

CBOE Holdings, Inc.
Form S-8
May 19, 2011

As filed with the Securities and Exchange Commission on May 19, 2011

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-8

Registration Statement

under

The Securities Act of 1933

CBOE HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-5446972
(I.R.S. employer
identification no.)

**400 South LaSalle Street
Chicago, Illinois 60605**

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(Address of principal executive offices, including zip code)

Amended and Restated CBOE Holdings, Inc. Long-Term Incentive Plan

(Full title of the plan)

Joanne Moffic-Silver
Executive Vice President, General Counsel

and Corporate Secretary

CBOE Holdings, Inc.
400 South LaSalle Street
Chicago, Illinois 60605

(Name and address of agent for service)

(312) 786-7462

(Telephone number, including area code, of agent for service)

With a copy to:

Michael T. Wolf, Esq.

Jenner & Block LLP

353 North Clark Street

Chicago, Illinois 60654-3456

(312) 222-9350

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE											
Title of Securities to be Registered		Amount to be registered		Proposed maximum offering price per share		Proposed maximum aggregate offering price		Amount of registration fee			
Unrestricted Common Stock, par value \$0.01 per share		1,759,458	(1)(2)	\$ 27.10	(3)	\$ 47,681,312	(3)	\$ 5,536	(3)		

(1) This registration statement registers an additional 1,759,458 shares issuable under the Registrant's Amended and Restated CBOE Holdings, Inc. Long-Term Incentive Plan (the Plan). 2,489,039 shares issuable under the Plan have previously been registered under Registration Statement No. 333-167506.

(2) Pursuant to Rule 416 of the Securities Act of 1933, this Registration Statement shall also cover any additional shares of Unrestricted Common Stock that become issuable under the Plan pursuant to this Registration Statement by reason of any stock dividend, stock split, recapitalization or any other similar transaction that results in an increase in the number of the Registrant's outstanding shares of Unrestricted Common Stock.

(3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act. Fee is based on the average high and low sales price of the Registrant's Unrestricted Common Stock on the NASDAQ Stock Market on May 13, 2011.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by CBOE Holdings, Inc. (the Registrant) are incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2010, File No. 001-34774;
- (b) The Registrant's Quarterly Report on Form 10-Q for the three months ended March 31, 2011, File No. 001-34774;
- (c) The Registrant's Current Report on Form 8-K, filed on May 18, 2011, File No. 001-34774; and
- (d) The description of the Registrant's Unrestricted Common Stock contained in the Registrant's Registration Statement on Form S-1 (File No. 333-165393), as incorporated by reference in the Registrant's Registration Statement on Form 8-A filed on June 11, 2010 (and any amendment or report filed for the purpose of updating such description).

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Pursuant to Section 145 of the Delaware General Corporation Law (the DGCL), a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than a derivative action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or serving at the request of such corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification

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shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to such corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses that such court shall deem proper.

To the extent a present or former director or officer is successful in the defense of such an action, suit or proceeding referenced above, or in defense of any claim, issue or matter therein, a corporation is required by the DGCL to indemnify such person for actual and reasonable expenses incurred in connection therewith. Expenses (including attorneys' fees) incurred by such persons in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon, in the case of a current officer or director, receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that such person is not entitled to be so indemnified.

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The DGCL provides that the indemnification described above shall not be deemed exclusive of other indemnification that may be granted by a corporation pursuant to its bylaws, disinterested directors' vote, stockholders' vote and agreement or otherwise.

Section 102(b)(7) of the DGCL enables a corporation, in its certificate of incorporation or an amendment thereto, to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. The Registrant's amended and restated certificate of incorporation provides for such limitations on liability for its directors.

The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above. The Registrant currently maintains liability insurance for its directors and officers. Such insurance is available to its directors and officers in accordance with its terms.

The Registrant's amended and restated certificate of incorporation requires the Registrant to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "covered person") who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he or she is or was a director, officer or member of a committee of the Registrant, or, while a director or officer of the Registrant, is or was serving at the request of the Registrant as a director or officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with a proceeding. Notwithstanding the foregoing, the Registrant shall be required to indemnify a covered person by this indemnity in connection with a proceeding (or part thereof) commenced by such covered person only if the commencement of such proceeding (or part thereof) by such covered person was authorized in the specific case by the board of directors of the Registrant.

In addition, under the Registrant's amended and restated certificate of incorporation, the Registrant shall, to the extent not prohibited by law, pay the expenses (including attorneys' fees) incurred by a covered person in defending a proceeding in advance of the final disposition of such proceeding; provided that the Registrant shall not be required to advance any expenses to a person against whom the Registrant directly brings an action, suit or proceeding alleging that such person (1) committed an act or omission not in good faith or (2) committed an act of intentional misconduct or a knowing violation of law. Additionally, an advancement of expenses incurred by a covered person shall be made only upon delivery to the Registrant of an undertaking, by or on behalf of such covered person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal or otherwise in accordance with Delaware law that such covered person is not entitled to be indemnified for such expenses.

The Registrant's amended and restated certificate of incorporation provides that if a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under the amended and restated certificate of incorporation is not paid in full within thirty days after a written claim therefor by the covered person has been received by the Registrant, the covered person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Registrant shall have the burden of proving that the covered person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Finally, the Registrant has entered into a Director Indemnification Agreement with each of its directors (the Agreement). In general, the Agreement provides that the Registrant will indemnify the director, to the fullest extent permitted by applicable law, against all expenses, judgments, fines and amounts paid in settlement (including all interest thereon) actually and reasonably incurred in connection with the director's service to, or at the request of, the Registrant. This indemnification is only available if the director acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Under the Agreement, no indemnification shall be made in respect of any claim, issue or matter as to which the director is judged liable to the Registrant unless the Delaware Court of Chancery determines that the director is fairly and reasonably entitled to indemnity for such expenses. In addition, the Agreement specifies those other matters for which the Registrant shall not be obligated

to make any indemnity, including with respect to any amount paid in settlement absent prior written consent to such settlement by the Registrant and amounts otherwise indemnifiable under any insurance policy or similar agreement.

In addition and subject to certain limitations, the Agreement provides for the advancement of expenses incurred by the director in connection with any proceeding covered by the Agreements to the extent not prohibited by law. In order to obtain such advancement, the director must provide the Registrant with an undertaking to repay all amounts if it is ultimately determined that the director is not entitled to indemnification for such expenses.

The Agreement does not exclude any other rights to indemnification or advancement of expenses to which the director may be entitled, including any rights arising under applicable law, the Registrant's amended and restated certificate of incorporation and bylaws, any other agreement or a vote of stockholders or resolution of directors, or otherwise.

The foregoing statements are subject to the detailed provisions of the DGCL, the full text of the Registrant's amended and restated certificate of incorporation, which is filed as Exhibit 4.1 hereto, and the Agreements, which were attached as Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on December 20, 2010.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits filed herewith or incorporated by reference herein are set forth in the Exhibit Index filed as part of this registration statement hereof.

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and each filing of the Plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois, on the 19th day of May, 2011.

CBOE HOLDINGS, INC.
(Registrant)

By: /s/ William J. Brodsky
William J. Brodsky
Chairman and Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints William J. Brodsky and Joanne Moffic-Silver as attorneys-in-fact and agents, with full power of substitution and re-substitution, to sign on his or her behalf, individually and in any and all capacities, including the capacities stated below, any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting to said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
/s/ William J. Brodsky William J. Brodsky	Chairman, Chief Executive Officer (Principal Executive Officer) and Director	May 19, 2011
/s/ Alan J. Dean Alan J. Dean	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)	May 19, 2011
/s/ David S. Reynolds David S. Reynolds	Chief Accounting Officer (Principal Accounting Officer)	May 19, 2011
/s/ James R. Boris James R. Boris	Director	May 19, 2011
/s/ Mark F. Duffy Mark F. Duffy	Director	May 19, 2011
/s/ David A. Fisher David A. Fisher	Director	May 19, 2011
/s/ Janet P. Froetscher Janet P. Froetscher	Director	May 19, 2011

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/s/ Paul Kepes
Paul Kepes

Director

May 19, 2011

/s/ Stuart J. Kipnes
Stuart J. Kipnes

Director

May 19, 2011

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SIGNATURE	TITLE	DATE
/s/ Duane R. Kullberg Duane R. Kullberg	Director	May 19, 2011
/s/ Benjamin R. Londergan Benjamin R. Londergan	Director	May 19, 2011
/s/ R. Eden Martin R. Eden Martin	Director	May 19, 2011
/s/ Roderick A. Palmore Roderick A. Palmore	Director	May 19, 2011
/s/ Susan M. Phillips Susan M. Phillips	Director	May 19, 2011
/s/ William R. Power William R. Power	Director	May 19, 2011
/s/ Samuel K. Skinner Samuel K. Skinner	Director	May 19, 2011
/s/ Carole E. Stone Carole E. Stone	Director	May 19, 2011
/s/ Eugene S. Sunshine Eugene S. Sunshine	Director	May 19, 2011

INDEX TO EXHIBITS

Exhibit Number	Exhibit
4.1	Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc. (incorporated by reference to Annex C to the Registration Statement on Form S-4 (Registration No. 333-140574) of the Registrant).
4.2	Amended and Restated Bylaws of CBOE Holdings, Inc. (incorporated by reference to Annex D to the Registration Statement on Form S-4 (Registration No. 333-140574) of the Registrant).
4.3	Amended and Restated CBOE Holdings, Inc. Long-Term Incentive Plan (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K of the Registrant, filed on May 18, 2011).
5	Opinion of Jenner & Block LLP.
23.1	Consent of Deloitte & Touche, LLP.
23.2	Consent of Jenner & Block LLP (contained in the Opinion filed as Exhibit 5).
24	Power of Attorney (set forth on the signature page).