

# State of Utah

## DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

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June 21, 1994

Mr. Thomas G. MacDonald  
Seward & Kissel  
One Battery Park Plaza  
New York, N.Y. 10004

Re: Mitchell Hutchins Asset Management Inc. File #002-1952-20/A30132-35

Dear Mr. Macdonald:

- This letter is in response to your letter dated April 20, 1994, requesting an interpretive opinion that Mitchell Hutchins Asset Management, Inc., a wholly owned subsidiary of PaineWebber Incorporated is an Institutional Buyer pursuant to § 61-1-14(2)(h) of the Utah Uniform Securities Act, ("Act").

So as to avoid unnecessary restatement or summarization of the facts set forth in your letter, the Division's response is attached to a photo copy of your letter.

Based upon your factual representations and legal analysis, the Division finds that Mitchell Hutchins Asset Management, Inc. is an Institutional Buyer pursuant to § 61-1-14(2)(h) of the Utah Uniform Securities Act, ("Act").

Because this interpretive opinion is based upon the representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Please note that this interpretive opinion relates only to the referenced company and shall have no value for future similar factual circumstances.

Very truly yours,

MARK J. GRIFFIN, DIRECTOR  
UTAH DIVISION OF SECURITIES

  
Steven J. Nielsen  
Assistant Director

jmj

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BLAISE G. A. PASZTORY  
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April 20, 1994

\*ADMITTED IN D.C. ONLY

Mark J. Griffin, Director  
Division of Securities  
160 East 300 South  
P.O. Box 45808  
Salt Lake City, Utah 84145-

Re: Mitchell Hutchins Asset Management Inc.  
International ACCESS

Dear Mr. Griffin:

We are acting as a special counsel to Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins"), a wholly owned subsidiary of PaineWebber Incorporated ("PaineWebber"), in connection with a "wrap fee" investment advisory program offered by PaineWebber, known as the PAINWEBBER ACCESS Program (the "Program"). Mitchell Hutchins, a sub-investment-adviser participating in the Program, manages International ACCESS, which invests predominately in American depositary receipts ("ADRs") and is one of the Program's international investment portfolios. On behalf of Mitchell Hutchins, we are requesting an interpretative opinion under Section 61-1-14(2)(h) of the

Utah Code Annotated, 1953, as amended (the "Code") with respect to purchases of ADRs for International ACCESS clients.

Under the Program, PaineWebber serves as investment adviser and participants can select from a number of sub-investment advisers having various investment philosophies. Each sub-adviser participating in the Program is required to be registered as an investment adviser with the Securities and Exchange Commission (the "SEC"). Sub-advisers in the Program have complete investment discretion and are furnished with detailed information regarding each participant's financial situation, investment goals and degree of risk tolerance. Each participant is charged an annual fee, payable on a quarterly basis and equal to a percentage of assets under management, that includes payment for investment advisory services and PaineWebber's brokerage and custodial services. A minimum investment of \$100,000 in the Program is required from each participant. A copy of the PAINWEBBER ACCESS Program Agreement is attached hereto.

Mitchell Hutchins is an investment adviser and a broker-dealer registered in each such capacity with the SEC and at the state level (including the Division of Securities) and a member of the National Association of Securities Dealers, Inc. It provides individualized investment management services to institutions and

individuals and currently manages client accounts with assets totaling more than \$38 billion.

As noted above, International ACCESS invests predominately in ADRs, some of which are not listed on any stock exchange or traded on either NASDAQ system.<sup>1</sup> In order for Mitchell Hutchins and PaineWebber to offer International ACCESS to Utah residents, there must be available a self-executing exemption with respect to the purchase of ADRs by Mitchell Hutchins for International ACCESS clients.

We believe that a self-executing exemption is available pursuant to Code Section 61-1-14(2)(h) with respect to purchases of ADRs by Mitchell Hutchins in its capacity as the sub-adviser for International ACCESS. Section 61-1-14(2)(h) of the Code exempts sales to a financial institution or institutional buyer, whether the purchaser is acting for itself or in some fiduciary capacity. In our opinion Mitchell Hutchins qualifies as a "financial institution" or "institutional buyer" within the meaning of that Section as a consequence of the dollar

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1. We note that information with respect to each of the issuers of the securities underlying the ADRs is listed in Moody's International Manual, which information includes, at a minimum, the names of each issuer's officers and directors, its balance sheet within 18 months of the transaction and its income statement for the two years prior to the date of the balance sheet.

amount of assets under its management and its sophistication with respect to investing in securities. Mitchell Hutchins' investment experience and sophistication in our view eliminate the need for state protection by securities registration with respect to its investments in securities. It is the investment experience and sophistication of investors such as Mitchell Hutchins that we understand to be the rationale and policy underlying the exemption contained in Code Section 61-1-14(2)(h) and its counterpart in the Uniform Securities Act of 1956, Section 402(b)(8). (See Draftsmen's Commentary to §402(b)(8) of the Uniform Securities Act of 1956, Blue Sky Law at 367 and 368, Louis Loss and Edward Cowett, (1958)). Thus, it is our conclusion that Code Section 61-1-14(2)(h) exempts from Utah securities registration requirements purchases of ADRs by Mitchell Hutchins for International ACCESS participants' accounts. Our conclusion is based on our view that Mitchell Hutchins is a "financial institution" and/or "institutional buyer" within the meaning of Code Section 61-1-14(2)(h) and is acting in a fiduciary capacity when purchasing ADRs for the International ACCESS participants' accounts.

We request that you confirm in writing that Mitchell Hutchins is both (i) a "financial institution" and/or "institutional buyer" within the meaning of Section 61-1-14(2)(h) of the Code and (ii) acting in a

Mr. Mark J. Griffin

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April 20, 1994

fiduciary capacity when purchasing for its International ACCESS participants' accounts, such that the exemption contained in that Section is available for the purchase by Mitchell Hutchins of ADRs for International ACCESS participants' accounts.

If you need any additional information or have any questions about this request, please feel free to contact Melinda J. Scarvey of this office at (212) 574-1232 or the undersigned at (212) 574-1263. We would appreciate having the opportunity to speak with you if you do not believe the Division of Securities will be able to issue the interpretive opinion requested hereby.

A check in the amount of \$120.00 is enclosed in payment of the filing fee for this request.

Thank you for your consideration of this matter.

Very truly yours,



Thomas G. MacDonald

Enclosures  
VIA FEDERAL EXPRESS

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