



ASIC

Australian Securities & Investments Commission

REPORT 104

**Market assessment report:
EBS Service Company
Limited**

ARBN 107 465 967

October 2007

About this report

This report summarises ASIC's second assessment of EBS Service Company Limited under s794C of the *Corporations Act 2001* (Corporations Act).

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.

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Key findings and recommendations

Key findings

- 1 ASIC is satisfied that EBS Service Company Limited (EBS) has adequate arrangements and resources for the supervision of its market in accordance with its obligations under s792A(c) of the Corporations Act.

Recommendations

- 2 ASIC does not have any recommendations to make in relation to EBS's current supervisory arrangements.

A The assessment

Key points

ASIC conducts annual assessments of market licensees, such as EBS 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 Chapter 7 obligations.

ASIC uses the licensee's self-assessment reports, information from its previous assessments, ASIC's observation of the licensees' performance, market intelligence and other things to form a view of how well the licensee(s) have operated its market.

Purpose and scope

- 3 Section 794C(2) requires ASIC to assess how well a market licensee complies with its obligations in s792A(c) at least once a year.
- 4 Section 792A(c) requires a market licensee 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.
- 5 In addition, s794C(1) permits ASIC to extend the scope of its assessment to review how well EBS complies with any or all of its obligations under Chapter 7.

Background

EBS Service Company Limited

- 6 EBS is a Swiss incorporated subsidiary of EBS Group Limited. EBS Group Limited and its subsidiaries were acquired in June 2006, by ICAP plc, a company listed on the London Stock Exchange.

- 7 The merger of these two entities has not affected the Australian market licence (AML) of EBS or its obligations as a market licensee.
- 8 From an operational perspective, EBS Group Limited and its affiliates, including EBS, (together, the EBS Group) are managed as a single group by the Executive Management Team made up of staff employed by affiliated companies EBS Dealing Resources, Inc., EBS Dealing Resources International Limited and subsidiaries of ICAP plc. In the case of EBS, the Executive Management Team provides recommendations to the directors of EBS, and if approved by the directors, these recommendations are implemented by the Executive Management Team.

The EBS market—EBS Spot

- 9 EBS has been operating the market known as EBS Spot in Australia since 14 March 2005 pursuant to an AML granted under s795B(1). The AML was varied on 21 December 2006, to permit EBS to facilitate trading in two additional precious metals: palladium and platinum.
- 10 EBS Spot is an electronic anonymous deal-matching trading system that facilitates trading by participants in spot foreign exchange and precious metals (i.e., gold, silver, palladium and platinum). The trades are matched automatically by EBS Spot's IT system on a credit-price-time priority.
- 11 Trades occur on an anonymous basis with the identity of the counterparty unknown to the participants before the trade is executed. However the system will only match trades between participants who have established mutual credit limits with each other.

Our methodology

Our assessment process

- 12 ASIC uses the formal assessment process to examine whether a market licensee has been and is continuing to meet its supervisory obligations. We also use the process to identify areas where improvements may be needed to enable the market licensee to meet its obligations in the future.
- 13 Our assessment and the views expressed in this report are a combination of processes which include the ongoing interaction we have with EBS in our role as the regulator of financial markets and information we gathered for the specific purpose of the assessment.

What we considered

- 14 In conducting our assessment we considered:
- information we received from and about EBS in the ordinary course of our dealings;
 - EBS's s792F annual regulatory report;
 - EBS's half-yearly reports to ASIC; and
 - how well EBS might comply with its obligations in the future.

Consultation

- 15 We have discussed the results of our assessment with EBS, seeking their comments on both the factual matters set out in this report and our conclusions.

B Our observations

Key points

As part of this assessment ASIC has considered the adequacy of EBS's arrangements for supervising its market, including arrangements for:

- handling conflicts between the commercial interests of the market licensee and the need for the market 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.

ASIC has also considered EBS's compliance with its reporting obligations under the Corporations Act.

Conflicts of interest

- 16 ASIC considers that EBS's arrangements for handling conflicts of interest are adequate because of the nature of the market and the nature of the market's participants.
- 17 EBS is aware that there may be conflicts of interest between its commercial interests and its supervisory duties and has arrangements in place for managing such conflicts.
- 18 The market is restricted to participants who, it is reasonable to assume, understand the risks involved in the market and have the resources to adequately represent and protect their own interests.
- 19 ASIC is not aware of any significant conflicts of interest events occurring during the assessment period.

Monitoring the conduct of participants

- 20 EBS has arrangements for monitoring the conduct of participants that are adequate for the nature of the market it operates.

Enforcing compliance with operating rules

- 21 EBS has adequate arrangements for enforcing compliance with its operating rules. During this assessment period EBS has published the operating rules on the EBS corporate website.

- 22 ASIC is not aware of EBS substantially changing the processes, which were outlined in its application for an AML, in relation to the enforcement of compliance with its operating rules

Reporting obligations

Annual regulatory report

- 23 EBS lodged with ASIC its s792F annual regulatory report for the period 1 January 2006 to 31 December 2006 on 29 March 2007. ASIC notes that this report was lodged within the required period and it contained the information required.

Reports required by licence

- 24 Under section 8 of the AML, EBS must lodge reports with ASIC every six months. The report must contain details of the volumes traded on the market in Australia and globally, and must list all Australian participants of the market.
- 25 ASIC notes that the section 8 reports for this assessment period were lodged within the required time and contained the prescribed information.

Conclusion

- 26 ASIC considers that EBS has adequate arrangements for the supervision of its market in accordance with its obligations under s792A(c).
- 27 Our conclusion is based on the assessment that we conducted and the following observations drawn from information gathered during the assessment process:
- ASIC is not aware of EBS substantially changing the arrangements it has in place for supervising the market from the description provided in its AML application;
 - no serious market failures or disruptions have come to our attention; and
 - during the assessment period no information came to our attention to suggest that the supervisory arrangements in place were not operating properly.

Key terms

Term	Meaning in this document
AML	Australian market licence
ASIC	Australian Securities and Investments Commission
Corporations Act	The <i>Corporations Act 2001</i> (Cth)
EBS	EBS Service Company Limited
market licensee	Holder of a section 795B Australian market licence
s794C (for example)	A section of the <i>Corporations Act 2001</i> (in this example, number 794C)