

# Episode 90: Defining the different types of Financial Professionals and the custody of your assets

**00:00**

Bob French

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**00:02**

Bob French

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**00:43**

Bob French

Find out why Alex may be wearing different hats and it's not just because of his fading hairline.

**00:50**

Alex Murguia

Hey, everyone. Welcome to Retire with Style. I'm Alex. And Wade, he's it's his turn to take his family vacation trip, and he's visiting his mama. So today I'm joined by Ryan Walter from RIA lawyers. Hey, Ryan. How are you?

**01:13**

Ryan Walter

I'm great, Alex. How are you? Thank you for having me on man.

**01:16**

Alex Murguia

Pretty good man. It's my absolute pleasure. Who is Ryan and why are we having him on? As you know, we did a pretty lengthy arc on contractual income annuities, and went through all the flavors and Vensom. Right. In addition, we've been doing stuff on investment management previous to that, and we've gotten a

lot of questions from our listeners. As you know, we probably break down about two thirds consumers, one third advisors, and a lot of the questions from consumers had to do with the actual process of purchasing annuity, if you will, who to do it with and the actual process of how is it to work with an advisor to implement the portfolio. And there were some questions that I kind of take for granted at this point, like what happens to the money, those kind of questions, and how does it work and are things safe?

**02:16**

Alex Murguia

And just terms are being thrown around in terms of types of advisors. And so I thought it'd be great as Wade and I get ready for a next arc, but we want to prep for that a little bit. I think we can do a nice mini arc on the business of financial advice and how to logistically go about getting it, if this is something you want to consider. Because I think there's a whole slew of folks that kind of maybe push off getting an advisor because they're like, oh, well, I don't understand that, and the heck with it. Or there's folks that are, know, wondering, did I make the right decision getting an advisor or whatnot? And so I think it behooves everyone to just level set it. And plus, Ryan, as I told you earlier, I don't think I've ever heard a podcast. Maybe there's a reason, right?

**03:00**

Alex Murguia

But I don't think I've ever heard a podcast about just advice. And what are the business of advice from a compliance standpoint in a manner that's just very approachable as opposed to read a 500 page boilerplate document? So enter Ryan. Ryan, take it away, man. You want to give a little bit about yourself and the like, why you're the person to do this.

**03:22**

Ryan Walter

Yeah. So thanks again for having me on here. Ryan Walter, as alex said, I'm a lawyer for Investment advisors. I've been practicing for about ten years now. I've seen the industry I've worked for broker dealers, registered investment advisors. I've seen it from a number of different angles. And now I focus my practice exclusively on helping registered investment advisors with their legal and compliance needs. And so that's basically where I'm coming from. I've seen the different perspectives of the industry and I've been involved in the inner workings of operations of different firms and their legal and compliance programs. And so I bring a little bit of that varied insight and I work with hundreds of investment advisors across the country. Currently I've drafted disclosure documents, client service agreements and so I kind of know them inside and out. It allows me to kind of speak to it at a explain to me like I'm five sort of level because I've seen different flavors and different scopes and forms of these relationships and engagements and service offerings and fee structures as well.

**04:40**

Ryan Walter

Just being able to wrap your head around everything that the industry has to offer can be a and trying to break that down to a simplistic level is kind of what I'm here for.

**04:52**

Alex Murguia

Yeah. And in transparency, as you know, Wade and I are managing principles of McLean Asset Management and Retirement researcher. McLean Asset Management is a traditional wealth management firm and retirement Researcher is our educational site. It's registered as an RIA. But we don't manage assets there. It's just we do so much education that sometimes we walk that balance between is this financial advice or not? And so we err on the side know, being conservative about it, so we register as an RA as well. But Ryan is the person that really takes care of all of this for us from a professional standpoint. And I can attest he does make it comprehensible for a five year old because that's where I'm at when it comes to this kind of stuff. So I thought, hey, who better, right? And so thank you again, Ryan. The first question I have to well, let me put it to you before we get going.

**05:48**

Alex Murguia

What do you think? If you're a consumer of financial advice and you're looking to take on an advisor or just look into it, what is the number one thing? And forget the whole oh, read the adv which we'll get into none of this sort of stuff that you would read in some sort of article. The five things to do if you're looking for an advisor, knowing what you know now and you know where all the potential minds are, what is the number one kind of takeaway you can tell somebody when looking for an advisor.

**06:22**

Ryan Walter

Yeah. And there are 1000 different things you want to look at what am I paying, what am I getting if I set all of that aside? Because that's going to apply to everybody. If I'm looking at it for myself. I want somebody I can trust. I want somebody who I feel good about working with, and that gets away from the hard facts and gets more into the emotional side of the decision making process. But I want somebody that I can put my money with where I'm not sitting up at night worrying about what's happening to it. I know that it's in good hands. I know that the person that I'm working with is intelligent and knows what they're doing. And that gives me peace of mind to just kind of set it and forget it and not worry about it once I've chosen the advisor that I want to work with.

**07:07**

Alex Murguia

Okay. So there's a level of communication and rapport that is established. Without that, you're not even in the door. And the reason I like that question is because I worked in the restaurant business quite a while during high school and college, and my biggest tell was, frankly, going to the bathroom of a restaurant when it's busy. If it's clean, that means that they're on everything, they're taking care of everything. Interesting way to look at it.

**07:34**

Ryan Walter

Yeah. You see firms that have these super expensive glossy marketing pamphlets and brochures and whatnot that they produce, and that's all great, but who pays for that? It comes from the client. I try and kind of put the razzle dazzle aside and make a decision more based on what I'm actually looking for, which is somebody that I enjoy working with.

**08:03**

Alex Murguia

No, that's good. And real quick, my take on that is it's true some advisors, they go all out and they get the trophy building everything, the designer furniture, et cetera. I've always felt funny about that simply because you're right, it's being subsidized by the client. And I don't think that's the way to go. I don't know. I think a client wants to make sure that if you wanted to, you could, but you show restraint in not doing so. And there's just a general professionalism, and that's fine.

**08:37**

Ryan Walter

You want your financial advisor to look like they know what they're doing with money. They're not struggling to get by, but you also don't want to be wasteful. It's a balance.

**08:47**

Alex Murguia

Yeah. Profit. So aside from that, which I don't know, I think there's like, cool tells. I think something that our readers ask us tons of questions about, and we get a lot of these, is, are you a fiduciary? And I think what they're asking with that is what kind of advisor are you? Are you an investment advisor? Are you a broker dealer? Are you an insurance agent? What are the different basic hats that an advisor is? And what does that tell a consumer in terms from an expectation standpoint?

**09:23**

Ryan Walter

Yeah. And I think it's fair to break them into those three broad categories. You've got registered investment advisors, which I think to a lot of people is what they sort of expect a financial advisor to be registered. Investment advisors can do things like financial planning. They could do discretionary or nondiscretionary ongoing management of accounts. They can consult on various different things. When you want to hire a financial professional, I think what most people have in mind is that they want to hire a registered investment advisor. Somebody who will actually manage their money and help them plan for their needs in the future, whatever those needs may be. You also have the broker dealer model. Broker dealers are typically much more a sales oriented role trying to sell particular mutual funds and securities. They can give advice. What that advice. The standard of conduct that they're subject to when giving that advice is a little bit different than it is for a registered investment advisor.

**10:30**

Ryan Walter

Broker dealers operate under the best interest standard. Investment advisors are fiduciaries by common law. And so it depends really on what you need and what your asset level are. A few different things are going to dictate who's going to be a better fit for you. You also have the insurance agent side. Insurance for things like fixed annuities, things that are not securities, like variable products would be done through a broker dealer. But they all serve different purposes. They sell different products, different services, they have different compensation structures and they tend to target different markets. And so the professional that you're looking to work with, you're probably going to want to choose that based on the types of service that you're looking to get. Do you want somebody who's going to be there 365 days out of the year to review your assets, manage your assets, give you planning, make sure you're on track for your planning needs?

**11:37**

Ryan Walter

Do you just need a piece of discrete advice or one particular security that you're looking at? Are you looking at annuities, life insurance, those kinds of needs? And that will kind of drive your decision making in terms of who you want to work with? The other factor is that certain professionals could wear more than one hat. You may have people who are representatives of an investment advisor, registered representatives of a broker dealer, and a licensed insurance agent all in the same person. And in that way you have the flexibility to engage them in different capacities depending on what your needs are.

**12:16**

Alex Murguia

Well, something you said that I was going to say, oh well what about this? Because you said depending on your needs. And so my quick response to that would have been, yeah, but what happens if with the Risa and everything, which is like find out how you want to source retirement income, they're discovering that and so a client wouldn't necessarily know what they I mean, I say this directionally, right? Obviously I don't want to someone will say, yes, I absolutely know what I want. But absent of those people, an individual may not necessarily know the most optimal strategy for them. And so if they walk into an investment advisor, an RIA, that's fee only or whatever, they will get pitched, most likely a total return strategy. If they walk into an insurance agent, they will most likely get pitched just sort of contractual income. And so I think it stands to reason for me that somebody that's able to provide everything, the whole cafeteria of options, would be kind of interesting.

**13:26**

Alex Murguia

But you say to do that, they would have to wear multiple hats, correct?

**13:30**

Ryan Walter

That's right. Somebody who's registered as an investment advisor isn't also qualified or licensed to be able to sell you an insurance product, annuity or a life insurance product. Those are separate licenses. They have to go through separate examinations and training processes. And they're subject to different standards of conduct when they're wearing those different hats, whether they're acting as an investor.

**14:00**

Alex Murguia

And can you explain those? Because I think where you're going with this is one is functioning as a fiduciary, one is functioning in the best interest, and one's functioning relative to suitability.

**14:10**

Ryan Walter

Yeah, that's basically right.

**14:11**

Alex Murguia

Break that down a bit.

**14:12**

Ryan Walter

Yeah. So if you're an investment advisor if I'm an investment advisor, I am subject to a fiduciary duty in the conduct or in the provision of services to you as my client. And so when I give you advice, it may not always be totally free from conflict. I think every investment advisor across the country has some degree of conflict of interest in rendering some level of advice. But even with that conflict, number one, I have to make full and fair disclosure of the conflict to you, the client, so that you can kind of assent or consent to that conflict. But even then, even after I've made that disclosure, I still have to give the advice that I feel is in your best interest and not subservient your interest to my own. And that's a little bit different from the broker standard of conduct. It was a much more stark comparison a few years ago, brokers had been subject to a suitability standard, which was basically just that.

**15:24**

Ryan Walter

If I make an investment recommendation to you, it has to be suitable to your circumstances, not a super high standard of conduct. But that's been changed recently through regulation best interest. It's now a much closer standard for brokers, when working with clients to an investment advisor than it was before. It's not an exact duplicate, and some people might say it is still a somewhat lesser standard of conduct than what you would receive from an investment advisor. But again, it's not as stark a difference as it was two years ago. Insurance agents, their standards are more or less dictated by state law. There is no overarching insurance regulatory regime that's in place. But most states tend to follow a suitability standard. So they

are still at that level where as long as the product that you are recommending as an insurance agent is suitable to the client, then it's okay and it's acceptable and you've met your standard of conduct there.

**16:27**

Alex Murguia

Okay. So I appreciate those definitions but I still think there's a little confusion and I think even with advisors and part of it is because it's a marketing game right now it's hot to say the word fiduciary, even though I'm sure more than 50% of consumers are like that's just an amorphous kind of term, right? I mean I know what it means grammatically, but I don't know what it means from the jargon of investment advice kind of thing. What would you call someone goes to I'm going to say Morgan Stanley, but there's nothing against Morgan Stanley. I'm thinking about an institutional a large broker dealer, right? Someone goes to Morgan Stanley, they have an advisor representative there and that person says, I'm an investment advisor. Because I think from the English definition of the word investment advisor, you're advising me on investments, hence you're an investment advisor.

**17:28**

Alex Murguia

You know what I mean? But technically that's not the route. Or is it? What do you call because we also get this at my client. You get prospects coming in and they say, oh, I have an advisor. And you ask them, well, who's that? Oh, it's somebody that comes in once every two years and tells me to keep up with my 401K contributions at my company and that's it. Or no, it's somebody at the branch office at Fidelity or that I talk to transfer assets or whatever. Right. There's no advice or it's somebody at like a Morgan Stanley or a Goldman. They're not registered as an advisor, but they call themselves advisors. Can you break that down? What happens in those relationships when you're part of this large mothership, if you will, like the Morgan Stanley's, the Smith Barney's, what have you?

**18:16**

Ryan Walter

Yeah, it really depends. If you don't work with a particular branch office where you have dedicated people who you can go in and meet with and everybody recognizes each other's faces, it's going to be a lot less of a personal experience in working with these types of shops. You may call in and you're assigned to whoever picks up the phone. That person may or may not be registered, depending on what the company authorizes them to do over the phone with you. But in a lot of ways it's kind of luck of the draw in terms of who you're talking to and how much they can help you out. The terminology that they might use to describe their role can be super confusing because there's not always set definitions for who falls into what category. A lot of people will say I'm a financial advisor and a financial advisor could mean any of those three categories of professionals that we talked about a few minutes ago.

**19:19**

Ryan Walter

It could be an investment advisor, an advisor, a registered rep at a broker dealer, insurance agent. They all

like to use that term. And so that creates a lot of confusion. If they tell me I'm an investment advisor, I take that to mean that they are actually either a registered investment advisor or an investment advisor representative. But in either case, being subject to that fiduciary standard and I feel pretty good about who I'm talking I think.

**19:49**

Alex Murguia

That, but I don't think that's the case in practicality. I think if you go to a party or something like that and Ned Ryerson from Groundhogs Day talks to you or whatever, I don't think anyone's going to say, I'm an insurance agent. I don't think anyone's going to say, oh, I'm a registered representative for a brokerage dealer. They're going to say, I'm a financial advisor, because that's just a better sounds better. Let me be clear here. That's not a nefarious surreptitious kind of thing they're trying to do. It's just the English language, what you're doing. Yeah, but there's a technical difference. Yes. With regards to that. So just FY, yeah, no, if that.

**20:31**

Ryan Walter

Is the response is I'm a financial advisor. If you really have interest in working with that person, I think the natural follow up question is, what does that mean exactly?

**20:43**

Alex Murguia

I give advice about finance.

**20:45**

Ryan Walter

No, but you want to know, are you working for a broker dealer? Are you working for an investment advisor, insurance company, agency, or more than one of those things? Because it's going to tell you a few things. It's probably going to tell you the services that they can offer. It's going to tell you what standard of conduct they're going to be held to when providing those services. And it's going to probably give you a good indication of how they're going to be compensated for those services, whether from an ongoing fee, potentially for an investment advisor or commission based compensation for a broker dealer or insurance company.

**21:21**

Bob French

Have you signed up for retirement researchers retirement Income challenge yet? It starts next week, Monday, August 21, at noon Eastern, and it's filling up fast. Don't miss your chance to join Wade, Alex and I in this free four day challenge where we walk with you and discover how you approach retirement income, where you stand relative to your retirement goals and what you could be doing to bridge that gap and then

make sure that your retirement is on track. Think of it like a pop quiz for your retirement plan. We can only accept a limited number of participants for this challenge, and like I said, we're filling up fast. So head over to [Risaprofile.com/podcast](https://risaprofile.com/podcast) to learn more and find out how you can join Wade, Alex and I. Again, that's [risaprofile.com/podcast](https://risaprofile.com/podcast). See you in the challenge.

**22:13**

Alex Murguia

Yeah. Not something you say that I think is kind of funny when I read it. Okay. When you give this advice, you're wearing your best interest hat. Oh. When you give this advice, you're wearing your fiduciary know, and then you get suitability, don't it's not as clearly delineated. I think that's what people say. Right. But like at McClain, we're at the point now where we will offer everything, but we let the client know transparency, this is what could happen. This and that. But I got to say, just as a general matter, I mean, we just go under the auspices of competent wise, what's the best practice where if contractual income provides a better outcome or provides an appropriate outcome, that's fine with us. So there's that piece to it and call it a day. We don't kind of play games in terms of this hat or that hat.

**23:12**

Alex Murguia

Can you talk about that sort of musical chair games, musical game of musical chairs that advisors can play that consumers should maybe look out for?

**23:24**

Ryan Walter

Yeah, it's maybe not always quite that simple as saying, I'm talking to you as my insurance agent right now, and so you're not going to be able to hold the fiduciary standard over my head when I talk to you about insurance products. And that's because a lot of investment advisors investing is kind of a multidisciplinary field, right. So you kind of need to have expertise in a number of different areas in order to give a sort of all encompassing or holistic take and advice to a particular client. And so where I'm going with that is that when I'm acting as an investment advisor, I may do things like financial planning or I may do things like give insurance recommendations. And when I'm doing that, I'm still doing that as an investment advisor under the fiduciary standard of conduct. When I go to make the sale of an insurance product, I have to do that as a licensed insurance agent.

**24:25**

Ryan Walter

That's what the license is for, is to allow me to engage in that sale. But it doesn't mean that I haven't given fiduciary advice about insurance while I was wearing my investment advisor hat. It's tough to draw a line in the sand to say, I stop being an investment advisor now and I start being an insurance agent or broker dealer rep. And so I think not a lot of firms, but firms. Who value servicing the client and doing the right thing by the client, I think kind of tend to do a lot of what you alluded to Alex in terms of we just want to do the right thing for the client. It doesn't matter what hat I'm wearing. Their needs and goals come first and

foremost. My needs are secondary to that. And I'm going to assume that I'm wearing the fiduciary hat all the time, regardless of whether I am.

**25:20**

Alex Murguia

Yeah. No, I agree. And that goes back to even your first point, which is that's where trust comes in. Obviously. Trust but verify. But that's where trust comes in. You just got to feel comfortable about what's being received. What do you see happening? Well, there's a couple of things. I'm going to take this off target a little bit because we were talking about the three types but in the grand scheme of things it's helping consumers be informed consumers if you will. There's an advisor because there's a game advisors sometimes play within warehouses and warehouses are like the large broker dealers where they jump from one firm to the other. Could that be a tell to a consumer about something going on in the back end? I'm not saying it is but could it be? Because I think that's something that we read the industry press and there's always like this team jumped shipped to this other yard brokerage and then through two years later, that same team jumped ship to another one.

**26:29**

Alex Murguia

And there's kind of a game playing on which I don't think it's necessarily good for the underlying consumer. But you want to talk about that because that could be a tell for somebody.

**26:39**

Ryan Walter

It could. It's just hard to kind of discern what it's a tell of.

**26:45**

Alex Murguia

Sure.

**26:46**

Ryan Walter

Is that group a bad decision maker and they keep hitching their wagon to the wrong stars and they just make mistake after mistake in terms of what kind of firm they want to associate with? Or is it an issue with the team in terms of not being able to fit in anywhere, not being able to follow policies or rules that they put in place? It's tough to tell based on that alone but it is a tell that there's something.

**27:17**

Alex Murguia

You're a much nicer person than I am. I was thinking from the point of view of it's never about the money.

It's always about the money and it's just the large firms are duking it out for assets and they're just incentivizing uberly incentivizing teams every so often and the clients have to go through the.

**27:36**

Ryan Walter

Hey we'll give you a half a million dollar forgivable loan if you transfer your book to our brokerage firm. And that forgiveness comes after like two years with minimal production thresholds to reach that. That's a very clear incentive to get them to change shop not necessarily having anything to do with what's best for their client base.

**27:59**

Alex Murguia

And that's one of these I don't know that's one of those. Keep that in mind. I've always think this is total BS when you see those things in the trade paper but that's fine so far. From the standpoint of types of advisors you're saying let me just kind of reiterate Tommy. They're investment advisors. Registered investment advisors. There's broker dealers which are kind of registered reps within that broker dealer. The broker dealer kind of gives them guardrails to work within. And you have insurance agents which are those selling insurance products that are just contracts effectively. Is that about right?

**28:41**

Ryan Walter

That's about right yeah. And the lines get blurred all the time and you'll see some things that sound like insurance products that an insurance agent can't sell. They have variable annuities, things like that.

**28:53**

Alex Murguia

Yeah. Because they can go down in value. Things that can have the potential to go down in value will not be sold by just an insurance agent. That insurance agent has to have some sort of affiliation with a broker dealer or something like that.

**29:04**

Ryan Walter

Right, yeah. The overall point though yeah, you're right. Three different categories, each filling different holes in the industry or different needs for clients, and each being subject to different regulatory standards, service models and compensation arrangements.

**29:23**

Alex Murguia

Okay. And the regulatory standards we kind of discussed being the fiduciary best interest and suitability.

**29:29**

Ryan Walter  
Right.

**29:30**

Alex Murguia  
Is there any other regulatory standard that maybe I may have missed?

**29:35**

Ryan Walter  
That is the standard when they're providing.

**29:37**

Alex Murguia  
Kind of what you meant, right? Yeah.

**29:39**

Ryan Walter  
When they're providing advice, those are the three standards.

**29:42**

Alex Murguia  
Okay. Then another question I'd like to discuss with this. Oh, and by the way, by the time this comes out, we'll have a handout. We'll have a little cheat sheet for anyone. If they want to download it'll be in the show notes. Knock yourself out. A question that comes up, it came up two or three times, and I was surprised because I thought they just don't understand the business of advice. And that's not a negative. I don't see why they would actually and you don't see it written a lot? I don't see this written a lot. And that's the point of custody. And what I want to get into here is when someone asks me what's a tell in terms of do I go into this or not? I think your point about rapport and all of that is the trust issue is 100% on the mark.

**30:28**

Alex Murguia  
But when it comes to a logistical standpoint, I always tell them custody is, I think, important because in my world, advisors that have custody of the assets, that's where things and by custody, I don't mean because they have limited power of attorney. I mean like custody where they can direct money. I think to me that's a red flag, not because that person is doing something wrong. It's a red flag because the potential to do something nefarious is now increased by orders of magnitude. And now that's just an opinion. That's not a fact, what I'm stating or anything like that. That's just my own kind of spider senses. Do you want to maybe

break down the whole custody thing? And the reason is because a client had not a client, somebody listening to the podcast wrote in, hey, I'm interested in getting annuity, but I don't want to use an advisor because they can steal my money effectively, something like that.

**31:27**

Alex Murguia

And so I realized right then and there they don't understand the concept of custody, so take it away.

**31:32**

Ryan Walter

I think you have to understand the way the industry works before you can even appreciate custody. When you hire an investment advisor, most of the time you're going to be hiring two. People. You're going to be hiring the investment advisor to advise on what should be done with your money. You're also probably going to be hiring a broker dealer to actually hold your money. Most of the time, the investment advisor won't take custody of your assets, your funds, or securities custody in this case, meaning like actual physical possession of your funds or securities. Most of the time, that's always going to be held at a bank or broker dealer, and they're going to be the ones who are transacting and holding those assets. The investment advisor, you're going to give, as Alex said, a limited power of attorney to authorize the investment advisor to talk back and forth with the broker, to say, here's what we should be doing.

**32:31**

Ryan Walter

We should be trading this, we should be buying this, selling this, and rebalancing in this.

**32:37**

Alex Murguia

And one thing real quick, Ryan, because you're introducing the word broker dealer and investment advisor, an independent investment advisor, the custodian is a broker dealer, but we're not registered reps of that broker dealer. We're independent. This is just going back to that previous conversation.

**32:52**

Ryan Walter

Yeah, totally separate, no affiliation. You may hire Ryan Walter Advisors, and we contract or we have an arrangement with Schwab, with Fidelity, with whoever a qualified custodian might be, to allow us to put client assets in their custody. Totally divorced from me and my ability to really do anything except what you as the client, authorize me to do.

**33:19**

Alex Murguia

And then with that so from a custodial standpoint, McClain, let's say we have 100 clients we can log into we custody largely with TD Ameritrade, Schwab, and Fidelity. TD Ameritrade and Schwab Merge. So let's just say Schwab, right? So we can interface Schwab and we'll see our complete client list. We don't log into every single account. They have their technology specifically for independent advisors that allows sort of a one to many workflow. And so it just makes it very smooth that way. We're not like individually going into your login account and doing things. It's more we get an aggregate view of all of our clients within that custodian, and then we can kind of group things together. I just wanted to throw that in there.

**34:05**

Ryan Walter

And the custodian I'm going to use Schwab in this case, just for simplicity. Schwab's not going to let me as an advisor, do anything with those assets without me demonstrating that I'm authorized to do so. Most of the time, they'll want to see, what does the advisory agreement with the client look like, what does it authorize you to do? And it may authorize you to do a few things to trade in the account, to pull my fee from the account. And it may either in the advisory agreement or in a separate document, it may authorize me to move money between certain pre identified accounts. Yeah.

**34:44**

Alex Murguia

And move money would be if you're taking distributions from a portfolio, there's standing wire information directions that once a month, whatever 5000 goes out to this bank account. Right.

**34:58**

Ryan Walter

But this is all to kind of illustrate how the relationship is going to work so that people can understand that if I don't have custody as an investment advisor, custody is reported on the formadv which is an investment advisor's public disclosure document. All registered investment advisors have one and they're all publicly available online at [advisoryinfo SEC gov](http://advisoryinfo.sec.gov). If I say that I don't have custody as an investment advisor, that means I truly don't take possession or control or ownership over any client funds or securities. They're all held at a broker that broker's procedures and technology and staff prevent me from doing anything inappropriate in theory with those assets because I don't have customers.

**35:53**

Alex Murguia

And something inappropriate would be Ryan. All of a sudden I'm a client of Ryan and I've got a million dollars in the portfolio and Ryan and I have standing transfers into my personal bank account because I'm taking distributions. But then Ryan all of a sudden says, you know what, I'm going to take \$10,000 and send it to some foreign account somewhere. That won't work. I'm trying to be like what's an example where I'm a criminal? Right? That just doesn't work. It doesn't happen. Yeah, all the things that happen that you read in the news happen largely when somebody has custody of the assets because they're serving the advisor is also serving as their own bank.

**36:39**

Ryan Walter  
Exactly.

**36:40**

Alex Murguia

And so that's not a good there's instances where from a business model standpoint it makes sense for the advisor. Right, but I'm just saying someone wants bill paying, someone wants certain things. Right. But absent of kind of logistical things, it's something as a firm we don't want to have that kind of authority because it's just a pita kind of thing. It's just not worth the aggravation nor do we want that.

**37:08**

Ryan Walter

No, you're absolutely right. To be clear, a firm that designates on their form ADB that they have custody, it doesn't mean that they're stealing from people. Right. A firm that has custody, like actual legitimate custody, has to subject those assets to annual surprise examination by a CPA. So there's oversight and controls that are in place for firms that actually take custody. But what it means is that the risk and the kind of what do I want to say that carrot is hanging out there for the advisor, it's dangling over their head. The risk increases because you're entrusting the same person to manage your assets and to safekeep them. And when somebody has that sort of level of control over your funds doesn't mean that they're going to do anything. It just means that the risk that they could do something is heightened.

**38:11**

Alex Murguia

Yeah, this is me. Right, and this is just an opinion. Those caveats, I think when things go south, when you read those stories of an advisor steals 20 million from a client, I don't think it happens in one shot. I think something goes off on a trade. They want to save face, so they kind of do some workaround, right? And it works out right? And so they're like, woof. I dodged a bullet, I dodged the bullet, that kind of thing, right? And so then they make a mistake. Five years later, they do the same thing, but it doesn't work out. And so they double down and they double down, and before you know it, they're in this hole. I think that's how it happens. I think it happens slowly and then all at once.

**39:00**

Ryan Walter

Time. It emboldens you to know that you can get away with it or to believe you can get away with it. And then it just compounds from there. The next time it happens, you're going to do the same thing. And until you get caught or until it gets too big and blown up that it's unavoidable, you're just going to keep doing it.

**39:20**

Alex Murguia

But again, that can only happen, though, when the advisor takes custody of the assets.

**39:26**

Ryan Walter

That's right.

**39:27**

Alex Murguia

It doesn't happen for the I don't even know what the percent is, but an advisor that doesn't have custody, to me, it's a needed checks and balance, because that's where Schwab, TD, Fidelity, whoever you have as a custodian, serves as that wall, if you will, which is good.

**39:48**

Ryan Walter

I like the way you put that. A check and balance, I think, is exactly the way you want to look at it. Having too many people or having one person or one group with too much responsibility and authority just invites abuse.

**40:01**

Bob French

Have you signed up for retirement researchers retirement Income challenge yet? It starts next week, Monday, August 21, at noon Eastern, and it's filling up fast. Don't miss your chance to join Wade, Alex and I in this free four day challenge where we walk with you and discover how you approach retirement income, where you stand relative to your retirement goals, and what you can be doing to bridge that gap, and then make sure that your retirement is on track. Think of it like a pop quiz for your retirement plan. We can only accept a limited number of participants for this challenge, and like I said, we're filling up fast. So head over to [Risaprofile.com/Podcast](https://risaprofile.com/Podcast) to learn more and find out how you can join Wade, Alex and I. Again, that's [risaprofile.com/podcast](https://risaprofile.com/podcast).

**40:51**

Alex Murguia

See you in the this is Assets. But there's other types of you're also deemed as having custody when certain things happen. And at McLean, we've been deemed as having custody when certain things happen, and you just get an audit and you go from there. And some of those things could be a client sends you a check to then forward on to fidelity or to whatever the custodian. You can only have that check for so many days. In fact, you don't want them to send you checks, you want them to send them directly to the custodian. We've had many times where we're telling the client no, so we take it very seriously. But it could also be password, having access to a password that you could potentially direct assets to somewhere else. And that

happens if somebody has a 401K account and they want you to look at their 401K account, and you've known this person for ten years, and they give you their password.

**41:45**

Alex Murguia

That's a no from our vantage point. Is it worth just talking briefly about the different types of custody as opposed to there's full blown, like, I'm actually a bank as well as an advisor, and then there's these kind of things in the periphery.

**42:01**

Ryan Walter

Yeah. And there are a lot of different ways that custody can come up. The SEC would generally say that custody is like the control or possession or ownership of funds or securities or the ability to get into one of those positions where you have control or authority to do something other than authorized trading in the account. And so custody could include, like, if my investment advisor can debit their fee every quarter, every month, whatever the frequency is, that is technically a form of custody. If they have check rating authority over my account, that could be a form of custody. The move money authority that Alex mentioned, being able to go from account A to account B, that's a form of custody. We can get into how those are disclosed on the adv when we touch.

**42:52**

Alex Murguia

On the we'll do that in there.

**42:53**

Ryan Walter

When we get to but being a trustee, executor conservator, being in possession, if somebody sends you the example you used, if somebody sends you a check, you become in possession of that check, you have custody over that check. Potentially the password authority, if you have anything, if that password and user ID gives you the ability to do anything other than trade, it potentially triggers custody. Really. The one you want to look out for, though, is the custody that's subject to the annual surprise CPA exam. That is specifically a form of custody that's disclosed on the form adv. And that's the form of custody that the SEC has identified as most likely to be ripe for abuse. And that's why they have that separate CPA oversight that's being conducted on a surprise basis every year by an independent CPA that doesn't have an affiliation or material relationship with the advisor.

**44:00**

Ryan Walter

So those are the ones you really want to be on the lookout for and be extra.

**44:04**

Alex Murguia

So then, for the gentleman that asked me the question that asked Wade and I the question wrote it in. They're looking for an advisor, but they're hesitant because they don't know if the assets are safe. Look at the custody. I'm not saying because you have custody, they're not safe, but not at all. An advisor that doesn't have custody, that does not have access to your assets to do as they know there's trading discretion for investments. But that's why you're using an advisor to begin with, right? Absent of that, the SEC looks at.

**44:39**

Ryan Walter

It in a lot of the same terms. The SEC requires firms that have custody, actual custody, subject to the surprise CPA audit. They make firms disclose that on the adv, and the SEC uses that to assess that firm's level of risk, to determine how often the SEC is going to examine them, what specifically they're going to look at when they are examining their firm. They view that as one of the top risk indicators that they look at when assessing a firm's risk profile. And you should too, if they're looking at it that way. A client or a prospect should.

**45:17**

Alex Murguia

You brought up a good point. The SEC exam, I'm not so sure people realize this, but yeah, advisors like McClain Independent Investment Advisors, they're subject to periodic exams as well, just so you know. And it wouldn't hurt to ask the advisor when was the last time they had an audit from that vantage point or if anything came out of it. But Ryan, just because I want to actually get to we're going to chop this up into another episode where we get into the adv, because that's the brochure that an advisor gives somebody. And I think that's really how you get down to the brass tax of things. But an audit by the SEC in like two minutes or so, what does that entail, what's the outcome of those things, et cetera? How can a consumer use that to become more informed about engaging in services?

**46:11**

Ryan Walter

Yeah, two broad categories. You've got cycle exams, which are just routine, typical examinations that the SEC conducts. They'll put firms on a different cycle exam schedule based on how they perceive that firm's or how risky they perceive that firm to be based on a number of different things, including potentially custody. Cycle exams are not really focused on any particular subject matter. They're looking at marketing materials, trading data, the actual advice that's being given and how appropriate that advice is for that particular client, whether there's anything going on in the advisor's personal securities accounts that would indicate that the advisor is kind of taking advantage of clients by trading ahead or front running, something like that. But it's a general exam, looking at a lot of different topics without any particular focus for the most

part. And then sometimes you'll have focused exams, something that the SEC, they have a particular subject area that they're looking for.

**47:14**

Ryan Walter

These are generally not done on a cycle. They're done pursuant to market events or know, big headline grabbing events. And so you might look at use of Signal or Snapchat by investment professionals. That is one of the current industry hop on issues and something that the SEC is looking at with specific focus for particular firms. So if you're asking about any of a firm's exam history. You want to know kind of about what type of exam they've undergone, how frequently they undergo exams that'll give you a little bit of insight into how the SEC perceives that firm's risk profile to be and then what the outcomes of those exams are. Did they get deficiencies? Deficiencies are not a huge deal. Almost every exam ends in a deficiency letter of some sort. Says here's some things you need to address. Not a big deal. Or did it proceed from there?

**48:10**

Ryan Walter

Did it get to an investigation? Did it go to enforcement? Did they have to settle any charges? Do they have to go to court? There's a lot of ways these things could shake out. But you want to kind of get an idea for what types of exams they've been subject to when those took place and what the general outcome was and that'll give you a good sense for what the regulators think of the firm and that can guide your thinking.

**48:32**

Alex Murguia

Yeah. And this is me my own editorial here. This is what gets me sometimes where I think going back to the box store advice sort of the big registered reps that you see in Morgan Stanley or mean you were talking about deficiencies and the like. I think sometimes people don't realize because a firm like McLean, an independent advisory know we custody with Schwab, Fidelity and TD. So we have those resources. It's not a resource game, we're a stable, we're not going anywhere kind of thing. The assets are safe, whatever. Then people view Morgan Stanley as no, this is know because it's big and the like. But the reality is and this is nothing against Morgan Stanley I think anyone that has a lot of folks, you kind of see these things. But what gets me is you read the adv and we'll get to and you see their deficiency letters and you realize quickly they settle things a lot because it's just cost of doing business for them.

**49:35**

Alex Murguia

They have hundreds and hundreds of these things of fines that they've paid because of just broken arrows in their system, if you will. But a firm like McLean, if we get something like that, it just shuts our doors down. So we're sort of uberly vigilant. No it know about stuff like that. I want to say as much as people think oh no going to like a Goldman. We'll be safe there. I don't know man. Relative to the behavior and an advisor and the like that. I'd say look at their history of what you're specifically talking about. And you'd be

surprised, because when they pay and no one in particular now I'm talking about, but when one of these types of firms pays a \$200 million fine and then the follow up sentence is it will not affect earnings in this upcoming quarter, that's all you need to know.

**50:31**

Alex Murguia

In terms of what they view as cost of doing business versus providing advice, that is on point. I don't know, again, that's my editorial.

**50:42**

Ryan Walter

And fines can have different flavors. Fines and settlements have different flavors. Okay. You used inappropriate language and marketing material that was kind of overly flowery would.

**50:53**

Alex Murguia

Be guilty of that like that. I thought you meant, like, curse words.

**50:58**

Ryan Walter

We were overly complimentary of ourselves in a marketing piece, and we settled that with the SEC. I don't think that's super egregious myself if I'm kind of trying to vet out an investment advisor. You tried to push the boundaries a little too much, and they slapped your wrist for it. Whatever the firms that have been found or who have settled allegations of fraud or in terms of how they have managed actual client accounts, where they put 85 year old grandma in three x SP got you. Those are the things that I want to look out for. I'm not looking at strictly at the dollars involved in a settlement. I'm looking at what the actual facts and substance of the allegations or findings were.

**51:50**

Alex Murguia

No, I got you. All right. I mean, that's good, man. Why don't we do this? We shut it down here. And I think the next episode really is integral to folks into the world of price, and it's really breaking down what's in a brochure that an advisor is having to give to their prospects and frankly, on a yearly basis to all of their clients. I think that really is when it gets to the brass tax. You can tell me you're an advisor? You can tell me you're a fiduciary? You can tell me know? You like hot know? But at the end of the day, let me see the right. All right, Ryan. Thank you. Just hang tight. We'll stop it, and through the magic of editing, we'll pretend it's a completely new interview in about five minutes. All right, sounds good. Hey, everyone. Thank you for listening in.

**52:46**

Alex Murguia

More default, remember, we're in the show notes. We have a download in terms of what the deal is with regards to these categories that we talked about today. And we'll put a link to Ryan and how to get a hold of him specifically for the advisors that are listening in. All righty, thank you very much.

**53:06**

Speaker 2

Wade and Alex are both principals of McLean Asset management and retirement researcher. Both are SEC registered investment advisors located in Tysons, Virginia. The opinions expressed in this program are for general informational and educational purposes only and are not intended to provide specific advice or recommendations for any individual or on any specific securities. To determine which investments may be appropriate for you, consult your financial advisor. All investing comes with a risk, including risk of loss. Past performance does not guarantee future results.