

Daniel W. Skubik,

Ethics & Humanities, California Baptist University, USA
dskubik@calbaptist.edu

Biographical Note

Daniel W. Skubik is Professor of Law, Ethics & Humanities at California Baptist University. He is former Founding Dean of the College of Arts & Sciences at CBU, and is currently a member of the faculty. His areas of teaching, publication and research include American and comparative constitutional law; international business, trade and finance; and world history. Current research projects include investigations of usury and alternative banking transactions, and business ethics in a globalized economy.

Abstract

Is Islamic Banking Kosher?

Shariah-compliant or Islamic banking products and services represent a relatively recent, and arguably welcome, set of financial alternatives for investors and consumers. Yet, such options are readily available only in select economies, such as Dubai, Kuala Lumpur, and London, though the number of financial institutions offering such products and services is growing and their effective reach is expanding even further. For all its gain in popularity, just what constitutes shariah-compliance: how is it defined, practiced, and regulated? It seems not all key players—whether national financial oversight authorities, international governmental and national non-governmental organizations, individual banks or consortia and their supervisory boards, or institutional and individual investors and consumers—are agreed. The results of these disagreements could be seriously detrimental to the growth of the sector on a more global scale. Conversely, some key disagreements may actually result in beneficial diversity of options, rather than formalized global homogeneity. How might that work? Based on analysis of the commercial and legal worlds of kosher foods, analogical principles and practices are drawn, suggesting ways forward that could benefit the growing Islamic banking industry overall, as well as servicing diverse needs of investors and consumers across multiple jurisdictions.

Key Words: shariah-compliant; Islamic banking; kosher foods; alternative finance

Is Islamic banking kosher?

Introduction

A diverse range of retail financial products and services has been designed and marketed over the past forty years. Some have been relatively modest, standardized investment or loan devices (e.g. bank certificates of deposit (CD's) and simple-interest auto loans); while others have offered access to high yield and high risk/highly leveraged investments and loans previously available only to select private banking clients and blue chip companies (e.g. pooling investments for participation in private equity hedge funds, sub-prime jumbo adjustable rate mortgages (ARM's) and collateralized debt obligation (CDO's) packages). In all such cases, those who utilize these products and services, however intricate, reasonably believe they can broadly rely on conservative banking, securities and other governmental regulatory bodies to guard against negligence, deceit and fraud in those transactions. Where oversight and regulation fail, legal remedies help fill the security gap by providing a final judicial forum for settling financial contractual grievances.

But there is a relatively new set of financial products and services becoming more widely available, particularly throughout North America and Western Europe, where neither government regulation nor legal remedy would appear to apply or suffice. This is prospectively disconcerting because the products and services in question are arguably to be welcomed, and doubly unfortunate because any resulting harm to investors and consumers will likely undermine the entire sector no less the individual transaction. Specific reference here is to the development and marketing of what are nominated shariah-compliantⁱ or Islamic banking products and services, *viz.* economic products and services that are structured to reflect the parameters drawn by Islamic jurisprudence. In 1997, there were already 176 Islamic banks and financial institutions around the world (Kahf 1999, 453). But growth in the sector has been great; as noted by Jaun Solé in a recent IMF Working Paper, "there are currently more than 300 Islamic financial institutions spread over 51 countries, plus well over 250 mutual funds that comply with Islamic principles. Over the last decade, this industry has experienced growth rates of 10-15 percent per annum—a trend that is expected to continue" (Solé 2007, 3). These institutions and their products and services thereby can present real financial options to observant Muslims and others who seek alternatives to typical risk-ranked, interest-based banking and investment products and services.ⁱⁱ

Still, these otherwise potentially desirable alternatives carry their own range of overlapping risks that must be addressed, variously identified as compliance risk, operational risk, regulatory risk, fatwa risk, spiritual risk, and scholar risk (all on which more, below).ⁱⁱⁱ

Consider the following scenario. After all necessary documents are signed and the transaction is finalized, one party, say the consumer/purchaser, discovers the deal may not in fact accord with not unreasonable assumptions about what fairly constitutes shariah-compliance. This may be due, perhaps, to discovery that (1) interest-bearing and non-interest-bearing funds are not all fully segregated by the financial institution selling the product; or (2) the institutional funds manager is not personally committed to advancing shariah-compliant standards across the business; or (3) the institution's investigation into shariah-compliance was not handled by a scholar or scholars recognized as holding proper authority by the customer's spiritual advisor; or (4) the scholar(s) advanced a minority opinion supporting the legitimacy of the particular transaction—an opinion contrary to the position promulgated by a majority of other Islamic finance advisors. How does the customer now judge the product or service that constitutes the deal? Does the consumer have any

recourse? One cannot simply declare that the specific contract has or has not been breached, since what is at issue reflexively concerns what is meant by "shariah-compliant" in the context of this particular [type of] transaction. Neither is it clear that there is any legal recourse involving a breach of general standards concerning good faith and fair dealing. As noted by Haider Ala Hamoudi at a recent symposium on Islamic business and commercial law, "I have more than once fielded calls from angry Muslim congregation leaders in the United States asking me to direct them to 'real' Islamic financial institutions, as the particular banks to which they went indirectly charged interest in their view, albeit in the form of an elaborate and obfuscatory transaction" (Hamoudi 2007, 615).

How might primary goals of communication, transparency and accountability be advanced in these cases, no less for the sake of expanding confidence in and recommending recourse to the larger market, as for managing expectations and understanding the particular transaction? One might suggest promulgation of a single, global standard, by an appropriate authoritative body, which would be adopted by any and all financial institutions in order to be recognized as Islamic or shariah-compliant. Of course there would be the initial concerns about what standards ought to be drafted, and what body could be deemed authoritative for delivering such a set of global standards to cover financial institutions in countries as diverse as the US, Saudi Arabia, Malaysia, Nigeria, Turkey, and Brazil.

Perhaps launching a new international technical body, similar to the International Telecommunication Union (ITU), under auspices of the United Nations, would suit? After all, since its founding in 1865, the work of the ITU has been to bring together a wide range of private industry and public sector representatives from many nations to hammer out technical standards for interoperation of communications equipment around the globe. It has been very successful over time, establishing regulations and specifications *inter alia* for telegraph, telephone, radio and satellite communications, which permit citizens around the world more easily to communicate with one another than would be the case in the presence of diverse national or product-by-product standards (Coddling & Rutkowski 1982). Hence, if standards and compliance issues are at stake in this matter, such a body might be well placed to determine whether any particular banking product or service constitutes an Islamic product or service for commercial or retail investors and customers in all the countries so served.

Or perhaps an international policy body, modeled on the Center on Transnational Corporations (CTC), also under the auspices of the United Nations, would better serve. It, likewise, has been relatively effective in its remit, advancing a variety of codes to handle wide-ranging economic matters by multinational corporations (Fatouros 1994). After all, since such a body can deal with broad policy issues touching economic justice and legislative fairness, regulations and specifications outlining the operations of large financial institutions that span the globe might help order a distinct, evolving Islamic banking regime.

Or better still, what of a working group under the auspices of the intergovernmental Organization of the Islamic Conference (OIC)? It would be able to combine aspects of both a standards-based ITU and policy-directed CTC, in addition to being a body singularly representative of the Muslim world (Khan 2001). Such a body could promulgate standards and policies touching Islamic banking affecting institutions around the globe, and with a perceived legitimacy unavailable to other more cosmopolitan bodies.

For all that these possibilities exist, I would argue that any and all of them would be poor investments and ultimately unavailing. The ITU option initially may be appealing, but the issues of Islamic finance cover far more than technical specifications for otherwise fungible items: whether a product or service is shariah-compliant raises issues of classical religious law and contemporary interpretation that go well beyond application of simple economic

criteria. While the CTC option is thus a tad more appealing, the multiple and conflicting policies that underlie particular Islamic jurisprudential decision making augur against successful conclusion to any such body's work. Finally, as appealing as the OIC option may likewise appear, it too fails to be a convincing forum for determining standards and policies that will perforce apply to legal and financial systems that are not Islamic in character. While such a body might promulgate a code that reaches, for example, Saudi Arabia and Malaysia (itself a bit of a stretch, given the divergences already existing between these countries and their banking systems, today), it surely would not reach governmental financial regulators in the US or the EU. Therefore, we must expect that all such global options will fail to deliver.

Given the hurdles for global bodies would be high, let me suggest an alternative, devolutionary route to creation of formal guidelines, administration and regulation that is sensitive to differing religious traditions and legal interpretations, while still delivering enforceable standards for the benefit of the financial sector and its wide variety of clients.

Kosher Food Laws

An interesting parallel exists in another area of law and consumer transactions with an integral religious component: kosher foods. Just what constitutes kosher food? What does it mean for a product to bear any such label or marking; and what grounds does a purchaser have for judging the kosher nature of the product, or seeking recourse if the food arguably fails the tests? Let's briefly consider the history of kosher foods regulation, and determine whether we might derive some applicable principles and procedures that can be carried into shariah-compliant banking deliberations and operations.

There used to be official, government-sanctioned answers to all these queries about kosher foods in the United States. At one time, not that many years ago, states like New York and California had not only criminal law statutes concerning kosher foods in their law codes (typically focusing on fraud in the sales of such foodstuffs), but persons with appropriate religious training and certification (*viz.* ordained orthodox rabbis)—typically hired as civil servants and assigned to a state department of agriculture or health—were dedicated to monitoring the markets and enforcing the law.^{iv} Such regulatory oversight and enforcement mechanisms no longer broadly obtain. Rather, as constitutional jurisprudence has evolved in recent years, several federal and state courts have declared such laws and state action to be unconstitutional because of excessive governmental entanglement with religion that impermissibly advances or inhibits contending religious views and practices. For example, the United States Court of Appeals for the Second Circuit struck down the New York kosher fraud statutes in 2002;^v the United States Court of Appeals for the Fourth Circuit struck down the Baltimore, Maryland municipal kosher fraud ordinance in 1995;^{vi} and the New Jersey State Supreme Court struck down its state's kosher fraud laws in 1992;^{vii} all said to be due to "excessive entanglement" of the government contrary to the Establishment Clause of the US Constitution's First Amendment. The matter was handled indirectly and rather earlier in California, but to the same practical effect, by the budgetary elimination (in FY 1965/66) of the Kosher Food Inspector's position within the Department of Public Health.^{viii}

Of course, none of these legal or budgetary and personnel decisions mean that kosher foods have disappeared from store shelves, or that the labeling of foods as kosher has ceased, or that fraud in the sale of foods so labeled cannot be addressed. In that regard, little has changed even given the disappearance of direct state oversight and enforcement.^{ix} Now the field is, relatively speaking, wholly self-regulating. The situation across the US is now similar to that of the UK, where ecclesiastical bodies—like the Kashrut division of the London Beth Din—grants licenses to parties who consensually agree with producers, wholesale merchants and sellers, to be bound by specific details and decisions with regard to

preparation and marketing of foods marked kosher. Such bodies perform no public law function and their decisions are not judicially reviewable, as clarified by the court in its Queen's Bench Division decision of 1997.^x Thus, different bodies apply varying standards: the circled "U" symbol denotes food approved as kosher by the Union of Orthodox Jewish Congregations of America under its international OU Kosher program; while the circled "K" symbol signifies food approved as kosher by the Organized Kashrus Laboratories under its international OK Kosher Certification program.^{xi} While in broad agreement about what constitutes kosher foods, there are important differences concerning particular foodstuffs (e.g. whether swordfish or certain wines and cheeses can be rendered kosher) between these various nongovernmental third-party agencies. It thence becomes incumbent upon the consumer to know whether the particular licensing body's standards and procedures for enforcing those standards together satisfy and are consistent with the consumer's own desires/expectations concerning kosher food products.

"Kosher"-style Banking

If "excessive entanglement" rulings prohibit governments from appointing religious leaders to enforce food regulations, one would expect *pari passu* the same prohibition to extend to governmental financial regulators appointing their own shariah experts, however sensibly suggested by some commentators:

Financial regulators should also appoint their own Shariah experts, which would provide advice on the instruments and services offered by the institutions in their jurisdiction. Consultation with these experts would be crucial to ascertain whether the regulations issued by the supervisor with regard to Islamic institutions, as well as the licensing of different activities, are compatible with Islamic principles (Solé 2007, 5).

For all that, one might opine that a state of affairs analogous to kosher food regulation is currently evolving in Islamic banking circles. Agencies such as the Islamic Financial Services Board (IFSB), the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), and the Islamic International Rating Agency (IIRA), have promulgated a variety of standards that financial institutions ought to meet in order to call themselves and their products and services Islamic or shariah-compliant. The IIRA even acts as a sort of Moody's-like ratings service, providing what it calls a Shari'a Quality Rating (SQR), running in six steps from the highest AAA (SQR) to lowest B (SQR) (the former conforming to the "highest level of standards" in all aspects; the latter conforming to an "adequate level of standards" though "weaknesses in some areas" exist), both for entities and their financial instruments.^{xii} Private consulting services and think tanks, like Dar Al Istithmar (a joint venture of Deutsche Bank, Russell Wood and Oxford Islamic Finance, headquartered in London), likewise claim to provide expert advice to the industry and individual institutions.^{xiii}

The limitations inherent in such self-regulation are relatively greater, however, in the financial realm than in kosher foods markets. In the latter arena, a consumer can buy at a shop licensed by a religious body associated with the particular sect to which the consumer adheres and so about which there is pertinent and sufficient information. If one alternatively wishes stricter or looser or even some different standards enforced, one chooses the appropriate shop licensed by the appropriate body. Naturally, one has legal recourse for false or deceptive advertising and fraud with regard to kosher foods: if what is sold as kosher is sold knowingly by the seller not to meet the standards guaranteed by the advertised licensing body, one has been deceived or defrauded in the sale and usual legal remedies in public courts are available. But these remedies are neither more nor less than those widely available for sales in general, where the product or service is expected to meet some standard known and agreed by the parties. One is not in a position legally to challenge the award of a kosher license by a private body, or labeling kosher a specific product sanctioned

by an appropriate licensing body, or generally to challenge the decisions and operations of the licensing body, itself (at least so long as it is operating according to its charter).

But what exactly are the standards that can be imported into such suits where Islamic financial products are at stake? Just how are investors in and consumers/purchasers of these products to know the sort of standards applied, whether they conform to the individual's principles and expectations that can be noticed and upheld by a court or arbitrator seeking to settle a dispute? One might rightly be concerned that any such suits will fail on grounds similar to those noted by a British court in *Beximco*.^{xiv}

In that case, reference was made to a set of financing agreements between a bank in Bahrain on the one side, and a pharmaceutical company and its guarantors on the other. One key governing law clause specified that the agreements were "subject to the principles of the Glorious Sharia'a" as well as English law. The justices decided that only English law would be construed and enforced; that the parties could not be asking the court to "get into matters of Islamic religion and orthodoxy" [quoting the lower court judge at ¶41] since there is no specific "reference to, or identification of, those aspects of Sharia'a law which are intended to be incorporated into the contract" [at ¶52] as one might do with foreign or international law terms that the parties seek to apply to their dealings (e.g. applying International Chamber of Commerce UCP 500 rules to a particular transaction's documentary credits). In short, determining whether the financing agreements were or were not *halal* was beyond the purview of the court.

Managing Risks

We are left, then, to analyze the range of risks identified earlier in this paper and, if possible, address them. The first, called compliance risk, refers in this context to the likelihood that a financial product or service "is not or will not be in compliance" (DeLorenzo 2007, 397) with the accepted structure and mechanics of Islamic law as related to financial transactions. According to DeLorenzo, we can best conceive of compliance risk as itself a function or form together of operational and regulatory risks (DeLorenzo 2007, 398). That is, managing compliance risk requires attending to the transparency of the product's or service's development, implementation, and subsequent control and use of funds associated with it, as well as how well this all is communicated to the target market of consumers/purchasers. As he subsequently notes, one way an institution can begin to manage these enveloping risks is to establish and follow the advice of an internal Shariah Supervisory Board (SSB)—comprising three or more scholars trained in Islamic law and finance, who are directly involved in and so responsible for the Islamic character of the financial institution's overall operations, as well as its particular products and services.

SSB's (and others) can then promulgate a fatwa or religious legal opinion, as is becoming more frequently required by some private regulators, attesting to or certifying that the character of the financial institution, or the particular product or service provided by the institution, is in compliance with Islamic law. The fatwa risk is then the probability that the fatwa will be rejected either by a private regulator or the institution's market targets. That probability is itself a function of scholar risk, or the likelihood that the SSB scholars will be accepted as such, that they represent a broader (or narrower) range of Islamic opinion and can communicate well with their institutions and the public. Part of this risk is a reflection of what has been nominated a scholar shortage: "In part because Islamic finance has grown in recent years, there has actually been a reported shortage of Shari'ah scholars possessing the dual expertise in modern finance and Muslim practices required to make such determinations" (Karasik, Wehrey & Strom 2007, 385). Neither is there any "consistent way of appointing Shari'ah boards, nor in the authority to which they report" (Kahf 1999, 454).

Hence, concerns exist about potential conflicts of interest (a single scholar serving on multiple boards for highly remunerative fees), as well as the range of differing interpretations that flow from these scholars' judgments. This latter concern sidles into our final, or spiritual risk, category, being the extent to which one is willing to put oneself and one's financial affairs under the guidance of any cleric or board for the sake of following Islamic mandates and so submitting to God: "The current range of religious opinion on Islamic finance provides many alternatives for people with varying tolerance for spiritual risk. The general consensus upholds the formal ban on interest despite frequent assertions [by a minority of scholars] that the Qur'an prohibits usury and exploitation rather than interest per se" (Bianchi 2007, 578).

Conclusions

So let's return to one of the hypothetical queries with which we began: what if the institution's advisory board adopts a minority position (for example, the board might adopt a position of the Hanafi school that is rejected by the other three principal Sunni schools of Islamic jurisprudence broadly recognized by Muslim scholars and adherents of Islam)?^{xv} Will different financial institutions then reflect different schools in much the same way that different kashrus bodies reflect different kosher mandates? Just what level of specificity must be embodied in the financial documents detailing the agreement so that the consumer can receive the benefit of the bargain, and still retain legal recourse for breach of same?

Since (A) deceptive advertising and unfair competition statutes and enforcement are of limited value in this sector at this time; and (B) US Constitutional "Establishment Clause" jurisprudence would seem straightforwardly to prohibit establishing shariah-compliance investigators/enforcers within federal or state securities, banking and consumer affairs agencies; and (C) there exists a variety of scholars and schools of Islamic jurisprudence which offer divergent as well as convergent counsel on what transactions are or are not shariah-compliant; and (D) claims by financial institutions within the US (and around the world) to be Islamic banks, or to be offering shariah-compliant products and services through separate service "windows", are increasing; let me suggest the following 5 steps be taken for the benefit of the industry as well as investors and consumers in Western-oriented markets.

First, consistent with rights to freedom of speech, freedom of association and freedom of religion, constrained legally only by statutory and common or civil law guidance concerning *inter alia* deceptive advertising and unfair competition, any financial institution may claim to offer Islamic or shariah-compliant products and services.^{xvi}

Second, any financial institution which claims to offer Islamic or shariah-compliant products and services shall explain to any current or prospective investor and customer the bases for this claim, and offer in writing, as warranty for the same, a document detailing those bases.^{xvii}

Third, these bases, comprising the institution's warranty of good faith and fair dealing, shall be incorporated into all transaction agreements or contracts, and noted as critical or essential elements of the deal agreed, so that any change in these bases constitutes a significant alteration of the parties' bargain.

Fourth, should any basis for the claim of Islamic or shariah-compliant status ever change (e.g. a change in scholars on the advisory board or a change in the schools of jurisprudence represented), the investor or consumer must be given updated notice as soon as practicable but no later than 30 calendar days after the change.

Fifth, and in relation to the fourth point above, should any basis for the claim of Islamic or shariah-compliant status ever change as noted, the investor or consumer must be permitted

to renegotiate or unwind/close out the investment or transaction then open, in an orderly fashion and without financial or other penalty.

Naturally, one appropriate way for handling standardization of these terms and advancing the cause of these banking and investment alternatives is for financial institutions explicitly to adopt consensual guidelines and provide investor and consumer education of same (in fashion akin to that of kosher foods purveyors), so that where one sees a particular body's license or label or seal of approval, one can know what sort of product or service to expect. By the same token, these standards bodies (like the OU and OK kosher programs' organizations, noted above) must engage in their own education and policing activities, so that investors and consumers can have confidence in, and institutional leaders can know they will be held to, the body's guidelines.

Consequently, it would be quite salutary to see increased transparency of these standards bodies in their processes of (a) producing guidelines; (b) licensing producers; (c) monitoring enforcement mechanisms; and (d) publishing industry data (e.g. how many institutions are licensed; how many periodic reviews/enforcement proceedings or actions have been taken; any licenses withdrawn and methods of publication/announcement of withdrawal to the general public). It would also help to publish comparative data, such as information on operations overseas, especially in countries like the US where shariah is not the law of the state.

Finally, it would also be valuable to have data published on general operations of those banks, like HSBC and Citi,^{xviii} which operate Islamic or shariah-compliant "windows" so that others might benefit from knowledge of their histories.

In these multiple but linked ways, roads can be smoothed to advance the spread of such banking alternatives. So built on increasing investor and consumer confidence that institutions are offering products of value, and for which they can know there is recourse to settle concerns or grievances if and when they arise, neither is there need for any single cosmopolitan compact or standard defining shariah-compliance in investment or retail banking: diversity will be the sector's strength, not its weakness.

Notes

ⁱ "Shariah" is one widely adopted transliteration from the Arabic for that body of Islamic law that covers all of life. It is variously rendered sharia, shari'a, sharia'a, shari'ah, sharee'ah, leading sometimes with a lower case "s" or capital "S". Unless quoting a source that uses a variant, I herein adopt "shariah" and use it to identify those standards or constraints identified by Islamic scholars that are applicable to modern economic arrangements; hence, labeling an institution or transaction as "shariah-compliant" is synonymous with its being "Islamic".

ⁱⁱ It is of at least passing interest that Islamic financial institutions are doing quite well in the midst of the current global liquidity crisis hitting mainstream financial markets via the collapse of their complex securitized products.

ⁱⁱⁱ These risks are similar to, yet importantly different from, the risks using these names found in contemporary risk management literature (cf. e.g. Allen 2003; and McNeil, Frey, & Embrechts 2005). We thus leave aside other, more typical risks, such as legal risk, that closely track the risk concerns of makers and clients in most any financial transaction. See e.g. the comments on legal risk of Professor R.A.A. Karim, Secretary-General of the Islamic Financial Services Board (IFSB), from his address to an Islamic Finance conference in May 2006 (available from the IFSB website at <http://www.ifsb.org/index.php?ch=5&pg=21&ac=45>, last accessed on 30 March 2008).

^{iv} The New York legislature promulgated a model kosher foods fraud statute in 1915; California followed suit with a near duplicate fraud statute in 1931. The Kosher Food Law Representative post

was created within the California Department of Public Health in 1957, mimicking that of New York's Director of Kosher Law Enforcement.

^v *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415 (2d Cir. 2002).

^{vi} *Barghout v. Bureau of Kosher Meat and Food Control*, 66 F.3d 1337 (4th Cir. 1995).

^{vii} *Ran-Dav's County Kosher v. New Jersey*, 129 N.J. 141 (1992).

^{viii} See details in *Glasner v. Department of Public Health*, 253 Cal. App. 2d 727 (1967).

^{ix} Statutes remain on many states' books, which can be cited by complainants who bring cases to court, with the caveat that the fraud must be shown to have been intentional on the part of the seller; in short, that the seller knew the product did not meet reasonable standards or expectations about what constitutes a kosher food product. The current New York statute is found in its Agriculture & Markets Law, §201-a *et seq.* (2007); California's statute is part of its Penal Code, §383b (2006). A companion statute, covering halal foods in California was added as §383c (2006) in 2002, with reference to Islamic religious requirements, laws and customs.

^x *R v. London Beth Din (Court of the Chief Rabbi) ex parte Bloom*, CO/2495/96 (Crown Office, UK 1997).

^{xi} Details of the OU Kosher Program can be found online at <http://www.oukosher.org/>; while the OK Kosher Certification Program can be found online at <http://www.okkosher.com/> (both sites last visited on 30 March 2008). For a fascinating and entertaining investigation into differing kosher rules, see Israel 1993.

^{xii} Ratings agencies like Moody's Investor Service, Standard & Poor's, and Fitch Ratings, all follow Islamic finance markets and will rate the credit worthiness of, say, a bond issue underwritten by an Islamic financial institution, but none take into account or provide advice on shariah-compliance for their ratings purposes, leaving that assessment to appropriate religious authorities. Similar approach is taken by some governmental authorities, such as the UK Financial Services Authority exercising its regulatory role over the new Islamic Bank of Britain: the FSA provides secular oversight of the Bank's operations, but leaves shariah-compliance issues to the Bank's own Sharia'a Supervisory Committee. A different approach is taken by Dow Jones in the management of its multiple Islamic Market Indexes, which utilizes an independent Shariah Supervisory Board or SSB (see text *supra* under the section on Managing Risks for further details about SSB's) for counsel concerning equities meeting "stringent" criteria for inclusion in any index (details at <http://www.djindexes.com/mdsidx/?event=showIslamicOverView>, last visited on 19 April 2008).

^{xiii} Details concerning the Islamic Financial Services Board (IFSB) can be found online at <http://www.ifsb.org/>; the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) can be found online at <http://www.aaofii.com/>; the Islamic International Rating Agency (IIRA) can be found online at <http://www.iirating.com/>; and Dar Al Istithmar can be found online at <http://www.daralistithmar.com/> (all sites last visited on 30 March 2008).

^{xiv} *Shamil Bank of Bahrain EC v. Beximco Pharmaceuticals Ltd and others*, [2004] EWCA Civ 19, [2004] 4 All ER 1072.

^{xv} There are four Sunni schools widely recognized today: the Hanafi, Maliki, Shafii, and Hanbali. A fifth school, Jafari, is associated with Shi'a Islamic jurisprudence (Brown 2007, 516). Not all schools agree with all financial options nominated shariah-compliant. For example, a minority allow a purchase of goods in a *murabaha* transaction to be completed directly by and in the name of the purchaser, rather than first being completed by or at least in the name and on behalf of the financial institution before transfer. As noted by Hamoudi, even when sanctioned by a recognized authority, many of these types of transactions "have proven somewhat controversial", while other jurists "have denounced them" outright (Hamoudi 2007, 120). Just what a court is empowered to do or of what factors it can take notice, in turn depends on the laws to which it can make reference. Hence, a court in Malaysia, taking its cue from Bank Negara, that nation's central bank which is charged with determining just what transactions are shariah-compliant and so contractually licit, can make decisions on "black letter law" grounds; while other courts, which have no such fixed point of legal-financial reference, cannot. See e.g. the decision of the High Court of Malaysia in *Tahan Steel Corp Sdn Bhd v. Bank Islam Malaysia Bhd*, [2004] 6 MLJ 1 (Malaysia), wherein the lead Justice, with due respect to the British court's *Beximco* decision noted above, disagrees with the claim of internal conflicts in the law of Islamic finance (¶20) and cites black letter Malaysian law defining Islamic banking in order to help resolve the issues involved in the instant case concerning *istisnaa'* financing agreements. For review of various models concerning central bank governance of Islamic bank operations, see El-Gamal 1999.

^{xvi} This is not to be confused with more limited undertakings, such as the Islamic Finance Documentation Committee (IFDC), that operates as a joint working group representing the International Capital Market Association (ICMA) and the International Islamic Financial Market (IIFM),

to create regional guidelines applicable only to Middle Eastern markets, where Gulf Cooperation Council countries claim already to have established shariah-based regimes to guide the development of their banking sector.

^{xvii} Practical examples of what might be expected in a writing along these lines can be found in consumer protection legislation, like the Truth-in-Lending Act, 15 U.S.C. §§1601 *et seq.*, and its accompanying detailed requirements in Regulation Z, at 12 CFR §226.1 *et seq.* While there may be no need for shariah-compliant transactions to adhere to certain specifics mandated in these laws (like size of font utilized in the document), the overall thrust of the legislation to ensure the consumer receives sufficient information to make an informed decision is well worth mimicking.

^{xviii} Some information about HSBC's "Islamic window" or subsidiary, called HSBC Amanah, can be found online at <http://www.hsbcamanah.com/1/2/hsbc-amanah/>. Citi's window is called the Citi Islamic Investment Bank, and some information about its operations can be found online at <http://www.citibank.com/ciib/homepage/index.htm> (both sites last visited on 30 March 2008).

References

Allen, Steve L. 2003. *Financial Risk Management: A Practitioner's Guide to Managing Market and Credit Risk*. NJ: John Wiley & Sons, Inc.

Bianchi, Robert R. 2007. The Revolution in Islamic Finance. *Chicago Journal of International Law* 7 (Winter 2007): 569-580.

Brown, Donald. 2007. A Destruction of Muslim Identity: Ontario's Decision to Stop Shari'a-based Arbitration. *North Carolina Journal of International Law & Commercial Regulation* 32 (Spring 2007): 495-546.

Codding, Jr., George A. & Anthony M. Rutkowski. 1982. *The International Telecommunication Union in a Changing World*. Boston: Artech House Publishers.

DeLorenzo, Yusuf Talal. 2007. Shari'ah Compliance Risk. *Chicago Journal of International Law* 7 (Winter 2007): 397-408.

El-Gamal, Mahmoud A. 1999. Involving Islamic Banks in Central Bank Open Market Operations. *Thunderbird International Business Review* 41(4/5): 501-521 (July-October 1999).

Fatouros, A.A., ed. 1994. *Transnational Corporations: The International Legal Framework*. Vol. 20 of United Nations Library on Transnational Corporations. New York: Routledge.

Hamoudi, Haider Ala. 2007. Jurisprudential Schizophrenia: On Form and Function in Islamic Finance. *Chicago Journal of International Law* 7 (Winter 2007): 605-622.

-----, 2007. Muhammad's Social Justice or Muslim Cant?: Langdellianism and the Failures of Islamic Finance. *Cornell International Law Journal* 40 (Winter 2007): 89-133.

Israel, Richard J. 1993. *The Kosher Pig: And Other Curiosities of Modern Jewish Life*. Los Angeles: Alef Design Group.

Kahf, Monzer. 1999. Islamic Banks at the Threshold of the Third Millennium. *Thunderbird International Business Review* 41(4/5): 445-460 (July-October 1999).

Karim, Rifaat Ahmed Abdel. 2007. Aligning the Architecture of Islamic Finance to Evolving Industry Needs: Opening Address to a conference on Islamic Finance in Beirut, Lebanon, 17-18 May 2006. Available from the Islamic Financial Services Board (IFSB) website at <http://www.ifsb.org/index.php?ch=5&pg=21&ac=45> (last accessed on 30 March 2008).

Karasik, Theodore; Frederic Wehrey; and Steven Strom. 2007. Islamic Finance in a Global Context: Opportunities and Challenges. *Chicago Journal of International Law* 7 (Winter 2007): 379-396.

Khan, Saad S. 2001. Reasserting International Islam: A Docus on the Organization of the Islamic Conference and Other Islamic Institutions. New York: Oxford University Press.

McNeil, Alexander; Rüdiger Frey; and Paul Embrechts. 2005. *Quantitative Risk Management: Concepts, Techniques, and Tools*. NJ: Princeton University Press.

Solé, Juan. 2007. Introducing Islamic Banks into Conventional Banking Systems. *IMF Working Paper* WP/07/175 (July 2007). Washington, D.C.: International Monetary Fund.