



Information Circular 08-037

Date: October 29, 2008

Re: **HOLDRS Trusts**

BATS Exchange, Inc. ("BATS") commenced operating as a national securities exchange for trading non-BATS listed securities on October 24, 2008. As a result, in the near future the following HOLDRS ETFs ("HOLDRS") will be traded by BATS as an exchange on an unlisted trading privileges (UTP) basis for the first time:

Exchange Traded Fund	Symbol	CUSIP
Biotech HOLDRS	BBH	09067D201
Broadband HOLDRS	BDH	11130P104
B2B HOLDRS	BHH	056033103
Europe 2001 HOLDRS	EKH	29875G105
Internet HOLDRS	HHH	46059W102
Internet Architecture HOLDRS	IAH	46060A107
Internet Infrastructure HOLDRS	IIH	46059V104
Oil Services HOLDRS	OIH	678002106
Pharmaceutical HOLDRS	PPH	71712A206
Regional Bank HOLDRS	RKH	75902E100
Retail HOLDRS	RTH	76127U101
Semiconductor HOLDERS	SMH	816636203
Software HOLDRS	SWH	83404B103
Telecom HOLDRS	TTH	87927P200
Utilities HOLDRS	UTH	918019100

Background Information on the Funds

As more fully set forth in the Registration Statement and Prospectus for each HOLDRS Trust, each of the HOLDRS is designed to achieve diversification of investment in a specific underlying industry, sector or group through a single, exchange-listed instrument ("Depository Receipts") representing an undivided beneficial ownership in the common stock of a group of specified companies.

Each HOLDRS Trust holds shares of common stock issued by specified companies that, when initially selected, were involved in a specific underlying industry, sector or group. The Trusts were formed under a depository trust agreement and are not registered investment companies under the Investment Company Act of 1940. The Trusts' assets may increase or decrease as a result of in-kind deposits and withdrawals of the underlying securities during the life of the Trusts. The underlying stocks included in a HOLDRS do not change except for changes due to corporate events (such as spin-offs) or reconstitution events (such as mergers and acquisitions). When spin-offs and changes occur, the owner of a HOLDRS is treated exactly as if he or she owned the underlying stock directly. Thus, when an issuer spins off a new security, an owner of a HOLDRS will receive that security in his or her brokerage account outside of the HOLDRS investment.

Under no circumstances will the common stock of a new company be added to the common stocks underlying a series of HOLDRS. However, the assets of a HOLDRS Trust may increase or decrease as a result of in-kind deposits or withdrawals of the underlying securities during the life of the Trust.

HOLDERS may be acquired in two ways: (1) through an in-kind deposit of the required number of shares of common stock of the underlying issuers with the Trustee, or (2) through a cash purchase in the secondary trading market. The Trusts only will issue and cancel, and you only may obtain, hold, trade or surrender, HOLDERS in a round-lot of 100 HOLDERS and round-lot multiples. The Trusts will only issue HOLDERS upon the deposit of the whole shares represented by a round-lot of 100 HOLDERS. In the event that a fractional share comes to be represented by a round-lot of HOLDERS, the Trusts may require a minimum of more than one round-lot of 100 HOLDERS for an issuance so that the Trusts will always receive whole share amounts for issuance of HOLDERS.

The number of outstanding HOLDERS will increase and decrease as a result of in-kind deposits and withdrawals of the underlying securities. The Trusts will stand ready to issue additional HOLDERS on a continuous basis when an investor deposits the required shares of common stock with the Trustee.

The owner of HOLDERS has the right to withdraw the underlying securities, upon request, by delivering a round-lot or integral multiple of round-lot of HOLDERS to the Trustee and paying certain fees. In return, the underlying securities will be delivered in whole share amounts and cash will be delivered in lieu of fractional shares.

The Bank of New York, a New York state-chartered banking organization, is the trustee and custodian and receives compensation as set forth in the depositary trust agreements. The Trustee is responsible for receiving deposits of underlying securities and delivering HOLDERS representing the underlying securities issued by the Trusts. The Trustee holds the underlying securities on behalf of the Holders.

Owners of HOLDERS have the right to receive all shareholder disclosure materials and proxy materials distributed by the issuers of the underlying securities, and have the right to instruct the Trustee to vote the underlying securities. In addition, the Trustee distributes dividends and other payments that are declared and paid to the Trustee by the underlying securities, net of taxes or fees, to owners of HOLDERS.

Ownership of HOLDERS is maintained in book-entry form by or through The Depositary Trust Company. Beneficial owners of HOLDERS will not have the right to receive physical certificates evidencing their ownership.

The Federal Income Tax laws treat a U.S. holder of HOLDERS as directly owning the underlying securities. The HOLDERS themselves will not result in any Federal tax consequences separate from the tax consequences associated with ownership of the underlying securities.

The registration statements for the Trusts describe the various fees and expenses for the HOLDERS. For a more complete description of the HOLDERS and the underlying securities, visit www.HOLDERS.com.

Principal Risks

Interested persons are referred to the discussion in the prospectus for a series of HOLDERS of the principal risks of an investment in it. These include the risk of a decline in the value of the underlying securities, risks associated with concentrated investments in particular industry, sector, or group, the risk that the HOLDERS may trade at a discount to the aggregate value of the underlying securities, the risk that the underlying securities are not necessarily representative of the specified industry, sector or group and that diversification may be lost as a result of business developments, reorganizations, or market fluctuations, the volatility of stock prices in the specific industry, sector or group, risks associated with the need of specific companies to keep pace with rapid changes in technology in order to remain competitive, the possibility that laws, regulations, or lack of consumer acceptance could impede the growth and profitability of the specific industry, sector, or group. Please note that trading in HOLDERS during the pre-opening session may result in additional trading risks which include: (1) lower liquidity in the pre-opening session may impact pricing, (2) higher volatility in the pre-opening session may impact pricing, (3) wider spreads may occur in the pre-opening session.

Exchange Rules Applicable to Trading in HOLDRS

Trading in HOLDRS on BATS is subject to BATS equity trading rules.

Trading Hours

The HOLDRS will trade on BATS between 8:00 a.m. and 4:00 p.m. ET

Suitability

Trading in HOLDRS on BATS will be subject to applicable suitability rules.

Trading Halts

BATS will halt trading in HOLDRS in accordance with BATS Rule 14.1(c)(4). The grounds for a halt under BATS Rule 14.1(c)(4) include a halt by the primary market because of a halt in the trading of the underlying securities of the HOLDRS or a halt for other regulatory reasons. In addition, BATS will stop trading in a series of HOLDRS if the primary market de-lists it.

Delivery of a Prospectus

BATS Members should be mindful of applicable prospectus delivery requirements under the federal securities laws with respect to transactions in HOLDRS. Prospectuses may be obtained through the HOLDRS website. The prospectus for a series of HOLDRS does not contain all of the information set forth in its registration statement (including the exhibits to the registration statement), parts of which have been omitted in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC"). For further information about a series of HOLDRS, please refer to its registration statement.

In the event that a series of HOLDRS relies upon an order by the SEC exempting the series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and in the future make available a written product description, BATS Rule 14.1(c)(3) requires that BATS Members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Trust for the HOLDRS series, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, BATS Members shall include such a written description with any sales material relating to the Shares that is provided to customers or the public. Any other written materials provided by a BATS member to customers or the public making specific reference to the Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [*the UTP Derivative Securities*] has been prepared by the [*open-ended management investment company name*] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [*the UTP Derivative Securities*]."

A BATS member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to BATS member under this rule.

Upon request of a customer, BATS Members also shall provide a copy of the Prospectus.

This Information Circular is not a statutory prospectus. BATS Members should consult the prospectus for a series of HOLDRS and the HOLDRS website for relevant information.

Please contact Eric Swanson, 212.378.8523, eswanson@batstrading.com, with any inquiries regarding this Information Circular.