

11. Applicants state that the transactions that may be deemed to be within the scope of Section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts from management separate accounts to unit investment separate accounts and the transfer of assets to an underlying fund. Applicants state that the terms and conditions of the transfer of assets entailed in the Substitution are consistent with such precedent and the precedent under Section 26(b).

Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) from that section upon application, subject to certain conditions. Applicants request an order of the Commission pursuant to Section 17(b) from the provisions of Section 17(a) in connection with any aspect of the Substitution that may be deemed prohibited by Section 17(a). Applicants represent that the Substitution meets all of the requirements of Section 17(b) of the 1940 Act and that an order should be granted exempting the Substitution from the provisions of Section 17(a) to the extent requested.

#### Conclusion

For the reasons summarized above, Applicants submit that the proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23237; 812-10930]

#### Stagecoach Funds, Inc., et al.; Notice of Application

June 2, 1998.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

#### SUMMARY OF THE APPLICATION:

Applicants seek an order that would permit certain registered open-end management investment companies to utilize their uninvested cash to

purchase shares of affiliated money market funds.

**APPLICANTS:** Stagecoach Funds, Inc., on behalf of its series Asset Allocation Fund, Arizona Tax-Free Fund, Balanced Fund, California Tax-Free Bond Fund, California Tax-Free Income Fund, California Tax-Free Money Market Mutual Fund, California Tax-Free Money Market Trust, Corporate Bond Fund, Diversified Equity Income Fund, Equity Index Fund, Equity Value Fund, Government Money Market Mutual Fund, Growth Fund, Index Allocation Fund, Intermediate Bond Fund, International Equity Fund, Money Market Mutual Fund, Money Market Trust, National Tax-Free Fund, National Tax-Free Money Market Trust, National Tax-Free Money Market Mutual Fund, Oregon Tax-Free Fund, Overland Express Sweep Fund, Prime Money Market Mutual Fund, Short-Intermediate U.S. Government Income Fund, Short-Term Municipal Income Fund, Short-Term Government Corporate Income Fund, Small Cap Fund, Strategic Growth Fund, Strategic Income Fund, Treasury Money Market Mutual Fund, U.S. Government Allocation Fund, U.S. Government Income Fund, and Variable Rate Government Fund (each series, a "Stagecoach Fund," and collectively, the "Stagecoach Funds"); Life & Annuity Trust, on behalf of its series Asset Allocation Fund, Equity Value Fund, Growth Fund, Money Market Fund, Strategic Growth Fund, and U.S. Government Allocation Fund (each series, a "LAT Fund," and collectively, the "LAT Funds"); Wells Fargo Bank, National Association and any entity controlling, controlled by, or under common control with Wells Fargo Bank, National Association that in the future may serve as an investment adviser to the Funds (as defined below) (collectively, "Wells Fargo"); and each registered investment company or series to be organized in the future and advised by, or to be advised in the future by, Wells Fargo (together with the Stagecoach Funds and LAT Funds, each a "Fund," and collectively, the "Funds").

**FILING DATES:** The application was filed on December 23, 1997 and amended on May 13, 1998.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on

June 29, 1998, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 525 Market Street, 19th Floor, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Mundt, Staff Attorney, at (202) 942-0578, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549, (202) 942-8090.

#### Applicant's Representations

1. Stagecoach Funds, Inc. ("Stagecoach") is an open-end management investment company registered under the Act and organized as a Maryland corporation. Stagecoach currently offers thirty-four separate Stagecoach Funds. Life & Annuity Trust ("LAT") is an open-end management investment company registered under the Act and organized as a Delaware business trust. LAT currently offers six LAT Funds. Ten of the Stagecoach Funds and one LAT Fund are money market funds subject to rule 2a-7 under the Act (together with any future money market portfolio of Stagecoach or LAT or any future money market portfolio advised by Wells Fargo, each a "Money Market Fund," and collectively, the "Money Market Funds"). The remaining Stagecoach Funds and LAT Funds are variable net asset value funds (together with any future variable net asset value portfolio of Stagecoach or LAT or any future variable net asset portfolio advised by Wells Fargo, each a "Non-Money Market Fund," and collectively, the "Non-Money Market Funds").

2. Wells Fargo is the investment adviser for all of the Stagecoach Funds and LAT Funds and, as a national banking association, is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). Barclays Global Fund Advisors ("BGFA") is a registered investment adviser under the Advisers Act that serves as investment sub-adviser to four Stagecoach Funds and two LAT Funds.

Stephens Inc., a broker-dealer registered under the Securities Exchange Act of 1934, serves as principal underwriter for each series, and Wells Fargo and Stephens Inc. provide administrative services for each series. An affiliate of BGFA serves as custodian for the Funds that BGFA sub-advises, and Wells Fargo serves as custodian to all of the other Funds.

3. Each of the Non-Money Market Funds has, or may be expected to have, cash reserves that have not been invested in portfolio securities ("Uninvested Cash") in an account at its custodian that either may be invested directly in individual short-term money market instruments or may not otherwise be invested in any portfolio securities. Uninvested cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, or new monies received from investors.

4. Applicants seek an order that would permit each of the Non-Money Market Funds to utilize the Uninvested Cash to purchase shares of one or more of the Money Market Funds (each Fund purchasing shares of the Money Market Funds, an "Investing Fund," and collectively, "Investing Funds"), and that would permit the Money Market Funds to sell their shares to, and redeem shares from, the Investing Funds. The requested relief would apply to Stagecoach Funds and LAT Funds (and each of their series and each subsequently created series) and other registered open-end management investment companies or series that become advised by Wells Fargo.<sup>1</sup> Applicants believe that the proposed transactions would allow Investing Funds to reduce transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

### Applicants' Legal Analysis

#### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits any registered investment company (the "acquiring company") or any company or companies controlled by the acquiring company from purchasing any security issued by any

other investment company (the "acquired company") if the acquiring company or companies it controls would own in the aggregate more than 3% of the outstanding voting stock of the acquired company, if the purchased securities would constitute more than 5% of the acquiring company's total assets, or if the securities, together with the securities of other acquired investment companies, would represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no acquired company may sell its securities to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Applicants request an order to permit an Investing Fund to invest up to 25% of its total net assets in shares of the Money Market Funds. Under the proposal, each Money Market Fund would also be permitted to sell its shares to an Investing Fund in excess of the limits in section 12(d)(1)(B).

3. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that none of the concerns underlying section 12(d)(1) is presented by the proposed transactions and that the proposed transactions meet the section 12(d)(1)(J) standards for relief. Applicants note that the perceived abuses that section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex fund structures. Applicants submit that because the Money Market Funds contain a highly liquid portfolio, none of the Money Market Funds will be subject to undue influence from an Investing Fund resulting from the threat of a large-scale redemption. Applicants state that the Investing Funds will vote their shares in the same proportion as the Money Market Funds' other shareholders. Applicants argue that there will be no layering of fees because the shares of the Money Market Funds will be sold to and redeemed from the Investing Funds without sales load or redemption fee, and to the extent that any distribution, service, or advisory fees are charged in connection with the investment in Money Market Funds, Wells Fargo and any sub-advisers will waive their advisory fees for each

Investing Fund in an amount that offsets the amount of the fees.

#### 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 that company. Section 2(a)(3) of the Act defines "affiliated person" to include persons under common control. Section 2(a)(9) of the Act defines "control" to mean the power to exercise a controlling influence over the management or policies of a company. Because Stagecoach and LAT have a common set of individuals serving as directors/trustees and a common investment adviser, each Fund may be deemed to be under common control with the other Stagecoach Funds and LAT Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, may be prohibited under section 17(a).

2. Section 17(b) of the Act permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt a series of transactions 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 policies of the Act.

3. Applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b). Applicants state that the shares of the Money Market Funds will be purchased and redeemed at their net asset value, which is the same consideration paid and received for the shares by any other shareholder. Applicants assert that the purchase of shares of the Money Market Funds by the Investing Funds will be effected in accordance with each Investing Fund's investment policies and that the proposed transactions are consistent with the general purposes of the Act.

#### C. Section 17(d) and Rule 17d-1

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17d-1 provides

<sup>1</sup> Each Fund that intends to rely on the order has been named as an applicant. Any other existing Fund and any future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

that the SEC will consider whether the participation of the investment company is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of the other participants. Applicants state that each Investing Fund, Wells Fargo, and each Money Market Fund could be deemed to be participants in a joint enterprise or other joint arrangement.

2. Applicants believe that the proposed transactions meet the standards for relief under rule 17d-1. Applicants state that the investment by the Investing Funds in shares of the Money Market Funds would be on the same basis as any other shareholder. Applicants further believe that the proposed transactions would be beneficial to each of the participants and that there is no basis on which to believe that any participant would benefit to a greater extent than any other. Applicants note that Wells Fargo and any sub-advisers will not receive any increased investment advisory fees under the proposed transactions, though they may experience reduced clerical costs.

#### Applicants' Conditions

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

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load or redemption fee. Nor will such shares be subject to a distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or a service fee (as defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers), or if such shares are subject to any such a distribution fee or service fee, Wells Fargo will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such distribution and/or service fees incurred by the Investing Fund.

2. Wells Fargo will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of a Money Market Fund incurred by the Investing Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total net assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, each Money Market Fund, and any future fund that may rely on the order shall be advised by Wells Fargo, or a person controlling, controlled by, or under common control with Wells Fargo.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23238; 812-11018]

#### Wilmington Trust Company, et al.; Notice of Application

June 2, 1998.

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

**ACTION:** Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain collective investment funds to transfer their assets to certain portfolios of registered open-end management companies in exchange for shares of the portfolios.

**APPLICANTS:** Wilmington Trust Company ("WTC"); Wilmington Trust Corporation ("Wilmington Trust"); The Rodney Square Strategic Equity Fund ("Strategic Equity Fund"); and the Rodney Square Fixed Income Fund ("Strategic Fixed-Income Fund," and collectively with the Strategic Equity Fund, the "Funds").

**FILING DATES:** The application was filed on February 20, 1998. Applicants have agreed to file an 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 June 24, 1998, 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, Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Applicants, 1100 N. Market Street, Wilmington, Delaware 19890-0001.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or George J. Zornada, Branch Chief at (202) 942-0564, Office of Investment Company Regulation, Division of Investment Management.

**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 Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

#### Applicants' Representations

1. WTC, a Delaware state-chartered bank, is a wholly-owned subsidiary of Wilmington Trust, a bank holding company. WTC serves as custodian and investment manager and/or trustee for numerous employee benefit plans qualified under section 401 of the Internal Revenue Code of 1986, as amended. The assets of some of these employee benefit plans are invested in collective investment funds ("CIFs") sponsored by WTC and for which WTC acts as trustee. Each CIF includes assets of retirement benefit plans for employees of entities unaffiliated with WTC ("Other Plans") as well as assets of retirement benefit plans for employees of WTC and its affiliates ("Affiliated Plans") (Other Plans and Affiliated Plans are collectively referred to as the "Plans"). Assets of Affiliated Plans represent 24% to 41% of the assets of each CIF.

2. Both the Strategic Equity Fund and the Strategic Fund-Income Fund are Massachusetts business trusts registered under the Act as open-end management investment companies and may offer several portfolios ("Portfolios"). Each Fund is offered and sold without a sales load, redemption fee, asset-based distribution fee or shareholder servicing