



ASIC

Australian Securities & Investments Commission

REPORT 144

**Market assessment report:
Chicago Mercantile
Exchange Inc.**

ARBN 103 432 391

December 2008

About this report

This report summarises ASIC's fifth annual assessment of Chicago Mercantile Exchange Inc. (CME) under s794C of the *Corporations Act 2001* (Cth) (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.

Previous reports on CME

CME was granted an Australian market licence for overseas market that commenced on 23 December 2003.

Report number	Date released
REP 52	August 2005
REP 72	May 2006
REP 92	March 2007
REP 102	March 2008

Contents

Key findings and recommendations	4
Key findings	4
Recommendations	4
A The assessment	5
Purpose and scope	5
Background	5
Our methodology	6
B Our observations	8
Supervisory arrangements	8
Regulation of CME in the United States of America	9
Reporting obligations	10
Conclusion	10
Key terms	11

Key findings and recommendations

Key findings

- 1 ASIC is satisfied that CME has adequate arrangements 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 about CME's current supervisory arrangements.

A The assessment

Key points

ASIC conducts annual assessments of market licensees, such as CME, because it is required to do so under s794C of the Corporations Act.

The scope of our assessment must always include the obligations in s792A(c) of the Corporations Act, but we can include other Chapter 7 obligations too.

ASIC uses 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 We are required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year (s794C(2)).
- 4 A market licensee is required to have adequate arrangements for supervising the market (under s792A) including 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, we are permitted to extend the scope of our assessment to review how well licensee complies with any or all of its obligations under Chapter 7 of the Corporations Act: s794C(1).

Background

- 6 CME's Australian market licence, for an overseas market operator, permits CME to operate their financial market, Globex, in Australia. Globex is an electronic trading platform that facilitates trading by Australian participants in futures and options on futures contracts.
- 7 CME requires all Australian participants to hold an Australian financial services (AFS) licence that permits them to trade in products of the same kind as those that can be dealt with on the market, unless the participant is

exempt under Australian law from the requirement to hold an AFS licence to participate in the market.

- 8 CME is registered to operate in the United States with the Commodity Futures Trading Commission (CFTC). CME is a self-regulating body with its own by-laws, rules and regulations contained in the CME Rulebook.
- 9 A copy of CME's market licence is available on our website at www.asic.gov.au.

Our methodology

Our assessment process

- 10 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.
- 11 We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a market licensee has in place for supervising its market 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.

What we considered

- 12 In conducting our assessment of CME we:
- analysed information we received from and about CME in the ordinary course of our dealings with the licensee;
 - reviewed CME's annual regulatory report required under s792F;
 - reviewed information from the media, CME's website and other sources;
 - reviewed CME's 6-monthly reports to ASIC;
 - sought additional information from CME for the purpose of this assessment; and
 - considered information from the CFTC about the market and CME.

Discussions with the foreign regulator

- 13 In assessing an overseas licensee's compliance with its obligations under s792A(c) of the Corporations Act, we place significant reliance on statements by the licensee's home regulator in regard to the standing of the

licensee. ASIC has received confirmation from the CFTC that CME remains a designated contract market in 'good standing' with the CFTC.

Consultation

- 14 CME has had the opportunity to view and comment on the findings contained in a draft version of this report. Where appropriate, this final report reflects CME's responses.

What we focused on for this assessment

- 15 Our focus in this assessment was to review how well CME complied with its ongoing supervisory and reporting obligations under its market licence and the Corporations Act.

B Our observations

Key points

As part of this assessment, we have considered the adequacy of CME's arrangements and resources for supervising its market including:

- 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.

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

Supervisory arrangements

- 16 We conclude that CME has adequate arrangements and resources for the supervision of its market in accordance with its obligations under s792A(c).
- 17 This conclusion is based on the following observations drawn from information gathered during our assessment process, our observations from our ongoing correspondence with CME, and the present operating conditions (including trading volumes and financial products traded on the market):
- CME confirmed the arrangements for supervising the market have not changed during the previous annual reporting period.
 - The CFTC confirmed that it had no concerns with CME's supervision of Globex.
 - During our assessment, nothing came to our attention to suggest that CME's supervisory arrangements were not operating properly.
- 18 A description of CME's supervisory arrangements for handling conflicts of interest, monitoring the conduct of participants on or in relation to the market, and enforcing compliance with the market's operating rules is set out at section 2.1 of ASIC's report on its first annual assessment of CME (REP 52) issued in August 2005.

Conflicts of interest

- 19 The current arrangements that CME has in place for handling conflicts have not changed since our last annual assessment.

20 Based on our review of all information at hand and information provided by CME and CFTC, ASIC is not aware of any significant conflicts of interest events occurring during the assessment period.

21 The CFTC has no information that would cause it to suspect or conclude that CME has not been meeting its arrangements for handling conflicts.

Monitoring market and participant conduct

22 The current arrangements that CME has in place for monitoring the conduct of participants have not changed since our last annual assessment.

23 Based on our review of all information at hand and information provided by CME and CFTC, CME appears to have arrangements for monitoring the conduct of participants that are adequate for the nature of the market it operates.

24 The CFTC has no information that would cause it to suspect or conclude that CME has not been meeting its obligations for monitoring participant conduct.

Compliance with market operating rules

25 The current arrangements that CME has in place for enforcing compliance with the operating rules have not changed since our last annual assessment.

26 The CFTC has no information that would cause it to suspect or conclude that CME has not been meeting its obligations to enforce compliance with its operating rules.

27 No event has been brought to our attention where an Australian participant breached CME's operating rules.

28 Based on our review of all information at hand and information provided by CME and CFTC, CME appears to have arrangements for enforcing compliance with its operating rules.

Regulation of CME in the United States of America

29 We received information from the CFTC about the regulation of CME during the assessment period.

30 The CFTC confirmed that CME remains a designated contract market in 'good standing' with the CFTC. The CFTC has no information that would cause the CFTC to suspect or conclude that CME has not been meeting its continuing obligations under the US *Commodity Exchange Act*.

Reporting obligations

Annual regulatory report

- 31 We note that CME lodged its s792F annual regulatory report with ASIC in a timely manner with the required information.

Reports required by market licence

- 32 CME's 6-monthly reports satisfied section 10(1)a and 10(1)b of the market licence.

Rule amendments

- 33 We acknowledge that CME has provided notices on rule changes in a timely manner and with sufficient information to satisfy s793D(3) of the Corporations Act.

Conclusion

- 34 Based on this assessment, ASIC does not have any recommendations to make about CME's current supervisory arrangements.

Key terms

Term	Meaning in this document
AFS licence	Australian financial services licence under s911A
AML	An Australian market licence under s791A
ASIC	Australian Securities and Investments Commission
CFTC	Commodity Futures Trading Commission
CME	Chicago Mercantile Exchange
Corporations Act	<i>Corporations Act 2001</i> (Cth)
Globex	The electronic trading platform operated by CME that facilitates trading by Australian participants in futures and options on futures contracts
s794C	A section of the Corporations Act (in this example numbered 794C)