

## Investors Exchange Product Information Circular 2023 - 0358

Date: December 11, 2023

Re: InfraCap Small Cap Income ETF

This Information Circular is being issued to advise you that the following securities have been approved for trading pursuant to unlisted trading privileges (“UTP”) on the Investors Exchange (“IEX” or the “Exchange”) as UTP Derivative Securities pursuant to IEX Rule 16.160. Compliance and supervisory personnel should note that, among other things, this Information Circular discusses the need to deliver a prospectus to customers purchasing shares of the exchange-traded funds. Please forward this Information Circular to interested persons within your organization.

### **Exchange-Traded Fund / Symbol**

InfraCap Small Cap Income ETF

SCAP

Issuer/Trust: Infrastructure Capital Advisors, LLC

Issuer/Trust Website: <https://www.infracapfunds.com/funds>

Primary Listing Exchange: NYSE Arca

The purpose of this information circular is to outline various rules and policies that will be applicable to trading in these new products pursuant to the Exchange’s unlisted trading privileges, as well as to provide certain characteristics and features of the products. For a more complete description of the Issuer, the securities and the underlying market instruments or indexes, visit the Issuer Website, consult the Prospectus available on the Issuer Website or examine the Issuer Registration Statement or review the most current information bulletin issued by the Primary Listing Exchange.

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

The Fund, under normal conditions, invests at least 80% of its net assets (plus any borrowings for investment purposes) in securities of small-capitalization companies. The Fund defines small-capitalization (“Small Cap”) companies as those companies with a market capitalization, at the time of initial investment that is within or below the range of companies in the Russell 2000® Index. As of September 30, 2023, the market capitalization range of companies comprising the Russell 2000® Index was between \$25.5 million and \$14.3 billion. The Fund’s investments in securities of Small Cap companies may include common stocks, preferred stocks, convertible securities, debt instruments, equity-linked notes (“ELNs”), other investment companies or exchange-traded funds (“ETFs”). The Fund considers investments in other investment companies and ETFs to be investments in Small Cap companies if the underlying investment company or ETF also has a policy of investing at least 80% of its net assets in small capitalization companies. The Fund’s investments in other investment companies and ETFs will typically be less than 20% of the Fund’s net assets. The Fund’s initial investments may appreciate beyond the Small Cap market capitalization range described above, however, the Fund will not sell an investment simply because it does not meet the original small-capitalization definition. The Fund may, on occasion,

purchase securities of companies with market capitalizations outside of the range described above when the Adviser believes the company has value and income qualities similar to small-capitalization companies sought out by the Fund.

The Fund's investments in Small Cap companies may also include investments in real estate investment trusts ("REITs"), companies in the utilities industry, companies whose business is related to commodities, or in registered investment companies or other companies that invest directly or indirectly in commodities, and master limited partnerships ("MLPs"). A REIT is a corporation, trust or association dedicated to owning, operating or financing income-producing real estate. MLPs are businesses organized as limited partnerships that trade their proportionate shares of the partnership (units) on a public exchange. Utilities companies include companies that produce or distribute gas, electricity or water. The Fund may also invest in ELNs in an effort to generate income. ELNs are structured as notes that are issued by counterparties, including banks, broker-dealers or their affiliates, and that are designed to offer a return linked to the underlying instruments within the ELN.

To assist the Adviser's portfolio management process, the Adviser may purchase and write put and call options in an effort to (i) generate additional income and reduce volatility in the portfolio, (ii) remove or add securities from the portfolio (*i.e.*, convertible securities), (iii) facilitate total return opportunities, and (iv) hedge against market risks or other risks in the Fund's portfolio. The Fund intends to enter into swap agreements, including total return swaps. The Fund may utilize swap agreements in an attempt to gain exposure to the securities in a market without actually purchasing those securities. The extent of the Fund's use of put and call options will vary depending on the Adviser's assessment of market conditions and other factors. The Fund may engage in short sales of securities in its portfolio to hedge against market, interest-rate, commodity, inflation and credit risk and to facilitate total return opportunities. In a short sale transaction, the Fund will borrow a security and sell it at the current market price in the anticipation of buying the security at a lower price prior to the time the Fund is obligated to return the security to the owner. The Fund will not sell a security short if, as a result of such short sale, the aggregate market value of all securities sold short exceeds 20% of the Fund's net assets.

The Fund may invest in fixed income securities of Small Cap companies of varying duration, maturity and credit quality, including debt securities that have been rated below investment grade by a nationally recognized statistical ratings organization ("NRSRO"), commonly referred to as "junk bonds" or "high yield bonds". The Fund is also authorized to borrow from banks for investment purposes an amount up to 33 1/3% of its total assets (including the amount borrowed), in compliance with the Investment Company Act of 1940 (the "1940 Act"). The use of borrowings to purchase additional securities is known as leverage. The Fund may enter into arrangements with counterparties that allow the Fund to borrow cash. Borrowings under such arrangements will be collateralized by the Fund's investments. Interest on such borrowing arrangements is typically charged at the overnight bank funding rate plus an additional percentage rate on the amount borrowed. The Fund's use of leverage will vary depending on market conditions. However, under normal market conditions, the Fund will employ leverage between 5% and 15% of the Fund's net assets.

The Fund invests primarily in securities of U.S. companies, but may also invest in foreign securities, including securities of companies located in emerging markets. The Fund's investments in foreign securities may include sponsored and unsponsored American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), International Depositary Receipts ("IDRs"), U.S. dollar-denominated foreign securities, direct foreign securities (purchased on a

foreign exchange), and securities of companies incorporated outside the U.S. but whose securities are publicly traded on a U.S. exchange.

The Adviser is a top-down manager, making investment decisions with global macroeconomic factors in mind. The Adviser actively manages the assets of the portfolio pursuant to a variety of quantitative, qualitative, and relative valuation factors. When selecting investments in Small Cap companies, the Adviser may emphasize stocks that it considers to be value stocks. As an example, the Adviser may favor lower relative price stocks, or stocks with higher profitability as compared to their representation in the small-cap value segment of the U.S. market (favorable relative value). If a company has a low price in relation to its book value or relative to the price of its peers, it would also be considered a value stock. When evaluating the relative price of a security, the Adviser may consider additional features such as enterprise values, capital ratios, operating metrics, and other key financial ratios that the Adviser believes are pertinent to valuing a sector or industry group of the Small Cap Company, such as price to cash flow or price to earnings ratios. When selecting preferred securities that are subject to a call provision, the Adviser generally seeks to underweight or eliminate those that trade above the call price and exhibit a low or negative yield-to-call (*i.e.*, the rate of return that an investor would earn if the security was held until its call date).

As part of its quantitative analysis when selecting securities and constructing the portfolio, the Adviser will evaluate potential investments with respect to key variables, including, without limitation, the competitive position of a company, the perceived ability of the company to earn a high return on capital, the historical and projected stability and reliability of the profits of the company, the anticipated ability of the company to generate cash in excess of its growth needs, and the company's ability to obtain additional capital. The Adviser will also consider data points such as current yield, market capitalization, financial risk profiles, and relative values based on various time horizons.

To seek to obtain capital appreciation and income, the Adviser will favor Small Cap companies that it currently views as undervalued on a relative basis. Generally, the Adviser will utilize a multi-factor proprietary approach that considers a Small Cap company's value relative to its industry or sector; however, the Adviser will also consider a company's value relative to the characteristics of other Small Cap companies contained in the Russell 2000® Index. For example, the Adviser may overweight a specific Small Cap issuer or the Fund's exposure to a real estate sector over the financial sector when the market has oversold a real estate sector or issuer or has overbought a financial sector. In addition, to reduce volatility and obtain income, the Adviser may add preferred securities, which, under normal market conditions, have historically lower volatility than common securities. When constructing and maintaining the Fund's portfolio, the Adviser will also consider macroeconomic factors and outlook with the goal of achieving diversification and the Fund's objectives.

Depending on the current market environment, the Adviser may select investments in sectors such as Utilities, REITs, Industrials and Pipelines, when it believes equity securities of these sectors offer high dividends and total return opportunities on a relative basis. The Fund may invest in limited partnership.

interest through MLP units, securities of companies holding primarily general partner or managing member interests in MLPs, and other investment companies that invest in MLPs.

In addition to quantitative, qualitative, and relative valuation factors, the Adviser aims to achieve an investment philosophy that is: (1) driven by discipline, (2) applied consistently, and (3) centered on risk management. The Adviser will execute a transaction after considering the time horizon for the investment and the portfolio's positioning. Factors considered as part of the sell discipline include excessive valuation, opportunities to shift to more favorable investments, lack of confidence in the original thesis, changes in the company's fundamental position, and whether a better opportunity exists to further the Fund's strategy. The Adviser expects, at times, to engage in active trading with high portfolio turnover of the Fund's portfolio investments to achieve the Fund's investment objective. The Adviser expects annual portfolio turnover may, at times, exceed 100% of the average value of the Fund's portfolio.

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

IEX Members are hereby informed that procedures for purchases and redemptions of Shares in Creation Units are described in the Trust's Prospectus and SAI and that Shares are not individually redeemable but are redeemable only in Creation Unit 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 a Fund's performance to not match the performance of its underlying index), market trading risk (for example, trading halts, trading above or below net asset value), investment style risk, sector risk, investment approach risk, non-diversification risk, issuer-specific risk, management risk, concentration risk, equity securities risk, and passive investment risk.

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

Trading in the Shares on IEX is subject to IEX trading rules.

### **Trading Hours**

The value of the Index underlying the Shares will be disseminated to data vendors every 15 seconds during the Regular Trading Session. The Shares will trade on IEX between 8:00 a.m. and 5:00 p.m. Please note that trading in the Shares during the Exchange's Pre-Market and Post-Market Sessions ("Extended Market Sessions") may result in additional trading risks which include: (1) that the current underlying indicative value may not be updated during the Extended Market Sessions, (2) lower liquidity in the Extended Market Sessions may impact pricing, (3) higher volatility in the Extended Market Sessions may impact pricing, (4) wider spreads may occur in the Extended Markets Sessions, and (5) because the indicative value is not calculated or widely disseminated during the Extended Market Sessions, an investor who is unable to calculate an implied value for the Shares in those sessions may be at a disadvantage to market professionals.

### **Delivery of a Prospectus**

Exchange 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 Funds Registration Statement (including the exhibits to the Registration

Statement), parts of which have been omitted in accordance with the rules and regulations of the 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, Exchange Rules require that Exchange Members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Issuer of the Fund, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, Exchange 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 an IEX member 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 UTP Derivative Securities] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Derivative Securities].”

An Exchange 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 such Exchange member under this rule. Upon request of a customer, Exchange Members also shall provide a copy of the Prospectus.

### **Suitability**

Trading in the securities on the Exchange will be subject to the provisions of IEX Rule 3.170 and other applicable suitability rules. Members recommending transactions in the securities to customers should make a determination that the recommendation is suitable for the customer.

### **Trading Halts**

The Exchange will halt trading in the Shares of a security in accordance with the Exchange’s Rules. The grounds for a halt include a halt because the intraday indicative value of the security and/or the value of its underlying index are not being disseminated as required, a halt for other regulatory reasons or due to other conditions or circumstances deemed to be detrimental to the maintenance of a free and orderly market.

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

The Securities and Exchange Commission (the “SEC”) has issued letters granting exemptive, interpretive and no-action relief from certain provisions of rules under the Securities Exchange Act of 1934 for exchange- traded securities listed and traded on a registered national securities exchange that meet certain criteria.

AS WHAT FOLLOWS IS ONLY A SUMMARY OF THE RELIEF OUTLINED IN THE NO-ACTION LETTERS REFERENCED ABOVE, THE EXCHANGE ADVISES INTERESTED PARTIES TO CONSULT THE NO-ACTION LETTERS FOR MORE COMPLETE INFORMATION REGARDING THE MATTERS COVERED THEREIN AND THE APPLICABILITY OF THE RELIEF GRANTED IN RESPECT OF TRADING IN SECURITIES. INTERESTED PARTIES SHOULD ALSO CONSULT THEIR PROFESSIONAL ADVISORS.

## **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 Funds’ securities during the restricted period of Rule 101. The SEC has also granted an exemption pursuant to paragraph (e) of Rule 102 under Regulation M to allow the redemption of Fund Shares in Creation Unit Aggregations during the continuous offering of Shares.

### **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 purchase; 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.

### **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. Members should consult the Prospectus for a security and the security’s website for relevant information.

Please contact IEX Regulation at 646-343-2000 with any inquiries regarding this Information Circular.