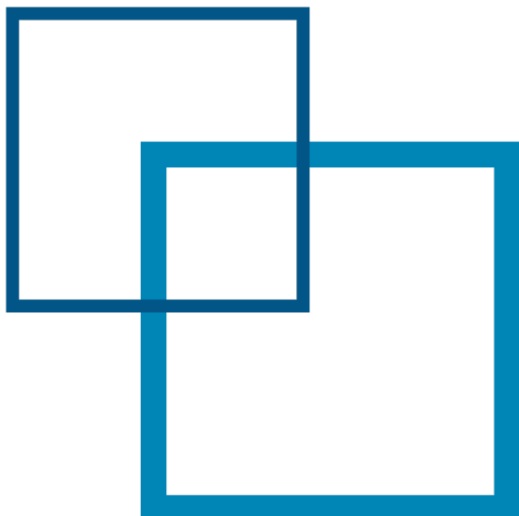


# Preparing for PTE 2020-02

*Insights from roundtable meeting held August 31, 2021.*



## INTRODUCTION AND OVERVIEW

Time is running out for meeting compliance for PTE 2020-02. By December 21, 2021 processes and documentation must be in place.

In response to the looming deadline, InvestorCOM hosted a roundtable event “Preparing for PTE 2020-02” to address the industry’s questions and concerns, and to share approaches firms are taking to meeting compliance. The event facilitated a collaborative discussion with compliance leaders from twelve firms about strategies for meeting the PTE 2020-02 requirements and predictions surrounding future requirements.

The two-hour session was moderated by Chip Kispert, managing partner at Beacon Strategies and a 20-year veteran of the broker-dealer and asset management marketplace. Chip was joined by four session leaders with expertise in legal counsel, technology, federal securities law, and risk mitigation for wealth management firms as it relates to the DOL’s PTE 2020-02.

The roundtable agenda focused questions, concerns, and relevant experiences on the three key areas of:

- PTE 2020-02: The regulation explained
- What compliance means for you
- How technology can help accelerate compliance

A pre-roundtable poll was conducted to capture implementation progress and facilitate the roundtable discussion on matters of highest importance to attendees. The insights from the poll are outlined throughout this document.

### Titles of Attendees from Participating Firms

- AVP, Senior Counsel
- AVP, Fiduciary Services
- Chief Operating Officer
- Chief Supervision Officer
- Chief Compliance Officer
- Chief Legal & Regulatory Affairs Officer
- Director, Federal Regulatory Affairs
- Senior Director and Deputy Chief Compliance Officer
- Vice President & Associate General Counsel
- Vice President, Compliance and COO

## INSIGHTS FROM INVESTORCOM'S ROUNDTABLE

The roundtable opened with an overview of the Department of Labor's Fiduciary Investment Advice Rule (Fiduciary Rule 3.0) Prohibited Transaction Exemption (PTE) 2020-02, including important recent events, such as:

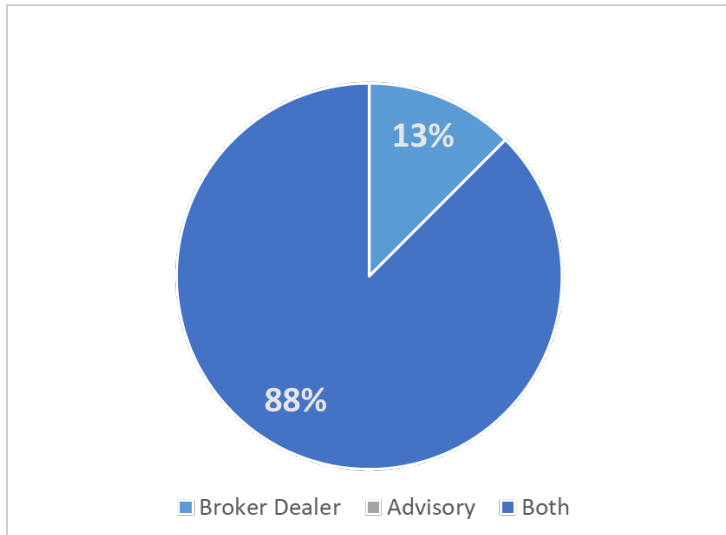
- The announcement by the Department of Labor (DOL) that Fiduciary Rule 3.0 came into effect as scheduled on February 16, 2021.
- The issuance of FAQs by the DOL on April 13, 2021 to support firms' compliance. This provided additional information on rollovers and mitigation of conflicts.
- The post vacatur temporary enforcement policy is scheduled to sunset on December 20, 2021. All firms will have to be compliant by the December 20 date.
- Further modifications to the overall Fiduciary Rule are in the pipeline for the remainder of 2021 – a proposed Rule 4.0 – which could see a modification of the regulatory definition of fiduciary and further evaluation of available prohibited transaction class exemptions by regulators. It's likely that changes to these two sets of rules could continue for several years.

While the DOL's requirements have a lot in common with the SEC Reg BI, the DOL has formally stated that firms cannot solely rely on compliance with Regulation Best Interest (Reg BI) to meet their PTE 2020-02 obligations. For example, firms will need to focus on areas where it differs from Reg BI, such as its specific requirement to document and disclose the best interest rollover recommendation to the investor. Another difference is the requirement for an annual retrospective review requirement.

*Insight: The new rules apply to both broker-dealers and investment advisors*

There is a common misunderstanding that the new compliance requirements will only impact broker-dealers. However, Fiduciary Rule 3.0, and PTE 2020-02 also apply to investment advisors. It's critically important for investment advisors to assess their current compliance deficit and determine what they will need to implement to meet their regulatory obligations in full. While investment advisors might believe they will not be examined for compliance for several years, regulatory examination schedules are changing for a variety of reasons, and RIAs may be taken by surprise by unexpected examinations.

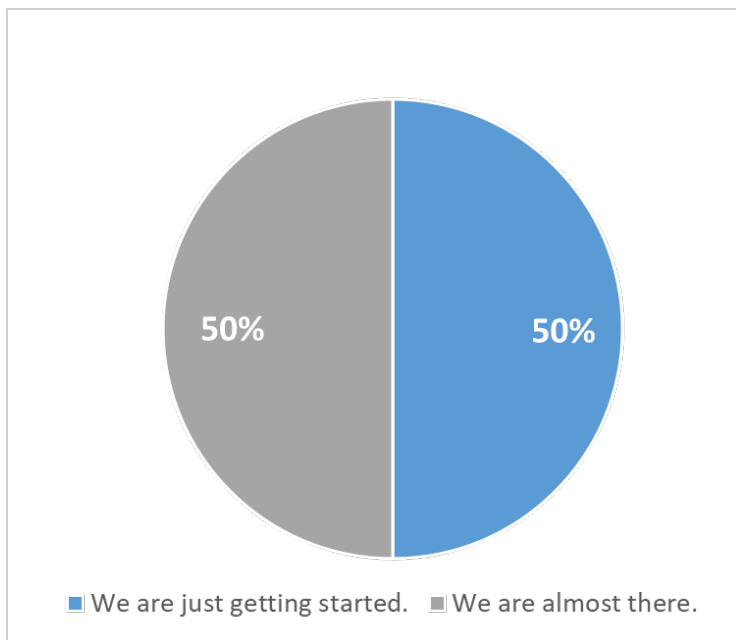
Poll 1: Who will be impacted the most by PTE 2020-02?



*Insight: Approach compliance with the Fiduciary Rule with a long-term lens*

Across the US, firms are at different states of readiness for compliance by the December 20, 2021 deadline. Some firms have been planning for compliance for some time, while others have only recently become aware of the impact that this rule will have on their processes.

Poll 2: Is your firm ready to meet the PTE 2020-02 requirements?

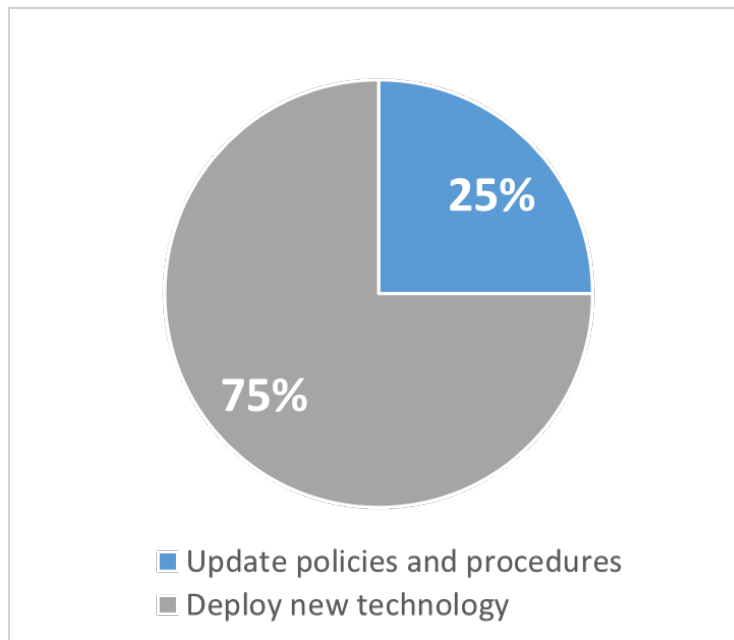


It's clear that best interest-type regulations are here to stay, so firms should think strategically about how they create compliance processes that are robust enough to meet today's requirements and support organizational agility in the face of regulatory change in the future.

Updated policies and procedures will need to be rolled out to employees in the field. Employees will require training to ensure they are engaging with new processes correctly – for example, the new rules will require a number of new assessments to be completed. This training can't be a one-time event. New employees will need initial training, and the training will need to be refreshed as the rules evolve.

Feedback on SEC Reg BI examinations suggests that examiners want to see documented, repeatable processes for assessing reasonable alternatives when making recommendations. Firms cannot treat a conflict review as a one-time project. Instead, they need to have a mechanism for updating the review when clearing contracts change, the tech stack is altered, new products are launched, or rules are updated. Also, firms need to review and update disclosure and mitigation of conflicts over time. Firms should think along similar lines when creating compliance processes for the Fiduciary Rule 3.0.

### Poll 3: What will be your priority for meeting the requirements?



In light of these pressing regulatory requirements, it will be prudent for firms to invest in scalable compliance technology that support their Reg BI and Fiduciary Rule 3.0 processes today and in the future. Creating sustainable processes within firms for meeting these regulatory obligations is likely to have one of the most significant compliance ROIs over the next three years.

*Insight: Many firms struggle with significant data and technology challenges around meeting Fiduciary Rule 3.0 regulatory obligations.*

Many financial services firms have complex organizational histories based on mergers and acquisitions. Technology implementation over the years can result in multiple operating systems and data residing in silos. Many firms will have multiple versions of rep masters, account masters, and product masters, and quite often these are reconciled manually, overnight, or not at all.

The world of pre-trade analysis and post-trade review are coming together. A firm needs to know the basis for a rollover recommendation and create a comparison to the investor's alternatives prior to the client's assets are rolled over. The transaction also needs to be run through the back-end surveillance system, to ensure that it was completed and approved so that commission and fees can be paid in the correct manner.

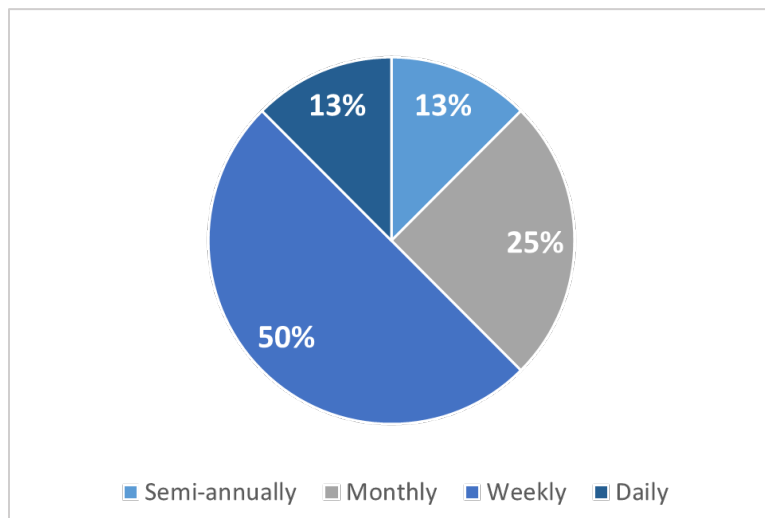
Firms also need to be able to trace the data lineage – the history of the data as it is used throughout the process, from beginning to end. With multiple disconnected systems, and manual interventions, this can also be a significant challenge for firms.

Today, many firms are working on substantial data remediation projects, to enable existing data and databases to be brought into this compliance process, and to ensure the data quality is sufficiently high for automation. If a firm is in the early stages of its Fiduciary Rule 3.0 project, one of the most important areas to assess is the quality and connectedness of the data that will be the foundation of any automation program. It is essential to impress on the business that it's not an option to take a minimum viable product approach to this compliance process – data quality and availability have to be present from the start.

*Insight: Engaging reps can deliver strong ROI for the whole organization*

The changes coming on December 20 will have a significant impact on rollovers, including plan-to-plan, IRA-to-IRA, and plan-to-IRA. Many firms are surprised by the volumes of these types of transactions executed each month.

Poll 4: How frequently does a financial professional make rollover recommendations?

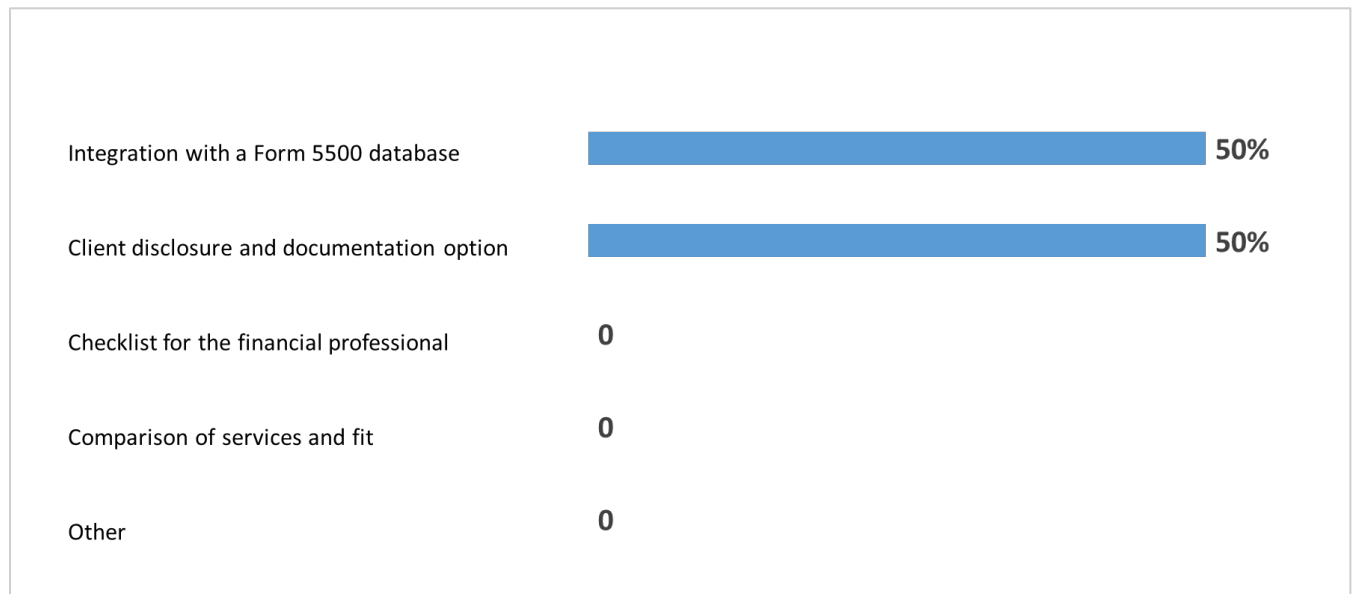


Similar to the SEC’s Reg BI, the DOL has made it clear that they require documentation to evidence why a rollover is in the client’s best interest. This means that financial professionals must record why they have made certain recommendations to an individual client. These explanations need to be clear and detailed and provide the kind of insight that examiners are looking for and compliance teams will need to rely on.

For pre-trade process documentation, manual processes, or processes that use existing systems such as CRMs, can result in suboptimal outcomes. Often training has not reinforced what is needed and there is a lack of consistency. Advisors and financial professionals have many pressures on their time and may provide less detail in a written document than they might verbally.

Firms should consider adopting data and technology that will support financial professionals with these compliance processes, combined with robust training that makes it clear what disclosure is needed and why. For example, if a firm can pre-populate data into compliance fields and offer decision support for the financial professional, processes will be streamlined.

## Poll 5: Which technology feature will be most valuable when analyzing rollover recommendations?



### *Insight: If not fully compliant by December, be prepared to show your work*

The DOL seems to recognize the scale of the compliance and implementation challenges facing firms for meeting the regulatory obligations and deadlines posed by Fiduciary Rule 3.0. Some firms may not have started their programs, while others may have a great deal of complexity to work through in implementing new policies, processes, improving data quality and putting new technology stacks in place.

While it may be tempting for firms to simply implement a manual program for compliance, this would be a mistake. For most firms, a manual compliance process for Fiduciary Rule 3.0 – and for future regulation – is simply not sustainable. Manual processes also open the firm up to potential operational risks and compliance breaches. Implementing a strong technology-based solution will position the firm for compliance success.

The DOL may recognize a firm’s roadmap that shows the goals that the organization has achieved towards compliance, and the progress towards completing the tasks ahead. If a firm knows that it will not be compliant by the deadline, it should draft a detailed roadmap, and ensure that key internal stakeholders such as the board and senior management are familiar with it as well.



## Powerful, modular solutions to solve tough regulatory requirements.

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- Auto-generated “reasons why” to support advisor decision-making.
- Capture and store the investment recommendation.

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- Identify a product peer group based on cost, risk and return.
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