

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73376; File No. SR-BATS-2014-026)

October 16, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Amendment No. 3, and Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of Certain Funds of the Alpha Architect ETF Trust

On July 3, 2014, BATS Exchange, Inc. (“Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of each of the following funds: (1) ValueShares U.S. Quantitative Value ETF; (2) ValueShares International Quantitative Value ETF; (3) MomentumShares U.S. Quantitative Momentum ETF; and (4) MomentumShares International Quantitative Momentum ETF (each referred to as the “Fund” and collectively the “Funds”). The proposed rule change was published for comment in the Federal Register on July 23, 2014.³ On August 15, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposal in its entirety. On August 26, 2014, the Exchange filed Amendment No. 2 to the proposed rule change, which also amended and replaced the proposal in its entirety. The Commission designated a longer period for Commission action on September 5, 2014.⁴ On September 12, 2014, the Exchange filed Amendment No. 3 to the proposed rule change, which again amended and replaced the proposal in its entirety.⁵ No comments on the proposal have

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72636 (July 17, 2014), 79 FR 42852.

⁴ See Securities Exchange Act Release No. 73003, 79 FR 54307 (September 11, 2014).

been received. This order approves the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

I. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Alpha Architect ETF Trust (“Trust”), which was established as a Delaware statutory trust and is registered with the Commission as an open-end investment company.⁶

⁵ Amendment No. 3 modified the proposed rule change by clarifying the holdings of the Funds, clarifying the valuation of various assets for purposes of calculating the net asset value (“NAV”) of each Fund, providing more information regarding the Share creation and redemption process, and adding information regarding its surveillance capability. With respect to the Funds’ holdings, the Exchange specified: (1) that the common stock, preferred stock, international stocks, and depositary receipts that may be held by the Funds (as applicable) will all be exchange-listed (except that up to 10% the portfolios of the international Funds may be composed of unsponsored depositary receipts); (2) the types of fixed income securities that may be held by each of the Funds; (3) that the debt securities held by the ValueShares U.S. Quantitative Value ETF and the MomentumShares U.S. Quantitative Momentum ETF would be investment grade; (4) that the Funds would not invest in private investment funds, vehicles or structures; (5) that the 15% limit on illiquid assets applicable to each Fund is an overarching investment restriction; and (6) the depositary receipts in which the ValueShares International Quantitative Value ETF and MomentumShares International Quantitative Momentum ETF (collectively, “International Funds”) may invest. With respect to NAV calculation, the Exchange: (1) clarified the method for valuation of exchange-listed securities; (2) stated that non-exchange-listed equity securities would be valued at their last reported sale prices or, if no last reported sale price is available, at the most recent bid price; and (3) clarified that fixed income securities (with the exception of repurchase agreements) would be valued by pricing services. With respect to Share creations and redemptions, the Exchange provided additional information regarding the circumstances in which a Fund may accept a custom fund deposit in connection with Share creations as well as the daily dissemination of the redemption basket. Lastly, the Exchange stated that it is able to access, as needed, trade information for certain fixed income instruments reported to the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”).

⁶ The Trust and has filed a registration statement on behalf of the Funds on Form N-1A (“Registration Statement”) with the Commission. See Registration Statement on Form N-1A for the Trust, dated April 25, 2014 (File Nos. 333-195493 and 811-22961). The Commission has issued an order granting certain exemptive relief to the Trust under the

Empowered Funds, LLC is the investment adviser (“Adviser”) to the Funds.⁷ The Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers.⁸ U.S. Bancorp Fund Services, LLC is the administrator and transfer agent for the Trust. U.S. Bank National Association is the custodian for the Trust. Quasar Distributors, LLC serves as the distributor for the Trust.⁹

Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). See Investment Company Act Release No. 31018 (April 16, 2014) (File No. 812-14245).

⁷ The Adviser is an indirect subsidiary of Empirical Finance, LLC d/b/a Empiritrage, LLC.

⁸ BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, the investment adviser shall erect a firewall between the investment adviser and the broker-dealer with respect to access to information concerning the composition of or changes to the investment company portfolio. In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the misuse and dissemination of material nonpublic information regarding the applicable investment company portfolio. The Exchange states that, in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

⁹ Additional information regarding the Trust, the Funds, the Shares, investment strategies, investment restrictions, risks, NAV calculation, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other information, is included in Amendment No. 3 and the Registration Statement, as applicable. See Amendment No. 3 and Registration Statement, supra note 5 and 6, respectively.

A. ValueShares U.S. Quantitative Value ETF

The investment objective of the Fund is to provide long-term capital appreciation. Under normal circumstances,¹⁰ the Fund will invest at least 80% of its net assets, plus any borrowings for investment purposes, in exchange-listed common stock of U.S. companies.

Other Portfolio Holdings. The Fund may invest in exchange-listed preferred stocks. The Fund may enter into repurchase agreements with banks and broker-dealers. The Fund may invest in debt securities by purchasing the following: obligations of the U.S. government, its agencies and instrumentalities; corporate debt securities; master-demand notes; bank certificates of deposit; time deposits; bankers' acceptances; commercial paper and other notes; and inflation-indexed securities. All debt securities held by the Fund will be investment grade. The Fund may also invest in the securities of other investment companies (including money market funds and ETFs) to the extent permitted under the 1940 Act, Commission rules thereunder and exemptions thereto.

B. ValueShares International Quantitative Value ETF

The investment objective of the Fund is to provide long-term capital appreciation. To achieve its objective, under normal circumstances, the Fund will invest at least 65% -- but generally greater than 80% -- of its net assets, plus any borrowings for investment purposes, in equity securities of international companies.¹¹ Specifically, the Fund may invest in exchange-

¹⁰ 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 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.

¹¹ The Fund may invest in securities of companies in any industry and of any market capitalization.

listed common stock of international companies, American Depositary Receipts, Global Depositary Receipts, and European Depositary Receipts (collectively, “Depositary Receipts”). Among the international stocks and Depositary Receipts held by the Fund, at least 90% of that part of the portfolio will consist of securities that trade in markets that are members of the Intermarket Surveillance Group (“ISG”) or are parties to a comprehensive surveillance sharing agreement with the Exchange.¹²

Other Portfolio Holdings. The Fund may invest in exchange-listed preferred stocks. The Fund may enter into repurchase agreements with banks and broker-dealers. The Fund may invest in the following types of debt securities: obligations of the U.S. government, its agencies and instrumentalities; corporate debt securities; master-demand notes; bank certificates of deposit; time deposits; bankers’ acceptances; commercial paper and other notes; and inflation-indexed securities. All debt securities held by the Fund will be investment grade. The Fund may also invest in the securities of other investment companies (including money market funds and ETFs) to the extent permitted under the 1940 Act, Commission rules thereunder and exemptions thereto.

C. MomentumShares U.S. Quantitative Momentum ETF

The investment objective of the Fund is to provide long-term capital appreciation. Under normal circumstances, the Fund will invest at least 80% of its net assets, plus any borrowings for investment purposes, in exchange-listed common stock of U.S. companies. The Fund may invest in securities of companies in any industry and of any market capitalization.

Other Portfolio Holdings. The Fund may invest in exchange-listed preferred stocks. The Fund may enter into repurchase agreements with banks and broker-dealers. The Fund may

¹² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

invest in the following types of debt securities: obligations of the U.S. government, its agencies and instrumentalities; corporate debt securities; master-demand notes; bank certificates of deposit; time deposits; bankers' acceptances; commercial paper and other notes; and inflation-indexed securities. All debt securities held by the Fund will be investment grade. The Fund may also invest in the securities of other investment companies (including money market funds and ETFs) to the extent permitted under the 1940 Act, Commission rules thereunder and exemptions thereto.

D. MomentumShares International Quantitative Momentum ETF

The investment objective of the Fund is to provide long-term capital appreciation. To achieve its objective, under normal circumstances, the Fund will invest at least 65% -- but generally greater than 80% -- of its net assets, plus any borrowings for investment purposes, in exchange-listed common stock of international companies and Depositary Receipts. The Fund may invest in securities of companies in any industry and of any market capitalization. Among the international stocks and Depositary Receipts held by the Fund, at least 90% of that part of the portfolio will consist of securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

Other Portfolio Holdings. The Fund may invest in exchange-listed preferred stocks. The Fund may enter into repurchase agreements with banks and broker-dealers. The Fund may invest in the following types of debt securities: obligations of the U.S. government, its agencies and instrumentalities; corporate debt securities; master-demand notes; bank certificates of deposit; time deposits; bankers' acceptances; commercial paper and other notes; and inflation-indexed securities. All debt securities held by the Fund will be investment grade. The Fund may also invest in the securities of other investment companies (including money market funds and

ETFs) to the extent permitted under the 1940 Act, Commission rules thereunder and exemptions thereto.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Exchange states that intraday, executable price

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

quotations on U.S. and non-U.S. securities as well as other assets are available from major broker-dealer firms, and, for exchange-traded assets, such intraday information is available directly from the applicable listing exchange. Further, the Exchange states that intraday price information is available through subscription services. Pricing information for securities not listed on an exchange or national securities market and repurchase agreements will be available from major broker-dealer firms and from subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation.

In addition, the Intraday Indicative Value, as defined in defined in BATS Rule 14.11(i)(3)(C), will be widely disseminated at least every 15 seconds during the Exchange's Regular Trading Hours.¹⁴ On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Funds will disclose the identities and quantities of the portfolio of securities and other assets held by each Fund that will form the basis for the Fund's calculation of NAV at the end of the business day ("Disclosed Portfolio").¹⁵ The NAV of each Fund will be calculated each business day as of the close of regular trading on the New York Stock Exchange (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for trading. Portfolio composition files will be sent via the National Securities Clearing Corporation and made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), and will include a list of the names and the required number of shares of each security in the in-kind creation basket (based on information

¹⁴ Currently, it is the Exchange's understanding that several major market data vendors display or make widely available Intraday Indicative Values published via the CTA or other data feeds.

¹⁵ The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by the Fund and the characteristics of such assets. The Funds will disseminate the Disclosed Portfolios through their website at no charge.

about the Fund's portfolio at the end of the previous business day) and a list of the names and the number of shares of each security in the in-kind redemption basket. The website for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, trading in the Shares would be subject to BATS Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in the Shares may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of each Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.¹⁶ In addition, the Exchange may obtain information regarding trading in the Shares and the underlying shares of exchange-listed equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or

¹⁶ See BATS Rule 14.11(i)(4)(B)(ii)(b).

with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Commission also notes that the Exchange is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE. The Exchange represents that it prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers. The Exchange represents that, in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Commission notes that the Funds and the Shares must comply with the requirements of BATS Rule 14.11(i) for the Shares to be listed and traded on the Exchange.

Additionally, in support of its proposal, the Exchange has made the following representations:

- (1) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

- (3) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, which are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.
- (4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening¹⁷ and After Hours Trading Sessions¹⁸ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (5) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Exchange Act.

¹⁷ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

¹⁸ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

- (6) A Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser, consistent with Commission guidance.
- (7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.
- (8) With respect to their investments in exchange-listed common stocks and Depositary Receipts, the International Funds will invest at least 90% of their assets invested in such securities in exchange-listed common stocks and Depositary Receipts that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.
- (9) All of the debt securities held by the Funds will be rated investment grade.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2014-026 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2014-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2014-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of Amendment No. 3 in the Federal Register. Amendment No. 3 supplements the proposed rule change by, among other things: (1) clarifying the holdings of the Funds; (2) providing additional information regarding the NAV valuation of certain of the Funds' holdings; (3) and supplemented the description of the Exchange's surveillance capabilities.¹⁹

This additional information has aided the Commission's analysis of the intra-day trading of the Shares and has clarified the Exchange's ability to obtain trading information regarding the underlying assets and thereby monitor trading in the Shares. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.²⁰

¹⁹ See note 5, supra.

²⁰ This approval order is based on all of the Exchange's representations and description of the Funds set forth above and in Amendment No. 3.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BATS-2014-026), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(57).