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Investing: The Case for Recognition as an Independent Capacity

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Abstract

In this paper we provide support for the need to recognize investing as an independent capacity. A comparison of the definitions and models of financial and investing capacities revealed significant differences between them. A review of the status of investing capacity assessment revealed that there are currently no investing capacity specific assessment instruments (ICSAIs). Implications for researchers and clinicians resulting from the lack of recognition of investing as an independent capacity are discussed and used as a rationale for the need to develop ICSAIs. The benefits of ICSAI development for financial, legal and clinical professionals as well as for investors are discussed, and a direction for future investing capacity research is proposed.

Keywords

investing; financial capacity; independent; assessment; money management

INTRODUCTION

Researchers have identified a number of important decision-making capacities. These include treatment consent, testamentary, contractual and financial capacity (Marson, Hebert, & Solomon, 2011; Moye & Marson, 2007). Impairment in any of these capacities, has the potential to affect financial and/or emotional aspects of an individual's life or their families' lives significantly (American Bar Association on Law and Aging and American Psychological Association, 2008; Hsu & Willis, 2011; Marson et al., 2000). In that regard, there is another important capacity, investing, which should be considered as an independent, stand-alone capacity in its own right. The purposes of this paper are to provide

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a rationale for the need to: 1) Recognize investing as an independent capacity, and 2) Develop an investing capacity specific assessment instrument.

Investing

The construct of investing is one of the core constituent components of financial capacity (Marson, 2016; Marson & Zebley, 2001; Marson et al., 2011; Marson et al., 2000; National Academies of Sciences & Medicine, 2016). It is a financial transaction which investors utilize to achieve important goals including owning a home, paying for education for themselves or their children, and funding retirement. With increasing age, older adults make increasingly complex financial decisions several of which are investment related (Karp, 2012). These include developing dynamic investment goals with increasing age, deciding when to buy and/or sell complex investment products, evaluating the appropriateness of their investments and selecting an appropriate investment advisor or firm.

As happens with other financial skills, impairment in investment related skills can have severe financial consequences (Triebel & Marson, 2012). Impaired investment capacity may impact older adults' ability to maximize benefit from their retirement savings, utilize their social security benefits adequately, and may increase their vulnerability to investment specific fraud and abuse, such as Ponzi schemes, unauthorized trading, or the purchase of investments which is based upon inaccurate or fraudulent data (Karp, 2012; Marson et al., 2000). Indeed, the literature provides numerous examples of cognitively impaired older Americans falling victim to financial fraud and abuse that was perpetrated by employees, relatives, friends and strangers (Brisk, 2012; Stiegel, 2012; Widera, Steenpass, Marson, & Sudore, 2011). Victimization by investment fraud which is a form of financial fraud and abuse, is often accompanied by catastrophic financial loss. Indeed, according to the Indiana Securities Division website it is estimated that overall 40 billion dollars a year is lost through investment fraud, with senior citizens incurring a loss of \$2.6 billion (Indiana Securities Division, 2018). The MetLife study of elder financial abuse conducted in 2011 similarly estimated that the loss sustained by exploited senior citizens was as high as 2.9 billion dollars (MetLife, 2011). The figures derived from these and other studies conducted by federal and state regulatory and law enforcement agencies most likely underestimate the actual total financial loss sustained. As Ric Edelman, President of one of the country's largest independent investment firms, notes 1)" the problems of swindles targeting the elderly is getting worse", and 2)"Investment related fraud that victimizes senior citizens often goes unreported" (Allianz Life Insurance Company of North America, August 2016; Spreng, Karlawish, & Marson, 2016; Stiegel, 2012). Investment fraud that is unreported, results in financial loss that is not reflected in the results of studies conducted by Met Life, regulatory or law enforcement agencies. Moreover, for older investors, victimization by financial fraud is also often accompanied by loss of independence and resulting emotional consequences (Marson et al., 2000), such as depression (Marson, 2001; Moye & Marson, 2007). The data that assessments of investment capacity would yield, could 1) be used by financial service, legal and law enforcement professionals to protect investors from fraud and abuse, and 2) help prevent or mitigate the harmful financial consequences of poor investment related decisions made in the presence of cognitive and neurodegenerative disorders.

Distinguishing Between Investing and Financial Capacities

In this section of our paper we provide evidence that financial capacity and investing capacity are separate and distinct capacities. A comparison of the most cited and frequently used definition and model of financial capacity in the literature with our proposed definition and model of investing capacity reveals significant differences between them. Financial capacity is defined as “the ability to manage one’s financial affairs in a manner consistent with personal self-interest and values”, (Marson & Herbert 2008). Marson and colleagues developed a domain based model of financial capacity which was subsequently revised by Griffith and colleagues (Griffith, et. al., 2003; Marson et. al., 2000). The use of the revised Marson model as the standard to distinguish between financial and investing capacities is most appropriate since other models of financial capacity such as the dimension model (Kershaw & Weber, 2004), and the person centered model (Lichtenberg, et. al., 2015) do not contain both a dedicated investing domain and investment specific tasks/items. Their model identified 9 broad skills sets (domains) that make up financial capacity. These are: 1) basic monetary skills, 2) financial conceptual knowledge, 3) cash transactions, 4) checkbook management 5) bank statement management, 6) financial judgment, 7) bill payment, 8) knowledge of personal assets/estate arrangements, and 9) investment decision making. The model operationalized domain performance with tasks examples of which include: identify specific coins and currency, define a variety of simple financial concepts, identify and explain parts of a check and check register, explain meaning and purpose of bills, understand options and determine returns. We define investing capacity as “the ability to execute investing transactions in a manner that facilitates the achievement of the investor’s goals, and is consistent with the investor’s values.” We have adapted and applied the domain based model to investing capacity and have identified 5 broad skill sets (domains), that make up investing capacity. These include: 1) investment calculations, 2) understanding general investment concepts and strategies, 3) monitoring investment performance, 4) risk awareness, and 5) investment judgment/decision making. We operationalized domain performance through the use of tasks and items examples of which include: calculating effect of fees upon investment return, defining a fiduciary, describing dollar cost averaging, identifying portfolio’s overall risk level, allocating investment dollars appropriately and requiring client approval before an advisor/broker can execute a transaction on a client’s behalf. An analysis of the comparison reveals similarities in the definition and models of both capacities which are organizational and structural only. The critical outcome however is the significant differences in the content of the domains and items/tasks including those in the one common domain of investment decision making. Clearly the comparison demonstrates that investing and financial capacities are separate and therefore require separate capacity specific instruments to assess each one.

Need to Assess Investment capacity

There is ample evidence from the financial service industry to support the need for capacity evaluations regarding investing skills. For example, in order to determine how often financial professionals encounter issues related to diminished capacity in their clients, a survey was administered to 166 compliance officers and 360 financial advisors (Karp, 2012). Approximately, 61% of advisors and 74% of compliance officers stated that diminished capacity was a problem for some clients served by their firm. Additionally, 83% of advisors

and 78% of compliance officers stated that firms should provide training with regard to handling issues related to diminished capacity. Only 33% of advisors and 25% of the compliance officers who responded to the survey reported that their firms required such training. Importantly, the survey seemed to focus on financial capacity as a global construct rather than investment specific issues which represent the core of the services that they provide.

Another study conducted by the Wall Street Journal involved a geographic analysis of the locations of problem stock brokers referred to as hot spots (Eaglesham & Barry, November 12, 2014). Problem brokers were operationally defined as those who had complaints lodged against them with a regulatory agency (e.g. FINRA). The analysis involved an examination of the record of 550,000 stock brokers spread through out the United States. The results of the analysis identified 16 national hotspots including 5 in southern Florida and 3 in New York. In many hot spots, the number of households headed by people over 65 whose income exceeded \$100,000, exceeded the national average by fifty percent. The results of the study support the conclusion that hot spots were located in geographic areas that had high densities of elderly residents. Indeed in the case of Delray Beach, it was found that there were 3,000 brokers located within in a 10 mile distance of an identified problem broker. Of these 1 in 17 or 3 times the national average had 3 or more disciplinary red flags in their record. Additionally, investigators noted that problem brokers frequently use incentives such as free dinners to induce older people to become their clients and buy investments that they recommend. These findings support the need for an investing capacity specific assessment instrument which can help professionals know when their clients may need assistance with the execution of investment transactions. Such assessment tools would also provide financial service firms and the families of clients advanced warning about an investor's vulnerability to either fraud or undue influence by unscrupulous financial professionals.

Current Status of Investing Capacity Assessment

To date, we know of no instrument exclusively devoted to comprehensively examining the transaction of investing. Thus far, assessment of investing capacity occurs as part of the broader assessment of financial capacity of which investing is considered to be a constituent skill (Marson et al., 2000; National Academies of Sciences & Medicine, 2016). As such, the transaction of investing and its component processes have yet to be fully elaborated upon and examined in detail. For example, the Financial Capacity Instrument (FCI) is a performance based instrument consisting of tasks which operationalize broad based domains of financial activity. The domains and tasks provide a global measure of money management skills (Griffith et al., 2003; Marson et al., 2000). The initial version of the FCI did not have a separate domain for investing, but did contain one investment related item, "Make Investment Decisions", under the domain of Financial Judgment. A subsequent revision of the FCI added an "Investment Decisions" domain which contains three items related to the transaction of investing. However it is narrow in scope and therefore not suitable for a focused in depth examination of investing capacity. Moreover, the FCI is not yet available for use in clinical settings thus limiting its utility.

The Financial Competence Assessment Inventory (FCAI) consists of dimensions and items which enable clinical and legal professionals to distinguish between individuals who can manage their finances independently and those who require legal intervention for the responsible and safe management of their finances, (e.g., appointment of a guardian or conservator) (Kershaw & Webber, 2008; Webber, Reeve, Kershaw, & Charlton, 2002). It includes under the dimension labeled “Financial Judgment”, one item specifically related to the transaction of investing. A third instrument, the Lichtenberg Financial Decision Rating Scale (LFDRS), emphasizes the decision-making aspect of the process of money management by assessing an individual’s ability to make responsible financial decisions within the specific context of an impending or recently transacted financial situation. Given the purpose of the LFDRS, items encompass a broad range of financial transactions that do not specifically relate to the transaction of investing (Lichtenberg, Stoltman, Ficker, Iris, & Mast, 2015).

The Assessment of Competency in Everyday Decision Making (ACED) is an instrument that provides a measure of decision-making with regard to either financial capacity, medication management or meal preparation (Lai et al., 2008). The ACED also focuses on a specific financial decision in the individual’s life and examines the extent to which individuals demonstrate elements of decisional capacity including understanding, appreciation, reasoning and expressing a choice with regard to the decision at hand. It does not, however, address investing related capacity. Recently, Spreng and colleagues introduced the Financial Competence in Everyday Decision Making (FCED) (Spreng et al., 2016). The FCED is an adaptation of the ACED that is specific to financial decision-making. It includes scenarios related to financial fraud and abuse of varying social complexity. However, as described, there are no scenarios that involve investment specific decision-making scenes, or other investment related skill sets.

Finally, other instruments such as the Independent Living Scales (ILS), incorporate a generic money management domain (Loeb & Fe, 1996). The ILS consists of 5 scales one of which is titled “Money Management”, and consists of items related to monetary calculations and budgetary precautions. Given that the goal of such instruments is to capture gross impairments, complex and specific aspects of any instrumental activity of daily living such as investing ability are typically not measured.

Thus far, reviews of FC instruments have overlooked the significance of the transaction of investing to the process of money management. Two separate reviews examined 88 and 10 financial capacity assessment instruments, respectively (Engel, Bar, Beaton, Green, & Dawson, 2016; Ghesquiere, McAfee, & Burnett, 2017). In Engel and colleagues’ review, they note that the comprehensiveness of an instrument is determined by the degree to which it “measures the entire construct of financial management skills”, and they identify nine skill domains “inclusive of all items found” across the instruments they reviewed. However, investing was not considered as a domain in their analytical framework. Ghesquiere and colleague’s review of ten financial capacity instruments focused upon the psychometric properties, strengths and weaknesses of each instrument. As such, neither review conceptualized investing as an independent capacity or commented on the lack of a model and corresponding instruments to assess investing capacity.

To summarize, despite the importance of assessing investing capacity, the instruments which are currently available do not offer the opportunity to examine it or provide partial assessment at best. For example, such instruments may focus on only one (decision-making) skill set of the entire range of skills that are required to complete investment transactions appropriately. Additionally these instruments provide only a small number of investing related items, rendering it difficult to make robust clinical conclusions with regard to either global investing capacity or any of the individual investing skills that the instruments do include, and appropriate interventions that compensate for investment skill weakness and build upon investment skill strength (Engel et al., 2016; Ghesquiere et al., 2017).

Implications for Researchers and Clinicians

The lack of availability of an investment specific instrument to detect and thoroughly measure impairment, has important implications for both researchers and clinicians.

Implications for Researchers: From a research perspective, there is a significant void in the capacity literature regarding the effect of aging, both normal and abnormal, on an investor's capacity to execute investment transactions, in an appropriate and responsible manner. Studies of financial capacity which have incorporated, (partially), investing as a constituent component, have demonstrated its sensitivity to cognitive decline in the presence of neurological disorders (Dreer, DeVivo, Novack, & Marson, 2012; Earnst et al., 2001; Griffith et al., 2003; Marson, 2013; Martin et al., 2008; Martin et al., 2013; Sherod et al., 2009; Tracy, Basso, Marson, Combs, & Whiteside, 2017; Wiedera et al., 2011). The lack of availability of an ICSAI, however, has denied researchers a method with which to conduct investigations of the relationship between cognitive aging, normal and abnormal, and the full range of investing skills. Moreover, the lack of conceptualization of investing as an independent capacity may have a negative effect upon researchers' opinion of the need to conduct this investigation in the first place.

Implications for Clinical Practice: Equally important, the lack of a capacity assessment instrument that is specific to the transaction of investing, poses major problems for clinical practice. First, as with other capacities, clinicians may be asked to assess a patient's/client's capacity to execute investment transactions appropriately and responsibly. The request for this type of evaluation may come from a judge, attorney, family member, financial advisor or compliance officer. As is required for all capacities (Demakis, 2012; Moye & Marson, 2007), evaluations of investing capacity must be narrowly tailored to address the specific reason for the referral and the associated clinical issues. Therefore, when the referral question relates to the capacity of an individual to execute investing transactions responsibly and appropriately, using one of the available financial capacity instruments may be inadequate as it may not capture nuances of the specific ability in question. Similarly, data derived from neuropsychological tests or other non-capacity specific instruments are considered to be a form of secondary and weaker evidence with regard to capacity performance. Direct conclusions about the capacity that is being evaluated cannot be drawn from such indirect sources of data (Griffith et al., 2003).

Finally, capacity specific instruments must contain a sufficient number of items that relate to all of the skill sets that comprise the scope and range of the capacity that is to be evaluated. The transaction of investing is a broad construct that involves procedural and conceptual skills in addition to decision making skills and an appropriate capacity assessment instrument must have items in sufficient numbers that represent these broad skills. As the FCI, FCAI and LFDRS conceptualize investing as primarily a decisional capacity and only have a small number of items if any that represent that skill set there currently exists no assessment instrument designed specifically and exclusively to assess investing capacity in its broadest conceptualization (e.g. more than just a decisional capacity) (Griffith et al., 2003; Kershaw & Webber, 2004; Lichtenberg et al., 2015).

In summary, the field has not yet recognized investing as an independent stand alone capacity resulting in a lack of a conceptual model of investing capacity, and a corresponding investing capacity specific assessment instrument. This lack of recognition also characterizes reviews and discussions of financial capacity assessment instruments. For clinicians, the lack of a model and assessment tool means that their evaluations of investing skills must utilize instruments that do not assess the entire range of skills that are required for the successful execution of investment related transactions, and they must therefore rely on secondary, indirect and less robust sources of data (e.g. neuropsychological tests).

Benefits of Investing Capacity Assessment Instruments

In this section, we discuss the benefits of developing instruments specific to investing capacity. The primary beneficiaries of the development of these instruments would be investors, financial professionals and the firms they work for as well as clinicians and legal professionals.

America's population is aging rapidly. Older citizen's are vulnerable to and are frequent targets of investment related fraud. The results of such victimization can be harsh. Many of Bernard Madoff's victims were elderly persons who lost most of their financial assets (eg. retirement accounts), and had to return to work to afford basic necessities such as rent. The use of ICSAs can provide evidence of investing capacity impairment and the need to implement protective measures prior to the occurrence of impaired investment decision making and victimization.

The development of ICSAIs would have four benefits for financial service professional and the firms that they work for. First, financial advisors and wealth managers could use the results of ICSAIs to obtain a baseline measure of investing capacity. This measure would function as a future resource which could be used to make determinations about the trajectory of decline in investment skills. Second, when financial professionals suspect that investing capacity may be impaired, based on observations made during interaction with investors, data obtained from ICSAIs could be used to determine whether investment capacity is impaired. Third, the development of investment capacity specific instruments could help compliance officers make more informed and objective decisions about when to initiate protective protocols. Fourth, by providing additional staff training with regard to the use of ICSAIs and utilizing ICSAI derived data to make decisions with regard to client investment capacity, financial service firms would reduce their legal vulnerability to suits

initiated by litigious families and attorneys based upon allegations of inadequate training, oversight and client protection.

Clinicians will also benefit from the development of ICSAIs. As America's population ages and the prevalence of neurocognitive and neurodegenerative disorders increases, there will be a concomitant increase in the number of requests by financial and legal professionals to assess the investing capacity of their clients. The availability of ICSAIs will enable clinicians to conduct assessments of investing skills in a manner that is concordant with the reason for referral. Clinicians will no longer have to use instruments that assess global financial capacity that address investing capacity minimally. They will no longer have to rely on assessment instruments that provide indirect sources of data about investing capacity such as neuropsychological instruments which assess memory and executive function. ICSAIs will provide clinicians with data that is directly related to investment skills. They will enable clinicians to: 1) Characterize investing capacity as a whole, 2) Identify specific investment related skill strengths and weaknesses, and 3) Recommend interventions that build upon investment skill strengths and compensate for investment skill weaknesses.

Judges will also experience an increase in the number of requests to hear cases that involve investing capacity related issues. Adjudication of these cases will involve consideration of remedies such as 1) The appointment of a guardian or conservator, and 2) Civil orders to freeze investor assets. ICSAIs will allow judge's to determine the need for specific remedies or no remedy at all through the application of the doctrine of limited capacity (Demakis, 2012; Marson & Sabatino, 2012). By treating investing capacity as a multidimensional construct, ICSAIs will facilitate judicial decisions about investor capacity that reflect a balance between two competing issues: the need for protection and the desire for independence (Lichtenberg et al., 2015). Judicial decisions that provide unnecessary protective remedies can result in unnecessary investment related right restriction. Judicial decisions that allow for too much independence can increase investor vulnerability to investment related fraud and abuse. ICSAIs will allow judges to render decisions that provide remedies based upon an appropriate balance between protection and independence.

Direction For Future Research

Following the recognition of investing as an independent capacity, research should focus on the initial phase of the development of an ICSAI. Specifically, as with financial capacity, to which investing capacity is clearly related, the initial task would be the development of a definition, clinical conceptualization and model of investing capacity. This should be followed by identifying and utilizing appropriate source material from which to develop investment related items for the ISCAI. Appropriate aspects of validity and reliability should then be established.

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