



# Anticipated Operational Impacts to the Insured Retirement Industry of the Department of Labor's Proposed Rules for the Definition of Fiduciary Advice

*This document contains general information only and Deloitte & Touche LLP is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte & Touche LLP shall not be responsible for any loss sustained by any person who relies on this document.*

# Contents

<b>Executive Summary</b>	<b>4</b>
<b>Insurers</b>	<b>5</b>
<b>Distribution Channels</b>	<b>12</b>
<b>Call Centers</b>	<b>14</b>
<b>Wholesalers</b>	<b>15</b>

# Executive Summary

---

On April 20, 2015, the Department of Labor (“DOL”) proposed the “Definition of the Term ‘Fiduciary’; Conflict of Interest Rule – Retirement Investment Advice; Proposed Rule<sup>1</sup>” (“Rule Package”). The Insured Retirement Institute<sup>2</sup> (“IRI”) engaged Deloitte & Touche LLP (“Deloitte & Touche”) to facilitate a study with 17 IRI member firms representing a 68% share of the annuity market based on 2014 sales<sup>3</sup> (referred to as the “IRI Working Group” throughout this document) to gather the IRI Working Group’s view on operational impacts of the Rule Package on the insured retirement industry, its products and its customers. The IRI Working Group analyzed applicable rule requirements and amendments of the Rule Package through collaborative working sessions and a questionnaire to establish the impacts to the retirement industry.

The IRI Working Group consisted of insurers who manufacture and distribute insurance products. Through the collaborative working sessions the IRI Working Group utilized process flows and rule requirement information to consider the implications of the Rule package across a variety of business models, including the operational impacts to captive and non-captive (third-party) distribution channels, with a specific focus on the operational impacts to fixed annuities, variable annuities and in-plan retirement income products.

The findings represent the views expressed by the IRI Working Group as communicated to Deloitte & Touche<sup>4</sup> through facilitated discussions and surveys. Deloitte & Touche has aggregated and summarized these views, but was not asked to and did not independently verify, validate or audit the information presented by the IRI Working Group.

## Summary of Findings

The following report addresses the operational impacts identified by the IRI Working Group as the impacts apply to insurance companies, and the different business models or channels utilized by the Insurers, including Distribution Channels (Captive and Non-Captive), Call Centers and Wholesalers. Some of the main impacts identified by the IRI Working Group, which are discussed in detail in this report, are as follows:

- The expanded definition of who is considered a “fiduciary” creates operational risk considerations and obligations that may cause insurers to restrict or end certain types of communications, products and services that consumers rely on to plan for their financial security in retirement.
- Current customer service models, such as call centers and wholesalers, which provide information, education and guidance to consumers, may be unfeasible under the requirements of the Rule Package. Insurance companies may shutter call centers as a result, further limiting consumer access to account and product information.

---

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

<sup>2</sup> IRI is an association for the retirement income industry. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement.

<sup>3</sup> Data obtained from Morningstar, Inc. and Beacon, Inc.

<sup>4</sup> This engagement was performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants. Deloitte & Touche did not provide any assurances regarding the sufficiency of the services provided for IRI’s purpose. Deloitte & Touche 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 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 expressing an opinion or any other form of assurance with respect to financial data or internal controls to IRI or any third party.

- For many Insurers, significant and lengthy updates, changes and bifurcations to systems, processes and oversight functions across organizations would be required to comply with the Rule Package if passed in its current form.
- The Rule Package is unclear and ambiguous as to the requirements and responsibilities for Insurers with non-captive distribution channels, leading to difficulty in operationalization of the Rule Package
- The different exemption requirements for fixed annuities and variable annuities will lead to further system bifurcations, oversight processes and standards, which may result in insurers no longer offering both products because of the operational complexities, potentially reducing retirement product options for consumers.

The IRI Working Group emphasized that the operational impacts of updates and the creation of systems, processes and oversight functions to comply with the Rule Package would be costly and would require a significant amount of time for creation and implementation, which would likely be significantly longer than the eight months between finalization of the Rule Package and the Rule Package taking effect. The IRI Working Group noted that the costs would inevitably trickle down to consumers, through indirect fees, as a result of the updates.

## Insurers

---

**Expansion of systems and processes** The Rule Package will require the development and enhancement of systems and processes to ensure compliance with new obligations. The IRI Working Group identified several instances where Insurers may need to make considerable investments and changes to people, process and technology to accommodate the revised fiduciary definition. The Rule Package will result in firms needing to implement new systems, capabilities, and monitoring processes to oversee and administer internal operations. The IRI Working Group noted that fully implementing the system development and process modifications to comply with the Rule Package will likely take 2 – 3 years, assuming normal development cycles. However, The IRI Working Group emphasized that accelerating modifications within the timeframe proposed by the DOL and Rule Package will likely lead to significant disruptions to normal operations and will result in many, if not all, Insurers suspending new development and potentially new sales of retirement products in order to put systems in place to comply with the Rule Package.

The Rule Package, as written, will require Insurers to meet new obligations such as enhanced recordkeeping and disclosure responsibilities. The IRI Working Group noted that substantial investment will be required to develop or enhance the technology solutions to obtain the data elements necessary to comply with these requirements. Several instances were identified where the technology functionality to capture data point requirements of the Rule Package do not currently exist. Significant effort and time will be required by Insurers to acquire, implement and maintain the capabilities needed to ensure compliance.

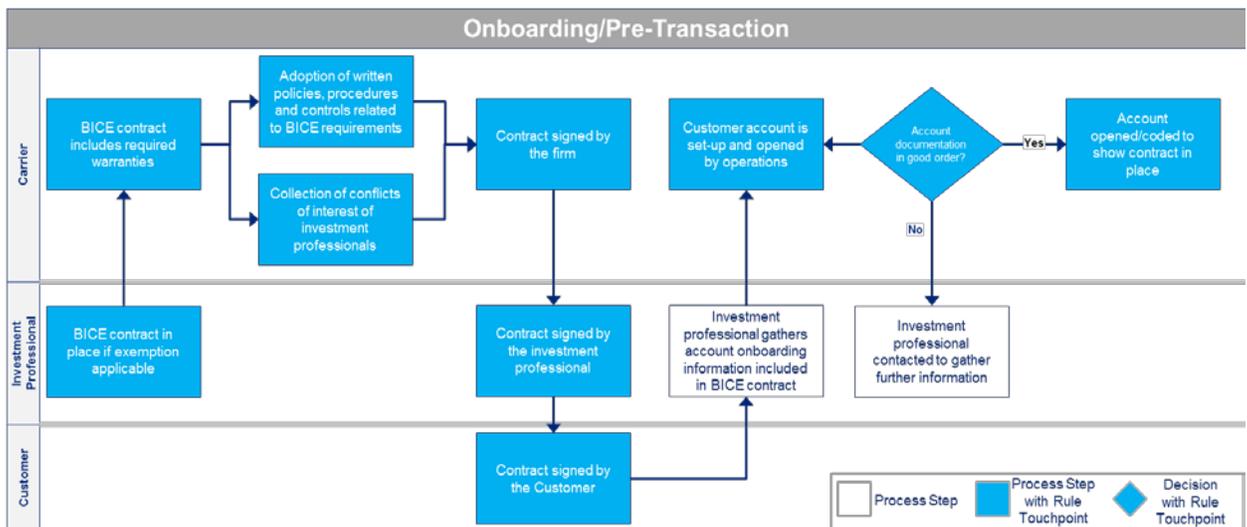
- **Significant investments and changes to people, process and technology will likely be required to determine applicability and ensure compliance with the requirements of the Best Interest Contract Exemption (BICE).** The IRI Working Group indicated that considerable effort and cost will be incurred to establish the necessary infrastructure for customers to utilize the BICE. The IRI Working Group noted that the following process,

system and oversight changes will be required<sup>5</sup> to determine applicability and compliance for new customers and exiting customers:

- New processes will be required to verify that applicability and conditions of exemption are met.
- Training and certifications for producers will be required to determine applicability for both new and existing customers.
- Additional layers of supervision and controls will need to be implemented to ensure compliance.
- Coding of administrative and correspondence systems will be needed to ensure that a best interest contract is in place and executed by all parties.
- Additional personnel, possibly with skill sets that do not currently exist internally, may need to be added.

The IRI Working Group noted that the modifications to current systems and processes will be essential to comply with the proposed Rule Package and are expected to lead to significant cost expenditures. Furthermore, it will take a multi-year effort to evaluate, design, test and implement the necessary changes to systems and processes. The IRI Working Group indicated that Insurers with the scale and financial capacity to operationalize the proposed Best Interest Contract Exemption requirements will likely have a competitive advantage over the Insurers with limited resources and capabilities. Figure 1.1 below illustrates an example of a process flow demonstrating the potential steps to create and implement contracts for reliance on the BICE.

**Figure 1.1 – Illustrative process flow of the creation and implementation of contracts for the BICE in the onboarding/pre-transaction portion of the customer lifecycle**



- **Given the numerous communication touch-points with clients (See Figure 1.3), Insurers will need to make significant modifications to training, administrative, compliance and correspondence systems and processes in order to ensure compliance with the Rule Package.** Due to the number of communication lines that exist between retirement product companies and customers or advisors there is an increased possibility that personnel may be providing advice, under the expanded definition of what is considered investment advice, leading to an expansion of the monitoring of additional personnel to ensure compliance with disclosure and recordkeeping requirements. The IRI Working Group noted that it would take at least two

<sup>5</sup> Anticipated changes to processes, systems and oversight requirements noted by the IRI Working Group is not exhaustive

years and significant effort to design, test and implement the necessary changes to systems and processes.

- **BICE disclosure requirements will necessitate the creation and collection of new data points, and require significant operational transformation and effort as many of these data points are not currently calculated or maintained by most firms.** The IRI Working Group noted that operationalizing the website, initial transaction, and annual transaction disclosure requirements of the BICE may require firms to implement systems that gather, calculate and distribute this information. Specifically, website, correspondence, compensation and administrative systems will need to be modified, or built from scratch, which may take several years to implement. The IRI Working Group indicated that disclosure compensation and fee information is not available at the individual contract level or by the exact dollar amount. Insurers will need to make changes to technology and processes to capture required reporting information and perform calculations for these new data points.
- **BICE disclosure requirements will require firms to develop new supervisory and control systems and processes to effectively monitor and ensure completeness and accuracy of disclosure statements to consumers in compliance with the Rule Package.** The IRI Working Group indicated that firms will need to develop new oversight processes and additional training to ensure compliance with disclosure requirements. Firms will need to build adequate supervisory and operational systems to develop effective control frameworks that ensure and safeguard the accuracy and completeness of disclosure information.
- **Because many Insurers currently maintain compensation and fee data points required by the BICE across multiple systems, it will likely be a difficult, costly and lengthy initiative to aggregate these data points for consumer disclosure purposes.** Insurers will be required to identify which accounts contain qualified products, within account types where the Insurer is required to provide compensation and fee disclosure information to customers. Currently, many Carriers maintain compensation and fee information in multiple systems and not in a format easily transmittable to customers or to broker-dealers who may require this information for disclosure purposes. Insurers will be required to update or build new systems to calculate and maintain the required compensation and fee information. The IRI Working Group noted that this would impact a number of systems and would be expected to take a minimum of 2 years to implement.
- **As a result of the expanded recordkeeping requirements to substantiate compliance with the BICE, current technology and process capabilities may not be able to accommodate the expanded recordkeeping requirements and will likely require enhancement across many Insurers.** Insurers are required to maintain, and provide to the DOL as requested, records to substantiate reliance on and compliance with the requirements of an exemption. Insurers may be required to update or create systems or data repositories to capture, maintain and provide this information to the DOL to remain compliant with the requirements. The IRI Working Group identified that the requirements would lead to updates or expansion of processes, systems and oversight for document management, correspondence, valuation and administrative systems that could potentially take 2 – 3 years to build and implement.
- **With the expansion of the fiduciary definition, to potentially include Call Center personnel, Wholesalers and other personnel, firms would be required to implement new or significantly modified training programs to accommodate expanded personnel responsibilities.** The IRI Working Group noted that enhanced or new training programs would be built to inform front, middle and back office personnel of the

requirements of the new definition, updated processes, policies and oversight associated with compliance.

**Lack of clarity around requirements and responsibilities** The IRI Working Group emphasized that the Rule Package, as written, does not provide clear requirements and responsibilities of the Insurers in certain types of customer relationships and customer communication lines. The lack of clarity here makes it difficult for Insurers to understand the scope of requirements or responsibilities, therefore making it difficult to operationalize the Rule Package. The IRI Working Group specifically noted the following instances where the Rule Package is broad in scope:

- **As a result of the ambiguity and lack of clarity in the Rule Package regarding the requirements and responsibilities for the BICE of the Insurers within customer relationships at non-captive (third party) distribution channels, there could be inconsistent adoption of standards to comply with the Rule Package.** In a third-party or independent distribution channel, it is not clear what the impact of the BICE will be on the Insurer, and specifically, how the BICE is applied to the Insurer, broker-dealer, and investment professional. Specifically, the IRI Working Group noted that currently, an Insurer could provide information or advice to an agent or advisor in the non-captive distribution channel that may flow through the agent or advisor to the customer. Although the communication is indirect, under the Rule Package it is unclear what the implication of this type of indirect communication would be for Insurers and if this communication would constitute advice under the expanded definition. The IRI Working Group noted that in the event Insurers would be included in the best interest contract relationship, there would be significant technology, process and oversight builds that would need to occur to implement best interest contracts.
- **The Rule Package leads to different requirements for different product types (e.g., PTE 84-24 applies to fixed annuities, and BICE applies to variable annuities) within distribution channels requiring Insurers to accommodate a variety of options across distribution channels.** Distribution channels may choose to rely on PTE 84-24 and the BICE or just the BICE. Because the choice of reliance can be unique to distribution channels, different distribution channels may choose different methodologies, systems and processes to meet rule requirements. Insurers will now have to accommodate a variety of options where differing requirements exist within the exemptions. In addition to taking into account the different requirements between Best Interest Contract and PTE 84-24, Insurers will have to overlay these requirements with current suitability requirements specific to each state. With regard to qualified versus non-qualified sales, insurance companies with captive agents will need to develop different processes to manage transactions in retirement plans and those outside retirement plans to different standards, and build or update systems and processes to accommodate the differences. Insurers who are unable to accommodate different requirements based on the type of business, and different business models, may not be able to service certain business within distribution channels which could lead to a competitive advantage for those firms able to make these accommodations. Further, smaller insurance companies or those with a smaller presence in the retirement market may find it difficult and costly to adapt systems and may choose to exit the retirement product business, further limiting consumer choice.
- **The Rule Package does not clearly specify whether a PTE 84-24 or BICE would be applicable in a switch transaction from a variable annuity to a fixed annuity, which will likely lead to the need for Insurers to update or build systems, processes and bifurcate as necessary in accordance with the different business models across distribution channels.** The IRI Working Group noted that Insurers will need to understand the source of funds for each product type in order to understand what level or

standard of suitability or exemption is required for the transaction. For example, take the case of a distribution channel performing a transaction where the customer uses funds from a variable annuity to buy a fixed annuity. The Insurer would need to require a Best Interest Contract, in the event that advice was provided, or evidence that advice was not provided for the sale of the variable annuity to purchase the fixed annuity product. To accommodate this increased requirement, Insurers would be required to update or build systems, processes and bifurcate as necessary in accordance with the different business models across distribution channels.

- **The Rule Package lacks clarity on determining reasonable assumption performance and cost allocations for the BICE disclosures and potentially conflicts with current regulations on price projections for certain products. This will make Insurers responsibilities difficult to understand and may prevent the operationalization of the performance assumption requirement.** The IRI Working Group noted that additional guidance is required on what constitutes “reasonable compensation” in order to calculate the total cost of investing for initial transaction disclosures. Furthermore, in the case of variable contracts, the SEC requires insurance companies to complete Form N-4 which includes a standardized fee table using prescribed calculations established by the SEC within prospectuses<sup>6</sup>. The IRI Working Group noted that the fee tables required by the SEC illustrating costs may not align with the suggested projection table within the Rule Package. FINRA Rule 2111<sup>7</sup> prohibits projection of costs. Further clarification is also needed on how all fees, expenses, and compensation on an individual contract level need to be allocated for disclosure requirements. Additionally, without a common interpretation or standard for “reasonable compensation” calculations, competitive advantages or disadvantages among Insurers may develop. BICE disclosure ambiguity makes it difficult for Insurers to understand the proposed Rule Package responsibilities, which will prevent Insurers from effectively operationalizing requirements and potentially lead to an extended period of time when retirement product availability to consumers is curtailed or suspended.
- **It is unclear if the BICE’s annual transaction disclosure, which requires the disclosure to be provided within 45 days of year end, refers to the policy year or fiscal year, making it difficult for Insurers to determine the impact and how to operationalize this requirement.** The IRI Working Group indicated that if the disclosure responsibility is defined as end of the fiscal year, it will be difficult to meet the 45 day requirement. Numerous disclosures are already required during this time frame, including many that are tax related. The IRI Working Group noted that adding these disclosure requirements at fiscal year-end may strain correspondence and call center resources.

**Bifurcation of systems and processes** Several instances were identified by the IRI Working Group where systems and processes will need to be bifurcated between qualified and nonqualified products. The Rule Package, as written, is only applicable to qualified products, which will require firms to separate systems and processes by each specific product type. Furthermore, the applicable exemptions (e.g., Best Interest Contract and PTE 84-24) are applicable to different product types, which will require firms to bifurcate systems and processes by product type as they apply to the prohibited transaction exemptions. Significant cost and effort would be necessary to modify or acquire the technology functionality or capabilities to delineate between permissible and non-permissible products. The IRI Working Group noted that oversight, surveillance and other compliance processes and systems would need to be bifurcated to accommodate the unique requirements for each type of product. Operational transformations will require significant

---

<sup>6</sup> Securities Exchange Commission Form N-4: <https://www.sec.gov/about/forms/formn-4.pdf>

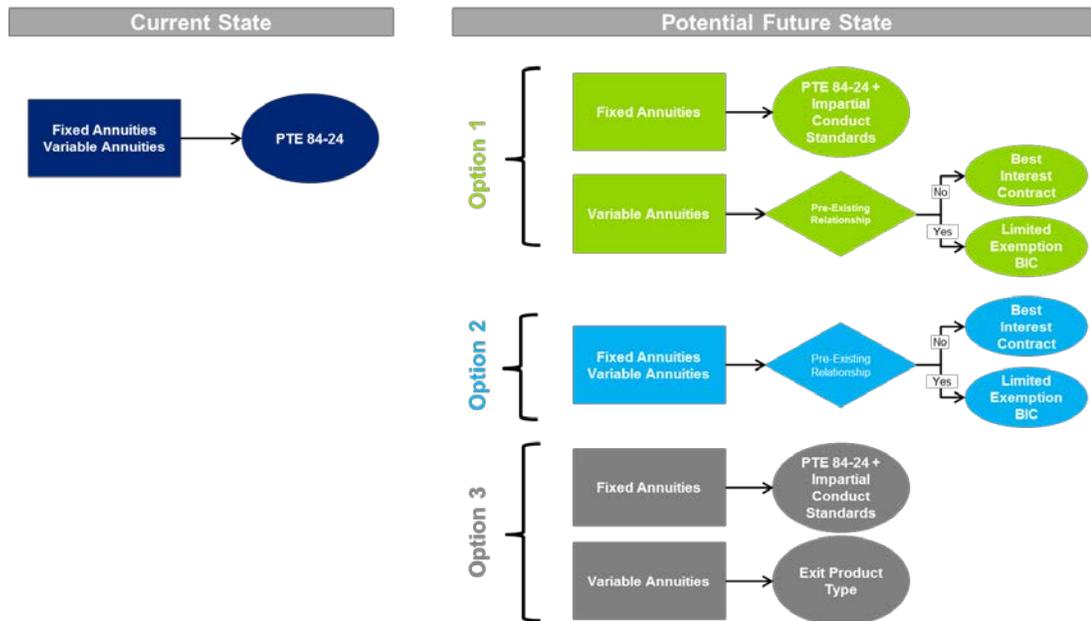
<sup>7</sup> FINRA Rule 2111 Suitability:

[http://finra.complinet.com/en/display/display\\_main.html?rbiid=2403&element\\_id=9859&print=1](http://finra.complinet.com/en/display/display_main.html?rbiid=2403&element_id=9859&print=1)

investments, time and effort, which may provide larger Insurers with a competitive advantage over smaller Insurers with less disposable resources.

- Oversight, surveillance, and other compliance processes and systems will need to be bifurcated in order to accommodate differences across account types for qualified versus non-qualified products.** The IRI Working group indicated that Insurers will be required to update or build new systems to identify and monitor accounts with qualified products. Insurers will likely need to create or update systems to accommodate the suitability or expanded requirements for accounts with qualified products.
- Bifurcating and reporting of required disclosures for qualified products will require significant time and expense to separate processes, systems and oversight function into separate groups.** The understanding of the IRI Working Group is that the Rule proposal will apply only to qualified products. In order to report on only qualified contracts, members would have to split their business, including processes, systems and oversight into qualified and non-qualified groups in order to create the required disclosures for only the qualified products.
- As a result of amendments to PTE 84-24, firms will be required to bifurcate systems, processes and oversight responsibilities to accommodate separate requirements for annuities products.** PTE 84-24 no longer includes relief for transactions in securities based annuities (variable annuities), and requires that these types of transactions be covered by the BICE. Insurers may be required to create three separate supervisory channels to monitor transactions in variable annuities, fixed annuities and non-qualified products in order to rely on applicable exemptions. See Figure 1.2 below for illustrative examples of future states for firms reliance on exemptions based on proposed amendments of PTE.

**Figure 1.2 Illustrative current state and examples of future state<sup>8</sup> for Insurer and Distribution Channel reliance on PTE 84-24 and BICE based on proposed amendments of PTE 84-24**



<sup>8</sup> The future state options present in Figure 1.2 are not all inclusive and other options may exist for reliance on PTE 84-24 and BICE for fixed and variable annuities.

**Changes to products or services that impact customer fees and prices** The IRI Working Group noted instances where significant high cost changes will be required across business models and Distribution Channels to comply with the requirements of the Rule Package. As written, the Rule Package may lead to significant changes to people, process, and technology within business models and Distribution Channels for firms and investment professionals for to achieve compliance.

- **The cost of the updates and changes to technology, systems and business models for compliance will likely trickle down to the prices and fees paid by customers due to the ultimately higher costs of updates and changes for Insurers to comply with the Rule Package.** The IRI Working Group specifically noted that consumers may experience higher indirect fees as a result of the operational changes.
- **The effort to review and revise all marketing and communication material will be an extensive and expensive undertaking given the size and scope of sales practices.** Insurers will need to review hundreds of annuity and retirement planning collateral pieces to determine if sales practices comply with the Rule Package. The operational implications of performing a holistic review to identify and remove impacted material from circulation and prevent its use may take Insurers 6-12 months to complete. Additionally, revising all impacted material may create added strain on compliance and paralyze Insurers' ability to market products. The IRI Working Group estimated that this will be a multi-million dollar effort to cover production and staffing costs and would potentially take 2 – 3 years for production and implementation.
- **Insurers will likely be required to modify or discontinue investment analysis tools to comply with the proposed Rule Package, as the Investment Education carve-out does not provide relief for investment education materials with reference to specific products previously permitted under FINRA Rule 2211.** The IRI Working Group noted that currently, FINRA Rule 2211 allows for some flexibility in information around specific investment products in marketing materials that are considered investment education materials. Specifically, FINRA Rule 2211<sup>9</sup> provides a safe harbor for investment strategies of a security or securities devised through “asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable consumer's assessment of the asset allocation model or any report generated by such a model and (iii) in compliance with FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools), if the asset allocation model is an ‘investment analysis tool’ covered by FINRA Rule 2214.” As written, the proposed Rule Package limits investment education materials including asset allocation tools to general information and does not include a provision for references to specific investment products. Insurers would be required to review and update asset allocation or investment analysis tools to include general information only. If Insurers do not update the investment analysis tools in use to comply with the Investment Education carve-out as written Insurers will be required to update and create processes and systems to monitor and comply with the requirements of a fiduciary for personnel who utilize these tools.
- **Product types have fees that will be difficult to quantify and communicate, which may limit Insurers' ability to meet the Rule Package's disclosures requirements.** Insurers that manufacture products like immediate annuities, where there are no explicit

---

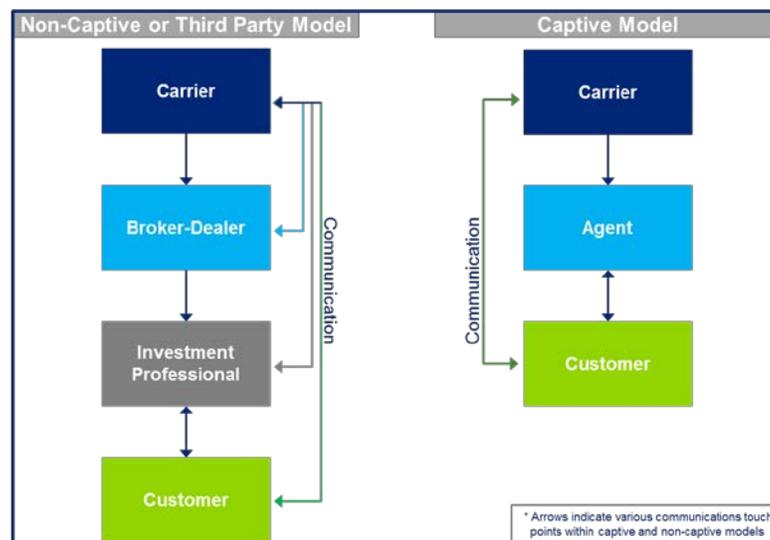
<sup>9</sup> FINRA Rule 2111.03 Suitability  
[http://finra.complinet.com/en/display/display\\_main.html?rbi d=2403&element\\_id=9859&print=1](http://finra.complinet.com/en/display/display_main.html?rbi d=2403&element_id=9859&print=1)

fees and charges and embedded cost to the consumer is difficult to quantify, will require additional guidance or clarification on how to include costs in disclosure reporting. For products where fees and charges will depend on future investment performance, such as the mortality and expense fees on a variable annuity, it is unclear how future investment performance should be reflected in the cost disclosures. Specifically, the IRI Working Group noted that it will be extremely difficult at the contract level when money is moved between investment divisions in variable annuities and for non-cash value products where fees are built in to the pricing structure. Furthermore, it will be difficult, if not impossible, to calculate the dollar amount of all direct and indirect compensation at the individual contract level.

## Distribution Channels

The IRI Working Group emphasized the impact to operations within Distribution Channels, and noted the implementation and enhancement of processes and systems within the Distribution Channels would likely be an arduous, time consuming and costly task. The IRI Working Group noted that retirement product Insurers utilize several types of Distribution Channels and business models to interact with customers, where multiple communication lines exist across models. The IRI Working Group focused on two types of models, the captive and non-captive (third-party) models. Within the Captive and Non-Captive models there are different communication lines that can occur as illustrated below in Figure 1.3:

**Figure 1.3 Illustrative examples of Non-Captive and Captive Distribution Channels communication lines<sup>10</sup>**



The IRI Working Group noted extensive operational impacts for captive and in-house agent models, specifically noting the expansion of systems and processes for these Distribution Channels to accommodate the amended requirements. In the view of the IRI Working Group, the process to implement and update systems and processes within the captive channels to ensure oversight and compliance with the expanded Rule Package would be a high cost and time consuming process. Specifically, the IRI Working Group emphasized the impact to enforce contracts, where customers

<sup>10</sup> The communication lines depicted in Figure 1.3 are not all inclusive and other communication lines exist within Insurers.

would be required to execute a best interest contract and potentially change their relationship with the captive agents.

The IRI Working Group expressed that operations would be impacted within third party Distribution Channels, resulting in an impact to the Insurers as the Rule Package requires changes to relationships. As a result of the disclosure requirements of the BICE, the IRI Working Group noted that the Rule Package may lead to significant changes in interactions between Insurers and distribution lines, requiring Insurers to share and provide access to information and systems that the Distribution Channels previously did not require.

The IRI Working Group specifically noted that the Rule Package lacks specificity, and Distribution Channels, both captive and non-captive, require further clarity in order to operationalize the Rule Package. Furthermore, the IRI Working Group noted that the operational changes and updates would impact the relationships between Insurers and Distribution Channels, as well as the relationships between customers and Distribution Channel personnel.

- **Insurers would be required to provide access to non-captive (third-party) distributors for customer disclosure information that is not currently provided, which will require significant technological, process and oversight changes to grant access to or distribute this information.** In order to meet the Financial Reporting and Valuation Carve-out requirements, non-captive (third-party) distributors would have to be able to access information currently maintained in Insurers' administration systems to report on account values and provide other administrative reporting. In the event that Insurers provide this information directly to customers, under the expanded definition, the Insurers may be considered fiduciaries in the relationship which may require a best interest contract and the documentation requirements associated with the fiduciary status. For the fiduciary status to remain with the non-captive third party, Insurers would be required to provide information around account values directly to the non-captive distributor. The IRI Working Group noted that this would require significant technological, process and oversight changes to grant access to or distribute this information to broker dealers and would likely require 2 – 3 years and significant resources to implement.
- **The Rule Package lacks clarity on whether advisors or agents may be considered a fiduciary for one type of product and not another product within the same account or customer. This may lead to potential confusion or uncertainty of the requirements and responsibilities of the distribution channels and Insurers under the Rule Package.** As the Rule Package is written, once an agent/firm claims fiduciary status, the agent/firm remains a fiduciary. It is unclear if this applies to all types of products in an account or if a fiduciary duty can be removed or revoked for certain types of products within an account. It is unclear whether an agent is able to have separate accounts with the same customer/consumer where the relationship is different.
- **The Rule Package lacks clarity on the requirements and steps necessary for inclusion of inforce contracts, specifically for implementation of the best interest contracts for inforce contracts, which may prevent the requirements from being operationalized.** The IRI Working Group noted that requiring best interest contracts for inforce business would require approximately 2 – 3 years and significant cost to contact millions of existing customers and re-document accounts where necessary. Additionally, it is not clear if for existing business the firms would be required to proactively reach out to each customer. Insurers would be required to build systems and processes to identify, contact and track implementation of best interest contracts across inforce business. The IRI Working Group expressed that the process to identify, contact and track the best interest contracts for inforce business would be a multi-year process.

# Call Centers

---

Call Center personnel are often responsible for providing basic account information, balances, and general administrative customer services to consumers. The IRI Working Group indicated that Call Centers provide an important communication line for their customers, providing basic account information through an easily accessible medium. However, the IRI Working Group noted that the scope of the Rule Package, as written, may be interpreted to include some employees not previously understood to be giving advice, including Call Center personnel. Several components of the Rule Package, including the expanded fiduciary definition and certain carve-outs, include wording that is ambiguous and does not specify responsibilities and outcomes for certain types of personnel. Ultimately, the IRI Working Group noted that this could lead to the need for Insurers to expand their workforces, including operations and oversight personnel, to accommodate additional fiduciaries on accounts. This would likely result in higher dollar costs to firms which could trickle down to customers through customer service fees and other indirect fees, as well as the potential exit of some firms from the industry with a commensurate reduction in product supply and consumer choice.

Additionally, the IRI Working Group noted that firms may elect to limit the capabilities and interaction of Call Center personnel to comply with the Rule Package. In this instance, Insurers would be required to build and expand monitoring of these personnel to ensure the information and interaction with clients is aligned with the Rule Package and does not constitute investment advice. The IRI Working Group noted that limiting interactions of Call Center personnel with customers would ultimately affect the customer experience, and could make the use of call center personnel obsolete. The IRI Working Group emphasized that this could ultimately lead to customers having less access to account and investment information by eliminating a communication line. The IRI Working Group noted the following specific examples:

- **Call Center personnel, whom previously interacted with customers primarily for customer service purposes, may be considered fiduciaries under the Rule Package, which would limit the services Call Centers provide retirement customers.** The Rule Package includes an expanded definition of fiduciary and what is considered investment advice. Currently Call Center personnel may interact and communicate with customers; and this communication is not considered advice. However, under the expanded definition the interaction between customers and these personnel may be considered to be investment advice, therefore these personnel may be considered fiduciaries for the account. This expansion may lead to changes in business models, including requiring Call Center employees to enter into best interest contracts prior to communicating with customers to ensure compliance with the Rule Package. The IRI Working Group noted that if fiduciary status extended to such routine tasks as providing contract values, it would be virtually impossible to provide service to retirement customers. As a result, some firms may choose to eliminate Call Centers as the Rule Package will lead to increased requirements to monitor the activities and communications of these types of personnel.
- **It is unclear if the expansion of the fiduciary definition, which as written includes providing financial information, extends to basic account or contract level information provided by customer service personnel, which limits the ability of Insurers to operationalize these requirements.** As written, the definition of fiduciary is expanded to include a person providing "appraisal, fairness opinion or similar oral or written statement concerning the value of securities or other property provided in connection with a specific transaction." Specifically, the IRI Working Group expressed concern that this language could include information that is currently provided by Call Center personnel (e.g., account value, current minimum death benefit). As written, it is unclear whether these personnel are intended to be considered fiduciaries under the

expanded fiduciary definition limiting the ability of Insurers to operationalize these requirements.

- **In the event that the expanded fiduciary definition includes call center personnel, increased oversight of third party vendors within Call Centers may require updates or new monitoring systems and processes to be established to ensure compliance with new requirements.** As some Insurers utilize third party vendors for Call Center personnel, the IRI Working Group noted that there will be a need for new or significantly modified systems, processes and monitoring of the Call Center personnel to ensure compliance with the requirements of the Rule Package. It was noted that this may be more difficult to implement as these personnel are employed by a third party. Firms may either be required to implement stricter contracts with these third parties for implementation of monitoring systems or cease to use third party vendors to eliminate the risk which may further raise costs that may be passed to consumers.
- **The IRI Working Group indicated that the extension of the definition of fiduciary to cover Call Center personnel would likely lead to increased pricing of products due to a need for more experienced personnel.** In the event that Call Center personnel are considered fiduciaries under the Rule Package, firms indicated that there would be a need to hire more experienced and potentially licensed personnel to interact with customers in Call Center locations. The need to hire more experienced and licensed personnel would likely result in firms needing to offer more competitive compensation to these personnel. The increase in compensation for Call Center personnel would lead to an increase in the fees paid by consumers for these services.

## Wholesalers

---

The IRI Working Group noted that the responsibilities of Wholesalers will be considerably changed and limited through the requirements of the Rule Package. Currently, Wholesalers interact with Distribution Channel personnel on a regular basis, including by conducting education seminars to teach advisors how to appropriately use retirement income products or attending individual client investment meetings with the advisor, as needed, to provide detailed information about specific retirement products. As written, the Rule Package, specifically the Investment Education Carve-out and the definition of a fiduciary, may be interpreted to limit the information Wholesalers will be able to provide to Distribution Channel personnel and consumers.

The expansion of the fiduciary duty may lead to Wholesalers becoming party to best interest contracts, and directly forming relationships with consumers where they previously have not entered into such a relationship. Operationally, firms would be required to build out systems, processes and oversight to ensure Wholesalers are in compliance with the requirements of the Rule Package. Furthermore, the IRI Working Group noted that if operations are not expanded to accommodate Wholesalers as fiduciaries, the Wholesaler business model would likely become obsolete and Insurers would be limited in the investment education they are able to provide to Distribution Channels and consumers in order to comply with the Rule Package as it is written. The IRI Working Group specifically noted:

- **The expanded definition of fiduciary may result in significant changes to the services Wholesalers are able to provide, which may limit investment education resources and require Insurers to build out systems, processes and oversight to ensure compliance.** The Rule Package includes an expanded definition of fiduciary and what is considered investment advice. Under the expanded definition, the interaction

between consumers and Wholesalers may be considered investment advice; therefore these personnel may be considered fiduciaries for the account. Under the expansion of fiduciary, Wholesalers may be required to be a Best Interest Contract signatory and assume fiduciary responsibility in any instance where they have provided some training or educational assistance. This could limit the interactions Wholesalers have with clients and create business impediments that did not previously exist. Furthermore, some firms may choose not to bring Wholesalers into compliance with the Rule Package, which will require an increase in monitoring the activities and communications of these types of personnel.

- **The Investment Education Carve-out challenges the traditional Wholesaler distribution model where Wholesalers provide specific information about products to advisors and consumers because these educational services may not be permitted within the expanded fiduciary definition.** The IRI Working Group noted that Wholesalers are a critical component of adviser training and education and often serve as subject matter experts working together with advisers and their clients. Currently, Wholesalers often provide information about specific products and assist advisers in choosing suitable retirement products for their clients. In some firms, Wholesalers have securities licenses and have obligations under securities' laws when they work in environments where both advisers and clients are present.



**About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Copyright © 2015 Deloitte Development LLC. All rights reserved. Member of Deloitte Touche Tohmatsu Limited