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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77199918
Applicant	Chicago Mercantile Exchange Inc.
Applied for Mark	CHI
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Submission	Applicant's Motion to Suspend
Attachments	131209 Request to Remand - final.pdf(21269 bytes ) Exhibit 1 Request to Suspend and Remand.pdf(75641 bytes ) Exhibit 2 - Request to Suspend and Remand.pdf(191758 bytes )
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Date	12/09/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:  CHICAGO MERCANTILE EXCHANGE INC.  Serial No.: 77/199,918  Filed: June 7, 2007  Mark: CHI	Examining Attorney:  Linda A. Powell  Law Office 106
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**APPLICANT'S REQUEST TO SUSPEND THE APPEAL AND REMAND THE APPLICATION FOR FURTHER EXAMINATION BASED ON ADDITIONAL EVIDENCE**

Pursuant to 37 CFR § 2.142(d) and Section 1207.02 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant, Chicago Mercantile Exchange Inc. ("Applicant"), through its undersigned counsel, files this request in good faith to suspend the appeal and remand the application to the Examining Attorney for further examination based on additional evidence. This request is filed prior to the rendering of the Trademark Trial and Appeal Board's (the "Board") final decision on the appeal. Applicant has good cause for filing this request and satisfies the Board's requirements to warrant suspension and remand.

The Examining Attorney recently filed her appeal brief, which significantly narrows the issues on appeal. Specifically, the Examining Attorney withdrew her refusal to register on the basis that the mark CHI ("Mark" or "CHI Mark") solely identified a process or system. Therefore, the sole remaining issue on appeal relates to the acceptability of the specimen. In her appeal brief, Examining Attorney raised a new issue regarding the specimen, which can be addressed through a substitute specimen. Therefore, there is no need to waste the Board's time with this appeal when the matter

can be resolved directly with the Examining Attorney. Accordingly, the present request should be granted and the application should be remanded to the Examining Attorney for further examination. Resolution of this issue would render the appeal moot.

## **BACKGROUND**

Applicant filed its application to register the CHI Mark on June 7, 2007 in International Class 36 for “investment services, namely, providing futures, options contracts related to hurricanes for trading on an exchange” (Applicant’s Investment Services”). The Examining Attorney issued her Final Refusal on October 5, 2012. Registration of the CHI Mark was refused because, in the Examining Attorney’s opinion, the Mark, as used on the specimens of record, merely identifies a process or system and does not function as a service mark to identify and distinguish Applicant’s services from those of others and to indicate the source of those services. 15 U.S.C. §§1051-1053, 1127.

On April 5, 2013, Applicant filed a Request for Reconsideration and Notice of Appeal. The Request for Reconsideration was denied on May 22, 2013, and the present appeal was resumed. In its appeal brief, the Applicant addressed two key issues in support of registrability of the CHI Mark: (1) the Mark does not simply identify a process or system in the nature of a numerical measure of potential damage from a hurricane and an index of that measure; and (2) the specimens of record show use of the CHI Mark to identify the source of Applicant’s Investment Services.

The Examining Attorney’s responsive brief withdrew the refusal to register the Mark on the ground that it identifies a process or system. The Examining Attorney stated that “[t]he refusal based on use of the mark to identify a process or system is

withdrawn in deference to the applicant's registration of the same mark for indexing services." Ex. Brief p.2.

The sole issue remaining on appeal is the refusal to register the Mark on the ground that the Mark fails to function as a service mark to identify and distinguish Applicant's Investment Services from those of others and indicate the source of those services. In the Examining Attorney's opinion, the Mark is not used in the specimens of record to identify the source of Applicant's Investment Services. Specifically, the Examining Attorney stated for the first time that the specimen of record that includes a reference to "CHI-Cat-In-A-Box – Galveston-Mobile" is not acceptable to show use of the Mark in connection with Applicant's Investment Services because the proposed the CHI Mark does not match the term "CHI-Cat-In-A-Box" and it is not clear that the CHI-Cat-In-A-Box – Galveston-Mobile" is the name of a futures or options. Ex. Brief p. 4. While Applicant disagrees with the Examining Attorney's opinion, Applicant believes that substitute specimens, attached hereto as Exhibit 1, will directly address Examining Attorney's concern because they clearly show the use of the CHI Mark as a source identifier of Applicant's Investment Services, e.g, CHI futures contracts. Applicant's deadline to file its reply brief is on December 9, 2013 and Applicant also intends to request an oral hearing for this appeal.

Applicant now requests suspension of the appeal and remand for further examination in light of the substitute specimens showing the use of the Mark as a source identifier of Applicant's Investment Services. The substitute specimens were in use in commerce prior to the expiration of the filing deadline for filing a Statement of Use.

## **ARGUMENT**

The Board's rules specifically authorize submission of new evidence while an appeal is pending. The proper procedure is to request suspension of the appeal and to remand the application for further examination. 37 CFR § 2.142(d); TBMP § 1207.01. A request to suspend and remand for additional evidence must be filed prior to the rendering of the Board's final decision on the appeal. TBMP § 1207.02. In addition, remand is a matter of discretion of the Board, and the request for remand will be granted upon a showing of good cause. *Id.* The request also must be accompanied by the additional evidence sought to be introduced. *Id.* See, e.g. *In Re Htc Sweden Ab*, 2013 WL 5467007 (T.T.A.B. 2013) (the appellant's request for remand for additional evidence granted); *In Re Advanced Armament Corp.*, 2013 WL 6355603 (T.T.A.B. 2013) (the examining attorney's request to remand the application "to allow for the inclusion of new and relevant evidence that was not previously available" granted).

### **A. Applicant's Request Is Timely and Accompanied by Additional Evidence.**

In this case, Applicant meets all requirements for filing the request to suspend and remand for additional evidence. This request is filed before the Board rendered its final decision on the appeal. In fact, the briefing by the parties is not complete and Applicant will be requesting an oral hearing. In addition, the request is accompanied by the additional evidence sought to be introduced in form of substitute specimens showing the use of the Mark as a source identifier of Applicant's Investment Services and explanations for the substitute specimens. See Exhibit 1, Applicant's substitute specimens. Attached as Exhibit 2 is Applicant's the Request for Further Examination

and Consideration of Additional Evidence by the Examining Attorney, which provides an explanation as to the substitute specimens.

**B. Applicant Demonstrates Good Cause for Suspension And Remand.**

Applicant also meets the good cause standard because good cause “may take the form of a satisfactory explanation as to why the evidence was not filed prior to appeal.” TBMP §1207.02. In the present case, the sole remaining issue on the appeal is whether the Mark is used to identify the source of Applicant’s Investment Services, which is judged by the specimens of record. As part of the prosecution of this Application, Applicant diligently searched its records and undertook significant efforts to locate suitable specimens that showed use of the CHI Mark in connection with Applicant’s Investment Services and Applicant submitted different specimens to this effect.

The Examining Attorney’s brief significantly narrows the issues on appeal. In particular, the Examining Attorney’s sole refusal only focuses on objections to the specimen of records because the specimen showed use of CHI Cat-In-A-Box futures and not CHI futures alone. Applicant firmly believes that a suitable specimen would squarely address Examining Attorney’s concern, thus, eliminating the need to pursue this appeal. For example, the attached evidence shows the use of the CHI Mark in close proximity with the descriptive modifiers characterizing Applicant’s Investments Services, namely “futures” and “options,” e.g., CHI futures, CHI futures contracts, etc. See Ex. 1. In addition, this additional evidence was not filed prior to appeal because Applicant believed that the specimens of record clearly showed use of the Mark as a source identifier of Applicant’s Investment Services, especially the specimen that includes a reference to “CHI-Cat-In-A-Box – Galveston-Mobile” futures. More

importantly, the additional evidence serves to address the specific issue raised by Examining Attorney's recent brief, as to an acceptable specimen. The Examining Attorney does not dispute that Applicant's Investment Services are services and that Applicant is rendering Applicant's Investment Services; however, the Examining Attorney only states that the specimens of record failed to show use of the Mark as a source identifier of Applicant's Investment Services. Accordingly, Applicant seeks to introduce a substitute specimen to address this issue. In support of these substitute specimens, Applicant provides an explanation and context regarding use of the substitute specimens. See Ex. 2.

**C. Granting Suspension and Remand Will Promote Efficiency and Conserve the Board's Resources.**

Applicant has no interest in wasting the time and efforts of either the Board or the Examining Attorney, especially where the outstanding issue may easily be resolved by a simple remand for examination of additional evidence to the Examining Attorney. In this regard, Applicant is not seeking to simply supplement the record, but seeks to submit evidence that could dispositively resolve the appeal. For example, Applicant believes, when properly considered in light of the circumstances, that the Examining Attorney will find that the additional evidence shows the use of the CHI Mark as a source identifier of Applicant's Investment Services and the appeal will be moot. The Board's caselaw generally affords applicants greater leniency regarding specimens for service marks and the Examining Attorneys can, and should consider, Applicant's explanations of use of the specimens. "[T]he Board has been fairly flexible in accepting service mark specimens." *In re PrintCo, Inc.*, Ser. No. 78155673, 2006 WL 2066578, \*3 (T.T.A.B. 2006); Trademark Manual of Examining Procedure Section 1301.04(b). In the

interest of efficiency alone, the Board should suspend and remand to avoid the need to conduct an oral hearing and more importantly, to avoid spending time and resources evaluating the parties' briefs and rendering a decision. Accordingly, the Board should exercise its discretion and suspend the appeal and remand the application to the Examining Attorney for further examination based on additional evidence.

## **CONCLUSION**

Based upon the foregoing, Applicant respectfully requests that the Board grant its request to suspend the appeal and remand the application to the Examining Attorney for further examination based on additional evidence submitted by Applicant with this request. Applicant's request is timely and Applicant has demonstrated the requisite good cause to grant this request. If the Board declines this request, Applicant requests that the Board provide Applicant with ten (10) days from the date of its decision to file its reply brief pursuant to TBMP § 1203.02(c) and request an oral hearing. Upon granting Applicant's Motion, Applicant requests that the Examining Attorney forward its Request for Further Examination to the Examining Attorney for consideration.

Respectfully submitted,

**CHICAGO MERCANTILE  
EXCHANGE INC.**

Dated: December 9, 2013

By:

/Tatyana V. Gilles/

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ATTORNEYS FOR APPLICANT

# Exhibit 1

## Chapter 423 CME Hurricane Index Futures

### 42300. SCOPE OF CHAPTER

This chapter is limited in application to CME Hurricane Index™ ("CHI"™) futures. In addition to this chapter, CHI futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

### 42301. CONTRACT SPECIFICATIONS

CHI values will be calculated by MDA Information Systems, Inc., using the methods described in the CME Hurricane Index: "Scope and Definitions" document, for hurricanes making landfall in the following locations:

- Eastern US (Brownsville, TX to Eastport, ME)

Separate futures contracts will be listed for trading on named hurricanes that make landfall in a specific location (e.g., Eastern US between January 1 and December 31 inclusive of a calendar year. At the beginning of each season storm names are used from a list, starting with A and ending with Z, maintained by the World Meteorological Organization. In the event that more than 21 named storms occur in a season, additional storms will take names from the Greek alphabet: Alpha, Beta, Gamma, Delta, and so on.

### 42302. TRADING SPECIFICATIONS

#### 42302.A. Trading Schedule

Futures contracts shall be scheduled for trading during such hours in such months as may be determined by the Exchange.

#### 42302.B. Trading Unit

The size of the unit of trading shall be \$1,000 times the respective CHI.

#### 42302.C. Price Increments

The minimum price fluctuation on the respective CHI futures shall be 0.1 index point, and have a value of \$100.

#### 42302.D. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

#### 42302.E. [Reserved]

#### 42302.F. [Reserved]

#### 42302.G. Termination of Trading

Futures trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following the last forecast/advisory issued by the National Hurricane Center ("NHC") for the named storm, provided that both the NHC and the Hydrometeorological Prediction Center have stopped issuing advisories for that named storm, but in no event shall trading terminate prior to the first Exchange Business Day that is at least five calendar days following January 1, or later than the first Business Day that is at least five calendar days following December 31. If a particular named storm is unused (i.e. that storm has not formed), trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following December 31.

#### 42302.H. [Reserved]

#### 42302.I. [Reserved]

**42303. SETTLEMENT PROCEDURES****42303.A. Final Settlement Price**

All futures contracts remaining open at the termination of trading shall be settled using the respective CHI final value reported by MDA Information Systems, Inc. for that named storm, using the methodology in effect on that date and the NHC data from the Public Advisories issued through the life of the named storm.

For example, on August 30, 2005, the last NHC Advisory on Hurricane Katrina was issued; therefore on September 6, 2005, the Eastern US contract for Hurricane Katrina would have been settled at 20.4 CHI index points, using data from the NHC's Hurricane Katrina Advisories Number 9 (Florida landfall, CHI = 1.4) and Number 26A (Louisiana landfall, CHI = 19.0).

**42303.B. Final Settlement**

Clearing members holding open positions in a **CHI futures contract** at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

**42304. [RESERVED]****42305.-06. [RESERVED]**

(End Chapter 423)

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO CHAPTER 423****LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

## Chapter 423A

### Options on CME Hurricane Index Futures

#### 423A00. SCOPE OF CHAPTER

This chapter is limited in application to trading in put and call options on CME Hurricane Index™ (“CHI”™) futures. In addition to this chapter, options on CHI futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

#### 423A01. OPTIONS CHARACTERISTICS

##### 423A01.A. Contract Months and Trading Hours

Options contracts shall be listed for such contract months and scheduled for trading during such hours as may be determined by the Exchange.

##### 423A01.B. Trading Unit

The trading unit shall be an option to buy, in the case of the call, or to sell, in the case of the put, one respective CHI futures contract as specified in Chapter 423.

##### 423A01.C. Minimum Fluctuations

The price of an option shall be quoted in terms of the respective CHI. Each index point represents \$1,000. For example, a quote of 2 index points represents \$2,000. The minimum fluctuation shall be 0.1 CHI (also known as one tick), equal to \$100.

##### 423A01.D. [Reserved]

##### 423A01.E. Exercise Prices

Exercise prices shall be stated in terms of the respective CHI futures contract. Eligible exercise prices shall be at intervals of 1 index point (e.g., 10, 11, 12, etc.).

At the commencement of option trading in a contract month, the eligible put and call options are at intervals of 1 index point in a range of 0 to 30 index points. New options may be listed for trading up to and including the termination of trading.

The Exchange may modify the provisions governing the establishment of exercise prices as it deems appropriate.

##### 423A01.F. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

##### 423A01.G. [Reserved]

##### 423A01.H. [Reserved]

##### 423A01.I. Termination of Trading

Options trading shall terminate on the same date and time as the underlying futures contract.

##### 423A01.J. [Reserved]

#### 423A02. EXERCISE AND ASSIGNMENT

In addition to the applicable procedures and requirements of Chapter 7, the following shall apply to the exercise of CHI options.

##### 423A02.A. Exercise of Option by Buyer

An option may be exercised by the buyer on any Business Day the option is traded. Exercise of an option is accomplished by the clearing member representing the buyer presenting an Exercise Notice to the Clearing House by 7:00 p.m. on the day of exercise.

An option that is in the money and has not been liquidated prior to the termination of trading shall, in the absence of contrary instructions delivered to the Clearing House by 7:00 p.m. on the day of expiration by the clearing member representing the option buyer, be exercised automatically.

**423A02.B. Assignment**

Exercise notices accepted by the Clearing House shall be assigned through a process of random selection to clearing members with open short positions in the same series. A clearing member to which an exercise notice is assigned shall be notified thereof as soon as practicable after such notice is assigned by the Clearing House, but not later than 45 minutes before the opening of Regular Trading Hours in the underlying futures contract on the following Business Day.

The clearing member assigned an exercise notice shall be assigned a short position in the underlying futures contract if a call is exercised or a long position if a put is exercised. The clearing member representing the option buyer shall be assigned a long position in the underlying futures contract if a call is exercised and a short position if a put is exercised.

All such futures positions shall be assigned at a price equal to the exercise price of the option and shall be marked to market in accordance with Rule 814 on the Trading Day of acceptance by the Clearing House of the exercise notice.

**423A03. [RESERVED]**

(End Chapter 423A)

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO CHAPTER 423A**

**LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

## Chapter 427

### CME Hurricane Index Seasonal Futures

#### 42700. SCOPE OF CHAPTER

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) Seasonal futures. In addition to this chapter, CHI Seasonal futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

#### 42701. CONTRACT SPECIFICATIONS

CHI Seasonal values will be calculated by MDA Information Systems, Inc., using the methods described in the “CME Hurricane Index: Scope and Definitions” document, for hurricanes making landfall in the following locations:

- Gulf Coast (Brownsville, TX to AL/FL Border)
- Florida (AL/FL Border to Fernandina Beach, FL)
- Southern Atlantic Coast (Fernandina Beach, FL to NC/VA Border)
- Northern Atlantic Coast (NC/VA Border to Eastport, ME)
- Eastern US (Brownsville, TX to Eastport, ME)
- Gulf + Florida (Brownsville, TX to Fernandina Beach, FL)
- Florida Gold Coast (Card Sound Bridge, FL to Jupiter Inlet, FL)
- Florida + Southern Atlantic + Northern Atlantic (AL/FL Border to Eastport, ME)

Separate futures contracts will be listed for trading on the accumulated CHI final settlement values for all hurricanes that make landfall in a specific location (e.g., Gulf Coast) between January 1 and December 31 inclusive of a calendar year.

#### 42702. TRADING SPECIFICATIONS

##### 42702.A. Trading Schedule

Futures contracts shall be scheduled for trading during such hours in such months as may be determined by the Exchange.

##### 42702.B. Trading Unit

The size of the unit of trading shall be \$1,000 times the respective CHI Seasonal total.

##### 42702.C. Price Increments

The minimum price fluctuation on the respective CHI Seasonal futures shall be 0.1 index point, and have a value of \$100.

##### 42702.D. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

##### 42702.E. [Reserved]

##### 42702.F. [Reserved]

##### 42702.G. Termination of Trading

Futures trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following December 31.

##### 42702.H. [Reserved]

42702.I. [Reserved]

**42703. SETTLEMENT PROCEDURES**

**42703.A. Final Settlement Price**

All futures contracts remaining open at the termination of trading shall be settled using the respective CHI Seasonal final value reported by MDA Information Systems, Inc., using the methodology in effect on that date. For example, on January 5, 2006, the 2005 Gulf Coast Seasonal contract would have been settled at 28.9 CHI index points.

**42703.B. Final Settlement**

Clearing members holding open positions in a CHI Seasonal futures contract at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

**42704. [RESERVED]**

**42705.-06. [RESERVED]**

(End Chapter 427)

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO CHAPTER 427**

**LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

## Chapter 428

### CME Hurricane Index Seasonal Maximum Futures

#### 42800. SCOPE OF CHAPTER

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) Seasonal Maximum futures. In addition to this chapter, CHI Seasonal Maximum futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

#### 42801. CONTRACT SPECIFICATIONS

CHI Seasonal Maximum values will be calculated by MDA Information Systems, Inc., using the methods described in the “CME Hurricane Index: Scope and Definitions” document, for hurricanes making landfall in the following locations:

- Gulf Coast (Brownsville, TX to AL/FL Border)
- Florida (AL/FL Border to Fernandina Beach, FL)
- Southern Atlantic Coast (Fernandina Beach, FL to NC/VA Border)
- Northern Atlantic Coast (NC/VA Border to Eastport, ME)
- Eastern US (Brownsville, TX to Eastport, ME)
- Gulf + Florida (Brownsville, TX to Fernandina Beach, FL)
- Florida Gold Coast (Card Sound Bridge, FL to Jupiter Inlet, FL)
- Florida + Southern Atlantic + Northern Atlantic (AL/FL Border to Eastport, ME)

Separate futures contracts will be listed for trading on the maximum CHI final settlement value for hurricanes that make landfall in a specific location (e.g., Gulf Coast) between January 1 and December 31 inclusive of a calendar year.

#### 42802. TRADING SPECIFICATIONS

##### 42802.A. Trading Schedule

Futures contracts shall be scheduled for trading during such hours in such months as may be determined by the Exchange.

##### 42802.B. Trading Unit

The size of the unit of trading shall be \$1,000 times the respective CHI.

##### 42802.C. Price Increments

The minimum price fluctuation on the respective CHI seasonal maximum futures shall be 0.1 index point, and have a value of \$100.

##### 42802.D. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

##### 42802.E. [Reserved]

##### 42802.F. [Reserved]

##### 42802.G. Termination of Trading

Futures trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following December 31.

42802.H. [Reserved]

42802.I. [Reserved]

#### **42803. SETTLEMENT PROCEDURES**

##### **42803.A. Final Settlement Price**

All futures contracts remaining open at the termination of trading shall be settled using the respective CHI Seasonal Maximum final value reported by MDA Information Systems, Inc., using the methodology in effect on that date. For example, on January 5, 2006, the 2005 Gulf Coast Seasonal Maximum contract would have been settled at 19.0 CHI index points.

##### **42803.B. Final Settlement**

Clearing members holding open positions in a CHI Seasonal Maximum futures contract at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

**42804. [RESERVED]**

**42805.-06. [RESERVED]**

(End Chapter 428)

### **INTERPRETATIONS AND SPECIAL NOTICES RELATING TO CHAPTER 428**

#### **LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

# Exhibit 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:  CHICAGO MERCANTILE EXCHANGE INC.  Serial No.: 77/199,918  Filed: June 7, 2007  Mark: CHI	Examining Attorney:  Linda A. Powell  Law Office 106
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**REQUEST FOR FURTHER EXAMINATION AND CONSIDERATION OF ADDITIONAL  
EVIDENCE BY THE EXAMINING ATTORNEY**

**I. INTRODUCTION**

Applicant, Chicago Mercantile Exchange Inc. (“Applicant”), through its undersigned counsel, hereby files its Request for Further Examination and Consideration of Additional Evidence. Applicant submits herewith additional evidence that directly addresses the concern raised by the Examining Attorney in her appeal brief. Proper examination and consideration of this additional evidence warrants withdrawal of the refusal to register. Specifically, the Examining Attorney refused registration of Applicant’s CHI Mark on the basis that the specimens of record failed to show use as a service mark. Applicant hereby submits substitute specimens showing use of “CHI futures,” “CHI futures contract,” “CHI options” and CHI<sup>TM</sup>, which reflect a clear association between the CHI mark and Applicant’s investment services, namely, providing futures, options contracts related to hurricanes for trading on an exchange (“Investment Services”). As a result, these are acceptable specimens for service marks. Because the Board’s precedent mandates flexibility in examining specimens for service marks, the Examining Attorney should conclude the specimens are appropriate and the

refusal to register be withdrawn. Also, any doubt should be resolved in Applicant's favor. Accordingly, the application should proceed to registration.

## **II. BACKGROUND**

For purposes of this Request for Further Examination, Applicant will not detail the application's prior prosecution history. Instead, Applicant simply states that Examining Attorney's appeal brief significantly narrowed the issue on appeal. The appeal solely focuses on the acceptability of Applicant's specimens of record. Therefore, if Applicant submits a suitable specimen, the appeal will be rendered moot and the parties will not need to prepare for and participate in an oral hearing.

Applicant is a self-regulatory organization and its Rulebook provides the regulatory framework for the trading of Applicant's products. The CME Rulebook is a critical component of its overall organization and available at Applicant's website at <http://www.cmegroup.com/rulebook/CME/>. The Rulebook provides detailed information regarding each of the different financial products traded through Applicant's exchange, such as the CHI futures and options contracts. Individuals looking to trade any of Applicant's products will likely consult the Rulebook. Specific to this appeal are hurricane-related futures and options contracts. Applicant's target customers for these products are sophisticated individuals and entities, such as hedge funds, insurers, energy companies, utility companies, hotel corporations and other commercial enterprises that might be affected by hurricanes. See Applicant's Br., p. 5. These customers trade the hurricane-related futures and options contracts as part of their risk management and prior to trading likely seek to understand the rules and limits associated with such financial products. *Id.*

Applicant requested suspension of the appeal and remand for consideration of additional evidence. The additional evidence primarily consists of substitute specimens that show the use of Applicant's CHI Mark as a source identifier of Applicant's Investment Services and information regarding use and context of Applicant's substitute specimens. Applicant's substitute specimens are attached hereto as Exhibit 1 ("Substitute Specimens"). The Substitute Specimens are select portions from Applicant's Rulebook and specifically govern the trading of hurricane futures and options under the CHI trademark. The information in this Rulebook is a critical component regarding the trading of these contracts. For example, the Rulebook provides information to Applicant's customers, such as traders and institutions, regarding the terms of the specific CHI futures or options contract, settlement positions, etc. CHI futures and options contracts are purchased and traded by sophisticated individuals and entities and are not traded on a whim. Instead, CHI futures and options contracts typically form an important component of a customer's overall risk management requiring the customer to consider the risk, trading unit, price increments, and settlement procedures prior to purchasing any such CHI futures or options contracts. Finally, the Substitute Specimens were in use in commerce prior to the expiration of the filing deadline for filing a Statement of Use.

### **III. ARGUMENT**

#### **A. The Board Will Grant Deference to Applicant on Specimens and Any Doubt Will Be Resolved in Favor of Applicant.**

As stated in Applicant's appeal brief, "the Board has been fairly flexible in accepting service mark specimens." *In re PrintCo, Inc.*, 2006 WL 2066578, at \*3; App. Br., Section III(E). For example, the Board demonstrated its flexible approach as to

service marks because of the inherent difficulty of proving use of a service mark. See, e.g., *In re Ralph Mantia*, 54 U.S.P.Q.2d 1284 (T.T.A.B. 2000) (applicant's specimen of letterhead stationery was found acceptable even though it only stated the word "design" and did not indicate the specific nature of applicant's services, commercial art design). Moreover, to the extent that the Board has any doubt on the question of whether the specimens of record are acceptable to show Applicant's use of the CHI Mark, this doubt will be resolved in favor of Applicant. *In Re Btio*, Ser. No. 75/712,224, 2001 WL 873280 (T.T.A.B. 2001).

On this basis, the Examining Attorney should consider the Board's flexible approach in evaluating the present Substitute Specimens and not apply any stringent rules. Moreover, if there is any doubt, then the Examining Attorney should resolve this doubt in favor of the Applicant. See App. Br., Section III(F).

**B. Service Mark Specimens Need Only Show An Association Between the Mark and the Services.**

The standard of review for service mark specimens is quite simple: there must be an association between the service mark and the services. TMEP Section 1301.04. As stated above, there are no stringent requirements for service mark specimens. In the present case, the Substitute Specimens need only show use of the CHI mark in connection with the Investment Services, namely, a hurricane futures or options contracts.<sup>1</sup> Examples of acceptable service mark specimens include: brochures, advertisements, menus, letterhead and invoices because they show use of the mark in connection with the rendering or advertising of services. *Id.*

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<sup>1</sup> While Applicant disagrees with Examining Attorney's prior refusal and arguments and reserves all such arguments, Applicant focuses the present request on the substitute specimens.

### **C. Applicant's Substitute Specimens Are Acceptable.**

Attached hereto as Exhibit 1 are Substitute Specimens that show the CHI Mark as used in the sale, rendering, or advertising of Applicant's Investment Services. See Exhibit 1. These specimens were in use at the time the Statement of Use was filed. The Substitute Specimens show a direct association between the offer of Applicant's Investment Services and Applicant's CHI Mark and there is sufficient reference to Applicant's Investment Services to create such association. Therefore, Applicant's Mark is used in such a manner that it would be readily perceived as identifying the source of Applicant's Investment Services.

Specifically, Exhibits 1 consists of select excerpts from the "CME Rulebook," which provide a common regulatory framework for Applicant's customers and more importantly directly associate Applicant's CHI Mark with Applicant's Investment Services. Throughout these excerpts, there are sufficient references to Applicant's Investment Services, namely: "futures," "futures contract," "options," "seasonal futures," "seasonal maximum futures," and "seasonal maximum futures contract." These specimens show direct association between the offer of Applicant's Investment Services and CHI Mark because Applicant's Mark is used immediately next to the description of Applicant's Investment Services, namely, futures and options contracts, e.g. "CHI futures," "CHI futures contract," "CHI options," "CHI seasonal futures," "CHI seasonal maximum futures," and "CHI seasonal maximum futures contract." Therefore, the commercial impression created by the specimens is that CHI is an investment service, namely a futures or options contract. Examples of such use from the Substitute Specimens are identified below.

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) futures. In addition to this chapter, CHI futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

The minimum price fluctuation on the respective CHI futures shall be 0.1 index point, and have a value of \$100.

Clearing members holding open positions in a CHI futures contract at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

This chapter is limited in application to trading in put and call options on CME Hurricane Index™ (“CHI”™) futures. In addition to this chapter, options on CHI futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

The trading unit shall be an option to buy, in the case of the call, or to sell, in the case of the put, one respective CHI futures contract as specified in Chapter 423.

Exercise prices shall be stated in terms of the respective CHI futures contract. Eligible exercise prices shall be at intervals of 1 index point (e.g., 10, 11, 12, etc.).

In addition to the applicable procedures and requirements of Chapter 7, the following shall apply to the exercise of CHI options.

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) Seasonal futures. In addition to this chapter, CHI Seasonal futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

Clearing members holding open positions in a CHI Seasonal futures contract at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) Seasonal Maximum futures. In addition to this chapter, CHI Seasonal Maximum futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

As stated above, Applicant’s Rulebook is commonly used by Applicant’s customers and is a critical component of Applicant’s Investment Services. For example, a customer looking to trade a CHI futures or options contract must know the trading unit, minimum price fluctuation and other regulations and would likely consult the

Substitute Specimens to identify this information. In addition, this information advertises the benefits of the Applicant's CHI futures and options contracts. The Substitute Specimens can be considered a brochure that describes Applicant's Services and shows use of the CHI Mark. Similarly, like a customer at a restaurant, Applicant's Substitute Specimens serves as a menu for customers to assist in their decision-making process. The Substitute Specimens are not documents ignored by Applicant's customers, but key components.

In light of the foregoing, the Substitute Specimens show direct association between the offer of Applicant's Investment Services and Applicant's CHI Mark. A customer viewing Applicant's Substitute Specimens would readily perceive Applicant's Mark as identifying the source of Applicant's Investment Services. Simply put, as a self-regulated organization, Applicant must provide the basic rules and framework for trading its products. Without this consistency, the trading could not take place. Applicant's customers utilize these Substitute Specimens to identify the risk and potential reward in purchasing Applicant's CHI futures or options contracts.

Therefore, the Substitute Specimens satisfy all of the requirements of a service mark specimen because they create a direct association between the CHI Mark and Applicant's Investment Services. Rejection of the Substitute Specimens is unacceptable and not consistent with Board's approach and rules regarding service mark specimens.

#### **IV. CONCLUSION**

The Board precedent encourages flexible examination of specimens for service marks and any doubt should be resolved in favor of the Applicant. The Substitute Specimens show clear use of CHI Mark as the source identifier for the provision of the

Applicant's Investment Services, namely futures and options contracts. Therefore, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register, accept the Substitute Specimens submitted by Applicant and allow the application to proceed to registration. As a result, the pending appeal would be moot.

The Examining Attorney is urged to telephone Applicant's counsel directly with any further issues or concerns.

Respectfully submitted,

**CHICAGO MERCANTILE  
EXCHANGE INC.**

Dated: December 9, 2013

By:

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ATTORNEYS FOR APPLICANT

# Exhibit 1

## Chapter 423 CME Hurricane Index Futures

### 42300. SCOPE OF CHAPTER

This chapter is limited in application to CME Hurricane Index™ ("CHI"™) futures. In addition to this chapter, CHI futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

### 42301. CONTRACT SPECIFICATIONS

CHI values will be calculated by MDA Information Systems, Inc., using the methods described in the CME Hurricane Index: "Scope and Definitions" document, for hurricanes making landfall in the following locations:

- Eastern US (Brownsville, TX to Eastport, ME)

Separate futures contracts will be listed for trading on named hurricanes that make landfall in a specific location (e.g., Eastern US between January 1 and December 31 inclusive of a calendar year. At the beginning of each season storm names are used from a list, starting with A and ending with Z, maintained by the World Meteorological Organization. In the event that more than 21 named storms occur in a season, additional storms will take names from the Greek alphabet: Alpha, Beta, Gamma, Delta, and so on.

### 42302. TRADING SPECIFICATIONS

#### 42302.A. Trading Schedule

Futures contracts shall be scheduled for trading during such hours in such months as may be determined by the Exchange.

#### 42302.B. Trading Unit

The size of the unit of trading shall be \$1,000 times the respective CHI.

#### 42302.C. Price Increments

The minimum price fluctuation on the respective CHI futures shall be 0.1 index point, and have a value of \$100.

#### 42302.D. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

#### 42302.E. [Reserved]

#### 42302.F. [Reserved]

#### 42302.G. Termination of Trading

Futures trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following the last forecast/advisory issued by the National Hurricane Center ("NHC") for the named storm, provided that both the NHC and the Hydrometeorological Prediction Center have stopped issuing advisories for that named storm, but in no event shall trading terminate prior to the first Exchange Business Day that is at least five calendar days following January 1, or later than the first Business Day that is at least five calendar days following December 31. If a particular named storm is unused (i.e. that storm has not formed), trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following December 31.

#### 42302.H. [Reserved]

#### 42302.I. [Reserved]

**42303. SETTLEMENT PROCEDURES****42303.A. Final Settlement Price**

All futures contracts remaining open at the termination of trading shall be settled using the respective CHI final value reported by MDA Information Systems, Inc. for that named storm, using the methodology in effect on that date and the NHC data from the Public Advisories issued through the life of the named storm.

For example, on August 30, 2005, the last NHC Advisory on Hurricane Katrina was issued; therefore on September 6, 2005, the Eastern US contract for Hurricane Katrina would have been settled at 20.4 CHI index points, using data from the NHC's Hurricane Katrina Advisories Number 9 (Florida landfall, CHI = 1.4) and Number 26A (Louisiana landfall, CHI = 19.0).

**42303.B. Final Settlement**

Clearing members holding open positions in a **CHI futures contract** at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

**42304. [RESERVED]****42305.-06. [RESERVED]**

(End Chapter 423)

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO CHAPTER 423****LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

## Chapter 423A

### Options on CME Hurricane Index Futures

#### 423A00. SCOPE OF CHAPTER

This chapter is limited in application to trading in put and call options on CME Hurricane Index™ (“CHI”™) futures. In addition to this chapter, options on CHI futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

#### 423A01. OPTIONS CHARACTERISTICS

##### 423A01.A. Contract Months and Trading Hours

Options contracts shall be listed for such contract months and scheduled for trading during such hours as may be determined by the Exchange.

##### 423A01.B. Trading Unit

The trading unit shall be an option to buy, in the case of the call, or to sell, in the case of the put, one respective CHI futures contract as specified in Chapter 423.

##### 423A01.C. Minimum Fluctuations

The price of an option shall be quoted in terms of the respective CHI. Each index point represents \$1,000. For example, a quote of 2 index points represents \$2,000. The minimum fluctuation shall be 0.1 CHI (also known as one tick), equal to \$100.

##### 423A01.D. [Reserved]

##### 423A01.E. Exercise Prices

Exercise prices shall be stated in terms of the respective CHI futures contract. Eligible exercise prices shall be at intervals of 1 index point (e.g., 10, 11, 12, etc.).

At the commencement of option trading in a contract month, the eligible put and call options are at intervals of 1 index point in a range of 0 to 30 index points. New options may be listed for trading up to and including the termination of trading.

The Exchange may modify the provisions governing the establishment of exercise prices as it deems appropriate.

##### 423A01.F. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

##### 423A01.G. [Reserved]

##### 423A01.H. [Reserved]

##### 423A01.I. Termination of Trading

Options trading shall terminate on the same date and time as the underlying futures contract.

##### 423A01.J. [Reserved]

#### 423A02. EXERCISE AND ASSIGNMENT

In addition to the applicable procedures and requirements of Chapter 7, the following shall apply to the exercise of CHI options.

##### 423A02.A. Exercise of Option by Buyer

An option may be exercised by the buyer on any Business Day the option is traded. Exercise of an option is accomplished by the clearing member representing the buyer presenting an Exercise Notice to the Clearing House by 7:00 p.m. on the day of exercise.

An option that is in the money and has not been liquidated prior to the termination of trading shall, in the absence of contrary instructions delivered to the Clearing House by 7:00 p.m. on the day of expiration by the clearing member representing the option buyer, be exercised automatically.

**423A02.B. Assignment**

Exercise notices accepted by the Clearing House shall be assigned through a process of random selection to clearing members with open short positions in the same series. A clearing member to which an exercise notice is assigned shall be notified thereof as soon as practicable after such notice is assigned by the Clearing House, but not later than 45 minutes before the opening of Regular Trading Hours in the underlying futures contract on the following Business Day.

The clearing member assigned an exercise notice shall be assigned a short position in the underlying futures contract if a call is exercised or a long position if a put is exercised. The clearing member representing the option buyer shall be assigned a long position in the underlying futures contract if a call is exercised and a short position if a put is exercised.

All such futures positions shall be assigned at a price equal to the exercise price of the option and shall be marked to market in accordance with Rule 814 on the Trading Day of acceptance by the Clearing House of the exercise notice.

**423A03. [RESERVED]**

(End Chapter 423A)

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO CHAPTER 423A**

**LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

## Chapter 427

### CME Hurricane Index Seasonal Futures

#### 42700. SCOPE OF CHAPTER

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) Seasonal futures. In addition to this chapter, CHI Seasonal futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

#### 42701. CONTRACT SPECIFICATIONS

CHI Seasonal values will be calculated by MDA Information Systems, Inc., using the methods described in the “CME Hurricane Index: Scope and Definitions” document, for hurricanes making landfall in the following locations:

- Gulf Coast (Brownsville, TX to AL/FL Border)
- Florida (AL/FL Border to Fernandina Beach, FL)
- Southern Atlantic Coast (Fernandina Beach, FL to NC/VA Border)
- Northern Atlantic Coast (NC/VA Border to Eastport, ME)
- Eastern US (Brownsville, TX to Eastport, ME)
- Gulf + Florida (Brownsville, TX to Fernandina Beach, FL)
- Florida Gold Coast (Card Sound Bridge, FL to Jupiter Inlet, FL)
- Florida + Southern Atlantic + Northern Atlantic (AL/FL Border to Eastport, ME)

Separate futures contracts will be listed for trading on the accumulated CHI final settlement values for all hurricanes that make landfall in a specific location (e.g., Gulf Coast) between January 1 and December 31 inclusive of a calendar year.

#### 42702. TRADING SPECIFICATIONS

##### 42702.A. Trading Schedule

Futures contracts shall be scheduled for trading during such hours in such months as may be determined by the Exchange.

##### 42702.B. Trading Unit

The size of the unit of trading shall be \$1,000 times the respective CHI Seasonal total.

##### 42702.C. Price Increments

The minimum price fluctuation on the respective CHI Seasonal futures shall be 0.1 index point, and have a value of \$100.

##### 42702.D. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

##### 42702.E. [Reserved]

##### 42702.F. [Reserved]

##### 42702.G. Termination of Trading

Futures trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following December 31.

##### 42702.H. [Reserved]

42702.I. [Reserved]

**42703. SETTLEMENT PROCEDURES**

**42703.A. Final Settlement Price**

All futures contracts remaining open at the termination of trading shall be settled using the respective CHI Seasonal final value reported by MDA Information Systems, Inc., using the methodology in effect on that date. For example, on January 5, 2006, the 2005 Gulf Coast Seasonal contract would have been settled at 28.9 CHI index points.

**42703.B. Final Settlement**

Clearing members holding open positions in a CHI Seasonal futures contract at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

**42704. [RESERVED]**

**42705.-06. [RESERVED]**

(End Chapter 427)

**INTERPRETATIONS AND SPECIAL NOTICES  
RELATING TO CHAPTER 427**

**LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.

## Chapter 428 CME Hurricane Index Seasonal Maximum Futures

### 42800. SCOPE OF CHAPTER

This chapter is limited in application to CME Hurricane Index™ (“CHI”™) Seasonal Maximum futures. In addition to this chapter, CHI Seasonal Maximum futures shall be subject to the general rules and regulations of the Exchange insofar as applicable.

For purposes of this chapter, unless otherwise specified, times referred herein shall refer to and indicate Chicago time.

### 42801. CONTRACT SPECIFICATIONS

CHI Seasonal Maximum values will be calculated by MDA Information Systems, Inc., using the methods described in the “CME Hurricane Index: Scope and Definitions” document, for hurricanes making landfall in the following locations:

- Gulf Coast (Brownsville, TX to AL/FL Border)
- Florida (AL/FL Border to Fernandina Beach, FL)
- Southern Atlantic Coast (Fernandina Beach, FL to NC/VA Border)
- Northern Atlantic Coast (NC/VA Border to Eastport, ME)
- Eastern US (Brownsville, TX to Eastport, ME)
- Gulf + Florida (Brownsville, TX to Fernandina Beach, FL)
- Florida Gold Coast (Card Sound Bridge, FL to Jupiter Inlet, FL)
- Florida + Southern Atlantic + Northern Atlantic (AL/FL Border to Eastport, ME)

Separate futures contracts will be listed for trading on the maximum CHI final settlement value for hurricanes that make landfall in a specific location (e.g., Gulf Coast) between January 1 and December 31 inclusive of a calendar year.

### 42802. TRADING SPECIFICATIONS

#### 42802.A. Trading Schedule

Futures contracts shall be scheduled for trading during such hours in such months as may be determined by the Exchange.

#### 42802.B. Trading Unit

The size of the unit of trading shall be \$1,000 times the respective CHI.

#### 42802.C. Price Increments

The minimum price fluctuation on the respective CHI seasonal maximum futures shall be 0.1 index point, and have a value of \$100.

#### 42802.D. Position Limits, Exemptions, Position Accountability and Reportable Levels

The applicable position limits and/or accountability levels, in addition to the reportable levels, are set forth in the Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5.

A Person seeking an exemption from position limits for bona fide commercial purposes shall apply to the Market Regulation Department on forms provided by the Exchange, and the Market Regulation Department may grant qualified exemptions in its sole discretion.

Refer to Rule 559 for requirements concerning the aggregation of positions and allowable exemptions from the specified position limits.

#### 42802.E. [Reserved]

#### 42802.F. [Reserved]

#### 42802.G. Termination of Trading

Futures trading shall terminate at 9:00 a.m. on the first Exchange Business Day that is at least five calendar days following December 31.

42802.H. [Reserved]

42802.I. [Reserved]

#### **42803. SETTLEMENT PROCEDURES**

##### **42803.A. Final Settlement Price**

All futures contracts remaining open at the termination of trading shall be settled using the respective CHI Seasonal Maximum final value reported by MDA Information Systems, Inc., using the methodology in effect on that date. For example, on January 5, 2006, the 2005 Gulf Coast Seasonal Maximum contract would have been settled at 19.0 CHI index points.

##### **42803.B. Final Settlement**

Clearing members holding open positions in a CHI Seasonal Maximum futures contract at the termination of trading in that contract shall make payment to or receive payment from the Clearing House in accordance with normal variation performance bond procedures based on a settlement price equal to the final settlement price.

**42804. [RESERVED]**

**42805.-06. [RESERVED]**

(End Chapter 428)

### **INTERPRETATIONS AND SPECIAL NOTICES RELATING TO CHAPTER 428**

#### **LIMITATION OF LIABILITY AND DISCLAIMER**

MDA Information Systems, Inc. ("MDA", formerly "Earth Sat") makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of the Data in connection with the trading of futures contracts, options on futures contracts or any other use. MDA makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the CHI. Without limiting any of the foregoing, in no event shall MDA have any liability for any special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages.