

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27772; 812-13262]

First Trust Exchange-Traded Fund, et al.; Notice of Application

March 30, 2007

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application to amend a prior 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), 22(e), 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 to amend a prior order that permits (a) open-end management investment companies that include series (“Domestic Index Funds”) based on domestic equity securities indexes to issue shares (“Shares”) that can be redeemed only in large aggregations (“Creation Unit Aggregations”); (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933; 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 (“Prior Order”).<sup>1</sup> Applicants seek to amend the Prior Order in order to offer two new series (the “New Funds”) and future series (“Future International Index Funds,” and together with the New Funds, the “International Index Funds”) based on foreign equity

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<sup>1</sup> *First Trust Exchange-Traded Fund, et al.*, Investment Company Act Release Nos. 27051 (Aug. 26, 2005) (notice) and 27068 (Sept. 20, 2005) (order).

securities indexes.<sup>2</sup> In addition the order would delete a condition related to future relief in the Prior Order and amend condition 2 in the Prior Order.

Applicants: First Trust Exchange-Traded Fund (“Initial Trust”), First Trust Exchange-Traded Fund II; First Trust Exchange-Traded AlphaDEX Fund (collectively, the “Trusts”), First Trust Advisors, L.P. (“Advisor”), and First Trust Portfolios, L.P. (“Distributor”).

Filing Dates: The application was filed on February 13, 2006, and amended on March 30, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 April 24, 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, 1001 Warrenville Road, Lisle, IL 60532.

For Further Information Contact: John Yoder, Senior Counsel, at (202) 551-6878, or Stacy L. Fuller, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

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<sup>2</sup> International Index Funds and Domestic Index Funds are referred to collectively as “Funds.” Future International Funds and future Domestic Index Funds are referred to collectively as “Future Index Funds.”

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 Trusts, Massachusetts business trusts, are each open-end management investment companies registered under the Act. The Trusts are organized as series funds with multiple series. The Initial Trust currently offers twelve Funds. The Advisor, which is registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”), or an entity controlling, controlled by or under common control with the Advisor (included in the term “Advisor”), will serve as investment adviser to each Fund. The Advisor may in the future retain one or more sub-advisers (“Sub-Advisors”) to manage particular Funds’ portfolios. Any Sub-Advisor will be registered under the Advisers Act or exempt from registration. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”), serves as the principal underwriter and distributor for the Funds.

2. The Trusts and other registered open-end management investment companies (“Future Trusts,” included in the term “Trusts”) are currently permitted to offer Funds based on domestic equity securities indexes (“Domestic Underlying Indexes”) in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trusts to offer the International Index Funds, which are based on foreign equity securities indexes (“International Underlying Indexes,” and together with Domestic Underlying Indexes, the “Underlying Indexes”). The International Index Funds would operate in a manner identical to the existing Funds, except as described in the application (and summarized in this notice).

3. The New Funds will invest in portfolios of securities consisting predominantly of the component securities of the Dow Jones STOXX Select Dividend 30 Index and FTSE EPRA/NAREIT Global Real Estate Index (each included in the term International Underlying Index). The Dow Jones STOXX Select Dividend 30 Index is a dividend weighted index designed to measure the performance of European companies, which pay dividends, relative to their home markets. The FTSE EPRA/NAREIT Global Real Estate Index is an index designed to track the performance of certain listed real estate companies and real estate investment trusts in North America, Europe and Asia. 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 a Trust, the Advisor, any Sub-Advisor, the promoter or Distributor of a Fund.

4. Under the Prior Order, each Fund is subject to the representation that it will invest at least 90% of its assets in the component securities of its Underlying Index (“Component Securities”). Applicants request relief to permit each International Index Fund, for purposes of satisfying this requirement, to count certain depositary receipts (“Depositary Receipts”) that represent Component Securities as well as Component Securities. Applicants represent that each International Index Fund would thus invest at least 90% of its assets in the Component Securities of its International Underlying Index and Depositary Receipts representing such Component Securities.<sup>3</sup> Applicants state that an International Index Fund generally would only hold Depositary Receipts if the Advisor believed that holding the Depositary Receipts, rather than holding the Component Securities, would benefit the International Index Fund.

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<sup>3</sup> Applicants state that the Depositary Receipts will be listed on a national securities exchange, as defined in section 2(a)(26) of the Act (“Exchange”) or a foreign exchange. The Advisor, Sub-Advisor and their affiliated persons will not serve as the depositary bank for any Depositary Receipts held by an International Index Fund.

5. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the International Index Funds, except as specifically noted by applicants (as summarized in this notice). Applicants assert that the International Index Funds will operate in a manner identical to the Funds and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

#### Applicants' Legal Analysis

##### Section 22(e) of the Act:

1. In connection with applicants' request for relief to permit the operations of International Index Funds, applicants seek to amend the Prior Order to add relief from section 22(e) of the Act. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the International Index Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Index Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Unit Aggregations, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the International Index Funds. Applicants request relief under section 6(c) of the Act from section 22(e) in such circumstances to allow the International Index Funds to pay redemption proceeds up to 12 calendar days after the tender of any Creation Unit Aggregation for redemption. At all other times and except as disclosed in the relevant statement

of additional information (“SAI”), applicants expect that each International Index Fund will be able to deliver redemption proceeds within seven days.<sup>4</sup> With respect to Future International Index Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

2. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI for each International Index Fund will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant International Index Fund.

Future Relief:

3. Applicants also seek to amend the Prior Order to modify the terms under which a Trust may offer Future Index Funds. The Prior Order is currently subject to a condition that does not permit relief for Future Index Funds unless applicants request and receive with respect to such Future Index Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or the Future Index Fund could be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

4. The order would amend the Prior Order to delete this condition. Any Future Index Funds will: (a) be advised by the Advisor; (b) track Underlying Indexes that are created,

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<sup>4</sup> Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Advisor, the Distributor, a Trust or any Sub-Advisor or promoter of a Fund; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

5. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Index Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing Funds and would remain appropriate for Future Index Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Index Fund to be listed on an Exchange without the need for a rule 19b-4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Condition to Prior Order:

6. Applicants also seek to amend the Prior Order by replacing existing condition 2 to the Prior Order. Existing condition 2 to the Prior Order currently provides that each Fund's prospectus ("Prospectus") and product description ("Product Description") will clearly disclose that, for purposes of the Act, Shares are issued by the Fund and the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act. Applicants wish to replace this condition in the Prior Order with the condition stated below.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the same conditions as the Prior Order, except for condition 1 to the Prior Order, which will be deleted, and condition 2 to the Prior Order, which will be replaced with the following condition:

Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company, and the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in the Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

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

Florence E. Harmon  
Deputy Secretary