

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27610; 812-13224]

Ziegler Exchange Traded Trust, et al.; Notice of Application

December 22, 2006

Agency: Securities and Exchange Commission (“Commission”)

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of registered open-end management investment companies, to issue shares (“Fund Shares”) that can be redeemed only in large aggregations (“Creation Unit Aggregations”); (b) secondary market transactions in Fund Shares to occur at negotiated prices; (c) dealers to sell Fund Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (“Securities Act”); and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations.

Applicants: Ziegler Exchange Traded Trust (“Trust”); Ziegler Capital Management, LLC (“Advisor”); and B.C. Ziegler and Company (“Distributor”).

Filing Dates: The application was filed on August 16, 2005, and amended on June 5, 2006, November 17, 2006, and December 19, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, 250 East Wisconsin Avenue, Suite 2200, Milwaukee, WI 53202.

For Further Information Contact: Deepak T. Pai, Senior Counsel at (202) 551-6876, or Stacy L. Fuller, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-0102, telephone (202) 551-5850.

Applicants' Representations:

1. The Trust is registered as an open-end management investment company and is organized as a Delaware statutory trust that may offer multiple series ("Funds"). Each Fund will track an index of domestic equity securities ("Underlying Index"). The initial Fund ("Initial Fund") will track the NYSE Arca Tech 100 Index.

2. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Advisor will serve as the investment adviser to the Initial Fund. The Advisor may enter into sub-advisory agreements with other investment advisers to act

as “sub-advisers” with respect to the Funds. Any sub-adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”), will serve as the principal underwriter and distributor of Fund Shares.

3. Each Fund will hold certain U.S. equity securities (“Portfolio Securities”) including American Depository Receipts (“ADRs”) selected to correspond generally to the price and yield performance, before fees and expenses, of an Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, Advisor, Distributor, or promoter of or any sub-adviser to, a Fund. The Trust intends to offer additional Funds in the future based on other Underlying Indices (included in the defined term “Funds”). Any such future Funds will (a) comply with the terms and conditions of any order granted pursuant to the application and (b) be advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (included in the defined term “Advisor”). All Funds that currently intend to rely on the requested order are named as applicants.

4. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a “replication” or “representative sampling” strategy.¹ A Fund using a replication strategy will invest in substantially all of the component securities in its Underlying Index in approximately the same weightings as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in

¹ Applicants represent that a Fund will normally invest at least 90% of its total assets in the component securities that comprise its Underlying Index. Each Fund may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser believes will help the Fund track its Underlying Index.

holding every security in an Underlying Index or when a component security is illiquid, a Fund may use a representative sampling strategy pursuant to which it will invest in some, but not all, of the relevant component securities.² Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than five percent.

5. Fund Shares will be sold at a price of between \$20 and \$300 per Fund Share in Creation Unit Aggregations of between 50,000 and 100,000 Fund Shares. All orders to purchase Creation Unit Aggregations must be placed with the Distributor by or through a party that has entered into an agreement with the Trust and Distributor (“Authorized Participant”). An Authorized Participant must be either: (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (“DTC”, and such participant, “DTC Participant”). Shares of each Fund generally will be sold in Creation Unit Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser (“Deposit Securities”), together with the deposit of a specified cash payment (“Cash Amount”).³ The Cash Amount is generally an amount equal to the difference between (a) the net asset value (“NAV”) (per Creation Unit Aggregation) of the

² Under the representative sampling strategy, the Adviser will seek to construct a Fund's portfolio to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Underlying Index.

³ The Funds must comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933. The specified Deposit Securities and Redemption Securities will generally correspond pro rata to the Portfolio Securities.

Fund and (b) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities.⁴ Applicants state that in some circumstances it may not be practicable or convenient for a Fund to operate exclusively on an “in-kind” basis. The Trust reserves the right to permit, under certain circumstances, a purchaser of Creation Unit Aggregations to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. An investor purchasing a Creation Unit Aggregation from a Fund will be charged a fee (“Transaction Fee”) to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Unit Aggregations.⁵ The Transaction Fees relevant to each Fund (including the maximum Transaction Fees) will be fully disclosed in the prospectus of such Fund (“Prospectus”), and the method for calculating the Transaction Fees will be disclosed in each Fund’s statement of additional information (“SAI”). The Distributor will be responsible for transmitting orders to the Funds, for delivering the Prospectus to those persons purchasing Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the NSCC or DTC, as appropriate, will maintain a record of the instructions given to the Trust to implement the delivery of Fund Shares.

6. Purchasers of Creation Unit Aggregations of Fund Shares may hold such Fund Shares or may sell such Fund Shares into the secondary market. Fund Shares will be listed and traded on NYSE Arca, Inc. (“NYSE Arca”) and NYSE Arca, LLC (“NYSE Arca Marketplace”),

⁴ The Trust will sell Creation Unit Aggregations of each Fund on any “Business Day,” which is defined to include any day that the Fund is open for business, including as required by section 22(e) of the Act. In addition to the list of names (and amount of each security constituting the current Deposit Securities), the Cash Amount effective as of the previous Business Day will be made available. Any Exchange on which Fund Shares are listed will disseminate, every 15 seconds, during its regular trading hours, through the facilities of the Consolidated Tape Association, an approximate amount per Fund Share representing the sum of the estimated Cash Component effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Fund Share basis.

⁵ Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost to the Fund of purchasing such Deposit Securities.

respectively.⁶ Fund Shares of future Funds may be listed and traded on other Exchanges (“Other Exchanges”). It is expected that one or more of the market makers that are members of NYSE Arca (“Arca Market Makers”) will register to make a market in Fund Shares listed on NYSE Arca. With respect to listings of Fund Shares on certain Other Exchanges, one or more member firms of the Other Exchange will be designated to act as a specialist and maintain a market for Fund Shares on the Exchange (a “Specialist”). If Nasdaq is the listing Exchange of Fund Shares, one or more member firms of Nasdaq will act as market makers (“Nasdaq Market Makers,” and together with the Arca Market Makers, “Market Makers”) and maintain a market for Fund Shares. Prices of Fund Shares trading on an Exchange will be based on the current bid/offer market. Fund Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). A Specialist or Market Maker also may purchase Creation Unit Aggregations for use in market-making activities. Applicants expect that secondary market purchasers of Fund Shares will include both institutional investors and retail investors.⁷ Applicants expect that the price at which Fund Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Unit Aggregations at their NAV, which should ensure that Fund Shares will not trade at a material discount or premium in relation to their NAV.

⁶ NYSE Arca is a national securities exchange, as defined in section 2(a)(26) of the Act (“Exchange”). The NYSE Arca Marketplace is the equities trading facility of NYSE Arca. Trading on the NYSE Arca Marketplace is subject to the rules (“NYSE Arca Equities Rules”) of NYSE Arca Equities, Inc., a subsidiary of NYSE Arca.

⁷ Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Fund Shares.

8. Fund Shares will not be individually redeemable, and owners of Fund Shares may acquire those Fund Shares from the Fund, and tender Fund Shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit Aggregation generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit Aggregation redemptions on the date that the request for redemption is submitted (“Redemption Securities”), which may not be identical to the Deposit Securities required to purchase Creation Unit Aggregations on that date, and (b) a “Cash Redemption Payment,” consisting of an amount calculated in the same manner as the Cash Component. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor will pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Unit Aggregations.

9. Neither the Trust nor any individual Fund will be marketed or otherwise held out as an “open-end investment company” or a “mutual fund.” Instead, each Fund will be marketed as an “exchange-traded fund,” an “investment company,” a “fund,” or a “trust.” All marketing materials that describe the method of obtaining, buying or selling Fund Shares, or refer to redeemability, will prominently disclose that Fund Shares are not individually redeemable and that the owners of Fund Shares may purchase or redeem Fund Shares from the Fund in Creation Unit Aggregations only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Fund Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Fund Shares.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer’s current net assets, or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Fund Shares that are redeemable in Creation Units Aggregations only. Applicants state that investors may purchase Fund Shares in Creation Unit Aggregations and redeem Creation Unit Aggregations from each Fund. Applicants further state that because the market price of

Fund Shares will be disciplined by arbitrage opportunities, investors should be able to sell Fund Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Fund Shares will take place at negotiated prices, not at a current offering price described in a Prospectus, and not at a price based on NAV. Thus, purchases and sales of Fund Shares in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing Fund Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Fund Shares does not involve the Funds as parties and cannot

result in dilution of an investment in Fund Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Fund Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling Fund Shares in the secondary market to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.⁸

8. Applicants state that Fund Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that Fund Shares likewise merit a reduction in

⁸ Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases Fund Shares from the Funds or an underwriter. Applicants further state that each Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Unit Aggregations from a Fund, breaks them down into the constituent Fund Shares, and sells those Fund Shares directly to customers, or if it chooses to couple the creation of a supply of new Fund Shares with an active selling effort involving solicitation of secondary market demand for Fund Shares. Each Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Prospectus will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Fund Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Fund Shares will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information will be published daily in the financial section of newspapers. In addition, a website will be maintained that will include each Fund's Prospectus and SAI, the relevant Underlying Index for each Fund, and additional quantitative information that is updated on a daily basis, including the closing price of Fund Shares, the prior Business Day's NAV for each Fund, and a calculation of the premium or discount of the closing price against the NAV, as well as data in chart format displaying the frequency distribution of discounts and premiums of the closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

9. Applicants will arrange for broker-dealers selling Fund Shares in the secondary market to provide purchasers with a product description ("Product Description") that describes, in plain English, the relevant Fund and the Fund Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Fund Shares in the secondary market.

Section 17(a)(1) and (2) of the Act

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling or holding with power to

vote 5% or more of the outstanding voting securities of the other person, and any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Applicants state that there exists the possibility for investors, Specialists, and Market Makers to own 5% or more, or more than 25%, of the Fund Shares of one or more Funds (“first-tier affiliates”). Applicants also state that there exists the possibility for investors to own 5% or more, or more than 25%, of the outstanding voting securities of other registered investment companies advised by the Advisor (together with affiliated persons of first-tier affiliates that are not otherwise affiliated with the Funds, “second-tier affiliates”).

11. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit first-tier and second-tier affiliates to effectuate purchases and redemptions in-kind. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Unit Aggregations through in-kind transactions. The deposit procedures for in-kind purchases and redemptions procedures for in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state, in-kind purchases and redemptions will afford no opportunity for these affiliated persons of a Fund to effect a transaction detrimental to other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Fund's Prospectus and Produce Description will clearly disclose that, for purposes of the Act, Fund Shares are issued by the Funds and that the acquisition of Fund Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

2. As long as a Trust operates in reliance on the requested order, Fund Shares will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from a Fund and tender those Fund Shares for redemption to a Fund only in Creation Unit Aggregations. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable and that owners of Fund Shares may acquire those Fund Shares from a Fund and tender those Fund Shares for redemption to a Fund in Creation Unit Aggregations only.

4. The website for the Trust, which is and will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis, for each Fund: (a) the prior Business Day's NAV and the reported closed price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the website for the Trust has information about the premiums and discounts at which Fund Shares have traded.

5. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently

completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Fund Share basis for one, five and ten year periods (or life of the Fund): (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Fund Shares to deliver a Product Description to purchasers of Fund Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris
Secretary