**Addressing the Question of Potential Incapacity**

Dear Client:

An estimated 5.8 million Americans currently suffer from Alzheimer’s or dementia. It is further estimated that up to one half of those over age 85 may be affected[[1]](#footnote-1). People affected by dementia have a much higher incidence of medical expenses, hospital stays, and often, general financial strains.

As older adults become more physically frail, they are less able to take care of themselves. These frailties can make the senior more difficult to support for those who care for them. In some cases, this leaves seniors open to some form of elder abuse or neglect– physical, emotional and/or, financial. Although authorities do not know for certain how many seniors experience elder abuse or neglect, studies show that in U.S. alone, about 10% of seniors have reported abuse. It is estimated that millions more cases go unreported. Sadly, those with dementia experience a much higher rate of abuse than the general population (some studies suggest this rate maybe as high as 50%)[[2]](#footnote-2).

Private Ocean is committed to being sensitive to situations where a client may be exhibiting evidence of declining cognitive ability or possible abuse. While we are not medical professionals, our relationship with our clients often gives us a unique perspective in observing a client’s mental state. If a client appears to exhibit declining cognitive ability or signs of elder abuse, we naturally become concerned. We want to be sure that our clients are able to meaningfully participate in decision making about their planning and investments. Such a situation would be extraordinarily difficult for us as your advisor, since (a) there is little in the way of objective criteria for assessing the difference between rational decisions that may be out of the ordinary and those that indicate some deeper difficulties and, (b) it is not our field nor the nature of our training to make such assessments.

Given the long-term associations we have with our clients, we are in a unique position to both observe and share concern where some question of client capacity exists. In these circumstances, it would be our hope that we could consult with a family member or other designated individual to bring our concern to their attention. As a registered investment advisor, Private Ocean is subject to Regulation SP that governs the disclosure of client information. As such, we must balance our concern about a client’s perceived declining cognitive ability or abuse with that client’s right to confidentiality and privacy. There are serious privacy issues in communicating the possibility of dementia to family members or other professionals if a diagnosis has not been confirmed by a physician.

In many instances, a client may have already appointed a trusted family member or other individual as a power of attorney or point of contact should questions of capacity arise. This is why we request that all clients provide us with their most recent, up-to-date estate planning documents. This would include wills, living wills, trust agreements, durable powers of attorney for financial matters and durable powers of attorney for health care. Private Ocean has also developed the attached Acknowledgment for client review, consideration, and execution.

Should an advisor suspect the existence of elder abuse, financial exploitation, or diminished cognitive ability, Private Ocean may, in its sole discretion, pause transactions in a client’s account until such time that client’s guardian, attorney-in-fact, or other authorized representative (listed in the attached form) is contacted to address this concern.  During this time, no new recommendations or portfolio rebalancing will occur.

Authorization to Contact and Share Information

Please advise us of your preferences in the unlikely (but possible) event that a situation of suspected incapacity or senior/elder abuse should arise. Please indicate below what action you would wish us to take.

Please **initial** as many items as seem appropriate:

\_\_\_\_\_\_\_ I would like to have the subject raised with me first.

\_\_\_\_\_\_\_ If, after such a discussion should the concerns not be resolved, I give permission to you to contact one or more of the people listed below and discuss the issue with him/her/them.

\_\_\_\_\_\_\_ I give permission to you to contact one or more of the people listed below and discuss the issue with him/her/them, without necessarily raising the subject with me first if you deem it appropriate.

NOTE: Only persons aged 18 and older may be named.

Relationship Name Phone Number

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Note: The sole purpose of the Authorization is to protect you, the client. It is absolutely not a power of attorney, and does not, in any manner whatsoever, confer upon any listed person any authority over your Private Ocean accounts (unless a valid Power of Attorney has been previously provided to us). Your providing us with this Authorization and our accepting it is in no way to be construed as a commitment on our part to act as your agent outside our normal financial planning/investment management role. This is not to be considered a part of the services you have contracted with us to perform and you agree, by signing it, that you and your heirs or assigns will hold us harmless if we either act or fail to act on these stated preferences based on our own best judgment.

I have indicated my preferences above and agree to hold Private Ocean Wealth Management and its employees harmless as stated in the previous paragraph.

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Alzheimer’s Association – January 2020 [↑](#footnote-ref-1)
2. National Center on Elder Abuse [↑](#footnote-ref-2)