MassMutual agrees that if, on the last day of each fiscal quarter during the 24 month period, the total operating expenses of a Replacement Fund (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Fund for the 2005 fiscal year, it will, for each Contract outstanding on the date of the Substitutions, make a corresponding reimbursement of Separate Account expenses as of the last day of such fiscal quarter period, such that the amount of the Replacement Fund's net expenses, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Fund and the expenses of the Separate Account for the 2005 fiscal year.

6. Applicants assert that the Substitutions will not result in the type of costly forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the 1940 Act:

(1) Each of the Replacement Funds is an appropriate fund to which to move contract owners with account values allocated to the Replaced Funds because the new funds have substantially similar investment objectives and policies.

(2) The costs of the Substitutions, including any brokerage costs, will be borne by MassMutual and C.M. Life and will not be borne by contract owners. No charges will be assessed to effect the Substitutions.

(3) The Substitutions will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's account value.

(4) The Substitutions will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitutions than before the Substitutions and will result in contract owners' account values being moved to a Mutual Fund with the same or lower current total annual expenses.

(5) All contract owners will be given notice of the Substitutions prior to the Substitutions and will have an opportunity for 30 days after a Substitution to reallocate account value among other available Sub-Accounts without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading or disintermediation involving the fixed accounts available with the variable annuity contracts.

(6) Within five days after a Substitution, MassMutual and C.M. Life will send to its affected contract owners written confirmation that a Substitution has occurred.

(7) The Substitutions will in no way alter the insurance benefits to contract owners or the contractual obligations of MassMutual and C.M. Life.

(8) The Substitutions will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

7. The section 17 Applicants request an order under section 17(b) exempting them from the provisions of section 17(a) to the extent necessary to permit MassMutual and C.M. Life to carry out each of the proposed substitutions. Sections 17(a)(1) and (2) of the 1940 Act prohibit an affiliated person of a registered investment company, or affiliated persons of any such affiliated person, or any principal underwriter for such company (collectively, ''Transaction Affiliates'') from selling a security to, or purchasing a security from, the registered investment company. Applicants may be deemed to be Transaction Affiliates of one another based upon the definition of ''affiliated person'' under section 2(a)(3) of the 1940 Act. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between Transaction Affiliates.

8. Section 17(b) provides that the Commission may grant an application exempting proposed transactions from the prohibitions of section 17(a) if the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; the transaction is consistent with the investment policies of each registered investment company concerned; and the transaction is consistent with the general purposes of the 1940 Act. Applicants state that the consideration to be paid by the Replacement Fund, and each of the Substituted Funds, will be fair and reasonable and will not involve overreaching. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's account value or death benefit or in the dollar value of his or her investment in any Sub-Account.

9. In addition, Applicants state that to the extent the Substitutions are effected by redeeming shares of the Substituted Funds and using the redemption proceeds to purchase shares of the Replacement Funds, the Substitutions will satisfy each of the procedural safeguards adopted by the Board of Directors responsible for each of the Ameritas Portfolios and the Substituted Funds, respectively under Rule 17a–7 under the 1940 Act.

Conclusions

1. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitutions. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in section 26(c) and should, therefore, be granted.

2. The Section 17 Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting the Separate Accounts, MassMutual, C.M. Life, and each Replacement Fund from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit, as part of the substitutions, the in-kind purchase of shares of the Replacement Funds which may be deemed to be prohibited by section 17(a) of the 1940 Act. The Section 17 Applicants represent that the proposed in-kind transactions meet all of the requirements of section 17(b) of the 1940 Act and that an exemption should be granted, to the extent necessary, from the provisions of section 17(a).

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

Nancy M. Morris,

Secretary.

[FR Doc. 06–2598 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27260; 812–13055]

Tactical Allocation Services, LLC and Agile Funds, Inc.; Notice of Application

March 13, 2006.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Tactical Allocation Services, LLC (the ''Adviser'') and Agile Funds, Inc. (the ''Company'').

FILING DATES: The application was filed on December 19, 2003, and amended on February 27, 2006. Applicants have agreed to file a final amendment during the notice period, the substance of which is reflected in this notice.

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 April 7, 2006, and should be accompanied by proof of service on the 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 4909 Pearl East Circle, Suite 300, Boulder, CO 80301.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, 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 Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Company currently offers shares of one series, the Agile Multi-Strategy Fund (the ''Multi-Strategy Fund,'' included in the term ''Fund,'' defined below), and may establish additional series, each consisting of separate investment objectives, policies, and restrictions (each, a ''Fund'' and collectively, the ''Funds''). The Adviser, a Colorado limited liability corporation, serves as the investment adviser to the Multi-Strategy Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').[1]

2. The Adviser serves as investment adviser to the Multi-Strategy Fund pursuant to an investment advisory agreement between the Company and the Adviser (the ''Advisory Agreement'') that was approved by the Company's board of directors (''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Company or the Adviser (''Independent Directors''), and the Multi-Strategy Fund's initial shareholders. The Advisory Agreement permits the Adviser to enter into investment advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Subadviser is, and any future Subadviser will be, registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Subadvisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Subadvisers out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser''). None of the current Subadvisers is an Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) 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 provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

4. Applicants note that the Commission adopted certain fund governance standards on July 27, 2004.[2] Applicants agree that each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7)

[1] The applicants request that any relief granted pursuant to the application apply to future series of the Company and any other existing or future registered open-end management investment company and its series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application (included in the term ''Funds''). The Company is the only existing registered open-end management investment company that currently intends to rely on the order. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

[2] See Investment Company Act Release No. 26520 (July 27, 2004).

under the Act by the compliance date. Applicants also note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[3]

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. Each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7) under the Act by the compliance date for the rule (''Compliance Date''). Prior to the Compliance Date, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be contained in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a new Subadviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) Set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objectives, policies and restrictions.

8. No director or officer of the Company, or director, manager or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director, manager or officer), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–3958 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

[3] Investment Company Act Release No. 26230 (Oct. 23, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53474; File No. SR–NASD–2006–022]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Optional Routing of Orders in Nasdaq's INET Facility

March 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2006, the National Association of Securities Dealers, Inc.(''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] which renders it effective upon filing with the Commission. On March 9, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to create a new voluntary routing option for its INET facility that will allow INET users to instruct that orders being ultimately directed to the New York Stock Exchange or the American Stock Exchange first check INET and then the Nasdaq Market Center and/or Nasdaq's Brut facility for potential execution before being delivered to those exchanges. Nasdaq will implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in *italics;* deletions are in [brackets].[5]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] Amendment No. 1 made a non-substantive, clarifying change to the rule text, as well as provided rationale for the request for the Commission to accelerate the operative delay.

[5] Changes are marked to the rule text that appears in the electronic NASD Manual found at *www.nasd.com.* Prior to the date when The NASDAQ Stock Market LLC (''NASDAQ LLC'') commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC

Continued