

Davis Polk

Gregory S. Rowland

Davis Polk & Wardwell LLP 212 450 4930 tel
450 Lexington Avenue 212 701 5930 fax
New York, NY 10017 gregory.rowland@davispolk.com

May 8, 2018

Re: South State Bank

Mr. Douglas J. Scheidt
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Mr. Scheidt:

On behalf of South State Bank ("**SSB**"), we respectfully request that the staff (the "**Staff**") of the Division of Investment Management of the Securities and Exchange Commission (the "**Commission**") confirm that it will not recommend enforcement action to the Commission under Sections 206(1), (2) or (4) of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**") or Rule 206(4)-1(a)(5) thereunder if the Minis Division (as defined below), following the Restructuring (as defined below), uses the performance track record of Minis (as defined below) to the same extent as Minis could have had the Restructuring not occurred.

Background

South State Advisory, Inc. ("**SSA**") and Minis & Co., Inc. ("**Minis**" and, together with SSA, the "**Advisers**") are two wholly-owned registered investment adviser subsidiaries of SSB, which in turn is a wholly-owned subsidiary of South State Corporation. South State Corporation is a registered bank holding public company incorporated under the laws of South Carolina and trades on NASDAQ under the ticker symbol SSB.

At present, the Advisers are operated largely independently of one another. The Advisers are located in different states, serve different types of clients and operate under different brands. SSA operates primarily in South Carolina and its current client base primarily consists of individuals, retirement plans and corporations. SSA first registered as an investment adviser with the Commission in 2010. Minis operates primarily in Georgia and its current client base primarily consists of individuals, charitable organizations and for-profit businesses. Minis's predecessor firm Minis & Company traces its history back to 1932 and the brand is well-known in the Savannah, Georgia area. Each Adviser has its own management team, which reports separately

to a SSB-level management team. Each Adviser also has its own investment committee that is responsible for the investment decisions and recommendations made by such Adviser.

To improve corporate efficiency, SSB is considering an internal restructuring whereby the Advisers would be merged together (the “**Restructuring**”). The Restructuring would not involve a change in the ultimate control of the Advisers and instead would be a purely internal restructuring. SSB wishes to reduce the number of legal entities in its structure while retaining the separate branding and advisory operations of SSA and Minis.¹ To achieve this, SSB proposes to merge Minis into SSA, with SSA continuing as the surviving entity of the merger. The business of Minis would then be continued as a separate business division of SSA (the “**Minis Division**”) operating under the Minis brand (with appropriate disclosure to existing and prospective clients making clear that SSA is the legal entity serving as their adviser).

Upon the Restructuring, the Minis Division would be managed by the same management team that currently manages Minis and the Minis investment committee would continue to have responsibility for the Minis Division’s investment decisions and recommendations.² The Minis Division would continue to be based in Georgia and operate under the Minis brand, while SSA would continue to be based in South Carolina and operate under the separate SSA brand. The existing clients of Minis (and the future clients of the Minis Division) would continue to be served by personnel representing the Minis brand.³

In short, upon the Restructuring, Minis would have undergone a change in legal form, but would effectively operate as though it were the same standalone entity it had been. As a result, the Restructuring will not result in a change of actual control or management of Minis and thus the Restructuring will not constitute an “assignment” of Minis’s client contracts pursuant to Rule 202(a)(1)-1 under the Advisers Act.⁴

Legal Issue

SSB wants the Minis Division to be able to continue using the Minis performance track record following the Restructuring. As a general matter, the Staff has analyzed questions regarding the use of a track record under Advisers Act Rule 206(4)-1(a)(5) which prohibits the use of false or

¹ SSB represents that the Restructuring is being effected for bona fide corporate purposes and not for the purpose of allowing SSA to improperly make use of the Minis performance track record in connection with the SSA-branded advisory business.

² The composition of the Minis management team and investment committee may change over time, although no changes are anticipated in connection with the Restructuring. For example, it is possible that, in the future, members of the Minis investment committee may also serve as members of the SSA investment committee, as they could under the current structure.

³ As with any business, it is possible that over time the businesses of SSA and the Minis Division may evolve in ways not currently anticipated in response to market and other factors, such as client demand. For example, it is possible that the Minis Division and SSA may grow into different geographic markets, or different client bases. Similarly, for efficiency purposes, it is possible that the Minis Division and SSA may make use of shared corporate and operational support, services and facilities so as not to have unnecessarily redundant functions within the same corporate group. Nonetheless, the Minis Division and SSA will continue to operate as separate advisory brands holding themselves out to the market and their clients as distinct investment advisers.

⁴ We note that we are not seeking the Staff’s confirmation of our view that the Restructuring will not constitute an assignment.

misleading advertisements.⁵ Here, given that, except for the change in form, the Minis Division will, upon the Restructuring, operate in the same manner and under the same brand name as Minis, we believe that it is clear that it would not be misleading for the Minis Division to use the Minis track record as its own immediately following the Restructuring (with appropriate disclosure of the change in form).

The Staff's guidance regarding a successor firm's use of a predecessor's track record where the successor and predecessor had different ownership, however, raises the issue of whether the Minis Division could continue to use the Minis track record if the composition of the Minis Division investment committee changed at some point (even years) after the Restructuring, such as through committee member retirements.⁶ In particular, in the *Great Lakes* no-action letter, the applicant, Great Lakes Advisors, Inc. ("**Great Lakes**"), had acquired 84% in dollar value of the investment advisory accounts of its predecessor and sought no-action assurance that it could use its predecessor's performance track record even though some of the personnel involved in the predecessor's investment decision-making were not employed by Great Lakes.⁷ The Staff declined to grant the requested no-action position due to the change in personnel, noting that the Staff had previously taken the position that "it may not be misleading for an adviser to use performance data of a predecessor" if, among other things, "no individual other than the successor's portfolio manager played a significant part in the performance of the predecessor's accounts"⁸ The Staff further stated that, where investment decisions are made by committee, "[u]nder certain circumstances, it may not be misleading for a successor adviser, composed of less than 100% of the predecessor's committee, to use the performance data of the predecessor's committee" provided that, "at a minimum," there is "a substantial identity of personnel among the predecessor's and successor's committees."⁹

Similarly, in the *Horizon* no-action letter, a newly formed adviser, Horizon Asset Management, LLC ("**Horizon**"), sought no-action assurances from the Staff that Horizon could use the performance track record of a predecessor firm.¹⁰ The Staff granted the requested no-action position on the basis that the ultimate investment decision-maker at Horizon had also been primarily responsible for the investment decisions at the predecessor firm.¹¹ In granting the relief, the Staff stated that "an investment adviser advertisement that includes prior performance results of accounts managed by a predecessor entity would not, in and of itself, be misleading"

⁵ See, e.g., *Horizon Asset Management, LLC*, SEC No-Action Letter (Sep. 13, 1996); *Great Lakes Advisors, Inc.*, SEC No-Action Letter (Apr. 3, 1992). Advisers Act Rule 206(4)-1(a)(5) prohibits any registered investment adviser from publishing, circulating or distributing any advertisement "[w]hich contains any untrue statement of a material fact, or which is otherwise false or misleading."

⁶ We note that we are not requesting the Staff's view as to whether a change in composition of the Minis investment committee in the absence of the Restructuring would affect the ability of Minis to continue to use its performance track record.

⁷ *Great Lakes Advisors, Inc.*, SEC No-Action Letter (Apr. 3, 1992).

⁸ *Id.* (citing *Fiduciary Management Associates, Inc.*, SEC No-Action Letter (Feb. 2, 1984) and *Conway Asset Management, Inc.*, SEC No-Action Letter (Jan. 27, 1989)).

⁹ *Id.*

¹⁰ *Horizon Asset Management, LLC*, SEC No-Action Letter (Sep. 13, 1996). In *Horizon*, the predecessor firm was not described as having the same ownership as the successor, Horizon.

¹¹ *Id.*

provided that, among other factors, “the person or persons who manage accounts at the adviser were also those primarily responsible for achieving the prior performance results.”¹²

The Staff’s statements in *Great Lakes* and *Horizon* could be read to mean that a successor adviser may use its predecessor’s performance track record only if the people primarily responsible for the predecessor’s results remain at the successor, not just at the time of the succession, but for so long as the successor uses the track record. We are neither seeking to address, nor are we requesting the Staff’s view regarding, whether that is the correct reading of those no-action letters in the context of a change of control transaction or where the successor and predecessor firms have different ownership.

Instead, we are seeking no-action assurance with respect to our position that, in the context of the Restructuring, it would not be misleading for the Minis Division to continue to use the Minis performance track record to the same extent as Minis could have had the Restructuring not occurred, with appropriate disclosure.¹³ We believe this is the correct position and that *Great Lakes* and *Horizon* are not to the contrary, because, unlike in *Great Lakes* and *Horizon*, the Restructuring involves an internal restructuring where the prior business is essentially continued in its entirety albeit in a different corporate form. In such an internal restructuring, as with the Restructuring, not only would the investment personnel continue with the successor adviser, but so would the management, culture and processes that also helped to give rise to the predecessor’s track record (such as through the hiring and oversight of the investment personnel). While the personnel, management, culture and processes of the successor may evolve over time following such a restructuring, so would they at a firm that had not undergone an internal restructuring.

Additional policy considerations support our position as well. Specifically, concluding that an internal restructuring, not involving a change of ultimate ownership or control, could impair an advisory business’s use of its performance track record would discourage firms from taking steps to maximize the efficiency of their corporate structures and organization for the benefit of their shareholders.

For the reasons set forth above, we respectfully request that the Staff confirm that it will not recommend enforcement action to the Commission under Sections 206(1), (2) or (4) of the Advisers Act or Rule 206(4)-1(a)(5) thereunder if the Minis Division, following the Restructuring, uses the performance track record of Minis to the same extent as Minis could have had the Restructuring not occurred.

¹² *Id.*

¹³ The Minis Division’s advertising materials that use the Minis track record will include appropriately prominent disclosure of the change in corporate form.

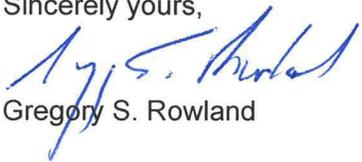
Mr. Douglas J. Scheidt

5

May 8, 2018

Please do not hesitate to contact me, or Benjamin Milder (212-450-3171), if you would like to discuss this matter further or if you require any additional information.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Gregory S. Rowland". The signature is fluid and cursive, with the first name being the most prominent.

Gregory S. Rowland