Shari'a Standard No. (21)

Financial Paper
(Shares and Bonds)

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In the name of Allah, the Benevolent, the Most Merciful
Praise be to Allah and peace be upon His Messenger, and his Family and the Companions

Preface

This Standard aims to elaborate the rules for the shares of corporations just as it seeks to explain the rules for interest-bearing bonds.

Statement of the Standard

1. Scope of the Standard

This Standard applies to shares with respect to their issuance and flotation including investment, trading, renting, loaning, pledging and *salam* in them, along with the rule for concluding futures, options and swapping contracts on the basis of shares.

The Standard also applies to interest-bearing bonds, that is, to the issuance of and trading in these bonds. The Standard does not apply to investment *sukuk* for which there is a separate specific standard.

2. The rules for the issuance of shares

2/1 The issuance of shares is permitted if the objectives for which the corporation was established are lawful according to the Shari'a, thus, the objectives of its formation should not be transactions that are prohibited, like the manufacturing of liquor, trading in swine or transactions in riba. If the objectives of the corporation are unlawful, the formation of the corporation is unlawful too, and consequentially the issuance of shares that constitute such a corporation.

2/2 It is permitted to add a determined percentage to the value of the share at the time of subscription to cover the expenses of issuance as long as this percentage is fixed and determined to be a reasonable amount. See item 4/1/2/2 of Shari'a Standard No. 12 regarding Sharika (Musharaha) and Modern Corporations.

2/3 It is permitted to issue new shares for increasing the capital of a corporation if these are issued at a price that is equivalent to the value of the old shares, which is worked out through expert valuation of the assets of the corporation or on the basis of the market-value whether this is at a premium or at a discount with respect the price of the issue. See item 4/1/2/3 of Shari'a Standard No. 12 with respect to Sharika (Musharaha) and Modern Corporations.

2/4 It is permitted to underwrite the issue when this is done without compensation in lieu of underwriting. This is an agreement, at the time of the formation of the corporation, with someone who undertakes to purchase the entire issue of shares, or a part thereof. It is an undertaking from the person bound to subscribe at the nominal value to all that remains and has not been subscribed to by another. It is permitted to acquire compensation for work, like the preparation of feasibility studies or the marketing of shares, irrespective of the work being undertaken by the underwriter or someone if such compensation is not in lieu of a guarantee. See item 4/1/2/4 of Shari'a Standard No. 12 regarding Sharika (Musharaka) and Modern Corporations.

2/5 It is permitted to split the value of the share into instalments at the time of subscription so that one instalment is paid and the remaining instalments are deferred. The subscriber will be considered a participant to the extent of what he has paid up and will be bound to pay his additional capital in the company, and this on the condition that the instalments apply to all the shares and that the liability of corporation remains restricted to the value of the shares subscribed to. See item 4/1/2/5 of Shari'a Standard No. (12) regarding Sharika (Musharaka) and Modern Corporations.

2/6 It is not permitted to issue preference shares that have special financial features leading to the granting of priority to these shares at the time of liquidation or the distribution of profits. It is permitted to grant certain shares features related to procedural or administration matters, in addition to the rights attached to ordinary shares, like voting rights. See item 4/1/2/14 of Shari'a Standard No. 12 regarding Sharika (Musharaka) and Modern Corporations.

2/7 It is not permitted to issue *tamattu*` shares. These are shares that grant the participant compensation in lieu of his shares, whose value is redeemed during the existence of the company, and he is granted *tamattu*` shares that grant him rights that are available for shares based on capital, except the right to profits and the distribution of assets at the time of winding up, insofar as the *tamattu*` shares are entitled to profit lesser than that given to the owner of shares based on capital, just as the owner of *tamattu*` shares does not have a share in the assets of the company at the time of winding up until the owners of shares based on capital have been granted the value of their shares. See item 4/1/2/15 of Shari'a Standard No. 12 regarding Sharika (Musharaka) and Modern Corporations.

2/8 The share certificate – or what stands in its place – is a document that is deemed evidence of ownership of the shareholder for his undivided share in the assets of the company. It is permitted that this document be in the name of the owner, to his order, or for the bearer.

3. Rules for dealing in shares

3/1 A share represents an undivided share in the capital of a corporation, just as it represents an undivided share in its assets and the rights associated with it upon conversion of the capital into tangible things, benefits, debts and so on. The subject-matter of the contract at the time of trading of shares is this undivided share.(1)

(1) See the Basis of Shari`a Rulings, item (18), for the permissibility of trading in shares of corporations whose assets represent tangible things and profits along with debts and cash that are in excess of the tangible assets and profits with the stipulation that such tangible and cash assets should not be less than one-third. The reason is that the debts and cash can be properly considered as secondary to them. (This explanatory note is intended to complete the text of the Standard for implementing subsequent amending procedures, God willing).

3/2 It is permitted to buy and sell shares of corporations, on a spot or deferred basis in which delay is permitted, if the activity of the corporation is permissible irrespective of its being an investment (that is, the acquisition of the share with the aim of profiting from it) or dealing in it (that is, with the intention of benefiting from the difference in prices).

3/3 Participation or trading in, shares for purposes of conversion

Participation or trading is permitted for purposes of conversion for one who has the ability to effect conversion by adopting a resolution for conversion in accordance with the Shari'a at the first general meeting or by striving for conversion in line with item 3/4/6. See Shari'a Standard No. (6) pertaining to the conversion of a conventional bank into an Islamic bank.

3/4 Participation or trading (for investment and trading) in the shares of corporations whose primary activity is lawful, but they make deposits or borrow on the basis of interest

The fundamental rule is that of prohibition of acquiring shares of and transactions (investment and trading) in the shares of corporations that sometimes undertake transactions in *riba* and other prohibited things even when their primary activity is lawful, but from this rule subscription and transactions (investment or trading) are exempted with the following conditions:

3/4/1 That the corporation does not state in its memorandum of association that one of its objectives is to deal in interest, or in prohibited goods or materials like pork (swine) and the like.

3/4/2 That the collective amount raised as loan on interest – whether long-term or short-term debt – does not exceed 30% of the market capitalization of the corporation, knowingly that raising loans on interest is prohibited whatsoever the amount is.

3/4/3 That the total amount of interest-taking deposits, whether short-, medium- or long-term, shall not exceed 30% of the market capitalization of total equity, knowingly that interest-taking deposits are prohibited whatsoever the collective amount is.

3/4/4 That the amount of income generated from prohibited component does not exceed 5% of the total income of the corporation irrespective of the income being generated by undertaking a prohibited activity, by ownership of a prohibited asset or in some other way. If a source of income is not properly disclosed then more effort is to be exerted for identification thereof giving due care and caution in this respect.

3/4/5 For the determination of these percentages, recourse is to be had to the last budget or verified financial position.

3/4/6 It is obligatory to eliminate prohibited income specific to the share that is mixed up with the earnings of the corporations, and this in accordance with the following:

3/4/6/1 The elimination of prohibited income is obligatory on one who is the owner of the share, whether an investor or a trader, at the end of the financial period, even if the payment is due at the time of issuance of the final financial statements whether quarterly, annual or for other period. Accordingly, elimination is not obligatory for one who sells the shares before the end of the financial period.

3/4/6/2 The subject-matter of elimination is the prohibited income specific to the share whether or not the profits have been distributed and whether or not the corporation has declared a profit or suffered a loss.

3/4/6/3 Elimination is not obligatory for the intermediary, agent or manager out of part of their commission or wages, because this is their right in lieu of the work they have undertaken.

3/4/6/4 The figure, whose elimination is obligatory on the person dealing in shares, is arrived at by dividing the total prohibited income of the corporation whose shares are traded by the number of shares of the corporation, thus, the figure specific to each share is obtained. Thereafter the result is multiplied by the number of shares owned by the dealer – individual, institution, fund or another – and the result is what is to be eliminated as an obligation.

3/4/6/5 It is not permitted to utilise the prohibited component in any way whatsoever nor is any legal fiction to be created to do so even if this is through the payment of taxes.

3/4/6/6 The responsibility for elimination of the prohibited component of the income, for the benefit of all, falls upon the institution in case it is trading for itself or in case it is managing the operations. In the case of intermediation, however, it is bound to inform the person dealing in them of the mechanism for the elimination of the prohibited component so that he can undertake it himself. The institution may offer these services, with or without a charge, for those dealers who desire them.

3/4/7 The institution will apply the above rules whether it does so directly or through another and whether it is trading for itself or for another by way of intermediation or management of wealth, like funds, or is doing so as the agent of another.

3/4/8 It is necessary to observe these rules throughout the period of participation or trading. If the rules cannot be applied, it is obligatory to give up such investment.

3/5 It is not permitted to purchase shares by raising interest-bearing loans through a broker or another (margin sales), just as it is not permitted to pledge

the shares for such a loan. See item 4/1/2/6 of Shari'a Standard No. 12 regarding Sharikah (Musharakah) and Modern Corporations.

3/6 It is not permitted to sell shares that the seller does not own (short sale), and the promise of a broker to lend these at the time of delivery is of no consequence. See item 4/1/2/7 of Shari'a Standard regarding Sharika (Musharakah) and Modern Corporations.

3/7 It is permitted to the buyer of a share to undertake transactions in it by way of sale to another and the like after the completion of the formalities of the sale and the transfer of liability to him even though the final settlement in his favour has not been made.

3/8 To secure lawful interests, it is permitted to specialised official agencies to organize trading in some shares so that it cannot be undertaken except through specialised brokers or those licensed to undertake the activity. See item 4/1/2/8 of Shari'a Standard No. 12 regarding Sharika (Musharaka) and Modern Corporations.

3/9 It is not permitted to lend shares of corporations.

3/10 It is permitted to pledge shares that are lawful according to the Shari'a, and in this respect there is no difference whether the assets of the corporation are cash, tangible assets or debts or they are a combination of cash, tangible assets and debts and irrespective of one type being predominant in them. This is to be done in conformity with the conditions for selling shares at the time of liquidation.

3/11 The contract of *salam* is not permitted in shares.

3/12 It is not permitted to conclude futures contracts for shares. See item 5/1 of Shari'a Standard No. 20 regarding the Sale of Commodities in Organised Markets.

3/13 It is not permitted to conclude contracts of options for shares. . See item 5/2 of Shari'a Standard No. 20 regarding the Sale of Commodities in Organised Markets.

3/14 It is not permitted to conclude swap contracts with respect to shares and their returns.

3/15 It is not permitted to rent shares, whether this is for pledging them or for the purpose of selling the rented shares, and returning shares similar to them, as is done in the stock-markets, or for acquiring their profits or for showing a stronger financial position of the hirer or for another reason.

3/16 It is permitted to lend shares by way of *i`arah* for the purpose of pledging them or for the purpose of granting their profit to the borrower as is done in stock markets. The borrower does not have the right to sell the shares except for the execution of the terms of the pledge.

3/17 It is not permissible to undertake trading in the shares of a corporation, when the assets of the corporation are cash exclusively, whether this is during the period of subscription or after that, prior to the commencement of the business of the company or at the time of liquidation, except at their nominal value and with the condition of delivery of possession.

3/18 It is not permitted to undertake trading in the shares of a corporation if the entire assets of the corporation are composed of debts, unless the rules for dealing in debts are observed.

3/19 If the assets of a corporation are composed of tangible assets, benefits, cash and debts, the rule for trading in the shares of such a corporation will differ according to the primary asset, which conforms to the objective of the corporation and its usual activity. If its purpose and activity pertain to trading in tangible assets, benefits and rights, trading in its shares is permitted without taking into account the rules of *sarf* or transactions in debts, irrespective of their size as in such a case these are secondary. If, however, the objective of the corporation and its usual activity is dealing in gold, silver or currencies (*sarrafah*), it is obligatory to undertake trading in its shares in the light of the rules of *sarf*.

3/20 It is stipulated for the implementation of what is laid down in paragraph 3/18 that it should not be adopted as a means for bargains in debts and trading in them by merging parts of tangible assets and benefits with the debts as a legal device for transaction in debts.

4. Rules for the issuance of bonds

The issuance of all kinds of bonds is prohibited when these bonds include stipulations for the return of the amount of loan and excess in any form, whether such excess is paid at the time of the satisfaction of the principal amount of loan, is paid in monthly or yearly instalments or in another manner and whether this excess represents a percentage of the value of the bond, as in the case with most types of bonds, or a part of it, as is the case with zero-coupon bonds. Likewise, prize bonds are also prohibited. This applies irrespective of the bonds being private, public or governmental.

5. The rule for trading in bonds

Trading in bonds, both sale and purchase, is prohibited and so is their pledging and endorsement and so on.

6. Shari'a substitute for bonds

The Shari'a substitute for bonds are investment *sukuk.* See Shari'a Standard No. (17) pertaining to investment *sukuk*.

7. Issue date

This Standard was issued on 30 Rabii I 1425H corresponding to 20 May 2004.

Adoption of the Standard

The Shari'a standard on financial papers (shares and bonds) was adopted by the Shari'a Board in its meeting No. (12) held at al-Madinah al-Munawwarah from 26-30 Rabi` al-Awwal 1425H, corresponding to 15--20 May 2004.

Shari'a Board

1.	Shaikh Muhammad Taqi Usmani	Chairman
2.	Shaikh Abdulla Bin Sulaiman Al Manea	Deputy Chairman
3.	Shaikh Al Siddiq Mohamed Al Amin Al Darir*	Member
4.	Shaikh Wahba Mustafa Al-Zuhaili	Member
5.	Shaikh Ajeel Jassim Al-Nashmi	Member
6.	Shaikh Abdul Rahman Bin Saleh El-Atram	Member
7.	Shaikh Dato' Gazali Bin Abdul Rahman	Member
8.	Shaikh Al Ayashi Al Saddiq Faddad	Member
9.	Shaikh Abdul Sattar Abu-Ghuddah	Member
10.	Shaikh Ahmed Ali Abdalla	Member
11.	Shaikh Nazih Kamal Hammad*	Member
12.	Shaikh Hussain Hamid Hassan	Member
13.	Shaikh Nizam Muhammad Salih Yaquby	Member
14.	Shaikh Mohamad Daud Bakar	Member
15.	Shaikh Muhammad Ali Al Taskhiri	Member
16.	Dr. Mohamed Nedal Al Chaar	Secretary General/ Rapparteur

* Did not attend the meeting.

Appendix A: Brief history of the preparation of the standard

The Shari'a Board in its meeting No. (7) held at Makka al-Mukarrama from 9-13 Ramadan 1422H corresponding to 24-28 November, 2001 decided to issue the Shari'a standard on financial paper (shares and bonds).

On 25 Rajab 1423H corresponding to 2 October 2002, the Shari'a Standards Committee decided to commission a Shari'a consultant for the preparation of an exposure draft on the Shari'a standard for financial paper (shares and bonds).

In meeting No. (6) of the Shari'a Standards Committee No. (2) held from 14-15 Muharram 1424H corresponding to 17-18 March 2003, in the Kingdom of Bahrain, the Committee discussed the Shari'a standard and required the consultant to incorporate necessary amendments in the light of the discussion and observations of the members.

In meeting No. (7) of the Shari'a Standards Committee No. (1) held from 14-15 Safar 1424H corresponding to 16-17 April 2003 in the Kingdom of Bahrain, the Committee discussed the exposure draft of the Shari'a standard on financial paper (shares and bonds) and made necessary amendments, just as the Committee discussed the exposure draft of the Standard in its meeting held from 25-26 Rabi'ul Akhar 1424H corresponding to 25-26 June 2003 and made necessary amendments in the light of the discussion and observations of the members.

In its meeting No. (9) held from 23-24 Jumada I corresponding to 23-24 July 2003 at Amman, the Hashimite Kingdom of Jordan, the Committee discussed the exposure draft of the Standard and made necessary amendments in the light of the discussion and observations of the members.

The revised exposure draft of the Shari'a standard was presented to the Shari'a Board in its meeting No. (11) held in Makka al-Mukarrama from 2-8 Ramadan 1424H, corresponding to 27 October-2 November 2003. The Shari'a Board made further amendments to the exposure draft of the standard, and decided that it be sent to specialists and interested parties in order to obtain their comments in preparation for the discussion of the standard in a public hearing.

The Organisation held a public hearing in the Kingdom of Bahrain on 29 Dhul-Qa`da 1424H corresponding to 21 January, 2004. The public hearing was attended by more than fifteen participants representing central banks, institutions, accounting firms, Shari'a scholars, academics and others interested in the field. The members of the Shari'a Standards Committees No. (1) and (2), responded to the written comments that were sent prior to the public hearing as well as to the oral comments that were expressed in the public hearing.

The Shari'a Standards Committees Nos. (1) and (2) in a joint meeting in the Kingdom of Bahrain on 30 Dhul Qa`da, 1424H corresponding to 22 January, 2004 discussed the comments that were made during the public hearing as well as the observations sent to the Organisation in writing. The Committees made amendments that were deemed suitable.

The amended exposure draft was presented to the Drafting Committee in its meeting held in the Kingdom of Bahrain on 25 Safar, 1425, corresponding to 15 April, 2004.

The Shari'a Board in its meeting No. (12) held at al-Madinah al-Munawwarah during the period 26-30 Rabi'ul Awwal 1425H, corresponding to 15-20 May, 2004 discussed the amendments suggested by the Shari'a Standards Committee and the Drafting Committee, and incorporated the amendments deemed suitable. The Shari'a Board unanimously adopted some of the items of the standard and some items were adopted by the majority vote of the members of the Shari'a Board, as recorded in the minutes of the meetings of the Shari'a Board.

Appendix B: Basis of the Shari'a Rulings

The Issuance of Shares

1. The basis for the permissibility of the issuance of shares, when the objectives for which the corporation has been established are lawful, is the basis for the permissibility of the corporation (*sharikat al-musahama*), which is the generality of the evidences conveying the obligation of abiding by contracts and conditions, the generality of the evidences conveying the permissibility of partnership, and the generality of the evidences conveying the permissibility of *`inan*, *mudaraba*, *musaqah* and *muzara`a. `Inan* is the basis for the permissibility of participation by two or more persons with their wealth and labour, just as *mudaraba*, *musaqah* and *muzara`*a are the basis for the permissibility of participation with wealth from one side and labour from the other side whether the subject-matter of the contract is cash, as in the case of *mudaraba*, or is tangible assets that are developed with work on these assets, as in the case of *musaqah* and *muzara`a.* The evidences for all these forms are well known.

2. The basis for the permissibility of underwriting the issue without compensation is that it is an undertaking that does not have a counter-value, which is the taking of compensation for it. In this regard a resolution of the International Islamic Fiqh Academy has been issued.(2)

3. The basis for the impermissibility of the issuance of preference shares, that is, in other than the prescribed manner, is that this leads to the severance of participation in profit and the imposition of injustice on the other shareholders.(3)

4. The basis for the impermissibility of issuing *tamattu`* shares is that the owners of these shares claim their rights to profit and their redemption is only in form as they continue to be owners of these share and are entitled to rights at the time of liquidation.

5. The basis for the permissibility of share being in a person's name, at his order, or for bearer is that the Lawgiver wishes to establish rights through writing and other forms, but He has not determined a particular form for this. If—in the case of corporations—this takes place through the issuance of shares on which names of the shareholders are written then this is valid. Likewise, if this is undertaken by recording the names of the shareholders in special registers, or indexes, or in any other way, or even if the names are not recorded at all—neither on the certificates nor elsewhere—then this is permissible.

Trading in Shares

6. The basis for the sale and purchase of shares of corporations, when the activity of the corporation is permissible, is that the shares are owned by the shareholder, and he has the right to undertake transactions in them as he likes whether this is by way of sale, gift or another way, especially when each one of the shareholders

(2) Resolution of the International Islamic Fiqh Academy No. 63(1/7) pertaining to financial markets.

(3) Resolution of the International Islamic Fiqh Academy No. 63(1/7) pertaining to financial markets.

has been granted permission to undertake such transactions through their participation in the memorandum of the corporation and by subscribing to it.

7. The basis for the permissibility of participation by one who has the ability to convert of makes an effort to convert insofar as that is a means to alter the rejected and belongs to the category of *al-amr bi'l ma`ruf wa-al-nahy `an'il-munkar* (doing good and forbidding evil), which is an act approved by acknowledged evidences. In this regard a legal opinion (fatwa) has been issued by the Third Seminar on Financial Markets.(4)

8. The basis for exempting trading in the shares of these corporations, whose primary activity is lawful, however, they deposit amounts and borrow on the basis of interest, is the application of the rule of removal of hardship and acknowledging of general need, widespread practice, the acknowledged principles of surplus, shortage and predominance,(5) as well as the permissibility of dealing with one the major part of whose wealth is lawful,(6) along with reliance upon the issue of separation of bargains according to some Jurists.(7) This is upheld by most *fatwa* issuing organisations as well as the Shari'a Supervisory Boards of Islamic banks.(8)

9. The basis of the impermissibility of buying shares by raising interest-bearing loans from the broker or someone else, is the indulgence in interest and securing this through pledge, and these are activities prohibited by the Texts along with a curse for those who charge riba, pay it, write it down and witness it.

10. The basis for the impermissibility of the sale of shares that the seller does not own is that this leads to the sale of something that is not within the liability of the seller nor in his ownership, and this is prohibited according to the Shari'a.

11. The basis for the permissibility of undertaking transactions in shares even though the final registration formalities have not been completed is the transfer of the liability for loss (*daman*) to the buyer. This is attained through legal possession that is granted through the transacting in what he has purchased.

12. The basis for the impermissibility of lending the shares of corporations is that the share at the time of repayment---in consideration of what it represents---does not represent the same thing that it did at the time of lending due to the constant change in the assets of the corporation.

13. The basis for the permissibility of pledging the shares of corporations is the established principle that a thing can be pledged if its sale is permissible. As the sale of shares is permitted, pledging them is also permitted. The reason is that the

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(4) Held in the Kingdom of Bahrain during Jumada I 1412H corresponding to November 1991

(5) *Al-Furuq* by al-Qarafi, vol. 4, p. 104; *al-Muwafaqat*, vol. 1. p. 37; *Ahkam al-Qur'an* by Ibn al-Arabi, vol. 4, p. 1804; and *Qawa*`id *al-Ahkam fi Masalih al-Anam*, vol. 1, pp. 18, 41-45.

(6) *Bada'i` al-Sana'i`,* vol. 4, p. 104; *al-Ashbah wa-al-Naza'ir* by Ibn Nujaym, pp. 112-114; *al-Bayan wa-al-Tahsil*, vol. 18, pp. 194-95; and *al-Manthur fi al-Qawai`id,* vol. 2, p. 335.

(7) *Fath al-Qadir,* vol. 6, pp. 89-90; *`Aqd al-Jawahir al-Thamaniyya*, vol. 3, p. 439; *Sharh al-Kabir ma` al-Dusuqi*, vol. 3, p. 15; *al-Rawda*, vol. 3, pp. 420-25; and *Majmu` al-Fatawa*, vol. 29, p. 48.

(8) Among these is al-Rajhi Organisation in its resolution No. 48, 23/8/1422H.

purpose of a pledge is the securing of a loan and recovering it through the sale price of the asset pledged in case recovery is not possible from the debtor. This is what is achieved through the pledging of shares and is, therefore, permitted.

14. The basis for the impermissibility of *salam* in shares is that the subject-matter of *salam* is a debt and not an ascertained thing, while in shares of corporations nothing works except ascertainment. This is done by mentioning the name of the corporation whose shares are desired through *salam* thereby rendering the shares an ascertained thing and not a liability for a debt. Shares cannot, therefore, essentially be the subject-matter of the contract of *salam*. Further, *salam* in shares implies the sale of ascertained things that are not owned and this is not permitted. In addition to this, the constant availability of specified shares in the market and the ability of the buyer to deliver them at the end of the period is something that cannot be guaranteed.

15. The impermissibility of concluding futures contracts for shares is that these contracts imply the stipulation of delay in the delivery of an ascertained sold commodity, that is, shares, and this prohibited and not permitted. Likewise, the delay in the price and the priced commodity, for this is the sale of a debt for a debt that is prohibited by agreement. Further, the seller—mostly—does not own the shares for which the futures contract has been concluded and is, therefore, selling something that is owned by another. This is something over which there is no disagreement among the scholars as to its impermissibility. It is also included primarily in the meaning of the Shari'a texts established through Muhammad Mustafa (SAWS) that convey the prohibition of the sale of something that one does not possess. Again, most of the futures contracts are completed through a cash settlement between the parties, and this is brazen gambling if this is stipulated within the contract. If it is not stipulated in the contract, it is still one type of gambling. Thereafter, the purpose of contracts is the delivery of possession, while in futures contracts delivery of possession is not the primary purpose of the contracting parties. These contracts, thus, create an obligation for, and engage the liability of, each party for a debt that is of no benefit, except by way of mukhatara and for waiting for a loss that will inevitably be incurred by one party.

16. The basis for the impermissibility of concluding options contracts for shares is the right of option—which is the subject-matter of options contracts transacted in financial markets—is not included in rights that can be sold. The reason is that this right is not established at all for the seller as it is created through the contract and after its creation it is not related to wealth rather it is related to an abstract thing, that is, sale and purchase. If established rights cannot be sold when these do not relate to wealth, like the right of pre-emption, the right to custody of children, the right of *qisas*, then, rights—like the right of option—cannot be permitted in the first instance. Added to this is the fact that dealing in options contracts is based upon *gharar*, and *gharar* is prohibited, just like dealing in options contracts is based upon gambling and games of chance, equally for the buyer and the seller of a right to an option, and this occurs in cases that terminate in a cash settlement between the two parties. The contract for an option falls under the sale by a person of something that he does not own when he writes an option to buy, for he does not own the shares or commodities that he undertakes to sell; and the sale of what one does not own is prohibited according to the Shari'a.

17. The basis for the impermissibility of concluding swap contracts for the dividends of shares is that these contracts include *riba* in both its forms if the contracts involve the same currency, or *riba al-nasi'a* alone if it involves two different currencies; the sale a debt for a debt as it is a contract in which both counter-values are deferred; *gharar* due to the uncertainty about the amount of the cash at the time of the contract; gambling, as the purpose of these contracts is the acquisition of the difference between the two average returns on the shares and it is not the delivery of possession, which is the purpose of contracts, thus, one of the parties gains and the other inevitably loses, and this is truly gambling. Each one of these prohibitions alone is sufficient to prohibit this type of contracts, then what about all of them collectively?

18. The basis for the permissibility of trading in shares or corporations, which include cash assets and debts, without regard for the rules of *sarf* and dealing in debts, even when such debts are more than one-half, is that in such circumstances such assets are deemed secondary, and in secondary things matters that are not normally overlooked otherwise are overlooked. If, however, the tangible assets and benefits are less than a third, it is not permitted to deal in the shares, except by observing the rules of *sarf* or transactions in debts, because in such a case the assets and benefits are meagre and here debts and cash cannot be deemed secondary to them, and they are the primary objective of the contract, thus, those conditions are to be stipulated for them that would be applied to them if they were desired separately.

19. The basis for the permissibility of trading in shares of corporations whose assets include debts and cash, when the objective and activity of the corporation is dealing in things and benefits, without regard for the percentage of debts and cash, is as follows:

a. The tradition of Ibn `Umar, God be pleased with both, "When a person buys a slave, who has wealth, then the wealth is for the seller, unless the buyer stipulates this too."[8] The tradition is explicit on the permissibility of the sale without regard for the genus of the price. The general meaning of the term "mal" in the tradition includes all his wealth whether this is cash, debts or goods and whether this is less or more. It indicates that debts or cash, less or more, in comparison with the price of the slave are not taken into account in the *hukm*, because they are in this case secondary and are not the primary purpose of the contract.

Imam Malik relates this tradition in *al-Muwatta'* and then says: "The matter is settled unanimously in our view that if the buyer stipulates the wealth of the slave then it belongs to him, whether this is cash or debt or goods, known or unknown. This applies even if the wealth owned by the slave is more than that with which he is purchased,

[8] Agreed upon by both al-Bukhari and Muslim, and this version is from al-Bukhari, *Sahih al-Bukhari*, *Kitab al-Musaqah*, ch. on the person who has a right of way or right to water in an orchard or palm-grove (No. 2250); *Sahih Muslim*, *Kitab al-Buyu`*, ch. on the person who sells palm-grove with fruit (No. 1543).

and irrespective of whether the price is cash debts or goods."[9]

b. The tradition of Ibn `Umar, God be pleased with both, "When a person buys a palm-grove after pollination, then the fruit is for the seller, unless the buyer stipulates this too."[10] The tradition conveys the permissibility of an absolute stipulation on the part of the buyer for the fruit whether or not the fruit has begun to ripen despite the prohibition of the sale of fruit before it has begun to ripen, as is found in the tradition of Jabir, God be pleased with him, "The Messenger of Allah (SAWS) forbade the sale of fruit before it has begun to ripen."[11] As the fruit was secondary to the primary subject-matter, which was the palm-grove, it was overlooked when it would not be if it was the only subject-matter of the contract.

c. Among the established principles of fiqh according to the scholars is that the secondary is subservient. One who examines the various issues flowing from this principle, and the cases structured upon the principle, will find that these principles as a group convey the meaning that the secondary thing will take the rule of the primary and will not be assigned a separate rule; it will come to be owned along with the ownership of the primary, and something that will not be overlooked separately will be overlooked when the thing is secondary.

Among the cases derived from the rules are the following:

i. The subservience of what has not begun to ripen to what has begun to ripen even when what is ripening is very little. It is stated in Kashshaf al-Qina` as follows: "The ripening of some of the fuit of a tree in a garden is its ripening, that is, of the tree as well as the ripening of all that falls in this category in a single garden. … It becomes valid with what has begun to ripen as it is subsidiary to it."[12]
ii. The sale of a house, whose roof is painted with gold, for gold, or is painted with silver for silver; the sale of a sword ornamented with gold for gold; the sale of milk for milk; or a thing made of wool for wool and so on.

The Issuance of Bonds

- The basis for the prohibition of issuing interest-bearing bonds is that they represent, in their customary nature, a loan and the meaning of a loan is applied to them in their nature according to the Shari'a. As each loan that yields a

[9] See *al-Muwatta'*.
[10] Agreed upon by both al-Bukhari and Muslim, and this version is from al-Bukhari, *Sahih al-Bukhari, Kitab al-Musaqah,* ch. on the person who has a right of way or right to water in an orchard or palm-grove (No. 2250); *Sahih Muslim, Kitab al-Buyu`*, ch. on the person who sells palm-grove with fruit (No. 1543).
[11] Agreed upon by both al-Bukhari and Muslim.
[12] Vol. 3, p. 287; see also *al-Mughni*, vol. 6, p. 156.

benefit is *riba*, and the issuance of bonds is based upon loans with interest, their issuance is prohibited according to the Shari'a.

Dealing in (Negotiation of) Bonds

- The basis for the prohibition of dealing in bonds is what has been settled with respect to their issuance due to their being based on riba. The reason is that the word negotiation includes the meaning of continuity and the transfer of the bond from one hand to another bearing interest benefits. This means that the buyer of a bond continues to be a creditor of the issuing corporation and demands riba for his debt. This is prohibited according to the Shari'a of God, and all dealing leading to this is prohibited.

Appendix D: Definitions

Share
It is the share of a shareholder in the assets of the corporation and is represented by a certificate that can be negotiated. The term share is also applied to the certificate that represents such share.

Preference shares
These are shares whose bearer is accorded priority over the holder of the ordinary share in the distribution of dividends and in claiming his share in the assets of the corporation at the time of liquidation.

Tamattu` shares
These are shares whose holder is granted compensation for his shares that are offered for redemption during the existence of the corporation, and in exchange for this he is granted *tamattu`* shares that grant him the rights that belong to the holder of shares based upon capital, except in dividends and the distribution of assets a the time of its winding up, insofar as the owner of the *tamattu`* shares is given a share in the profits less than that given to the shares based upon capital, just as the owner of the *tamattu`* shares does not get a share in the assets of the corporation at the time of winding up until the owners of shares based on capital are granted the value of their shares.

Futures contract
It is a contract for a specified thing, or one described as deferred liability, for a deferred prince.

Option Contract
It is a contract for compensation for an abstract right granting the owner the right to sell a specified thing, or to buy it for a specified price, during a determined period, or at a fixed date, either directly or through an organisation that guarantees the rights of the two parties.

Swap contract
It is an agreement between two parties to exchange at a subsequent date the average return on a specified share, or a group of share for the average return on a share or for another financial asset.

Bonds
It is financial paper issued by trading establishments and governments in order to raise long-term loans (wealth) in lieu of interest that is paid to the bearer of the bond after periods. They are sometimes issued at a discount with respect to their face value.