

August 11, 2015

Submitted via Federal eRulemaking Portal

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re: Comments on Proposed Amendments to Form ADV and Investment Advisers Act Rules,
Release No. IA-4091; File No. S7-09-15

Ladies and Gentlemen:

Financial Engines respectfully submits the following comments in response to the Securities and Exchange Commission's ("Commission") proposed amendments to Form ADV and Investment Advisers Act Rules, published in the June 12, 2015 Federal Register.

Financial Engines Advisors, a wholly owned subsidiary of Financial Engines Inc., is a registered investment adviser that provides personalized investment advice and management services directly to plan participants in 401(k) and similar plans. Financial Engines is a leading provider of independent advisory services to large plan sponsors, working with many of the nation's largest employers and retirement service providers.¹

We appreciate the opportunity to comment on the proposed amendments. We believe, however, that the proposed amendments are overly broad in scope and would impose unnecessary burdens on investment advisers who are providing advice on a fund universe within a 401(k) plan. The following comments are intended to assist the Commission in clarifying the applicability of the proposed amendments in such circumstances.

Proposed Amendments for Form ADV

The proposed amendments require information as to whether an adviser manages assets in separately managed accounts ("SMAs"), whether they engage in borrowing and/or derivative transactions on behalf of any of their SMA clients, and the identity of any custodians that hold ten percent or more of SMA assets.

In addition, advisers that manage at least \$150 million in SMA assets must report on the following:

- The allocation of assets in SMAs among various asset classes, including exchange-traded equity securities, U.S. government or agency bonds, U.S. state and local bonds, sovereign

¹ Financial Engines offers retirement help, including investment advice and management services, to over 9.4 million plan participants through leading employers and financial institutions, including 143 of the Fortune 500 companies, as of July 31, 2015.

bonds, investment-grade corporate bonds, non-investment grade corporate bonds, derivatives, securities issued by registered investment companies or business development companies, securities issued by other pooled investment vehicles, and other asset classes;

- The number of SMAs managed in each of three tiers of accounts (\$10 million to \$249,999,999; \$250 million to \$999,999,999; and \$1 billion or greater) for four levels of gross notional exposure (less than 10%, 10-99%, 100-199%, and 200% or more);
- The average borrowings of SMAs, within each tier and level of gross notional exposure described above in (ii); and
- For advisers with at least \$10 billion in SMA assets under management, the average derivative exposure by class of derivative (interest rate, foreign exchange, credit, equity, commodity and other), within each tier and level of gross notional exposure described above in (ii).

In each case, data must be calculated at the end of each year and, for advisers (such as Financial Engines) with at least \$10 billion in SMA assets under management, six months before the end of the year.

1. Pooled Investment Vehicles and Investment Companies

The proposed disclosures will be difficult to implement for an adviser, like Financial Engines, to 401(k) plans, in part because this type of adviser does not have control over the investment options available to plan participants. Each plan sponsor determines the options available to participants.

It is unclear that Financial Engines (or advisers in similar positions) could provide the information sought by the proposed amendments, and whether the information would be relevant to the Commission's oversight needs. Financial Engines does not use any derivatives or borrow on behalf of any Participant's account. The investment options in 401(k) plans are typically either registered investment companies or similar pooled investment vehicles, but nuances in the types of instruments used in 401(k) plans can sometimes mean it is useful to designate, or "code" an instrument as a pooled investment vehicle versus a mutual fund, or vice versa, such as when retail mutual funds are included in a plan line-up, but fees are rebated in accordance with ERISA requirements. It would be difficult, and would require additional systems work, to then track a different set of designations solely for purposes of ADV reporting. We suggest that assets held within a 401(k) or other defined contribution plan be excluded from the definition of SMA. Alternately, the Commission could make it clear that reasonable, good faith efforts to correctly categorize the assets held would be sufficient.

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2. Custodians

Financial Engines does not select the trustees, custodians or plan administrators (also referred to as plan recordkeepers) for the plan participants it advises, and Financial Engines has no custody of participant assets. Financial Engines works with the plan administrator, who may not be the custodian, to obtain the information needed to advise on the Participants' accounts, and to transmit and reconcile trade and fee deduction instructions. Financial Engines can readily provide the identity of the recordkeepers who administer more than 10 percent of its SMA regulatory assets under management, but it would require additional inquiry to determine the custodian. We suggest that the recordkeeper, rather than the custodian, be identified where the advised assets are associated with a 401(k) plan.

Conclusion

Financial Engines appreciates the opportunity to comment on the proposed rule. We welcome the opportunity to work with the Commission and to provide any further assistance that may be required. Please contact us should you have any questions.

Very truly yours,

Financial Engines Advisors, L.L.C.

By: /s/ Anne Tuttle Cappel

Anne Tuttle Cappel

Its Executive Vice President and General Counsel