



## Information Circular: Ziegler NYSE Arca Tech 100 Exchange-Traded Fund

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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 28, 2007

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Exchange-Traded Fund	Symbol	CUSIP Number
Ziegler NYSE Arca Tech 100 ETF	NXT	98951C106

### Background Information on the Fund

The Ziegler NYSE Arca Tech 100 (the "Fund"), is an exchange-traded fund that currently is the only existing portfolio of Ziegler Exchange Traded Trust (the "Trust"). The Trust is an investment company organized as a Delaware statutory trust under the Investment Company Act of 1940. Additional investment portfolios may be offered by the Trust in the future.

Ziegler Capital Management, LLC acts as investment advisor to the Fund and B.C. Ziegler and Company is the distributor of the shares of the Fund.

The Fund seeks to provide investment results that closely correspond to the performance of the NYSE Arca Tech 100 Index ("Index").

The Fund uses a passive management strategy, known as "replication," to track the performance of the Index, which consists of at least 100 individual technology-related securities. Through this replication strategy, the Fund will hold substantially all of the component securities included in the Index in approximately the same proportions as they are represented in the Index.

The Fund will generally select its component securities according to the following parameters: the Fund plans to replicate the Index. The Index consists of companies in a broad spectrum of industries that produce or deploy innovative technologies to conduct their business. At least 90% of the Fund's total assets (exclusive of collateral held for purposes of securities lending) will be invested in the component securities of the companies in the Index. The largest component of the Index consists of companies in the technology sector, such as companies in the software, hardware and semiconductor industries. However, the Index also includes companies in numerous other sectors and industries, such as aerospace & defense, health care equipment, biotechnology and others. Because the Index includes securities of several technology sector industries, the Fund will invest more than 25% of its total

assets in securities of companies in the technology sector (this practice is commonly referred to as being “concentrated” in a group of related industries). The Fund may invest up to 10% of its assets in securities not included in the Index, such as futures contracts, options on futures contracts, options and swaps as well as cash and cash equivalents.

The Fund may also lend securities in order to earn additional income. The Fund will maintain collateral in the form of cash or U.S. Treasury obligations against the loaned securities of at least 100% of the market value of the loaned securities during the period of the loan.

The Fund’s investment advisor, Ziegler Capital Management, LLC (the “Advisor”), expects that the Fund will have a tracking error relative to the performance of its respective Index of no more than five percent (5%), before taking into account operating fees or expenses.

Unlike traditional mutual funds, Fund shares (“Shares”) may be purchased and sold either directly from the Trust in an in-kind transaction, as described in the Fund’s Prospectus, or in the secondary market. However, given the structure of the Fund, most individual investors will not be able to purchase Shares of the Fund directly from the Trust but will need to purchase them in the secondary market.

The Trust will generally only sell and redeem Shares in large increments to certain participants in in-kind transactions, called Creation Units. Each Creation Unit will consist of 50,000 Shares and is expected to be worth several million dollars. In addition, only certain participants (“Authorized Participants”) in the Depository Trust Company or the Continuous Net Settlement System of the National Securities Clearing Corporation that have entered into a participant agreement with the Fund will be permitted to purchase Shares from or redeem them with the Trust. The Trust will offer and sell Creation Units of the Fund to Authorized Participants based upon the net asset value (“NAV”) of the Fund. The Fund will calculate its NAV once a day like traditional mutual funds and other exchange-traded funds. Individual Shares will not be sold or redeemed by the Trust.

Shares can also be purchased and sold in the secondary market in much smaller increments and for cash. These transactions, however, are not made at the Fund's NAV, but rather are made at market prices which may vary throughout the day and may differ from the Fund’s NAV. Like any listed security, exchange-traded fund shares can be purchased and sold at any time a secondary market is open.

The NAV per share of the Fund is determined daily by adding up the total value of the Fund’s investments and other assets and subtracting any of its liabilities, or debts, and then dividing by the number of outstanding shares of the Fund. The NAV per share is expected to be determined as of 4:00 p.m., Eastern Time (ET), on each day that the NYSE Arca Marketplace is open for trading.

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.nxt100.com](http://www.nxt100.com).

## **Purchases and Redemptions in Creation Unit Size**

NASDAQ members are hereby informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Trusts' prospectus and SAI, 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 Fund's prospectus of the principal risks of an investment in the Fund. These include, but are not limited to, 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), stock market risk, investment style risk, interest rate risk, concentration risk, non-diversification risk, issuer-specific risk, management risk, lack of market liquidity, and index risk.

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

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

## **Trading Hours**

The values of the 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, unless otherwise indicated.

## **Suitability**

Trading in the Shares on NASDAQ will be subject to the provisions of [NASDAQ Rule 2310](#). Members 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 the NASDAQ Conduct Rules.

Members also should review NASD [NASD Notice to Members 03-71](#) or 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 the Fund in accordance with [NASDAQ Rule 4120](#). The grounds for a halt under NASDAQ Rule 4120 include a halt by the primary market because the intraday indicative value of the Fund and/or the value of its underlying index are not being disseminated as required, or a halt for other regulatory reasons. In addition, NASDAQ will also stop trading the Shares of the Fund if the primary market de-lists the Fund.

## Delivery of a Prospectus

NASDAQ members 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 Fund 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 its 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 Rule 4420\(j\)\(2\)](#) requires that NASDAQ members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Trust for the Fund, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, NASDAQ members shall include such a written description with any sales material relating to the Shares that is provided to customers or the public. Any other written materials provided by a NASDAQ member to customers or the public making specific reference to the ETF 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."

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

Upon request of a customer, NASDAQ members also 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.

### **Short Sale Rules**

Transactions in ETFs will not be subject to "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.)

### **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 the Fund, 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.)

### **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 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 Fund to (i) purchase securities for the purpose of purchasing Creation Unit Aggregations of Fund Shares and (ii) 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 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 to (1) redeem Fund Shares in Creation Unit Aggregations from the issuer that may include a security subject to such tender offer and (2) 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 should consult the Fund's prospectus and/or the Fund's website at [www.nxt100.com](http://www.nxt100.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 Market Sales](#) at 800.846.0477