



**ASIC**

Australian Securities & Investments Commission

**REPORT 145**

**Market assessment report:  
Board of Trade of the City of  
Chicago Inc.**

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**About this report**

This report summarises ASIC's third annual assessment of Board of Trade of the City of Chicago Inc. (CBOT) 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 CBOT

CBOT was granted an Australian market licence for overseas market that commenced on 7 December 2005.

| Report number | Date released |
|---------------|---------------|
| REP 92        | March 2007    |
| REP 103       | March 2008    |

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## Key findings and recommendations

### Key findings

- 1 ASIC is satisfied that CBOT 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 CBOT's current supervisory arrangements.

## A The assessment

### Key points

ASIC conducts annual assessments of market licensees, such as CBOT, 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 a licensee complies with any or all of its obligations under Chapter 7 of the Corporations Act: s794C(1).

### Background

- 6 CBOT's Australian market licence, for an overseas market operator, permits CBOT to operate the financial market, e-cbot, in Australia. E-cbot is an electronic trading platform that facilitates trading by Australian participants in futures and options on futures contracts.
- 7 CBOT requires all Australian participants to hold an Australian financial services (AFS) licence permitting 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           CBOT is registered to operate in the United States with the Commodity Futures Trading Commission (CFTC) as a designated contract market and as a derivatives clearing organisation. CBOT is governed by its certificate of incorporation, by-laws, rules and regulations.
- 9           A copy of CBOT's market licence is available on our website at [www.asic.gov.au](http://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 CBOT we:
- analysed information we received from and about CBOT in the ordinary course of our dealings with CBOT;
  - reviewed CBOT's annual regulatory report required under s792F;
  - reviewed information from the media, CBOT's website and other sources;
  - sought additional information from CBOT for the purpose of this assessment; and
  - considered information from the CFTC about the market and CBOT.

### 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 CBOT remains a designated contract market in 'good standing' with the CFTC.

### **Consultation**

- 14      CBOT 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 CBOT's responses.

### **What we focused on for this assessment**

- 15      Our focus in this assessment was to review how well CBOT 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 CBOT'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 CBOT's compliance with its reporting obligations under the Corporations Act.

### Supervisory arrangements

- 16 We conclude that CBOT 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 CBOT, and the present operating conditions (including trading volumes and financial products traded on the market):
- CBOT 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 CBOT's supervision of e-cbot.
  - During our assessment, nothing came to our attention to suggest that CBOT's supervisory arrangements were not operating properly.

### Conflicts of interest

- 18 The current arrangements that CBOT has in place for handling conflicts have not changed since our last annual assessment.
- 19 CBOT bars directors and committee members from voting on matters involving a named party with whom they have a specified relationship. Under CBOT regulations, directors and committee members are also barred from trading on the basis of material non-public information acquired in the course of their duties. CBOT employees are not eligible for membership and CBOT personnel policy restricts trading by employees.



20 Based on our review of all information at hand and information provided by CBOT 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 CBOT has not been meeting its arrangements for handling conflicts.

### **Monitoring market and participant conduct**

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

23 CBOT's Office of Investigations and Audit's (OIA) role is to monitor members' compliance with the rules. OIA is comprised of five departments including the Market Surveillance Department and the Regulatory Reporting and Research Department. These two departments are responsible for administering the market surveillance programs at CBOT.

24 OIA monitors daily trading activity by assigning investigators to several different types of investigations. Investigators use SMART (market analysis system), or an equivalent electronic system, to review and analyse all trading at CBOT in order to detect trading violations.

25 The Division of Market Oversight (DMO) of the CFTC completed a rule enforcement review of CBOT's market surveillance program for:

- (a) compliance with preventing manipulation, price distortion, and disruptions of the delivery or cash settlement process and enforcing; and
- (b) enforcing its speculative position limits and position accountability rules.

26 The DMO found that CBOT maintains an effective and comprehensive market surveillance program, and made no recommendations for further improvements.

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

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

### **Compliance with market operating rules**

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

- 30           CBOT engages in market surveillance and financial supervision activities designed to ensure market integrity and provide financial safeguards to users of its markets. CBOT's Regulatory Compliance Committee is responsible for among other things: establishing a range of penalties and fines for violations of the rules; monitoring of compliance policies; and establishing risk management policies.
- 31           The CFTC has no information that would cause it to suspect or conclude that CBOT has not been meeting its obligations to enforce compliance with its operating rules.
- 32           No event has been brought to our attention where an Australian participant breached CBOT's operating rules.
- 33           Based on our review of all information at hand and information provided by CBOT and CFTC, CBOT appears to have arrangements for enforcing compliance with its operating rules.

## Regulation of CBOT in the United States of America

- 34           We received information from the CFTC about the regulation of CBOT during the assessment period.
- 35           The CFTC confirmed that CBOT 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 CBOT has not been meeting its continuing obligations under the US Commodity Exchange Act.

## Reporting obligations

### Annual regulatory report

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

### Rule amendments

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

## Conclusion

- 38           Based on this assessment, we do not have any recommendations to make about CBOT's current supervisory arrangements.

## Key terms

| Term             | Meaning in this document   |
|------------------|--|
| AFS licence      | Australian financial services licence under s911A  |
| AML              | Australian market licence under s791A  |
| ASIC             | Australian Securities and Investments Commission   |
| CBOT             | Board of Trade of the City of Chicago Inc.   |
| CFTC             | Commodity Futures Trading Commission   |
| Corporations Act | <i>Corporations Act 2001</i> (Cth)   |
| DMO              | Division of Market Oversight of the CFTC   |
| e-cbot           | The electronic trading platform operated by CBOT that facilitates trading and clearing by Australian participants in futures and options |
| s794C            | A section of the Corporations Act (in this example numbered 794C)  |