

# Responding to Change:

Securities Regulators, Diminished Capacity and the Aging Population



By 2030, 20% of the US population will be over 65 years old and will control 75% of the country's wealth

# So what does diminished capacity have to do with securities regulators?

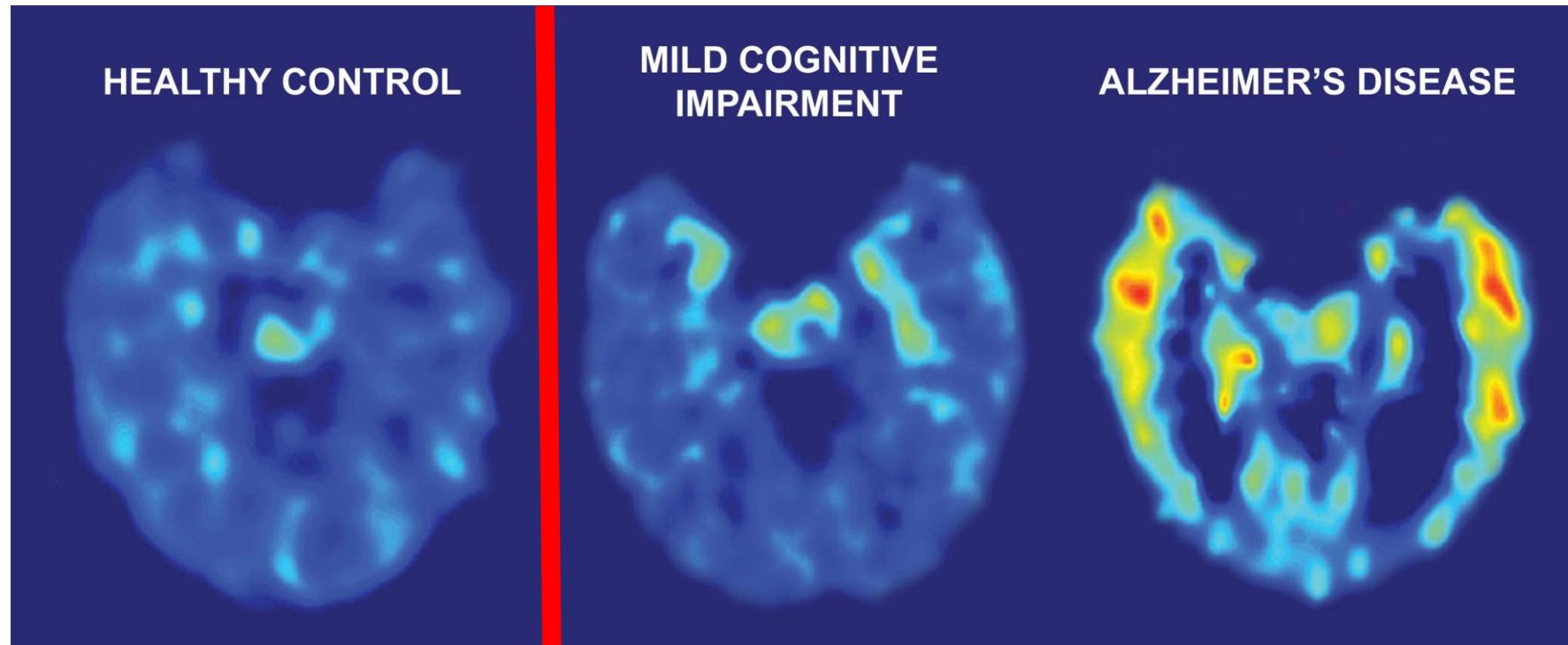
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Potentially ...

- ❖ Impaired clients – suitability or fiduciary duty
- ❖ Impaired registrants
- ❖ Changes needed!

# Diminished capacity is a spectrum

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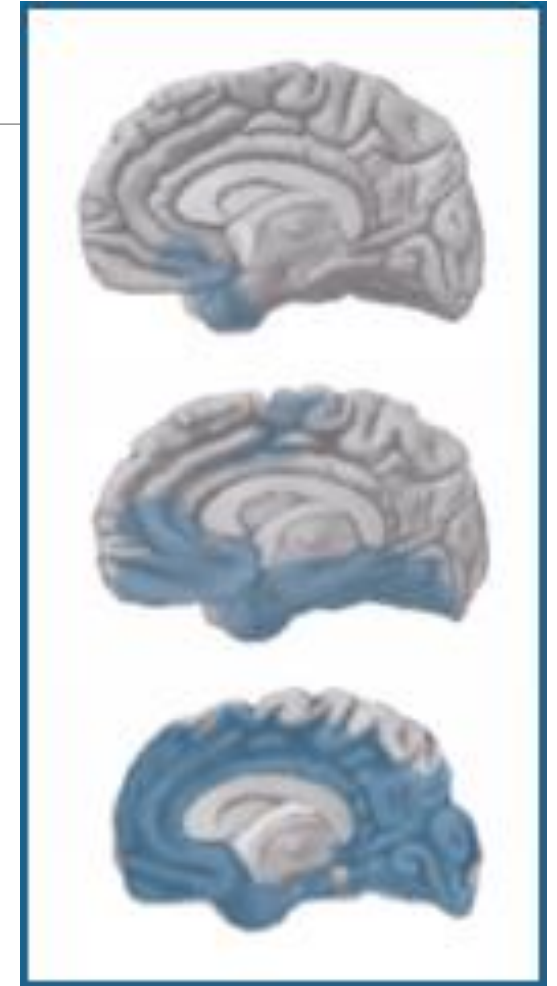
Diminished Capacity



# MCI is like being stuck in the middle

Mild cognitive impairment is between normal aging and dementia.

	Normal Aging	MCI	Dementia
<b>Cognitive Decline:</b> some areas of cognition (thinking ability) are below age-expectations.	No	Yes	Yes
<b>Functional Decline:</b> support managing daily responsibilities is needed.	No	No	Yes



*\* Information from Psychology Today, April 2013*

# Financial decisions + MCI or dementia = potential for abuse/exploitation

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Financial capacity is the “capacity to manage money and financial assets in ways that meet a person’s needs and which are consistent with his/her values and self interest”.

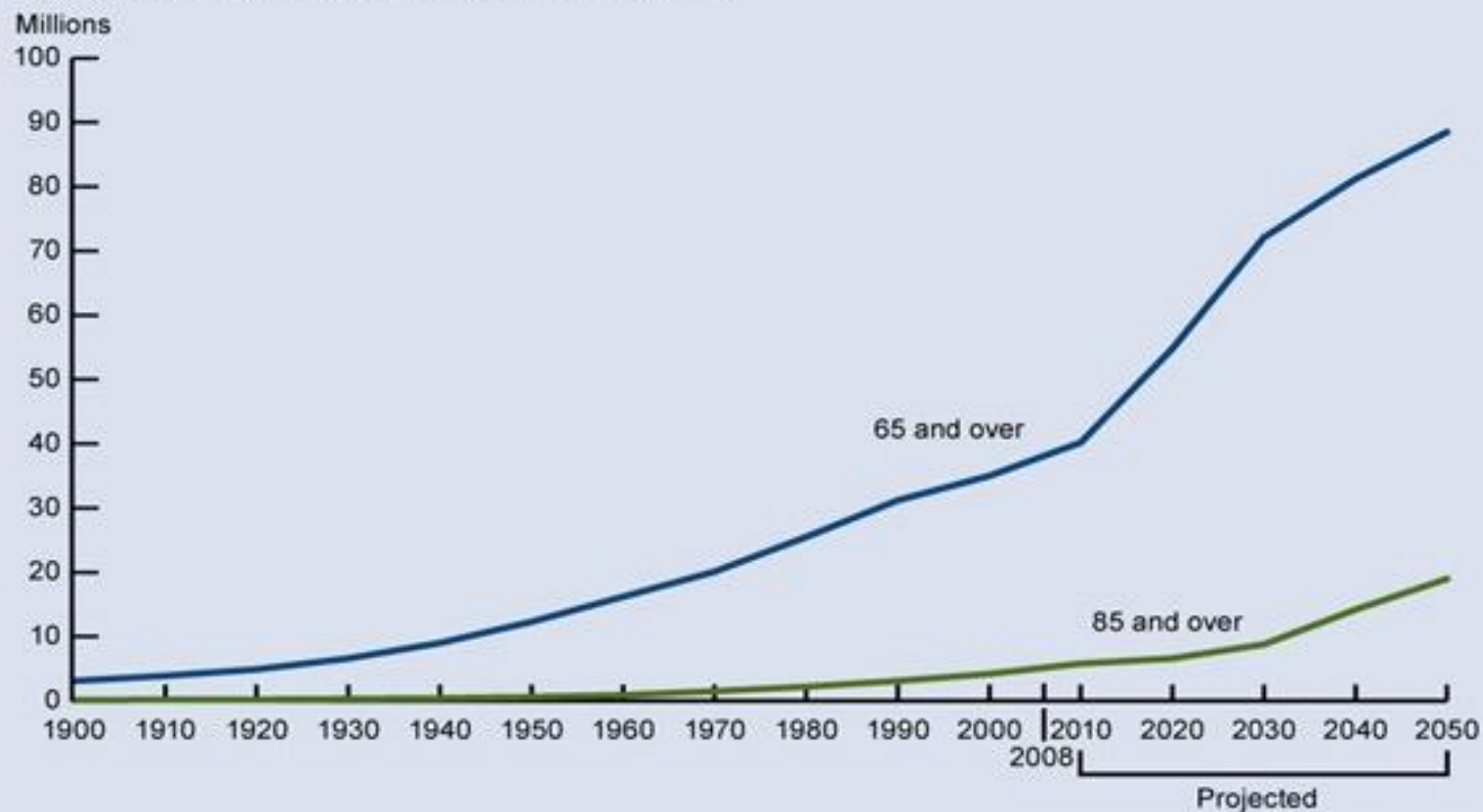
Impairment of financial capacity is one of the earliest indicators of MCI, Alzheimers and other dementias.

The combination of making financial decisions while experiencing MCI or an early stage of dementia/Alzheimers can be disastrous

*\*2011 AARP Report: Assessing civil competencies in older adults with dementia*



# Population age 65 and over and age 85 and over, selected years 1900–2008 and projected 2010–2050



NOTE: Data for 2010–2050 are projections of the population.  
Reference population: These data refer to the resident population.  
SOURCE: U.S. Census Bureau, Decennial Census, Population Estimates and Projections.



# Alzheimers Statistics – United States

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5.5 Million People have Alzheimers:



1 in 8 of all people over 65



Of those over 65:

- 93% are more likely to be solicited to invest
- Of those solicited;
  - 47% are more likely to actually invest
- Of those solicited:
  - 34% are more likely to lose money

Half of all people over 85

*Statistics from video: The American Retirement Initiative: Exploring the Link Between Diminished Capacity and Elder Financial Abuse*

# Alzheimers statistics – Canada

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500,000 Canadians have Alzheimers or a related dementia

Lifetime risk of Alzheimers:



1 in 5 for women over **65**



1 in 10 for men over **65**

Estimated 6-15% of Canadians 65 and older are living with Alzheimers and other forms of dementia

\*[www.alzheimers.ca](http://www.alzheimers.ca)

# Elder financial abuse can kill

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Older victims of physical mistreatment and financial exploitation have a mortality rate

**3X higher**

than non-abused seniors

\* <https://www.eversafe.com/elder-financial-abuse/what-to-do.html>

# Adviser Red Flags

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Like the rest of the population, investment advisers are showing signs of aging.

As an adviser ages, he or she is more likely to have senior moments, including forgetting to put in a sell order, getting confused about their clients' investment goals, and actually causing serious financial harm to their clients.





Following are some “red flags” to be aware of:

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- The adviser being examined is late, forgets you are coming, and is confused about the date and time.
- The adviser being examined is untypically inattentive to appearance, is disheveled, or is inappropriately dressed for the exam.
- The adviser is uncharacteristically confused, suspicious, depressed, fearful or anxious.

# Red flags continued...

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The adviser being examined is forgetful or a “poor historian.” There appear to be a lot of sticky notes or “hints” in the work area and a lot of reliance on those notes by the adviser.



The adviser being examined has difficulty logging onto his or her computer, or is unable to accommodate your requests involving the computer.



# Red flags continued...

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There is a lot of repetition and apparently unintentional failing to follow directions or respond to questions.



Client files and the adviser's work space are uncharacteristically in disarray



# So what do securities regulators need to do about diminished capacity?

## ❖ **Enforcement investigator/attorney**

- Secure reliable evidence in trials and hearings
  - Document testimony from victims early in an investigation prior to further diminished capacity.
  - Promote cooperation from the witnesses.

## ❖ **Securities examiner who interacts with an investment professional**

- Recognize potentially impaired registrants
  - Make proper referrals to protect clients and securities dealer
- Consider holding registrants responsible if they are making unsuitable recommendations to their clients or violating their fiduciary duty
  - Suitability standards and fiduciary duty apply in cases of diminished capacity



# So what do securities regulators need to do about diminished capacity?

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## ❖ **Investor education coordinator**

- Work with front line senior service providers
- Conduct preventive presentations for early detection by senior service providers
  - Work directly with people who may be impacted (adults themselves and/or caregivers etc.)

## ❖ **Securities staff**

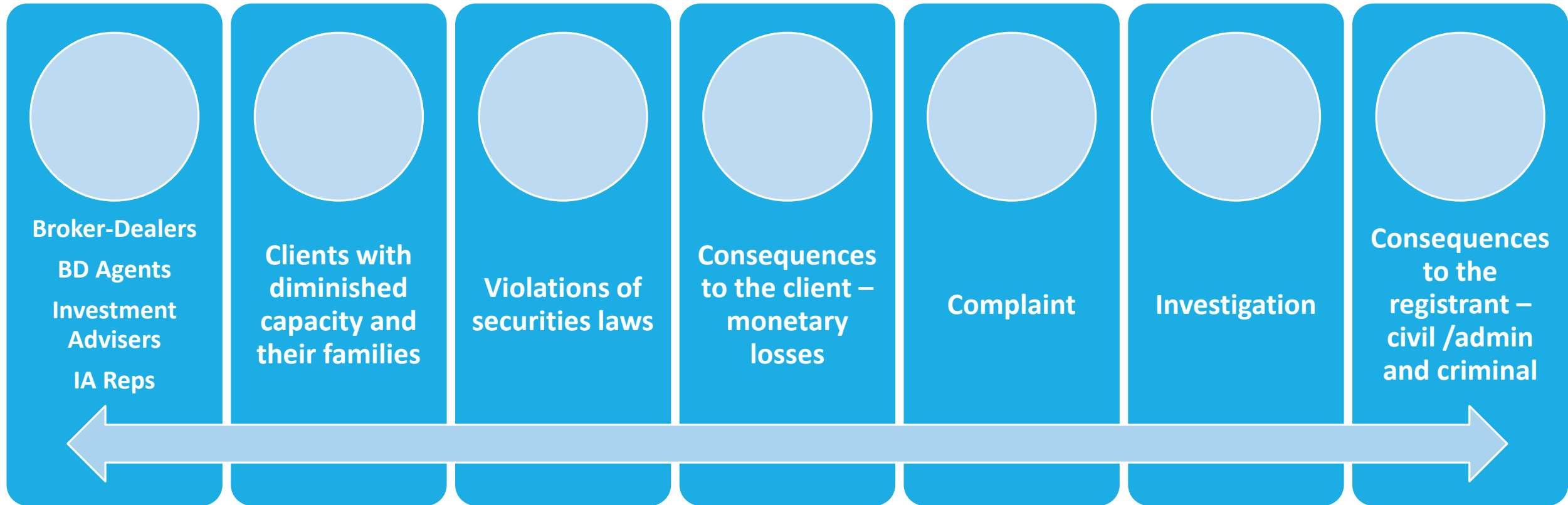
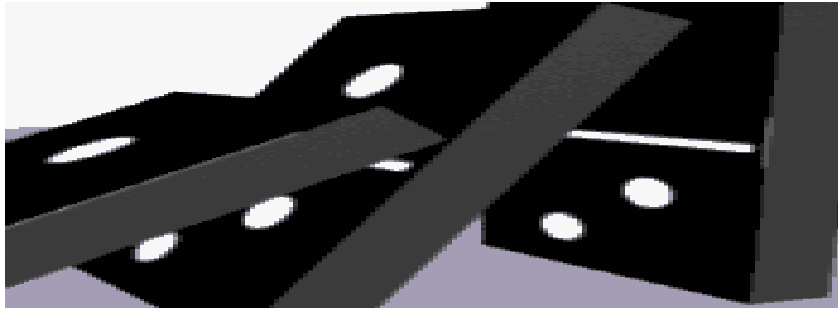
- Communicate more effectively with complainants and/or victims
  - Modify communication approach when taking complaints
- Opportunity to raise awareness to industry professionals through compliance events, Town Hall meetings, during exams
  - Provide resources to regulated professionals to raise awareness to their clients

# Enhancing communication with affected persons

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- Simplify questions - don't ask a two-part question
- Exercise patience when waiting for a response
- Be prepared for repetition
- Documentation is key to help spur memories, keep track of testimonials
- Encourage the buddy system
- Provide victim tips on how to document evidence
- If it helps the affected person, allow a trusted third party to be present

# Domino effect



# Types of referral and sources

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- Financial regulators / protection bureaus
- Legal associations, helplines or attorneys
- Medical associations or specialists
- Abuse – Report elder abuse/financial exploitation to:
  - Adult Protective Services (APS)
  - Local authorities
  - Local Long-Term Care Ombudsman Program



# Making a difference

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Securities regulators should never make a medical diagnosis, but it is important to have a basic knowledge of the challenges of aging that older clients may face.

**Just as you might make office space changes to accommodate the physical challenges of some older clients, you should also make communication changes with clients to accommodate sensory and cognitive impairments.**

# It's personal

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William Utermohlen, an American artist in London, chronicled his descent into Alzheimer's disease through a series of self-portraits.

- New York Times 2006

# Remember to **PAUSE** and get ready – The Silver Tsunami is here

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**P** – Prepare yourself

**A** – Asset protection is vital in later life

**U** – Understand the impact of diminished capacity

**S** – Securities regulators' roles are changing

**E** – Educate yourself, the industry & the clients





Our roles are changing because life is changing.



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