

total value of U.S. imports of that product. The "D" flag next to articles on the list indicates articles that, based on eight-month 2006 trade data, may be eligible for a *de minimis* waiver because the total value of imports of that article from all countries is below \$12 million.

The list published on the USTR Web site is provided for informational purposes only. The list is computer-generated and based on interim 2006 data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the list, all determinations and decisions regarding the CNLs of the GSP program will depend on full calendar year 2006 import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2006 import data with regard to the possible application of GSP CNLs. Please see the notice announcing the 2006 GSP Review which was published in the **Federal Register** on June 29, 2006 for further details on submitting a petition for a CNL waiver.

**Marideth J. Sandler,**

*Executive Director for the GSP Program,  
Chairman, GSP Subcommittee of the Trade  
Policy Staff Committee.*

[FR Doc. E6-18304 Filed 10-30-06; 8:45 am]

**BILLING CODE 3190-W7-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27523; 812-13056]

### Tactical Allocation Services, LLC, et al.; Notice of Application

October 24, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) 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 Application:* The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts ("UITs") both within and outside the same group of investment companies.

*Applicants:* Agile Funds, Inc. (the "Company"), with respect to its portfolio series (each a "Fund" and collectively the "Funds"), and Tactical Allocation Services, LLC (the "Adviser").

*Filing Dates:* The application was filed on December 18, 2003 and amended on October 20, 2006.

*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. November 17, 2006, 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, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, Tactical Allocation Services, LLC, and Agile Funds, Inc., 4909 Pearl East Circle, Suite 300, Boulder, Colorado 80301-6101.

**FOR FURTHER INFORMATION CONTACT:** Nadya Roytblat, Assistant Director, 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 Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

### Applicants' Representations

1. The Company is a Maryland corporation and an open-end management investment company registered under the Act. One Fund of the Company is the Agile Multi-Strategy Fund (the "Multi-Strategy Fund"). The Adviser, a Colorado limited liability company, serves as investment adviser to the Multi-Strategy Fund and is registered under the Investment Advisers Act of 1940.

2. Applicants request relief to permit: (1) One or more Funds (including the Multi-Strategy Fund, "Funds of Funds") to acquire shares of: (a) Registered open-end management investment companies or UITs that are not part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds ("Other Group Funds")<sup>1</sup> and the Other Group

Funds to sell such shares to the Fund of Funds; and (2) the Fund of Funds to acquire shares of certain Funds that are in the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (the "Same Group Funds") (together with the Other Group Funds, the "Underlying Funds") and the Same Group Funds to sell such shares to the Fund of Funds. Applicants also apply for an order pursuant to section 6(c) and section 17(b) of the Act exempting Applicants from section 17(a) of the Act to the extent necessary to permit purchases and redemptions by a Fund of Funds of shares of the Underlying Funds and to permit the Underlying Funds to sell or redeem their shares in transactions with the Fund of Funds.<sup>2</sup> Applicants state that the requested relief will enable investors to achieve a diversified investment in a range of Underlying Funds through a single investment in a Fund of Funds.

### 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 the 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, its principal underwriter and any broker or dealer from selling shares of the investment company to any other 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.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or

investment companies ("Other Group Management Companies") that have received exemptive relief to sell their shares on a national securities exchange at negotiated prices ("ETFs"). Shares of an ETF also may be purchased from the ETF in large aggregations by delivering a basket of specified securities to the ETF, and large aggregations of shares may be redeemed from an ETF in exchange for a basket of specified securities ("In-kind ETF Purchases and Redemptions").

<sup>2</sup> All existing investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the order.

<sup>1</sup> The Other Group Funds may include UITs ("Other Group Trusts") and open-end management

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 seek an exemption under section 12(d)(1)(j) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell shares of the Underlying Funds to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over an Other Group Fund. To limit the control that a Fund of Funds may have over an Other Group Fund, applicants propose a condition prohibiting: (a) The Adviser and any person controlling, controlled by or under common control with the Adviser, and any investment company or any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the "Adviser Group"), and (b) any investment adviser to a Fund of Funds that meets the definition of section 2(a)(20)(B) of the Act ("Sub-adviser"), any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the "Subadviser Group") from controlling an Other Group Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions to preclude a Fund of Funds and its affiliated entities from taking advantage of an Other Group Fund. Under condition 2, no Fund of Funds or its Adviser, Sub-Adviser, promoter, principal underwriter or any person controlling, controlled by or under

common control with any of these entities (each, a "Fund of Funds Affiliate"), will cause any existing or potential investment by the Fund of Funds in shares of an Other Group Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Other Group Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an "Other Group Fund Affiliate"). Condition 5 precludes a Fund of Funds and any Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Management Company or sponsor to an Other Group Underlying Trust) from causing an Other Group Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Adviser, Sub-Adviser, or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Other Group Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. As an additional assurance that an Other Group Management Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in an Other Group Management Company in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and the Other Group Management Company execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Other Group Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.<sup>3</sup>

<sup>3</sup> An Other Group Fund, including an EFT, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, before approving any investment advisory contract under section 15 of the Act, the board of directors or trustees ("Board") of each Fund of Funds, including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Directors"), will find that the investment advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except as may be permitted by a Commission order allowing an Underlying Fund to purchase shares of an affiliated investment company for short-term cash management purposes or rule 12d-1 under the Act. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds. Each Fund of Funds also will comply with the disclosure requirements adopted in Investment Company Act Release No. 27399 (June 20, 2006).

#### *B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling,

12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

controlled by, or under common control with the other person.

2. Applicants state that since the Funds of Funds and the Same Group Funds may be advised by the Adviser or share common officers or directors, they might be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.<sup>4</sup>

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if 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.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.<sup>5</sup> Applicants state that

the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

#### Applicants' Conditions

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

1. The members of the Adviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Other Group Fund, the Adviser Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Other Group Fund, it will vote its shares of the Other Group Fund in the same proportion as the vote of all other holders of the Other Group Fund's shares. This condition does not apply to the Subadviser Group with respect to an Other Group Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Other Group Management Company) or as the sponsor (in the case of an Other Group Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Other Group Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Other Group Fund or an Other Group Fund Affiliate.

3. The Board of a Fund of Funds, including a majority of the Disinterested Directors, will adopt procedures reasonably designed to assure that the Adviser and any Subadviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Other Group Fund or an Other Group Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Other Group Management Company exceeds

the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Other Group Management Company, including a majority of the Disinterested Directors, will determine that any consideration paid by the Other Group Management Company to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Other Group Management Company; (b) is within the range of consideration that the Other Group Management Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Other Group Management Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Management Company or sponsor to an Other Group Trust) will cause an Other Group Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Other Group Management Company, including a majority of the Disinterested Directors, will adopt procedures reasonably designed to monitor any purchases of securities by the Other Group Management Company in Affiliated Underwritings, once an investment by a Fund of Funds in the securities of the Other Group Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Other Group Management Company. The Board will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Other Group Management Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities

<sup>4</sup> Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

<sup>5</sup> Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent a

Fund of Funds engages in In-kind ETF Purchases and Redemptions, Applicants request relief from section 17(a) for these transactions.

purchased by the Other Group Management Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. The Other Group Management Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of an Other Group Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Other Group Management Company were made.

8. Before investing in an Other Group Management Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Other Group Management Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Other Group Management Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Other Group Management Company of the investment. At such time, the Fund of Funds will also transmit to the Other Group Management Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Other Group Management Company of any changes to the list as soon as reasonably practicable after a change occurs. The Other Group Management Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the

duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Directors, will find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Other Group Management Company under rule 12b-1 under the Act) received from an Other Group Management Company by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Other Group Management Company, in connection with the investment by the Fund of Funds in the Other Group Management Company. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Other Group Management Company, in connection with the investment by the Fund of Funds in the Other Group Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except as may be permitted by a Commission order allowing an Underlying Fund to purchase shares of an affiliated investment company for short-term cash management purposes or rule 12d-1 under the Act.

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

Nancy M. Morris,  
Secretary.

[FR Doc. E6-18256 Filed 10-30-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-37; File No. S7-17-06]

### Privacy Act of 1974: Establishment of a New System of Records: Photographic Files (SEC-54)

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of the establishment of a new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission gives notice of a proposed Privacy Act system of records: "Photographic Files (SEC-54)." This system of records will contain a collection of photographic materials, in print and electronic format, related to Commission staff and events.

**DATES:** The new system will become effective December 11, 2006 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before November 30, 2006.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-17-06 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-17-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site