

Shari'ah Compliant Finance: Toward Economic *Jihad*

**A Monograph
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Abstract

SHARI'AH COMPLIANT FINANCING: Toward Economic Jihad by Major Kevin R. Nalette, USAF, 52 pages.

This monograph discusses the relevant components of the Islamic financial sector, otherwise known as Shari'ah Compliant Finance, in order to gain a better understanding of an industry quickly spreading around the globe and the greater implications for the system's reliance on Shari'ah law.

The analysis divided the Shari'ah financial system into its three main components: the underlying components of the financial system and associated definitions; the financial system's foundations on Shari'ah law; and finally the legal justification for the system as a method of economic *jihad*. This is important because United States financial institutions are involved in Shari'ah financing. Some of the largest financial organizations in the US offer Shari'ah compliant investment vehicles including Citigroup, American International Group (AIG), Goldman Sachs and Morgan Stanley. None of these corporations offer any information about Shari'ah law to investors other than a statement of conformance to ethical principles. Nowhere in the advertising literature do these companies discuss the other material facts of Shari'ah compliance as required by the 1933 and 1934 Securities Acts defining disclosure requirements.

The triadic argument plainly demonstrates that Shari'ah Compliant Financing is economic *jihad*, a methodology effectively establishing a foothold of acceptance for Shari'ah law under the guise of an ethical banking structure. Once Shari'ah law gains acceptance in this seemingly benign realm, those supporting the "settlement" of the West may push for Shari'ah law acceptance in other facets of the legal system.

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Introduction

A robust financial system existed in the geographic area that we know as today's modern day Middle East even before the Prophet Mohammed preached the word of *Allah* as transcribed in the Qur'an. A few modern Arab countries developed today's Islamic financial system in the 1970s. The Islamic concept is different from the Western finance system as it complies with the principles of Islamic law, also known as Shari'ah. The last decade has seen substantial growth in this economic sector owing to growth among banks from Gulf Cooperation Council (GCC) countries. More recently, the UK and US began pursuing business investments in this market segment. Several major financial institutions in the US, namely Citigroup, American International group (AIG), Goldman Sachs, and Morgan Stanley offer Shari'ah compliant investment vehicles.

To qualify as Shari'ah compliant, the investment portfolio, among other things, cannot contain companies that deal in pork or pork products, entertainment, alcohol, military equipment, gambling enterprises and other vices. Additionally, the companies the fund holds cannot have more than 33 percent of their assets from interest income (e.g. credit card banks) nor can companies possess corporate debt greater than 33 percent, as this is viewed as excessive risk. To ensure compliance, investment firms must rely on guidance from a Shari'ah council, paid to assert the financial products conform to Shari'ah law. Even the US's Dow Jones company is involved, operating the Shari'ah compliant Dow Jones Islamic Market Index.

By rule, Shari'ah Law is all encompassing; you either follow all of Shari'ah Law or none. One cannot decide to follow certain tenets of the Shari'ah and abdicate responsibility for other tenets. Under this belief system some US and UK banks, as well as the Dow Jones, are tacitly supporting Islamic Shari'ah Law by offering Shari'ah compliant investments. Until his recent removal, one of the Shari'ah advisors for the Dow Jones Islamic Market Index was Muhammad Taqi Usmani from Pakistan, a retired Pakistan Supreme Court Justice. Usmani has published numerous articles and books calling for *jihad* against all those who do not follow Islam according

to Shari'ah Law. In effect, the Dow Jones was paying an individual to certify investments who in turn was calling for *jihad* against the West. Western investors in Shari'ah compliant funds may not understand what they are supporting by investing in these funds. The investors may not comprehend how their financial support to these funds in effect supports the global *jihad*. Additionally, companies offering the Shari'ah compliant investment vehicles do not fully disclose the nature of Shari'ah law to their customers.

The hypothesis of this monograph is that Shari'ah Compliant Financing is economic *jihad*, which effectively establishes a foothold and acceptance for Shari'ah law under the guise of an ethical banking structure. Once Shari'ah law gains acceptance in this seemingly benign realm, those supporting the “settlement” of the West will have established a precedent for Shari'ah law acceptance in other facets of the legal system. Answering the hypothesis demands that three different sets of research come together for proper due diligence. The monograph discusses several definitions and Islamic doctrinal beliefs to help clarify the relationship between Shari'ah Law, *jihad*, and SCF. The research begins with the defining characteristics of SCF. Definitions of Shari'ah Law, its applicability to the Muslim faith, and its role in the Islamic World follow to provide the environmental framework and background for the reader. Finally, the research defines *jihad*, what *jihad* means to the Muslim faithful, and its relationship with Shari'ah law. This research forms the basis for explaining Shari'ah Compliant Financing, what it is, how it is managed, and what, if any, links there are to *jihad*. This monograph strives to make the linkages clear.

The form of this monograph is neither an apologia nor a condemnation. It seeks to display the facts and allow the reader to make his or her own judgments. The author is not an Islamic scholar and does not make any claims of expertise towards Islamic law. However, the author is fully capable of conducting proper research and supporting the assertions with appropriate evidence. Undoubtedly, some will find this monograph offensive, as it does not seek to cover up or avert the truth as espoused in Islamic primary source texts. A key aspect of Islamic writing is the

absence of nuance. Islamic texts mean exactly what they say. This is an extremely difficult concept for Western readers to comprehend. Westerners continually seek out the underlying meanings in words and phrases, always searching for a different take on an issue. However, in this instance the Islamic texts are clear, un-nuanced, and in fact, the words as written mean exactly what they state. Evidence throughout the monograph sustains this assertion.

Many writings use the term “extremist” when referring to a Muslim who espouses the need for *jihad*, conducts *jihad*, or calls for the implementation of Shari’ah law. This monograph rejects the notion of “extremist.” Instead, the author offers the term “literalist.” If evidence shows that following the writings of Islam is a requirement for Muslims as dictated by *Allah*, and the writings mean what they say, it is not possible to label such a person as an extremist. Such a person is a literalist. Following the rules as proscribed by *Allah* is a requirement to be Muslim; following the rules does not make one an extremist. Though there are four separate sets of rules, this monograph primarily uses one, the Shafi’i school of jurisprudence as its primary text.

As discussed further on in the monograph, there are four schools of Islamic jurisprudence. The four schools of law are similar; generally varying only in the weight each gives to the method of interpreting the law. The Shafi’i school is the primary source for this monograph as it has the second largest following among Middle Eastern and Asian countries, and primary source texts translated to English are readily available. Two distinct primary source texts prevail throughout the monograph.

The monograph intentionally used a 1946 English translation of the Qur’an and a 1991 translation of Shafi’i Shari’ah law in an effort to avoid any reworked translations done after the September 11, 2001 terrorist attacks in New York City. The author acknowledges world events during 1946 and 1991 could have also led to differing translations of the primary source texts and therefore readers are encouraged to review the primary source material for themselves.

The monograph’s theme is Shari’ah law with regard to its economic requirements. Since Shari’ah law is all encompassing, it was necessary to use examples from outside the economic

realm to show the other impacts of implementing Shari'ah law. Accepting Shari'ah law in the financial sector admits Shari'ah law in toto-there is not any separation. A financial institution accepting Shari'ah investments by law also accepts the husband's right to discipline his wife in a physical manner. One does not get to say I will follow the Shari'ah for my finances but not for prayer, fasting, pilgrimage, justice, and marriage. This fact appears lost on Western financial institutions involved in Shari'ah Compliant Financing. At this juncture, it seems best to begin with an overview of Shari'ah Compliant Finance.

Shari'ah Compliant Financing

Shari'ah Compliant Financing or as it is also known, Islamic Finance, formally came into being in the 1970s. This date does not represent the dawn of finance in the Islamic world, as financial systems of one form or another have existed there for millennia. The date does, however, mark the formal beginnings of a movement to formalize finance under Shari'ah law. This section of the monograph defines Shari'ah Compliant Finance (SCF) and its components, requirements, and directives. From here, the monograph will link SCF to the greater *jihad* as legitimized by Shari'ah law itself. Finally, the monograph links Shari'ah law in toto to SCF with its inherent implications. These linkages show that Shari'ah law provides the boundaries for Shari'ah Compliant Financing, which in turn supports *jihad* as a whole. Conversely, this monograph does not seek to offer an opinion as to the validity of Shari'ah finance as an alternative to the universally accepted conventional financial system. Nevertheless, it is important to understand the history, components and requirements of SCF.

A Brief Background of Shari'ah Compliant Finance

Trade and finance in some fashion have existed for millennia. In fact, the Iqibi Bank of Babylon in 575 BC acted as a representative for their clients by conducting financial transactions

on a signatory basis including agricultural loans and a crude form of deposit account.¹ The Prophet Mohammed was himself a trader in historical Arabia. During the period of the supposed revelation, Mohammed's thoughts, ideas and actions were recorded in the Qu'ran, Sunnah and Hadith as prescriptions from *Allah* (God) himself. These three sources serve as the underpinning for Shari'ah law, which in turn provides the guidelines for the SCF system. The SCF system as known today began innocuously enough in Malaysia circa 1963.

In 1963, Malayan Muslims yearned for a safe place to hold their savings for the annual pilgrimage to Mecca that did not include interest on the money. The Pilgrim's Savings Corporation responded by creating a Shari'ah-based account whereby the money would be free from growth by interest.² The next spike of attention for SCF bubbled up with the Middle Eastern oil boom in the early 1970s and its resultant glut of petro dollars. The Nuevo rich oil barons decided they wanted to invest their money according to Shari'ah law and thus called for banks to develop a process to follow the prescribed tenets.³ What began with one financial institution in 1975 Egypt has expanded today to some 300 vying for control in at least 75 countries managing assets rapidly climbing above \$250 billion worldwide.⁴ In the United States, companies such as Citigroup, AIG, Goldman Sachs and Morgan Stanley all offer SCF products and the Dow Jones Corporation manages the Dow Jones Islamic Market Index.⁵ At this point, it is important to define SCF and its component parts.

¹ Muhammad Ayub, *Understanding Islamic Finance* (West Sussex: John Wiley & Sons, 2007), 179.

² Zamir Iqbal and Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (Singapore: John Wiley & Sons (Asia), 2007), 24.

³ Mohammed El Qorchi, "Islamic Finance Gears Up," *Finance and Development* 42, no. 4 (2005): 46-49.

⁴ Ibid., 46.

⁵ Dow Jones Islamic Market Index, <http://www.djindexes.com/islamic/index.cfm?go=overview> (accessed October 1, 2009).

Definition of Shari'ah Compliant Finance

Before presenting a definition for the SCF system, it is important to understand the context in which the Muslim community understands the system. Muslims believe the economy is a system based on ideology contrary to the Western view of economics as a science leading to the creation of wealth.⁶ To Muslims then, economics is a social science derived from and conducted under the guidance of Islamic values.⁷ The “fundamental feature of Islamic economics and finance is socio-economic and distributive justice with a comprehensive system of ethics and moral values. It is religion-based, valuation oriented, morality judged and spiritually-bound.”⁸

The foundational construct of Islamic economics and financial systems is social, economic and distributive justice containing a comprehensive methodology of morality and ethics.⁹ The finite purpose of an Islamic economy is the establishment of social justice because this type of system can “effectively address income distribution and poverty alleviation where capitalism has failed.”¹⁰ According to Ayub, the Islamic economic framework is a “means to achieve development in terms of complete human personality from all directions—material, world and ethics—of individuals in society. Once Shari’ah has been adopted, it will determine various aspects of economic management like the contents of production, trade, finance, distribution, and others.”¹¹ One can now understand the basis of the formal SCF system definition proposed by Iqbal and Mirakhor as

...[a] collection of formal and informal rules of conduct and their enforcement characteristics, designed by *Allah* through the rules prescribed in the Qu’ran, operationalized by the Sunnah of the Prophet and extended to new situations by

⁶ Ayub, 10.

⁷ Ibid., 31.

⁸ Ibid., 12-37. The author spreads his defining characteristics of SCF throughout his book vice constructing an entire chapter on his philosophies of the SCF system. Hence, several snippets of information are coddled together from throughout his book to put coherent summations of the information together.

⁹ Ibid., 12.

¹⁰ Ibid., 12-39.

¹¹ Ibid, 31-37.

ijtihad to deal with allocation of scarce resources, production and exchange of goods and services and distribution of resulting income and wealth.¹²

A concomitant basis for the SCF foundation is property rights preservation and contract sanctity.¹³ A fundamental difference between financial transactions under the conventional system and the Shari'ah system relies on the concept of a contract. In conventional finance, a transaction between parties is nothing more than a money transfer. A person brings their money to the bank, deposits the money, and leaves. The depositor has not established a relationship with the bank nor discussed appropriate transactions the bank can pursue. Under this system, a depositor enters into a contract with the bank. The depositor and the bank reach an agreement as to how the bank may use the depositor's money, and what share of profit and loss passes to the customer. All financial transactions in the Shari'ah system are contracts.¹⁴

Moving from the foundational beliefs of the system to its components necessitates a discussion of several important concepts. The next section outlines the basic mechanisms underscoring the SCF system. The section does not argue the efficacy of these components, but simply serves to define them to continue developing the picture of Shari'ah Compliant Finance.

The Basic Components of Shari'ah Compliant Finance

Many people offer the answer, "no interest charged" when asked what they know of Shari'ah Compliant Finance. Many book and journal authors use this as their introduction to the topic illustrating the paltry amount of knowledge surrounding the system. This monograph focuses on the most basic tenets of the Shari'ah system, as these tenets most often form the key arguments for replacing the conventional financial system with this Islamic variety. The terms defined and discussed are *riba*, usury, *gharar*, *murabaha*, *musharakeh*, and *ijarah*.

¹² Iqbal & Mirakhor, 32.

¹³ Ibid., 53.

¹⁴ Ibid., 4.

Riba and Usury: The Perceived Absence of Interest

The prevalent understanding of Shari'ah financing is the lack of interest paid against a loan. This section offers insight into this principle. *Riba* is the term accepted to mean an “excess or addition,” added to a transaction such as a monetary loan or a trade.¹⁵ *Riba* then, leads to usury, or excess paid beyond what the initial transaction was worth. In the Qur'an *Allah* prohibited usury in any form, which directly relates to the prohibition of *riba*. The most cited Qur'an verse defining this prohibition states, “Those who devour usury will not stand except as stands one whom the evil one by his touch has driven to madness...trade is like usury, but God has permitted trade and forbidden usury...God will deprive usury of all blessing.”¹⁶ Therefore, the prohibition of usury and concomitantly *riba* is divine in nature through the Qur'an and not simply an idolatrous addition to the Islamic economic system.

Some Islamic economic scholars posited that the prohibition of *riba* was primarily established to protect consumers from becoming over-indebted to a lender as well as paying for or receiving an unfair compensation tied to receiving or extending credit.¹⁷ In Islamic contexts, money does not have an intrinsic value. Money is for purchasing other items therefore earning money from money is *riba*.¹⁸ This is the basis for prohibiting interest on financial transactions. Likewise, the Qur'an proscribes dissimilar transactions as they also result in *riba*.

For example, a transaction between customers for wheat shares must have the same content. One trader cannot offer 10 bushels of premium wheat for 20 bushels of secondary wheat, as this result is *riba*; he is gaining 10 bushels more than he is offering. The trader can only offer 10 premium bushels for 10 premium bushels or 20 secondary for 20 secondary. The prohibition of *riba* as a form of usury ensures that financial transactions occur for the benefit of the buyer and

¹⁵ Alastair MacIntosh and Wayne Visser, “A Short Review of the Historical Critique of Usury,” *Accounting, Business, and Financial History* 8, no. 2 (1998): 175-189.

¹⁶ The Holy Qur'an, 2:275-276. See also verses 2:188, 3:130, 4:29, 161, 9:34-35, 43, 30:39.

¹⁷ Mahmood El-Gamal, *Islamic Finance* (New York: Cambridge University Press, 2006), 55.

¹⁸ Iqbal, 55.

the seller instead of occurring simply for an increase in money. The next section will discuss the concept of *gharar* as speculative risk.

***Gharar*: Avoiding Speculative Risk**

The term *gharar* refers to speculative risk, that is, a degree of uncertainty in a sale or trade.¹⁹ Shari'ah law considers the uncertainty of a transaction item's quality, availability, quantity or even existence to be *gharar*.²⁰ All transactions under the SCF construct must contain full disclosure by the seller as well as the buyer. The seller must physically possess the item for sale and the buyer must be able to pay for the item. *Gharar* inserts itself into the transaction when the seller withholds information describing the item for sale or the seller does not definitively possess the said item.

For example, an angler cannot sell fish from the day's catch if he has not yet caught the fish.²¹ Similarly, a shepherd cannot sell an unborn calf, even if the cow is obviously pregnant. Finally, a produce vendor cannot offer to sell a bunch of bananas sight unseen to a customer, take his money and then deliver rotten bananas. Here, the seller withheld information from the buyer. In all of these transactions, the seller either withholds information or does not possess the items for sale and that involves risk. This risk is *gharar*. The following concept is *murabaha*, or cost-plus sale; the most common way SCF institutions earn their profits.

***Murabaha*: A Cost-Plus Financing Methodology**

The optimal description of *murabaha* is as a cost-plus sales contract. The characteristics of this contract type should be familiar to most. In it, the seller purchases an item for one price, and

¹⁹ Sohrab Behdad & Farhad Nomani, *Islam and the Everyday World: Public Policy Dilemmas* (London: Routledge, 2006), 196.

²⁰ Iqbal, 67.

²¹ Ibid. This monograph does not cover personal insurance. The focus is on the SCF system in general terms. However, *gharar* is the mechanism that prohibits insurance. One is not allowed to pay into a policy that does not guarantee a payout. The Shari'ah councils ruled that since you do not know if you will ever get the benefits of the insurance policy, the contract therefore contains *gharar*.

then sells the item to another buyer at an increased price resulting in a profit for the seller. The Shari'ah Compliant Financial system extends this methodology to banking, whereby an individual enters into a contract with the bank for the purchase of an item with repayment occurring over time.²² The conventional banking system would label this a loan with interest. However, this is *riba* in the SCF system and therefore prohibited. In SCF, the seller must own the item for sale. Consequently, the seller increases the price for the buyer's privilege of deferred payments back to the seller. The increase also allows the seller to recover the original costs of purchase, such as legal fees, transportation, storage, etc. This type of transaction contains three separate contracts in order to avoid *riba*.

For simplicity's sake, let us assume the item for purchase is a house and where the common understanding between parties is the home's current owner does not finance the purchase with the buyer. Therefore, the buyer needs a loan from a bank to buy the house. The buyer approaches the bank with an offer to buy the house. Assuming the bank agrees, the three contracts come into being. First, the bank buys the house from the seller. Second, the bank resells the house to the buyer at an increased price to cover its costs and earn a profit. Third, the buyer repays the money to the bank over time. This appears to be similar to a conventional mortgage, but it is not.

In the case of *murabaha*, unlike a conventional mortgage, the bank and the buyer jointly own the house; it is not merely collateral for the bank's loan. Each payment from the buyer to the bank increases the buyer's share of the house and decreases the bank's share. In a conventional mortgage, the buyer makes payments against principle and interest on the loan. The *murabaha* contract continues until the buyer makes enough payments to complete the contract and then owns the house outright. The entire *murabaha* process does have its critics.

Some view this type of transaction as an interest based transaction under another name simply to claim it complies with Shari'ah law. The critics base their claim on the fact that the

²² Ibid., 87.

banks routinely use the prevailing market rate index as their profit markup during the sale.²³ The Shari'ah scholars counter stating a *murabaha* contract is not an interest-based loan, rather it is a contract whereby the price increase relates to the deferred payment; interest-based loans increase the amount of debt repayment simply to get the repayment deferred.²⁴ Finally, the scholars submit they have no other alternative but to use the prevailing index rate when determining profit margin as the Islamic index does not currently have the means to track the cost of capital.²⁵ The scholars base this claim on the fact that money, in and of itself, does not have value; it is simply used as a means to purchase other items. The next section discusses *ijarah* and its relationship to *murabaha*.

***Ijarah*: The Western Lease**

A *murabaha* contract results in ownership of property by the buyer. In contrast, an *ijarah* contract does not result in ownership; it is more like a lease. The formal definition of an *ijarah* contract is “the transfer of usufruct for a consideration, which is rent in the case of hiring assets or things and wages in the case of hiring people.”²⁶ In other words, an individual enters into an *ijarah* contract to rent an asset or commodity so they can benefit from the asset's usufruct such as shelter provided by a house. Additionally, one uses an *ijarah* contract to hire laborers. Laborers in this case have a broad definition, from construction workers and repair people to doctors and lawyers. One benefits from a doctor's usufruct during the course of treatment they receive. There are specific conditions required for an *ijarah* contract under the SCF system.

²³ Alex Alexiev, Islamic Financing or Financing Islamism,” The Center for Security Policy, <http://www.centerforsecuritypolicy.org/upload/wysiwyg/centerpercent20publicationpercent20pdfs/alexievp ercent20islamicpercent20finance.pdf> (accessed September 10, 2009).

²⁴ Iqbal, 90.

²⁵ Iqbal, 90.

²⁶ Ayub, 279.

Ijarah is a contract transferring the known usufruct of a particular asset for a specified period for an agreed rental amount.²⁷ The lessor must physically own the property under an *ijarah* contract and the lessee must have the means to make payment. At the conclusion of the contract, the lessor retains ownership of his property. Additionally, the lessor is responsible for all caretaking associated with the asset under contract. The lessee is only responsible for damage caused by negligence. Finally, *ijarah* contracts only cover consumer durable items, not commodities. Consumer durables are for rent and commodities are for sale.²⁸ One cannot enter into an *ijarah* contract for gas, and food; the only contract available for commodity items is a sale. *Ijarah* contracts are the most common, simplest and user-friendly modes of finance. Hence, they are the most important contract SCF institutions use for financial operations to meet the needs of all business sectors.²⁹ The final component of the SCF system essential to this discussion is the concept of *musharakeh*.

***Musharakeh*: The Partnership Solution**

Murabaha and *ijarah* contracts are generally between two people, the buyer and the seller or the lessor and the lessee for goods or services. *Musharakeh*, on the other hand, is a contract between two or more individuals or institutions investing in the same project, more commonly known as a partnership.³⁰ *Musharakeh* contracts are profit and loss sharing entities. Under a *musharakeh* contract, investors collectively pool their resources into a single project and share in the outcome. Investors either gain or lose resources based on the success or failure of the venture. The ratio of individual investments into the contract determines each party's respective profit or loss. A quick example provides some clarity.

²⁷ Ibid., 280.

²⁸ Ibid.

²⁹ Ibid., 297.

³⁰ Iqbal, 91-93.

Assume two individuals pool their resources to invest in a small café. The first investor puts up \$9,000 and the second allocates \$1,000 for a total of \$10,000. If the café earns \$500 in the first month, the first investor receives \$450 or 90 percent of his investment and the other partner receives \$50, or 10 percent of his investment. This is an overly simplistic example, but illustrates the point nonetheless. Even though the example is simplistic, the entire SCF banking system has as its base the *musharakeh* contract process so it is therefore an important concept to understand.³¹

Since Shari'ah Compliant Financing prohibits *riba* and *gharar*, SCF institutions need a way to earn a profit to stay in business. After all, nobody works without pay. Consequently, the financial institutions developed the *musharakeh* system as a method for earning profits. Under this system, the financial institution assumes the role of one partner in the contract and invests money in business ventures with other partners outside the institution. If the venture earns a profit, so does the institution. Similarly, if the venture loses money the institution does as well.³² There is another layer to the profit and loss distribution as the financial institutions often rely on depositors' money for the investments.

The SCF system prohibits banks from charging interest on loans, or adding interest income to deposits. Though this is commonplace in conventional banking systems, under the SCF system this amounts to *riba*. Depositors have two choices when putting their money in a bank. They can either deposit their money into an account and pay an annual fee for the privilege of the bank securing their money, or they can enter into a *musharakeh* contract with the bank. If the depositors decide on the latter, the bank uses their money as capital to invest in its own *musharakeh* contracts with outside investors.³³ At this point, both the bank and the individual depositors share in the profit or loss of the outside contract. This type of transaction does not

³¹ Ibid., 92.

³² Ibid.

³³ Ayub, 315.

involve *riba* because there is not any guarantee of profit simply by investing the money with the bank.

This concludes the section defining the basic components of the SCF system. The next logical sequence is a discussion of the procedures for stock market investment under the Shari'ah law. This includes prohibited businesses and the screening criteria fund managers must use to ensure compliance.

Shari'ah Compliant Investment Types

The concept of *gharar* immediately comes to mind when thinking of stock market investments. Surely, this is a prohibited transaction owing to the uncertain if not risky behavior of the stock market. It is not. Islamic scholars have routinely approved stock market and mutual fund investment. The scholars grant approval because the investments contain an economic analysis of the product.³⁴ This analysis provides some clarity as to the possible outcome of the investment rather than a speculative guess such as picking the “superfecta” at the local horse track. Therefore, it is permissible to invest in the stock and mutual fund markets with some restrictions. The term commonly associated with these restrictions is “Islamic screens.”

Islamic Screens: Eliminating the Unsavory

There are two types of screens used to determine if an investment is Shari'ah compliant. The first is a “line-of-business” screen and the second is a “financial ratio” screen.³⁵ Line-of-business screens determine if the business engages in any prohibited activities under Shari'ah law. Some such prohibitions include dealings in pork or pork related products, alcohol, gaming, adult entertainment, some types of genetic research and weapons sales.³⁶ This list is not all-inclusive but provides enough background to get the essence of the prohibitions. The second screen is the

³⁴ Iqbal, 68.

³⁵ El-Gamal, 125-6.

³⁶ Alexiev, 8.

financial ration screen requiring a richer understanding of a potential investment's financial activities.

Financial ratio screens determine the amount of debt a company carries and/or how much of a company's income is strictly from interest on its investments or loans. The SCF system uses several closely related benchmarks, but by far the most common is the one used by the Dow Jones Islamic Market Index. The index uses three financial ratio screens to analyze prospective companies. Each of the three screen's ratios must be less than 33 percent: the company's total debt, the sum of a company's total cash and interest-bearing securities, and a company's accounts receivable.³⁷

More simply, the screens determine if a company carries too much debt or a company derives too much of its income strictly via interest, which is *riba* and prohibited. Fund managers apply the screens to the previous twelve-month period for each company to ensure continued compliance. As the markets ebb and flow, there are times when a current investment fails a screening application or takes on a prohibited business category. Cleansing occurs if the investment fails a screening criterion. The cleansing process is a natural transition point to understanding who is responsible for the rules governing the SCF system.

The Shari'ah Councils: Sole Arbiters of Compliance

Fund managers and financial institutions must meet a requirement that all business practices or financial investment vehicles be approved by a panel of Shari'ah scholars.³⁸ These scholars issue *fatwas*, or religious decisions, declaring the transaction Shari'ah compliant. Without the fatwa, the institution cannot claim the transaction as Shari'ah compliant and may lose potential investors. Each institution employs a Shari'ah council generally seating three members. However,

³⁷ The Dow Jones Islamic Market Index, <http://www.djindexes.com/islamic/index.cfm?go=methodology> (accessed October 10, 2009). This website also has a link to the DJIMI Handbook outlining all characteristics and rules governing the Shari'ah compliant investments.

³⁸ Alexiev, 11.

there are not enough Shari'ah scholars also versed in economics for each institution to have its own council. Therefore, many Shari'ah scholars sit on numerous councils at a number of institutions.³⁹

The Shari'ah council's main purpose is to determine if a financial product and associated documentation comply with Shari'ah law. Additionally, the council ensures the transaction process itself also complies, that it follows the strict rules of *murabaha*, *ijarah*, or *musharakeh*. Once the council determines compliance, it files a report clearly stating the earnings from the investment will comply with Shari'ah law. If the councils discover illegitimate profits during end-of-year reviews, the councils also ensure the proper cleansing and disposition of the untoward profits to charitable organizations.⁴⁰ The Shari'ah councils do not have free reign when deciding compliance. There are two organizations governing conduct of the Shari'ah councils.

Shari'ah Compliant Financing's Governing Organizations

Two organizations have responsibility for ensuring the Shari'ah councils adjudicate properly. They are the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) headquartered in the Kingdom of Bahrain and the Islamic Financial Services Board (IFSB), located in Malaysia. These two bodies provide the overarching guidance the Shari'ah councils follow while making their decisions. The AAOIFI is at the top of the regulatory hierarchy.

The AAOIFI has its beginnings in March of 1991 and is charged with responsibility for "developing accounting, auditing, ethics, governance, and Shari'ah standards for the international Islamic banking and finance industry."⁴¹ The AAOIFI garners support from 160 members representing 40 countries filling positions on its Board of Trustees, Accounting and Auditing

³⁹ Iqbal, 115.

⁴⁰ Ayub, 388.

⁴¹ The Accounting and Auditing Organization for Islamic Financial Institutions, <http://www.aaofii.com> (accessed October 9, 2009).

Standards Board (AASB), and Shari'ah Board.⁴² The AASB is responsible for the adoption, application and ethical standards of accounting and auditing guidelines.⁴³ Similarly, the Shari'ah Board ensures consistent interpretation of financial transactions, assists in the development of Shari'ah compatible products, and reviews the standards the AASB issues for compliance with Shari'ah law.⁴⁴ The chairman of the Shari'ah Board is Shaikh Muhammad Taqi Usmani, Vice President of the Darul Uloom Madrassa in Karachi, Pakistan.

The IFSB began operations in 2003 in Kuala Lumpur, Malaysia. The board “issues standards and principles in the areas of capital adequacy, corporate governance, risk management and transparency. The goal of the IFSB is to promote the awareness of issues that could have an impact on the Islamic financial services industry and issues Shari'ah compliant standards, guidance and supervision.”⁴⁵ The IFSB is responsible for governance and regulatory issues with regard to international applications of Shari'ah financing. The current chairman of the IFSB is Dr. Muhammad Al-Jasser, Governor of the Saudi Arabian Monetary Agency and the chairman of the Shari'ah Advisory Committee is Dr. Abdulrahman A. Al-Hamidy, Deputy Governor for Technical Affairs, Saudi Arabian Monetary Agency.⁴⁶

Up to this point, the SCF system appears benign. It offers a savings strategy that may appeal to many investors outside Islamic circles as an alternative to the typical Wall Street capitalist greed so candidly portrayed in the media. Certainly, one might find it appealing to avoid the seven deadly sins while investing and feel good about it. There are even several prominent US financial institutions offering SCF investment vehicles such as the Dow Jones Company,

⁴² AAOIFI, <http://www.aaofi.com/> (accessed October 9, 2009).

⁴³ AAOIFI, <http://www.aaofi.com/aasb.html> (accessed October 9, 2009).

⁴⁴ AAOIFI, <http://www.aaofi.com/sharia-board.html> (accessed October 9, 2009).

⁴⁵ Investopedia, <http://www.investopedia.com/terms/i/ifsfb.asp> (accessed October 9, 2009).

⁴⁶ The Islamic Financial Services board, <http://www.ifsfb.org/council.php> (accessed November 16, 2009).

Citigroup, and America International Group (AIG).⁴⁷ Interestingly enough, the questions seem to stop at the point investors think they understand the key concepts and screening criteria. There are two important inquiries conspicuously absent with regard to the SCF system: what are the detailed backgrounds of the Shari'ah scholars and what else comprises the Shari'ah law?

The Shari'ah-compliant model continues with an outline of the basic components of Shari'ah law and its linkage to the SCF system. The limited length of this work does not allow for a thorough dissection of Shari'ah law; therefore, limited highlights provide the necessary background information.

Shari'ah Law—A Primer

It would take years and thousands of pages to provide a thorough explanation of Islam and Shari'ah law. The intent here is to give the reader a basic overview of the interrelationship between Islam as a governing system and Shari'ah law as its legal component. This writing does not seek to pass judgment but rather relays the facts presented by Islamic scholars and their critics. The readers are encouraged to make their own interpretations of the data after reviewing the source material. It is important to understand how the Muslim faithful regard Islam.

Islam and Muslims: A Summary of the Relationship

“Islam” in Arabic means, “to surrender” and “Muslim” means, “one who has submitted to the acceptance of God’s will.”⁴⁸ To date, 1.5 billion Muslims in 57 countries have accepted Islam representing 21 percent of all those individuals claiming some form of religious affiliation.⁴⁹ Not only do Muslims believe Islam is the right religion for everyone, but Islam is the *only* religion as

⁴⁷ Dow Jones, <http://www.djindexes.com/islamic/index.cfm?go=overview>, Citigroup, <http://www.transactionservices.citigroup.com/transactionsservices/home/region/me/sfs/issuers.jsp>, AIG, <http://www.aigtakaful-enaya.com/aig/takaful/index.jsp> (all three accessed October 9, 2009).

⁴⁸ Hunt Janin and Andre Kahlmeyer, *Islamic Law: The Sharia from Muhammad's Time to the Present* (London: McFarland and Company, 2007), 14.

⁴⁹ http://www.adherents.com/Religions_By_Adherents.html (accessed 1 Nov 09). The website states that Adherents.com is a growing collection of over 43,870 adherent statistics and religious geography citations.

declared by *Allah* himself.⁵⁰ This is a powerful statement whose context comes directly from the Qur'an.

Qur'anic verse 3:85 states, "If anyone desires a religion other than Islam (submission to God), never will it be accepted of him; and in the hereafter he will be in the ranks of those who have lost all spiritual good."⁵¹ To Muslims, this means all other religions before *Allah*'s revelations to Mohammad are no longer valid. It is *Allah* himself who is stating Islam is the only true religion and promises to punish the nonbelievers in the afterlife. Since Islam comes directly from *Allah*, Muslims believe it is more precise than Christianity and Judaism.⁵² There are many other important beliefs to the Muslim faithful, most often referred to as the five pillars of Islam.

The five pillars are: *shahada*, the daily prayer; *solat*, the act of praying five times per day; *zakat*, the annual 2.5 percent "gift" tax to widows, the poor and orphans; *sawm*, fasting dawn to dusk during the holy month of Ramadan; and *hajj*, a pilgrimage to Mecca at least once in a believer's lifetime.⁵³ Being a devout Muslim requires adhering to these five pillars. The pillars form a strong base for Islam underscoring the faith's ideals as more than just a religion. Islam is in fact a system, an entire way of life. Islam makes no distinction between the church and the state; believers consider them the same governed by *Allah*'s rules.⁵⁴ Another core belief in Islam is the sanctity of the Qur'an and adherence to its rules.

⁵⁰ Frank Griffel, "The Harmony of Natural Law and Shari'a in Islamist Theology," in *Shari'a: Islamic Law in the Contemporary Context* (Stanford: Stanford University Press, 2007), 50.

⁵¹ Qur'an 3:85(see also Q 30:30). Commentator, Yusuf Ali, adds clarity to this verse. The Muslim position is clear. The Muslim does not claim to have a religion peculiar to himself. Islam is not a sect or an ethnic religion. In its view all religion is one, for the Truth is one. It was the religion preached by all the earlier Prophets. It was the truth taught by all the inspired Books. In essence, it amounts to a consciousness of the Will and Plan of God and a joyful submission to that Will and Plan. If anyone wants a religion other than that, he is false to his own nature, as he is false to God's Will and Plan. Such a one cannot expect guidance, for he has deliberately renounced guidance.

⁵² Frank Griffel, *Introduction to Shari'a: Islamic Law in the Contemporary Context* (Stanford: Stanford University Press, 2007), 6.

⁵³ Syed Ameer Ali, *The Life and Teachings of Mohammad* (London: W.H. Allen & Co.,1891), 256.

⁵⁴ Stephen Coughlin, "To Our Great Detriment: Ignoring What Extremists Say About Jihad" (masters thesis, National Defense Intelligence College, 2007), 83.

The Qur'an

Muslims believe the Qur'an is a compendium of revelations made to Mohammad by *Allah*. Mohammad received these revelations either directly from *Allah* or dictated through the angel Gabriel. Therefore, verses in the Qur'an are the direct word of *Allah*, the natural or divine law, conclusive in meaning and not subject to alteration by humans.⁵⁵ As the Qur'an declares in verse 6:57, "Say...the command rests with none but *Allah*: He declares the Truth, and He is the best of judges".⁵⁶ *Allah* declared the law and the truth and He is the only one capable of passing judgment. Muslims also believe the Qur'an is complete and nothing omitted from its guiding principles.

Islamic doctrine adheres to two verses in the Qur'an for the basis of the belief in completeness. Verse 6:38 declares, "...Nothing have we omitted from the book, and they shall be gathered to their Lord in the end."⁵⁷ Additionally, 16:89 states, "...and we have sent down to thee the book explaining all things, a guide, a mercy, and glad tidings to Muslims."⁵⁸ Since Muslims believe they must follow the Qur'an, as it is the direct, unadulterated word of *Allah*, it follows reason that verses in the Qur'an mean exactly what they state. As such, Islamic scholars use several verses from throughout the Qur'an to highlight the requirement for obedience to *Allah* and his Apostle (Mohammad). These verses provide directions such as: follow the right path of *Allah*, obey *Allah* and Mohammad, those not following *Allah* are unbelievers, and submit to God and the true faith.⁵⁹ When reviewing the Qur'an, it quickly becomes obvious many of the guiding

⁵⁵ Griffel, 43.

⁵⁶ Qur'an 6:57

⁵⁷ Qur'an, 6:38.

⁵⁸ Qur'an, 16:89.

⁵⁹ Qur'an, 45:18, Q 23:54, Q 5:44-5, Q 33:36. The reader should explore each of these verses in their entirety to gain a better appreciation of them than space allows in this monograph. Pay particular attention to the commentary of Ali as he does an excellent job of explaining the nuances of these verses and their applicability to the Muslim community.

principles are located throughout the book in different forms, sometimes in contradiction to one another. This is the Qur'anic concept of abrogation due to progressive revelation.

Abrogation literally means, “to abolish by formal or authoritative action.”⁶⁰ In the context of the Qur'an, it means verses with similar meaning revealed later override verses made earlier.⁶¹ This is an extremely powerful and vitally important concept, as abrogation is the lead in to understanding the process of progressive revelation. Revelation of the verses in the Qur'an did not occur all at once, but piece by piece over time. The Qur'an states, “it is a Qur'an which we have divided into parts from time to time, in order that thou mightest recite it to men at intervals: we have revealed it by stages.”⁶² As man developed the capacity to understand more of *Allah's* teachings, *Allah* revealed more refined doctrine to Mohammed. Further confirmation comes from the verse “None of our revelations do we abrogate or cause to be forgotten, but we substitute something better or similar: knowest thou not that *Allah* hath power over all things?”⁶³ *Allah's* teachings are valid for all time regardless of when their revelation took place. However, the teachings revealed later are better than those revealed previously. Progressive revelation leads to the last fact about the Qur'an for the purpose of this monograph.

As noted, the teachings in the Qur'an appear contradictory and out of place from time to time when read from front to back. This is because presentation of the Qur'an occurs from longest chapter, or sura, to the shortest. The date of the verse's revelation does not matter in terms of where it appears in the Qur'an. This concept often confuses those who read the Qur'an without benefit of some background knowledge. The reader assumes the revelations proceed from sura 1

⁶⁰ Bryan Garner, ed. *Black's Law Dictionary*, 7th ed. (St. Paul: West Group, 1999), s.v. “abrogation.”

⁶¹ Coughlin, 106.

⁶² Qur'an 17:106. Ali states in his commentary that all revelation is progressive. The previous revelations were also progressive. Each of them marked a stage in the world's spiritual history. Man's mind does not take in more than his spiritual state will have prepared him for.

⁶³ Qur'an 2:106. Ali's commentary says that this means that God's message from age to age is always the same, but that its form may differ according to the needs and exigencies of time. That form was different as given to Moses and then to Jesus and then to Muhammad... There is nothing derogatory in this if we believe in progressive revelation.

to sura 114 when in fact the sura order occurs by length. This is also a critical concept to understand as many critics of “literal” Islam posit these believers are cherry picking stronger verses from different parts of the Qur’an. In fact, these verses are the most recent and abrogated earlier verses espousing a more genteel approach. The pundits assume that since a verse appears later in the Qur’an it is the most up to date, when the verse might actually appear earlier in the course of time from the stricter verse “literalists” quote.

Shari’ah Law Proper

The subject of Shari’ah law alone can cause one to wince. It is without doubt one of the hot topics discussed among contemporary media outlets with regard to freedoms and human rights, especially women’s rights. Most discussions center on the perception of unfair treatment toward women discussing topics such as full coverage clothing in public, unequal status in the marriage, and other basic freedoms enjoyed by “Western” women. This section provides an overview of Shari’ah law with regard to its doctrinal basis and the different schools of jurisprudence. First, a general overview of Shari’ah law.

Shari’ah literally means “the way” or “the path.”⁶⁴ It is the epitome of the Islamic way of life, covering all aspects of one’s existence. Concomitant with accepting Islam, the believer agrees to observe Shari’ah.⁶⁵ Shari’ah law disburses guidelines for everything, from marriage, spiritual and moral matters, to criminal law and economics.⁶⁶ There are two parts to the Shari’ah law. *Ibadat* refers to the laws governing the vertical relationship between *Allah* and man, and *mu’amalat*, the laws governing the horizontal laws between men.⁶⁷ *Allah* decides the fate of men who violate *ibadat* in the afterlife; Islamic jurists use *mu’amalat* to decide the rulings between individuals in

⁶⁴ Paul Marshall, ed. *Radical Islam’s Rules: The Worldwide Spread of Extreme Shari’ah Law* (New York: Rowman and Littlefield, 2005),1.

⁶⁵ Iqbal, 5.

⁶⁶ Marshall, 1.

⁶⁷ Janin, 29.

this life. The Qur'an provides the basis for following *Allah's* laws. Since the Qur'an is the direct word of *Allah*, it has to be true and obedience is mandatory. Islam is thus submission to *Allah's* revealed Shari'ah.⁶⁸

"The command rests with none but God: He declares the Truth, and He is the best of judges."⁶⁹ Similarly, "Let the people of the gospel judge by what God hath revealed therein..."⁷⁰ Clearly, these Qur'anic verses and others discussed in the footnotes give credence to the requirement for Muslims to follow *Allah's* law. Challenging Shari'ah law, then, becomes a challenge against *Allah*. However, what is the "law" and how was it put together? The best description of Shari'ah law is "systematic" but "uncodified;" systematic because it represents a system of doctrine based on widely accepted beliefs and uncodified because no one set of laws contain all the authoritative guidelines.⁷¹ If fact, there are four schools of jurisprudence each with similar interpretations of the law but differing in some areas. This writing does not provide as protracted debate on the nuances in the different schools of jurisprudence, but merely captures the notion of differing opinions among the jurists.

Schools of Jurisprudence and Scholarly Consensus

The four schools of jurisprudence are *Shafi'i*, *Maliki*, *Hanbali*, and *Hanafi*, aptly named after each jurist who compiled the rulings.⁷² The differences among their guiding principles are minor; the differences appear in the weight the jurist gave to the importance of each block used to build

⁶⁸ Griffel, 60.

⁶⁹ Qur'an, 6:57.

⁷⁰ Qur'an 5:50. Verses 5:47-8 are also considered instructions to obey God's law and are worth reading to gain a more complete picture of how the Qur'an flows in putting together the revealed word of God with regard to following His laws.

⁷¹ Janin, 3.

⁷² Amira Mashhour, "Islamic Law and Gender Equality: Could There be a Common Ground," *Human Rights Quarterly* 27, no.2 (2005): 563

the Shari'ah. The doctrinal basis of Shari'ah law comes four sources: the Qur'an, *hadith*, *ijma*, and *qiyas*.⁷³

A previous discussion covered the Qur'an as a source of Islamic law. The *hadith* is the second most important aspect of Islam and Shari'ah law. The *hadith* is the collection of the acts and rulings of the Prophet Mohammad collected and written down from oral reports.⁷⁴ To Muslims, the *hadith* carry the weight of law just as much as the Qur'an. *Qiyas*, or analogy, is the third piece of Shari'ah law. The Qur'an only contains a few legal rulings and the *hadith* only contained rulings justified during the prophet's time and could not possibly cover all types of future rulings.⁷⁵ Therefore, Islamic scholars must use analogy to issue rulings on events in contemporary times. The fourth and final piece of Shari'ah law is *ijma*, or scholarly consensus.

Scholarly consensus occurs when an Islamic jurist compiles evidence for his decision using the three previously discussed methods. The jurist issues his ruling, which then becomes a permanent part of the sacred law and compels compliance.⁷⁶ Changing the ruling is not possible. This is perhaps the most difficult part for Western audiences to comprehend. Western law can and quite often changes. In Islamic jurisprudence, an *ijma* ruling is not subject to review as it is considered an absolute ruling "that cannot be amended or annulled."⁷⁷ Western views that there are thousands of interpretations of Islamic law are completely without base; only Islamic scholars

⁷³ Felicitas Opwis, "The Concept of Maslaha," in *Shari'a: Islamic Law in the Contemporary Context*, ed. Abbas Amanat (Stanford: Stanford University Press, 2007), 62-82.

⁷⁴ Griffel, 3.

⁷⁵ Griffel, 3.

⁷⁶ Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad* (Selangor: The Other Press, 2002), 134.

⁷⁷ Ahmad ibn Naqib al-Misri, *Reliance of the Traveller*, trans. Nuh Ha Mim Keller (Beltsville: Amana, 1991), 24. This manual is from the Shafi'i school of jurisprudence, the predominant school used in the Middle East and Asia. The monograph author chose the 1991 translation because it is the farthest from the September 11, 2001 attacks on the US and thus subject to less softening of the words or phrases in the wake of supposed backlash on literalist Muslim beliefs.

can perform the scholarly consensus process and issue the ijma rulings.⁷⁸ When considering Shari'ah law, one must remember that it is all encompassing.

A Muslim cannot decide what tenets of Shari'ah law he follows. Shari'ah law is *the* law; therefore, being a devout Muslim compels obedience to all parts of the Shari'ah, not just those the individual finds palatable or convenient at the time. Shari'ah is *the* guide for *human* action covering every aspect of life.⁷⁹ Note the convergence of thought here. Muslims believe Islam is the only system for all humans and Shari'ah is the law for all human activity. It follows naturally then that all humans must follow Shari'ah law. The distinction here is telling. Muslims do not believe only Muslims follow Islam and Shari'ah law, but all humans are responsible for following Islam and Shari'ah law. This line of reasoning conveniently leads to the darker side of Shari'ah law.

Some Truths in Shari'ah Law

The Western mind does not have the desirable cognitive ability for accepting Shari'ah law at face value. For some unexplainable reason, Westerners insist on believing the Qur'an is misinterpreted and the Shari'ah law cannot mean what it advocates. Westerners seem to stick to the notion that everything is subject to interpretation. Westerners are intellectually unprepared for dealing with the realities of Shari'ah law.⁸⁰ The Qur'an and Shari'ah mean exactly what they say. The Shari'ah dictates Muslim behavior in their everyday lives from the daily prayer, to weekly worship services, employment, trade, marriage, justice, inheritance, and most disturbingly, *jihad*. Several examples below provide context.

⁷⁸ Coughlin, 106.

⁷⁹ Iqbal, 14.

⁸⁰ Marshall, 204.

The Qur'an tells believers, "The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes...and let a party of believers witness their punishment."⁸¹ This statement of law clearly dictates the punishment for adultery. If the Qur'an is the unadulterated word of *Allah* that requires obedience, why are Westerners surprised when an adulterer receives a public whipping under Shari'ah law? The believers are simply doing what their law proscribes. Similarly, Shafi'i Shari'ah jurisprudence tells male believers how to deal with a rebellious wife. Shari'ah law defines a rebellious wife as one who "answers her husband coldly when she used to politely, refuses her husband's bed when before she didn't, and when he finds her averse to him when before she was not."⁸² If the husband decides his wife is rebellious, he must adhere to the following steps (in order) for recourse. The husband admonishes the wife by explaining the harmful effects of rebellion on the marriage; he keeps himself from her bed; and if these do not work, he may hit her in a way that does not injure her if he believes it will put her back on the right path.⁸³ Lest the reader believe the Shari'ah only contains rulings against women, the next example concerns killing apostates from Islam.

An apostate is someone who no longer follows Islam. The Shari'ah stipulates that anyone who has reached puberty and voluntarily apostatizes from Islam deserves to be killed.⁸⁴ Correspondingly, under Shari'ah denying that *Allah* intended the Prophet's message to be the religion followed by the entire world or even simply denying any verse of the Qur'an or ruling reached by scholarly consensus is akin to apostasy.⁸⁵ This first part of the preceding statement is perhaps the most telling. Careful review of the Shari'ah law shows that this verse refers to all

⁸¹ Qur'an, 24:2. The commentator tells us that the law of marriage and divorce is made easy in Islam, so that there may be the less temptation for intercourse outside the well-defined incidents of marriage. This makes greater self-respect for both man and woman. The punishment should be open in order to be a deterrent.

⁸² Al-Misri, 541.

⁸³ Ibid., 542.

⁸⁴ Ibid., 595.

⁸⁵ Ibid., 597-8.

people, not just Muslims, as Islam is the religion for everyone according to *Allah*. Therefore, anyone denying Islam as the one true religion is an apostate and subject to a death penalty. The Shari'ah law provides a legal context for killing non-believers under *Allah*'s guidance. Again, Westerners show surprise when individuals are put to death under Shari'ah law for seemingly everyday missteps and cannot cognitively reconcile how it happens.

Shari'ah Law and the Governance of Trade

The Shari'ah law provides explicit guidance for conducting trade. It clearly delineates six specific requirements for something as simple as selling a small item. For instance, a valid sale must have a seller, a buyer, a known price, the article for purchase, the spoken offer of purchase and the spoken offer of acceptance.⁸⁶ Additionally, the Shari'ah further deconstructs the transaction by describing lawful conditions of the offer and acceptance, the sanity of the buyer and seller, and the options available should one side or the other decide to cancel the transaction. Furthermore, the law requires five conditions alone for the item up for sale. The item must be pure, useful, deliverable, the property of the seller and determinately known.⁸⁷ As is obvious, the Shari'ah is detail oriented in its requirements.

The remaining sections in the chapter on trade and economics provide the legal guidance for the types of transactions discussed earlier in this monograph. It covers the topics of *riba*, usury, items prohibited for sale, loans, collateral, partnerships, and financing a profit-sharing venture.⁸⁸ This section of the Shari'ah law provides all the legal guidance one needs to conduct business in the SCF system. The Shari'ah is indeed a complete system of jurisprudence.

Following Shari'ah law is total; one cannot pick and choose which tenets they follow. The first section of this monograph depicted the basic requirements for following Shari'ah law in the economic sense. The real problems begin to emerge when Western financial institutions conduct

⁸⁶ Ibid., 377.

⁸⁷ Ibid., 381.

⁸⁸ Ibid., 381-435.

business under the Shari'ah Compliant Financing model. The institutions tacitly proclaim allegiance to the Shari'ah because their products follow the SCF requirements. However, the institutions either ignore or are not aware of the rest of Shari'ah law. When an institution provides a Shari'ah compliant investment vehicle, the institution legitimizes the Shari'ah law. In effect, the institution is proffering public support for all the tenets of Shari'ah law in the eyes of the believers. Providing SCF investment opportunities is one small step towards implementing Shari'ah law in toto. This is the natural transition to a further discussion, describing how the Islamic literalists bring about the Shari'ah...*jihad*.

Jihad

No single topic with regard to Islam is as controversial as *jihad*. *Jihad*'s primacy to Muslims is not in doubt and its applications are numerous. The following discussion defines *jihad* and its obligations, outlines its legal roots in the Qur'an and Shari'ah, and shows how it is permeating in the financial sector to propagate the spread of Shari'ah law throughout Western banking systems.

Definition and Context in Islam

Jihad has two definitions: the lesser *jihad* and the greater *jihad*. These definitions have remained intact for over 1,400 years and are strikingly similar among the four schools of jurisprudence, all calling *jihad* a duty or obligation.⁸⁹ The Shari'ah law defines the greater *jihad* as "the spiritual warfare against the lower self" commonly recognized by Islamic scholars as the internal moral battle between man and his desires while rightly serving *Allah*.⁹⁰ The greater *jihad* is required of all Muslims. The lesser *jihad* refers to the conduct of war to establish the religion with direct roots in the Qur'an and is only required by those able-bodied individuals.⁹¹ The three verses recognized as the basis for justifying the lesser *jihad* state, "Fighting is prescribed for

⁸⁹ Coughlin, 219.

⁹⁰ Al-Misri, 599.

⁹¹ Ibid., 599-602.

you...,” “They but wish that ye should reject faith as they do...seize them and slay them wherever ye find them,” and “...fight the pagans all together as they fight you all together.”⁹² Though the preceding verses appear to reflect only violent means of *jihad*, this is not necessarily correct, for one conducts *jihad* in different ways.

In a general sense, *jihad* refers to bringing Islam into practice. Since Islam is the only religion according to *Allah*, this must mean bringing Islam itself into practice. There are four methods to conduct *jihad*: the heart, the tongue, the hands and the sword.⁹³ The first three methods compose the greater *jihad* required of all Muslims and typically reflect an absence of violence while *jihad* by the sword connotes a violent application, if necessary.⁹⁴ Violent *jihad* “by the sword” is the more common method used to gain headlines. One only has to remember the attack on the World Trade Center towers in New York City, the train bombings in Madrid, Spain or the subway and bus bombings in London, England. Cited below in its entirety for clarity is an excellent analogy for the legitimacy of *jihad*.

There is no substance in Christianity; it contains no more than a few moral teachings that form a set of advice such as “tell the truth”, “do not tell lies”, “do not gobble up the wealth of others”, and so on. Such things do not call for *jihad*? Islam however is a religion that sees its duty and commitment to form an Islamic state. Islam came to reform society and to form a nation and government. Its mandate is the reform of the whole world. Such a religion cannot be indifferent. It cannot be without a law of *jihad*. In the same way, its government cannot be without an army. While the scope of Christianity is extremely limited, that of Islam is extremely wide. While Christianity does not cross the frontiers of advice, Islam is a religion which covers all the activities of human life. It has laws which govern the society, economic laws, and political laws. It came to organize a state,

⁹² Qur’an, 2:216, 4:89, and 9:36. The commentator says to fight in the cause of truth is one of the highest forms of charity. What can you offer that is more precious than your own life? If you offer your life to the righteous Imam, who is only guided by *Allah*, you are an unselfish hero. God knows the value of things better than you do.

⁹³ Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins University Press, 1955), 56.

⁹⁴ John R. Willis, “Jihad fi Sabil *Allah*: It’s Doctrinal Basis in Islam and Some Aspects of its Evolution in Nineteenth Century West Africa,” *The Journal of African History* 8, no.3 (1967), 398.

to organize a government. Once this done, how can it remain without an army?
How can it be without a law of *jihad*?⁹⁵

The Legal Prescription for *Jihad*

Laws belonging to Islamic law contain a rule, or *hukm*, qualified with the descriptor *shar'i*.⁹⁶ Islamic law defined as *hukm shar'i* is doctrinally codified as a communiqué from *Allah* relating to the actions of his people by way of a demand, option or declaration.⁹⁷ Therefore, when *Allah* constructed an obligatory path for Muslims, that law became *hukm shari*. The rights of *Allah* create legally binding obligations on Muslims because they are *hukm shari*. Given that *jihad* is a right of *Allah*, it is concomitantly a *hukm shari* consisting of a direct communication from *Allah* that, by definition, creates an obligation on Muslims. Finally, because it is not possible for mere humans to countermand a rule from *Allah*, man cannot possibly subjugate the required obligation of *jihad*. The first point to notice about this definition is that (*shari'a*) *hukm* or a rule of law is a communication from *Allah*. This means that it is not treated merely as a command. It also means that a communication from anyone else cannot be considered as a *hukm*, be he a ruler or someone else.⁹⁸

Islamic law theories designating *Allah* as the only lawgiver subsequently define *jihad* as a right of *Allah* that creates an obligation for all Muslims. For Shari'ah jurists, *jihad* is a permanent part of the inner sanctum of Islamic law and thus a non-optional rule. This method of reasoning produces a string of logic stitching the elements of the rule of law together in the Islamic legal system: the Lawgiver (*Hakim*); the relevant law (*hukm*); the act to which the legal rule is related;

⁹⁵ Ayatullah Morteza Mutahhari, "The Holy War of Islam and Its Legitimacy in the Qur'an," trans. Mohammad Salman Tawhidi, Islamic Propagation Organization (Tehran: Sepehr, 1985), 8, <http://www.al-islam.org/short/jihad/> (accessed November 15, 2009).

⁹⁶ Coughlin, 142. This simple notation does not do this reference justice. Coughlin put together a brilliant argument for piecing together the legal justification of jihad from multiple sources and certainly served as the framework for this author's understanding of the legal basis for jihad. This author reviewed Coughlin's source material for context before including it in this monograph.

⁹⁷ Nyazee, 35.

⁹⁸ Ibid., 64.

and the subject who performs the act and who is under an obligation to conform.⁹⁹ As this logic path correlates to the obligation of *jihad*: “1) The lawgiver, *Allah*, 2) creates the requirement of *jihad*, 3) in order that *jihad* be undertaken, 4) by the Muslim community, joint and severable, when under a legal obligation to do so.”¹⁰⁰ This logic clearly shows the Muslim community is lawfully required to conduct *jihad*, and *jihad* is the method to transform the two worlds into one.

The Two Worlds: *Dar al-Islam* and *Dar al-harb*

The Muslim community looks at the world as divided into two distinct spheres, those of *dar al-Islam* and those of *dar al-harb*. *Dar al-Islam*, or abode of Islam, refers to the territory currently under Islam, and *dar al-harb*, or abode of war, refers to territory not under Islam. The ultimate objective of the Muslim community is transforming the *dar al-harb* into the *dar al-Islam* as required by Islamic law.¹⁰¹ *Jihad* is the just war of Islam and is the method used to transform *dar al-harb* into *dar al-Islam*, by peaceful means if able, by violent means if necessary.¹⁰² In this sense, *jihad* is required because Shari’ah law stipulates there can only be one system, and that system is Islam.¹⁰³ Better yet, *jihad* is a type of political activity used as a means to establish Islamic sovereignty across the world. *Jihad* does not end until the entire world is *dar al-Islam*. *Jihad* by the sword is not the only means of transforming the *dar al-harb* into the *dar al-Islam*.

Transforming *dar al-harb* into *dar al-Islam* by *jihad* is not a “blind and bloody-minded scramble for temporal power; rather, it is a form of political action...linked to the founding or re-

⁹⁹ Ibid., 35.

¹⁰⁰ Coughlin, 143.

¹⁰¹ Al-Misri, 599. The hadith cited, recorded by Bukhari, states Muhammad said, “I have been commanded to fight people until they testify that there is no God but *Allah* and that Muhammad is the messenger of *Allah*...if they say it, they have saved their blood and possessions from me, except for the rights of Islam over them.”

¹⁰² Majid Khadduri, *The Islamic Conception of Justice* (Baltimore: Johns Hopkins University Press, 1984), 164.

¹⁰³ Al-Misri, 602-3. “Fight those who do not believe in *Allah* and the last day...who do not practice the religion of truth. The caliph fights all other peoples until they become Muslim.”

creation of a *just* community on earth, or more precisely, Islamic sovereignty on earth”¹⁰⁴ *Jihad* as a political activity typically lends itself to conduct by non-violent means. *Jihad* by the heart refers to combating Satan and by the tongue and hands refers to proselytizing the faith by supporting the right and correcting the wrong to extend the faith.¹⁰⁵ Since Islam is the system for governing all aspects of a human’s life according to the Qur’an, then Shari’ah law is the method for such governance. Shari’ah law provides the legal mandates for conducting one’s life. An aspect of life covered under Shari’ah law is economics, which is broken down further into financial transactions.

The specific financial methodology is Shari’ah Compliant Financing. The Qur’an, via the Shari’ah law, requires the conversion of *dar al-harb* to *dar al-Islam*. Therefore, it follows that areas of the world not following the SCF system are *dar al-harb* and conversion to *dar al-Islam* is required. A way to convert *dar al-harb* economies to SCF economies is *jihad* by the tongue and hands in a non-violent manner. Thus, a circular pattern emerges. Shari’ah Compliant Finance is a method of *jihad* legitimized by Shari’ah law, which provides the legal guidelines for SCF, propagating the spread of *dar al-Islam*. Perhaps the best description of this circular pattern is “Economic *Jihad*.”

Towards Economic *Jihad*: The Race to *Dar al-Islam*

The linkage between the Shari’ah, *jihad*, and Shari’ah Compliant Financing is clear and cogently sourced on law. Shari’ah law, with justification from the Qur’an and 1,400 years of scholarly consensus, requires *jihad* until all the lands are *dar al-Islam*. One method of this *jihad* is transforming the traditional economic system from its current state into one exclusively governed

¹⁰⁴ Roxanne Euben, “Killing for Politics: Jihad, Martyrdom, and Political Action,” *Political Theory* 30, no. 1, (2002), 9-10.

¹⁰⁵ Khadduri, *War and Peace*, 56.

by Shari'ah law. As one noted Shari'ah advisory board member and spiritual leader of the Muslim brotherhood, Yusuf al-Qaradawi, phrased it, "I like to call it *jihad* with money."¹⁰⁶

Implementation Plan: The Muslim Brotherhood's Way Forward

Making inroads in a society may seem like an arduous task, especially in a society as diverse as the United States. The most logical approach is to have a plan, disseminate the plan to one's allies, and together using your combined resources, implement the plan. In 1991 the Islamic literalist group, The Muslim Brotherhood, distributed their plan for "establishing an effective and stable Islamic movement in North America aimed at unifying Muslims' efforts to present Islam as a civilization alternative and establish an Islamic State led by the Muslim Brotherhood."¹⁰⁷ The organization distributed the plan to twenty-nine like-minded partner organizations in the United States calling for their support in establishing an Islamic State in North America in six phases.

The six phases are: establish an effective and stable Islamic movement led by the Muslim Brotherhood, adopt Muslims' causes domestically, expand the observant Muslim base, unify and direct Muslim's efforts, present Islam as a civilization alternative, and finally support the establishment of the Islamic State in North America.¹⁰⁸ The underlying methodology the Brotherhood proposes to realize their goals is through the process of settlement-stability-rooting. This monograph uses the settlement process outlined by the Brotherhood for the linkage to Shari'ah Compliant Financing.

The Muslim Brotherhood clearly defines its concepts and objectives for settlement in a strikingly blatant methodology:

¹⁰⁶ Australian Islamist Monitor, "Stop Shari'ah Compliant Finance," http://www.islammonitor.org/index.php?option=com_content&task=view&id=2670&Itemid=96 (accessed November 16, 2009)

¹⁰⁷ United States v. Holy Land Foundation (HLF) for Relief and Development et al., no. 3:04-CR-240-G, US District Court for the Northern Division of Texas, Dallas Division, Government Exhibit 003-0085, 4, <http://www.saneworks.us/uploads/application/39.pdf> (accessed December 4, 2009).

¹⁰⁸ US v. HLF, 4-5.

The process of settlement is a “Civilization-*Jihadist* Process” with all the word means. The Ikhwan must understand that their work in America is a kind of grand *Jihad* in eliminating and destroying the Western civilization from within and “sabotaging” its miserable house by their hands and the hands of the believers so that it is eliminated and God’s religion is made victorious over all other religions. Without this level of understanding, we are not up to this challenge and have not prepared ourselves for *Jihad* yet. It is a Muslim’s destiny to perform *Jihad* and work wherever he is and wherever he lands until the final hour comes, and there is no escape from that destiny except for those who chose to slack.¹⁰⁹

The Brotherhood clearly lays out its plans to settle America through *jihad* by eliminating and destroying the Western civilization from within. One method for taking over Western civilization from within is by subverting the current economic system for one governed by Shari’ah law. Hence, the settlement process is already well underway, as several major US financial institutions presently offer investment vehicles in accordance with Shari’ah law. The acceptance of Shari’ah law has already begun, though it is doubtful those involved even realize the implications of their actions. It is not important what you believe; it is important what your enemy believes. Right now, the enemy believes they have begun to infiltrate the Western economic system. The following information lends credence to US involvement in supporting Shari’ah law.

US Companies Offering Shari’ah Compliant Products

There are currently seven financial institutions in the US openly advertising Shari’ah Compliant Products. This number at first seems small, but when one looks at the size of the companies and comprehends their reach, a different picture emerges. The list reads as a veritable who is who of Wall Street firms. Citigroup’s Citi Islamic Investment Bank is the largest, followed closely by American International Group better known as AIG. The list continues with the Dow Jones Company, Morgan Stanley’s Capital International branch, Goldman Sachs, the much small

¹⁰⁹ Ibid., 7.

Guidance Financial Group and finally Devon Bank. Of these financial institutions, four received US government bailout dollars from the Troubled Assets Relief Program (TARP) in late 2008.¹¹⁰

The largest recipient of TARP funds was AIG amounting to a \$182.3 billion bailout by the US government leading to the government owning 80 percent of AIG.¹¹¹ Citigroup also received \$25 billion in October of 2008 via the US government's purchase of 33 percent of Citigroup's preferred stock shares.¹¹² Additionally, Goldman Sachs and Morgan Stanley each received \$10 billion and both companies repaid the loan on June 17, 2009.¹¹³ The debate here is not about whether one supports the TARP program or not. The crux of the issue is that the US government still owns an 80 percent controlling interest in AIG and a nearly 35 percent stake in Citigroup.

These facts belie the greater ramifications. The US government is now involved with Shari'ah Compliant Financing. Though reasonable people do not believe the government intentionally lent its money for implicit involvement in SCF, nonetheless, the government now gives tacit legitimacy to Shari'ah law. Since the corporations the government all but directly owns supply Shari'ah products and the government has not divested itself of these products, one can reasonably conclude the US government does not understand or is choosing to ignore the situation in which it finds itself. Perhaps if the government performed its due diligence with a simple glimpse into the make-up of some Shari'ah Councils and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), their stance may change.

¹¹⁰ U.S. Department of the Treasury, Troubled Asset Relief Program Transaction Report for the Period Ending December 31, 2008. Open-file report, <http://www.financialstability.gov/docs/CPP/001-05-08CPPChart.pdf> (accessed November 30, 2009).

¹¹¹ American International Group, Inc., "What AIG Owes the U.S. Government," http://www.aigcorporate.com/GInAIG/owedtoUS_gov_new.html (accessed November 30, 2009).

¹¹² Gary Crittenden, "Memorandum for the Citigroup Management Executive Committee," *Citigroup*, November 4, 2008, http://www.citigroup.com/citi/corporategovernance/data/tarp/tarp_pr_3q09.pdf?ieNocache=221 (accessed November 30, 2009).

¹¹³ Matthew Ericson, "Tracking the \$700 Billion Bailout," *The New York Times*, June 24, 2009, <http://projects.nytimes.com/crediterisis/recipients/table> (accessed November 30, 2009).

Shari'ah Advisory Councils—Revisited for a Deeper Analysis

The Shari'ah Advisory Councils compose the nucleus of the SCF system's authenticity. Financial transactions are not Islamic without the council's sanction. If an institution wishes to conduct business under the provisions of Shari'ah law, the institution must employ a Shari'ah council. However, the Shari'ah councils do not enjoy complete autonomy. The Accounting and Auditing Organization for Islamic Financial Institution's Shari'ah Board ensures consistent interpretation of financial transactions, assists in the development of Shari'ah compatible products, and reviews the standards for compliance with Shari'ah law.¹¹⁴ The chairman of the Shari'ah Board is Shaikh Muhammad Taqi Usmani, Vice President of the Darul Uloom Madrassa in Karachi, Pakistan and a retired Pakistan Supreme Court Judge.¹¹⁵

Taqi Usmani's position as THE authority for Shari'ah compliance decisions should cause consternation for all involved in SCF. Usmani is perhaps the world's leading proponent of Shari'ah finance and uses his current position to extol the system's virtues. He is on record as stating, "We'll have to restructure our economic system on the basis of clear guidance provided by the Qu'ran and Sunnah. Our success in setting an example for implementing the Islamic principles will be our gift to the human fraternity in the new century."¹¹⁶ Usmani makes it clear he believes a Shari'ah-based financial system is a gift benefitting humanity and not merely a financial method for Muslims. This belief, in and of itself does not engender a pause for concern. There are numerous individuals throughout history who have proposed an alternative to Western capitalism. However, Usmani is a believer and proponent of *jihad* and advocates its use, violently if necessary, to spread Islam.

¹¹⁴ AAOIFI, <http://www.aaofi.com/sharia-board.html> (accessed October 9, 2009).

¹¹⁵ AAOIFI, <http://www.aaofi.com/sharia-board.html> (accessed November 30, 2009).

¹¹⁶ Sheikh Taqi Usmani, The Economic Challenge for the Ummah, http://www.albalagh.net/Islamic_economics/economy.shtml (accessed December 5, 2009). There is not a date attributed to these statements on the web site. However, the language lends itself to a time period shortly before the year 2000.

Usmani is a prolific writer in Arabic, his native Urdu and English and has published some 70 works covering a variety of topics. The majority of his writings concern Islamic jurisprudence lending to his former role as a member of the Pakistani Supreme Court and his current position at his madrassa. His secondary interest and area of expertise is Shari'ah Compliant Financing, publishing several books and numerous papers on the topic. Additionally he is either the chairman of the Shari'ah Advisory Council or a member of the board of at least eight financial institutions including one in the United States.¹¹⁷ Finally, until sometime in late 2008 Usmani was a member of the Dow Jones Islamic Market Index's Shari'ah board until his unannounced removal or resignation. One suspects Usmani's departure from the Dow Jones board may have something to do with his published beliefs on *jihad*.

Usmani has made his beliefs with regard to *jihad* abundantly clear, most notably in his book "Islam and Modernism," published in 2006. The following statements by the chairman of the Shari'ah Board under the world's governing organization for Shari'ah finance are disturbing:

The most important purpose of *jihad* is to break the grandeur of the non-Muslim states so that the resulting psychological subordination to Islam should come smoothly.¹¹⁸

Aggressive *jihad* is lawful even today for the purpose it was lawful in those days. Its justification cannot be veiled only because the peace-loving inventors of atom bombs and hydrogen bombs label it as "expansionism" and resent those who have put the chains of slavery around the necks of the people of Africa and Asia.¹¹⁹

Power or domination of a non-Muslim state against Muslims is by itself a great obstacle in the propagation of Islam.¹²⁰

¹¹⁷ Wikimedia, http://en.wikipedia.org/wiki/Muhammad_Taqi_Usmani (accessed December 5, 2009).

¹¹⁸ Sheikh Taqi Usmani, *Islam and Modernism* (New Delhi: Adam Publishers and Distributors, 2006), 131.

¹¹⁹ Ibid., 138.

¹²⁰ Ibid., 130.

My belief is that the purpose of *jihad* aims at breaking the grandeur of unbelievers and establish that of Muslims. As my father said, ‘*Jihad* against the enemies of Islam is obligatory on Muslims until the dander of their [non-Muslims] mischief or evil-doings is over.’¹²¹

If Muslims do not possess the capability of ‘*jihad* with power,’ agreement may be made [to conduct *jihad* by other means] until the power is attained.¹²²

Even though Usmani is no longer a member of the Dow Jones’ Shari’ah Advisory Board, he remains the chairman of the Shari’ah board for Guidance Financial Group, LLC in Reston, Virginia.¹²³ It makes one wonder whether Guidance Financial is aware of Usmani’s thoughts. He certainly has not made them a secret, publishing his book on the subject of *jihad* in English. One would presume this book is as easily accessible to Guidance Financial as it was to the author, as well as every other institution supporting the spread of Shari’ah Compliant Finance. Usmani appears to be the most vocal of the Shari’ah advisors but by no means is he the only supporter.

Dr. Yusuf al-Qaradawi of “*jihad* with money” fame has also made other questionable statements. Though not a member of any Shari’ah boards in the US, he is a member of numerous financial institutions in the Persian Gulf region, especially in his home base of Qatar. Qaradawi’s membership on these Shari’ah boards is long-standing and his opinions are used as the basis for Shari’ah rulings throughout the worldwide financial sector. He is also the chairman and president of the European Council for Fatwa and Research in Dublin, Ireland as well as the in-absentia chairman of the Michigan-based Islamic American University.¹²⁴ Qaradawi’s role in Michigan is in-absentia because he is banned from travelling to the US due to his ties to terrorist organizations. Additionally, he remains a member of the Muslim Brotherhood as spiritual

¹²¹ Ibid., 133.

¹²² Ibid., 136.

¹²³ Guidance Residential, LLC website, <http://www.guidanceresidential.com/about-us/sharia-board/members> (accessed on December 6, 2009).

¹²⁴ Anti-Defamation League, http://www.adl.org/main_Arab_World/al_Qaradawi_report_20041110.htm?Multi_page_sections=sHeading_4 (accessed December 10, 2009).

advisor, the same organization calling for the settlement of North America through *jihad*. He is on record making the following comments:

We have our own economic philosophy and system which others do not have. The collapse of the capitalist system, which is based on usury and securities rather than commodities in markets, shows us that it is undergoing a crisis and that our integrated Islamic philosophy, if properly understood and applied, can replace Western capitalism.¹²⁵
I will shoot *Allah's* enemies, the Jews, and they will throw a bomb at me, and thus I will seal my life with martyrdom.¹²⁶

Oh *Allah*, take this oppressive, Jewish, Zionist band of people... do not spare a single one of them. Oh *Allah*, count their numbers, and kill them, down to the very last one.¹²⁷

Fighting American civilians in Iraq is a duty for all Muslims...Americans in Iraq are all fighters and invaders. There is no difference between a civilian and a military American in Iraq.¹²⁸

America gives Israel absolute and unconditional support. This has led to Israel wrecking havoc on earth, killing women, children and men.¹²⁹

Admittedly, these quotes from both Usmani and Qaradawi are some of their more inflammatory rhetoric. However, these are two of the leading Shari'ah financial scholars in the world, and Usmani is THE Shari'ah authority for the financial industry. One would presume financial institutions in the US would have a requirement to inform investors in SCF products of the full scope of Shari'ah law at a minimum, and who is involved with the industry's regulatory laws. This presumption is grossly misguided.

¹²⁵ Steve Emerson, "Prominent 'Moderate' Islamic Leader Linked to Terror," http://www.newsmax.com/emerson/muslim_brotherhood_qaida/2009/09/18/261800.html (accessed December 6, 2009).

¹²⁶ Anti-Defamation League, http://www.adl.org/main_Arab_World/al_Qaradawi_report_20041110.htm?Multi_page_sections=sHeading_5 (accessed December 9, 2009). The ADL website cited here and below contains the references to al-Qaradawi's remarks, such as "Sermon on Al Jazeera TV, January 28, 2009 for this entry.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

United States financial institutions are not currently required to disclose any aspects of Shari'ah law to prospective investors. Investment literature simply describes Shari'ah financial investments as “ethical,” and in compliance with Islamic law and traditions which prohibit charging interest, investment in companies dealing with forbidden items such as pork, gaming, entertainment, alcohol, etc.¹³⁰ The prospectus literature does not discuss the greater Shari'ah law in any respect. There is a lack of disclosure required by US law.

The Disclosure Conundrum: You Mean There is More?

The 1933 and 1934 Securities Acts require due diligence with regard to the misstatement or omission of a material fact in connection with the purchase of a security.¹³¹ These acts then generated several requirements under sections of 15 U.S.C. with regard to disclosures deemed necessary to protect investors upon registering a product, as well as the disclosures required in an investment's prospectus.¹³² Sections 11 and 12 of the 1933 Act allow the purchaser to sue the seller of the security for any misrepresentations or omissions of a *material fact*.¹³³ The US Supreme Court defines a *material fact* as one in which

There is a substantial likelihood that a reasonable shareholder would consider it [the material fact] important in deciding how to vote. This standard is fully consistent with the general description of materiality as a requirement that ‘the defect have a significant propensity to affect the voting process.’ It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote, but contemplates a showing of a substantial likelihood that, under all the circumstances, the omitted

¹³⁰ Dow Jones Islamic Market Index, <http://www.djindexes.com/islamic/index.cfm?go=methodology> (accessed December 10, 2009). Web sites for Citibank, <http://www.citibank.com/ciib/homepage/index.htm> (accessed December 10, 2009) and AIG (under their Charits branch), http://www.chartisinsurance.com/global-about-us_295_192373.html (accessed December 10, 2009) also address their respective Shari'ah compliant investments.

¹³¹ David Yerusalmi, “Shari'ah's Black Box: Civil Liability and Criminal Exposure Surrounding Shari'ah Compliant Finance, *Utah Law Review*, no. 3 (2008): 1062.

¹³² 15 U.S.C. Sec. 77g and 77h (2008). The author credits David Yerusalmi for constructing the following legal argument with regard to “disclosure” and “material facts” as contained in his *Utah Law Review* article.

¹³³ Securities Act of 1933 (as amended October 13, 2009), 23.

fact would have assumed actual significance in the reasonable shareholder's deliberations.¹³⁴

Thus, the US Supreme Court has held that there is a legal requirement for those offering investments to disclose all facts that may affect the decision to purchase the asset by the investor. Taking this judgment an step further, one could easily argue that a material fact of Shari'ah compliant investments are the greater implications of Shari'ah law, not simply the "ethical" standards advertised by the financial institutions. Would an investor from the US have a legal right to know, without having to ask, that the individual responsible for regulating international Shari'ah compliance promotes *jihad*, the worldwide propagation of Islam, and the elimination of the capitalist banking system? The disclosure requirement of material fact in the 1933 Securities Act as upheld by the U.S. Supreme Court leads one to say "yes." However, the facts are not all in the open.

Implications for the Future

Today's economy is indeed global, offering opportunities for all investors. As Islam continues to make its way around the world, Muslims are searching for ways to invest their money according to their belief system. With the chance of making a quick buck, pound sterling, or Euro, Western financial entities now offer investment vehicles consistent with the Accounting and Auditing Organization of Islamic Financial Institutions Shari'ah law guidelines. These institutions fail to conduct responsible due-diligence to understand the full implications of their decision to become a part of Shari'ah compliant investing.

Western financial institutions openly, if ignorantly, support the spread of Shari'ah law and aid the Muslim Brotherhood's goal of settlement in the West. These financial institutions give legitimacy to Shari'ah in toto by simply offering investment vehicles compliant with Shari'ah law. Those supporting *jihad* against the West and elimination of democracy and capitalism view

¹³⁴ TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438 (1976).

this as a step further in “destroying the civilization from within.” Once the financial institutions become complacent with Shari’ah law in their industry, what is to stop them from accepting Shari’ah law principles with regard to other requirements?

A small example of support for Shari’ah law may help. Dubai Bank in the United Arab Emirates recently began a policy requiring all female employees to wear the *shailah* and *abaya*, the headscarf and full-body coverings required by Shari’ah law in Islamic nations. The female employees, whether Muslim or non-Muslim, must wear the coverings as a condition of employment. Though Dubai is a Muslim nation, it is not an Islamic state under Shari’ah law where all females in the country must wear the *abaya*. However, since the bank is Shari’ah compliant, the bank’s Shari’ah advisory council felt the coverings would “gain customers’ confidence and help market the bank’s products.”¹³⁵ The chairman of the bank’s Shari’ah advisory council signed the letter...Shaikh Taqi Usmani.¹³⁶

If a Middle Eastern nation not subservient to Shari’ah law can implement such an employment requirement, what is to stop a bank in the UK or US from implementing a similar policy upon guidance from its Shari’ah council? Before the reader is quick to judge, one must consider how many establishments already require a particular clothing ensemble for employment. Think about your favorite chain restaurant and recall the distinctive outfits worn by the staff. It is truly a stretch to think *abayas* could become the norm in banks offering Shari’ah compliant products?

The clothing requirements for female employees of Shari’ah compliant institutions are not the deepest implication for accepting Shari’ah law. The intangibles are clearly evident by this point. Of true concern are those individuals supporting the “settlement” of the West and placing everyone under Shari’ah law. Shari’ah Compliant Finance is but one method, a small step in the

¹³⁵ Bassma Al Jandaly, “Dubai Bank Says All Female Staff Must Wear Abayas,” Gulfnews.com <http://gulfnews.com/news/gulf/uae/general/dubai-bank-says-all-female-staff-must-wear-abayas-1.536395> (accessed December, 21 2009).

¹³⁶ Ibid.

grander settlement movement. If one is willing to accept Shari'ah law in the bank or stock market, it is not a stretch to accept Shari'ah law as a separate entity in the family courts. These courts already adjudicate such issues as marriage, divorce, inheritance and other family matters in many Islamic countries not under strict Shari'ah law. These courts are also active and supported in the UK as tribunals. There are currently five tribunals active in London, Birmingham, Bradford and Manchester with the network's headquarters in Nuneaton, Warwickshire.¹³⁷ If the UK supports the Shari'ah courts, what is to stop them from gaining support in the US, beginning in primarily Muslim neighborhoods?

Accepting Shari'ah law in the financial sector is simply one way of garnering an acceptance of Shari'ah law in a non-descript manner. The greater issue becomes apparent when those pushing for acceptance of Shari'ah law in the financial sector begin agitating for Shari'ah law implementation in other facets of everyday life. As each step gets implemented and more and more people see it as the new norm, more and more aspects of the law lie in wait for implementation. Remember, it does not matter what you believe or accept. It is the beliefs of those crafting the implementation of *dar al-Islam* worldwide that matter. If they believe they are succeeding, then one needs to pay closer attention to what they believe they are accomplishing.

Areas For Further Research

The limited length of this monograph cannot possibly cover all aspects of the implications of spreading Shari'ah Compliant Financing. This monograph proposes the system is but one means those supporting the settlement of the West are using to transform *dar a-harb* to *dar al-Islam* in the form of economic *jihad*. One area not covered in this monograph that would benefit from additional scholarly research is the cleansing process when managing Shari'ah compliant

¹³⁷ Abul Taher, "Revealed: UK's First Official Shari'ah Courts," The Sunday Times online, <http://www.timesonline.co.uk/tol/comment/faith/article4749183.ece> (accessed December 21, 2009). For additional resources see also, "Shari'ah Law Tribunal is Proposed," http://news.bbc.co.uk/2/hi/uk_news/wales/8406796.stm (accessed December 21, 2009), and "Shari'ah Law in UK is 'Unavoidable,'" http://news.bbc.co.uk/2/hi/uk_news/7232661.stm (accessed December 21, 2009).

investment fund products. This is a form of *zakat*, one of the five pillars of Islam alluded to earlier in this writing.

If a Shari'ah compliant fund becomes contaminated by untoward profits, or one of the companies in the portfolio becomes engaged in an unacceptable business practice, the fund must be cleansed and the profits distributed to appropriate charities. The financial institution's Shari'ah advisory council decides which charity organizations receives the cleansed funds.

For example, if a company in a Shari'ah compliant fund suddenly accrues too much interest income from its own business dealings, the Shari'ah fund has a requirement to sell its shares in the company. The fund is no longer Shari'ah compliant. The Shari'ah council must now distribute any profit as *zakat*. They are the sole arbiters of the money and alone decide which charities get the funds. Scholarly research would do well to delve further into this process and trace the money to see which organizations do indeed benefit from the *zakat*. If the chairman of the AAOIFI's Shari'ah Council openly calls for *jihad* against the West and is a member of numerous Shari'ah councils with responsibility for the *zakat* distributions, one might be more interested in who is benefitting from the funds. Similarly, other Shari'ah Advisory Board members may need further investigation.

If two of the biggest names in Shari'ah Compliant Finance openly support violence against the West, why would the list necessarily stop there? The author suggests the financial industry would greatly benefit from an in-depth analysis of all Shari'ah Advisory Board members, particularly those serving on the boards of US-based financial institutions. Perhaps more than passing third-party interest in the subject may uncover more individuals such as Taqi Usmani and al-Qaradawi.

Conclusion

Shari'ah Compliant Finance, by any other name, is economic *jihad*. The research supported the author's hypothesis that Shari'ah Compliant Financing is indeed a form of economic *jihad*,

effectively establishing a foothold and acceptance for Shari'ah law under the guise of an ethical banking structure. Once Shari'ah law gains acceptance in this seemingly benign realm, those supporting the settlement of the West may push for Shari'ah law acceptance in other facets of the legal system. To answer the hypothesis, the author demonstrated that three different sets of research came together to properly format the argument.

The first set of research data built a coherent structure of the basics for Shari'ah financing. It began with a brief historical overview of the roots of the financial system in the Middle East and provided a working definition of the Shari'ah compliant system sourced on guidance from the Qur'an, Sunnah and hadith. The discussion transitioned to a description of the modern-day Shari'ah compliant components. It provided definitions and examples for the key terms and practices in Islamic finance such as *riba* and its associated component of usury as well as *murabaha*, *ijarah*, and *musharakeh*. Definitions followed for the requirements for Shari'ah compliant investment vehicles tied to the stock market highlighting earnings restrictions on the companies as well as their prohibited business practices. Such restrictions consist of prohibitions against earnings from interest or debt greater than 33 percent as well as exclusions from pork, pork-related business, alcohol, gaming, adult entertainment, or weapons sales. The subsequent work described the Shari'ah Advisory Councils and their roles in the financial institutions in addition to the global governing organizations, the Accounting and Auditing Organization of Islamic Financial Institutions and the Islamic Financial Services board. The section finished with a declaration regarding the desire for a greater understanding of Shari'ah law.

The writing continued with a presentation of the second leg of the argument by defining Shari'ah law and its relationship to the Muslim faith and concomitantly *jihad*. It began with a brief portrayal of Islam including the faith's five pillars and an overview of the Qur'an. The Qur'anic overview illustrated how the compilation of the Qur'an took place, the ordering of the verses in the sura, and the doctrine of abrogation. The section continued with a closer look at principles of Shari'ah law conspicuously absent from the advertising literature propagated by

SCF institutions. It provided examples from trade law as well as some harsher requirements under the Shari'ah concerning marriage and family law. Emphasis continually reiterated the notion that belief in Shari'ah law is all encompassing. One simply cannot believe in one aspect of the law and not the rest. Belief in one aspect of Shari'ah law is belief in all sections. One does not get to pick and choose which laws to follow. The final segment closed with a linkage between Shari'ah law and the prescription for carrying out *jihad*.

Further writings completed the triadic argument by legally linking *jihad* to Shari'ah law. The section began with the legal methodology for *jihad* as circumscribed from the Qur'an. It provided a legal justification for carrying out the four types of *jihad*, the followers required to conduct *jihad*, and how *jihad* is the legal methodology for transforming the "two worlds" of *dar al-harb* into *dar al-Islam*. The writings provided the legal basis for *jihad* by the heart and tongue as a method for transforming the capitalist *dar al-harb* financial system into a Shari'ah compliant *dar al-Islam* system. The section concluded by closing the circular argument that Shari'ah Compliant Finance is indeed a legal method of economic *jihad*. The final writings brought the argument to a close by depicting the Muslim Brotherhood's desired settlement of the West.

Next, the writing presented a cogent statement from the Islamist group The Muslim Brotherhood, concisely articulating their desire to "settle" the West and destroy the civilization from the inside. Transforming the capitalist financial system into a Shari'ah compliant system is one such path to their success. Here, writings outlined the key players in the US Shari'ah compliant market even pointing out the US government's tacit involvement through its majority ownership of AIG and Citigroup via the TARP bailout packages. Finally, the section spent some energy detailing the true feelings of two of the biggest authorities in the SCF market. The first was Taqi Usmani as chairman of the AAOIFI's Shari'ah Board and second, Yusuf al-Qaradawi, spiritual advisor to the Muslim Brotherhood and chairman or member of several Middle Eastern SCF institutions. Their vitriolic rhetoric leaves no doubt as to their true intentions for propagating Shari'ah finance. The section closed by offering an argument first posed by David Yerushalmi

that financial institutions in the US are required to fully disclose the material facts behind all aspects of Shari'ah law to their investors under the Securities Acts of 1933 and 1934. To date, US financial institutions are not complying with this requirement as evidenced by their advertising materials for their SCF products.

Finally, the writings offered a concise argument of the greater implications of accepting Shari'ah law one small bit at a time. Once you give a pig a pancake, he is going to want another one. If Shari'ah law gains acceptance in the financial services industry, there does not seem to be any bounds to its further propagation as evidenced by its acceptance in marriage and family tribunals in the UK. There is not any reason the propagation could not continue in the US. Finally, this monograph suggests the need for scholarly research with regard to the *zakat* distributions from the cleansed investment vehicles to determine exactly which organizations are receiving the funds. This money trail is not currently tracked. Additionally, the financial industry would be well served with an in-depth profiling of every Shari'ah Advisory Board member in a transparent manner. It would be well worth knowing if there are any more Taqi Usmanis or Yusuf al-Qaradawis on any other institution's Shari'ah boards.

The linkage between the Shari'ah, *jihad*, and Shari'ah Compliant Financing is clear and cogently sourced on law. Shari'ah law, with justification from the Qur'an and 1,400 years of scholarly consensus, requires *jihad* until all the lands are *dar al-Islam*. This monograph made this argument clear. Now, one must answer the question "What is next?"

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