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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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Date	08/08/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Chicago Mercantile Exchange Inc. Serial No.: 77/199,918 Filing Date: June 7, 2007 Mark: CHI	Examining Attorney: Linda A. Powell Law Office 106
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**APPLICANT'S REPLY BRIEF IN SUPPORT OF REGISTRATION FOR THE MARK CHI IN
INTERNATIONAL CLASS 36**

Respectfully submitted,

**CHICAGO MERCANTILE
EXCHANGE INC.**

Dated: August 8, 2014

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ATTORNEYS FOR APPLICANT

I. INTRODUCTION

This appeal boils down to one question: Do the specimens in the record show use of the CHI trademark in connection with the “investment services, namely, providing futures, options contracts related to hurricanes for trading on an exchange?” The answer is Yes. Therefore, the Board should reverse the Examining Attorney’s refusal to register and allow the application to proceed to registration.

II. BACKGROUND

Because the Examining Attorney brief withdrew one of the prior refusals to register, the remaining issue on appeal is whether Applicant’s specimen sufficiently shows the mark CHI (“CHI Mark”) functioning as a service mark to identify and distinguish Applicant’s investment services, namely, providing futures, options contracts related to hurricanes for trading on an exchange” (“Investment Services”) from those of others and to indicate the source of those services. A detailed summary of the prosecution history is set forth in Applicant’s main brief. In the Examining Attorney’s opinion, the CHI Mark is not used in the specimens of record to identify the source of Applicant’s Investment Services. Applicant respectfully disagrees.

To address the new issues raised by the Examining Attorney and simplify the appeal, Applicant moved to remand the application for consideration of additional evidence in support of registration of the CHI mark, and the Board granted the motion. Specifically, Applicant submitted substitute specimens (“Substitute Specimens”) in its Request for Further Examination and Consideration to the Examining Attorney and provided supporting information on the use and function of the Substitute Specimens. *See* Dec. 9, 2013 Req. for Further Examination and Consideration. Ultimately, the Examining Attorney refused to accept this evidence and raised new issues regarding the submitted evidence. However, the record clearly shows use of the CHI Mark in connection with Investment Services and Examining Attorney’s arguments to the contrary are unsupported. Moreover, Examining Attorneys’ new objections to the evidence are

being addressed in a Request for Remand and Request for Further Consideration filed concurrently herewith.

III. ARGUMENT

A. Applicant's Substitute Specimens Clearly Show Use of the CHI Mark In Connection with the Identified Investment Services.

1. Applicant's Specimens Support Registration of the CHI Mark In Connection With Investment Services.

The standard of review for service mark specimens is simple: there must be an association between the service mark and the services. TMEP § 1301.04. There are no stringent requirements for service mark specimens. In the present case, the specimens need only show use of the CHI mark in connection with the Investment Services, namely, hurricane futures or options contracts. A specimen that shows the mark as used in the course of rendering or performing the services is also generally acceptable. Where the record shows that the mark is used in performing (as opposed to advertising) the services, a reference to the services on the specimen itself may not be necessary. *In re Metriplex Inc.*, 23 USPQ2d 1315 (TTAB 1992); TMEP § 1301.04. Based on the evidence contained in the record, the Examining Attorney acknowledges that the CHI mark “is used in connection with the applicant’s futures and options contracts” Ex. Brief p.4. Therefore, the Board should find the specimens of record acceptable.

The Examining Attorney’s substantive objection to the Substitute Specimens (attached hereto as Exhibit A) relates to whether the material constitutes advertising for the services or would be used by consumers in making purchasing decisions. “The Board has observed that use in the ‘rendition’ of services should be viewed as an element of the ‘sale’ of services under Section 45 of the [Trademark] Act.” *In re ICE Futures U.S., Inc.*, 85 USPQ2d 1664, 2008 WL 162813 (TTAB), at *5 (quoting *In re Red Robin Enterprises, Inc.*, 222 USPQ 911, 913 (TTAB 1984)). *See also In re Metriplex*, supra at 1316; *In re Eagle Fence Rentals, Inc.*, 231 USPQ 228, 330 (TTAB 1986). “Also, the Board has recognized that the service need not be referenced

explicitly even in a specimen which purports to show use of a mark in the advertisement of promotion of the services.” *Id.* “The context of use and the history of applicant’s exclusive use in the industry reflected in the record” may be sufficient to show an applicant’s use of its marks in connection with the identified services. *Id.*

Applicant’s specimens and Substitute Specimens clearly show Applicant’s CHI Mark used in the rendition of Applicant’s Investment Services, and immediately next to descriptions of Applicant’s Investment Services, namely, futures and options contracts, e.g. “CHI futures and options,” “CHI contract,” “CHI contracts,” and “CHI future.” The commercial impression created by each specimen is that CHI is an investment service, namely futures or options contracts. The fact that Applicant’s specimens do not feature the words “investment services” adjacent to the CHI mark in every specimen does not render every specimen insufficient. “In the case of a specimen intended to show use of the mark in the sale or ‘rendering’ of the services, the specimen need not and often will not include an explicit reference to the service. *Id.* (quoting *In re Metriplex* at 1316). See also *In re Int’l Envtl. Corp.*, 230 USPQ 688, 691 (TTAB 1986)(specimen showing use of mark in surveys used to promote service with no mention of “distributorship services” found acceptable). The following excerpt from Applicant’s Substitute Specimen definitively shows why the specimen is acceptable:

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.).

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.

2. Applicant’s Mark Can Cover Different Services.

The Examining Attorney misplaces focus on Applicant’s registration of the CHI mark in connection with certain index services, as identified in U.S. Reg. No. 4315763. Because of this registration, the Examining Attorney believes all use of the CHI mark refers to the index and ignores the other Investment Services. However, Applicant submits that its specimens show

the mark identifying *both* the services in this application and the services in Registration No. 4315763. As demonstrated in the record, Applicant uses the CHI Mark in connection with both types of services which are not mutually exclusive.

3. Examining Attorney's Case Law Fails to Support Her Position

The Examining Attorney's reliance on *In re Moody's Investors Services, Inc.* also is misplaced. 13 USPQ2d 2043 (TTAB 1989). *Moody's* sought to register "Aaa" as a service mark in connection with "providing ratings of fixed interest rate obligations." *Id.* at 2044. The Board found that "the symbol 'Aaa' would be perceived only as certifying that a particular bond is a safe investment," and not "as indicating the source of rating services." *Id.* at 2048. Further, the Board found that "'Moody's' provides rating services," and "Aaa" is merely "a rating assigned to a particular fixed interest rate obligation." *Id.* The present facts are distinguishable.

The Examining Attorney misunderstands Applicant's specimens and services because the following statement is incorrect: "the mark, 'CHI', is used *in connection with* the applicant's futures and options contracts in that the mark is used on *indexes* used for valuation of futures and options contracts." Ex. Brief p.4 (emphasis in original). When traded on financial exchanges, the CHI mark signals Applicant's two services; 1) compiling, providing, and updating a financial index measuring potential damage from a hurricane (the subject of U.S. Reg. No. 4315763), and 2) providing futures, options contracts related to hurricanes for trading on an exchange (the subject of this application). Simply put, CHI Mark is used to measure potential risk, and to offer contracts to willing buyers based on those risks.

Moreover, the Board's decision in *In re Moody's* shows that Applicant's CHI Mark is capable of registration as a service mark. The applicant in *In re Moody's* submitted a booklet including a list of its goods and services, and the goods and services appeared under "a subheading consisting of the mark 'Moody's' and matter describing that particular item (i.e., 'Moody's Manuals,' 'Moody's Trust and Estate Services,' etc.)." *In re Moody's* at 2046. Clearly, the mark *Moody's* functioned as a service mark. In that case, the Board found that the applicant

only used the mark “Aaa” as a rating symbol in the booklet, and not as a service mark. In contrast, Applicant’s use of the CHI mark, as shown in the prosecution history, more closely resembles use of the mark “Moody’s” than the mark “Aaa” because Applicant’s Rulebook contains numerous references to “CHI futures,” “CHI futures contracts,” and “CHI Seasonal Futures,” see Examiner’s Reconsideration Letter of July 14, 2014 (Exhibits). The specific use of “CHI-Cat-In-A-Box – Galveston-Mobile” is merely one category of contracts offered under the CHI mark. Applicant’s Specimen, April 5, 2013.

B. The Evidence Is Properly Before the Board for Consideration.

1. Applicant’s Evidence Is Proper.

The Examining Attorney found the substitute specimens unacceptable, and without further explanation, declared that the substitute specimens were “not information of the kind believed to be used by consumers for the futures and options contracts in making a purchasing decision.” Req. for Recon. Denied p.3. Furthermore, rather than provide any justification for the refusal, the Examining Attorney attacked Applicant’s attorney’s experience dealing in the affairs of the Applicant, claiming:

“The applicant’s attorney has made statements regarding the consumers for the applicant’s services and statements regarding how the substitute specimens are used by consumers. There is no actual proof to support these statements in the record, and there is no showing that the applicant’s attorney has expertise in this field.”

Id. at p.4. To support her position, the Examining Attorney relies upon the Board’s decision in *In re U.S. Tsubaki, Inc.*, 109 U.S.P.Q.2d 2002 (TTAB 2014); however, this decision is inapposite here. The *U.S. Tsubaki* case involved an attorney’s opinion of whether certain specimens showed a mark used in association with *goods* at the point-of-sale. *Id.* Here, Applicant, through its counsel, can certainly provide information regarding the operation of Applicant and the use of a Rulebook published by Applicant. Moreover, the actual documents submitted in the record describe the use of the CHI mark in Applicant’s Rulebook. These are not mere arguments before the Board, but Applicant’s own evidence submitted during the prosecution of the

application during remand of the application. Moreover, Applicant seeks to further clarify this information in its Request for Remand filed herewith.

More importantly, the U.S. trademark laws do not require submission of advertising specimens for service marks. Instead, there is a great deal of flexibility for service marks. One of the specimens provided is Applicant's Rulebook, which is used in connection with the rendering of services. Therefore, Examining Attorney's argument is unsupported.

2. Applicant Satisfied the Requisite Good Cause Requirement.

The Examining Attorney claims that Applicant's submission of the Substitute Specimen was untimely because Applicant did not show good cause to remand the application. Req. for Recon. Denied, p.3. To the contrary, Applicant demonstrated good cause for remanding the application in Applicant's Motion to Suspend of December 9, 2013. Applicant pointed out that the Examining Attorney raised a new issue in the Examiner's Brief regarding the specimen, and that a substitute specimen could address this issue while conserving the Board's resources. The Board agreed and granted the motion to remand on December 13, 2013. See Jurisdiction Restored / Remanded to Examiner.

3. Applicant Supports the Substitute Specimens.

The Examining Attorney rejected the Substitute Specimens because the Request for Further Examination lacked a declaration. In Applicant's Request for Further Examination, Applicant clearly stated that the "substitute specimens were in use in commerce prior to the expiration of the filing deadline for the Statement of Use." Examining Attorney's objection can be easily addressed and Applicant has submitted such a declaration via a Request for Remand and Request for Further Examination. If the Examining Attorney had a concern about such a declaration, she could have easily telephoned Applicant's counsel or issued an office action. This is a non-issue and should not be used to deny registration of the CHI Mark.

C. Doubt As To The Sufficiency Of The Substitute Specimen Should Be Resolved In Favor Of Applicant.

On remand, Applicant submitted substitute specimens showing 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 contract," and "CHI options." These specimens 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. The Substitute Specimens are select portions from Applicant's Rulebook, which governs 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.

As Applicant pointed out in its Appeal Brief, "the Board [has] 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 (TTAB 2000). 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. *See In Re Btio*, Ser. No. 75/712,224, 2001 WL 873280 (TTAB 2001).

IV. CONCLUSION

Concurrently herewith, Applicant has filed a further Request for Remand. In her denial of Applicant's Request for Further Examination, Examining Attorney identified new issues regarding acceptability of the specimens and Applicant has fully complied with these issues in the Request for Remand.

Because Applicant's CHI Mark is used in the specimens of record as the source identifier for the provision of the Applicant's Investment Services, Applicant respectfully requests that the Board reverse the Examining Attorney's refusal to register the CHI Mark, accept the specimens submitted by Applicant and allow the Application to proceed to the registration.

Respectfully submitted,

**CHICAGO MERCANTILE
EXCHANGE INC.**

Dated: August 8, 2014

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Exhibit A

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.