

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



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94-35A  
PTE 77-4

Thomas L. O'Brien, Esq.  
Vedder, Price, Kaufman & Kammholz  
222 North La Salle Street  
Chicago, IL 60601-1003

Re: Dimensional Fund Advisors, Inc. (DFA)  
Identification Number C-9127

Dear Mr. O'Brien:

This is in response to your request for an advisory opinion on behalf of DFA regarding the application of Prohibited Transaction Exemption 77-4 (42 FR 18732, April 8, 1977) (PTE 77-4).

You represent that DFA has investment management responsibilities with respect to assets of \$7 billion of employee benefit plans qualified under section 401(a) of the Internal Revenue Code of 1986, of which approximately \$4.3 billion are invested in group trusts managed by DFA (Group Trusts). Each Group Trust is comprised of a number of sub-trusts (Sub Trusts) with distinct investment strategies. The decision to invest in each Sub Trust is made by a plan fiduciary independent of and unrelated to DFA. Each plan negotiates a management agreement with DFA under which it pays DFA a fee for its services.

You state that DFA also serves as investment advisor to an open-end investment company (the Core Fund) which will be registered under the Investment Company Act of 1940 (the '40 Act), but not under the Securities Act of 1933 (the '33 Act).<sup>1</sup> The Core Fund is comprised of five series: the U.S. 6-10 Small Company Series, the U.S. Large Company Series, the DFA One-Year Fixed Income Series, the U.S. Small Cap Value Series and the U.S. Large Cap Value Series.

You further represent that DFA is the investment advisor with respect to DFA Investment Dimensions Group, Inc. (the Mutual Fund), an open-end investment company registered under the '40 Act. The shares of the Mutual Fund are offered to the public and are registered under the '33 Act. The Mutual Fund has various series, most of which correspond to a Sub Trust which has an identical investment objective.

You indicate that the Core Fund will be the "core" of a "core-and-feeder" arrangement. Under this type of arrangement, the core is a central mutual fund in which the feeders (the Feeders) invest. You state that DFA intends that the Feeders purchasing shares in the Core Fund will be limited to the following: the Mutual Fund; ERISA-covered entities comprised of group trusts meeting the requirements of Rev. Rul. 81-100, 1981-13 I.R.B. 32, as well as separately managed accounts forming a part of qualified plans; and other large institutional investors.

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<sup>1</sup> You represent that offerings of securities which are not public offerings are exempt from the registration requirements of the '33 Act pursuant to section 4(2) thereof. Accordingly, you have requested that, for purposes of your advisory opinion request, the Department assume that the offering of shares in the Core Fund will be a private placement which is not a public offering for purposes of the '33 Act.

You represent that the advantage of the core-and-feeder arrangement is that the feeder funds through investment in the Core Fund will be able to spread the fixed costs of portfolio management and fund administration over a greater number of investment dollars producing economies of scale. As a part of its cost cutting effort, DFA intends to avoid registering the Core Fund under the '33 Act.

DFA proposes to invest plan assets with respect to which it serves as fiduciary, including assets held in the Sub Trusts, in the Core Fund.<sup>2</sup> DFA represents that it will meet all of the conditions of PTE 77-4.<sup>3</sup> You state that DFA will be paid an investment advisory fee by the Core Fund.<sup>4</sup> In this regard, you represent that DFA will credit the investment advisory fee paid by the Core Fund to DFA with respect to plan assets invested in the shares of the Core Fund against the investment management fee paid by the plan to DFA.<sup>5</sup> DFA represents that none of its affiliates will receive fees from the Feeders or the Core Fund for investment advisory or similar services.

However, the disclosures provided to the independent plan fiduciary by DFA with respect to investments in the Core Fund will not include a prospectus which must be filed with the Securities and Exchange Commission as part of a registration statement under the '33 Act. In this regard, DFA proposes instead to provide to plans all of the information required under Form N-1A regarding the registration of an open end investment company under the '40 Act, and certain additional information (Additional Information).

You state that the Additional Information will contain all of the information relevant to the decision of the independent fiduciary as to whether to approve the purchase and sale of shares in the Core Fund that would be included in the prospectus for the Core Fund if it were registered under the Securities Act of '33. In this regard, the Additional Information will include, but is not limited to the following: (1) a table listing management fees, all other expenses broken down by category and total portfolio operating expenses; (2) a chart showing the effect of such fees on an investment in the fund over one, three, five and ten years; and (3) a list of per share income and capital changes for a share outstanding throughout the year, including investment income, expenses, net investment income, dividends from net investment income, net realized and unrealized gains (losses on securities; distributions from net realized gains on securities, net increase (decrease) in net asset value, net asset value at the beginning of the period, net asset value at the end of the period, expenses to average net assets, portfolio turnover rate, and number of shares outstanding at the end of the period.

In effect, you request an advisory opinion that a plan's receipt of the Core Fund's Form N-1A and the Additional Information complies with the prospectus disclosure requirement of paragraph (d) of section II of PTE 77-4.

Paragraph (d) of section II of PTE 77-4 provides that:

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<sup>2</sup> The plan assets invested under this proposed arrangement will be limited to the plan assets contained in the Feeders.

<sup>3</sup> In this regard, the Department is of the view that the relief provided by PTE 77-4 is unavailable for the purchase of shares in mutual funds other than for cash.

<sup>4</sup> You represent that, with respect to an investment in the Core Fund through the Feeder Mutual Fund, the Feeder Mutual Fund will not pay an investment advisory fee to DFA.

<sup>5</sup> The Mutual Fund or Core Fund may pay additional fees to DFA for administrative services with respect to plan assets invested therein.

A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/ investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations . . . .

Based upon the facts and representations contained in your submissions, it is the opinion of the Department that the arrangement you describe in your submission for the disclosure of the Core Fund's Form N-1A information and the Additional Information to an independent plan fiduciary, in lieu of a prospectus, will satisfy the prospectus disclosure requirement of paragraph (d) of section II of PTE 77-4 provided that the Additional Information contains all of the information relevant to the decision of the independent fiduciary as to whether to approve the purchase and sale of shares in the Core Fund that otherwise would be included in a prospectus.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and is issued subject to the provisions of that procedure, including section 10, relating to the effect of advisory opinions. This opinion relates only to the specific disclosure issue addressed herein. For example, the Department is not providing an opinion as to whether the particular arrangement described in your request otherwise satisfies the conditions imposed by PTE 77-4.

Sincerely,

Ivan L. Strasfeld  
Director  
Office of Exemption Determinations