



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

DATE: September 21, 2016

EXCHANGE-TRADED FUND

SYMBOL

CUSIP

Elkhorn Fundamental Commodity Strategy ETF

RCOM

287711824

BACKGROUND INFORMATION ON THE FUND

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 Elkhorn Fundamental Commodity Strategy ETF (the “Fund”). Elkhorn Investments, LLC (the “Adviser”) serves as the investment adviser to the Fund. The shares of the Fund are referred to herein as “Shares.”

The Fund is an actively managed ETF that seeks to achieve its investment objective by investing in financial instruments that provide economic exposure to a diverse group of the world’s most heavily traded commodities. Under normal market conditions, the Fund intends to invest in exchange-traded commodity futures contracts, centrally cleared and non-centrally cleared swaps, exchange-traded options on futures contracts and exchange-traded commodity linked instruments through a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands.

Unlike securities, commodities are assets that have tangible properties, such as oil, metal or agricultural products. The Fund’s investment in Commodities Instruments provides exposure to these commodities without requiring a direct investment. Federal tax laws limit registered investment companies, such as the Fund, from investing directly in physical commodities or Commodities Instruments. Therefore, the Fund will invest indirectly in Commodities Instruments via its wholly-owned Subsidiary. Such investment is expected to provide the Fund with exposure from Commodities Instruments within the limits of the federal tax laws, including Subchapter M of the Internal Revenue Code of 1986.

The Subsidiary is organized under the laws of the Cayman Islands. The Fund is the sole shareholder of the Subsidiary, which will not be sold or offered to other investors. The Subsidiary is overseen by its own board of directors. The Adviser serves as the Subsidiary’s investment adviser and manages the Subsidiary to comply with the compliance policies and procedures of the Fund. The Fund’s investment in the Subsidiary may not exceed 25% of the Fund’s total assets at each quarter end of

the Fund's fiscal year. The Subsidiary has the same investment objective as the Fund, but unlike the Fund, it is not an investment company registered under the 1940 Act and may invest without limitation in commodity-linked futures contracts. Like the Fund, the Subsidiary also may invest in cash or highly liquid securities intended to promote liquidity, serve as margin or collateralize the Subsidiary's positions in Commodities Instruments.

The Subsidiary will invest in exchange-traded commodity futures contracts, which generally are agreements between two parties where one party agrees to buy, and the counterparty to sell, a set amount of a physical commodity (or, in some contracts, a cash equivalent) at a pre-determined future date and price. The value of these futures contracts is based upon the price movements of their underlying commodities.

Futures contracts, by their terms, reflect the expected future value of a reference asset. Commodity-linked futures contracts reflect the value of price movements of the underlying commodity (which serves as the reference asset) on which the contract is based. These contracts are agreements between two parties where one party agrees to buy, and the other to sell, a set amount of reference asset (or, in some instances, a cash equivalent) at pre-determined price (the "spot price") on a pre-determined future date (the "expiration date"). As the expiration date for a futures contract draws closer, an investor wishing to maintain its exposure to that commodity will close out its position in the expiring futures contract and open a new position in a futures contract with a later expiration date. This process is referred to as "rolling." "Roll yield" refers to the amount of return generated by rolling a futures contract.

The Subsidiary will, under normal market circumstance, invest in those exchange-traded futures contracts that generally are components of the Benchmark. The Fund will seek excess return above the Benchmark, before Fund expenses are taken into account, solely through the active management of a short duration portfolio of highly liquid, high quality bonds.

The Benchmark, which is jointly compiled by S&P Dow Jones Indices and RAFI is a version of the Dow Jones Commodity Index, a broad-market commodity index with equally weighted sectors and liquidity weighted commodities. The Benchmark uses price momentum and roll yield to over or underweight the commodities held in the Dow Jones Commodity Index. The Benchmark utilizes a dynamic roll methodology based on liquidity and implied roll yield. For inclusion in the Benchmark, a futures contract must have an expiration date less than or equal to 24 months from the nearby most liquid contract. The futures contract must also have open interest of at least 5% of the total open interest of the nearby liquid contract, subject to annual review and adjustment as necessary for capacity. The roll occurs on the first through fifth business days with the monthly rebalancing. The Benchmark weighting is a modification of that used in the Dow Jones Commodity Index. In the Dow Jones Commodity Index, commodities are liquidity weighted and sectors are equal weighted. For the Benchmark, the basic weights are modified with over or underweighting applied based on fundamental factors represented by a 50/50 combination of momentum and roll yield. In addition, unlike the Dow Jones Commodity Index, the Benchmark does not have a capped component rule. This is to ensure that the impact of the momentum and roll yield factors is fully realized without constraints.

Reconstitution of the Benchmark occurs annually during the January roll. Currently the Benchmark consists of twenty-four commodity futures on physical commodities across three sectors: energy, agriculture and livestock and metals. The inception date of the Benchmark was September 10, 2014.

Although the Subsidiary generally holds all the components of the Benchmark, the Fund is not an “index tracking” ETF and instead seeks to exceed the performance of the Benchmark. Therefore, the Subsidiary may not invest in all of the Benchmark’s components or in the same proportion, may invest in Commodities Instruments outside the Benchmark, and, at times, may emphasize investments in some commodity sectors more than others.

The Subsidiary may also invest in Commodity-Related Assets that are expected to provide investment returns that are highly correlated to those of the Benchmark. These Commodity-Related Assets have values linked to the price movement of a commodity, commodity index, or futures contract. The Subsidiary will only invest in those Commodity-Related Assets that are based on the price of a relevant commodities future, and if such instruments tend to exhibit trading prices or returns that correlate with commodity futures that comprise the Benchmark and that further the investment objective of the Fund. The Fund is subject to legal requirements applicable to all mutual funds that are designed to reduce the effects of any leverage created by the use of derivative instruments.

The remainder of the Fund’s assets will primarily be invested in: (1) short-term investment grade fixed income securities that include U.S. government and agency securities, corporate debt obligations and repurchase agreements; (2) money market instruments; (3) certain bank instruments; and (4) cash and other cash equivalents. The Fund uses such instruments as investments to seek to exceed the performance of the Benchmark and to provide liquidity, serve as margin or otherwise collateralize the Subsidiary’s Commodities Instruments exposure on a day-to-day basis.

The Fund’s investment objective is a fundamental policy that may only be changed with shareholder approval. Unless an investment policy is identified as being fundamental, all investment policies included in the prospectus and the Fund’s Statement of Additional Information (“SAI”) are non-fundamental and may be changed by the Board of Trustees (the “Board”) of Elkhorn ETF Trust (the “Trust”), of which the Fund is a series, without shareholder approval. If there is a material change to the Fund’s principal investment strategies, you should consider whether the Fund remains an appropriate investment for you. There is no guarantee that the Fund will achieve its investment objective.

The CFTC has adopted certain requirements that subject registered investment companies and their advisers to regulation by the CFTC if a registered investment company invests more than a prescribed level of its NAV in CFTC-related futures, options and swaps, or if a registered investment company markets itself as providing investment exposure to such instruments. Because of the Fund’s use of these instruments above levels prescribed by the CFTC, it is considered a “commodity pool.” The Adviser is registered as a commodity pool operator and a commodity trading advisor and will manage both the Fund and the Subsidiary in accordance with CFTC rules, as well as the rules that apply to registered investment companies.

The Fund may not 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. This restriction will not apply

to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or securities of other investment companies.

Please read the Fund's prospectus for more information regarding its investment objectives.

As described more fully in the Trust's prospectus and Statement of Additional Information, the Fund will issue and redeem Shares on a continuous basis at their net asset value ("NAV") only in large blocks of 200,000 Shares (each, a "Creation Unit"). Creation Units will be issued and redeemed principally in-kind for securities included in the underlying index. Except when aggregated in Creation Units, the Shares may not be redeemed with the Fund.

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 the 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 Fund describes the various fees and expenses for the Fund's Shares. For a more complete description of the Fund and the underlying Index, visit the Fund's 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 Fund of the principal risks of an investment in the Fund. These include tracking error risk (factors causing the Fund's performance to not match the performance of the underlying index), market trading risk (for example, trading halts, trading above or below net asset value), active market risk, authorized participant concentration risk, below net asset value risk, benchmark risk, cash transactions risk, clearing broker risk, commodity risk, counterparty risk, credit risk, currency risk, cyber security risk, derivatives investment risk, foreign currency risk, futures risk, income risk, interest rate risk, liquidity risk, market maker risk, new fund risk, non-U.S. investment risk, options risk, pooled investment vehicle risk, regulatory change risk, regulatory risk, repurchase agreement risk, strategy risk, subsidiary investment risk, swaps risk, and volatility 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 Fund 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 Fundamental Commodity Strategy ETF	BATS	RCOM	RCOM.IV	RCOM.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 Fund.

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

In the event that the Fund relies 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 Fund, 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 Fund.

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 Fund 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 Fund (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 Fund for redemption does not constitute a bid for or purchase of any of the Fund’s 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 the 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 the 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 the 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 the Fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(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 the 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 Fund's prospectus and/or the Fund's website for relevant information.

Inquiries regarding this Information Circular should be directed to:

- Will Slattery, Listing Qualifications, at 301.978.8088
- NASDAQ / BX / PSX Market Sales, at 800.846.0477