



ASIC

Australian Securities & Investments Commission

REPORT 321

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

ARBN 110 594 459

Chicago Mercantile Exchange Inc.

ARBN 103 432 391

December 2012

About this report

This assessment covers the period 23 June 2011 to 27 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 Board of Trade of the City of Chicago Inc. (CBOT) and Chicago Mercantile Exchange Inc. (CME)

CBOT and CME were each granted an Australian market licence for an overseas market on 7 December 2005 and 23 December 2003, respectively. After the 2008 merger of CBOT and CME, we issued a joint report for these two entities.

CBOT/CME joint reports	Report date
REP 253	September 2011
REP 220	October 2010
REP 188	January 2010
CBOT reports	Report date
REP 145	December 2008
REP 103	February 2008
REP 92	February 2007
CME reports	Report date
REP 144	December 2008
REP 102	February 2008
REP 93	March 2007
REP 72	May 2006
REP 52	July 2005

The assessment

Key points

ASIC is satisfied that Board of Trade of the City of Chicago Inc. (CBOT) and Chicago Mercantile Exchange Inc. (CME) have adequate arrangements for operating their markets in accordance with their obligations under s792A(c) of the *Corporations Act 2001* (Corporations Act). We do not have any recommendations to make about these arrangements.

Scope

- 1 Under s792A(c)¹ a market licensee is required to have adequate arrangements for operating its market, including arrangements for:
 - handling conflicts between its commercial interests and the need to ensure that the market is fair, orderly and transparent; and
 - monitoring and enforcing compliance with the market's operating rules.
- 2 ASIC is required to assess how well a market licensee complies with its obligations under s792A(c) at least once a year: s794C(2). ASIC is permitted to extend the scope of its assessment to review how well a licensee complies with any or all of its obligations under Ch 7.

Approach to assessment

- 3 CBOT and CME are one of a small number of financial markets that are licensed to operate in Australia under the foreign licensing arrangements in the Corporations Act: s795B(2).
- 4 Under the arrangements in s795B(2), a foreign financial market may be permitted to operate in this country if the operation of the market in its home jurisdiction is subject to requirements and supervision that are sufficiently equivalent to those that apply to financial markets in Australia.
- 5 In assessing whether a market's home jurisdiction satisfies this requirement, we focus on whether that jurisdiction achieves sufficiently equivalent investor protection and market integrity outcomes to those achieved for comparable domestic markets.

¹ In this report, references to legislation (e.g. s792A(c), Ch 7, Pt 5B.2) are references to the Corporations Act, unless otherwise specified.

6 In addition, as a condition of CBOT and CME’s market licences, Australian-based clients of participants of CBOT and CME’s market must be first notified that CBOT and CME are regulated primarily under the regulatory regime of the United States.

7 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.

The first two priorities are particularly important for licensed markets.

8 In the context of foreign licensed markets, the importance placed on the regulatory arrangements in the operator’s home jurisdiction means that in assessing whether our strategic priorities are being met, our primary focus is on the extent to which CBOT and CME continue to satisfy the regulatory requirements of that home regime. We also consider whether there have been any significant changes to that regulatory regime.

9 For that reason, our assessment of these types of markets focuses on a narrower subset of the key measures than we might otherwise use if the market was a comparable domestic licensed market. To determine whether CBOT and CME have complied with their obligations to have adequate arrangements for operating their markets, we focused on:

- information provided by CBOT and CME’s home regulator about:
 - the standing of CBOT and CME;
 - any disciplinary action taken against CBOT and CME; and
 - any reviews or on-site risk assessments of CBOT and CME;
- information provided by CBOT and CME about whether:
 - there have been any significant changes to the regulatory regime in the home jurisdiction (as required by s792B(4)(b));
 - there have been any complaints by market participants to CBOT and CME about the operation of their markets;
 - CBOT and CME have taken any disciplinary action against Australian participants; and
 - CBOT and CME’s arrangements for operating their markets have changed; and
- whether ASIC has received any complaints about the operation of their markets.

Background

- 10 CBOT and CME are wholly owned subsidiaries of CME Group Inc. (CME Group). CME Group comprises four designated contract markets. These are CBOT, CME, Commodity Exchange, Inc. (COMEX) and New York Mercantile Exchange, Inc. (NYMEX). The 2008 CBOT/CME merger resulted in the establishment of a single market regulation department and a single audit department for CBOT and CME.

Regulation of CBOT and CME in Australia

- 11 CBOT and CME were registered under Div 2 of Pt 5B.2 as foreign companies in Australia on 19 August 2004 and 23 January 2003, respectively.
- 12 CBOT and CME were each granted an Australian market licence to operate their electronic trading platforms on 7 December 2005 and 23 December 2003, respectively, under the foreign licensing arrangements in the Corporations Act. A copy of CBOT and CME's market licence is available on the ASIC website at www.asic.gov.au/markets.
- 13 Both CBOT and CME require all Australian participants to hold (or be exempt from holding) an Australian financial services (AFS) licence, permitting them to trade in the products that can be dealt with on their markets.

Regulation of CBOT and CME in the United States and other jurisdictions

- 14 CBOT and CME are each registered with the Commodity Futures Trading Commission (CFTC) to operate in the United States as a designated contract market under the *Commodity Exchange Act 1936* (US) (Commodity Exchange Act).
- 15 CBOT and CME are self-regulating bodies governed by their respective certificates of incorporation, by-laws, rules and regulations.
- 16 Following the CBOT/CME merger, CBOT and CME remain separate self-regulating bodies. However, both sets of rules were harmonised, making the rules parallel in structure, numbering and language, where possible.

Our assessment process

- 17 We use the assessment process to reach conclusions about the adequacy of the arrangements a market licensee had in place for operating its market in

accordance with its obligations, and to identify issues that in our view need (or may need) to be addressed to ensure ongoing compliance.

- 18 In conducting our assessment we considered:
- information from the CFTC about CBOT and CME;
 - information we received from and about CBOT and CME in the ordinary course of our dealings with CBOT and CME, including information sought from CBOT and CME for the purpose of this assessment;
 - CBOT and CME's:
 - annual regulatory report required under s792F;
 - six-monthly licence conditions report; and
 - financial report for the year ended 31 December 2011; and
 - information from the media, CBOT and CME's website and other sources.
- 19 CBOT and CME have had the opportunity to view and comment on the factual accuracy of a draft version of this report. Where appropriate, our findings reflect CBOT and CME's clarifications.

Our observations

Arrangements for operating the market

- 20 We conclude that during the assessment period CBOT and CME had adequate arrangements for the operation of their markets in accordance with their obligations under s792A(c).
- 21 Our conclusion is based on our review of the measures that typically guide our assessment of CBOT and CME and like markets, being:
- CFTC confirmed that CBOT and CME remain designated contract markets under the Commodity Exchange Act and in 'good standing' with the CFTC, and continue to meet their self-regulatory obligations. The CFTC also confirmed that there was no disciplinary action taken against CBOT and CME during the assessment period;
 - during the assessment period, there were no significant changes to the regulatory regime for designated contract markets in CBOT and CME's home jurisdiction;
 - CBOT and CME confirmed that during the assessment period:
 - there were no complaints by market users about the operation of their markets;

- CBOT and CME did not take any disciplinary action against any Australian participants; and
- CBOT and CME’s arrangements for operating their markets did not change; and
- during the assessment period, we did not receive any complaints about the operation of their markets.

Notification of changes to the regulatory regime in CBOT and CME’s home jurisdiction

- 22 During the assessment period, CBOT and CME notified us of forthcoming changes to the regulatory regime in their home jurisdiction. These changes specifically relate to CBOT and CME’s registration as a designated contract market and other requirements, as a result of the *Dodd–Frank Wall Street Reform and Consumer Protection Act 2010* (US). We, along with CBOT and CME, are of the view these regulatory changes do not affect the sufficient equivalency of US regulation in relation to the CBOT and CME Australian market licences.

Reporting obligations

- 23 We note that CBOT and CME lodged their annual regulatory reports (as required under s792F) with ASIC in a timely manner with the required information.
- 24 We also note that CBOT and CME lodged their six-monthly reports with us on time and these contained the information required.
- 25 CBOT and CME have provided notices on rule changes in a timely manner and with sufficient information to satisfy s793D(3).