



<b>EDGA &amp; EDGX STOCK EXCHANGES</b>			
Regulatory Information Circular			
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**Subject: TDAX Independence 2010 ETF  
TDAX Independence 2020 ETF  
TDAX Independence 2030 ETF  
TDAX Independence 2040 ETF  
TDAX Independence In-Target ETF**

### **Background Information on the Funds**

TDAX Funds, Inc. is the investment company with respect to the underlying fund portfolios, as more fully explained in the Registration Statement (Nos. 811-22001 and 333-139872). Each Fund offers shares, known as TDAX Independence Target Date Shares™, which are not individually redeemable by the Funds but trade in individual share lots. Each Fund seeks to invest in a portfolio of securities that substantially replicates a particular benchmark index (the "Underlying Index"). XShares Advisors LLC (the "Advisor") serves as the investment adviser to the Fund.

According to the Funds' prospectus, each of the Underlying Indexes seeks an investment technique that starts by targeting a particular investment horizon ("Lifecycle Investing"). That investment horizon corresponds to the date the investor expects to need his or her invested assets. For some investors, that date may be the investor's expected retirement date. For other investors, it may be another life event, such as purchase of a vacation home, payment of college tuition or investment (typically, a fund) that is diversified among a variety of asset classes, such as stocks and bonds, to seek to prudently maximize capital appreciation at the target date. The fund automatically rebalances its investment portfolio, periodically altering the portfolio's allocations among each asset class, as the target date approaches to move over time from an aggressive portfolio construction to a more conservative portfolio construction at the target date. After the target date, the fund will periodically move from a conservative portfolio construction to a marginally less conservative portfolio construction. The Underlying Indexes are created by Zacks Investment Research ("Zacks").

Each Underlying Index will be administered by Zacks, which also serves as Index Administrator. As Index Administrator, Zacks will employ the Index Methodology to determine the composition of each Underlying Index. Bloomberg L.P. acts as "index calculation agent" for Zacks in connection with the calculation and dissemination of each Underlying Index. Amerivest Investment Management, LLC ("Amerivest") and BNY Investment Advisors ("BNY") act as investment sub-advisors to the Funds. BNY will be responsible for the day-to-day management of each Fund's portfolio, which involves principally reconfiguring the portfolio of each Fund annually, or quarterly when necessary, to reflect the reconfiguration of each Underlying Index by the Index Administrator. Amerivest will provide portfolio consulting to the Advisor and oversight over BNY, which involves reviewing the portfolio of securities of each Fund against its

respective Underlying Index, assisting in resolving any pricing issues and assisting in the development of trading strategies.

For the Underlying Index, the Index Administrator will employ the Index Methodology adjusts the relative weightings of each asset class within each Index, and may adjust the relative weightings of subsectors of one or more asset classes along the "Glidepath," gradually moving from a more aggressive to a more conservative allocation as the target date approaches, and then gradually back to a more Moderately-Conservative Allocation following the target date.

Shares of the Funds will be issued on a continuous offering basis in groups of Shares, or multiples thereof. These "groups" of shares are called "Creation Unit Aggregations." The Fund will issue and redeem Shares only in Creation Unit Aggregations of 200,000 Shares.

All orders to purchase Shares in Creation Unit Aggregations must be placed through an Authorized Participant. An Authorized Participant must be either a "Participating Party", *i.e.*, a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation Continuous Net Settlement System (the "Clearing Process"), or a Depository Trust Company participant, and in each case, must enter into a Participant Agreement. The Funds impose a transaction fee in connection with the issuance and redemption of Shares to offset transfer and other transaction costs.

The net asset value ("NAV") for the Funds will be calculated and disseminated daily. The Fund's NAV will be calculated by BNY Investment Advisors. The Fund's NAV will be published in a number of places, including [www.tdaxshares.com](http://www.tdaxshares.com), and on the Consolidated Tape. In addition, at least every 15 seconds during Exchange trading hours, the Intraday Indicative Value per TDAX Independence Target Date Shares™ will be disseminated.

The Funds registration statement describes the various fees and expenses for the Shares. For a more complete description of the Funds and the underlying indexes, visit [www.tdaxshares.com](http://www.tdaxshares.com).

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

Exchange members and member organizations are hereby informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Funds' 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 TDAX Independence Target Date Shares Prospectus of 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 the underlying index), stock market risk, index risk, small and mid capitalization risks, REIT risk, index sampling risk, market price risk, foreign security risk, secondary market risk, fixed income risk, derivatives risk.

### **Suitability**

Trading in the Shares on the Exchanges will be subject to the provisions of EDGA and EDGX Exchange Rules 3.7. 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 Exchange Rules 3.7.

Members also should review FINRA 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 Hours**

Trading in the shares on EDGA and EDGX Exchanges (the “Exchanges”) is on a UTP basis and is subject to the Exchanges’ equity trading rules. The shares will trade from 8:00 a.m. until 8:00 p.m. Eastern Time. Members trading the shares during the Extended Market Sessions (Pre-opening and Post-closing sessions) are exposed to the risk of the lack of the calculation or dissemination of underlying index value or intraday indicative value (“IIV”). For certain derivative securities products, an updated underlying index value or IIV may not be calculated or publicly disseminated in the Extended Market hours. Since the underlying index value and IIV are not calculated or widely disseminated during Extended Market hours, an investor who is unable to calculate implied values for certain derivative securities products during Extended Market hours may be at a disadvantage to market professionals.

### **Trading Halts**

The Exchanges will halt trading in the Shares of a Trust in accordance with Exchange Rules 14.1(c)(4). The grounds for a halt under this Rule include a halt by the primary market because it stops trading the Shares and/or a halt because dissemination of the IIV or applicable currency spot price has ceased, or a halt for other regulatory reasons. In addition, the Exchanges will stop trading the Shares of a Trust if the primary market de-lists the Shares.

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

The Shares are considered equity securities, thus rendering trading in the Shares subject to the Exchanges’ existing rules governing the trading of equity securities.

### **Delivery of a Prospectus**

Pursuant to federal securities laws, investors purchasing Shares must receive a prospectus prior to or concurrently with the confirmation of a transaction. Investors purchasing Shares directly from the Fund (by delivery of the Deposit Amount) must also receive a prospectus.

Prospectuses may be obtained through the Distributor or on the Fund’s website. The Prospectus does not contain all of the information set forth in the registration statement (including the exhibits to the registration statement), parts of which have been omitted in accordance with the rules and regulations of the SEC. For further information about the Fund, please refer to the Trust’s registration statement.

## **Exemptive, Interpretive and No-Action Relief Under Federal Securities Regulations**

The Commission has issued exemptive, interpretive and no-action relief from certain provisions of and rules under the Act applicable to trading in the above-mentioned Fund. Members and member organizations are referred to the SEC Letter dated October 24, 2006 from James Brigagliano, Associate Director, SEC Division of Market Regulation, to Stuart M. Strauss, Clifford, Chance (Class Action Relief for Exchange Traded Index Funds). A description of the SEC's exemptive relief follows; however, in the event of any discrepancy between this description and the SEC Letter, the text of the SEC Letter controls.

### **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 Commission issued a No-Action Letter by which persons participating in a distribution of shares of a fund may engage in secondary market transactions in such shares during their participation in such a distribution, despite the requirements of from Rule 101 under Regulation M. In addition, the Commission has permitted persons who may be deemed to be participating in the distribution of shares of a 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 Commission 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 Funds' securities during the restricted period of Rule 101. The Commission has issued a No-Action Letter to paragraph (e) of Rule 102 under Regulation M which 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 Units 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 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**

The Commission has permitted any person acting as a dealer-manager of a tender offer for a component security of 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 has been issued under Rule 14e-5 states that 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, it must be made in conformance with the following:

- i. 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
- ii. 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
- iii. 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 Commission 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 a 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 dated November 22, 2005 from Brian A Bussey, Assistant Chief Counsel, Division of Market Regulation, to Barclays Global Investors, N.A., dated November 22, 2005. The Commission has issued a No-Action Letter under Section 11(d)(1) of the Act states 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.

**This Regulatory Information Circular is not a statutory Prospectus. Members should consult the Trust's Registration Statement, SAI, Prospectus and the Fund's website for relevant information.**

## Appendix A

<b>Ticker</b>	<b>Fund Name</b>	<b>Cusip</b>
TDD	TDAX Independence 2010 ETF	87238A108
TDH	TDAX Independence 2020 ETF	87238A207
TDN	TDAX Independence 2030 ETF	87238A306
TDV	TDAX Independence 2040 ETF	87238A405
TDX	TDAX Independence In-Target ETF	87238A504