



INFORMATION CIRCULAR: ELKHORN ETF TRUST

TO: Head Traders, Technical Contacts, Compliance Officers, Heads of ETF Trading, Structured Products Traders

FROM: NASDAQ / BX / PHLX Listing Qualifications Department

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EXCHANGE-TRADED FUND

SYMBOL CUSIP

Elkhorn S&P MidCap Consumer Discretionary Portfolio	XD	287711600
Elkhorn S&P MidCap Consumer Staples Portfolio	XS	287711709
Elkhorn S&P MidCap Energy Portfolio	XE	287771808
Elkhorn S&P MidCap Financials Portfolio	XF	287711881
Elkhorn S&P MidCap Health Care Portfolio	XH	287711873
Elkhorn S&P MidCap Industrials Portfolio	XI	287711865
Elkhorn S&P MidCap Information Technology Portfolio	XK	287711857
Elkhorn S&P MidCap Materials Portfolio	XM	287711840
Elkhorn S&P MidCap Utilities Portfolio	XU	287711832

BACKGROUND INFORMATION ON THE FUNDS

The Elkhorn ETF Trust (the "Trust") is a management investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"), consisting of several investment portfolios. This circular relates only to the Funds listed above (each, a "Fund" and together, the "Funds"). The shares of the Fund are referred to herein as "Shares." Elkhorn Investments, LLC (the "Adviser") is the investment adviser to the Funds.

Elkhorn S&P MidCap Consumer Discretionary Portfolio

The Elkhorn S&P MidCap Consumer Discretionary Portfolio (the "Consumer Discretionary Fund" or the "XD Fund") seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Consumer Discretionary Index (the "XD Index").

The XD Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. consumer discretionary companies that comprise the XD Index. The XD Index companies are mid-capitalization companies that are principally engaged in the businesses of providing consumer goods and services that are cyclical in nature, including, but not limited to, household durables, leisure products and services, apparel and luxury goods, computers and electronics, automobiles and auto components, hotel and restaurant services and television and

other entertainment goods and services. Pursuant to the XD Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XD Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XD Index. The XD Fund's investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XD Fund's performance and the performance of the XD Index; a figure of 1.00 would represent perfect correlation. S&P Opco LLC (a subsidiary of S&P Dow Jones Indices, LLC) ("S&P" or the "Index Provider") defines sectors according to the Global Industry Classification Standard ("GICS") and compiles, maintains and calculates the XD Index strictly in accordance with its guidelines and procedures.

The XD Fund generally invests in all of the securities comprising the XD Index in proportion to their weightings in the XD Index. Because the XD Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XD Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XD Index reflects a concentration in that industry or group of industries. The XD Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Consumer Staples Portfolio

The Elkhorn S&P MidCap Consumer Staples Portfolio (the "Consumer Staples Fund" or the "XS Fund") seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Consumer Staples Index (the "XS Index").

The XS Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. consumer staples companies that comprise the XS Index. The XS Index companies are mid-capitalization companies that are principally engaged in the business of providing consumer goods and services that have non-cyclical characteristics, including tobacco, food and beverage, and nondiscretionary retail. Pursuant to the XS Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XS Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XS Index. The XS Fund's investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XS Fund's performance and the performance of the XS Index; a figure of 1.00 would represent perfect correlation. S&P defines sectors according to the GICS and compiles, maintains and calculates the XS Index strictly in accordance with its guidelines and procedures.

The XS Fund generally invests in all of the securities comprising the XS Index in proportion to their weightings in the XS Index. Because the XS Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XS Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XS

Index reflects a concentration in that industry or group of industries. The XS Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Energy Portfolio

The Elkhorn S&P MidCap Energy Portfolio (the “Energy Fund” or the “XE Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Energy Index (the “XE Index”).

The XE Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. energy companies that comprise the XE Index. The XE Index companies are mid-capitalization companies that are principally engaged in the business of producing, distributing or servicing energy related products, including oil and gas exploration and production, refining, oil services and pipelines. Pursuant to the XE Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XE Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XE Index. The XE Fund’s investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XE Fund’s performance and the performance of the XE Index; a figure of 1.00 would represent perfect correlation. The Index Provider defines sectors according to the GICS and compiles, maintains and calculates the XE Index strictly in accordance with its guidelines and procedures.

The XE Fund generally invests in all of the securities comprising the XE Index in proportion to their weightings in the XE Index. Because the XE Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XE Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XE Index reflects a concentration in that industry or group of industries. The XE Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Financials Portfolio

The Elkhorn S&P MidCap Financials Portfolio (the “Financials Fund” or the “XF Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Financials Index (the “XF Index”).

The XF Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. financial service companies that comprise the XF Index. The XF Index companies are mid-capitalization companies that are principally engaged in the business of providing financial services and products, including banking, investment services, insurance and real estate finance services. Pursuant to the XF Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XF Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XF Index. The XF Fund’s investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XF Fund’s performance and the performance of the XF Index; a figure of 1.00 would represent perfect correlation. The Index Provider

defines sectors according to the GICS and compiles, maintains and calculates the XF Index strictly in accordance with its guidelines and procedures.

The XF Fund generally invests in all of the securities comprising the XF Index in proportion to their weightings in the XF Index. Because the XF Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XF Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XF Index reflects a concentration in that industry or group of industries. The XF Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Health Care Portfolio

The Elkhorn S&P MidCap Health Care Portfolio (the “Health Care Fund” or the “XH Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Health Care Index (the “XH Index”).

The XH Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. healthcare companies that comprise the XH Index. The XH Index companies are mid-capitalization companies that are principally engaged in the business of providing healthcare-related products, facilities and services, including biotechnology, pharmaceuticals, medical technology and supplies. Pursuant to the XH Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XH Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XH Index. The XH Fund’s investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XH Fund’s performance and the performance of the XH Index; a figure of 1.00 would represent perfect correlation. The Index Provider defines sectors according to the GICS and compiles, maintains and calculates the XH Index strictly in accordance with its guidelines and procedures.

The XH Fund generally invests in all of the securities comprising the XH Index in proportion to their weightings in the XH Index. Because the XH Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XH Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XH Index reflects a concentration in that industry or group of industries. The XH Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Industrials Portfolio

The Elkhorn S&P MidCap Industrials Portfolio (the “Industrials Fund” or the “XI Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Industrials Index (the “XI Index”).

The XI Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. industrial companies that comprise the XI Index. The XI Index companies are mid-capitalization companies that are principally engaged in the business of providing industrial products and services, including engineering, heavy machinery, construction, electrical equipment, aerospace and defense and general manufacturing. Pursuant to the XI Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XI Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XI Index. The XI Fund’s investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XI Fund’s performance and the performance of the XI Index; a figure of 1.00 would represent perfect correlation. The Index Provider defines sectors according to the GICS and compiles, maintains and calculates the XI Index strictly in accordance with its guidelines and procedures.

The XI Fund generally invests in all of the securities comprising the XI Index in proportion to their weightings in the XI Index. Because the XI Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XI Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XI Index reflects a concentration in that industry or group of industries. The XI Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Information Technology Portfolio

The Elkhorn S&P MidCap Information Technology Portfolio (the “Information Technology Fund” or the “XK Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Information Technology Index (the “XK Index”).

The XK Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. information technology companies that comprise the XK Index. The XK Index companies are mid-capitalization companies that are principally engaged in the business of providing information technology-related products and services, including computer hardware and software, Internet, electronics and semiconductors, and communication technologies. Pursuant to the XK Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XK Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XK Index. The XK Fund’s investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XK Fund’s performance and the performance of the XK Index; a figure of 1.00 would represent perfect correlation. The Index Provider defines sectors according to the GICS and compiles, maintains and calculates the XK Index strictly in accordance with its guidelines and procedures.

The XK Fund generally invests in all of the securities comprising the XK Index in proportion to their weightings in the XK Index. Because the XK Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XK Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XK Index reflects a concentration in that industry or group of industries. The XK Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Materials Portfolio

The Elkhorn S&P MidCap Materials Portfolio (the “Materials Fund” or the “XM Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Materials Index (the “XM Index”).

The XM Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. materials companies that comprise the XM Index. The XM Index companies are mid-capitalization companies that are principally engaged in the business of producing raw materials, including paper or wood products, chemicals, construction materials, and mining and metals. Pursuant to the XM Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XM Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XM Index. The XM Fund’s investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XM Fund’s performance and the performance of the XM Index; a figure of 1.00 would represent perfect correlation. The Index Provider defines sectors according to the GICS and compiles, maintains and calculates the XM Index strictly in accordance with its guidelines and procedures.

The XM Fund generally invests in all of the securities comprising the XM Index in proportion to their weightings in the XM Index. Because the XM Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XM Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XM Index reflects a concentration in that industry or group of industries. The XM Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries.

Elkhorn S&P MidCap Utilities Portfolio

The Elkhorn S&P MidCap Utilities Portfolio (the “Utilities Fund” or the “XU Fund”) seeks investment results that generally correspond (before fees and expenses) to the price and yield of the S&P MidCap 400 Capped Utilities Index (the “XU Index”).

The XU Fund generally will invest at least 90% of its total assets in common stocks of mid-capitalization U.S. utility companies that comprise the XU Index. The XU Index companies are mid-capitalization companies that are principally engaged in providing either energy, water, electric or natural gas utilities or providing telecommunications services. Pursuant to the XU Index, mid-capitalization companies have a market capitalization of \$1.4 to \$5.9 billion. The XU Fund, using an indexing investment approach, attempts to replicate, before fees and expenses, the performance of the XU Index. The XU Fund's investment adviser seeks a correlation of 0.95 or better (before fees and expenses) between the XU Fund's performance and the performance of the XU Index; a figure of 1.00 would represent perfect correlation. The Index Provider defines sectors according to the GICS and compiles, maintains and calculates the XU Index strictly in accordance with its guidelines and procedures.

The XU Fund generally invests in all of the securities comprising the XU Index in proportion to their weightings in the XU Index. For more information on the XU Index, please refer to the Index Provider section later in this prospectus. Because the XU Fund is non-diversified and can invest a greater portion of its assets in securities of individual issuers than a diversified fund, changes in the market value of a single investment could cause greater fluctuations in Share price than would occur in a diversified fund.

The XU Fund will concentrate its investments (i.e., invest more than 25% of the value of its total assets) in securities of issuers in any one industry or group of industries only to the extent that the XU Index reflects a concentration in that industry or group of industries. The XU Fund will not otherwise concentrate its investments in securities of issuers in any one industry or group of industries

For more information regarding each Fund's investment strategy, please read the prospectus for the Funds.

As described more fully in the Trust's prospectus and Statement of Additional Information ("SAI"), the Funds issue and redeem Shares at net asset value ("NAV") only in large blocks of 50,000 to 50,000 Shares (each block of Shares called a "Creation Unit"). As a practical matter, only broker-dealers or large institutional investors with creation and redemption agreements (called Authorized Participants) can purchase or redeem these Creation Units. Except when aggregated in Creation Units, the Shares may not be redeemed with the Funds.

Shares are held in book-entry form, which means that no Share certificates are issued. The Depository Trust Company or its nominee is the record owner of all outstanding Shares of the Funds and is recognized as the owner of all Shares for all purposes.

The NAV per Share for each Fund is computed by dividing the value of the net assets of the Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund is determined each business day after the close of trading (ordinarily 4:00 p.m., Eastern Time or "ET") of the New York Stock Exchange. Any assets or liabilities denominated in currencies other than the U.S. dollar are converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The registration statement for the Funds describes the various fees and expenses for the Funds' Shares. For a more complete description of the Funds and the underlying indexes, visit the Funds' website at www.elkhorn.com.

PURCHASES AND REDEMPTIONS IN CREATION UNIT SIZE

NASDAQ members, BX members and PHLX members and member organizations are hereby informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Trust's prospectus and Statement of Additional Information and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

PRINCIPAL RISKS

Interested persons are referred to the discussion in the prospectus for the Funds of the principal risks of an investment in the Funds. These include tracking error risk (factors causing a Fund's performance to not match the performance of its underlying index), market trading risk (for example, trading halts, trading above or below net asset value), active market risk, consumer discretionary sector risk, consumer staples sector risk, equity securities risk, fluctuation of net asset value risk, index risk, market making risk, market risk, mid-capitalization risk, new fund risk, non-correlation risk, non-diversification risk, food and beverage industry concentration risk, energy sector risk, mid-capitalization risk, oil and gas services industry concentration risk, banking industry concentration risk, mortgage REIT risk, healthcare sector risk, industrials sector, information technology sector risk, basic materials sector risk, and utilities sector risk.

EXCHANGE RULES APPLICABLE TO TRADING IN THE SHARES

Trading in the Shares on NASDAQ is on a UTP basis and is subject to NASDAQ equity trading rules. Trading of the Shares on BX is on a UTP basis and is subject to BX equity trading rules. Trading of the Shares on PHLX's PSX system is on a UTP basis and is subject to PHLX rules.

TRADING HOURS

The values of each index underlying the Shares are disseminated to data vendors every 15 seconds. The Shares will trade on NASDAQ between 7:00 a.m. and 8:00 p.m. ET. The Shares will trade on BX between 8:00 a.m. and 7:00 p.m. ET. The Shares will trade on PSX between 9:00 a.m. and 5:00 p.m. ET. For trading during each market's pre-market and post-market sessions, market participants should note that additional risks may exist with respect to trading the Funds during these sessions, when the underlying index's values, intraday indicative value, or similar value may not be disseminated or calculated.

DISSEMINATION OF FUND DATA

The Consolidated Tape Association will disseminate real time trade and quote information for the Funds to Tape B.

Fund Name	Listing Market	Trading Symbol	IOPV Symbol	NAV Symbol
Elkhorn S&P MidCap Consumer Discretionary Portfolio	BATS	XD	XD.IV	XD.NV
Elkhorn S&P MidCap Consumer Staples Portfolio	BATS	XS	XS.IV	XS.NV
Elkhorn S&P MidCap Financials Portfolio	BATS	XF	XF.IV	XF.NV
Elkhorn S&P MidCap Health Care Portfolio	BATS	XH	XH.IV	XH.NV
Elkhorn S&P MidCap Industrials Portfolio	BATS	XI	XI.IV	XI.NV
Elkhorn S&P MidCap Information Technology Portfolio	BATS	XK	XK.IV	XK.NV
Elkhorn S&P MidCap Materials Portfolio	BATS	XM	XM.IV	XM.NV
Elkhorn S&P MidCap Energy Portfolio	BATS	XE	XE.IV	XE.NV
Elkhorn S&P MidCap Utilities Portfolio	BATS	XU	XU.IV	XU.NV

SUITABILITY

Trading in the Shares on NASDAQ will be subject to the provisions of NASDAQ Rule 2310. Trading in the Shares on BX will be subject to the provisions of BX Equity Rule 2310. Shares trading on PSX will be subject to the provisions of PHLX Rule 763. Members and member organizations recommending transactions in the Shares 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 both the NASDAQ Conduct Rules and the BX Conduct Rules.

NASDAQ members, BX members and PHLX members and member organizations should also 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 the Shares of a Fund in accordance with NASDAQ Rule 4120. BX will halt trading in the Shares of a Fund in accordance with BX Equity Rule 4120. PHLX will halt trading in the Shares of a Fund in accordance with PHLX Rule 3100. The grounds for a halt under these rules include a halt by the primary market because the intraday indicative value of the Fund, the value of its underlying index, or a similar value are not being disseminated as required, or a halt for other regulatory reasons. In addition, NASDAQ, BX and PHLX will also stop trading the Shares of a Fund if the primary market delists the Fund.

DELIVERY OF A PROSPECTUS

NASDAQ members, BX members and PHLX members and member organizations should be mindful of applicable prospectus delivery requirements under the federal securities laws with respect to transactions in the Funds.

Prospectuses may be obtained through the Funds’ website. The prospectus for the Funds does not contain all of the information set forth in the Funds’ 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 the Funds, please refer to the registration statement.

In the event that the Funds rely upon an order by the SEC exempting the Shares from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and in the future make available a written product description, NASDAQ Rules 5705 and 5740, BX Equity Rules 4420 and 4421, and PHLX Rule 803 require that members and member organizations, respectively, 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 Funds, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, members and member organizations 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 members or member organizations 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 Shares of the Fund has been prepared by the Trust and is available from your broker. It is recommended that you obtain and review such circular before purchasing Shares of the Fund. In addition, upon request you may obtain from your broker a prospectus for Shares of the Fund."

Any NASDAQ, BX or PHLX member or member organization 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 NASDAQ members, BX members and PHLX members or member organizations under this rule.

Upon request of a customer, NASDAQ members, BX members and PHLX members or member organizations shall provide a copy of the prospectus.

EXEMPTIVE, INTERPRETIVE AND NO-ACTION RELIEF UNDER FEDERAL SECURITIES REGULATIONS

The SEC has issued exemptive, interpretive or no-action relief from certain provisions of rules under the Securities Exchange Act of 1934 (the "Act") regarding trading in the above mentioned exchange-traded Funds.

REGULATION M EXEMPTIONS

Generally, Rules 101 and 102 of Regulation M prohibit any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of the Rules apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities.

The SEC has granted an exemption from Rule 101 under Regulation M to permit persons participating in a distribution of shares of the above-mentioned Funds to engage in secondary market transactions in such shares during their participation in such a distribution. In addition, the SEC has granted relief under Regulation M to permit persons who may be deemed to be participating in the distribution of Shares of the above-mentioned Funds (i) to purchase securities for the purpose of purchasing Creation Unit Aggregations of Fund Shares and (ii) to tender securities for redemption in Creation Unit Aggregations. Further, the SEC has clarified that the tender of Fund Shares to the Funds for redemption does not constitute a bid for or purchase of any of the Funds' securities during the restricted period of Rule 101. The SEC has also granted an exemption pursuant to paragraph (e) of

Rule 102 under Regulation M to allow the redemption of Fund Shares in Creation Unit Aggregations during the continuous offering of Shares.

CUSTOMER CONFIRMATIONS FOR CREATION OR REDEMPTION OF FUND SHARES (SEC RULE 10B-10)

Broker-dealers who handle purchases or redemptions of Fund Shares in Creation Unit size for customers will be permitted to provide such customers with a statement of the number of Creation Unit Aggregations created or redeemed without providing a statement of the identity, number and price of shares of the individual securities tendered to a Fund for purposes of purchasing Creation Unit Aggregations (“Deposit Securities”) or the identity, number and price of shares to be delivered by the Trust for the Fund to the redeeming holder (“Redemption Securities”). The composition of the securities required to be tendered to the Fund for creation purposes and of the securities to be delivered on redemption will be disseminated each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This exemptive relief under Rule 10b-10 with respect to creations and redemptions is subject to the following conditions:

- 1) Confirmations to customers engaging in creations or redemptions must state that all information required by Rule 10b-10 will be provided upon request;
- 2) Any such request by a customer for information required by Rule 10b-10 will be filed in a timely manner, in accordance with Rule 10b-10(c);
- 3) Except for the identity, number and price of shares of the component securities of the Deposit Securities and Redemption Securities, as described above, confirmations to customers must disclose all other information required by Rule 10b-10(a).

SEC RULE 14E-5

An exemption from Rule 14e-5 has been granted to permit any person acting as a dealer-manager of a tender offer for a component security of a Fund (1) to redeem Fund Shares in Creation Unit Aggregations from the issuer that may include a security subject to such tender offer and (2) to purchase Fund Shares during such tender offer. In addition, a no-action position has been taken under Rule 14e-5 if a broker-dealer acting as a dealer-manager of a tender offer for a security of a Fund purchases or arranges to purchase such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit Aggregations of Shares, if made in conformance with the following:

- 1) such bids or purchases are effected in the ordinary course of business, in connection with a basket of 20 or more securities in which any security that is the subject of a distribution, or any reference security, does not comprise more than 5% of the value of the basket purchased; or
- 2) purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of the underlying index; and

- 3) such bids or purchases are not effected for the purpose of facilitating such tender offer.

Section 11(d)(1); SEC Rules 11d1-1 and 11d1-2

Section 11(d)(1) of the Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. The SEC has clarified that Section 11(d)(1) does not apply to broker-dealers that are not Authorized Participants (and, therefore, do not create Creation Unit Aggregations) that engage in both proprietary and customer transactions in Shares of the Fund in the secondary market, and for broker-dealer Authorized Participants that engage in creations of Creation Unit Aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an Authorized Participant) does not, directly or indirectly, receive from the fund complex any payment, compensation or other economic incentive to promote or sell the Shares of a Fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(I)(5)(A), (B) or (C). (See [letter](#) from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.) The SEC also has taken a no-action position under Section 11(d)(1) of the Act that broker-dealers may treat Shares of a Fund, for purposes of Rule 11d1-2, as "securities issued by a registered open-end investment company as defined in the Investment Company Act" and thereby extend credit or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

SEC RULE 15C1-5 AND 15C1-6

The SEC has taken a no-action position with respect to Rule 15c1-5 and Rule 15c1-6 as to the required disclosure of control by a broker or dealer with respect to creations and redemptions of Fund Shares and secondary market transactions therein. (See [letter](#) from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.)

This Information Circular is not a statutory prospectus. NASDAQ members, BX members and PHLX members and member organizations should consult the Funds' prospectus and/or the Funds' website for relevant information.

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