financial engines

July 8, 2013

Via Electronic Filing
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Request for Data and Other Information, Rel. No. 34-69013; IA-3558; File No. 4-606 Duties of Brokers, Dealers, and Investment Advisers

Ladies and Gentlemen:

Financial Engines respectfully submits the following data and comments in response to the Securities and Exchange Commission's ("Commission") request for information relating to the duties of brokers, dealers, and investment advisers. We believe that the interests of individual investors will be best served by the consistent application of the fiduciary standard to providers of investment advice. Financial Engines provides both discretionary and non-discretionary investment advice, acting as a fiduciary for both types of investment advice. We serve as a fiduciary for a large number of individuals of modest means, as more fully described below.

Company Information and Provision of Non-Discretionary Retail Customer Investment Advice

Financial Engines was founded in 1996 by Bill Sharpe, a Nobel Prize-winning economist, and Joe Grundfest, a former SEC Commissioner, with the goal of providing to those of more modest means the same independent, objective investment advice that was typically only available to the wealthy. Financial Engines Advisors L.L.C. ("Financial Engines"), a wholly owned subsidiary of Financial Engines, Inc., is a Commission-registered investment adviser that provides personalized investment advice to plan participants in 401(k) plans, IRAs, and similar plans. Financial Engines provides both discretionary and non-discretionary investment advice to these individual retail customers[1].

Financial Engines offers services for individuals' workplace retirement accounts through an agreement between Financial Engines and the plan or the sponsoring employer ("plan sponsor"). Financial Engines also has arrangements with financial institutions to provide similar services on a sub-advisory basis[2]. Financial Engines works with many of the nation's largest employers, including 142 of the Fortune 500[3]. Once a plan sponsor chooses to make our services available to their employees, those individuals may use either our non-discretionary Online Advice service or our discretionary Professional Management service. Financial Engines offers retirement help, including investment advice and management services, to over

[1] Section 913(a) of the Dodd-Frank Act defines the term "retail customer" as "a natural person, or the legal representative of such natural person, who (1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes."

[2] In accordance with the Department of Labor Advisory Opinion 2001-09A (known as the "Sun America opinion"), the investment advice is provided by Financial Engines as an independent financial expert.

[3] As of March 31, 2013

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8.5 million plan participants[4]. Within the last 3 years, nearly one million individuals have received non-discretionary investment advice through our Online Advice service.[5]

Our focus is on plan participants. Financial Engines is not, nor is it affiliated with, any broker-dealer, bank, insurance company, or other financial services entity. We do not sell investments. We do not receive commissions, or offer brokerage accounts. Our compensation does not vary based on the investments we recommend.

Online Advice is a non-discretionary investment advisory service which includes specific buy and sell recommendations among the investment alternatives available in the employer-sponsored retirement plan (generally mutual funds and other investment company securities and in some cases, one or more equity securities issued by the plan sponsor); and access to ongoing monitoring, including access to optional, online quarterly Retirement Updates. The advice and recommendations are specific to the individual, as distinguished from a model portfolio (see also the "Methodology Overview" section below). The Online Advice client is responsible for determining whether and when to implement the recommendations they receive from Online Advice. Financial Engines has established electronic communications links with certain defined contribution plan providers ("plan providers") and other financial institutions to enable plan participants to transmit their investment decisions to the plan provider or institution for execution. Plan participants may use Online Advice as frequently as they choose to receive investment recommendations and forecasts, monitor progress toward their retirement goals, and access educational content. Financial Engines may from time to time provide e-mail notifications to clients who elect to receive them, concerning changes in the value of the client's investments or the chances of reaching the client's goal. A participant is responsible for periodically revisiting Online Advice to:

- update account information to reflect changes in investments, including purchases and sales of investments;
- update personal information, including retirement goals, to reflect changes in personal or financial circumstances; and/or
- review any updates regarding changes to the participant's account value or forecast.

Individual investors also may subscribe to Online Advice directly from Financial Engines (not in connection with an arrangement with a plan or plan sponsor).

Methodology Overview

Financial Engines employs its own proprietary advice methodology to provide its investment advisory services. The analyses and recommendations generated by Financial Engines' advice methodology are based on an assessment of risk, correlations and expected returns for more than 33,000 securities (e.g., stocks, mutual funds, commingled trusts and separate accounts). The methodology is designed to provide personalized and diversified investment recommendations that take into consideration time to retirement, risk tolerance, outside assets and other personal circumstances. Financial Engines' methodology employs

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[4] As of March 31, 2013

[5] As of March 31, 2013, Financial Engines managed, on a discretionary basis, through our Professional Management service, the retirement accounts of 681,000 individuals, representing RAUM of $70.8 billion. The instructions to Form ADV Part 1 permit advisers to include non-discretionary assets in their RAUM if they "have ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell, and, if such recommendations are accepted by the client, [they] are responsible for arranging or effecting the purchase or sale." Form ADV Part 1A, instructions for Item 5F. This type of ongoing non-discretionary advice differs from the periodic or episodic non-discretionary advice offered by many brokers. Based on the instructions to Form ADV, Financial Engines does not include the assets in accounts it advises on a non-discretionary basis in its RAUM.

market consensus expectations on key economic and market indicators, and does not engage in market timing.

Description of Retail Customer Segment

Financial Engines was founded with the mission to provide investment advisory services to all plan participants, regardless of account balance. We have clients of all ages, incomes, and education. The median account balance for our Professional Management services is $47,000[6]. We have found that younger, higher-balance clients are more likely to use our non-discretionary Online Advice service[7] than our discretionary Professional Management service. Risk levels are consistent with the primary purpose of saving for retirement, and vary in accordance with the individual's time horizon to retirement and individual preference.

Our revenue is generated primarily from management fees on assets we manage for individual customers and also from subscription fees paid by the plan, plan sponsor, or plan provider. We do not receive any revenue from commissions.

Comments

Data and other information: describing the cost to retail customers of receiving personalized investment advice about securities (Part II, request 5)

Our arrangements with a plan or plan sponsor to provide Online Advice to plan participants generally provide for our non-discretionary management fees to be paid by the plan, the plan sponsor or plan provider. Such fees range up to $35 per eligible plan participant per year, depending on the services provided; however, we may negotiate a different fee schedule based on other factors, including the amount of aggregate assets in the plan or the assets in client accounts, or a flat annual or other periodic fee.

For individual investors who subscribe to Online Advice directly from Financial Engines, fees range from $39.95 per quarter or $149.95 per year to $300 per year, depending on the services provided.

Continuing Duty of Care/Limited Services (Part III, Assumption 5)

The Commission indicates that it does not assume that a broker-dealer or investment adviser would have a continuing duty of care or loyalty after providing advice or be required to provide services beyond those on which the parties have agreed, an assumption that follows Section 913 of the Dodd-Frank Act. We agree and believe that it is important to preserve the ability to engage in one-time recommendations for clients without the obligation to monitor the client's circumstances and account on an ongoing basis.

Suitability (Part III.B.2.1; Part III.E.2)

The Commission has requested comment as to whether the application of certain approaches, such as specifying suitability requirements for investment advisers similar to those currently applicable to broker-

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[6] As of March 31, 2013

[7] Financial Engines and Aon Hewitt study, Help in Defined Contribution Plans: 2006 through 2010 published September 2011, available on financialengines.com. The report is based on a dataset of eight plan sponsors representing more than 425,000 individual participants and more than $25 billion in plan assets. Within the Help group, online advice and professional management were provided by Financial Engines. This report looked at participant behavior and portfolio risks and returns during the volatile period between January 1, 2006 and December 31, 2010.

dealers, without modifying the regulation of broker-dealers, would require a firm to modify or eliminate current business practices.

Investment advisers, under the fiduciary standard, already must use a high degree of care to ensure investment recommendations are suitable for a client. We do not see how investors would be better served with a "check the box" approach to suitability that may require collection of information that is not relevant to developing suitable portfolios for particular clients, but which would certainly lead to increased costs. For example, Financial Engines obtains certain information relating to plan participants from the plan sponsor or plan recordkeeper, such as account balance and age, while assuming that the client has an investment horizon reaching to a typical retirement age of 65. Clients can easily express a different retirement age, and thus either a shorter or longer investment horizon. We advise clients on the investments within their tax-deferred retirement savings accounts, and therefore assume that their investment objectives will be consistent with saving for retirement. As noted above, we make recommendations based on the investment choices available within the 401(k) plan. Other information such as liquidity needs or investment experience would not provide any additional information relevant to the task of recommending a suitable portfolio for the client's 401(k) plan investments.

Potential Areas for Further Regulatory Harmonization (Part IV)

Advertising (Part IV.A.1)
In the staff study, areas the staff suggested the Commission consider for harmonization included advertising and other communications.

As noted in the Request, Advisers Act Rule 206(4)-7 already indicates that an adviser's policies and procedures, at a minimum, should address the accuracy of disclosures made in account statements and advertisements, and that the adviser's CCO should have the authority to develop and enforce appropriate compliance policies and procedures. The policies and procedures should be reasonably designed to prevent violations, and must be tailored to the particular adviser's circumstances, rather than using an "off-the-shelf" set of policies. Advisers must maintain records of their advertisements. More prescriptive rules, such as the designation of particular employees to review and approve communications and advertisements, would not serve to further protect an adviser's clients. Advisers have already developed processes that designate appropriate individuals, either compliance personnel or other employees, to review advertisements, and that appropriately place compliance responsibilities on those employees.

Prospective investment adviser clients could obtain useful information about an investment adviser's services if the rules governing investment adviser use of testimonials were harmonized with the rules governing broker-dealer use of testimonials.

Requiring associated persons of investment advisers to be subject to federal qualification examinations and continuing education requirements (Part IV.A.5)

The staff study notes that investment adviser representatives are already required to pass securities exams (or hold a designation such as Certified Financial Analyst). We see no additional benefit to expanding testing requirements to all associated persons of an adviser.[8]

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[8] The costs involved would be considerable. Associated persons would need to spend considerable time preparing for exams that may have little relevance to the expertise and regulatory knowledge needed to serve clients in roles other than investment adviser representative.

Conclusion

We agree with the concern expressed by the Commission when specific regulatory obligations depend on the statue under which a firm is registered instead of the services provided. We believe that the interests of individual investors will be best served by the consistent application of the fiduciary standard to providers of investment advice. For Financial Engines, adhering to a fiduciary standard has not been an impediment to advising large numbers of clients of modest means.

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

Very truly yours,

Anne Tuttle Cappel
EVP and General Counsel

CC:
The Hon. Mary Jo White, Chair
The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Troy A. Paredes, Commissioner
The Hon. Daniel M. Gallagher, Commissioner
Mr. John Ramsay, Acting Director, Division of Trading and Markets
Mr. Norm Champ, Director, Division of Investment Management
Mr. Craig Lewis, Director and Chief Economist, Division of Economic and Risk Analysis