



ASIC

Australian Securities & Investments Commission

REPORT 103

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

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February 2008

About this report

This report summarises the second annual assessment of Board of Trade of the City of Chicago Inc. (CBOT) by the Australian Securities and Investments Commission (ASIC) 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.

Previous reports on CBOT

CBOT was granted an Australian market licence (AML) commencing 7 December 2005.

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

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Key findings and recommendations

Key findings

- 1 ASIC is satisfied that Board of Trade of the City of Chicago Inc. (CBOT) 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 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 its previous assessments, ASIC's 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 ASIC is required to assess how well a market licensee complies with its obligations in s792A(c) at least once a year (s792C(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 CBOT complies with any or all of its obligations under Chapter 7 (s794C(1)).

Background

- 6 The AML 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 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 such a 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. CBOT is governed by its certificate of incorporation, by-laws, rules and regulations.
- 9 On 12 July 2007, CBOT Holdings Inc. and CME Holdings Inc., former parent companies of market licensees, CBOT and Chicago Mercantile Exchange Inc. (CME) respectively, merged to form a common parent company, CME Group Inc. CBOT expects that both it and CME will continue to operate under their respective AMLs.
- 10 A copy of CBOT's AML is available on our website at www.asic.gov.au.

Our methodology

Our assessment process

- 11 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.
- 12 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

- 13 In conducting our assessment we:
- analysed information we received from and about CBOT in the ordinary course of our dealings with the licensee, including 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
 - obtained information from the CFTC about the market and CBOT.

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 AML and the Corporations Act.

B Our observations and recommendations for CBOT

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 the supervisory arrangements were not operating properly.

Conflicts of interest

- 18 ASIC is not aware of any significant conflicts of interest events occurring during the assessment period.
- 19 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

- 20 CBOT has arrangements for monitoring the conduct of participants that are adequate for the nature of the market it operates.
- 21 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

- 22 CBOT has adequate arrangements for enforcing compliance with its operating rules.
- 23 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.
- 24 No event has been brought to ASIC's attention where an Australian participant breached CBOT's operating rules.

Regulation of CBOT in the United States of America

- 25 ASIC received information from the CFTC about the regulation of CBOT during the assessment period.
- 26 The CFTC confirmed that CBOT remains a designated contract market under the Commodity Exchange Act and continues to meet its self-regulatory obligations and is in good standing. CBOT's authorisations and permissions to operate its market have not changed.
- 27 The CFTC has not identified any inadequacies in CBOT's market monitoring programs, and is satisfied that CBOT maintains sophisticated electronic surveillance system and operates adequate regulatory programs to enforce its rules.

Reporting obligations

Annual regulatory report

- 28 ASIC notes that CBOT lodged its s792F annual regulatory report with ASIC in a timely manner.

Rule amendments

- 29 ASIC acknowledges 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

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

Key terms

| Term | Meaning in this document |
|------------------|--|
| AML | Australian market licence |
| ASIC | Australian Securities and Investments Commission |
| CBOT | Board of Trade of the City of Chicago Inc. |
| CFTC | Commodity Futures Trading Commission |
| CME | Chicago Mercantile Exchange Inc. |
| Corporations Act | <i>Corporations Act 2001</i> (Cth) |
| e-cbot | The electronic trading platform operated by CBOT that facilitates trading and clearing by Australian participants in futures and options |