

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65781; File No. SR-CBOE-2011-101)

November 17, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify That CBSX Will Process Only Round-Lot Orders of HOLDRS

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 52.8 to clarify that CBOE Stock Exchange (“CBSX”), CBOE’s stock trading facility, will only process round-lot orders<sup>3</sup> of HOLDRS Trust Issued Receipts (“HOLDRS”) that trade on CBSX. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A “round-lot” order is an order for a quantity that is a multiple of 100 (e.g. 100, 400, 1200). An “odd-lot” order is an order for a quantity that is less than 100. A “mixed-lot” order is an order for a quantity that is greater than 100 but not a multiple of 100 (e.g. 135, 372, 1126).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 52.8 states that odd-lot orders (including the odd-lot portion of a mixed-lot order) are processed in the same manner as are round-lot orders, except (i) if an incoming odd-lot order trades against a quote in the CBSX Book, the new quantity remaining in the quote will be rounded down to the nearest lower round-lot amount (zero or multiple of 100) for display purposes, with the remaining odd-lot amount being cancelled, or (ii) if an incoming order trades against a limit order resting on the CBSX Book and an odd-lot amount remains from the limit order resting on the CBSX Book, that odd-lot amount will remain in the system eligible for execution but will not be displayed.

HOLDERS are Trust Issued Receipts that trade on CBSX and represent an investor's beneficial ownership of a specified group of stocks in various industries, sectors or groups.<sup>4</sup> Currently, CBSX processes odd-lot and mixed-lot orders of HOLDERS in accordance with

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<sup>4</sup> The following is a list of current outstanding HOLDERS: Biotech (BBH), Broadband (BDH), B2B Internet (BHH), Europe 2001 (EKH), Internet (HHH), Internet Architecture (IAH), Internet Infrastructure (IIH), Market 2000+ (MKH), Oil Services (OIH), Pharmaceutical (PPH), Regional Bank (RKH), Retail (RTH), Semiconductor (SMH), Software (SWH), Telecom (TTH), Utilities (UTH), and Wireless (WMH).

Rule 52.8, as described above. However, the prospectuses describing the terms of HOLDRS provide that investors may only acquire, hold, transfer, and surrender a round-lot of HOLDRS.<sup>5</sup> The purpose of the proposed rule change is to amend Rule 52.8 to state that CBSX will only process round-lot orders of HOLDRS that trade on CBSX in accordance with the trading terms of HOLDRS. CBSX will no longer accept odd-lot or mixed-lot orders of HOLDRS it receives.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and in general to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change serves to foster investor protection by ensuring that investors not only are aware of this restriction on transactions in HOLDRS but also comply with this restriction going forward, as CBSX will no longer accept transactions that do not.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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<sup>5</sup> The prospectuses also provide, however, that bid and ask prices are quoted per single HOLDR.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder<sup>9</sup> because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that such action is consistent with the protection of investors and the public interest, because it will enable the Exchange immediately to align its trading rules with respect to HOLDRS with provisions of the HOLDRS prospectuses. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>12</sup>

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-101 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2011-101 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).