

No company held in the Series' portfolios nor any affiliated person of that company will act as a broker for any Series in the purchase or sale of any securities for the Series' portfolios.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-29656 Filed 11-26-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26261; 812-12877]

### First Trust Portfolios, L.P., et al.; Notice of Application

November 21, 2003.

**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 an exemption from sections 12(d)(1)(A), (B) and (C) 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:** FT Series (the "Trust") and any registered unit investment trusts ("UITs") organized in the future and sponsored by First Trust Portfolios, L.P. ("Sponsor"), and their respective series (together with the Trust, the "Trusts", and each series of the Trusts, a "Trust Series"), request an order to permit the Trusts to acquire shares of registered management investment companies and UITs both within and outside the same group of investment companies.

**APPLICANTS:** First Trust Portfolios, L.P. and FT Series.

**FILING DATES:** The application was filed on August 28, 2002 and amended on November 10, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief 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 December 16, 2003, 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, Commission, 450 Fifth Street, NW., Washington, DC, 20549-0609. Applicants, 1001 Warrenville Road, Lisle, IL 60532.

#### FOR FURTHER INFORMATION CONTACT:

Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, or Annette Capretta, Branch Chief, at (202) 942-0564 (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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. The Trust is a UIT registered under the Act. Each Trust Series will be a series of a Trust, each a UIT which is or will be registered under the Act.<sup>1</sup> The Sponsor, an Illinois limited partnership, is registered under the Securities Exchange Act of 1934 as a broker-dealer.

2. Applicants request relief to permit a Trust Series to invest in (a) registered investment companies that are part of the same "group of investment companies" (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust ("Affiliated Funds"), and (b) registered investment companies that are not part of the same group of investment companies as the Trust ("Unaffiliated Funds," together with Affiliated Funds, the "Funds"). The Unaffiliated Funds may include UITs ("Unaffiliated Underlying Trusts") and open-end or closed-end management investment companies ("Unaffiliated Underlying Funds"). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be "exchange-traded funds" that are registered under the Act as UITs or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiated prices.<sup>1</sup>

3. Applicants state that the requested relief will benefit unitholders by

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providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

#### Applicants' Legal Analysis

##### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Trust Series may invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit a Trust Series to acquire shares of a Fund and to permit a Fund to sell shares to a Trust Series beyond the limits set forth in sections 12(d)(1)(A), (B) and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections