



U.S. Securities and Exchange Commission

Investment Advisers Act of 1940 - Sections 206(1), (2), and (4) / Rule 206(4)-1(a)(5)

May 8, 2018

RESPONSE OF THE CHIEF COUNSEL'S OFFICE
DIVISION OF INVESTMENT MANAGEMENT

By letter dated May 8, 2018, you request our assurance that we would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under sections 206(1), 206(2) and 206(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 & Co., Inc. ("Minis") to the same extent as Minis could have had the Restructuring not occurred.

Background

You state the following:

- South State Advisory, Inc. ("SSA") and Minis (together with SSA, the "Advisers") are wholly-owned registered investment adviser subsidiaries of South State Bank ("SSB"), which in turn is a wholly-owned subsidiary of South State Corporation.
- Each Adviser has its own management team, which reports separately to a SSB management team. Each Adviser also has its own investment committee, which is responsible for the Adviser's investment decisions and recommendations.
- To improve corporate efficiency, SSB is considering an internal restructuring whereby Minis would be merged into SSA (the "Restructuring").^[1]
- Following the Restructuring,
 - Minis' business would continue as a separate business division of SSA (the "Minis Division") operating under the Minis brand; and
 - The same management team that currently manages Minis would manage the Minis Division and the Minis investment committee would continue to have responsibility for the Minis Division's investment decisions and recommendations.^[2]
- The Minis Division proposes to use the performance track record of Minis to the same extent as Minis could have used such track record had the Restructuring not occurred.^[3]

Analysis

Section 206 and Rule 206(4)-1(a)(5)

Section 206(1) of the Advisers Act prohibits investment advisers from employing any device, scheme, or artifice to defraud any client or prospective client. Section 206(2) of the Advisers Act prohibits investment advisers from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

Section 206(4) of the Advisers Act prohibits investment advisers from engaging in any act, practice, or course of business that the Commission, by rule, defines as fraudulent, deceptive or manipulative. Rule 206(4)-1(a)(5) under the Advisers Act prohibits any registered investment adviser from, directly or indirectly, publishing, circulating, or distributing any advertisement^[4], "[w]hich contains any untrue statement of a material fact, or which is otherwise false or misleading."

You argue that, so long as appropriate disclosure is provided, it would not be misleading for the Minis Division to continue to use the Minis performance track record in advertisements and otherwise to the same extent as Minis could have had the Restructuring not occurred because, except for the change in legal entity, the Minis Division will operate in the same manner and under the same brand name as Minis. Furthermore, you state that the Minis investment personnel, as well as the management, culture, and processes that helped to give rise to Minis' track record, will continue with SSA.^[5]

Conclusion

Based on the facts and representations set forth in your letter, we would not recommend enforcement action to the Commission under Sections 206(1), 206(2), or 206(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, with appropriate disclosure.^[6]

Because our position is based on your facts and representations, you should note that any different facts or circumstances might require a different conclusion. This letter represents only the Division's position on enforcement action and does not purport to express any legal conclusion on the questions presented.

Jessica Shin
Attorney-Adviser

^[1] You represent that 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' client contracts pursuant to Rule 202(a)(1)-1 under the Advisers Act. In this letter, we are not interpreting what constitutes an "assignment" pursuant to Rule 202(a)(1)-1 under the Advisers Act.

^[2] You state that the composition of the Minis management team and investment committee may change over time, although no changes are anticipated in connection with the Restructuring.

^[3] You represent that any use of Minis' performance track record by the Minis Division would be accompanied by appropriate disclosure.

^[4] Rule 206(4)-1(b) defines "advertisement" as follows:

For the purposes of this section the term *advertisement* shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to

buy or sell, or (3) any other investment advisory service with regard to securities.

[5] You state that, while the personnel, management, culture and processes of the Minis Division may evolve over time following the Restructuring, such changes could also occur at a firm that had not undergone an internal restructuring.

[6] We note that the Division's positions expressed in the *Great Lakes Advisors, Inc.* and *Horizon Asset Management, LLC* no-action letters continue to represent the staff's positions with respect to the circumstances presented therein.

Incoming Letter

The [Incoming Letter](#) is in [Acrobat](#) format.

<http://www.sec.gov/divisions/investment/noaction/2018/southstatebank050818.htm>

[Home](#) | [Previous Page](#)

Modified: 05/09/2018