

6. At the present time, the Applicant's shares are beneficially owned by fewer than one hundred persons in the United States, and the Applicant is not making, and does not presently propose to make, a public offering of its securities in the United States. The Applicant intends, however, to raise additional capital, which may include another offering of American Depository Shares to additional United States investors through a further private placement.

#### Applicant's Legal Analysis

1. Section 3(a)(1) defines "investment company" to mean, as here relevant, any issuer that holds itself out as being engaged primarily in the business of investing or trading in securities. Because the Applicant is listed on the LSE as an "investment company," it arguably has held itself out as an investment company within the meaning of section 3(a)(1).<sup>2</sup>

2. Applicant requests an exemption from all provisions of the Act pursuant to section 6(c). Section 6(c) provides, as here relevant, that the SEC, by order upon application, may exempt any person from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is 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.

3. Applicant submits that the requested relief meets the exemptive standards established by section 6(c). It asserts primarily that it is engaged through the Subsidiaries in the business of an insurance company, and does not operate as an investment company for purposes of the Act. In this regard, even though the Applicant's memorandum of association gives it the power to carry on the business of both an investment company and an insurance business, it is not treated as an investment company under the U.K. Companies Act or as an investment trust for tax purposes. Similarly, the Applicant is not treated as a collective investment scheme or an authorized unit trust scheme under the U.K. Financial Services Act or as an undertaking for collective investment in transferable securities ("UCITS") under directives of the European Union. In addition, the daily trading price of the

<sup>2</sup>The Applicant's assets consist entirely of securities of the wholly-owned Subsidiaries, which in turn hold assets in the form of a Lloyd's deposit that is invested in securities. Thus, the Subsidiaries, and consequently the Applicant itself, would be deemed investment companies under section 3(a)(3), except for, as discussed below, the Subsidiaries' status as foreign insurance companies under rule 3a-6.

Applicant's shares on the LSE is quoted in the Financial Times under the caption "Insurance" and not "Investment Trusts." While the 1994 prospectus for the Applicant's shares introduced it as an investment company, the stated purpose of the offering was to enable investors to underwrite insurance with limited liability through Lloyd's syndicates managed by Wellington Underwriting Agencies Limited. Based on the foregoing, Applicant argues that the Act's purpose would not be served by applying it to the Applicant merely because it is listed, for reasons of convenience, as an investment company on the LSE.

4. Applicant also submits that exemptive relief would be consistent with the purposes intended by specific policies and provisions of the Act. Section 3(c)(3) of the Act excludes from the definition of "investment company" domestic insurance companies. Rule 3a-6 provides that foreign insurance companies are also not subject to the provisions of the Act. Applicant represents that its Subsidiaries fall within the requirements of rule 3a-6.<sup>3</sup> Applicant notes that United States holding companies for insurance companies are excepted from the definition of investment company by section 3(c)(6). Because of its status as a holding company whose only operations are the ownership of the Subsidiaries, the Applicant is a foreign insurance company holding company. The SEC, upon adopting rule 3a-6, made it clear that foreign insurance company holding companies should be treated under the Act on the same basis as United States insurance company holding companies.<sup>4</sup>

#### Applicant's Conditions

Applicant agrees that any order of the SEC granting the exemptive relief requested by the application may be made subject to the following conditions:

<sup>3</sup>Rule 3a-6 defines "foreign insurance company" as an insurance company organized under the laws of another country that is regulated as such by that country's government, that is engaged predominantly in writing or reinsuring insurance agreements of the type specified in section 3(a)(8) of the 1933 Act, and that is not operated for purposes of evading the provisions of the Act. Applicant intends to rely on an opinion of counsel to the effect that its Subsidiaries are exempt from registration under the Act because they are foreign insurance companies within the meaning of the rule. Applicant does not request SEC review or approval of counsel's opinion, and acknowledges that the SEC takes no position as to its availability.

<sup>4</sup>See Investment Company Act Release No. 18381 (Oct. 29, 1991).

1. No Subsidiary will be an "investment company" as defined by the Act.

2. Applicant will continue to operate, either directly or indirectly, only in the business of insurance.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 35-26427]

#### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 8, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### The Southern Company (70-8733)

The Southern Company ("Southern"), 270 Peachtree Street, N.W., Atlanta, Georgia 30346, a registered holding company, and its subsidiaries, Mobile Energy Services Holdings, Inc. ("Mobile Energy"), Southern Electric International, Inc. ("Southern Electric"), SEI Holdings, Inc. ("Holdings"), Southern Electric Wholesale Generators, Inc. ("Domestic Holdings"), and SEI

Europe, Inc. ("Foreign Holdings"), each of 900 Ashwood Parkway, Atlanta, Georgia 30338, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 13, 32 and 33 of the Act and rules 43, 45, 53, and 54 thereunder.

#### *Consolidation of Ownership of Exempt Projects*

Southern proposes to consolidate all of its direct and indirect ownership interests in all exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs", and, together with EWGs, "Exempt Projects") (each as defined in the Act), various intermediate subsidiaries through which it holds investments in EWGs and FUCOs ("Project Parents"), and activities and functions related to these projects, under one of its subsidiaries, Holdings.<sup>1</sup>

Pursuant to the Orders and preliminary to the proposed reorganization, Southern organized and contributed to Holdings all of the outstanding stock of Domestic Holdings, an EWG that holds Southern's ownership interests in other domestic EWGs, and of Foreign Holdings, a Project Parent that holds Southern's interest in a FUCO in England. Southern will then contribute to Foreign Holdings its interests in other existing FUCOs, foreign EWGs, and Project Parents.

In this proceeding, Southern proposes to take the following additional steps to effect the proposed reorganization: (1) Southern will contribute to Holdings the common stock of Southern Electric<sup>2</sup>, and Southern Electric will become a subsidiary of Holdings; (2) Southern Electric will sell to Foreign Holdings or its subsidiaries the securities of Southern Electric International-Asia, Inc., and Southern Electric international GmbH, two Southern electric subsidiaries that conduct preliminary project development activities in foreign countries<sup>3</sup>; (3) Southern Electric will transfer to Foreign Holdings all of the

<sup>1</sup> The authorization of the transactions proposed in this file would supercede Southern's current authorization to organize Project Parents to hold investments in EWGs and FUCOs. Holding Co. Act Release Nos. 26096 (Aug. 3, 1994) and 26338 (July 25, 1995) ("Orders").

<sup>2</sup> Southern Electric engages in preliminary project development activities and the sale of operating, construction, project management, administrative and other services to associates and nonassociates, pursuant to Holding Co. Act Release No. 26212 (Dec. 30, 1994) ("December 1994 Order"). After the proposed reorganization, Southern Electric would continue to engage in these activities, and any additional investment in Southern Electric would be made indirectly through Holdings.

<sup>3</sup> The sales price for the shares will equal Southern Electric's investment in the two companies, which currently is less than \$50,000 in the aggregate.

common stock of SEI Operadora de Argentina S.A., a FUCO<sup>4</sup>; and (4) Mobile Energy will create a new class of nonvoting preferred stock and distribute all outstanding shares of such stock to Southern; Southern will transfer such stock to Holdings, which, in turn, will transfer such stock to Domestic Holdings, as a capital contribution.<sup>5</sup>

After the reorganization, Southern expects that future investments in power projects will be made through Holdings and its subsidiaries, and that Holdings and its subsidiaries will conduct all other related project activities. Holdings will use available funds, including the proceeds of financing by Southern and third-party borrowings that are guaranteed by Southern<sup>6</sup>, together with internally generated funds and proceeds of securities sold to third parties, to make these investments and to finance the costs of other authorized and permitted activities.

#### *Acquisition of Energy-Related Companies*

Holdings also requests authority to acquire, directly or indirectly through subsidiaries, in one or more transactions from time to time through December 31, 2000, the securities of or other interests in one or more companies that derive or will derive substantially all of their revenues from the ownership and/or operation of one or more of the following categories of energy-related businesses: (a) "Qualifying facilities", as defined under the Public Utility Regulatory Policies Act of 1978, as amended, and ownership and operation of incidental facilities; (b) production, conversion and distribution of thermal energy products; (c) brokering and marketing of energy commodities; and (d) other energy-related businesses to

<sup>4</sup> Southern Electric will distribute the stock of this subsidiary to Holdings, and Holdings will concurrently transfer the stock to Foreign Holdings.

<sup>5</sup> The purpose of these transactions is to direct some or all of the cash flow and income from Mobile Energy to support the operations and future financing by Holdings and Domestic Holdings. Mobile Energy holds a 99% interest in Mobile Energy Services Company, L.L.C., an Alabama limited liability company that owns a cogeneration complex in Mobile.

<sup>6</sup> The applicants state that Southern will make additional investments in Holdings from time to time, to finance the business of Holdings and its subsidiaries, pursuant to the exemptions in rules 52 and 45(b)(4), provided that (a) any additional investment in Holdings to enable Holdings to acquire directly or indirectly an interest in an Exempt Project will be subject to the limitations of rule 53 and any other applicable rules, and (b) the aggregate amount of financing provided to Holdings by Southern that will be invested directly or indirectly in energy-related companies will not exceed \$300 million or such greater amount as may be permitted under a rule subsequently adopted by the Commission.

the extent that acquisition of interests in such businesses are exempt under a rule subsequently adopted by the Commission.<sup>7</sup>

#### *Formation of New Subsidiaries*

Holdings, Domestic Holdings and Foreign Holdings propose to organize one or more intermediate subsidiaries to make investments in Exempt Projects, other power projects, and energy-related companies and to provide project development and management services to projects and companies held by them ("Intermediate Subsidiaries"), and to organize one or more special purpose subsidiaries to engage in any of the activities in which Southern Electric is currently authorized to engage ("Special Purpose Subsidiaries").<sup>8</sup>

#### *Financial Guaranties*

Southern has existing authorization with respect to guaranties of subsidiary obligations.<sup>9</sup> Southern now requests an order that would supersede this guaranty authorization. Southern proposes to guaranty the securities of Holdings or any of its direct or indirect subsidiaries, from time to time through December 31, 2000, in an aggregate principal amount at any one time outstanding of not more than \$1.2 billion, provided that the aggregate outstanding principal amount of such guaranties, when added to Southern's "aggregate investment", as defined in rule 53(a), in all Exempt Projects, shall not exceed 50% of Southern's "consolidated retained earnings," as so defined.<sup>10</sup>

Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary also propose to guaranty the securities issued by any of their direct or indirect subsidiaries (provided that the issue and sale of such securities are

<sup>7</sup> The Commission has proposed a rule that would exempt from the requirement of prior Commission approval under the Act acquisitions of securities of companies that derive all or substantially all of their revenues from specified activities closely related to the core utility business of a registered holding company system. See Holding Co. Act Release No. 26313 (June 20, 1995), 60 FR 33642 (June 28, 1995).

<sup>8</sup> The activities of such special purpose subsidiaries would be subject to all terms, conditions and limitations in the December 1994 Order that are applicable to Southern Electric.

<sup>9</sup> Holding Co. Act Release No. 26349 (Aug. 3, 1995), authorizing guaranties of the securities of Exempt Projects from time to time through December 31, 1999, in an aggregate amount at any one time outstanding not to exceed \$1.2 billion, subject to certain conditions and limitations.

<sup>10</sup> In a separate proceeding in File No. 70-8725, Southern has requested authorization to increase this limit to 100% of its "consolidated retained earnings". The issuance of an order in that filing would amend Southern's guaranty authority as in effect at the date of issuance of such order.

exempt from the requirement of prior Commission approval under section 6(a) of the Act), from time to time through December 31, 2000, in an aggregate amount not to exceed \$1.2 billion at any one time outstanding.

Guaranties may take the form of direct guaranties, standby equity funding commitments, obligations under capital maintenance agreements or reimbursement agreements in respect of bank letters of credit, or other similar financial instruments or undertakings.

#### *Pledge of Securities*

Southern proposes to pledge the shares of Holdings, and Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary propose to pledge the shares of their respective subsidiaries, as security in connection with the sale of debt securities by Holdings and such subsidiaries.

#### *Performance Guaranties*

Southern is currently authorized by the December 1994 Order to guaranty performance by or act as indemnitor or surety with respect to contractual obligations of Southern Electric, any subsidiary of Southern Electric or any project entity in which Southern directly or indirectly holds an interest, in an aggregate amount not to exceed \$800 million at any one time outstanding through December 31, 2003<sup>11</sup>. Southern requests that this authorization be modified so that it may provide such performance guaranties on behalf of Holdings and any direct or indirect subsidiary of Holdings, including Southern Electric, any Exempt Project, other power project, energy-related company or Intermediate Subsidiary.

Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary also propose to provide performance guaranties on behalf of any of their direct and indirect subsidiaries. The amount of these guaranties will be included in calculating the above maximum amount of performance guaranties provided by Southern only if they are supported by an agreement or undertaking of Southern.

#### *Services and Goods*

The applicants propose that Special Purpose Subsidiaries of Holdings, Domestic Holdings or Foreign Holdings may render services or sell goods to associate companies. Such services will

be rendered and goods will be sold at cost, in compliance with the Act and the rules thereunder, unless the Special Purpose Subsidiary complies with the conditions specified in the December 1994 Order with respect to Southern Electric, in which case services or goods may be sold at market prices.

#### *Reporting*

The applicants propose that a single consolidated quarterly report be filed by Southern and Holdings pursuant to rule 24 with respect to all activities of Holdings and its subsidiaries authorized in this file. This report would replace the combined report currently being filed pursuant to the December 1994 Order and the Orders with respect to the activities of Southern Electric and the Project Parents.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Investment Company Act Release No. 21590; 812-9534]

### **Managed Accounts Services Portfolio Trust and Mitchell Hutchins Asset Management Inc.; Notice of Application**

December 11, 1995.

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

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

**APPLICANTS:** Managed Accounts Services Portfolio Trust (the "Trust") and Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins").

**RELEVANT ACT SECTIONS:** Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 thereunder.

**SUMMARY OF APPLICATION:** The Trust is a registered investment company advised by Mitchell Hutchins. Mitchell Hutchins oversees the selection of other investment advisers for the Trust's series, monitors such investment advisers, and allocates assets among them. The order would permit an investment adviser other than Mitchell Hutchins to serve as an investment adviser to one or more series of the Trust without receiving prior shareholder approval.

**FILING DATE:** The application was filed on March 16, 1995, and amended on August 9, and December 8, 1995.

**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 January 5, 1996, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942-0574 or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

#### *Applicants' Representations*

1. The Trust is a registered open-end management investment company organized as a Delaware business trust. The Trust is currently composed of twelve separate investment portfolios (each a "Portfolio," and collectively, the "Portfolios"). The Trust was organized by Mitchell Hutchins and its parent, PaineWebber Incorporated ("PaineWebber"), to provide to participants in the PaineWebber PACE Program (the "PACE Program") a cost-effective investment method (i.e., a series of pooled investment funds) to invest their assets in a variety of different asset classes managed by investment advisers selected and monitored by Mitchell Hutchins.

2. Mitchell Hutchins, a Delaware corporation that is registered as an investment adviser, acts as the investment manager and administrator to the Trust pursuant to an Investment Management and Administration Agreement with the Trust (the "Management Agreement") and is responsible for the selection or termination of investment advisers ("Sub-Advisers") for each of the Portfolios. Mitchell Hutchins also serves as the adviser to the PACE Money Market Investment Portfolio, one of the

<sup>11</sup> The aggregate amount of such guarantees and indemnification of sureties is reduced by similar undertakings made or incurred by Southern in connection with activities of certain other subsidiaries.