

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80567; File No. TP 17-08)

May 01, 2017

Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Alpha Architect Value Momentum Trend ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated May 01, 2017 (the “Letter”), counsel for Alpha Architect ETF Trust (the “Trust”), on behalf of the Trust, Alpha Architect Value Momentum Trend ETF (the “Fund”), any national securities exchange or national securities association on or through which shares issued by the Fund (“Shares”) are listed and/or may subsequently trade, Quasar Distributors, LLC (the “Distributor”), and other persons engaging in transactions in Shares (collectively, the “Requestors”), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of 50,000 Shares (“Creation Units”).

The Trust is registered with the Securities and Exchange Commission (“Commission”) under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The Fund is an exchange-traded fund (“ETF”) organized as a series of the Trust. The Fund seeks to track the performance of the Alpha Architect Value Momentum Trend Index (the “Index”). The Fund intends to operate as an “ETF of ETFs” by seeking to track the performance of its underlying Index through, under normal circumstances,<sup>1</sup>

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<sup>1</sup> The term “under normal circumstances” includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events, such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

investing at least 80% of its total assets<sup>2</sup> in up to four ETFs that comprise the Index (“Underlying ETFs”). The Fund also intends to invest the remaining twenty percent of its total assets in cash and cash equivalents, other investment companies, as well as securities and other types of financial instruments that may not be components of the Index, but which will help the Fund track the Index (e.g., the Fund may invest in securities that are not components of the Index to reflect various corporate actions and other changes to the Index such as reconstitutions, additions, and deletions).<sup>3</sup> Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner identical to the Underlying ETFs.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (“NAV”), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on BATS Exchange, Inc. or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the “Exchange”);<sup>4</sup>
- All Underlying ETFs in which the Fund invests will either meet all conditions set forth in

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<sup>2</sup> Regardless of the representation that the Fund generally will invest at least 80% of its total assets in securities that comprise the underlying Index, the Fund seeks to have a tracking error of less than five percent in any given month over a one-year period.

<sup>3</sup> The Fund intends, under normal circumstances, to hold shares of the Underlying ETFs and, from time to time, for hedging purposes, the Fund intends to short index ETFs or various types of financial instruments including, but not limited to, futures contracts and options on securities, indices, and futures contracts (“Financial Instruments”). Financial Instruments held or shorted by the Fund, if any, will be expected to provide a hedge against potential adverse market movements.

<sup>4</sup> Further, Requestors represent in the Letter that, should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act.

relevant class relief, will have received individual relief from the Commission, or will be able to rely upon individual relief even though they are not named parties;

- All of the components of the Index will have publicly available last sale trade information;
- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Fund's custodian, through the National Securities Clearing Corporation, will make available the list of the names and the required number of shares of each security to be included in the consideration for purchase of a Creation Unit that day;
- The Exchange will disseminate continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share, and the Exchange, market data vendors, or other information providers will disseminate, every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Fund, and the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities and Financial Instruments;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Trust believes that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

## Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rules 101 and 102 of Regulation M, the Requestors may not rely upon those exceptions for the Shares.<sup>5</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant exemptions from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security that is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the Rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate in, or are participating in, a distribution of securities. The Shares are in a continuous distribution, and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase, the Shares extends indefinitely.

Based on the representations and the facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem, at

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<sup>5</sup> While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

NAV, Creation Unit aggregations of Shares of the Fund and that a close alignment between the market price of the Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 101 pursuant to paragraph (d) of Rule 101 of Regulation M with respect to the Shares of the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>6</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and the facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem, at the NAV, Creation Unit aggregations of Shares of the Fund and that a close alignment between the market price of the Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 102 pursuant to paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the distribution of such Shares.

#### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating

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<sup>6</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

to such class of securities in accordance with Rule 10b-17(b). Based on the representations and the facts presented in the Letter, and subject to the conditions below, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>7</sup>

### Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to Shares of the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to the transactions in the Shares of the Fund.

The exemption from Rule 10b-17 is subject to the following conditions:

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<sup>7</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the Fund's nature because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based on the Requestors representations in the Letter, that the provision of notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

- The Trust will comply with Rule 10b-17, except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. These exemptions are based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemptive relief shall promptly present the facts for the Commission's consideration in the event that any material change occurs with respect to any of the facts or representations made by the Requestors, and, as is the case with all preceding relief for ETFs, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on these exemptions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on these exemptions.

This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(6) and (9).