

**PUBLIC**

OCT 17 1995

Our Ref. No. 95-496-CC  
The DFA Investment Trust  
Company  
File No. 132-3

**RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT**

By letter dated August 23, 1995, you request our assurance that we would not recommend enforcement action to the Commission under section 17(a) of the Investment Company Act of 1940 ("Investment Company Act") or rule 17a-7 thereunder 1/ with respect to the sale of portfolio securities by three tax-exempt group trusts ("Group Trusts") 2/ to certain series of The DFA Investment Trust Company ("DFAITC"), a registered investment company, in exchange for shares of those series ("Series"), as described in your letter.

Dimensional Fund Advisors, Inc. ("DFA") serves as the investment adviser to the Series, each of which is a master fund in a master fund-feeder fund relationship. DFA also sponsors and advises the Group Trusts, which are divided into various subtrusts ("Subtrusts"). The Subtrusts hold assets of private and public employee benefit plans.

You represent that DFA (as fiduciary) believes that it would be in the best interests of the employee benefit plans that have invested in the Subtrusts, and DFAITC's Board of Trustees believes it would be in the best interests of DFAITC's feeder funds and their shareholders, if certain Subtrusts sell their portfolio securities to those Series that have the same investment objectives and consistent policies, in exchange for shares of the corresponding Series. The sale would occur at the current net asset value of such shares, calculated as of the close of the New York Stock Exchange on the day of the transaction. You anticipate that the proposed transaction would very substantially increase the size of each Series and should result in spreading the fixed, and relatively fixed, costs of operation over a larger asset base, thereby decreasing such costs on a per shareholder basis.

You also represent that, except for the requirement that the transaction be a purchase or sale for no consideration other than cash, it would comply with the requirements of rule 17a-7 under the Investment Company Act. Specifically, you state that (i) securities purchased and shares issued would be valued in accordance with DFAITC's standard valuation methods used to calculate net asset value, as described in its registration statement,

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1/ Section 17(a) generally prohibits affiliated persons of a registered investment company from selling securities to, or purchasing securities from, the registered company. Rule 17a-7 conditionally exempts from the prohibitions of section 17(a) certain purchases and sales of securities between affiliated registered investment companies, and between registered investment companies and other affiliated persons when the affiliation arises solely by reason of having a common investment adviser, common directors and/or common officers.

2/ The Group Trusts have not registered under the Investment Company Act in reliance on section 3(c)(1) of that Act. Telephone conversation with Lisa Duda, Stradley Ronon Stevens & Young, on September 26, 1995.

and would be consistent with the requirements of rule 17a-7(b) 3/; (ii) a Subtrust will sell its portfolio securities to the Series that has the same investment objectives and consistent investment policies, as required by rule 17a-7(c); (iii) the proposed transaction will not involve the payment of any brokerage commission, fee (other than customary transfer fees), or other remuneration, in accordance with rule 17a-7(d); and (iv) each Series will comply with paragraphs (e) and (f) of rule 17a-7 in connection with the proposed transactions. In addition, you represent that, other than DFA in its capacity as investment adviser, no person who is an affiliated person of DFAITC, or an affiliated person of an affiliated person of DFAITC, within the meaning of section 2(a)(3) of the Investment Company Act, has any beneficial interest in the Subtrusts of the Group Trusts participating in the proposed transaction.

Without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission under section 17(a) or rule 17a-7 thereunder if the Series and Subtrusts engage in the transactions described in your letter. Because this position is based on the facts and representations in your letter, different facts and representations might lead to a different result. This response only expresses the Division's position on enforcement action and does not purport to express any legal conclusions on the questions presented.

Having stated our views on several occasions with respect to the ability of a registered investment company, in the context of a reorganization, to issue shares as consideration for the purchase of portfolio securities from persons affiliated with the company by reason of having a common investment adviser, 4/ we will no longer respond to requests for no-action relief in this area unless they present novel or unusual issues. 5/

  
Karrie McMillan  
Senior Counsel

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- 3/ You also represent that if it is not possible to determine a price for a particular security using the methodology set forth in rule 17a-7(b), that security will remain in the Subtrust.
- 4/ *E.g.*, Federated Investors (pub. avail. Apr. 21, 1994) (registered investment company advised by a bank that was also a fiduciary of a common trust fund); The First National Bank of Chicago (pub. avail. Sept. 22, 1992) (trustee, fiduciary or agent caused certain accounts to purchase from, and sell securities to, certain affiliated registered investment companies); Counsellors Capital Appreciation Fund (pub. avail. June 22, 1987) (no action relief denied where the possibility of overreaching existed). As these letters illustrate, we have permitted the rule to be applied when the affiliated person serves in a role with respect to the counterparty to the transaction that is substantially similar to that of an investment adviser.
- 5/ The staff's analysis in these letters would also apply to a similar transaction between two registered investment companies if the transaction met all the required conditions.

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1940 Act/Section 17(a)  
1940 Act/Rule 17a-7

August 23, 1995

Office of Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

ICA
Rule Section 17a-7
File
Public Availability 10-17-95

Ladies and Gentlemen:

We respectfully request that the Staff of the Division of Investment Management ("Staff") confirm that it will not recommend enforcement action to the Securities and Exchange Commission ("SEC") under Section 17(a) of the Investment Company Act of 1940 ("1940 Act") with respect to the sale of securities by three tax-exempt group trusts to The DFA Investment Trust Company ("DFAITC") in exchange for shares of certain series of DFAITC.

**I. BACKGROUND**

**A. Dimensional Fund Advisors Inc.**

Dimensional Fund Advisors Inc. ("DFA"), a registered investment advisor under the Investment Advisers Act of 1940, serves as investment advisor of several registered investment companies, collective investment vehicles and other institutional clients, including all series of DFAITC.

**B. Group Trusts**

DFA sponsors three tax-exempt group trusts (individually, a "Group Trust" and collectively, the "Group

Trusts") and has full investment authority under such trusts. The Group Trusts are divided into various subtrusts (individually, a "Subtrust" and collectively, the "Subtrusts"), each of which has its own investment objective and policies.

The Group Trusts hold assets of private and public employee benefit plans for which DFA serves as investment advisor. The private employee benefit plans are governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the public employee benefit plans are subject to state and/or local laws and regulations. Each plan negotiates a fee agreement with DFA under which it pays DFA a fee for its services as investment manager. DFA receives no fee from the Group Trusts, but serves as investment advisor to the Group Trusts. The initial decision and authorization to participate in a Subtrust of the Group Trust is made by an independent fiduciary of each employee benefit plan. The beneficial interests in the Group Trusts do not include voting rights.

**C. The DFA Investment Trust Company**

DFAITC is a Delaware business trust which is registered as an open-end management investment company. DFAITC consists of several series of shares ("Series"), each of which serves as a master fund in a master fund-feeder fund relationship. For certain Subtrusts of the Group Trusts, there are corresponding Series of DFAITC with the same investment objectives and consistent investment policies.

Current investors in each Series include, primarily, DFA-administered publicly-held registered investment companies. They, and the Group Trusts and Subtrusts, are "accredited investors" as such term is defined in Regulation D under the Securities Act of 1933, as amended.

**D. Master Fund-Feeder Fund Arrangement**

As previously stated, each Series of DFAITC serves as a master fund in a master fund-feeder fund arrangement. In such an arrangement, multiple institutional investors with identical investment objectives ("feeder funds") pool their assets by investing in a single master registered investment company having the same investment objective, which directly acquires and manages a portfolio of securities.

## II. THE PROPOSED TRANSACTION

DFA believes it would be in the best interests of the pension and profit sharing plans that have invested in the Subtrusts, and the Board of Trustees of DFAITC believe it would be in the best interests of DFAITC's feeder funds and their public stockholders, if those Subtrusts that have the same investment objectives and consistent policies to certain corresponding Series of DFAITC sell their portfolio securities to such corresponding Series in return for shares of beneficial interest of such Series, at the current net asset value of such shares (the "Transaction"), calculated as of the close of the New York Stock Exchange on the day of the Transaction. The Transaction would very substantially increase the size of the Series and should result in spreading the fixed, and relatively fixed, costs of operation over a larger asset base, thereby decreasing such costs on a per shareholder basis.

Except for the requirement that the transaction be a purchase or sale for no consideration other than cash, the Transaction would comply with the requirements of Rule 17a-7 and would be subject to the procedures adopted by the Board of Trustees of DFAITC to ensure compliance with the requirements of the Rule. Securities purchased and shares issued in the Transaction would be valued in accordance with DFAITC's standard valuation methods used to calculate net asset value, as stated in its registration statement and, in particular, would be consistent with the requirements of Rule 17a-7(b). Because the securities held by a Subtrust and the corresponding Series of DFAITC are largely the same, there will be no disruption of portfolio management and valuation of the securities transferred will accurately reflect their value to the buyer and seller. To the extent that it is not possible to determine a price for a particular security using the methodology set forth in Rule 17a-7(b), such security will remain in the Subtrust. The Transaction would not involve payment of any brokerage commission, fee (other than customary transfer fees), or other remuneration. Other than DFA in its capacity as investment advisor, no person who is an affiliated person of DFAITC, or an affiliated person of an affiliated person of DFAITC, within the meaning of Section 2(a)(3) of the 1940 Act, has any beneficial interest in the Group Trusts.

In addition to this no-action request, DFA has submitted to the Department of Labor ("DOL"), Division of Fiduciary Interpretation and Regulation, a prohibited transaction exemption application pursuant to Section 408(a) of ERISA. The Transaction will not be effected unless and until such exemption is granted

by the DOL. As a condition to any exemptive relief granted by the DOL, a second fiduciary who is independent of, and unrelated to, DFA will be provided with advance written notice of the sale of the assets of the Subtrusts, full written disclosure of information concerning DFAITC and certain additional financial information. On the basis of the foregoing information, the second fiduciary would then authorize in writing the transfer of the participating plan's Subtrust assets to DFAITC in exchange for shares of the corresponding Series priced at net asset value of such shares.

### **III. LEGAL CONSIDERATIONS**

#### **A. Section 17(a) of the 1940 Act**

Section 17(a)(1) of the 1940 Act, in relevant part, prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company, acting as principal, to sell to or purchase from such investment company any security or other property. Pursuant to Section 2(a)(3)(E) of the 1940 Act, DFA is an affiliated person of DFAITC by virtue of being the investment advisor to each of its Series. Pursuant to Section 2(a)(3)(C), the Group Trusts may be deemed to be affiliated persons of DFA because of the control DFA exercises over the Group Trusts and Subtrusts as investment manager. Thus, the Group Trusts and each Subtrust may be deemed to be affiliated persons of an affiliated person of DFAITC and, therefore, the Transaction might violate Section 17(a).

#### **B. Rule 17a-7 under the 1940 Act**

Rule 17a-7 under the 1940 Act, in relevant part, provides that a purchase or sale transaction between a registered investment company or series thereof and a person which is an affiliated person of such registered investment company (or an affiliated person of such person) solely by reason of having a common investment advisor is exempt from Section 17(a) of the 1940 Act, provided that certain conditions are met. DFA serves as investment advisor to each Series of DFAITC and each Subtrust of the Group Trusts and any affiliation between the Group Trusts and DFAITC exists solely because they share a common investment advisor. Therefore, the requirement of Rule 17a-7 that the affiliation exists by virtue of having a common investment advisor is satisfied.

Subsection (a) of Rule 17a-7 requires that the purchase or sale transaction be "for no consideration other than cash payment against prompt delivery of a security for which market

quotations are readily available." The requirement of Rule 17a-7 that cash be the sole consideration for the Transaction would not be satisfied. DFAITC would issue Series' shares to the Subtrusts priced at the current net asset value of the shares. The securities acquired by the Series would be valued in the identical manner at the same time. However, as previously indicated, Sections (b) through (f) of Rule 17a-7 will be satisfied by DFAITC and the Group Trusts.

As currently structured, the Transaction would benefit the Group Trusts because they would permit the Subtrusts' participating plans to achieve the substantial fixed cost savings available through participation in the master fund-feeder fund structure and, at the same time, lower the substantial transaction costs involved in selling their assets and purchasing master fund shares on the open market from the proceeds. No brokerage costs or market maker's spread will be incurred and no potentially adverse market consequences would result from the Transaction. The savings generated by such in-kind purchases would inure directly to the benefit of the Subtrusts whose assets are being transferred and to their participants. DFAITC's feeder funds and their public shareholders will also benefit because the Series' fixed and relatively fixed costs will be spread over a much larger asset base.

### **C. Previous No-Action Letters**

The Staff of the SEC has granted no-action relief in reliance on Rule 17a-7 with respect to similar transactions where cash was not the sole consideration. Such no-action relief granted under Rule 17a-7 demonstrates that failure to comply literally with the cash requirement of Rule 17a-7(a) is not fatal.

In Federated Investors, SEC No-Action Letter, (pub. avail. April 21, 1994), no-action relief was granted where certain banks, which served as (1) investment advisors to registered investment companies; and (2) fiduciaries with respect to common trust funds and/or commingled investment funds which were not registered under the 1940 Act, proposed to have certain investment companies purchase substantially all of the assets held by certain of the common trusts, and then have the investment companies issue their shares to the common trusts, which shares would be distributed to the participating trust accounts of the common trusts. No-action relief was conditioned upon compliance with all of the requirements of Rule 17a-7 under the 1940 Act, except for the requirement that the transaction be a purchase or sale for cash and no affiliated person of the

participating investment company having any beneficial interest, other than the bank in its fiduciary capacity, in the common trusts. The facts and circumstances described in the Federated no-action letter are similar to the facts and circumstances of the Transaction described herein. Moreover, the no-action relief requested herein would be subject to the same conditions as those to which the parties in Federated were subject.

No action positions also have been granted on similar facts in American Medical Association Retirement Plan, SEC No-Action Letter, (pub. avail. Jan. 15, 1987); The First National Bank of Chicago, SEC No-Action Letter, (pub. avail. Sept. 22, 1992); The First National Bank of Chicago, SEC No-Action Letter, (pub. avail. Feb. 5, 1986); and Lincoln National Investment Management Company, SEC No-Action Letter, (pub. avail. April 25, 1976). As a condition of the relief granted in each of these no-action letters was the requirement that no affiliated person of the participating investment company would have any beneficial interest in the account or fund selling securities to the registered investment company. As stated above, no affiliated person of DFAITC or any affiliate of such person, other than DFA in its capacity as investment advisor, has any interest in the Group Trusts.

The Transaction, as structured, is consistent with previous no-action relief granted under Rule 17a-7. Specifically, except for the requirement that the Transaction be a purchase or sale for cash, each proposed transaction will comply with all of the requirements of Rule 17a-7 under the 1940 Act. In this regard, (1) securities purchased or sold in the Transaction will be valued in accordance with each Series' standard methods used to calculate net asset value and, in particular, will be consistent with the requirements of Rule 17a-7(b); (2) the Transaction is consistent with the investment objective and policies of the Series; (3) the Transaction will not involve payment of any brokerage commission, fee (other than customary transfer fees), or other remuneration; and (4) each Series of DFAITC will comply with paragraphs (e) and (f) of Rule 17a-7 in connection with the Transaction.

#### IV. CONCLUSION

The conditions of Rule 17a-7 were designed to safeguard the interests of investment company shareholders. An SEC Release indicates that the conditions were intended "to limit the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the

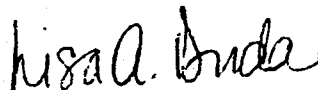


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transaction." Notice of Proposal to Adopt Rule 17a-7 to Provide an Exemption from the Provisions of Section 17(a) of the Investment Company Act of 1940, Investment Company Act Release No. 4604, [1964-1966 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,350 (May 20, 1966). By substantially complying with the conditions of Rule 17a-7, the interests of the shareholders of each Series of DFAITC are protected. Moreover, previous non-action relief granted under Rule 17a-7 demonstrates that compliance with the cash requirement of the Rule is not essential for the protection of shareholders.

Accordingly, we respectfully request that the Staff advise us that it will not recommend any enforcement action to the SEC if DFAITC on behalf of its Series engages in the Transaction, as described herein in reliance upon Rule 17a-7, subject to compliance by each Series with all of the requirements of Rule 17a-7 except for its cash requirement. If the Staff intends to issue a response that is adverse to this request, we respectfully further request the opportunity to have a conference prior to the issuance of such response. If you have any questions regarding this request, please contact the undersigned at (215) 564-8143 or, in my absence, Stephen W. Kline, Esquire at (610) 640-5801.

Very truly yours,



Lisa A. Duda

LAD/klb

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