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DEBUTING THE ETF SHARE CLASS — AND ITS CHALLENGES AND FUTURE

In this article, we describe the requirements for complying with the SEC's exemptive orders permitting ETF share classes and certain share class exchanges. We then explore some of the issues presented by the dual class *structure that may challenge fund advisers and sponsors, such as product management issues (e.g., potential transparency into mutual fund holdings, inhibiting capacity control), operational concerns (e.g., effecting exchanges of mutual fund class shares for ETF shares), and regulatory compliance issues (e.g., identifying appropriate peer groups in connection with Section 15(c) reviews and approvals). We also consider future developments and approaches that may be taken by industry members to launch, manage, and distribute ETFs as a share class.*

By Kevin R. Gustafson and Keri E. Riemer *

In a monumental move for the asset management industry, on November 17, 2025, the U.S. Securities and Exchange Commission (the "SEC") issued an order[1] (the "Order") for an exemption that will permit an open-end management investment company (or series thereof) registered under the Investment Company Act of 1940, as amended (the 1940 Act) to offer one class of exchange-traded shares that operates as an exchange-traded fund (an ETF share class or ETF class shares), and one or more classes of shares that are not exchange-traded (each, a mutual fund share class or mutual fund class shares). The exemptive order came more than two years after the application seeking relief from various sections of the 1940 Act and Rule 22c-1 thereunder in order to offer such share classes was first filed on July 13, 2023 by the applicants, including a registered investment company and its investment adviser.[2] Since the initial application was filed, close to 100 other applications have been filed requesting similar relief, and many registered investment company applicants have received such relief, subject to the conditions set forth in the Application and related notice issued by the SEC (the "Notice").

[1] DFA Investment Dimensions Group Inc., et al., Investment Company Act Release No. 35786 (November 17, 2025) (Order); DFA Investment Dimensions Group Inc., et. al., Investment Company Act Release No. 35770 (Sep. 29, 2025) (Notice).

[2] DFA Investment Dimensions Group Inc., et al., SEC File No. 812-15484 (July 13, 2023). The application was subsequently amended three times, with the third amended application (the "Application") being filed September 26, 2025 as the final version.

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