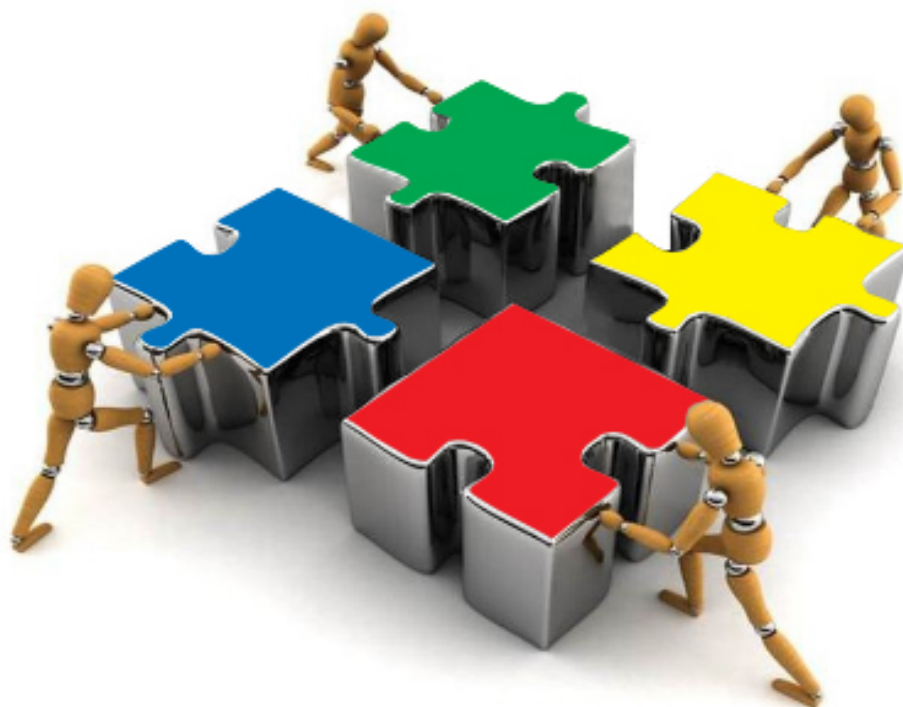




# Report on the Anticipated Operational Impacts to Broker- Dealers of the Department of Labor's Proposed Conflicts of Interest Rule Package



July 17, 2015

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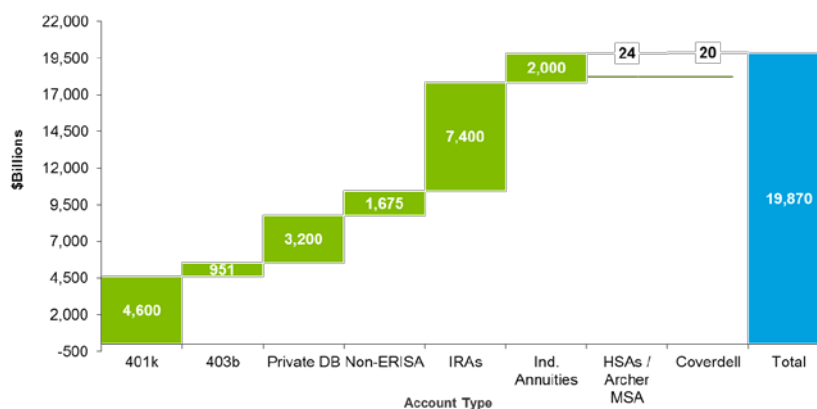
# Executive Summary

## Introduction

On April 20, 2015, the Department of Labor (“DOL”) proposed<sup>1</sup> a new definition of investment advice fiduciary under 29 CFR 2510.3-21 and a series of prohibited transaction exemptions (referred to as the “Rule Package” throughout the document). From the DOL’s perspective the amended rules are designed to provide further protection to the public from “questionable retirement investment advice” by requiring retirement advisors to follow strict “fiduciary” standards<sup>2</sup>. However, the Securities Industry and Financial Markets Association (“SIFMA”) working group members who participated in the study (“SIFMA Working Group”) indicated that they believe the potential effects of the proposed changes extend beyond the realm of retirement advice and will have broad and extensive operational impacts into many areas of financial services institutions, including profound changes to existing business models, compensations practices of broker-dealers, available investments, client relationships and firm operations and infrastructure.

Existing rules in this area were defined by the Employee Retirement Income Security Act of 1974 (“ERISA”), which was enacted at a time when professionally managed defined benefit pension funds were the retirement norm. Over the past 40 years, however, self-managed investments such as Individual Retirement Accounts (“IRAs”) and other defined contribution arrangements such as 401(k) plans have taken over as the primary ways to save for retirement, which has increased the availability and variety of retirement savings options for individuals. In the view of the SIFMA Working Group, the DOL’s Rule Package may have unintended consequences for the broker-dealer industry as well as individual investors which the industry serves. Consider Figure I.1 that shows almost \$20 trillion in US retirement assets will be affected by the proposed Rule Package<sup>3</sup>:

**Figure I.1 – Dollar Amount of Retirement Assets by Account Type in 2014**



<sup>1</sup> Federal Register Vol. 80, No. 75 - Proposed Rules – Employee Benefits Security Administration (4/20/2015)

<sup>2</sup> Source: Department of Labor “Fiduciary Investment Advice – Regulatory Impact Analysis”

<http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf>

<sup>3</sup> Source: ICI “The U.S. Retirement Market”, (4Q 2014); Devenir “HSA Research Report”, (Dec 2014); Strategic Insight “529 Industry Analysis”, (2015)

## Approach

To understand the views of the broker-dealer industry on the extent of the operational impacts of the proposed rule to the financial services community, SIFMA engaged Deloitte & Touche LLP (“Deloitte”) to facilitate a study with a SIFMA Working Group comprised of over 140 senior operations, technology, and legal professionals from approximately 40 SIFMA member firms whose business include providing individual investors with financial advice and services (referred to as the “SIFMA Working Group” throughout this report). The SIFMA Working Group analyzed the requirements of the proposed Rule Package across the customer life cycle to primarily understand the technology or operational reformation needed to align existing processes with new obligations of the proposed rule. Additionally, process flow diagrams were developed to illustrate the requirements and necessary process augmentations<sup>4</sup> identified by the SIFMA Working Group to operationalize the Rule Package’s requirements from the point of view of financial services firms, investment professionals (e.g., client facing financial advisors or registered representatives) and customers.

Through the analysis, the SIFMA Working Group sought to identify operational “hot spots” reflecting required operational changes to systems, personnel, processes and business models. Finally, SIFMA conducted a cost survey with a subset of the SIFMA Working Group to understand how the Rule Package requirements may impact operational expenses for implementing and maintaining the operational changes, processes and systems that will be required to comply with the Rule Package.

The findings represent the views expressed by the SIFMA Working Group as communicated to Deloitte through facilitated discussions and surveys. Deloitte has aggregated and summarized these views, but was not asked to and did not independently verify, validate or audit the information presented by the SIFMA Working Group<sup>5</sup>.

## Summary of the findings

The collective views of the SIFMA Working Group yielded five themes<sup>6</sup> that indicated broker-dealers will likely face immense challenges in operationalizing the requirements of the proposed Rule Package. Given the business and legal frameworks within which the financial services industry operates, the SIFMA Working Group identified areas where the proposed Rule Package will be impractical or impossible to implement as currently drafted (e.g., contracts signed before service provider is hired or before the first sales pitch; two indicative quotes before any approval of a principal transaction; a written chart provided to clients projecting future performance and future cost before any trade). It was noted by the SIFMA Working Group that they believe that the proposed Rule Package is so broad in scope, subjective and ambiguous in certain areas that it will be impossible to build operational systems and processes to ensure compliance, to create objective surveillance systems, or to run risk and compliance routines in connection with the requirements. Finally, the SIFMA Working Group noted that the proposed Rule Package will impose requirements that may conflict with other existing regulatory obligations.

The SIFMA Working Group expressed concern that the punitive and automatic nature of excise taxes for non-compliance, even in instances of immaterial or inadvertent non-compliance, coupled with the

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<sup>4</sup> Illustrative process flow diagrams may not be all inclusive of actual implementation requirements

<sup>5</sup> This engagement was performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants. Deloitte & Touche LLP did not provide any assurances regarding the sufficiency of the services provided for SIFMA’s purpose. Deloitte & Touche LLP services provided in conjunction with this assignment do not constitute an engagement to provide audit, review, compilation or attestation services as described in the pronouncements on professional standards issued by the American Institute of Certified Public Accountants and, accordingly, Deloitte & Touche LLP did not provide any assurance concerning the reliability of any assertion that is the responsibility of another party. These services did not result in the issuance of any written or oral communication by Deloitte & Touche LLP expressing an opinion or any other form of assurance with respect to financial data or internal controls to SIFMA or any third party.

<sup>6</sup> The themes and views identified by the SIFMA Working Group and represented in this report are not all inclusive of all impacts or costs associated with the proposed Rule Package.

view that many of the Rule Package requirements are impractical and ambiguous, may cause some financial services firms to exit the market, terminate smaller accounts or migrate to wrap programs where suitable.

The five themes identified by the SIFMA Working Group, which will be discussed in detail in the following pages, are as follows:

- **It will be unfeasible or impossible to operationalize certain Rule Package requirements**
  - Operationally Impractical
    - Disclosure challenges and challenging operations
    - Financial market implications and credit rating limitations
    - Best Interest and Principal Transaction Exemption Contract implications
  
- **Significant personnel, process and technology changes and investments to operations, business and compliance will be required to comply with the Rule Package**
  - Operationally Onerous
    - Substantial changes and investments to systems and processes
    - Large-scale new data collection and management requirements
    - High-dollar cost to implementing and maintaining
  
- **Rule Package requirements will create disruptions to business operations and customer experience**
  - Impediment to Business
    - Negative impacts to customer experience
      - Customer confusion as a result of the Rule Package
      - Impact of investment education limitations
      - Investment option limitations and disadvantages
  
- **Rule Package requirements may conflict with existing regulatory obligations**
  - Potential Regulatory Implications
    - Migration to multiple and various types of accounts
    - Inconsistencies with other existing rules and guidance
  
- **The Rule Package is ambiguous and broad in certain areas, which challenges the operationalization of the Rule Package's requirements**
  - Rule Package Ambiguity
    - The definitions of terms are not clear
    - The scope of requirements is not clear
    - Other areas of the Rule Package require clarification

# 1. It will be unfeasible or impossible for firms to operationalize certain Rule Package requirements

## Operationally Impractical

The SIFMA Working Group identified several requirements of the proposed Rule Package that will be unfeasible or impossible for firms to operationalize within existing business, operational and compliance frameworks. Specifically, the SIFMA Working Group noted concerns with the industry's ability to operationalize components of the contract and disclosure requirements of the Best Interest Contract Exemption and Principal Transaction Exemption. Examples were identified by the SIFMA Working Group where the nature of financial markets, products, business models, third-party relationships or operational processes will be challenging for firms to meet the obligations of the proposed Rule Package.

### 1.1 Disclosure challenges and illogical operational structures

Under the proposed Best Interest Contract Exemption obligations, firms and investment professionals will be required to provide new disclosures to customers at the point of sale, annually and through a webpage. The SIFMA Working Group identified several components of the Best Interest Contract Exemption disclosure requirements as impractical to implement due to legal restrictions and illogical operational processes including:

- The potential inability to obtain information from third parties as a result of how information is collected and shared amongst various stakeholders will make it difficult for firms to provide annual disclosures within 45 days of year end – Information around fees for inclusion in the annual disclosure to customers may not be available to firms within the 45 day timeframe. The expectation that firms will be able to obtain this information and perform necessary calculations of direct and indirect fees for products in the allotted timeframe will be difficult. The SIFMA Working Group noted that some vendors pay certain fees and compensations to institutions after close of the business year which may take more than 45 days to receive, reconcile and post.
- Attributing direct and indirect compensation and fees earned by firms and investment professionals to the individual investor and transactions will likely be a lengthy, complicated process – Currently, many compensation fees earned by firms and investment professionals are not directly attributable to specific transactions and customers due to the nature of revenue sharing arrangements and other compensation models utilized by product companies. Specifically, the SIFMA Working Group indicated there will be complications on precisely attributing the revenue sharing in specific transactions to the corresponding specific account. Additionally, because the Rule Package does not enumerate the methodology that should be used to attribute these fees, these calculations may vary and be performed inconsistently across the industry.
- The SIFMA Working Group noted the calculation of indirect compensation and fees attributable to specific transactions and investors will be an impractical process that ultimately does not result in the disclosure of fees that materially affect the customers' bottom line – The SIFMA Working Group emphasized that there are indirect compensation and fees paid by firms that are passed through to investors, the indirect compensation and fees often cannot be attributed to specific transactions or investors and may not be material fees to individual investors or specific transactions. Attributing the indirect compensation and

fees will likely require updates to calculations, technology and systems and will be impossible for certain products. Furthermore, the calculations of the indirect compensation and fees specific to customers would likely not yield material fee amounts for individual investors attributed to their specific transactions. For example, the SIFMA Working Group noted that fees that intermediaries pay to the manufacturer of an investment product often depend upon the amount of a product that an intermediary places with customers over a period. As such, the intermediary will not know the exact fee associated with a product until the end of a calculating period. Additionally, because the Rule Package lacks guidance on how to calculate and attribute fees, these calculations may vary and be performed inconsistently across the industry.

Figure 1.1 is an excerpt from the Best Interest Contract Exemption process flow (See Appendix) illustrating the points where the SIFMA Working Group indicated that Rule Package requirements are expected to impact the processes within the transaction/maintenance portion of the customer transaction life cycle:

**Figure 1.1 – Best Interest Contract Exemption Process Impacts of the Rule Package to the Transaction/Maintenance portion of the customer life cycle**

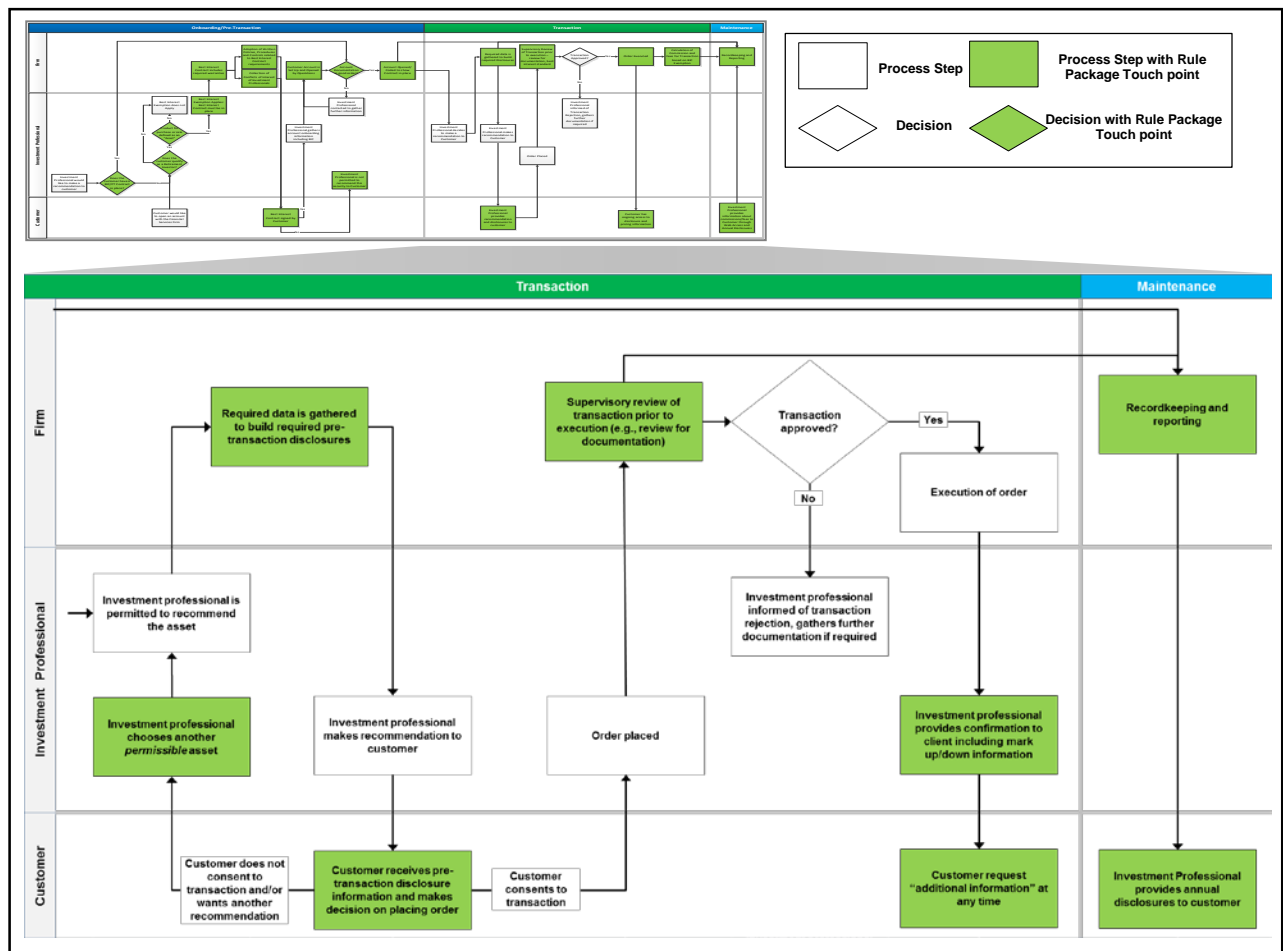
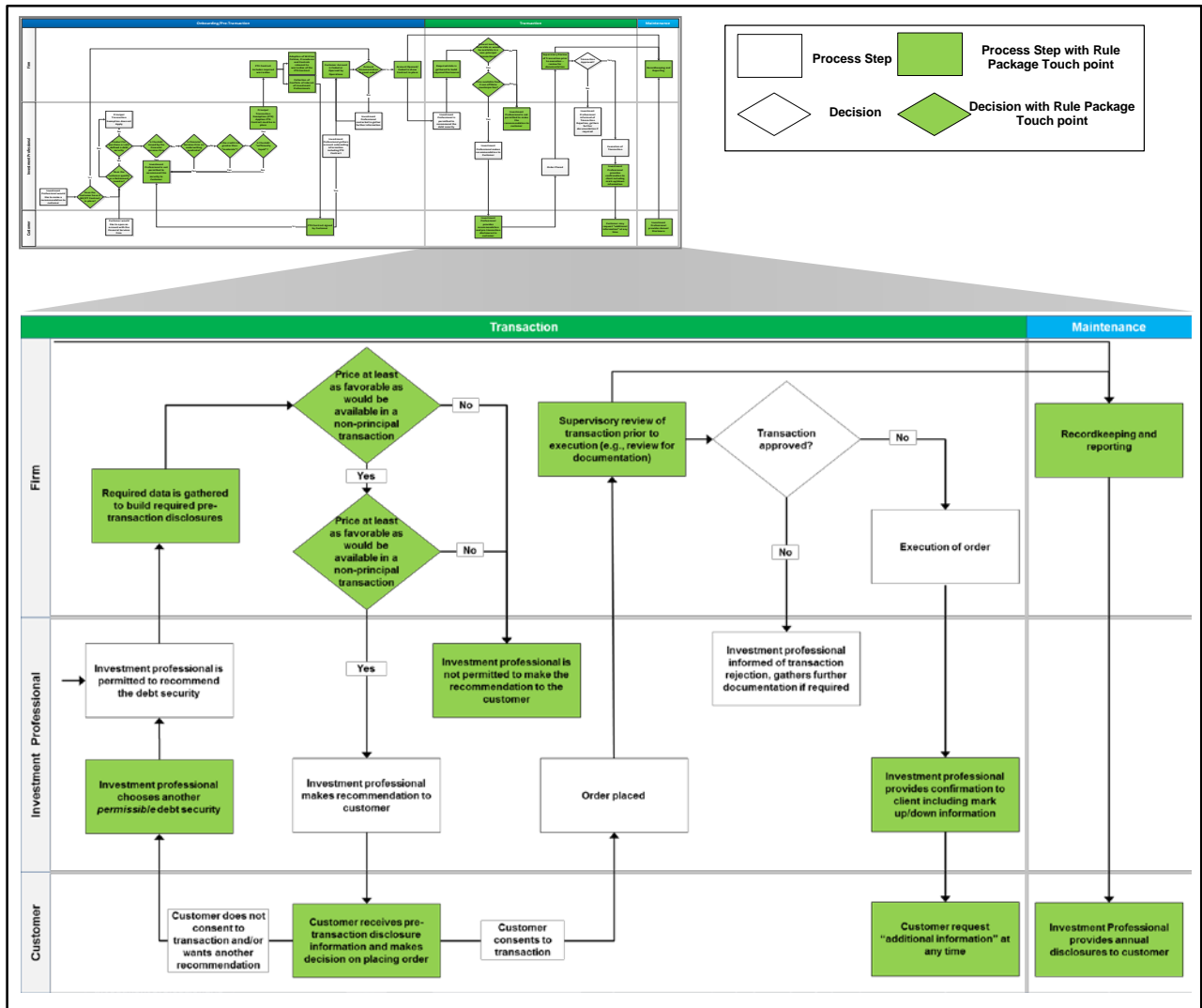




Figure 1.2 is an excerpt from the Principal Transaction Exemption process flow (See Appendix) illustrating the points where the SIFMA Working Group indicated that Rule Package requirements are expected to impact the processes within the transaction/maintenance portion of the customer transaction life cycle:

**Figure 1.2 – Principal Transaction Exemption Process Impacts of the Rule Package to the Transaction/Maintenance portion of the customer life cycle**



**1.2 Financial market implications and credit rating limitations**

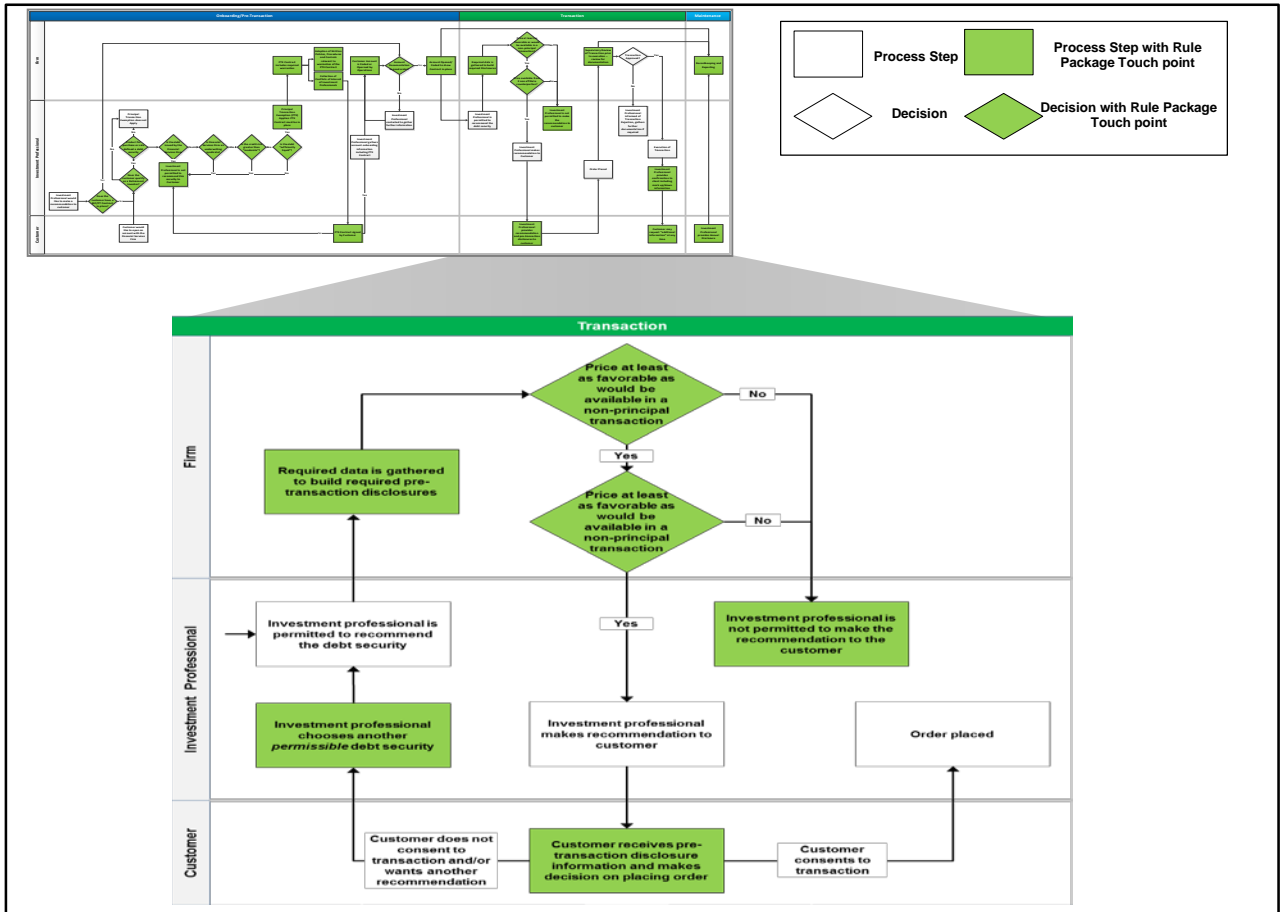
The SIFMA Working Group identified several instances where financial market implications and credit rating limitations may prevent components of the Principal Transaction Exemption disclosure requirements from being operationalized. Under the proposed Principal Transaction Exemption requirements, transactions must not involve debt securities with greater than “moderate credit risk” or that are not “sufficiently liquid” such that a sale at approximately “fair market value” would not be possible in a reasonably short period. Obtaining precise and timely credit risk ratings at the point of sale will not be possible for all debt securities because of the dynamic nature of the market. Additionally, the continuously changing financial market conditions would likely impact the accuracy and effectiveness of the Principal Transaction Exemption’s liquidity and disclosure requirements. Under the proposed Principal Transaction Exemption obligations, investment professional and firms will be required to disclose mark up and mark down information as well as price quotes when making a recommendation to a customer. The price quotes need to reflect that the current transaction will be

at least as favorable to customers as would be available in a (a) non-principal transaction and (b) contemporaneously offered by two counterparties. The natural changing conditions of the financial market environment will make these disclosures requirements difficult and may create unintended harm to consumers. Specifically, the SIFMA Working Group cited the following concerns pertaining to financial market implications and credit rating limitations that will prevent the proposed Rule Package from being implemented as written include:

- Obtaining accurate and timely credit risk ratings at the point of sale will not be possible for all debt securities due to the nature of the securities rating system currently in place – Depending on the specific debt security, there will be limited consistency in determining ratings as a result of securities not being rated at all or the rating being outdated.
- As a result of liquidity being a point in time determination, concluding if a debt security is “sufficiently liquid” will be difficult and subjective – Given that liquidity is dependent on market conditions, ongoing monitoring of liquidity will be difficult, time consuming and potentially inaccurate with changes or fluctuations in the financial markets. Additionally, liquidity may be hard to measure and monitor as it changes under different scenarios that are largely dependent on the order size and market conditions at the time of a transaction.
- A change in price, credit rating and/or liquidity prior to transaction execution will lead to a repetitive disclosure process with unintended harmful consequences to customers as a result of best execution limitations and pricing disparities – Financial market fluctuations will create situations where there are changes to prices, credit ratings or liquidity conditions in the time between the initial transaction disclosure recommendation and the customer’s decision to execute the transaction. For the firm to stay in compliance with the exemption, the investment professional would be required to perform additional disclosures if prices, credit ratings or liquidity changes during this time period. Delays caused from performing repetitive disclosure process may have unintended harmful consequences to customers such as best execution requirements and pricing disparities.

Figure 1.3 below is an excerpt from the Principal Transaction Exemption process flow (See Appendix) illustrating the pricing determination and the points where the SIFMA Working Group indicated that Rule Package requirements are expected to impact the illustrative process:

**Figure 1.3 – Principal Transaction Exemption Process Impacts of the Rule Package related to pricing determinations**



### 1.3 Best Interest and Principal Transaction Exemption Contract Implications

The SIFMA Working Group identified several instances where the proposed Rule Package’s contract requirements will make existing business operations difficult or impractical. The contract requirements specify that investments professionals, firms and customers enter into a multi-party agreement (“Multi-party Contract”). The Best Interest Contract Exemption and Principal Transaction Exemption obligations require the Multi-party Contract be executed in writing before providing any advice or recommendations that would be considered “Investment Advice” as outlined in fiduciary standard definition of the proposed Rule Package.

Specifically, the SIFMA Working Group expressed concerns around existing business operations that will become unfeasible as a result of the Multi-party Contract requirements including:

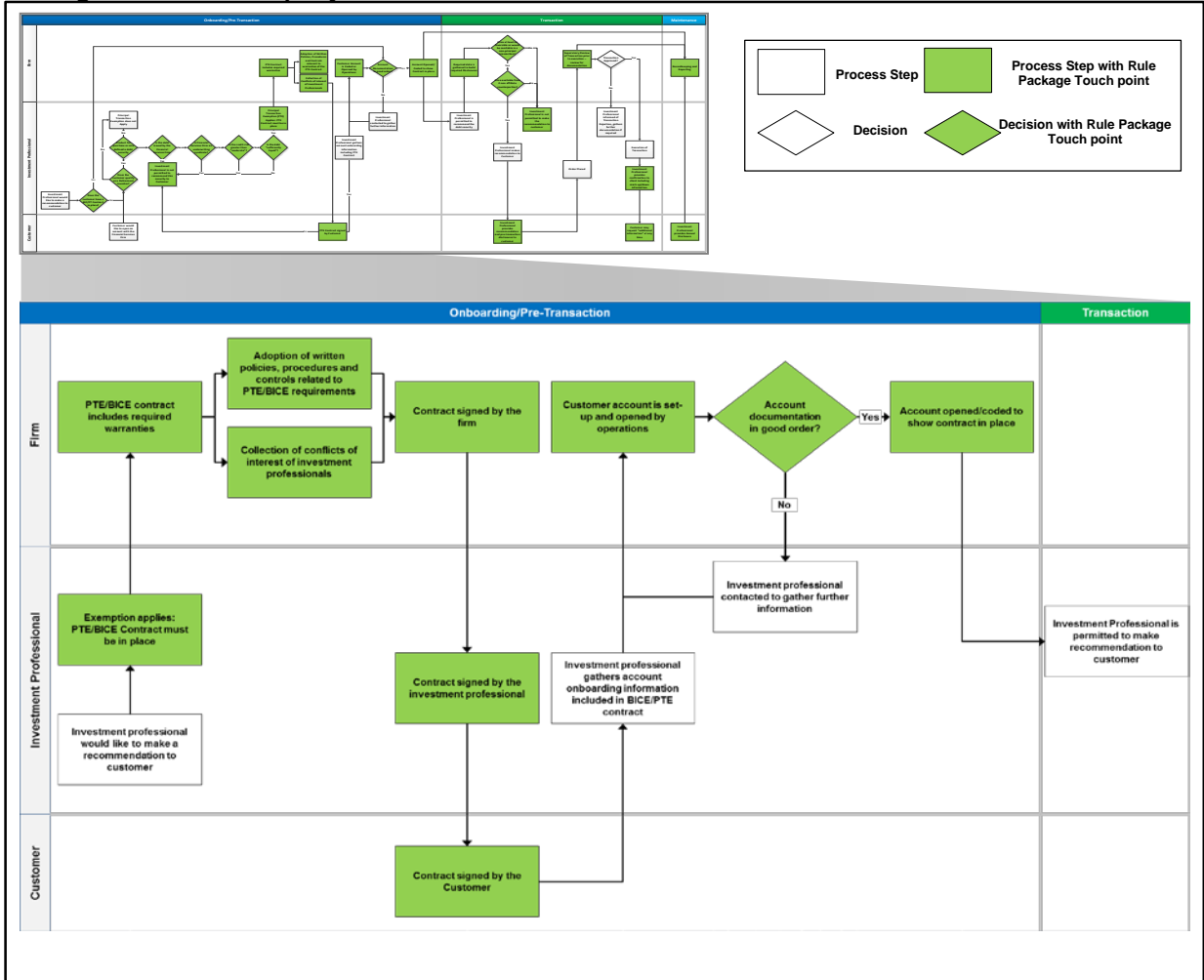
- Current guidance models (e.g., call centers) will be prohibited or impractical under the Rule Package – Many current call center models include call center employees who are registered persons and give guidance to customers. However, due to the nature of call centers, these employees are generally not assigned to specific accounts, making implementation of a Multi-party Contract impractical or impossible. Call centers will only be able to provide generic information to customers unless a Best Interest Contract or Principal Transaction Exemption is implemented between that specific call center staff and the customer, which may negatively impact the customer experience. Firms will be required to

instruct call centers to provide no investment guidance, generic or otherwise, out of increased liability risk and fear of excise taxes.

- Limitations of Multi-party Contract may make existing business operations challenging and negatively impact customers if investment professionals are unavailable to service their specific account – If a new contract is needed every time one of the Multi-party Contract participants changes or is unavailable, it may negatively impact the client or limit business operations. For example, if the investment professional is not available, a recommendation or transaction cannot be made because the Multi-party Contract is non-transferable between investment professionals.
- Mass account transfers, acquisitions and firm wind-ups may result in harm to the customer – Firms would be required to complete Multi-party Contracts for applicable accounts **prior** to providing advice to customers in order to complete transactions. Financial service firms would be burdened with a time consuming and complex process when completing a mass transfer without the use of negative consent letters, as prescribed in the exception under FINRA Rule 2510. This could negatively impact the marketplace leading financial service firms to not accept mass transfers or to not step in during financial crises simply due to the operationally onerous requirements for retirement accounts. Overall, the customer would be harmed most by the financial services firms' inability to quickly service the retirement accounts and provide protection for the customer in a potentially volatile marketplace.

Figure 1.4 below is an excerpt from the Best Interest Contracts and Principal Transaction Exemptions process flows (See Appendix) illustrating the process of executing Multi-party Contracts between the financial services firm, investment professional and customer. The figure highlights the points in the process flow where the SIFMA Working Group noted that the Rule Package requirement is expected to impact the illustrative process:

**Figure 1.4 - Best Interest Contract and Principal Transaction Exemption Process Impacts of the Rule Package related to Multi-party Contracts**



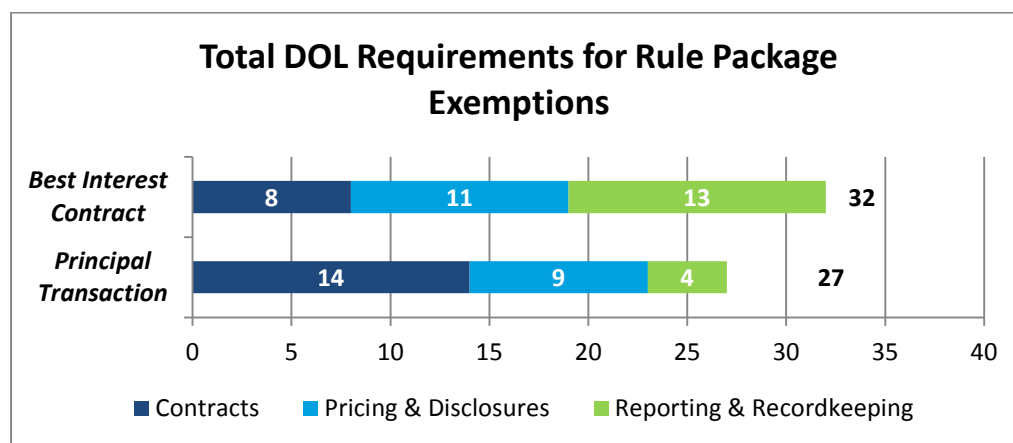
## 2. Significant personnel, process and technology changes and investments to operations, business and compliance will be required to comply with the Rule Package

### Operationally Onerous

Significant changes to people, process, and technology will be required for firms and investment professionals to comply with the proposed Rule Package. The SIFMA Working Group identified several instances where firms will need to make substantial investments and transformations to business, compliance and operational frameworks. The proposed Rule Package will require a considerable overhaul to existing systems inclusive of technology and processes. In addition, firms across the industry will need to develop and implement new systems and tools, which are expected to entail significant effort and time. The SIFMA Working Group also identified cases where the technology functionality to capture data point requirements of the proposed Rule Package do not currently exist and will require a firm to acquire, implement and maintain these capabilities (See Figure 2.4 and 2.5 for further detail on data point requirements). Lastly, the SIFMA cost survey (see section 2.3 for results) indicated that the data implications coupled with onerous system overhauls will likely require firms to incur significantly higher expenses to operationalize the proposed Rule Package requirements than originally estimated by the DOL.

Figure 2.1 below provides an overview of the requirements that firms must meet to qualify for the Best Interest Contract and Principal Transaction Exemptions. The figure illustrates the number of requirements categorized by contracts, pricing & disclosures and reporting & recordkeeping for the Best Interest Contract and Principal Transaction exemptions.

**Figure 2.1 – Number of requirements related to contracts, pricing & disclosures, reporting & recordkeeping within the Best Interest Contract and Principal Transaction Exemptions**



### 2.1 Substantial changes and investments to systems and processes

The SIFMA Working Group voiced concerns that the proposed Rule Package will require changes to systems impacting current controls, supervision, surveillance, data collection and data management

as depicted in Figure 2.2 below. Due to the new Rule Package affecting only retirement accounts, firms will need to bifurcate applicable field, middle and back office systems and processes to accommodate different standards and regulatory requirements for retirement and non-retirement accounts. Modifications to current systems and processes will be essential to comply with the proposed Rule Package which is expected to lead to significant cost expenditures for firms and ultimately increase costs for investors. However, as described in additional detail below, some firms may not be able to modify or to bifurcate systems and processes currently in place which will require firms to build or buy new systems and technology. Organizations that have the scale and financial capacity to operationalize the proposed Rule Package will likely have a competitive advantage over the firms with limited resources and capabilities.

Figure 2.2 below illustrates examples of systems present in many financial service firms and where the SIFMA Working Group noted potential impacts of the Rule Package that could require updates and builds to systems:

**Figure 2.2 – Illustrative impacts to Financial Service Systems**

		Potential impacts, may not be all inclusive					
		Bifurcation	Controls	Supervision	Surveillance	Data Collection	Data Management
<b>Examples of Systems</b>	<b>Onboarding/Pre-Transaction</b>						
	Front Office Customer Account	X	X	X	X	X	X
	Middle/Back Office Customer Account	X	X	X	X	X	X
	Customer Account Documentation		X	X	X	X	X
	Conflicts of Interest Documentation and Maintenance		X	X	X	X	X
	Account Opening Supervision		X	X	X	X	X
	Account Opening Surveillance		X	X	X	X	X
	Provider Platforms	X	X	X	X	X	X
	Investment Professional Product Training	X	X	X	X		
	Investment Professional Product Information	X	X	X	X		
	New Product Approval		X	X	X		
	Product Approval including Measuring Credit Rating and Liquidity		X	X	X		
	<b>Transaction</b>						
	Execution	X	X	X	X	X	X
	Clearing	X	X	X	X	X	X
	Security Master	X	X	X	X		
	Transaction Supervision	X	X	X	X	X	X
	Transaction Surveillance	X	X	X	X	X	X
	Disclosure Disbursement		X	X	X	X	X
	Front Office Documentation and Maintenance	X	X	X	X	X	X
	Customer Relationship Management	X	X	X	X	X	X
	Pricing Determinations		X	X	X	X	X
	Pricing Documentation	X	X	X	X	X	X
	Middle/Back Office Transaction	X	X	X	X	X	X
	<b>Maintenance</b>						
	Recordkeeping	X	X	X	X	X	X
	Webpages and Customer Web Access	X	X	X	X	X	X
	Ongoing Customer Communications (Mailings, Account Statements)	X	X	X	X	X	X

The SIFMA Working Group expressed concerns regarding the bifurcation of current systems including the following:

- Due to the DOL Rule Package only covering retirement type accounts, firms will need to bifurcate accounts, systems, processes and other infrastructure - The DOL proposal is only applicable to retirement type accounts (defined as qualified plans and IRAs) which would lead to different requirements, restrictions and prohibitions for the various types of customer accounts. This will likely result in firms' needing to bifurcate processes, build duplicate websites, trading pipes and accounting systems (e.g., online account client access), processes and other infrastructure which would result in costs to the firm, as indicated in the SIFMA cost survey results in section 2.3. A client accessing their accounts online would need to go to one website for nonretirement accounts and another website for retirement accounts causing confusion amongst customers and investment professionals. Furthermore, only two of the six carve-outs apply to all retirement accounts, which increases the likelihood firms will need to bifurcate current systems and processes.

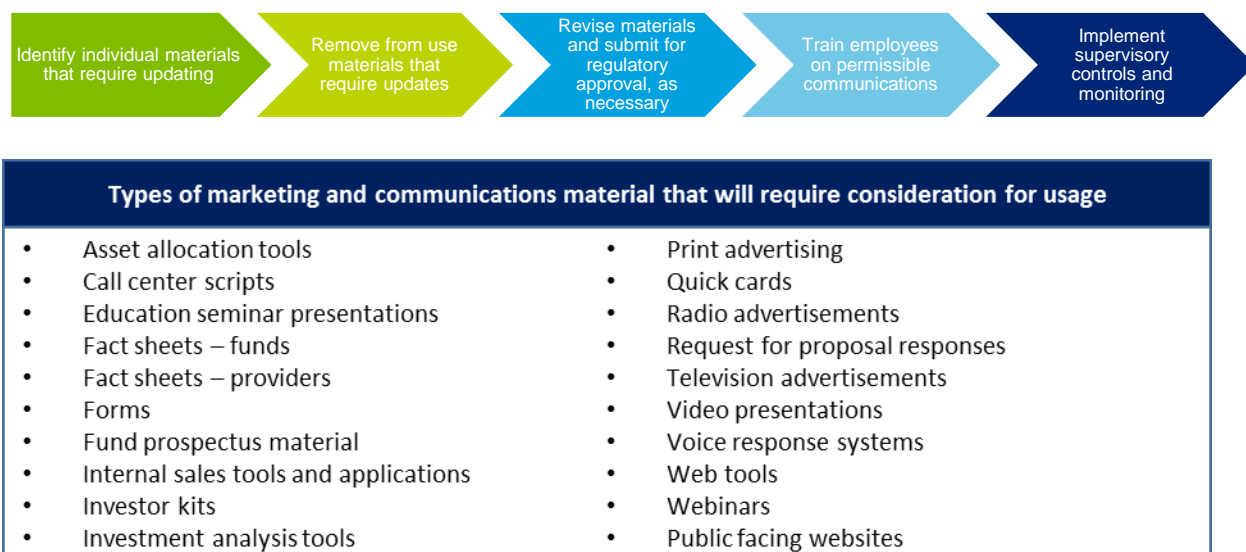
The DOL proposal includes components that will require a transformation of a firm's day-to-day operations, systems and processes including the following: supervision, compliance, data collection and retention, sales and marketing, and education and training. Specifically, the SIFMA Working Group noted the following:

- Firms will be required to expand the technology capabilities to monitor agency transactions within IRAs - The inclusion of discretionary IRAs within Prohibited Transaction Exemption 86-128, but the exclusion on nondiscretionary IRAs from that exemption, moving them instead to Best Interest Contract Exemption, will cause confusion and errors. All discretionary accounts will need to be re-documented because of the new disclosure requirements for discretionary IRAs. Firms would be required to identify existing accounts that are considered discretionary and non-discretionary IRAs, and identify these accounts on an ongoing basis in order to monitor for permissible activities within these accounts. The process of identifying applicable accounts would be lengthy and complex for some firms. Furthermore, the current proposal would require financial service firms to create separate monitoring and recordkeeping processes for different types of IRAs. This separation would require changes to account coding, as well as ongoing maintenance of lists of permissible securities within different types of accounts to allow oversight of the activity in these accounts.
- Supervisory and compliance programs will require an overhaul to implement new controls, monitoring and surveillance processes in accordance with the proposed Rule Package requirements - Firms will be required to enhance supervisory and compliance programs to evidence, document and ensure compliance with Rule Package requirements prior to execution of a transaction. This includes revision or creation of applicable compliance procedures and surveillance routines to review trades and advice prior to execution of a transaction. Additionally, legal opinions will be required in advance of the design of certain documents (e.g., disclosure charts required by the Best Interest Contract Exemption, the Best Interest Contracts, warranties and updated or new applicable policies and procedures). New processes will require additional compliance personnel and technology enhancements to meet compliance recordkeeping requirements for substantiating that conditions of the Rule Package have been met.
- The effort to revise all marketing material (e.g., investor kits, websites, fact sheets) to comply with the Investment Education carve-out will likely be a costly and extensive exercise - To meet the narrowed Investment Education carve-out requirements firms will need to revise virtually all marketing content such as written material, websites and investor kits. Firms will have to implement systems and processes to (1) identify which pieces of marketing material that are currently in use no longer align to the carve-out; (2) suspend use of that material; (3) update the material and submit for approval to issuers and regulators and (4) implement updated supervisory processes to comply with new requirements. The process of updating the materials will be a lengthy and costly process as firms will need to review updated



materials with product issuers as well as submit marketing materials for regulatory review and approval, which incurs a cost with each piece filed with regulators. Firms will need to undertake additional effort to retrain employees, including call center representatives, on what types of information would be permissible to communicate to an investor. Figure 2.3 below provides an overview, as defined by the SIFMA Working Group, of the types of marketing materials that the Rule Package will impact and the process that many firms would have to go through.

**Figure 2.3 – Steps and impacts for review of marketing materials as a result of the Investment Education carve-out**



Finally, the SIFMA Working Group expressed concerns that many firms are not able to modify or bifurcate various systems and processes currently in place forcing firms to take on the costs associated with acquiring new technology to ensure investment professionals and firms will be in compliance with the proposed Rule Package including:

- Technology solutions may not exist, which will require effort and time for the development of new solutions to assist firms with meeting the proposed Rule Package obligations – Introducing firms may have customized contracts and business models that require specialized operational solutions at the clearing firm/vendor level. Clearing firms/vendors who service these introducing firms may be required to develop new systems and tools, which will entail substantial and time-consuming investments. Additionally, the process to implement new systems and tools with introducing brokers will require time and customization by firm to accommodate the variety of business models of introducing brokers who utilize third party clearing firms.
- Firms do not currently have the technology and tools in place for monitoring and surveillance to ensure investment professionals provide advice only on products that are permissible under the proposed Rule Package - Firms will be required to build systems that capture permissibility of products by account type, first inventorying the accounts into account types and then aligning a firms security master list to determine which products would be permissible. Firms will be required to build a system to monitor that advice given in an account is utilized in that account on permissible securities only, including documenting and maintaining records to evidence advice given. Furthermore, firms will be required to build processes, systems and oversight to accommodate customers who hold securities in their retirement accounts that are non-permissible securities under the prohibited exemption transactions in the Rule Package.

- Technology and control frameworks will require updates to accommodate implementation of credit rating and liquidity standards - The Rule Package requires that a debt security must be “sufficiently liquid” or greater than a “moderate credit risk” to comply with the Principal Transaction Exemption. Currently, control frameworks and technology in place to detect and monitor credit rating and liquidity standards may be challenging to customize in a manner that will allow for daily changes. The Rule Package will require firms to create new technology and control frameworks be created for ongoing maintenance of liquidity and credit rating information and to gather and document this information to assist in determining if a product is permitted for sale.
- Technology updates will be required to include mark up/down information on customer confirmations documents - The Rule Package requires the customer is provided with information related to the mark up and mark down on the written confirmation, this is not currently captured by firms on the written confirmation provided to customers and will require updates to internal systems and technology to capture. Furthermore, FINRA (“Financial Industry Regulatory Authority”) recently released Regulatory Notice 15-52 requesting comment on a proposed FINRA rule that will require firms to disclose additional information on customer confirmations for transactions in fixed income securities. Specifically, FINRA is proposing that, for same-day, retail-size principal transactions, firms disclose on the customer confirmation the price to the customer, the price to the member of a transaction in the same security, and the differential between those two prices. The proposed Rule Package requirements do not necessarily correspond with the potential requirements proposed by FINRA for customer reporting, this may result in firms completing duplicative updates or changes to technology to comply with multiple authorities. Legal opinions will need to be obtained to determine how to calculate markups and markdowns. Confirms solely for retirement accounts will need to be designed, back-tested, and programming done so that the appropriate confirm is attached to retirement accounts in principal transactions.
- Technology and control frameworks will require updates for documentation to evidence fiduciary standard, including evidence of price comparisons, liquidity determinations and credit ratings - The Rule Package requires substantiation of fiduciary standard which will require firms to document determinations and maintain documentation to evidence reliance on the exemption. The SIFMA Working Group noted that this information (illustrated in Figures 2.4 and 2.5) is not required to be maintained at this time and firms will be required to update retention capabilities or acquire a data warehouse to accommodate additional documentation as well as expand current control frameworks to ensure documentation is properly maintained.

## 2.2 Large-scale new data collection and management requirements

The SIFMA Working Group identified several instances where the proposed Rule Package will require new data points that firms must capture, aggregate, calculate, monitor and store. Changes to technology and processes will be needed to acquire, implement, and maintain the capabilities to address these data implications. Firms will need to expend effort and resources to develop and aggregate data that currently does not exist or is maintained on disparate systems. New processes and technology functionality around data will be required to monitor compliance and track exemption applicability. Lastly, firms may need to develop new data repositories which can lead to additional cost and effort to acquire, store and maintain new data points for disclosures and recordkeeping requirements.

Figure 2.4 below illustrates data points outlined within the Rule Package for compliance with the Best Interest Contract Exemption and the impact areas identified by the SIFMA Working Group where build out of systems, conversions, and implementations of processes, controls and oversight frameworks will be required for compliance:

**Figure 2.4 – Illustrative impacts to firms when considering operational needs to gather and maintain the data points listed in the Best Interest Contract exemption**

		Potential Impacts, may not be all inclusive				
		System Build to Collect	Conversion to Dollar Amount	Implementation of Process	Implementation of Controls	Implementation of Oversight
<b>Disclosures</b>						
Initial Transaction Disclosure	Acquisition Costs of Transaction		X		X	X
	Ongoing Costs of Product	X	X	X	X	X
	Disposition Costs for 1-, 5- and 10-year Periods	X	X	X	X	X
	Reasonable Assumptions about Investment Performance	X	X	X	X	X
Annual Disclosure	List of Assets Bought and Sold During the Year (along with sales price)	X	X	X	X	X
	Total Dollar Amount of Direct Fees paid by the investor with respect to assets bought, sold and held	X	X	X	X	X
	Total Dollar Amount of Indirect Fees paid by the investor with respect to assets bought, sold and held	X	X	X	X	X
	Total Dollar Amount of Expenses paid by the investor with respect to assets bought, sold and held	X	X	X	X	X
	Total Dollar Amount of Direct Compensation received by the Investment Professional with respect to assets bought, sold and held	X	X	X	X	X
	Total Dollar Amount of Indirect Compensation received by the Investment Professional with respect to assets bought, sold and held	X	X	X	X	X
	Total Dollar Amount of Direct Compensation received by the Financial Services Firm with respect to assets bought, sold and held	X	X	X	X	X
	Total Dollar Amount of Indirect Compensation received by the Financial Services Firm with respect to assets bought, sold and held	X	X	X	X	X
Webpage	Direct Compensation payable to the Investment Professional for assets bought, sold and held by an investor in the last 365 days	X		X	X	X
	Indirect Compensation payable to the Investment Professional for assets bought, sold and held by an investor in the last 365 days	X		X	X	X
	Direct Compensation payable to the Financial Services Firm for assets bought, sold and held by an investor in the last 365 days	X		X	X	X
	Indirect Compensation payable to the Financial Services Firm for assets bought, sold and held by an investor in the last 365 days	X		X	X	X
	Direct Compensation payable to any affiliates for assets bought, sold and held by an investor in the last 365 days	X		X	X	X
	Indirect Compensation payable to any affiliates for assets bought, sold and held by an investor in the last 365 days	X		X	X	X
	Variations in compensation within and among assets	X		X	X	X
<b>Recordkeeping</b>						
	Intention to Rely on Exemption	X		X	X	X
	Inflows	X		X	X	X
	Outflows	X		X	X	X
	Holdings	X		X	X	X
	Returns	X		X	X	X
	Substantiation that conditions of the exemption were met	X		X	X	X

Figure 2.5 below illustrates data points outlined within the Rule Package for compliance with the Principal Transaction Exemption and the impact areas identified by the SIFMA Working Group where build out of systems, conversions, and implementations of processes, controls and oversight frameworks would be required for compliance:

**Figure 2.5 - Illustrative impacts to firms when considering operational needs to gather and maintain the data points listed in the Principal Transaction Exemption**

		Potential impacts, may not be all inclusive					
		System Build to Collect	Conversion to Dollar Amount	Implementation of Process	Implementation of Controls	Implementation of Oversight	
<b>Disclosures</b>							
<b>Potential Required Data Points</b>	<b>Initial Transaction Disclosure</b>	Transaction Occurs on a Principal Basis		X		X	X
		Price at which the Financial Institution will Transact	X	X	X	X	X
		Mark Up and Mark Down	X	X	X	X	X
		Agency Transaction Pricing	X	X	X	X	X
		Two other bids from Contemporaneous Non-Affiliates	X	X	X	X	X
		Written Confirm including Mark Up/Mark Down		X	X	X	X
	<b>Annual Disclosure</b>	List of Principal Transactions During the Year	X	X	X	X	X
		Prevailing Market Price at which the debt security was purchased or sold	X	X	X	X	X
		Mark Up and Mark Down on each transaction	X	X	X	X	X
	<b>Recordkeeping</b>						
	Intention to Rely on Exemption			X	X	X	
	Substantiation that conditions of the exemption were met	X	X	X	X	X	

The SIFMA Working Group expressed specific concerns pertaining to data that firms would need create, capture, aggregate, calculate and/or maintain with respect to the proposed Rule Packages' disclosure requirements of the Principal Transaction and/or Best Interest Contract Exemptions include:

- The volume and type of data required to meet the Best Interest Contract Exemption webpage disclosures obligations is multi-faceted and not currently available – Aggregation and documentation of new data points to meet requirements will be a potentially lengthy and costly process that will involve enhancements to current technology. (See Figure 2.4 above)
- Data requirements for the initial transaction disclosures currently exists in multiple systems and are not readily available – The data points and cost information required for the Best Interest Contract Exemption's Initial Transaction Disclosures is currently maintained in multiple systems or sits with multiple sources. (See Figure 2.5 above) The proposed Rule Package requires the all-in cost and anticipated future costs of the assets be disclosed to the customer at the point of sale. Firms will be required to build systems, processes and data repositories to aggregate, calculate and maintain this information. Processes, controls and supervision will also need to be implemented to ensure accuracy, completeness and compliance.
- Gathering contemporaneous pricing information for the Principal Transaction Exemption point of sale disclosures will require firms to implement new technology capabilities to capture data points that are not currently captured – Non-affiliate contemporaneous or historical pricing information for determining the security's mark up or mark down at the point the security was placed in a firms inventory is not currently available and would need to be developed. It will be a challenging task for firms to build systems that will aggregate information from disparate sources and covert it to dollar amounts, including algorithms to determine if the amounts should be calculated using LIFO, FIFO, weighted averages or some other method. Firms must also build and implement additional processes, controls,

and supervision will be required to ensure data integrity and completeness. (See Figure 2.5 above)

Additionally, specific concerns pertaining to the data implications of the proposed Rule Packages' Principal Transaction and/or Best Interest Contract Exemptions reporting and recordkeeping requirements include:

- The data points required to meet new reporting obligations are not currently captured or calculated by firms – Changes to technology and processes would be needed for firms to capture required reporting information and perform calculations for new data points related to pricing and fees. Additionally, updates to industry technology would be needed for reporting required data to the DOL as many of the data points (including detailed pricing information, such as advisor compensation) are not required to be maintained and/or reported at this time. To provide this information to the DOL, firms would need to build systems that are formatted in a manner determined by the DOL, which has not been provided within the Rule Package.
- Storing the required data to meet new recordkeeping obligations would require creation of a new large data repository within each firm with cost and effort implications – The industry is not currently required to store information on inflows, outflows, holdings or other data points required to meet the Best Interest Contract Exemption. Creating the infrastructure to capture this data would be a challenge to build and maintain.

Lastly, firms will need to create and build new processes and technology functionality will be needed to monitor compliance and track exemption applicability of the proposed Rule Packages' Seller carve-out and Swap carve-out requirements include:

- The technology capabilities currently do not exist to capture the data point requirements on both new and existing accounts to monitor proposed Swap carve-out obligations – Firms will need to create an indicator to identify specific Swap carve-out requirements by account. The process to implement the technology functionality may be challenging and would likely require that all existing accounts be updated with new classifications.
- In order to monitor for the Seller carve-out requirements, including monitoring assets and plan participants to ensure the exemption remains applicable, new technology functionality would need to be built in order to capture required data points – The Seller carve-out only applies to plans with more than 100 participants and over \$100M in ERISA assets. To understand and monitor if a plan meets these qualifications, financial firms would need to develop new system functionality to track the participant and total asset requirements on an ongoing basis. Firms will need to expand current documentation repositories and control checks to record and maintain this information.

### 2.3 High-dollar cost for firms to implement and maintain

To assess the financial impact across the industry, SIFMA conducted a survey of 18 SIFMA Working Group member firms in which they were asked to estimate the cost to comply with the Rule Package as it is currently written (“2015 Cost Survey”). The surveyed firms were grouped into small, medium and large categories based on their net capital as of 12/31/14.<sup>7</sup>

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<sup>7</sup> The firm size categories used in the SIFMA cost survey are the same categories used by the DOL in their Regulatory Impact Analysis (source: <http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf> , Page 158, Section 5.2.3)

**Figure 2.7 – Firm size as defined in terms of Dollar Amount of Net Capital**

Firm Size	Net Capital
Large	Greater than \$1 billion
Medium	\$50 million to \$1 billion
Small	Less than \$50 million

According to the estimates that the DOL included in its Regulatory Impact Analysis<sup>8</sup> there were a total of 2,619 broker-dealers that serve ERISA accounts or IRAs and would thus be impacted by the proposed Rule. The DOL’s estimate broke down this population as follows:

**Figure 2.8 – Department of Labor Population and participants in SIFMA cost survey**

Firm Size	Number of broker-dealers in industry, per DOL	Number of broker-dealers in SIFMA survey
Large	42	9
Medium	137	4
Small	2,440	5

The surveyed firms represent a diverse business mix; including both clearing and non-clearing firms and range from full-service broker-dealers to smaller retail oriented broker-dealers. Using the SIFMA survey, the surveyed firms indicated there would be significant costs for implementation and ongoing maintenance for operations to comply with the Rule. The surveyed firms were asked to consider the types of costs noted in Figure 2.9

**Figure 2.9 – Key Cost Components Considered**

Considerations for Start-up and annual on-going costs	
<ul style="list-style-type: none"> <li>Information technology suppliers and vendors;</li> <li>Information technology systems, hardware and software, support and testing/audit;</li> <li>Outside legal counsel costs</li> <li>Outside compliance consultant costs</li> <li>Communications, marketing, business review and risk review;</li> <li>Training materials: creating, editing, and circulating new materials; reviewing, editing, finalizing, and publishing all impacted training materials;</li> <li>Training: providing training and communication to all impacted personnel, particularly sales and operations personnel;</li> </ul>	<ul style="list-style-type: none"> <li>Reviewing and updating all existing client contracts and client disclosures (including documentation and delivery of disclosure);</li> <li>Reviewing and updating of sales surveillance tools, all impacted policies and procedures, including written supervisory procedures;</li> <li>Publishing and distributing revised policies and procedures;</li> <li>Reviewing, editing, finalizing and publishing all impacted marketing materials; and</li> <li>Updating exam test modules and instructions, training examiners, and executing additional testing procedures across all branch offices</li> <li>Other out-of-pocket costs</li> <li>Employee- and staff-related costs</li> </ul>

The survey respondent firms noted that they would incur significant costs to understand the requirements and update systems, policies and processes in order to be ready to comply with the Rule Package. For global and complex firms who serve large portions of the IRA marketplace, this is expected to involve evaluating and updating potentially hundreds of different systems, policies and processes. As it relates to smaller and introducing firms many of these firms will be dependent on third party providers such as clearing firms and service vendors. Firms of all sizes will have to bear

<sup>8</sup> Source: <http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf> , Page 160

the burden of significant costs of adapting technology and operational frameworks. Smaller firms would likely be at a greater disadvantage, and some firms indicated that they may decide to exit the market due to the expense of complying with the Rule obligations.

**Figure 2.10 Examples of the steps that firms may need to take to be ready for Rule implementation**



Once the Rule is implemented, the survey respondent firms noted that they will incur additional costs for supporting the enhanced systems and processes designed to comply with the Rule’s requirements for contracts, disclosures, recordkeeping and communications.

The SIFMA survey conducted with the SIFMA Working Group provides insight on how the Rule requirements are expected to impact operational expenses for implementing and maintaining the operational changes, processes and systems. In order to provide a closer approximation of costs that survey respondent firms will incur, Figure 2.11 contains the mean cost estimates from survey respondents by firm size<sup>9</sup>. The survey respondent firms estimated their start-up and ongoing maintenance costs to be the following:

**Figure 2.11 –Mean Cost Estimates of Survey Respondents by Firm Size**

Firm Size	Mean Start-up Costs per Respondent	Mean Ongoing Costs per Respondent
Large	\$38.1M	\$9.5M
Medium	\$23.1M	\$5M
Small	\$3.4M	\$2.6M

To understand what the range of the potential cost impact to the broader broker-dealer industry would be, the Working Group applied two methodologies to the SIFMA survey results: the DOL’s cost estimate methodology for “Scenario A”<sup>10</sup> (“DOL Methodology”) and by multiplying the mean cost estimate of each firm size category by the number of firms in the respective firm size category

<sup>9</sup> The cost survey was conducted by SIFMA. Deloitte did not audit or verify the underlying information and the extrapolation is provided as an illustrative example of what SIFMA in conjunction with the SIFMA Working Group believes to be the potential cost implications.

<sup>10</sup> The DOL Methodology is defined in the table below (source: Source: <http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf> , Page 164-166):

Firm Size Category	Scenario A	
	DOL’s Per Firm Cost Calculation Methodology	DOL’s Total Industry Cost Calculation Methodology
Large BD	Use SIFMA’s large BD average cost estimate	Multiply DOL’s Per Firm Cost Calculation by number of firms in industry in size same category
Medium BD	Multiply SIFMA’s large BD average cost estimate by IAA ratio (0.133)	Multiply DOL’s Per Firm Cost Calculation by number of firms in industry in size same category
Small BD	Multiply SIFMA’s large BD average cost estimate by IAA ratio (0.048)	Multiply DOL’s Per Firm Cost Calculation by number of firms in industry in size same category

(“Alternative Methodology”). However, the Working Group chose to exclude small firms from this exercise because of the broad and diverse make-up of the industry’s small firm population, which the SIFMA survey respondents may not have been representative of. In the view of the Working Group, while there would undoubtedly be substantial costs for small firms to come into compliance, their costs are difficult to assess, given the broad range of firm sizes and business models included in this category. Implementation for small firms would involve a mix of costs which are borne entirely by the firm itself, such as additional employees, customized legal advice, and system and process changes, as well changes made at the vendors and clearing firms who support many of their processes. The balance of these costs and whether costs undertaken by vendors would also be borne by small firms remains uncertain.

**Figure 2.12 – Start-Up Cost Estimates for Broker-Dealer Industry for Large and Medium Firms**

Firm Size Category	# of Firms	Start-Up Costs			
		DOL Methodology		Alternative Methodology	
		Per Firm Avg. Costs	Total Costs	Per Firm Avg. Costs	Total Costs
Large BD	42	\$38.1M	\$1.6B	\$38.1M	\$1.6B
Medium BD	137	\$5M	\$685M	\$23.1M	\$3.1B
<b>Total Cost</b>			<b>\$2.2B</b>		<b>\$4.7B</b>

**Figure 2.13 – On-Going Cost Estimates for Broker-Dealer Industry for Large and Medium Firms**

Firm Size Category	# of Firms	On-Going Costs			
		DOL Methodology		Alternative Methodology	
		Per Firm Avg. Costs	Total Costs	Per Firm Avg. Costs	Total Costs
Large BD	42	\$9.5M	\$399M	\$9.5M	\$399M
Medium BD	137	\$1.2M	\$164M	\$5M	\$685M
<b>Total Cost</b>			<b>\$563M</b>		<b>\$1.1B</b>

**Figure 2.14 – Range of Cost Estimates for Broker-Dealer Industry for Large and Medium Firms**

Range of Cost Estimates for Broker Dealer Industry for Large and Medium Firms
<b>Start-up Costs: \$2.2B - \$4.7B</b>
<b>Annual On-Going Costs: \$563M - \$1.1B</b>

The cost estimates provided by the respondent firms and Working Group are considerably greater than what the DOL in their Regulatory Impact Analysis estimated the start-up and ongoing costs would be for firms of similar size<sup>11</sup>. For the SIFMA Working Group this came as no surprise, since, in

<sup>11</sup> The DOL estimated the following ranges for total industry Start-Up and On-Going Costs:

	Scenario A	Scenario B
<b>Start-Up Costs</b>	\$892M	\$195M
<b>On-Going Costs</b>	\$357M	\$78M

Source: <http://www.dol.gov/ebsa/pdf/conflictsofinterestria.pdf> , Page 166



their view, the DOL's estimate was based on a narrow dataset that was never intended to measure costs for complying with the Rule Package, which resulted in the DOL underestimating the projected costs. The cost estimates for the broker-dealer industry provided by the DOL in their Regulatory Impact Analysis relied on the results of a cost survey conducted by SIFMA in 2011 to understand the estimated costs of complying with prospective SEC fiduciary rules established under Dodd-Frank §913 ("913 Data"). The costs estimated in the 913 Data are fundamentally different than those anticipated for compliance with the Rule Package, given the comparatively narrow scope of Dodd-Frank §913 requirements and the focus on development of disclosure forms and customer relationship guides. Although the DOL conceded that "there will be substantive differences between the [DOL]'s new proposal and exemptions and any future SEC regulation that would establish a uniform fiduciary standard", the DOL nevertheless elected to rely on the 913 Data as the basis for their cost estimates, stating that the reason for doing so is that there are "some similarities between the cost components" in the 913 Data and the costs that would be required to comply with the Rule Package.

However, in the view of the Working Group, the results of the 2015 Cost Survey serve as a better guide to understand the estimated costs of complying with the Rule Package for the simple fact that the specific intent of the 2015 Cost Survey was to understand the broker-dealer industry's cost estimates of the Rule Package.

# 3. Certain Rule Package requirements will create disruptions to business operations and customer experience

## Impediment to Business

The SIFMA Working Group identified components of the Best Interest Contract Exemption and Principal Transaction Exemption which will create obstacles for investment professionals, firms and customers to have efficient or even functional investment relations. The requirements of the Rule Package are expected to impede open dialogue on investment choices and education between investment professionals and their customers. The SIFMA Working Group identified several instances where the obligations of the proposed Rule Package may cause confusion amongst customers, loss of business and a decline in investments.

### 3.1 Potential negative impacts to customer experience

#### 3.1.1 Customer confusion as a result of the Rule Package

Operationalizing the contract and disclosure requirements of the Best Interest Contract Exemption and Principal Transaction Exemption may inadvertently bring negative consequences to the customer.

The Best Interest Contract Exemption and Principal Transaction Exemption require investment professionals and firms to disclose the total cost of investing and “reasonable assumptions” about investment performance. Best Interest Contract Exemption and Principal Transaction Exemption requirements with respect to costs, calculations and performance assumptions may cause customer confusion as a result of non-standardized methodologies across firms.

- Initial transaction disclosures focus heavily on costs which may mislead customers - The Best Interest Contract Exemption disclosure will emphasize costs which may be misleading and harmful to customers. The disclosure would not require equal evaluation of risk and performance, and does not require that investment professionals provide a complete view of the investment. Firms will need to build out training for investment professionals on client relationship management and disclosures as well as an increased focus by investment professionals on documentation of conversations with clients to evidence compliance with the proposed rule.
- Differing assumptions across firms in calculating performance for cost disclosures of products across firms will cause customer confusion - The Rule Package provides limited guidance on determining performance assumptions to calculate future costs, which will lead to differing calculations across firms and therefore different information communicated to clients. The disclosure requirements also leave ambiguity on how future performance should be calculated. This will result in firms using different variables and assumptions from each other when calculating future performance, which will lead to instances where similar or the same products have different performance projections based on which firm performed the performance calculation.

- Firms may be required to bifurcate accounts to accommodate products that may not be permissible under the Rule Package, which could lead to confusion when advice is provided in one account but not another - Due to the number of products that will not be permissible under the proposed prohibited transaction exemptions, firms may be required to separate customer holdings into different account types for firms abide by the Rule Package requirements around advice. This may cause confusion to customers receiving advice from their investment professional in one account, but are suddenly no longer able to receive advice on other types of securities or in other non-fiduciary accounts. In this particular scenario, the DOL Rule Package would limit investment professionals from having complete transparency over customer assets, and may infringe on the ability of the customer to receive the best recommendations based on the customer's overall investment profile. Furthermore, firms would be required to identify permissible and non-permissible securities for products within customer accounts to determine what products can remain in IRAs and what assets may need to be sold or liquidated. Firms would be required to build out infrastructure oversight to ensure accounts are holding permissible investments, and customers are acting on advice in the applicable accounts. Establishing multiple IRAs may lead to an impact to IRA documentation requirements where the IRS may require separate IRA agreements for the fiduciary vs. non-fiduciary account types which could result in additional IRS reporting and potentially calculation of multiple required minimum distributions.

### **3.1.2 Impact of investment education limitations**

The proposed Platform Provider and Investment Education carve-out requirements will limit information provided to investment professionals and customers. The Platform Provider carve-out restricts individualized information and allows firms to provide only general financial information such as the historical performance of asset classes, and platform investment options. Similarly, under the Investment Education carve-out, educational materials can no longer include information advice or specific recommendations with respect to specific investment products, managers or the value of particular securities. Restrictions proposed in these carve-outs limit education sources and the depth of information available upon which investment professionals and customers often base investment decisions.

- Restricting Platform Providers from answering specific questions will restrict the information available to customers – Currently, requests for proposals (“RFP”) to platform providers from companies looking to sponsor a retirement plan for employees include questions around the specific products that could be offered on a platform to assist the potential plan sponsor in determining if the product choice is correct for their retirement plan needs. The exemption will preclude providers from addressing questions around specific product availability or options provided on the platform. The SIFMA Working Group indicated that this will limit the ability of potential plan sponsors to choose the platform provider that best serves their needs. This will make the process for choosing a plan provider operationally onerous and complicated due to a lack of information provided. Due to the limitations of the proposed Platform Provider carve-out, customers will be negatively impacted by a provider's inability to address information requests for specific information. Additionally, potential plan sponsors will likely be inundated with information that will not be relevant to them as a result of restricted information provisions
- Proposed limitations on information in educational material could lead to a lack of meaningful information available to investors upon which to base investment decisions - The proposed Investment Education carve-out allows exceptions if educational materials provided to a plan, fiduciaries or investors do not provide any specific recommendations to investment products, alternatives, or show value of a particular security or property investment. The narrow applicability of this carve-out will impede business and customer service due to the limitation of available information that can be provided without converting to fiduciary status. Customers will be prevented from utilizing investment analysis tools and

call centers which will limit their understanding of investment options. Asset allocation models and interactive investment materials that refer to specific products available under a plan or IRA would be considered individualized recommendations rather than investment education. The proposed Investment Education carve-out could lead to an absence of educational tools that currently benefit customers. Additionally, firms would be required to update webpages or investment tools which will require new technology and operation builds and updates.

### **3.1.3 Investment option limitations and disadvantages**

The complexities, costs and risks associated with non-compliance of the Rule Package may cause some firms to discontinue business with low balance accounts or retirement accounts altogether. Additionally, the Principal Transaction Exemption requirements will limit customer investment options if two price quotes from unaffiliated firms cannot be found.

- Because of the associated complexities and costs required to transform operational and technological frameworks, firms may choose to no longer service low balance accounts - Firms will consider the risk of taking on low balance accounts versus the potential for violating the strict requirements of the Rule Package. This may result in many firms closing small dollar value accounts, and limiting options for customers with low balance accounts.
- Clients purchasing debt securities in principal transactions may be adversely impacted by investment limitations if two contemporaneous price quotes cannot be obtained - The ability to gather price quotes based on the Principal Transaction Exemption requirements will vary depending on the debt security and available inventory. If the investment professional is unable to obtain the required two contemporaneous price quotes from non-affiliates, the investment professional will not be able to recommend the product to customers. This will lead to limitations on the products available to customers due to the constraints of the requirements and alternative recommendations that may not be best for the customer. Furthermore, it will be difficult for firms to operationalize retrieving two competing quote which could lead to latency in pricing comparison processes and trade executions. Once the price quotes are received, and regardless of whether the trade is completed or not, it will be operationally onerous to then track and store that data for 6 years.

# 4. Certain Rule Package requirements may conflict with existing regulatory obligations

## Potential Regulatory Implications

Multiple requirements of the proposed Rule Package contradict current regulatory rules and guidelines to which firms are already held. It is unclear how firms will be expected to operationally comply with the proposed Rule Package within the current regulatory environment. Firms will need to understand where current regulations and the DOL conflict or overlap to identify operational processes that require enhancements to facilitate compliance across all regulations. Firms would be required to build out controls and oversight processes to document and evidence compliance with regulatory requirements and will need to store this massive amount of data.

### 4.1 Migration to multiple and various types of accounts that may not align with current expectations

Firms may find the requirements to comply with the Rule Package cost-prohibitive, and in some instances, these firms will choose to only offer a fixed-fee or wrap-fee model where suitable, or will terminate the account. In accounts with low or no activity, moving customers to this business model could result in increased regulatory scrutiny as this type of movement of these accounts has been noted as an SEC (“U.S. Securities and Exchange Commission”) and FINRA focus<sup>12</sup>. These instances will require firms to implement additional recordkeeping and documentation of oversight to evidence reasoning or best interest to regulators.

Furthermore, complications can arise if customers with multiple types of accounts take advice related to a fiduciary account and act on it in a non-fiduciary account. Under the proposed Rule Package obligations, current customers would need to update account documentation for all applicable existing accounts to continue receiving advice. However, some customers may decide not to enter into contracts, or complete other necessary requirements for the firm to take advantage of an exemption (e.g., refusal to sign contracts required for Best Interest Contract of Principal Transaction Exemption, refusal to sell certain products out of their account for compliance with exemptions) which may result in customers entering into wrap accounts. These scenarios will lead to additional obligations for firms to monitor and supervise conversations to determine if advice was executed in an unintended account or if the investment professional violated regulations. Specifically, the following SIFMA Working Group concern was identified:

- Customers with multiple account types (both fiduciary and non-fiduciary) could act on advice in a different account than intended, potentially leading to regulatory violations – Customers could act on advice received in connection with their fiduciary account in a non-fiduciary account. Firms would be required to monitor and supervise conversations and to store the data to determine if advice was given and then executed in another type of account. The customer has the ability to act on a recommendation/advice in any account or capacity; however a customer may claim fiduciary duty and therefore puts firms and investment professionals at risk of violating the DOL Rule Package exemptions in accounts not aligned with the DOL requirements.

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<sup>12</sup> Source: SEC 2014 Examination Priorities (<http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf>)

## 4.2 Inconsistencies with other existing rules and guidance

The proposed Rule Package obligations pose concerns with firms being able to comply with both current regulatory rules and the DOL requirements. According to FINRA Rule Package 2510(d)(2), in the event of a mass account transfer FINRA would recognize negative consent letters as a notice of movement of accounts. However, the operationalization of the Multi-party Contract may result in a hindrance to opening customer accounts at the new brokerage firm and potential harm to the customer. This could lead to financial service firms not being able to utilize the exception under FINRA Rule Package 2510, which allows for negative consent forms to be used to process accounts involved in bulk exchanges.

In addition, under the Best Interest Contract and Principal Transaction Exemptions requirement for Initial transaction disclosures, the Rule Package requires “reasonable assumptions about investment performance,” including assumptions related to future cost projections for 1-, 5-, and 10-year timeframe, which could potentially be in direct conflict with FINRA Rule Package 2210 depending on the nature of the assumptions which limits the ability of firms to provide assumptions on future performance. Further, factors that affect reasonable assumptions are dynamic and could change leading to potential questions around reasonable assumptions expressed. For example, changes in interest rates, specific earnings and other macro factors may impact the performance of an investment. These factors may not be captured in the framework to determine reasonable performance assumptions, which could create potential liability for financial service firms and investment professionals.

Additionally, the Investment Education and Financial Reporting and Valuation carve-outs both impose limitations on providing specific information with respect to valuations and potential investments. As a result of these limitations on non-fiduciaries, investment professionals will be restricted from providing customers with price quotes which may conflict with SEC guidance on providing greater valuation clarity<sup>13</sup>.

- The Initial transaction disclosure requirement to make performance assumptions may result in a violation of FINRA Rule Package 2210 - Firms will be required to make performance assumptions/projections in order to calculate the total costs for the initial transaction disclosures that could result in violations of FINRA Rule Package 2210 depending on the nature of the assumptions and projections. There is limited guidance in how firms will calculate the reasonable assumptions and performance information and this may not be consistent from firm to firm, making it difficult for firms to implement processes for providing this information. Per discussion with SIFMA, FINRA would likely adjust its requirements for accounts covered by the Rule Package. This could lead to two standards depending on the type of account, requiring firms to implement additional controls and oversight to ensure assumptions are only provided for retirement accounts and that information provided is not utilized by customers in non-fiduciary type accounts.
- Introducing limitations on non-fiduciaries may conflict with SEC and MSRB (“Municipal Securities Rule Package making Board”) guidance to provide greater clarity on valuations - As a result of the constraints the Rule Package would enact on a non-fiduciary, investment professionals will be prevented from providing price quotes to customers which is contrary to SEC and MSRB initiatives around increasing price transparency. This may lead to industry confusion across firms, investment professionals and customers. Additionally, firms would be required to update current controls and compliance frameworks, and provide training to investment professionals to ensure compliance with the Rule Package.

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<sup>13</sup> Source: <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542347679>

# 5. The Rule Package is ambiguous and broad in certain areas, which challenges the operationalization of the Rule Package's requirements

## Rule Package Ambiguity

Certain areas of the proposed Rule Package are broad or ambiguous and it may be impractical or impossible to operationalize the specific requirements as written. The SIFMA Working Group identified several instances where the Rule Package's requirements lack a definitive scope or enough specificity in wording and definitions to be fully understood and implemented. Without further clarification of certain terms and concepts, firms will not be able to build sufficient operational systems and processes to ensure compliance with the proposed requirements. Furthermore, the identified Rule Package ambiguities will lead firms and investment professional to become inadvertent fiduciaries and/or subject to excise taxes if controls and processes are not implemented. Without further clarification of certain areas of the Rule Package, the requirements for compliance are unclear or undefined and Firms are at a higher risk for unintentionally being subject to the penalty of the excise tax.

### 5.1 The definitions of certain terms are not clear

Certain terms within the proposed Principal Transaction Exemption are not clearly defined and will make it challenging for investment professionals and firms from complying with the obligations. To determine the Principal Transaction Exemption applicability and disclosure requirements, firms will require greater clarity and conclusive definitions of certain terms to fully operationalize the proposed Rule Package. Under the Principal Transaction Exemption, transactions must not involve debt securities with greater than "moderate credit risk" or that are not "sufficiently liquid" such that a sale at approximately "fair market" would not be possible in a reasonably short period. Without conclusive definition for the terms within the Principal Transaction Exemption requirements, there is a potential for inadvertent regulatory violations to occur. Specifically, concerns pertaining to ambiguous applicability and disclosures determination terms that will prevent the proposed Rule Package from being implemented as written include:

- Lack of a clear definition for the term "moderate credit risk" will potentially create inadvertent regulatory violations – The Rule Package requires that under the exemption a principal transaction must not involve debt securities with a greater than "moderate credit risk", this "moderate credit risk" is undefined and therefore it is unclear what debt securities can be involved in a principal transaction. This will make it unclear to investors and may be different from firm to firm as they use different standards.
- Lack of clear definitions for the terms "sufficiently liquid" and "fair market value" will potentially create inadvertent regulatory violations – The Rule Package requires that the debt security be "sufficiently liquid" so that it could be sold at or near its "fair market value" within a reasonably short space of time. This liquidity standard is undefined and it is therefore unclear which the debt securities can be involved in the transaction.

### 5.2 The scope of certain requirements is not clear

The SIFMA Working Group identified multiple instances where the scope of a proposed Rule Package requirement is not clearly defined, which will make it impossible or impractical to be fully operationalized. For example, while the Best Interest Contract Exemption and Principal Transaction

Exemptions obligations require that “material” conflicts of interest be aggregated and disclosed within a Multi-party Contract, the proposed Rule Package does not define the scope of what could be considered “material.” Both exemptions also require that records be maintained to substantiate whether the conditions of the exemptions have been met, but do not appear to clarify if the scope of this requirement includes the historical records for existing accounts. Lastly, while the Rule Package and exemptions outline requirements for certain types of securities, there are a number of products that are not included (e.g., municipal bonds, options) and without further clarification it would be impossible to determine which securities are “non-permissible.” Specifically, SIFMA Working Group concerns pertaining to instances where the scope of a proposed Rule Package requirement is not clearly defined and will prevent the proposed Rule Package from being fully implemented as written include:

- Without further clarification on the scope of what could be considered “material”, it would be impossible for firms to gain comfort that they’re controls and processes are designed to meet the expectations and requirements of the DOL for gathering conflicts of interest – The word “material” is not clearly defined and as it reads would require the firm to gather all conflicts of interest related to the transaction.
- Lack of clarity if the scope of the recordkeeping requirements to substantiate that exemption conditions have been met includes the historical records for existing accounts – The proposed Rule Package does not provide guidance as to whether firms are required to document historic data for existing accounts to evidence records of data for 6 years upon Rule Package implementation. It is not clear if the records will be grandfathered in or need to be created for exiting accounts.
- There is a lack of clarity around the scope of which securities would be considered “non-permissible” under the Rule Package and exemptions – The Rule Package and exemptions outline requirements for certain types of securities, however there are a number of products that are not included (e.g., municipal bonds, options). Without clarity on permissible and non-permissible products, firms would not be able to build adequate supervisory and operational systems to ensure proper controls frameworks and systems for these types of accounts.

### 5.3 Other areas of the Rule Package require clarification

Additionally, there were several instances identified by the SIFMA Working Group where further clarification would be needed to operationalize the Rule Package requirements. Specifically, concerns pertaining to ambiguous Rule Package requirements that will necessitate additional explanation to understand potential operational implications and prevent inadvertent non-compliance include:

- Lack of clarity around how certain mandatory requirements in the IRA life cycle (e.g., required minimum distributions) should be treated may lead to inadvertent non-compliance violations – The Rule Package does not delineate how providing advice aligned with requirements of an IRA would be treated in terms of contract and disclosure requirements. It is unclear whether providing this advice would be considered a recommendation, or the terms on when advice on a requirement is defined as a recommendation and compliance is required.
- Lack of clarity around presenting reasonable performance assumptions as it relates to debt securities – Due to the nature of debt securities, providing projections at 1-, 5- and 10-year intervals will prove difficult without the advisor making assumptions about future transactions. There are no standards or guidelines for the assumptions and variables to consider.
- It is unclear if an exemption (e.g., Sellers carve-out) can be applied to an existing fiduciary account that had previously not met the exemption requirements, but now due to changes would meet the exemption requirements – There is ambiguity around whether carve-outs



apply for accounts that had previously fallen under other types of exemptions (e.g., Best Interest Contract Exemption, Principal Transaction Exemption) where the investment professional claimed a fiduciary status, and due to changes in the account would now otherwise qualify for an exception. For example, growth of a previously categorized “small” plan to a “large” plan as defined under the Seller carve-out requirements. The Rule Package notes that for the Sellers carve-out to apply, the investment professional may not identify as a fiduciary. It is unclear whether accounts that change in size after the implementation of the Rule Packages will be permitted to fall under the Sellers carve-out if the investment professional had previously been considered a fiduciary for the account but the “small” plan exemptions no longer apply.

- Failure to complete the contract with the appropriate customer party may result in failure to comply in accounts – Accounts may have multiple account owners (e.g., joint, trust), or a person granted trading authority (e.g., power of attorney), however it is unclear who is required to sign the contract and may require that multiple contracts be implemented for one account.

# Conclusion

This points of view captured in this document indicate broad concerns from the broker-dealer community around the operationalization of the requirements of the Rule Package. The SIFMA Working Group identified multiple areas where the Rule Package, in their view, will require expansive and expensive changes to firm operations and infrastructure. The results of these changes will require considerably different training, compliance, systems, reporting, and recordkeeping than what is currently done by most broker-dealers. These transformational changes may fundamentally change the relationships and experiences between broker-dealers and their customers. While participants in the SIFMA Working Group indicated that they will make full and best efforts to comply with the letter and spirit of the rule, there remain concerns about the penalties in the form of excise taxes and transaction reversals they may have face in instances where there is even immaterial or inadvertent non-compliance with the Rule Package.

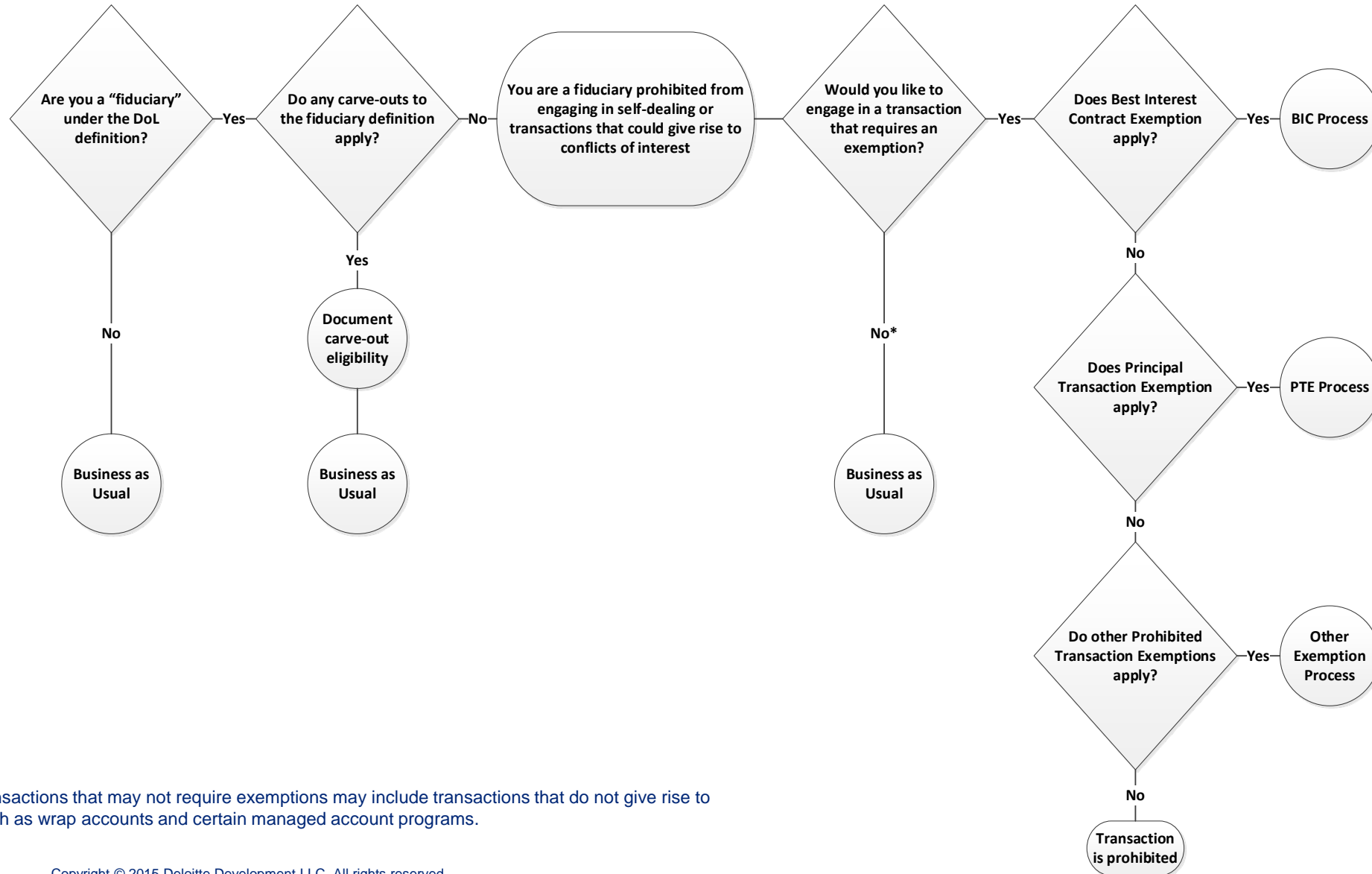
As the rulemaking process progresses, broker-dealers should continue to monitor and understand the different areas within their firms where changes or business decisions will need to be made. Accordingly, broker-dealers should continue to understand the potential investments that they may need to plan, the required timelines that it will take to become compliant and the residual effects for their people, processes, systems and customers.

# Appendix: Rule Package Requirement Process Flows and Decision trees

# Overview of the rule

# Overview of proposed rule

## Proposed Conflicts of Interest Rule: Overview of decisions and processes

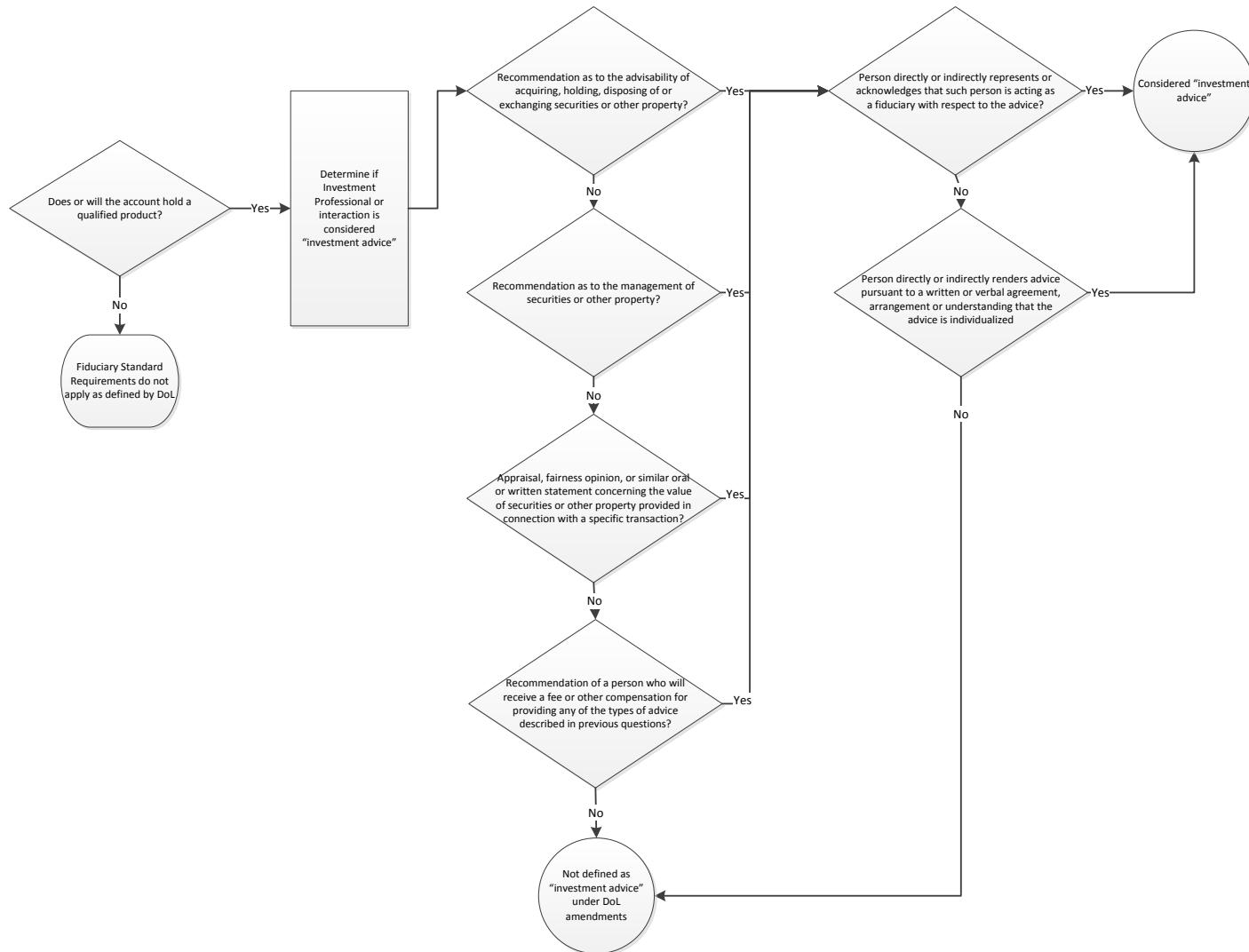


\*Note: Examples of transactions that may not require exemptions may include transactions that do not give rise to conflicts of interest, such as wrap accounts and certain managed account programs.

# Fiduciary Standard Definition and Carve Outs

# Fiduciary Standard Definition and Carve Outs

## Fiduciary Standard Definition



## Carve-Outs



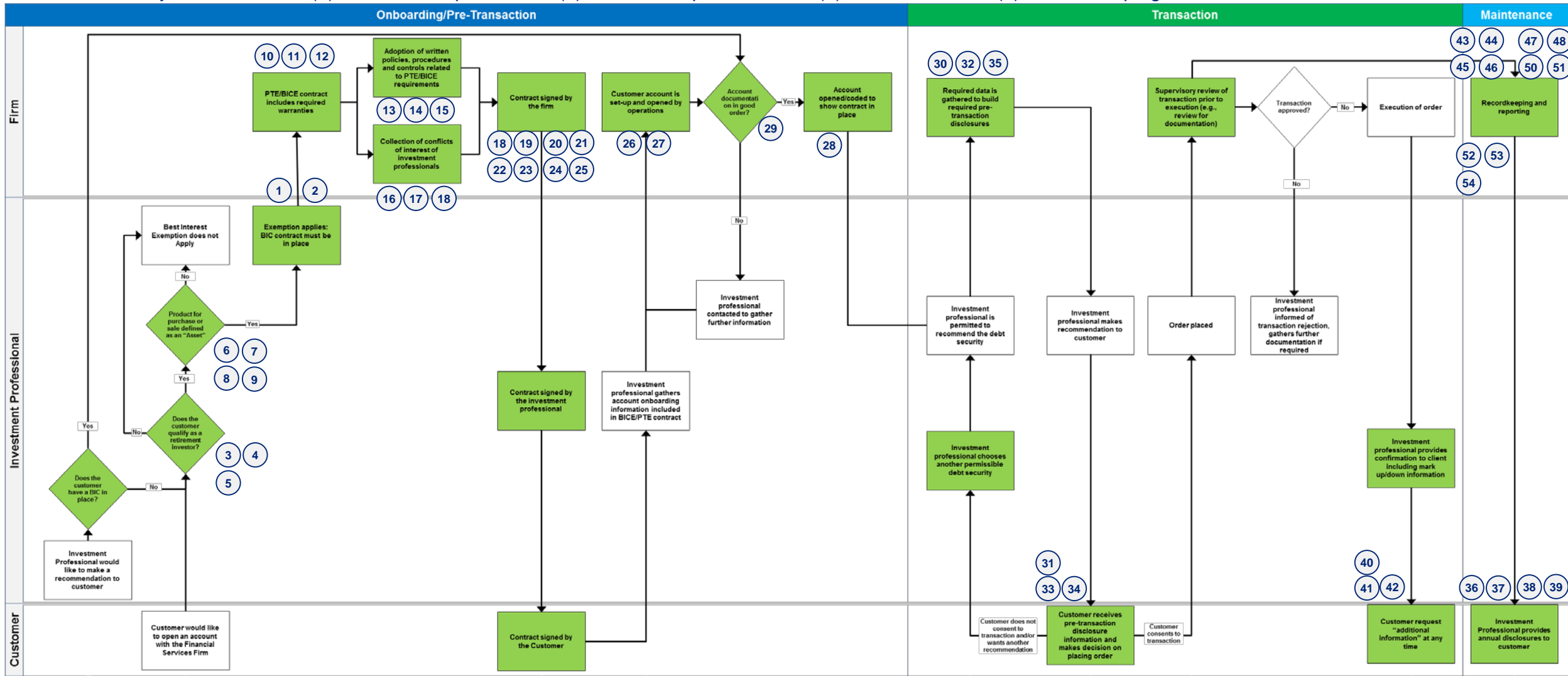
# Best Interest Contract (“BIC”)

**Process Flows and Operational Considerations**

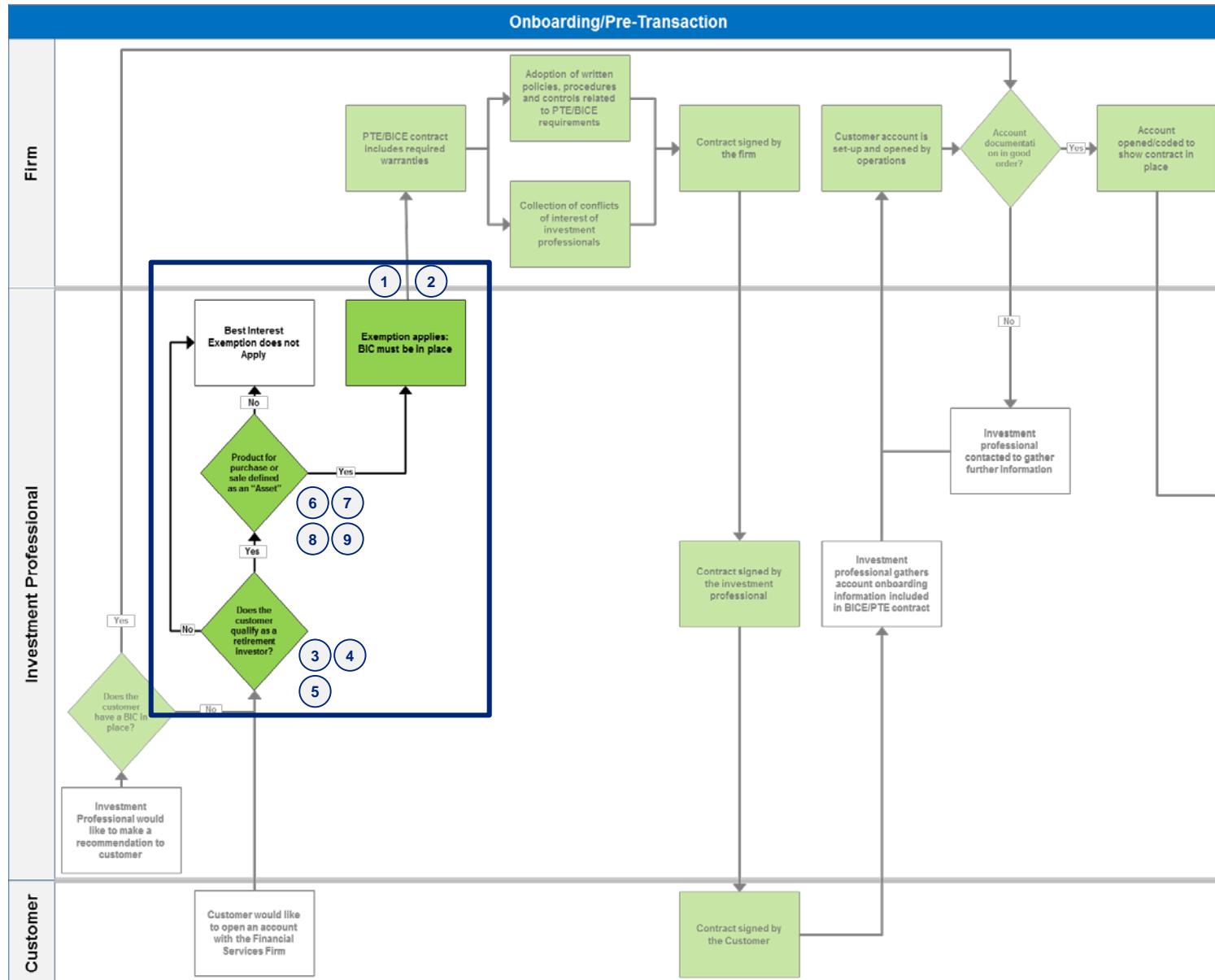


# Best Interest Contract Exemption Process Flow

Illustrative high level overview of the proposed rule requirements associated with the Best Interest Contract Exemption through the phases of the customer life cycle. The (X) indicate where operational considerations exist for financial service firms and the detail is provided in the following pages in five sections: (1) Applicability and Permissibility Determination; (2) Contract Requirements; (3) Contract Implementation; (4) Disclosures and (5) Recordkeeping

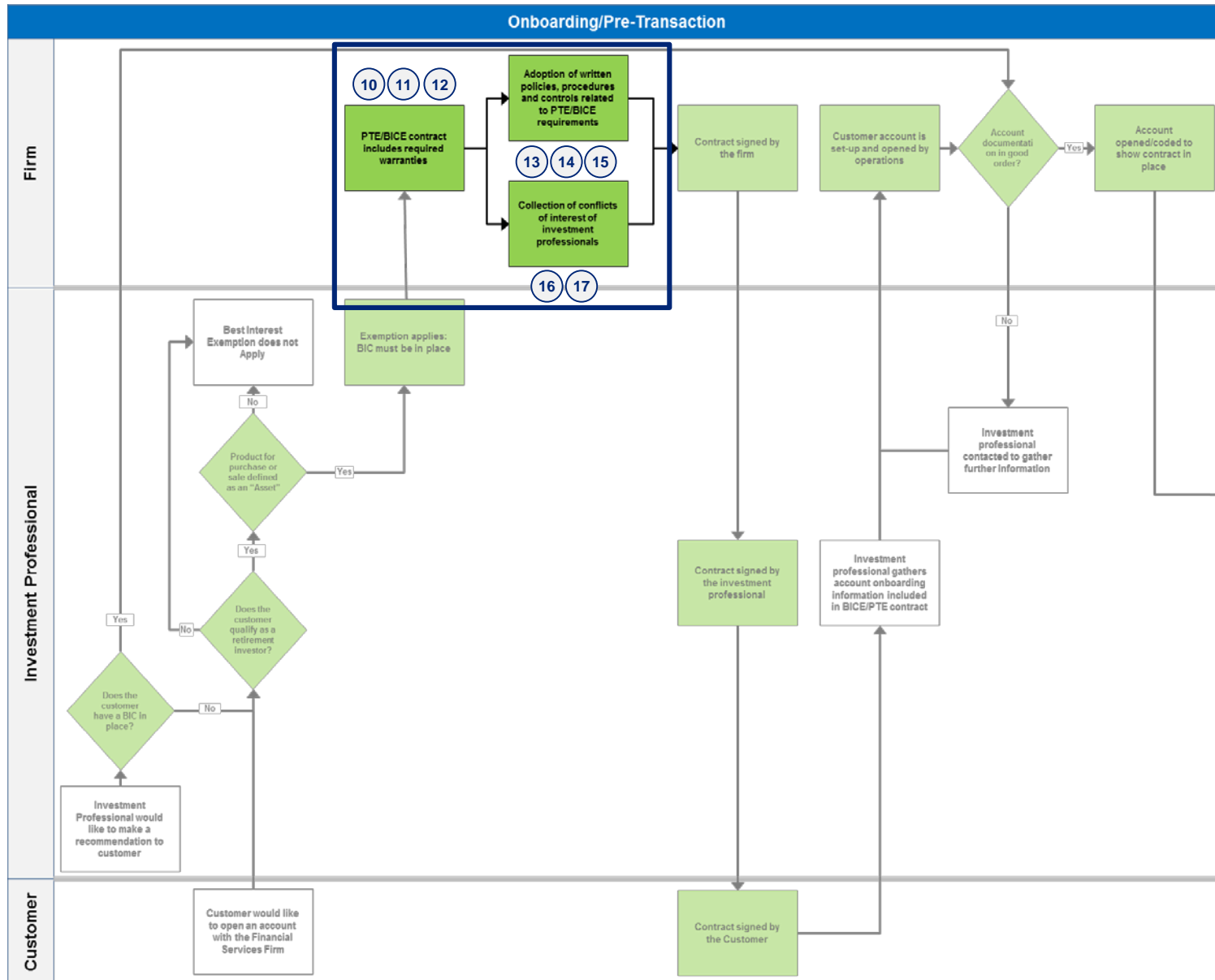


# BIC - Applicability and Permissibility Determination



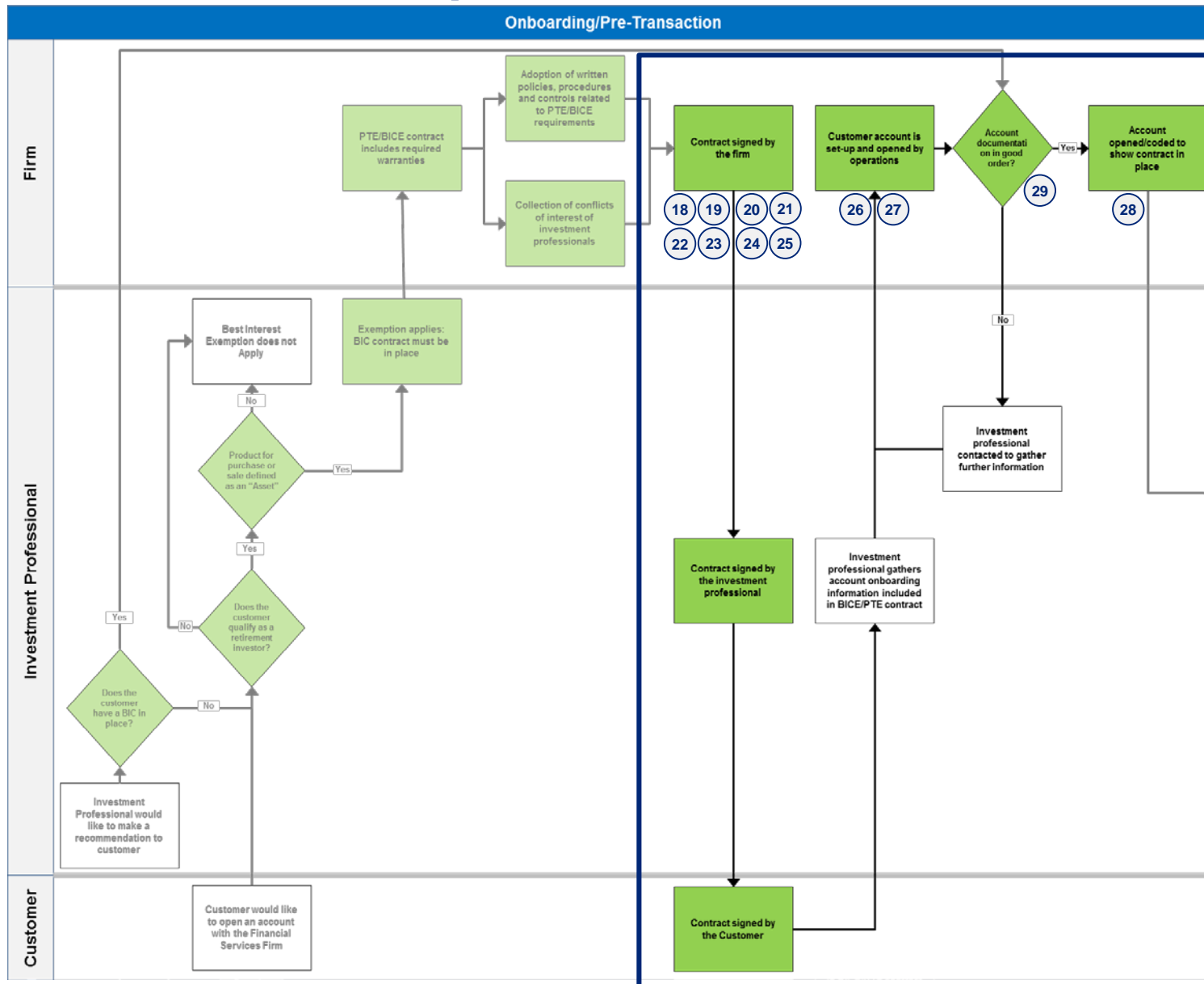
Process Steps	Operational Considerations for Compliance
<b>Applicability and Permissibility Determination</b>	
Determine if the investment professional will be providing investment advice	<ol style="list-style-type: none"> <li>Systems processes developed to document conversations with customers to evidence where recommendations are given</li> <li>Oversight systems and processes to monitor investment professionals conversations to ensure documentation and compliance with requirements</li> </ol>
Determine if customer is "Retirement Investor"	<ol style="list-style-type: none"> <li>Standardized methodology to identify and code accounts for Retirement Investors</li> <li>Systems to capture customers identified as Retirement Investors to assist front, middle and back office in servicing this type of account within requirements</li> <li>Oversight to monitor that Retirement Investors are properly identified and assisted in a manner prescribed by the Rule</li> </ol>
Determine if the asset is permissible	<ol style="list-style-type: none"> <li>Standardized methodology to identify what is a permissible assets</li> <li>Systems and processes to block non-permissible assets from being recommended in retirement accounts</li> <li>Oversight to monitor account activity is permissible within the specified account type</li> <li>Opening and administration of non-retirement accounts or self-directed accounts to be used for non-permissible securities</li> </ol>

# BIC - Contract Requirements



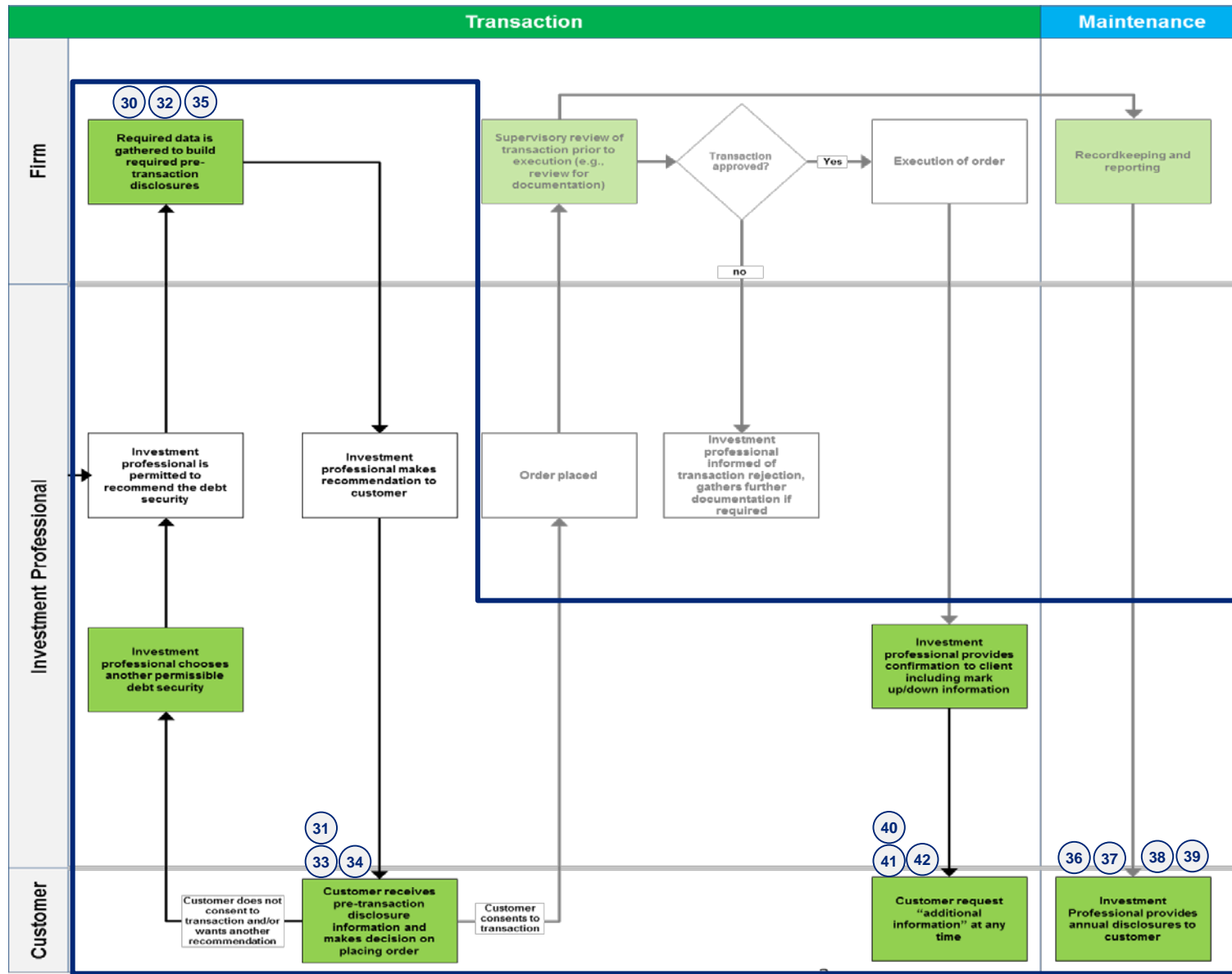
Process Steps	Operational Considerations for Compliance
<b>Contract Requirements</b>	
Create new contracts that meet the Rule conditions	<ul style="list-style-type: none"> <li>⑩ Create new contracts and/or account documentation aligned with conditions and requirements outlined in Rule</li> <li>⑪ Document direct and indirect fees associated with applicable retirement assets offered</li> <li>⑫ Review all current policies and procedures to determine if gaps exist in meeting compliance</li> </ul>
Collection of conflicts of interest of investment professionals	<ul style="list-style-type: none"> <li>⑬ Design policies and procedures to address conflicts of interest requirements.</li> <li>⑭ Standardized methodology to identify, report, document and catalog all investment professional conflicts of interest</li> <li>⑮ Oversight systems, control framework and processes to monitor reporting, documenting and disclosure of conflicts of interest</li> </ul>
Adoption of written policies, procedures and controls related to PTE/BICE requirements	<ul style="list-style-type: none"> <li>⑯ Design policies and procedures to address requirements for PTE and BIC contracts</li> <li>⑰ Oversight systems, control framework and processes interactions between investment professionals and customers to ensure advice not given before contract signed and all appropriate documentation is collected</li> </ul>

# BIC - Contract Implementation



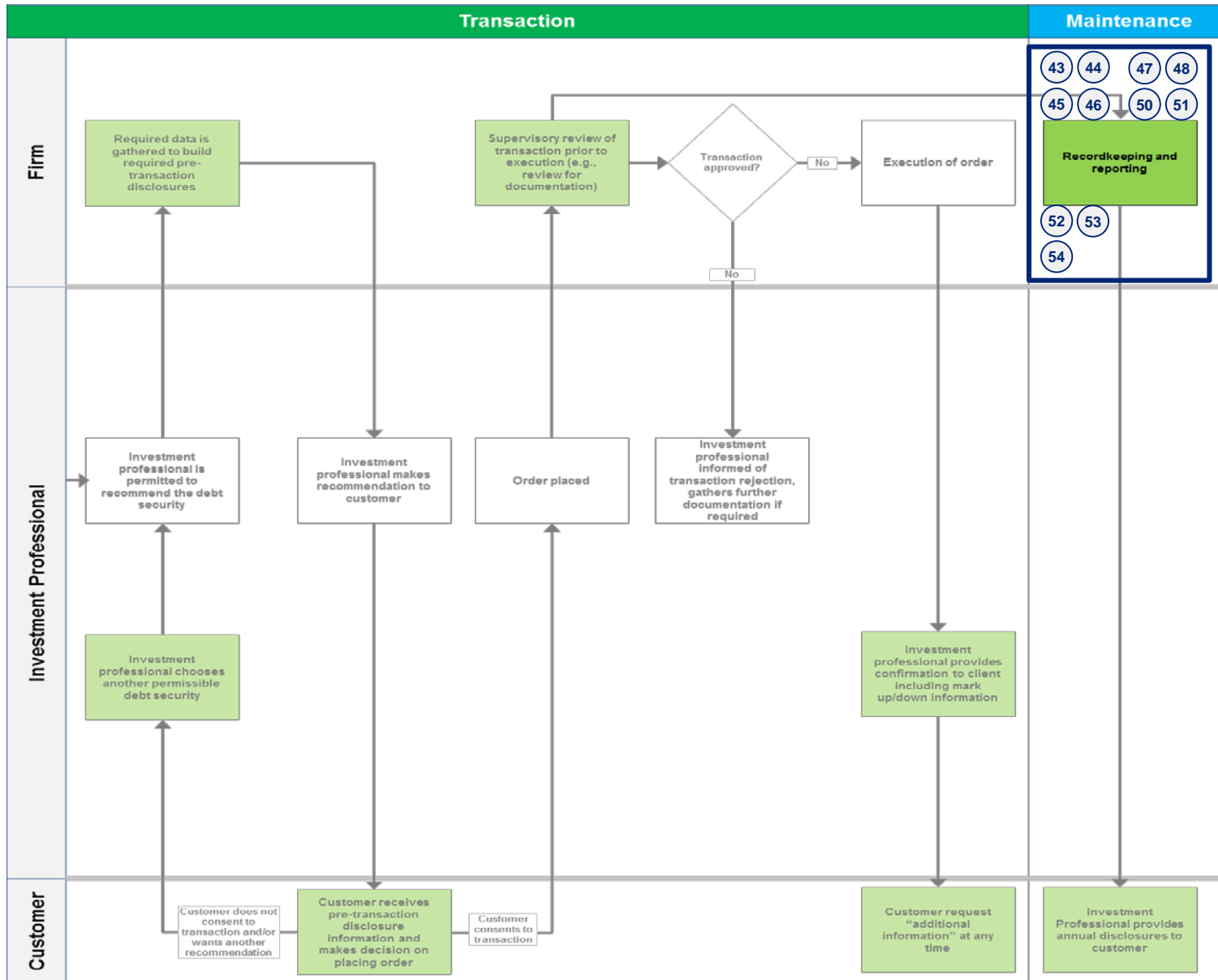
Process Steps	Operational Considerations for Compliance
<b>Contract Implementation</b>	
Identify if customer requires multi party contract for transaction/account	<ul style="list-style-type: none"> <li>18 Standardized methodology to determine which customers and accounts require contracts</li> <li>19 Identify existing customers and accounts requiring multi-party contracts</li> <li>20 Oversight and control for systems to identify customers on an ongoing basis who require contracts and to ensure contracts are in place</li> <li>21 Training to educate investment professionals regarding documentation and disclosure requirements</li> </ul>
Require signature of firm, investment professional and customer prior to discussing securities	<ul style="list-style-type: none"> <li>22 Oversight and control systems and processes to monitor investment professionals conversations with customers prior to signing Tri-party Contract</li> <li>23 Standardized methodology for completing contracts and other relevant account documentation</li> <li>24 Build or update systems and document repositories to accommodate new documentation and disclosure requirements</li> <li>25 Training to educate investment professionals to provide updated information to customers on conflicts of interest, fees and compensation written in contract</li> </ul>
Customer account is setup and opened	<ul style="list-style-type: none"> <li>26 Standardized methodology for account onboarding incorporating new documentation, contract and disclosure requirements</li> <li>27 Standardized methodology to identify all documentation necessary to setup customer account</li> <li>28 Systems and processes updated and bifurcated to document and code accounts</li> <li>29 Oversight and control systems and processes to monitor account documentation and investment professional dealings with retirement customers</li> </ul>

# BIC - Disclosures



Process Steps	Operational Considerations for Compliance Disclosures
Disclose total costs and reasonable assumptions of investing pre-transaction	<ul style="list-style-type: none"> <li>30 Standardized methodology to identify and estimate total costs required for disclosure pre-transaction</li> <li>31 Standardized methodology to ensure consistency in predicting performance on investments in retirement accounts</li> <li>32 Systems to distribute disclosure information and relevant controls for distribution of information</li> <li>33 Oversight systems and processes to monitor accuracy and consistency on investment performance prediction</li> <li>34 Oversight and control systems and processes to monitor dissemination and accuracy of pre-transaction disclosures</li> <li>35 Training for front, middle and back office on requirements, methodologies, policies and procedures for pre-transaction disclosures</li> </ul>
Disclose annual transaction information	<ul style="list-style-type: none"> <li>36 Standardized methodology for calculating direct and indirect fees and compensation attributable to the customer</li> <li>37 Systems and processes to capture and maintain ongoing data collection identifying total dollar amount of: 1) assets purchased or sold, 2) expenses and fees and 3) indirect and direct compensation received by firms and investment professionals</li> <li>38 Systems to distribute disclosure information and relevant controls for distribution of information</li> <li>39 Oversight to monitor disclosure and accuracy of annual information within specified timeframe</li> </ul>
Maintain a website with publicly disclosed information	<ul style="list-style-type: none"> <li>40 Standardized methodology to create, update and maintain website with required data</li> <li>41 Updates or changes to technology and cyber security to protect customer information</li> <li>42 Oversight and controls systems and processes to monitor publicly disclosed information on website is current and accurate</li> </ul>

# BIC - Recordkeeping



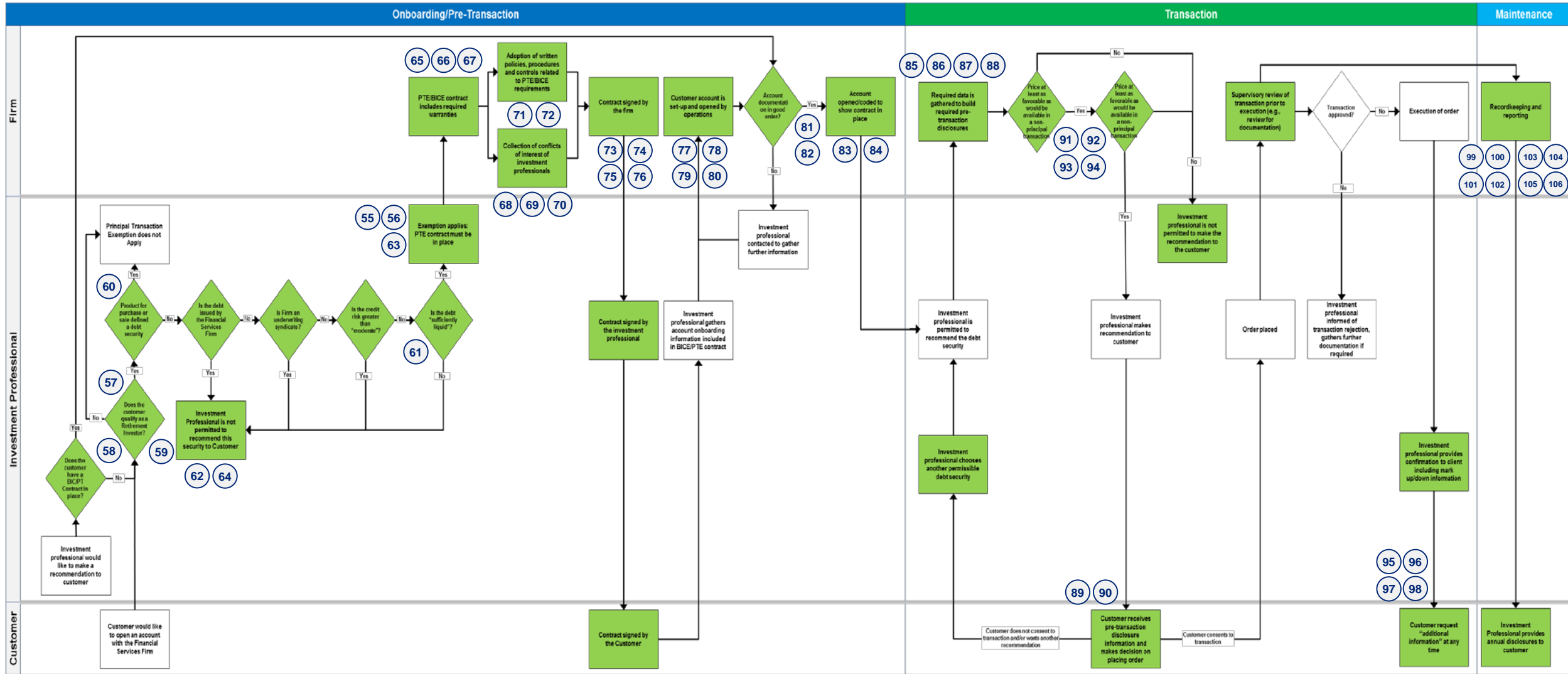
Process Steps	Operational Considerations for Compliance
<b>Recordkeeping</b>	
Notify DOL of intention to rely upon exemption	<ul style="list-style-type: none"> <li>43 Standardized methodology to identify and convey accounts where an exemption is applicable</li> <li>44 Systems and processes to document and code accounts</li> <li>45 Controls to ensure firms notify the DOL of their intention to utilize the exemption</li> <li>46 Oversight to monitor that Retirement Investors who rely upon the exemption meet the Rule requirements</li> </ul>
Retain data in readily accessible form to substantiate the inflows; outflows; holdings; and returns for six years	<ul style="list-style-type: none"> <li>47 Systems and processes developed to document data points pertaining to purchases, sales, holdings and performance of customers</li> <li>48 Data repositories to acquire, store, and maintain data points for six years</li> <li>50 Oversight systems and processes to monitor documentation and compliance with requirements</li> </ul>
Retain necessary records, for six years, to substantiate whether exemption conditions have been met	<ul style="list-style-type: none"> <li>51 Records inventory to identify applicable exemption requirements (e.g., contracts, disclosures) and corresponding documentation to be maintained across customer lifecycle</li> <li>52 Systems and document repositories to capture, store, and retrieve applicable records</li> <li>53 Controls to ensure compliance with exemption requirements</li> <li>54 Oversight and surveillance processes to monitor that necessary records are being maintained</li> </ul>

# Principal Transaction Exemption (“PrTE”)

**Process Flows and Operational Considerations**

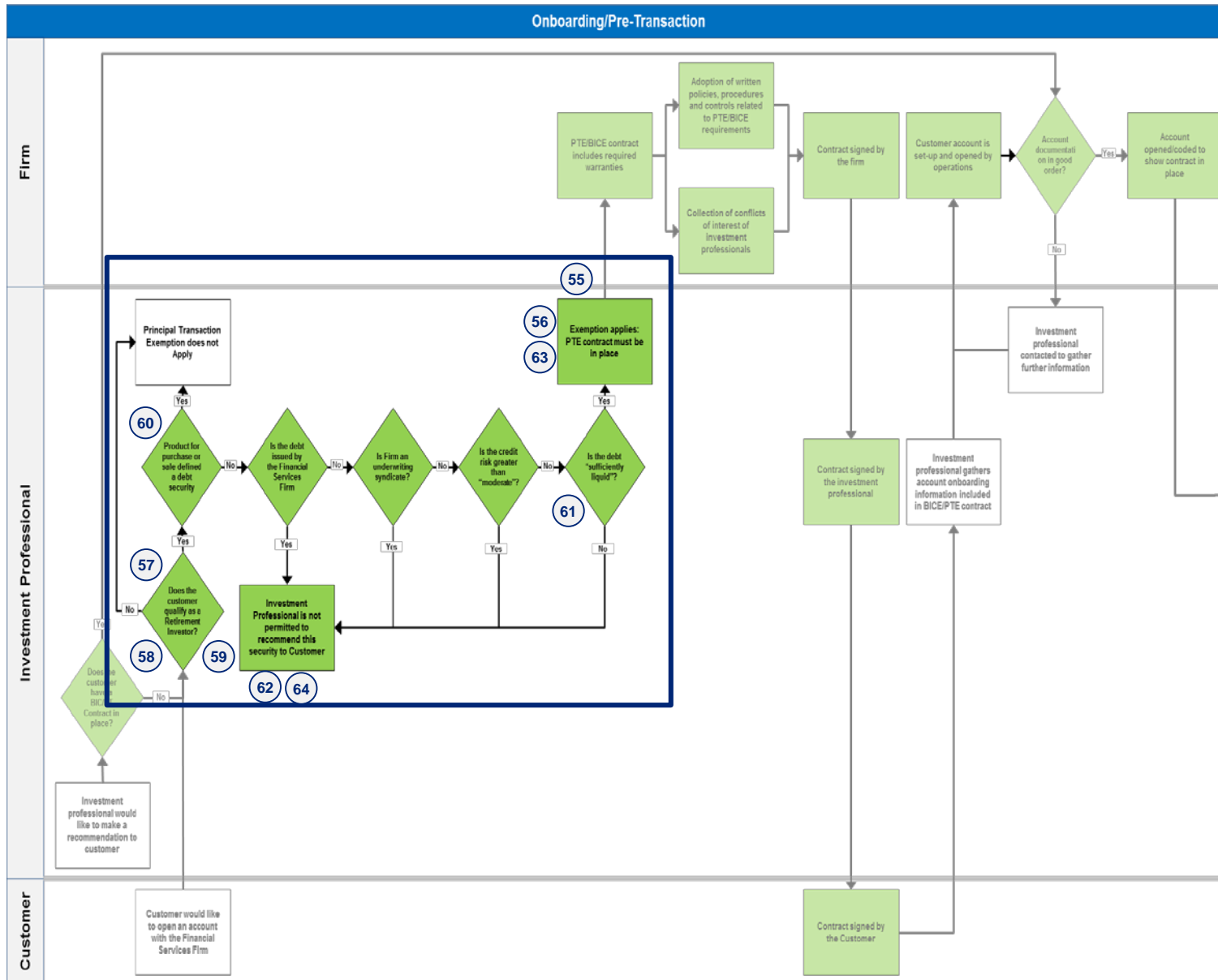
# Principal Transaction Prohibited Transaction Exemption Process Flow

Illustrative high level overview of the proposed rule requirements associated with the Principal Transaction Prohibited Transaction Exemption through the phases of the customer life cycle. The (X) indicate where operational considerations exist for financial service firms and the detail is provided in the following pages in five sections: (1) Applicability and Permissibility Determination; (2) Contract Requirements; (3) Contract Implementation; (4) Disclosures and (5) Recordkeeping



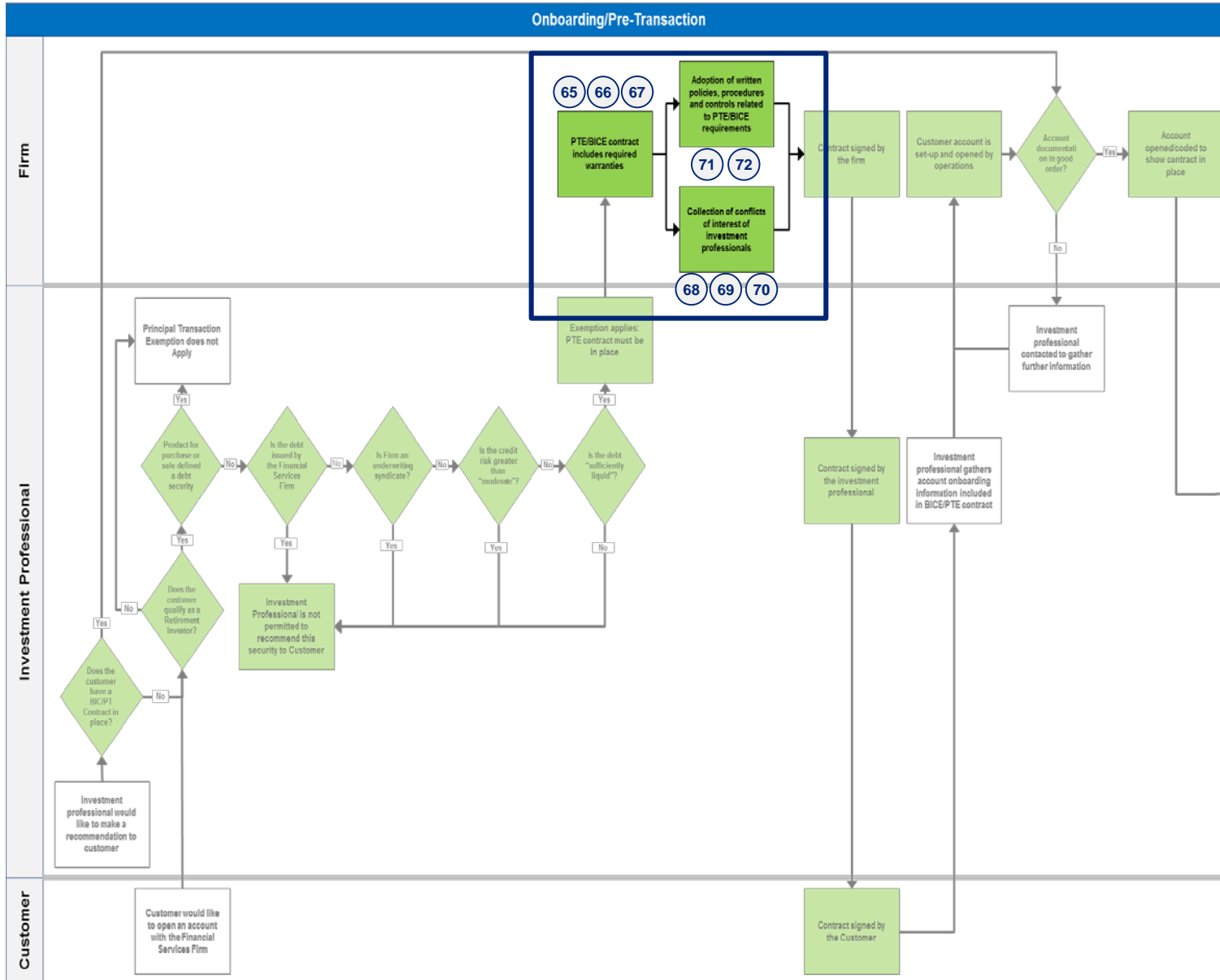


# PrTE - Applicability and Permissibility Determination



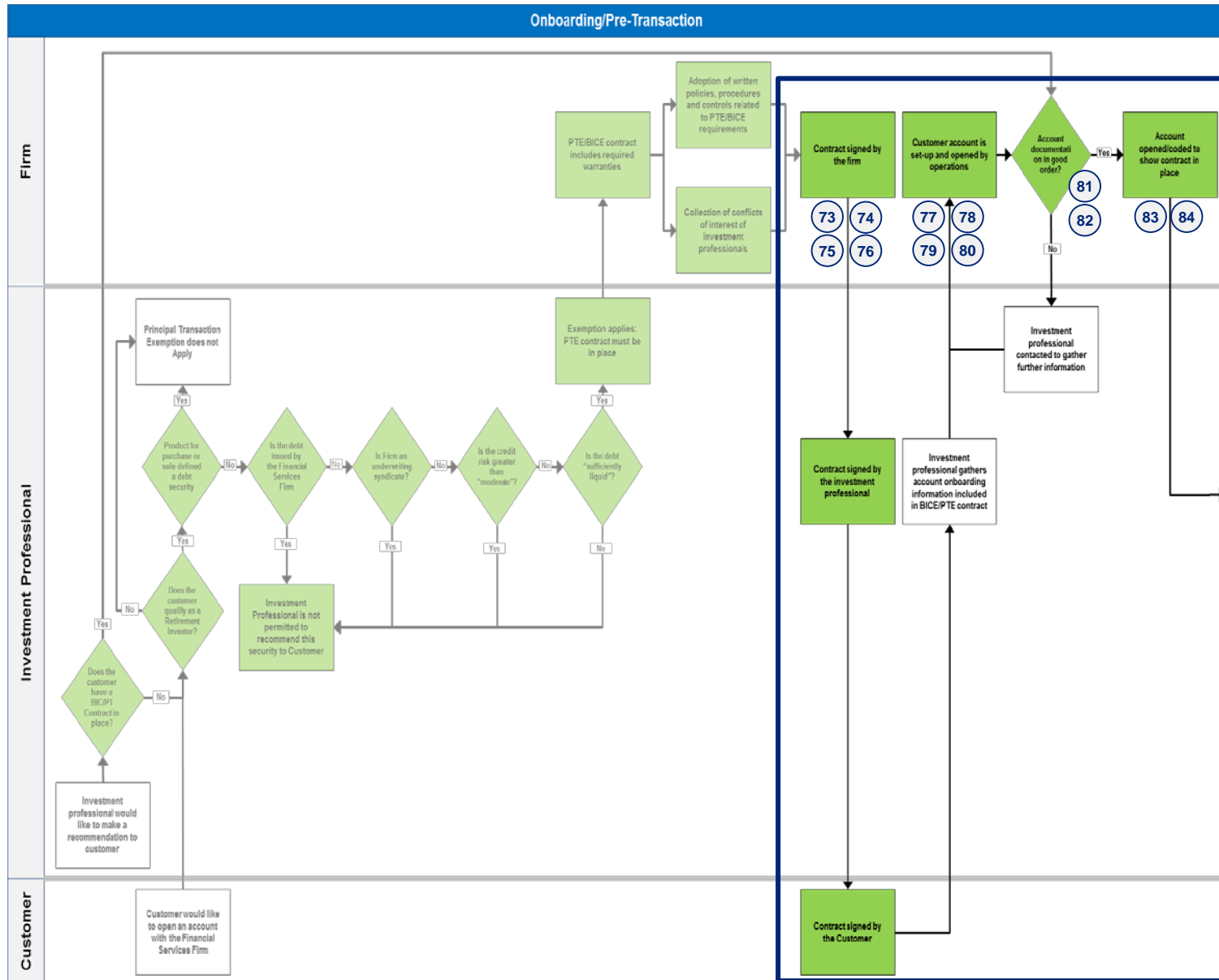
Process Steps	Operational Considerations for Compliance
<b>Applicability and Permissibility Determination</b>	
Determine if the investment professional will be providing investment advice	<ul style="list-style-type: none"> <li>55 Systems processes developed to document conversations with customers to evidence where recommendations are given</li> <li>56 Oversight systems and processes to monitor investment professionals conversations to ensure documentation and compliance with requirements</li> </ul>
Determine if customer is "Retirement Investor"	<ul style="list-style-type: none"> <li>57 Standardized methodology to identify and code accounts for Retirement Investors</li> <li>58 Systems to capture customers identified as Retirement Investors to assist front, middle and back office in servicing this type of account within requirements</li> <li>59 Oversight to monitor that Retirement Investors are properly identified and assisted in a manner prescribed by the Rule</li> </ul>
Determine if the debt security is permissible	<ul style="list-style-type: none"> <li>60 Standardized methodology to identify what is a permissible debt security</li> <li>61 Systems to determine liquidity and credit rating for debt securities to identify permissible debt securities</li> <li>62 Systems and processes to block non-permissible debt securities from being recommended in retirement accounts</li> <li>63 Oversight to monitor account activity is permissible within the specified account type</li> <li>64 Opening and administration of non-retirement accounts or self-directed accounts to be used for non-permissible securities</li> </ul>

# PrTE - Contract Requirements



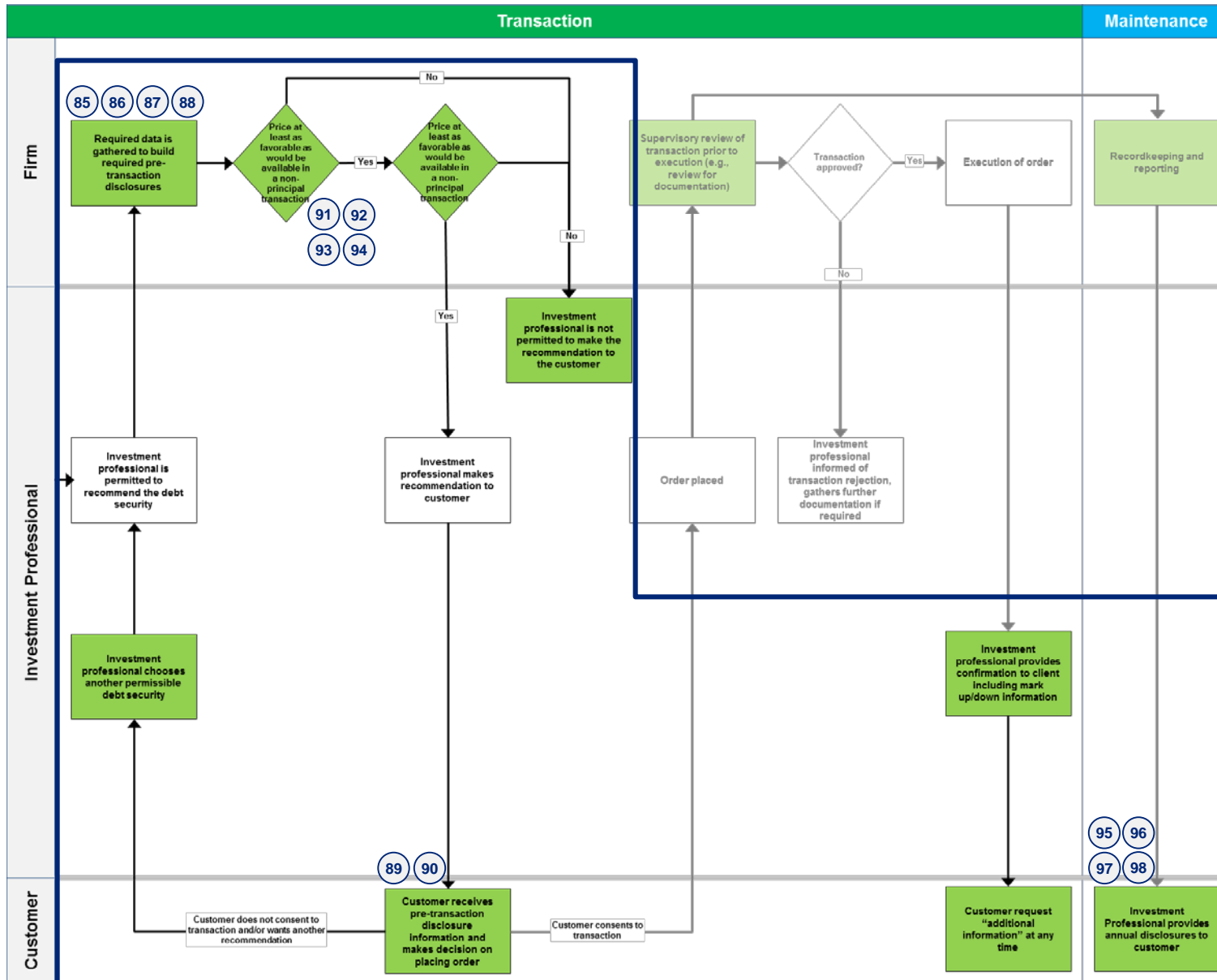
Process Steps	Operational Considerations for Compliance
<b>Contract Requirements</b>	
Create new contracts that meet the Rule conditions	<ul style="list-style-type: none"> <li>65 Create new contracts and/or account documentation aligned with conditions and requirements outlined in Rule</li> <li>66 Document direct and indirect fees associated with applicable retirement assets offered</li> <li>67 Review all current policies and procedures to determine if gaps exist in meeting compliance</li> </ul>
Collection of conflicts of interest of investment professionals	<ul style="list-style-type: none"> <li>68 Design policies and procedures to address conflicts of interest requirements</li> <li>69 Standardized methodology to identify, report, document and catalog all investment professional conflicts of interest</li> <li>70 Oversight systems, control framework and processes to monitor reporting, documenting and disclosure of conflicts of interest</li> </ul>
Adoption of written policies, procedures and controls related to PTE/BICE requirements	<ul style="list-style-type: none"> <li>71 Design policies and procedures to address requirements for PTE and BIC contracts</li> <li>72 Oversight systems, control framework and processes interactions between investment professionals and customers to ensure advice not given before contract signed and all appropriate documentation is collected</li> </ul>

# PrTE - Contract Implementation



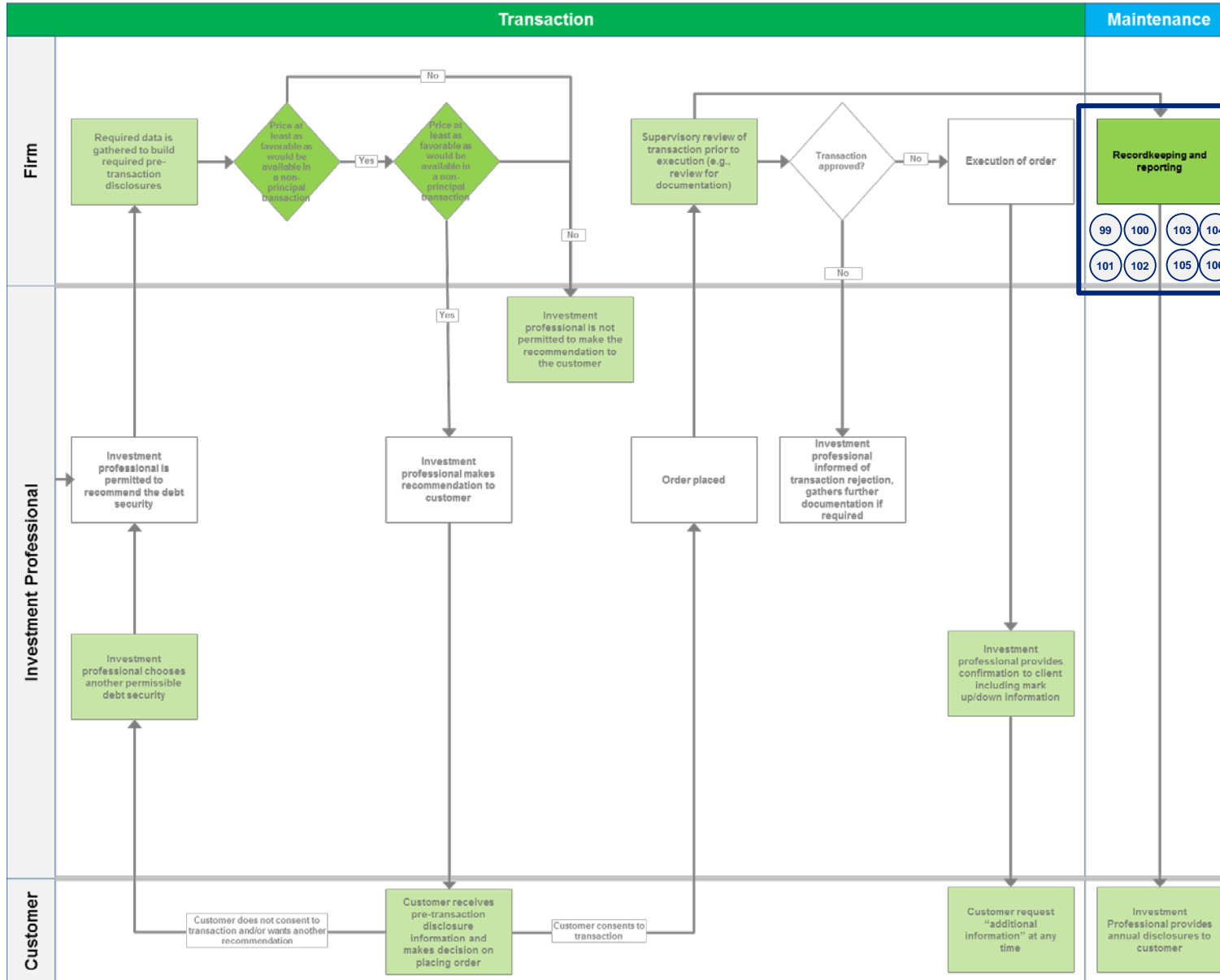
Process Steps	Operational Considerations for Compliance
<b>Contract Implementation</b>	
Identify if customer requires multi party contract for transaction/account	<ul style="list-style-type: none"> <li>73 Standardized methodology to determine which customers and accounts require contracts</li> <li>74 Identify existing customers and accounts requiring multi-party contracts</li> <li>75 Oversight and control for systems to identify customers on an ongoing basis who require contracts and to ensure contracts are in place</li> <li>76 Training to educate investment professionals regarding documentation and disclosure requirements</li> </ul>
Require signature of firm, investment professional and customer prior to discussing securities	<ul style="list-style-type: none"> <li>77 Oversight and control systems and processes to monitor investment professionals conversations with customers prior to signing Tri-party Contract</li> <li>78 Standardized methodology for completing contracts and other relevant account documentation</li> <li>79 Build or update systems and document repositories to accommodate new documentation and disclosure requirements</li> <li>80 Training to educate investment professionals to provide updated information to customers on conflicts of interest, fees and compensation written in contract</li> </ul>
Customer account is setup and opened	<ul style="list-style-type: none"> <li>81 Standardized methodology for account onboarding incorporating new documentation, contract and disclosure requirements</li> <li>82 Standardized methodology to identify all documentation necessary to setup customer account</li> <li>83 Systems and processes updated and bifurcated to document and code accounts</li> <li>84 Oversight and control systems and processes to monitor account documentation and investment professional dealings with retirement customers</li> </ul>

# PrTE - Disclosures



Process Steps	Operational Considerations for Compliance
	<b>Disclosures</b>
Disclose total costs and reasonable assumptions of investing pre-transaction	<ul style="list-style-type: none"> <li>85 Standardized methodology to identify and estimate total costs required for disclosure pre-transaction</li> <li>86 Standardized methodology to ensure consistency in predicting performance on investments in retirement accounts</li> <li>87 Systems to distribute disclosure information and relevant controls for distribution of information</li> <li>88 Oversight systems and processes to monitor accuracy and consistency on investment performance prediction</li> <li>89 Oversight and control systems and processes to monitor dissemination and accuracy of pre-transaction disclosures</li> <li>90 Training for front, middle and back office on requirements, methodologies, policies and procedures for pre-transaction disclosures</li> </ul>
Disclose additional pricing information	<ul style="list-style-type: none"> <li>91 Standardized methodology to obtain price quotes from two unaffiliated firms and the associated mark-up or mark-downs</li> <li>92 Systems and processes to obtain price quotes from unaffiliated firms</li> <li>93 Oversight and controls to monitor methodology and processes for obtaining and distributing pricing information to customers</li> <li>94 Training for front, middle and back office on obtaining pricing information and systems</li> </ul>
Disclose annual transaction information	<ul style="list-style-type: none"> <li>95 Standardized methodology for calculating direct and indirect fees and compensation attributable to the customer</li> <li>96 Systems and processes to capture and maintain ongoing data collection identifying total dollar amount of: 1) assets purchased or sold, 2) expenses and fees and 3) indirect and direct compensation received by firms and investment professionals</li> <li>97 Systems to distribute disclosure information and relevant controls for distribution of information</li> <li>98 Oversight to monitor disclosure and accuracy of annual information within specified timeframe</li> </ul>

# PrTE - Recordkeeping



Process Steps	Operational Considerations for Compliance
<b>Recordkeeping</b>	
Notify DOL of intention to rely upon exemption	<ul style="list-style-type: none"> <li>99 Standardized methodology to identify and convey accounts where an exemption is applicable</li> <li>100 Systems and processes to document and code accounts</li> <li>101 Controls to ensure firms notify the DOL of their intention to utilize the exemption</li> <li>102 Oversight to monitor that Retirement Investors who rely upon the exemption meet the Rule requirements</li> </ul>
Retain necessary records, for six years, to substantiate whether exemption conditions have been met	<ul style="list-style-type: none"> <li>103 Records inventory to identify applicable exemption requirements (e.g., contracts, pricing, disclosures) and corresponding documentation to be maintained across customer lifecycle</li> <li>104 Systems and document repositories to capture, store, and retrieve applicable records</li> <li>105 Controls to ensure compliance with exemption requirements</li> <li>106 Oversight and surveillance processes to monitor that necessary records are being maintained</li> </ul>



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