

submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting Licensee, all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

#### *Right to Correct and Complete Information*

Prior to any final adverse determination, the Licensee shall make available, to the individual, the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination for unescorted access to radioactive material or other property based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to radioactive material or other property, the Licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to radioactive material or other property shall not be granted to an individual.

#### *Protection of Information*

1. Each Licensee who obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or

to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the radioactive material or other property. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to radioactive material or other property. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

[FR Doc. E7-8666 Filed 5-4-07; 8:45 am]

BILLING CODE 7590-01-P

## **NUCLEAR REGULATORY COMMISSION**

[EA-07-087]

### **In the Matter of Certificate Holders and All Other Persons Who Seek or Obtain Authorized Unescorted Access to Radioactive Material or Other Property Described Herein; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material or Other Property (Effective Immediately)**

#### **I**

The Certificate Holders identified in Attachment 1 to this Order hold certificates issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC), authorizing them to possess radioactive material. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other

property subject to regulation by the Commission, and which the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking, because a deliberate malevolent act by an individual with unescorted access to radioactive material or other property has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 **Federal Register** 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have an active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Additional Security Measures (ASMs) or Interim Compensatory Measures (ICMs) for certain radioactive material. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals needing unescorted access to radioactive material or other property. "Access" means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, for all individuals allowed unescorted access to protected areas, secure areas, and other areas, as applicable, as set forth in the Order, for the Certificate Holders identified in Attachment 1 to this Order. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

**II**

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 73 and 10 CFR Part 76, *it is hereby ordered*, effective immediately, that all certificate holders identified in attachment 1 and all other persons who seek or obtain unescorted access to radioactive material or other property described herein shall comply with the requirements set forth in this Order.

A. All Certificate Holders identified in Attachment 1 to this Order shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order, for unescorted access to radioactive material or other property.

B. All Certificate Holders identified in Attachment 1 to this Order shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) Individual who: (1) The Certificate Holder nominates as the "reviewing official" for determining unescorted access to radioactive material or other property by other individuals; and (2) has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 3 to this Order. The NRC will determine whether this individual (or any subsequent reviewing official) may have unescorted access to radioactive material or other property, and therefore, will be permitted to serve as the Certificate Holder's reviewing official.<sup>1</sup>

C. All Certificate Holders identified in Attachment 1 to this Order shall, in writing, within twenty (20) days from the date of this Order, notify the Commission: (1) Of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide the Certificate Holder's justification for seeking relief from, or variation of, any specific requirement.

D. Only a NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine

whether an individual may have, or continue to have, unescorted access to radioactive material or other property. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to the Certificate Holder's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

E. Fingerprints shall be submitted and the results of the FBI criminal history records check be reviewed in accordance with the procedures described in Attachment 2 to this Order. No person may have access to Safeguards Information or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to radioactive material or property subject to regulation by NRC.

F. The Certificate Holder may allow any individual who currently has unescorted access to radioactive material or other property, in accordance with the ASM or ICM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to radioactive material or other property. The Certificate Holder shall complete implementation of the requirements of Attachment 2 to this Order within ninety (90) days from the date of issuance of this Order.

Certificate Holder responses to Condition B. and C. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Certificate Holder responses shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Certificate Holder.

**III**

In accordance with 10 CFR 2.202, the Certificate Holder must, and any other person adversely affected by this Order, may submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law for which the Certificate Holder or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to the Certificatee, if the answer or hearing request is by an individual other than the Certificatee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415-1101, or via e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov), and also to the Office of the General Counsel, either by means of facsimile transmission to (301) 415-3725, or via e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than the Certificate Holder requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309. If a hearing is requested by the Certificate Holder or an individual whose interest is adversely affected, the

<sup>1</sup> The NRC's determination of this individual's unescorted access to radioactive material or other property, in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

Commission will issue an Order designating the time and place of a hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Certificate Holder may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III, shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 30th day of April 2007.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material, Safety and Safeguards.*

#### **Attachment 1—List of Applicable Certificate Holders**

Certificate No. GDP-0001

Docket No.: 70-7001

USEC—Paducah

Certificate No. GDP-0002

Docket No.: 70-7002

USEC—Portsmouth

#### **Attachment 2—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to Radioactive Material or Other Property**

Licensees shall comply with the following requirements of this Attachment.

1. Each Licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to radioactive material or other property. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this Attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and

Complete Information" section of this Attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61 for unescorted access, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history records check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to radioactive material or other property associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The Licensee's Reviewing Official shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ASM or ICM Security Orders, in making a determination whether to grant, or continue to allow, unescorted access to radioactive material or other property.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the radioactive material or other property.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the radioactive material or other property.

#### **Prohibitions**

A Licensee shall not base a final determination to deny an individual access to radioactive material or other property solely on information received from the FBI involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history records check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

#### **Procedures for Processing Fingerprint Checks**

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual

seeking unescorted access to radioactive material or other property, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or via e-mail to [forms@nrc.gov](mailto:forms@nrc.gov). Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404]. Combined payment for multiple applications is acceptable. The application fee (currently \$27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting Licensee, all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

#### **Right to Correct and Complete Information**

Prior to any final adverse determination, the Licensee shall make available, to the individual, the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual

challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination for unescorted access to radioactive material or other property based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to radioactive material or other property, the Licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to radioactive material or other property shall not be granted to an individual.

#### *Protection of Information*

1. Each Licensee who obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the radioactive material or other property. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from

the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to radioactive material or other property. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

#### **Attachment 3—Trustworthiness and Reliability Requirements**

In order to ensure the safe handling, use, and control radioactive material or other property, each licensee shall control and limit access to radioactive material or other property to those individuals who have established the need-to-know, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that the individuals that are granted unescorted access to radioactive material or other property are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent activities.

The Licensee shall comply with the requirements of this Attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

[FR Doc. E7-8762 Filed 5-4-07; 8:45 am]

**BILLING CODE 7590-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 27812; 812-13340]

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

April 30, 2007.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for exemption from sections 12(d)(1)(A) and (B) of the Act and under

sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF THE APPLICATION:** The applicants request an order to permit certain management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies registered under the Act that are outside the same group of investment companies.

**APPLICANTS:** First Trust Exchange-Traded Fund ("Initial Trust"), First Trust Exchange-Traded Fund II ("Trust II"), and First Trust Exchange-Traded AlphaDEX Fund ("AlphaDEX Trust") (collectively, the "Existing Trusts"), First Trust Advisors L.P. (the "Advisor") and First Trust Portfolios L.P. (the "Distributor").

**FILING DATES:** The application was filed on November 7, 2006, and amended on April 27, 2007.

**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 May 29, 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, Illinois 60532.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Mary Kay Frech, 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 Existing Trusts, Massachusetts business trusts, are each an open-end