



## Information Circular: HOLDRS TRUSTS

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**To:** Head Traders, Technical Contacts, Compliance Officers, Head of ETF Trading, Structured Products Traders

**From:** William Slattery, Director, NASDAQ Listing Qualifications Department

**DATE:** March 1, 2007 **(Updated March 29, 2007)**

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The NASDAQ Stock Market LLC ("NASDAQ") began operating as a national securities exchange for trading non-NASDAQ listed securities on February 12, 2007. As a result, certain HOLDRS Trusts Depository Receipts ("HOLDRS") that have previously traded through our systems on an over-the-counter basis are being traded by NASDAQ as an exchange on an unlisted trading privileges (UTP) basis for the first time. An [Information Circular](#) with respect to some of the HOLDRS funds trading on NASDAQ was issued on February 14, 2007. **This Information Circular relates to the additional HOLDRS Funds listed in Appendix A (the "Funds").**

### 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 HOLDR 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 HOLDR 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 HOLDR 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.

HOLDRS 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, HOLDRS in a round-lot of 100 HOLDRS and round-lot multiples, except for CP HOLDRS, which may require the in-kind

deposit of the quantity and classes of securities in an amount to create integral multiples of 500 CP HOLDRS to represent beneficial ownership of the underlying securities in only whole share amounts. In the event that a fractional share comes to be represented by such exchanges, the Trusts may require more securities so that the Trusts will always receive whole share amounts for issuance of HOLDRS.

The number of outstanding HOLDRS 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 HOLDRS on a continuous basis when an investor deposits the required shares of common stock with the Trustee.

The owner of HOLDRS has the right to withdraw the underlying securities, upon request, by delivering a round-lot or integral multiple of round-lot of HOLDRS 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 for all HOLDRS except CP HOLDRS, the trustee and custodian of which is BNY Trust Company of Canada. The Trustees are responsible for receiving deposits of underlying securities and delivering HOLDRS representing the underlying securities issued by the Trusts. The Trustees hold the underlying securities on behalf of the HOLDRS.

Owners of HOLDRS 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 Trustees to vote the underlying securities. In addition, the Trustees distribute dividends and other payments that are declared and paid to the Trustees by the underlying securities, net of taxes or fees, to owners of HOLDRS.

Ownership of HOLDRS is maintained in book-entry form by or through The Depository Trust Company in the United States and BNY Trust Company of Canada in Canada. Beneficial owners of HOLDRS will not have the right to receive physical certificates evidencing their ownership.

The Federal Income Tax laws treat a U.S. holder of HOLDRS as directly owning the underlying securities. The HOLDRS 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 HOLDRS.

For a more complete description of the HOLDRS and the underlying securities, visit [www.HOLDRS.com](http://www.HOLDRS.com).

## **Principal Risks**

Interested persons are referred to the discussion in the prospectus for a series of HOLDRS 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 HOLDRS 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.

## **Exchange Rules Applicable to Trading in the HOLDRS**

Trading in the HOLDRS on NASDAQ is subject to [NASDAQ equity trading rules](#).

## **Trading Hours**

The HOLDRS will trade on NASDAQ between 7:00 a.m. and 8:00 p.m. ET.

## **Suitability**

Trading in the HOLDRS on NASDAQ will be subject to the provisions of [NASDAQ Rule 2310](#). Members recommending transactions in the HOLDRS to customers should make a determination that the recommendation is suitable for the customer. In addition, members must possess sufficient information to satisfy the "know your customer" obligation that is embedded in the NASDAQ Conduct Rules.

Members also should review [NASD Notice to Members 03-71](#) for guidance on trading these products. The Notice reminds members of their obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

## **Trading Halts**

NASDAQ will halt trading in a series of HOLDRS in accordance with [NASDAQ Rule 4120](#). The grounds for a halt under [NASDAQ Rule 4120](#) 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, NASDAQ will stop trading a series of HOLDRS if the primary market de-lists it.

## **Delivery of a Prospectus**

HOLDRs are Trust Issued Receipts within the meaning of [NASDAQ Rule 4420](#). Nasdaq requires that members provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

## **Short Sale Rules**

Market 2000+ HOLDRs and Wireless HOLDRs are currently not subject to the "tick" requirements of the SEC short sale rule (SEC Rule 10a-1) or the "bid" requirements of the NASDAQ short sale rule (NASDAQ Rule 3350). Short orders must be marked

SHORT or SHORT EXEMPT. (See paragraph below regarding Rule 200(g) of Regulation SHO.)

Trading of the CP HOLDERS on NASDAQ is subject to SEC Rule 10a-1 (the SEC short sale rule).

### **Rule 200(g) of Regulation SHO**

The SEC Division of Market Regulation has stated that the Division will not recommend enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks "short" rather than "short exempt" a short sale effected in HOLDERS that are exempt from Rule 10a-1 and Rule 3350, subject to specified conditions, including that a broker-dealer executing exempt short sales will mark such sales as "short" and in no event will such sales be marked "long". (See letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, SEC, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated January 3, 2005.)

**This Information Circular is not a statutory prospectus. NASDAQ members should consult the prospectus for a HOLDER and the HOLDERS' website at [www.HOLDERS.com](http://www.HOLDERS.com) for relevant information.**

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Inquiries regarding this Information Circular should be directed to:

- Will Slattery, Director, NASDAQ Listing Qualifications, at 301.978.8088
- NASDAQ Office of General Counsel at 301.978.8400
- NASDAQ Market Sales at 800.846.0477

## Appendix A – HOLDERS Trusts Depository Receipts

<b>Exchange-Traded Fund</b>	<b>Symbol</b>	<b>CUSIP Number</b>
Market 2000+ HOLDERS	MKH	57059Y204
Wireless HOLDERS	WMH	97653L208
CP HOLDERS	HCH	12616K106