources (including technological resources) are deployed to operate the market in a proper and reliable manner.

Our methodology

Our assessment process

- 17 A market licensee's obligations are ongoing. Whether a market licensee is likely to comply with its obligations in the future cannot be judged merely by reference to its past compliance.
- 18 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

- 19 During the assessment period, as with the previous assessment, there were no listed entities and no active trading on the APX market. In this context, there was limited cause for ASIC to conduct a detailed assessment of APX's compliance with its statutory obligations because APX was not operating a market during the assessment period.

What we considered

- 20 In conducting our assessment we:
- reviewed APX's annual regulatory reports, dated 30 September 2012 and 30 September 2013, as required under s792F;
 - considered information received from and about APX in the ordinary course of ASIC's dealings with APX as a market licensee; and
 - considered information from external sources, including media and industry commentary.

Consultation

- 21 APX has had the opportunity to view and comment on the factual accuracy of this report. Where appropriate, this report reflects APX's comments.

B Our observations

Key points

During the assessment period, there were no entities on the official list of APX and no trading took place during this period. ASIC is satisfied that, in terms of the standards set out in the Corporations Act, APX had adequate arrangements in place for meeting its statutory obligations under s792A(c) of the Corporations Act, and the provision of those services was sufficiently resourced under s792A(d).

In order for APX to meet its statutory obligations once its market recommences, we expect that the standards and practices administered by APX, as a market licensee, will be consistent with best practice arrangements undertaken in the Australian financial marketplace.

Adequate arrangements

- 22 In assessing how well a licensee is complying with its statutory obligations to have adequate arrangements in place to operate its market, we consider whether a licensee has adequate arrangements to:
- monitor and enforce its operating rules; and
 - handle conflicts of interest.

Monitoring and enforcing operating rules

- 23 In determining whether a licensee is complying with its obligations to monitor and enforce its operating rules, we consider how the licensee:
- deals with listed entities, monitors their disclosure to detect potential or actual non-compliance with the law or the market's listing rules, and enforces breaches of listing rules where the breach does not also constitute a possible breach of a statutory obligation actionable by ASIC;
 - monitors trading and participant activity in relation to its operating rules to detect potential or actual non-compliance with the law or the market's operating rules;
 - plans and documents procedures for ensuring frequent and comprehensive assessment of its ongoing compliance with its obligations, and ongoing compliance by listed entities and market participants with their obligations;
 - deals with actual or suspected breaches of the law or the operating rules, including remedial, disciplinary and other deterrent measures;
 - deals with complaints about the market or market participants; and

- shares information with ASIC and (where appropriate) operators of other markets and clearing and settlement facilities.
- 24 We conclude that during the assessment period, in which there were no listed entities and no active trading on APX's market, APX had:
- adequate arrangements for the operation of its market in accordance with its obligations under s792A(c) of the Corporations Act; and
 - sufficient resources to comply with its obligations under s792A(d) of the Corporations Act.

25 In order for APX to meet its statutory obligations once its market recommences, we expect that the standards and practices administered by APX, as a market licensee, will be consistent with best practice arrangements undertaken in the Australian financial marketplace.

Handling conflicts of interest

- 26 APX is wholly-owned by AIMS Group Holding Pty Limited (AIMS). In assessing the adequacy of a market licensee's arrangements for managing conflicts of interest, it is relevant that the regulatory regime does not preclude the existence of conflicts. APX must, however, have adequate arrangements to manage any conflicts it does have so that when it recommences trading on its market it does not allow AIMS and APX's own commercial interests to prevail over APX's obligation to operate a market that is fair, orderly and transparent.
- 27 Conflicts of interest may arise in any area where a market licensee makes decisions in relation to monitoring and enforcing its operating rules. For example, conflicts of interest may arise in connection with decisions about:
- admission of a person to the market as either a participant or a listed entity;
 - monitoring of a listed entity or market participant;
 - investigative or disciplinary action;
 - the exercise of discretions, such as granting waivers from the market's operating rules; or
 - the determination of the fees schedule of a financial market, including any trading incentive programs and/or relevant shareholder rebates.
- 28 In assessing a market licensee's arrangements for handling conflicts of interest, we consider a range of matters, including:
- whether, under current arrangements, actual or potential conflicts of interest are reliably anticipated, identified and appropriately responded to;
 - whether there is a sufficient level of disclosure to the market about the nature and existence of any actual or perceived conflict and the steps taken to adequately manage it;

- whether the licensee's organisational and reporting structures separate its commercial activities from its monitoring activities to a significant degree; and
- whether a parent company that controls the licensee has any related parties that are participants in the market, or whether the parent entity or its related parties have commercial associations with entities that apply to list on the market and/or are admitted to the licensee's official list.

29 In order for APX to meet its statutory obligations once its market recommences, we expect that the standards and practices administered by APX, as a market licensee, will be consistent with best practice arrangements undertaken in the Australian financial marketplace. We will monitor the adequacy of APX's conflict handling arrangements once the market recommences and the arrangements are put into practice, to ensure ongoing compliance with APX's statutory obligations.

Sufficient resources

30 In assessing how well a licensee is complying with its obligation under s792A(d) to have sufficient resources to properly operate the facility, we consider:

- how the licensee makes available and uses resources for supporting its arrangements for operating the facility, taking into consideration:
 - the financial, technological and human resources made available compared with previous assessment periods; and
 - a general expectation that resourcing should increase in step with the licensees' operations and that any reduction is appropriate only where changed circumstances or specific efficiencies can be clearly demonstrated;
- the licensee's information technology system 'uptime' and instances of market disruption; and
- our own experiences and observations, as well as those of market users, that there can be confidence that the market will operate in a reliable manner.

31 As there was no activity on the APX market during the assessment period, we are satisfied that during this period APX had sufficient financial, technological and human resources to comply with its obligations under s792A(d) of the Corporations Act. We will monitor the sufficiency of APX's resources once the market recommences.

Ongoing areas of consideration

- 32 In September 2012, we published our previous assessment report on APX: see REP 307. Like this assessment period, in the period covered by REP 307 there was no activity on the APX market. Like this report, REP 307 did not include any recommendations or agreed actions.
- 33 In order for APX to meet its statutory obligations once its market recommences, we expect that the standards and practices administered by APX, as a market licensee, will be consistent with best practice arrangements undertaken in the Australian financial marketplace.

Conclusion

- 34 Based on this assessment, which was conducted in an environment where there was no active trading on the APX market, we do not have any recommendations to make about APX's arrangements and resources for the operation of its market in accordance with its obligations under the Corporations Act.

Key terms

Term	Meaning in this document
AIMS	AIMS Group Holding Pty Limited
APX	Asia Pacific Exchange Limited
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
IOSCO	International Organization of Securities Commissions
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