

Investment Choice Liability



ERISA Fiduciary Requirements

- ERISA requires a named fiduciary over the plan's operations specified in the plan document or through a process described in the plan.
 - Investment option selection is one of those operations with fiduciary responsibilities.

Retirement Plan Fiduciary Responsibilities

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- Carrying out their duties prudently;
- Following the plan documents;
- Diversifying plan investments; and
- Paying only reasonable plan expenses.

Investment Array Management – ERISA Standards

- the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and like aims.
 - Requires a certain level of knowledge and skill on investment option selection.

Plan Sponsor Decision on Investment Fiduciary Role

- “Do It Myself”
 - May use platform provider or open architecture.
- 3(21) Co-Fiduciary Assistance – “Help Me”
 - Acquire investment advice for a fee but retain decision-making role.
- 3(38) Investment Manager – “Do It For Me”
 - Hire discretionary investment manager to make all the investment array decisions for the plan.
 - Plan sponsor fiduciary role exists as to choosing and monitoring the 3(38) investment manager.

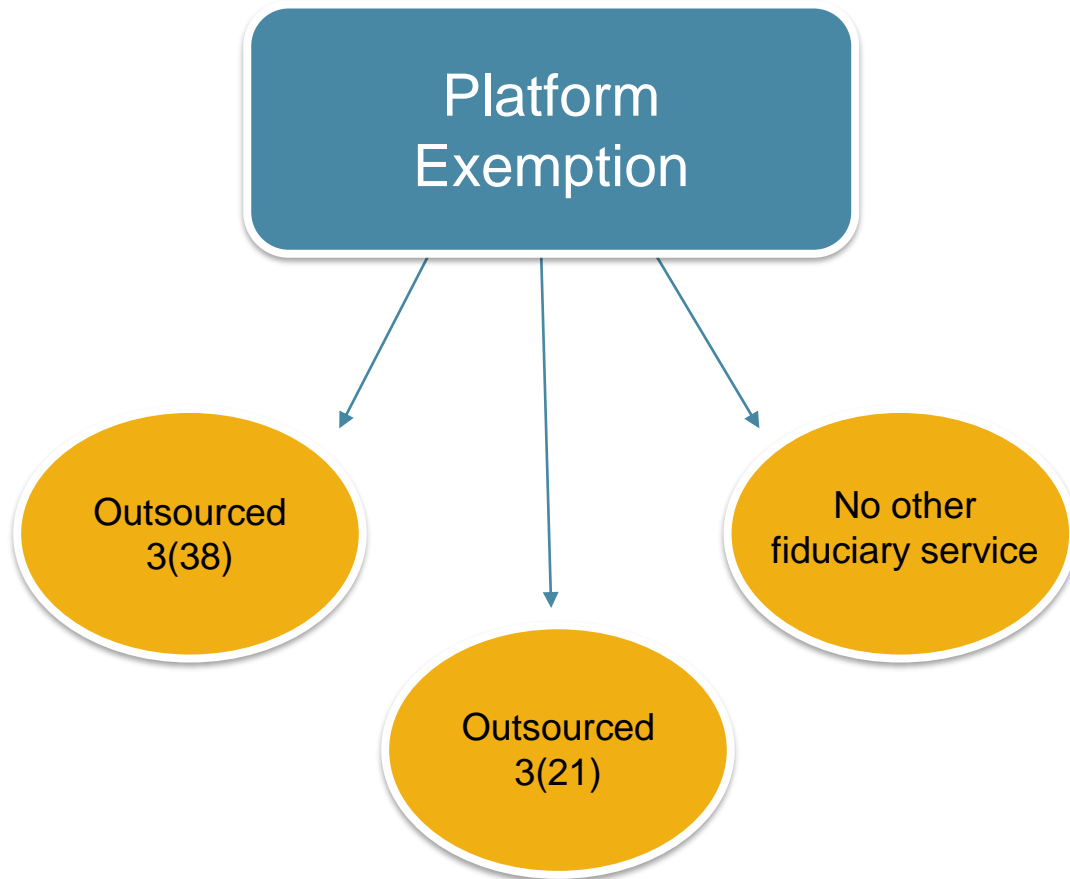
Platform Provider Exemption

- Can maintain non-fiduciary status and disclaim responsibility if
 - Written disclosure that provider not giving impartial investment advice or rendering advice in fiduciary capacity
 - Selecting, monitoring investments performed without regard to individualized plan, participant needs
- Plan fiduciary selecting platform responsible for prudent selection, monitoring

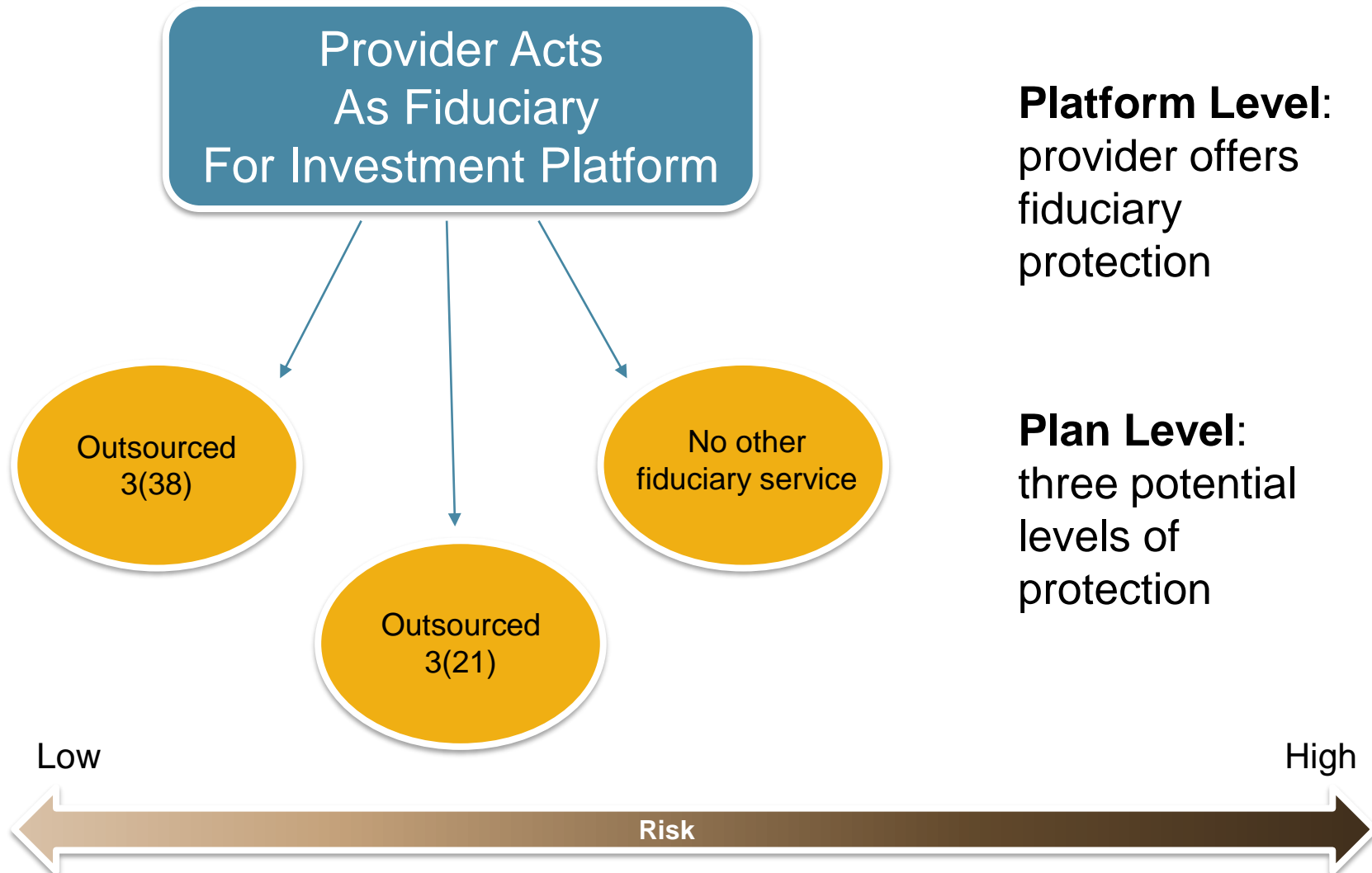
Platform Provider Exemption - Investments

Platform Level:
no fiduciary
protection

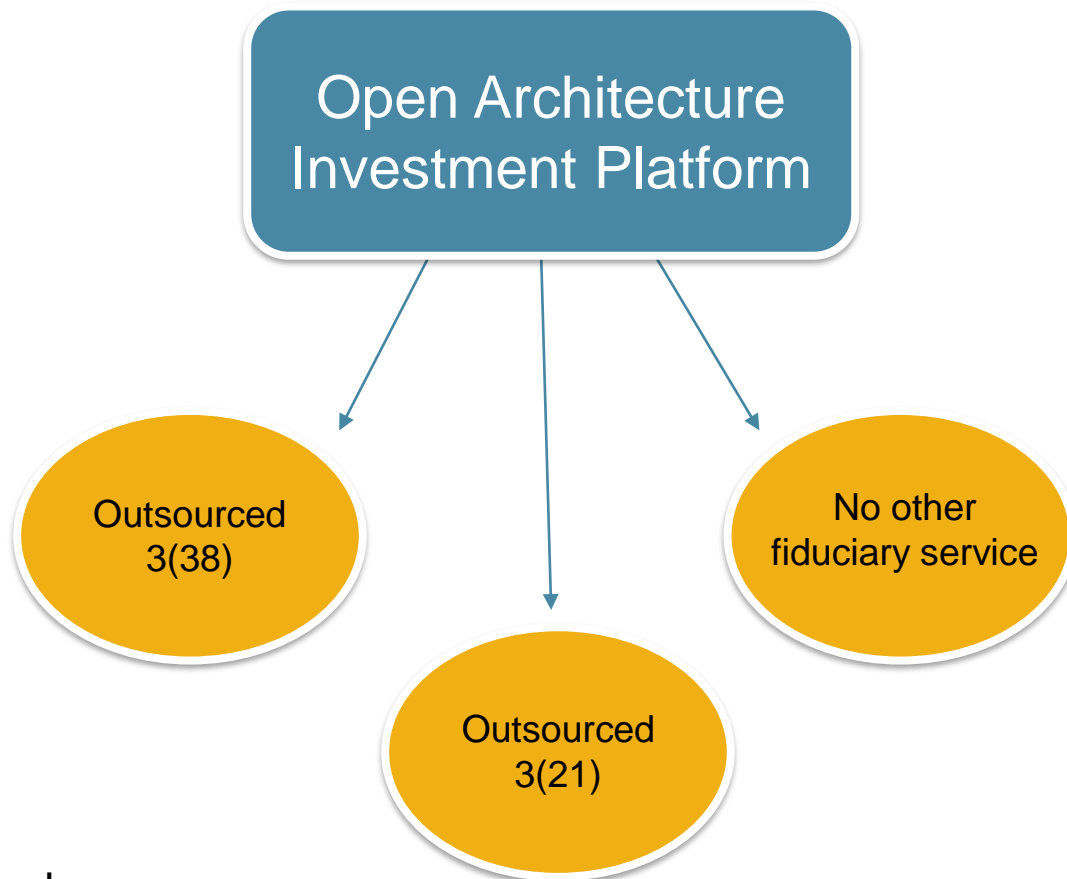
Plan Level:
three potential
levels of
protection



Platform Provider Takes Fiduciary Status



Open Architecture Fiduciary Liability



Platform Level:
no fiduciary protection

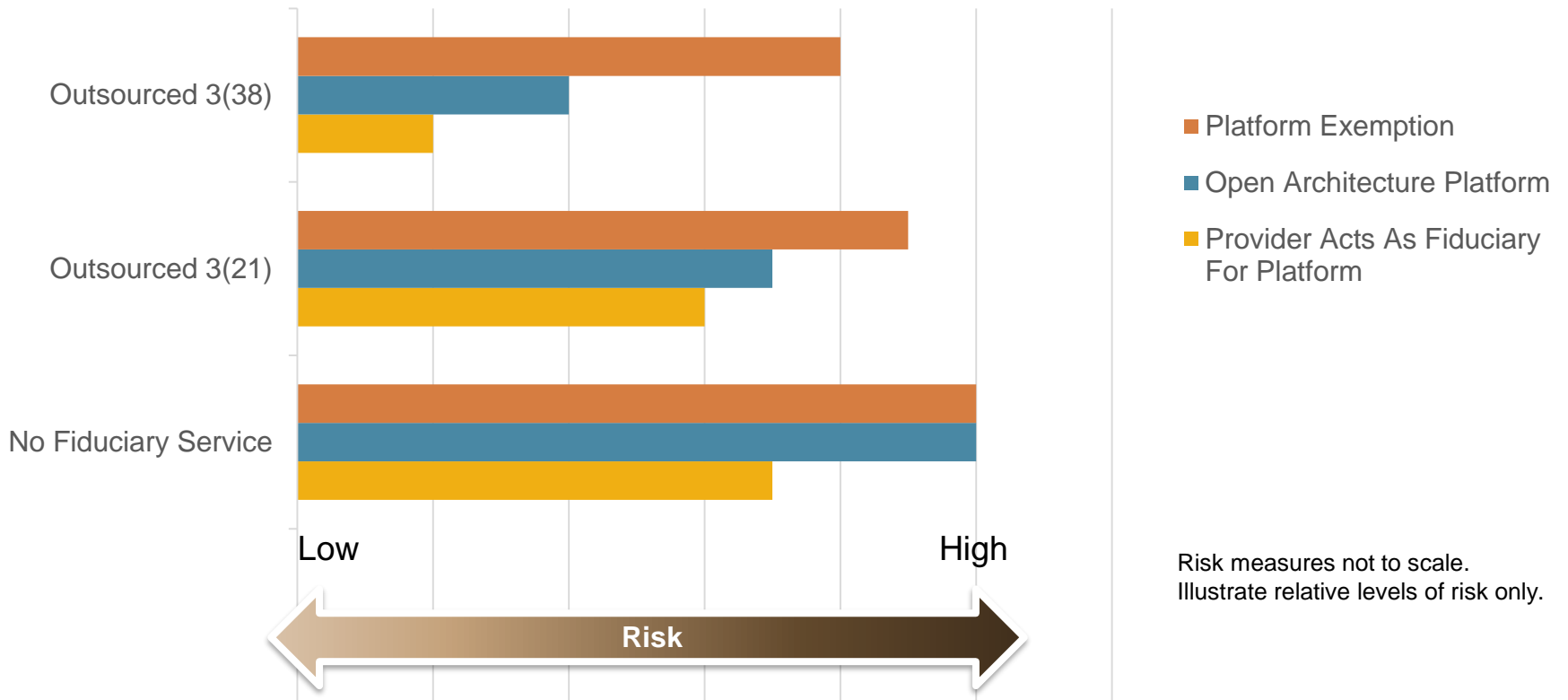
Plan Level:
three potential levels of protection

Low

High

Risk

Investment Platform and Plan Fiduciary Options



Key Takeaways

- Recommendation of bundled 401(k) provider with inseparable investment component
 - Considered investment advice under Conflicts of Interest rule
 - Key indicators
 - Revenue sharing practices
 - Required or incented investment options
 - Share class selection
 - Additional fees for asset allocation models

Key Takeaways

- Platform exemption allows recordkeepers to effectively shift risk for proprietary and limited scope arrays
 - Highly scrutinize bundled 401(k) providers limiting universe of investment options to determine if utilizing platform exemption

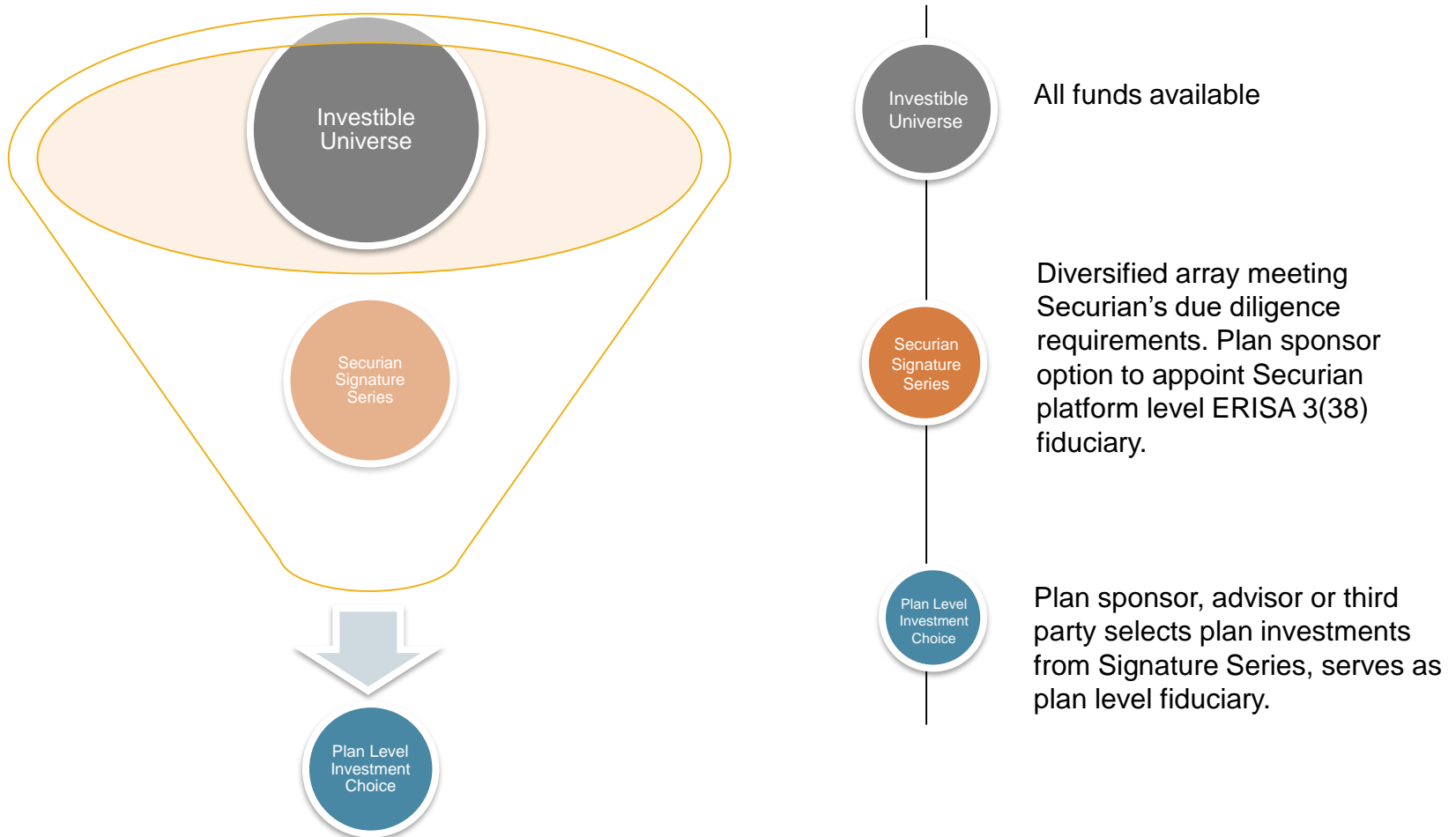
Signature Series Fiduciary Protection

- Platform level investment fiduciary choices
 - Appoint Securian to serve as ERISA 3(38) to Securian Signature Series array
 - Contract with advisor or third party for investment level fiduciary protection
 - Plan sponsor retains fiduciary liability

Signature Series Fiduciary Protection

- Plan level investment fiduciary
 - Plan sponsor can elect advisor or third-party fiduciary protection for Signature Series options populating a plan
 - Plan sponsor retains fiduciary liability

Signature Series Fiduciary Protection



Separate accounts

- Significant benefits
 - Daily return of revenue sharing to participants
 - Foreign tax credits
 - Most efficient share class

Advisor Issues

- Recordkeeper can disclaim fiduciary status via platform exemption for limited investment arrays - potential to shift risk
 - Included proprietary funds
 - Required share classes

Advisor Issues

- Recordkeeper imbedded investment component into product
 - May make recommendation of platform a fiduciary act
 - Prudent selection and monitoring
 - Key indicators
 - Revenue sharing practices
 - Required or incented investment options
 - Share class selection
 - Additional fees for asset allocation models

Advisor Issues

- Only fiduciaries remaining
 - Plan sponsor
 - Advisor
 - Advisor's broker-dealer as financial institution

Questions?

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DOFU 12-2016

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