

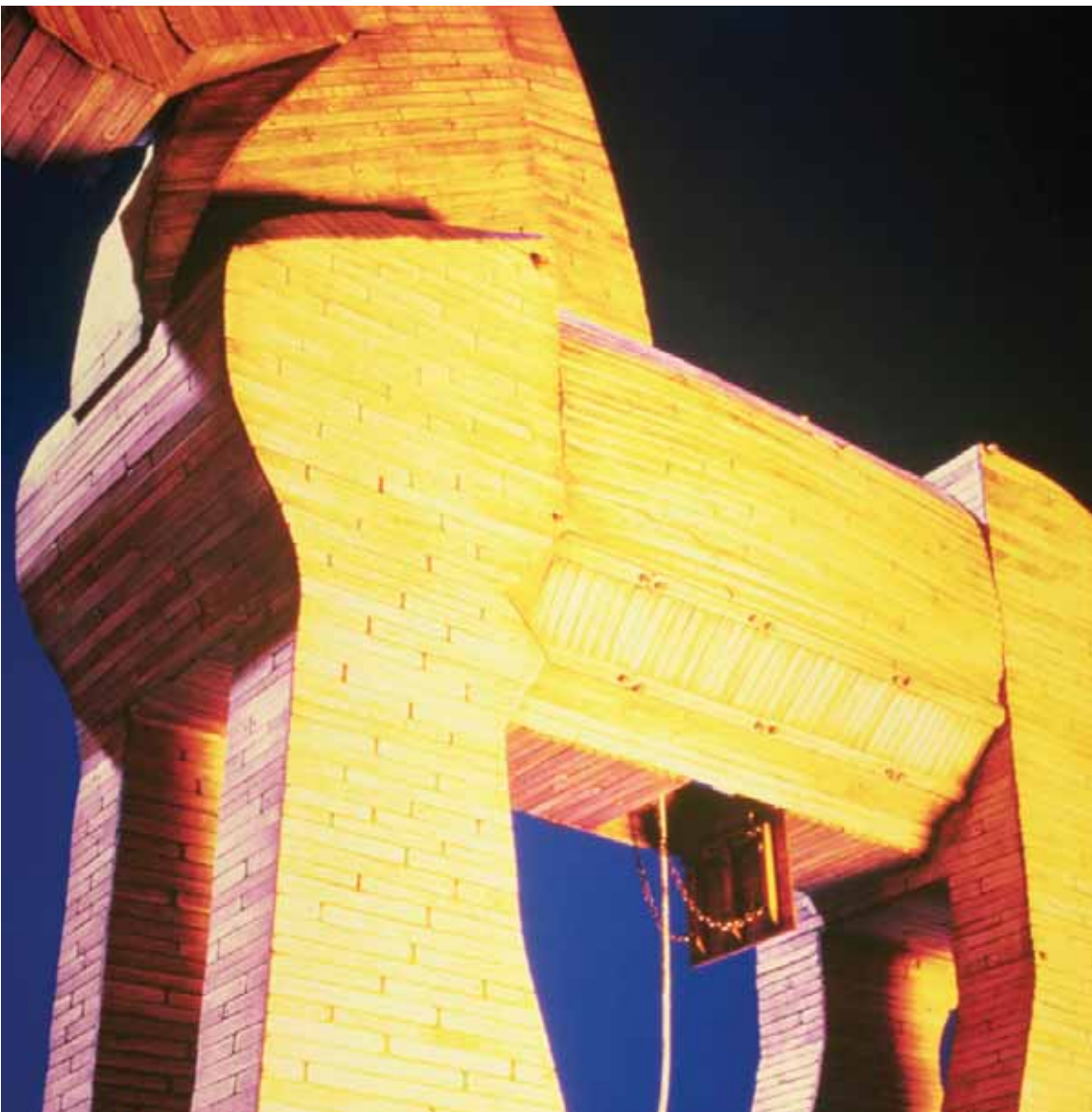
# EXHIBIT 4(b)

# **Shariah, Law and ‘Financial Jihad’: How Should America Respond?**

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Analysis and Findings of a Workshop

Co-sponsored by: The McCormick Foundation and  
The Center for Security Policy



**Cover:**

**Trojan Horse**

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# **Shariah, Law and ‘Financial Jihad’: How Should America Respond?**

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The McCormick Foundation and The Center for Security Policy**

**Cantigny Park  
Wheaton, Illinois**

# Shariah, Law and ‘Financial Jihad’: How Should America Respond?

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Shariah, Law and ‘Financial Jihad’:  
How Should America Respond?

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## Executive Summary

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**S**hariah-Compliant Finance (SCF) is a phenomenon that is taking capital markets around the world by storm. It is estimated that there are currently \$800 billion invested in vehicles that are deemed by a select group of Muslim scholars engaged for the purpose to comply with the all-embracing body of Islamic religious, social, political and military duties known as Shariah law. All other things being equal, that amount is expected to grow dramatically in the years ahead, thanks in part to the ever-increasing treasuries of the oil-exporting Muslim states and their sovereign wealth funds.

Unfortunately, Shariah-compliant finance is also a Trojan Horse—an instrument for legitimating and propagating Shariah law in Western societies. Since the stated purpose of that code is to bring about—through violent means (*jihad*) if necessary—the rule of Islam worldwide in place of secular governments like that of the United States, SCF is furthering a seditious agenda.

Sedition is, however, only one of a number of civil liabilities and criminal exposures associated with Shariah-compliant finance. SCF is conducted as a “black box,” with a small cohort of Shariah advisors—Muslim authorities on Shariah law—determining capital and credit flows with little, if any, of the transparency and accountability at the heart of federal and state securities laws. This gives rise to risks for firms engaging in SCF that include: racketeering, anti-trust and securities and consumer fraud.

Worse yet, these advisors’ adherence to authoritative, totalitarian Shariah (not to be confused with the personal, pietistic “path to God” embraced by many tolerant, peaceable Muslims) gives rise to another problem: material support for terrorism. Under Shariah law there are eight approved forms of charity to which faithful Muslims are expected to tithe at least 2.5% of their income. Four of these can be interpreted as supportive of violent *jihad*.

Shariah-compliant finance affords Shariah advisors the opportunity to channel funds skimmed off of SCF investments in the form of *zakat* (charitable contributions) or “purification” (funds judged by the advisors to have been generated by “impure,” non-Shariah-compliant sources) to charities of their choice. There is strong reason to believe at least some of these funds are finding their way to entities that sponsor or otherwise support terrorism.

## Executive Summary

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For all these reasons, Shariah-compliant finance should be seen by regulators, the financial sector and investors alike as problematic in the extreme. It is inconsistent with this country's legal code that requires transparency and disclosure of risks that would be material, particularly to post-9/11 American investors. The true nature of Shariah law, the unacknowledged agenda of the Shariah advisors that enable Shariah-compliant finance and the array of civil and criminal liabilities associated with SCF all should be fully revealed. In the absence of such transparency and disclosure, Americans are in jeopardy of aiding and abetting economic warfare in the form of "financial jihad" against their own country.

# Introduction

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This monograph is the product of a series of conversations that led ultimately to an extraordinary, day-long workshop convened on 4 March 2008 under the co-sponsorship of the McCormick Foundation and the Center for Security Policy. For many of the participants in that workshop, as will be true of many—if *not nearly* all—of the readers of this volume, the subject of Shariah-Compliant Finance (SCF) was a new one.

It is our hope that the latter will be as moved as were the former by the shocking information presented here—moved to understand the challenge posed to our capital markets, our economy and ultimately to our society by the still-nascent Shariah-compliant finance phenomenon in the United States and moved to counter this threat.

The pages that follow focus on three important facets of the phenomenon of Shariah-compliant finance:

First, this monograph addresses the true nature of authoritative Shariah and its ominous implications for America and other freedom-loving nations. In contrast to the personal, pietistic version of Shariah embraced by hundreds of millions of peaceable, tolerant Muslims around the globe, that practiced by *all* of the formal schools of Sunni and Shi'a Islam, by the faith's recognized Shariah authorities and by their adherents is a prescription for the destruction of the West's sovereign governments in favor of a world-wide theocracy. Shariah-compliant finance is an instrument for legitimating and otherwise advancing this seditious agenda and must be both understood and dealt with as such.

Second, this monograph explores the personal history, associations and agenda of several of the men at the heart of the Shariah-compliant finance industry: the Shariah advisors. The rulings of these scholars determine whether investments conform to authoritative Shariah or are "impure" and must, therefore, be eschewed. In order to accommodate the unique role of these advisors, the SCF industry has been structured as a "black box"—an arrangement that utterly defies Western legal and regulatory requirements for transparency and accountability.

This situation would appear problematic on its face. Unfortunately, as the illustrative biographical material makes clear, the Shariah authorities employed as advisors to the Shariah-compliant finance market are, seemingly without exception, avowed Islamist-sympathizers. As a general rule,



## Introduction

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they appear to have ties to organizations or institutions associated with terrorism financing or other activities. It is the height of folly to entrust decision-making concerning a significant—and growing—portion of Western capital and credit flows to such individuals.

Third, this monograph explores the relationship between Shariah-compliant financial transactions and *zakat*, the charitable contributions made in the name of fulfilling the obligatory tithing of faithful Muslims. While the black box in which the SCF industry operates obscures the full extent of this practice, it seems safe to assume that a significant portion (i.e., at least 2.5% of proceeds) are being diverted to charities favored by the respective companies' Shariah advisors. Given the latter's fidelity to Shariah's purposes and violent methods, the possibility that some of these sums are finding their way into "charitable" organizations with ties to terror is extraordinarily high. This is but one of the myriad examples of civil and criminal exposure inherent in Shariah-compliant finance discussed at length.

To address these subjects, the present volume drew heavily upon briefings and discussion that took place during the Cantigny workshop involving leading experts on Islamism, Shariah, finance, national security and law enforcement. It also benefited from a compelling legal memorandum authored by David Yerulshalmi entitled *Shariah's Black Box: Civil Liability and Criminal Exposure Surrounding Shariah-Compliant Finance*, to be published in an abbreviated form in the September 2008 edition of the *Utah Law Review*. It was also based on analysis of Shariah-compliant finance and other sources that were distributed at the meeting and used by the participants. These additional materials are available at [www.StopShariahNow.org](http://www.StopShariahNow.org).

All of these inputs have been tailored with a view to providing one-stop-shopping for the lay investor and legal advisor alike. Ultimately, the utility of this monograph will be measured by the extent to which awareness about these three topics (among others) is raised and ever-more-forceful and decisive opposition expressed to the practice of SCF—on Wall Street, in executive branch agencies and in the Congress.

We hope that the result of all these efforts will be to halt and then to reverse the Islamists' "creeping" campaign aimed at imposing irreversibly totalitarian Shariah in this country, among many others world-wide.

# Chapter 1: What is Shariah?<sup>1</sup>

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**S**hariah is an all-embracing body of Islamic religious, social, political, and military duties derived by caliphs and Shariah authorities over 1200 years. It is imposed as the law of the land in Saudi Arabia, Iran, and Sudan and, until recently, in Afghanistan by the Taliban. Adherents to traditional, authoritative Islam seek to impose the repressive, theocratic program they call Shariah on everyone, Muslims and non-Muslims alike.

Shariah-Compliant Finance (SCF) is a manifestation of that agenda. There is no “Shariah finance” apart from the indivisible system of Shariah law. Without exception, scholars employed as advisors on financial matters are deemed to be authorities on SCF because of their standing with respect to the comprehensive whole of Shariah law.

At least a rudimentary understanding of Shariah is required to grasp the implications of Shariah-compliant finance. Per force, this discussion will be elementary, yet true to the understanding of Shariah by contemporary and classical Shariah authorities.

## **Purpose**

The primary purpose of Shariah is to promote Islam as the only legitimate theo-political system and to accomplish its dominance, through violent Jihad if necessary, worldwide (This is what is meant by the “Islamist” agenda). Shariah rules govern all aspects of life but are most notorious for the mandate they provide for: stoning of adulterers, execution of homosexuals, amputations for petty crimes, beheadings of Muslim apostates, institutionalized misogyny and myriad other violations of Western values and international norms. As an example, a popular educational poster from the Islamic region of Nigeria, shows the dire punishments of Shariah in a country torn in two by conflicts over new Shariah courts. In the top row, a woman is shown riding a bike with a man, and next is shown her punishment: being stoned to death.

## **Shariah Sources<sup>2</sup>**

The authoritative Sunni and Shi’a legal schools of Islam consider Shariah

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<sup>1</sup> Much of the original scholarship uncovering the danger of Shariah-compliant finance was based upon the early work of Alex Alexiev. See, e.g., Alex Alexiev, Islamic Financing or Financing Islamism, Center for Security Policy Occasional Paper, <http://www.centerforsecuritypolicy.org/Modules/NewsManager/Center%20publication%20PDFs/Islamic%20Finance%20or%20Financing%20Islamism.pdf>

<sup>2</sup> The following analysis draws heavily from David Yerushalmi. “Shariah’s Black Box”: Civil Liability and Criminal Exposure Surrounding Shari’ah-Compliant Finance. Utah Law Review. To be published September 2008.

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(the “proper way”) to be derived from two canonical sources: The first is the Quran, which is considered the perfect expression of Allah’s will for man. Every word is perfect and unalterable except and unless altered by some subsequent word of Allah. While most of the Quran’s 6,236 verses are not considered legal text, there are approximately 500 verses considered instructional or sources for normative law.

The second source of Allah’s instruction for Shariah is considered to be the Hadith, or stories of Mohammed’s life and behavior, which are also deemed to be legal and binding authority for how a Muslim in any place at any time must live. The Hadith were collected by various authors in the early period after Mohammed’s death. Over time, Islamic legal scholars vetted the authors for trustworthiness and their Hadith for authenticity. There is general consensus across all Sunni schools that there are six canonical Hadith. The legal or instructional portions of the Hadith together make up the Sunna.

While the Shariah authorities from the Shi’a Muslim world also accept the Hadith as authoritative, they differ on the selection of the authors accepted as authoritative, based upon mostly theological grounds. For all Shariah authorities, however, the Quran is considered the direct revelation of Allah’s will and therefore primary. The Sunna is the indirect expression of that will and secondary. Both sources are considered absolutely infallible and authoritative.

In order to divine the detailed laws, norms and customs for a Muslim in all matters of life, the Shariah authorities over time have developed several schools of legal jurisprudence. These schools adhere to certain theological and jurisprudential rules to guide their interpretations of the Quran and Sunna. While there is broad agreement among the schools about the rules, there are important distinctions and these differences do result in different legal interpretations and rulings. These differences are typically of degree, not of principle.

The rules of interpretation and their application to finite factual settings are collectively termed *al fiqh* (literally “understanding”). *Usul al fiqh*, or the ‘sources of the law’, is what is normally referred to as jurisprudence. *Furu’* is the term most often associated with the specific positive law rulings.

Technically, Shariah is the overarching divine law and *fiqh* is the way Shariah authorities interpret that divine law in finite ways. It is important to note, however, that *the word Shariah appears only once in the Quran* in this context. Shariah authorities have, for more than a millennium, created a corpus juris (“*al fiqh*”) based upon their interpretative understandings of the Quran and Sunna. These authorities have given Shariah the currency it now enjoys in the Islamic world, both institutionally and culturally.

For this reason, the word Shariah is used in this monograph to mean *all* of Islamic jurisprudence, doctrine and legal rulings—much as it is used in the

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vernacular by the typical Shariah-adherent Muslim. According to this sense of the term, Shariah is not predicated upon a personal, pietistic or subjective understanding of what it means to be a Muslim. Neither is it simply an objective, formal law or behavioral code regulating finance and commercial transactions.

While some Muslims around the world may conceive of Shariah in such personal, subjective terms, two of the preeminent Western authorities on Islam—Professors Frank Vogel and Samuel Hayes of Harvard University—make clear in their co-authored book *Islamic Law and Finance*, that the authoritative understanding of Shariah is as an institutionalized legal-political-normative doctrine and system:

Islamic legal rules encompass both ethics and law, this world and the next, church and state. The law does not separate rules enforced by individual conscience from rules enforced by a judge or by the state. Since scholars alone are capable of knowing the law directly from revelation, lay people are expected to seek an opinion [fatwa] from a qualified scholar on any point in doubt. If they follow that opinion sincerely, they are blameless, even if the opinion is in error.<sup>3</sup>

This classical understanding of Shariah has been echoed by a leading professor of finance in Australia and a senior official in the Bahrain Ministry of Finance and National Economy:

Since Islamic law reflects the will of God rather than the will of a human lawmaker, it covers all areas of life and not simply those which are of interest to a secular state or society. It is not limited to questions of belief and religious practice, but also deals with criminal and constitutional matters, as well as many other fields which in other societies would be regarded as the concern of the secular authorities. In an Islamic context there is no such thing as a separate secular authority and secular law, since religion and state are one. Essentially, the Islamic state as conceived by orthodox Muslims is a religious entity established under divine law.<sup>4</sup>

Shariah demands that its law be dominant. It is a fundamental crime under Shariah for a Muslim to adhere to a secular law that does not make clear that Shariah is the “highest law of the land.” If a Muslim instead con-

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<sup>3</sup> Frank E. Vogel and Samuel L. Hayes III, *Islamic Law and finance: Religion, Risk and Return* 71-87 (1998).

<sup>4</sup> Mervyn K. Lewis and Latifa M. Algaoud, *Islamic Banking* 24 (Edward Elgar ed., 2001), as cited in “Shariah’s Black Box”.

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siders a secular constitution to be the “highest law of the land,” even if the secular constitution and the laws of the land allow for Shariah adherence, the Muslim is considered a Mushrik or polytheist. He is subject to capital punishment because he has implicitly acknowledged a law giver higher than Allah. Moreover, according to Shariah, a Muslim is a martyr when he dies killing/murdering the infidel in a battle to spread Shariah, as this is an act of obligatory “jihad.”

## The Law of Jihad and Shariah

Shariah is the source of the command for faithful Muslims to practice jihad. For peaceable Muslims, this term is usually interpreted to mean a personal, introspective “struggle” against the Muslim’s own sins or temptations. The authoritative rendering of Islamic jihad, however, is a “just” war against non-Muslims and Muslims who have gone astray. Shariah-adherent Muslims must engage in jihad to bring about the global Islamic state under a caliph who governs pursuant to Shariah.

Sheik Mohammed Taqi Usmani is the leading scholarly authority for Shariah-compliant finance. Usmani is also the leading proponent of the argument that Shariah itself demands aggressive jihad against all non-Muslims and against any non-Islamic country. Usmani, serves on SCF advisory boards, frequently in a leadership role. He is also the Chairman of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), a group established to establish standards for and monitor the practices of the Shariah-compliant finance industry.

The English translation of Usmani’s 2006 book *Islam and Modernism* includes an entire chapter devoted to the obligation for Muslims to engage in violent jihad against non-Muslim states, even when the latter permit Muslims to preach and attempt to convert freely. The following passages are illustrative:

Here, killing is to continue until the unbelievers pay Jizyah after they are humbled or overpowered. If the purpose of killing was only to acquire permission and freedom of preaching Islam, it would have been said “until they allow for preaching Islam.” But the obligation of Jizyah and along with it the mention of their subordination is a clear proof that the purpose is to smash their grandeur, so that the veils of their domination should be raised and people get a free chance to think over the blessings of Islam.

In short, my humble self is of the view that the purpose of jihad is not just to get the right of missionary activities in any country, but it aims at breaking the grandeur of unbelievers and establish[ing] that of Muslims. As a result no one will dare to show any evil designs against Muslims on

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one side and on the other side, people subdued from the grandeur of Islam will have an open mind to think over the blessings of Islam. Factually, this aims at safeguarding Islam. It is for this reason that the scholars who have called jihad “A Protection” must be looked in the above context. But the basic element of this “protection” is to break the grandeur of unbelievers and establish the authority of Islam.

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 Asia and Africa. They are still bleeding under these heavy chains.

At least in my humble knowledge there has not been a single incident in the entire history of Islam where Muslims had shown their willingness to stop jihad just for one condition that they will be allowed to preach Islam freely. On the contrary, the aim of Muslims as declared by them in the battle of Qadsia was, “To take out people from the rule of people and put them under the rule of Allah.”

The West has in recent years become most familiar with the term jihad in its “hard” form, involving the use or threat of violence to coerce, intimidate, extort and, if necessary, destroy the unbelievers and Muslims who resist the imposition of Shariah. Terrorism as a tactic is a manifestation of this strain of war, in which relatively weak Muslims nonetheless find ways to use violence against their enemies.

The call to violence inherent in Shariah is very likely to result in violent activity. Evidence of this direct nexus can be observed in numerous terrorist incidents that occur immediately after Shariah authorities issue legal rulings calling for violence. A prominent example was the murder and mayhem precipitated by imams who issued fatwas and otherwise incited violence following the publication of cartoons satirizing Mohammed in a Danish newspaper.

Jihad can also be waged through “soft” means—for example, via proselytizing (*dawa*) and other peaceable forms of subversion—so as to insinuate Shariah into non-Muslim societies. It can be advanced as an interim step through elections, although representative government—rule by the people—is inherently incompatible with Shariah’s theocratic imposition of Shariah as the supreme law of the land.

Shariah-compliant finance is a soft form of jihad; some of its practitioners have called it “financial jihad.” When asked by the BBC in 2006 about the *zakat* (charitable contribution) obligation inherent to SCF transactions, Sheik Youssef Qaradawi, the head of the European Council on Fatwa and

## What is Shariah?

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Research and a driving force in the SCF industry, declared, “I like to call it jihad with money, because Allah has ordered us to fight enemies with our lives and our money.”

### **Shariah as Sedition**

Insofar as authoritative Shariah clearly entails the realization of a transnational Islamic theocratic state, its adherents are committed to, among other things, the overthrow of the U.S. government, through violent means if necessary. Federal statutes define such activity as sedition and prohibit it.

Specifically, a statute known as the Smith Act (18 U.S. Code § 2385), states:

#### **Advocating overthrow of Government**

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms “organizes” and “organize,” with respect to any society, group, or assembly of persons, include the



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recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

The U.S. Supreme Court has, on four separate occasions, upheld the Smith Act against a variety of constitutional challenges. In the context of these decisions, the Court has made it clear that a conviction for advocating the violent overthrow of the U.S. Government will stand when the prosecution can establish:

- a. the call for violence is not merely theoretical;
- b. that there is a real nexus between the call for violence and actual behavior; and
- c. the violent acts are likely to occur immediately or in the future.

While some courts and commentators have understood the Court’s rulings on “incitement” to require “imminent lawless acts” [citing to *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (per curiam)], the Smith Act criminalizes seditious behavior that is more akin to criminal solicitation and conspiracy than incitement.<sup>5</sup>

The call for violence and violent jihad by Shariah authorities is a paradigmatic violation of the Smith Act. The Mohammed cartoons are a historical example of how the fatwas from leading Ulema (Shariah authorities) lead inexorably to violence. Shariah-based fatwas are not theoretical or theological: they are mandates for behavior to the Shariah faithful. The cartoons had been in the public domain for months without incident until the Ulema called for a Day of Rage and invariably and inevitably violence and murder throughout Europe, the Middle East and Southern Asia. The lesson learned from the cartoon-related violence was not its immediacy but its inevitability, once the fatwas had been issued.

Authoritative Shariah scholars must, in accordance with their traditions and practice of Islam, advocate the Law of Jihad against the United States. This advocacy falls well within the requisites of the Smith Act as refined by the Supreme Court. Shariah, as in the fatwas that result in violence, functions as a set of legal and normative instructions for jihad to the Shariah faithful. As will be discussed below, U.S. corporations that employ such scholars as advisors in connection with the firms’ Shariah-compliant finance-related activities have increased civil and criminal exposure not otherwise associated with financial transactions.

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<sup>5</sup> For a detailed analysis of this point, see David Yerushalmi, Robert Spencer et al: “Shariah, Seditious, and the First Amendment” to be released for publication September 2008.



## Chapter 2: Mapping Shariah in America

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### Advocacy of Violent Jihad: An Empirical Demonstration

The threat posed to the United States by Shariah-adherent Muslims inside this country has prompted the world's first private sector effort to evaluate systematically the extent of the danger a nation faces from efforts to impose Shariah within its borders. This effort is known as the Mapping Shariah in America Project (MSA Project), sponsored by the non-profit research organization Society of Americans for National Existence.

The MSA project is collecting information about the United States' 2,300-plus mosques, Muslim student and community associations, and associated schools (madrassas). It is providing the results of its on-site, undercover surveys to both law enforcement officials and the public with a view to proving the proposition that Shariah adherence is invariably tied to the call for violent jihad and as such amounts to a criminal conspiracy to overthrow the U.S. government. Almost 200 mosques have been individually surveyed and evaluated to date. A complete inventory of jihadist materials found in 100 mosques randomly selected from the 2300 mosques and Islamic centers, has been prepared for publication. A final statistical analysis of this first sample is near completion. The preliminary results indicate a nearly perfect correlation between Shariah adherence and the prevalence of materials advocating violent jihad.

There is strong reason to believe that a number of al Qaeda and related, affiliated or kindred Muslim terrorist organizations and operational cells are located in the United States. Some are said to be actively planning and preparing for the next major wave of terrorism in the U.S. homeland. Others are believed to be "sleeper" cells, biding their time and waiting for the right opportunity and command instructions from overseas.

Scarcely less worrisome is the fact that the infrastructure is also in place for an *ideological* Islamic assault on America from within. This infrastructure is comprised of a large number of mosques, schools, social clubs and other organizations openly teaching historical, traditional and authoritative Shariah including the call for violent jihad.

To be sure, many Muslims in America appear to construe their obligation to engage in jihad as a personal, peaceful and pietistic struggle. Others, however, pursue a non-violent—and, therefore, legal—form of jihad aimed at persuading Americans to embrace Islam as a religion, political doctrine and obligation to work to bring about an Islamic state. In addition, there are

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still other Muslims who operate “underground” and explicitly advocate violence and Islamic war against America as the Great Satan.

Understanding the true sentiments and agendas of the latter two categories of Muslim individuals and organizations is made more difficult by their frequent adoption of an unthreatening and tolerant veneer in public settings where English is used. In private, however, and in their native tongues (usually Arabic, Farsi or Urdu), they frequently are more candid about their anti-American and even violent ambitions.

As discussed above, Shariah demands of the Muslim faithful that they carry out—or at least *support*—violent jihad when circumstances permit. In order to assess accurately the threat posed across America by domestic jihadists, it is necessary to identify:

- the Muslim organizations and mosques teaching and preaching Shariah;
- how it rates on a scale designed to measure systematically the extent of Shariah adherence that is being taught or preached (based upon one of the five historical, traditional and authoritative jurisprudential schools of *fiqh*, or legal interpretation); and
- to what degree does the particular brand of Shariah advocated call for jihad, and which aspect of jihad.

### Project Methodology

A team of experienced former intelligence officers and counter-terrorism experts and Islamic scholars (Arabs, Christians and Jews), many fluent in Arabic, Urdu, and Farsi, are visiting America’s 2,300-plus mosques and associated schools to collect information that includes the level of Shariah adherence in practice, prayer and discussion and the statements by their leaders and the literature and other materials they disseminate which advocate violent Jihad.

Through this investigation, the project is developing two products: First, for law enforcement officials, an interactive, cross-indexed mapping and ranking of Shariah as it is preached, taught, and observed in each of the mosques and Islamic day schools. And second, for the public, an open access portal that provides the ranking of individual mosques and schools.

## Mapping Shariah in America

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The project is designed with two goals in mind:

1. To examine the extent to which Shariah amounts to a criminal conspiracy to overthrow the government of the United States by undermining and ultimately replacing the Constitution with Islamic law. In the process, every effort is made to document evidence of jihadist sympathies or teachings since such activities are tactics for advancing Shariah.
2. To test the hypothesis that one can identify and interdict much of the early groundwork used to establish jihadist cells and networks by identifying mosques and Islamic schools that are teaching and preaching traditional and authoritative Shariah.

As the link between Shariah and the threat to the United States from jihad is thus documented, there will be strong grounds for the criminalization of authoritative Shariah—that is, treating it as a criminal conspiracy to undermine the Constitution and to commit murder and treason.

## Chapter 3: What is Shariah-Compliant Finance?

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**S**hariah-Compliant Finance is not strictly speaking a Quranic requirement of faithful Muslims. In fact, there is only one reference in the Quran to the Arabic term *riba*, a prohibition that was traditionally understood to apply to the practice of usury, not traditional interest transactions.

Rather, Shariah-Compliant Finance (SCF) is an invention of the 20th Century. The influential Islamist ideologue Maulana Abul Ala Mawdudi took it upon himself in the 1940s to chart out a course for Muslim cultural and political reassertion in the face of what he saw as an onslaught of Westernization that ostensibly threatened Muslims with the loss of their religious and single national identity (i.e., the Ummah). Mawdudi saw the solution to this existential threat in a return of the Muslims to authentic Islam. To do that, he advocated building a separate, self-sustained Islamic order with its own Islamic ideology, Islamic politics and Islamic economics that taken together would guarantee an Islamic way of life and ultimately the Islamic state as the first step toward establishing Muslim rule worldwide, bound and united together through Shariah.

Mawdudi's novel call for Muslim economic reassertion was promptly taken up by others like the prominent Muslim Brotherhood ideologue Sayyid Qutb in the 1950s. Qutb, like Mawdudi, knew very little about economics, but saw clearly its utility in mobilizing support for the cause of political Islam.

The transition from the vague discourse on Islamic economics to actual Islamic financial institutions took place several decades later, further evidence that the concept of Islamic economics was indeed a recent innovation. The driving forces behind the establishment of Islamic banking in the 1970s were two closely related developments.

The first one involved the huge windfall profits that accrued to Saudi Arabia and other Gulf oil producers following the 1973 oil embargo and the dramatic spike in oil prices that followed it. Suddenly endowed with unprecedented amounts of money, Saudi Arabia dramatically accelerated its drive to promote itself as the leading country of Islam and export its Wahhabi creed worldwide by using its new financial clout.

Following the embargo, Saudi funding of Islamic activities outside the Kingdom's borders—usually depicted as “overseas development aid”—averaged \$4 billion per annum between 1975 and 1987, a truly unprecedented sum at the time. By 2002, according to Saudi sources, Riyadh's Islamic largesse had built a Wahhabi-controlled network of 1500 mosques, 210 Islamic centers, 202 Islamic colleges and 2000 Islamic schools in non-Muslim countries alone.

## What is Shariah-Compliant Finance?

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A first practical result of this drive was the founding of the Saudi-controlled multinational Islamic bank, the Islamic Development Bank (IDB) in 1975. The first private bank, the Islamic Bank of Dubai followed in 1975 and several others were opened before the decade of the 1970s was over.

The real takeoff of Islamic finance, however, took place in the 1980s, prompted by the success of the Khomeini revolution in Iran in 1979, the ongoing Islamization of Pakistan under Zia ul-Haq in the 1980s and the imposition of Shariah jurisprudence in these two countries, as well as in Sudan in the same period. The result was a veritable explosion of Islamic banks and affiliated institutions across the Muslim world.

According to the International Monetary Fund (IMF), the number of such banks reached 300 in 2005. More recent estimates from Arab sources suggest there were 400 Islamic banks active in 75 countries with close to a trillion dollars under management as of mid-2007. This does not include the dozens of Western banks that are now offering various Islamic financial products and “Islamic windows” at their institutions.

As practiced today in Muslim and Western capital markets, “Shariah-compliant finance” means that a particular investment or financial transaction has been conducted or structured in a way deemed “legal,” “authorized” or “pure” (halal) pursuant to Islamic law. Such compliance is determined by Shariah “authorities” engaged as advisors to the investment houses, commercial banks or other institutions making various SCF products available to their clients.

According to SCF prospectuses and related information, the following factors determine whether, according to Shariah advisors engaged for the purpose, transactions are compliant or non-compliant:

- **Interest:** SCF transactions avoid interest through convoluted nominate contracts developed by Shariah authorities based upon classical Islamic forms;
- **Risk:** SCF transactions eschew risk (uncertainty or speculation) as defined by Shariah authorities;
- **Banned Industries:** SCF transactions must not include prohibited (*haram*) activities, including investments in the pork and alcohol-beverage industries, pornography, gambling, interest-based financing and Western defense, based on lists revised monthly by Shariah authorities;
- **Obligatory Tithing:** SCF can entail contributions of 2.5% of income or more in a charitable gift (known as *zakat*) that observant Muslims are obliged to make each year. The Shariah advisors are often responsible for determining the recipients of such contributions;

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- **Obligatory Donation of “Tainted” Revenue:** “Purification” is required of a Shariah-compliant investment or financial transaction that has been tainted with forbidden revenue, whether from interest, illicit speculation (such as trading in commodity futures) or a forbidden commercial enterprise (such as the pork industry). These “tainted” funds must be purified by donating the revenue to an acceptable charity, again typically selected by Shariah authorities. The recipients of these funds are currently not disclosed and the process is non-transparent. Shariah law requires charitable donations to jihadist combatants (i.e., terrorists) and their families (e.g., the support of families of suicide-homicide bombers).

### **The Growth of Shariah-Compliant Finance**

At current oil prices of well over \$120/barrel, there are more than a trillion petrodollars available annually for global investment. To date, most Muslim investments worldwide have remained in traditional Western banking and financial products, rather than their Shariah-compliant counterparts.

That is beginning to change, however, with more and more countries in the Muslim world embracing Shariah-compliant finance and total funds committed globally to some kind of SCF program currently estimated to be between \$400 billion and \$1 trillion. What is more, the annual rate of SCF growth is projected to be on the order of 15-25%. (The great range in estimates is due in part to the rapid proliferation of new products, and the lack of disclosure about those products.)

According to an article in *The Banker* in November 2007, “The Top 25 country ranking of the Top 500 Islamic institutions clearly demonstrates that Iran, Saudi Arabia and Malaysia are by far the three largest countries providing Islamic finance, with Iran’s total amounting to \$154.6 billion of Shariah-compliant assets (SCAs) accounting for 30.9% of the global aggregate total of \$500.5 billion.”

At this writing, Shariah-compliant finance has achieved its greatest penetration in Western capital markets outside the United States. Increasingly, however, American financial institutions and commercial banks are offering SCF products—particularly in the wake of the sub-prime meltdown.

Typically, those in the U.S. financial sector promoting Shariah-compliant finance portray it as just another form of “socially responsible” or “ethical” investing. They fail to explain to investors what Shariah is, much less its intimate connection to Islamic fundamentalism and violent jihad against the non-Muslim world. The post-9/11 investor (Muslim and non-Muslim alike) has a material interest in knowing if this so-called “socially responsible,”

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“ethical” investment serves to legitimate, reinforce and perhaps underwrite a doctrine of war against the United States.

To the extent that SCF transactions generate revenue streams—notably, via *zakat* and/or “purification”—that migrate to Islamic “charities,” investors are also entitled to know the true character of the recipients and the purposes to which such funds will be placed. It is highly relevant, for example, that the three largest Muslim charities in the United States (i.e., the Holy Land Foundation, Benevolence International Foundation, and the Global Relief Foundation) have been shut down after the government determined they were funding terrorist organizations.

### **Proliferation of SCF products in the United States**

U.S. financial institutions are increasingly introducing SCF counterparts to the traditional products they have on offer. For example, SCF bonds (*sukuk*), SCF mutual funds, SCF mortgages, SCF insurance, SCF hedge funds and SCF Real Estate Investment Trusts (REITS) have recently been introduced or are expected to be launched in this country by the end of 2008. *Sukuk* are by far the most common, with total issuance aggregating \$37.7 billion in the 2007 third quarter—a growth of 110.7 percent over the previous year. Seven years ago, the total yearly number was just \$336 million.

Some U.S. financial institutions, such as Merrill Lynch and Citibank, received large investments from sovereign wealth funds from Islamic countries following the sub-prime mortgage crisis. Significantly, at the same time these U.S. financial institutions were creating Shariah-compliant products. Key institutional drivers of this SCF market are:

1. specialized law firms such as King and Spalding, Patton Boggs, Gibson Dunn, and Gersten Savage;
2. Shariah consulting firms such as Shariah Capital;
3. Shariah Index Providers such as Dow Jones, HSBC, S & P, and FTSE;
4. accounting firms,
5. software providers, and
6. global banking institutions such as Barclays, Merrill Lynch, UBS, Deutchebank, Morgan Stanley Capital, Citibank, UBS and Goldman Sachs.

## Chapter 4: The Shariah Advisors

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Shariah advisors are *the* key element in the infrastructure of Shariah-Compliant Finance (SCF). Understanding the role of Shariah finance advisers is essential to understanding how SCF works.<sup>6</sup>

The Shariah scholars employed as SCF advisors are not simply the people who enable Shariah-Compliant Financial transactions. In fact, they have de facto control over capital and credit flows associated with SCF.

Interestingly, there are very few SCF advisors today, perhaps fewer than one hundred of them in the entire world. Of these, approximately two dozen are considered the “rock stars” of the industry—individuals who not only are recognized Shariah authorities but who read and speak English and have some knowledge of finance. Typically, each one of these preeminent advisers sits on between 20 and 25 Shariah boards, garnering substantial incomes. One of the “rock stars” can easily command \$50,000 per year from each of the boards on which he sits.

In this fashion, SCF financial institutions are underwriting—and, thereby, enabling—some of the worst Jihadists in the world. Very few of them have any credentials in economics or finance. Most have been educated in the madrassas and Shariah studies programs of Saudi Arabia, Pakistan, Malaysia or Egypt’s Al Azhar University.

Naturally, these SCF authorities are adherents to Shariah and, therefore, seek to transform America—and, indeed, the world—into an Islamic state. The following brief biographies of several of the most prominent SCF advisors underscore the folly of allowing such men to play a decisive role in Western financial markets.

### ***Sheikh Yusuf al-Qaradawi***

Sheikh Qaradawi is an Egyptian Islamic scholar and one of the most prominent Islamists of the past few decades. A well-known Muslim Brotherhood member, a television preacher and a theoretician of jihad, he is considered a top spiritual authority by most Sunni Islamist organizations and movements. He is particularly influential among Islamists in the Western world as chairman of the European Council on Fatwas and Research and the International Association of Muslim Scholars.

### **Background**

Qaradawi was born September 9, 1926 in Egypt. He became a follower of Hassan al-Banna and also joined the Muslim Brotherhood in his youth,

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<sup>6</sup> Sources for Chapter 4 will be included with the whitepaper “Profiles of Shariah Advisors” by Alex Alexiev, to be released for publication August 2008 at <http://www.centerforsecuritypolicy.org>.



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and was arrested several times by Egyptian government authorities between 1949 and 1961 because of his activity in the Muslim Brotherhood. Qaradawi moved to Qatar in 1964 and has been residing there ever since. He was banned from the United States in 1999 and from the United Kingdom in 2008.

Qaradawi's religious education is extensive. He received his PhD. from Al Azhar University in Cairo in 1973. His dissertation was about "Zakat and its influence in the Solution of Social Problems." He attended the Al-Azhar Theological Seminary. He obtained the High Preliminary Study (equivalent to MA degree from the department of the Sciences of Qur'an and Hadith at the Faculty of Theology) in 1960. Previously, he had received the 'Ijaza of teaching from the Faculty of Arabic language in 1954, attended Al-Azhar Institutes for his primary and secondary stages, and joined the Faculty of Theology and got the 'Aliyya certificate (equivalent to BA degree at present) in 1952-53.

His professional experience includes work as a Professor at the University of Qatar, as Shariah Faculty Teacher (khatib) and Writer at Al-Awqaf and Al-Azhar, and as Grand Mufti of the United Arab Emirates (UAE).

### **Qaradawi's affiliations with Islamist Organizations are often in leadership positions:**

- Member—Muslim Brotherhood
- President—The European Council for Fatwa and Research (ECFR), Dublin, Ireland.
- President—Union of Good (an umbrella group of 56 Muslim charities accused of funding Hamas terrorism), Saudi Arabia
- Founder and President—IslamOnline.com (perhaps the most popular Islamist web site on the Internet)
- Chairman (in absentia)—Board of Trustees of Islamic American University
- Faculty member—Islamic American University (IAU)
- Founder and president—International Association of Muslim Scholars (IAMS), Dublin, Ireland
- Host—"Shariah and Life" television program, Al Jazeera Television, Qatar
- Trustee/Teacher—Muslim American Society (MAS),
- Trustee/Teacher—Islamic Circle of North America (ICNA)
- Board of Advisors—Institute for Islamic Political Thought in the UK
- Dean—Islamic Department at the Faculties of Shariah and Education in Qatar

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- Chairman—Islamic Scientific Councils of Algerian Universities and Institutions

### **Affiliations with Shariah Finance**

- Chairman—Shariah Advisory board of Bank Al-Taqwa, a Nassau-Bahamas registered Islamic bank which was declared a designated terrorist entity by the US Department of the Treasury in 2001 and closed down.
- Chairman—Shariah Advisory Board, Qatar Islamic Bank
- Chairman—Shariah Advisory Board, Qatar International Islamic Bank
- Member—Shariah Advisory Board, First Islamic Investment Bank of Bahrain.

### **Ideology and Views**

Sheikh Qaradawi has issued hundreds of fatwas and opinions known for their advocacy of Jihad and support of suicide bombing and terrorism. Below is just a small sampling of his views:

#### **On Terrorism**

“If everyone who defends his land and dies defending his sacred symbols is considered a terrorist, then I wish to be at the forefront of the terrorists. And I pray to Allah if that is terrorism, then O Allah make me live as a terrorist, die as a terrorist, and be raised up with the terrorists.”

#### **On Suicide Bombings/Martyrdom**

“[Palestinian suicide bombings] are not in any way included in the framework of prohibited terrorism, even if the victims include civilians because Israeli society is of a colonialist, occupational, racist and [plundering] nature.”

“Allah Almighty is just; through his infinite wisdom he has given the weak a weapon the strong do not have and that is their ability to turn their bodies into bombs as Palestinians do. [Suicide bombings] are weapons to which the weak resort in order to upset the balance because the powerful have all the weapons that the weak are denied.”

“I support the Palestinian cause. I support the resistance and the jihad, I support Hamas, the Islamic Jihad, and Hezbollah. I oppose the peace that Israel and America wish to dictate. This peace is an illusion. I support the martyrdom operations.”

“We must plant the love of death and the love of martyrdom in the Islamic Nation.”

### **On War in Iraq**

“All of the Americans in Iraq are combatants, there is no difference between civilians and soldiers, and one should fight them, since the American civilians came to Iraq in order to serve the occupation. The abduction and killings of Americans in Iraq is a [religious] obligation so as to cause them to leave Iraq immediately.”

### **On Israel**

“It is the duty of every Muslim to support this resistance against the Israeli enemy.”

“It is incumbent on Muslims, wherever they may be, to shoulder their responsibility of defending Jerusalem and Al-Aqsa Mosque. This is an obligation for them all. They are to jointly defend it, offering in the process their lives, their money and all they possess, or else they will be subject to Allah’s punishment.”

“You can say that what is happening in Palestine is done by Israel with the help of America, or by America with the help of Israel, and there is no difference between them...What is happening in Iraq is serving Zionism and Israel. The first to benefit from all of it is Israel...Look for Israel, look for the Zionism—all of it is behind these events. You will find their hidden fingers behind many of the events.”

### **On Financial Jihad**

“I like to call it jihad with money, because God has ordered us to fight enemies with our lives and our money.”

### **On Women and Jihad**

“Women’s participation in the martyrdom [suicide] operations carried out in Palestine given the status of the land as an occupied territory, in addition to a lot of sacrilegious acts perpetrated by the Jews against the sanctuaries is one of the most praised acts of worship.”

“Also, the act is a form of martyrdom for the cause of Allah, and it entitles them, inshallah, to the same reward earned by their male counterparts who also die in the cause of Allah.” He said Muslim jurists have unanimously agreed that when the enemy attacks part of the Muslim territories, jihad becomes the duty of every individual.”

“This obligation reaches the extent that a woman should go out for jihad even without the permission of her husband, and the son without the consent of his parents,”

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### **On Beating of Women**

“Beating is not suitable for every wife; it is suitable for certain wives and for other wives it is not. There is a woman who cannot agree to being beaten, and sees this as humiliation, while some women enjoy the beating and for them, only beating to cause them sorrow is suitable...”

### **Publications**

Sheikh Qaradawi is a prolific author with over 100 books published, many of which have been translated into several languages. Some of these books—for example, *Priorities of the Islamic Movement in the Coming Phase* (1990)—are widely viewed as action plans for the Islamist movement in its struggle against Israel and the West. Other popular books include *Towards a Sound Awakening*, *The Status of Women in Islam*, *Islamic Awakening between Rejection and Extremism*, *The Lawful and Prohibited in Islam*, *Diversion and Arts in Islam etc.*

### **Mufti Muhammad Taqi Usmani**

Mufti Taqi Usmani is one of the most prominent living theoreticians of Sunni Islam and perhaps the best known current exponent of the Deobandi school of Islamism. He is also one of the half-a-dozen most authoritative and sought after Shariah experts in the world of Islamic finance today.

### **Background**

Taqi Usmani was born in 1943 in Deoband, Uttar Pradesh, India. Taqi Usmani is the son of the late Mufti Muhammad Shafi, a prominent Deobandi scholar, founder of the leading Deobandi madrasa Darul Uloom Karachi (also known as Jamia Darul Uloom Karachi) and mufti of Pakistan. His older brother, Muhammad Rafi Usmani is the president of Darul Uloom Karachi and the chief Deobandi mufti in Pakistan currently, and a well-known Islamist in his own right. Taqi Usmani’s son, Muhammad Imran Ashraf Usmani, holds a PhD in Islamic jurisprudence and Islamic finance and also teaches at Darul Uloom Karachi. Like his father, the son sits on the Shariah boards of numerous Islamic banks.

### **Education**

Usmani obtained ‘Alimiyyah’ and ‘Takhasus’ (PhD-equivalent) religious degrees in Islamic Fiqh and Fatwa from Darul Uloom Karachi in 1961. For

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his secular education, he received a B.A. from Karachi University in 1964, a Law Degree (LLB) from Karachi University, 1967, and a Master's degree in Arabic literature, Punjab University, 1970

Usmani's professional affiliations include experience as a Professor of Islamic Law, Fiqh and Hadith and vice president of Darul Uloom Karachi, 1980s to present. He was also a Judge, Shariah Appellate Bench, Supreme Court of Pakistan, 1982-2002, and also a Judge, Federal Shariah Court of Pakistan, 1980-1982.

### **Usmani's affiliations with Islamist Organizations include Shariah- and Jihad-centered educational institutions:**

- Usmani is the Vice-President and professor of Islamic studies at Darul Uloom Karachi, one of the largest and best known Deobandi madrassas in Pakistan. It is a modern and financially well-endowed madrassa with some 4000 students teaching a Shariah-centered Islamist curriculum mixed with occasional secular subjects, such as science and computers. It is one of the few madrassas in Pakistan that prepare students in Islamic economics and banking, alongside the usual Islamic curriculum.

Darul Uloom also encourages and subsidizes students to go on proselytizing missions, such as those of Tablighi Jamaat. While it does not openly promote jihad and violence, the madrassa has produced and continues to produce thousands of Islamic jihadists active in Pakistan and elsewhere.

In the words of a recent study of madrassas in Karachi by the prestigious European human rights think tank, International Crisis Group: "While the madrassa, on the surface, appears a model for less educationally endowed seminaries, Darul Uloom also plays a role in promoting violent jihad. Both Usmani brothers have given practical help to jihadi organizations, which are allowed to preach and collect donations from the madrassa's mosques and branches." According to one of Darul Uloom's teacher's, "Students are not allowed to participate in jihad while they are studying, though they can do so after completing their studies."

Other educational affiliations include Permanent Member and Deputy Chairman for the Islamic Fiqh Academy, Jedda, Saudi Arabia. He is also a Member, Islamic Fiqh Academy of the Muslim World League (MWL), Mecca, Saudi Arabia.

### **Usmani’s affiliations with Islamist Organizations also include other political and legal institutions:**

- Member, European Council of Fatwa and Research (ECFR), Dublin, Ireland
- Member—Muttahida Majlis e-Amal (MMA) fatwa committee
- Member—Delegation of Deobandi clerics to Taliban, Sept 2001. Mufti Usmani was a member of a small delegation of prominent Deobandi ulema (i.e., recognized Shariah authorities) known as sympathizers of the Taliban sent to meet with Mullah Omar under the auspices of the Pakistani Inter-Services Intelligence (ISI) shortly after September 11, 2001. The ostensible purpose of the visit, according to Pakistani government sources, was to encourage Mullah Omar to turn over Osama bin Laden to the Americans. Information leaked later by some of the clerics present, such as the jihadist Mufti Shamzai, indicates that the delegation may have, in fact, tried to stiffen the Taliban’s will to resist.
- Member—Delegation of Deobandi clerics to Lal Masjid/Jamia Hafsa. Taqi Usmani was part of a group of senior Deobandi clerics that visited the besieged Lal Masjid in Islamabad hoping to persuade the jihadists to give up, after the Pakistani government threatened to end the violent standoff with the jihadists by force. Mufti Usmani was evidently a former teacher and spiritual and religious leader of the jihadist Lal Masjid imam Ghazi Abdul Aziz. The mission was unsuccessful and in the aftermath of the bloody suppression of the insurrection in July 2007, Usmani leveled heavy criticism against the government for its actions.
- Editor—Taqi Usmani is the editor of two Islamist publications: Albalagh and Albalagh International, published by Darul Uloom Karachi. Both of them promote the Islamist agenda and are popular in South Asia and internationally. The U.S.-based Albalagh.net also functions as an online bookstore for Shariah and Jihad literature based in Garden Grove, California.

### **Usmani is a leader in the major Shariah Finance-Sponsoring Organizations:**

- Chairman—International Shariah Standards Council, Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), Bahrain.
- Member—Commission for the Islamization of the Economy, government of Pakistan
- Chairman—Shariah Board, Islamic Financial Services Board (IFSB)
- Chairman—Shariah Board, International Islamic Rating Agency (IIRA)
- Chairman—Shariah Board, Bahrain Monetary Agency, Bahrain
- Chairman—Center for Islamic Economics, Pakistan

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### **Usmani typically runs most of the Shariah-Compliant Banks and Institutions with which he is affiliated:**

- Chairman—Shariah Supervisory Board, Dow Jones Islamic Fund, New York (**recently resigned or terminated**).
- Chairman—Shariah Supervisory Board, HSBC Amanah Finance, Dubai
- Chairman—Shariah Supervisory Board, Guidance Financial Group and Guidance Residential, USA
- Chairman—Shariah Board, Abu Dhabi Islamic bank, UAE
- Chairman—Shariah Board, Islamic House of Britain PLC. London
- Chairman—Shariah Board, Meezan Bank, Pakistan
- Chairman—Shariah Supervisory Board, Saudi American Bank, Jedda, Saudi Arabia
- Chairman—Shariah Supervisory Board, Citi Islamic Investment Bank, Bahrain
- Chairman—Shariah Board, Amana Investments LTD., Sri Lanka
- Chairman—Shariah Supervisory Board, Bank Islami Pakistan Ltd., Pakistan
- Chairman—Shariah Board, Robert Fleming Oasis Fund, Luxembourg
- Member—Shariah Board, Islamic Corporation for Development of the Private Sector, Islamic Development Bank (IDB), Jedda
- Member—Shariah Supervisory Board, Dallah al-Barakah Group, Jedda, Saudi Arabia
- Member—Shariah Supervisory Board, First Islamic Investment Bank, Bahrain
- Member—Shariah Supervisory Board, Islamic Finance Unit, United Bank of Kuwait

### **Publications**

Taqi Usmani is a prolific writer in Urdu, Arabic and English and has published several dozen books and countless articles. Most of his writing focuses on religious subjects, but there are a number of books that are clearly political in nature and characterized by the author's Islamist Shariah-laden views. Among those available in English is a vitriolic attack on Christianity ("What is Christianity"), a broadside against the West and modernity ("Islam and Modernism") and an exposition of the Islamist interpretation of the Muslim faith ("Discourse on Islamic Way of Life"). Usmani is also the author of two books in English on Islamic finance: "An Introduction to Islamic Finance" and "Historic Judgment on Interest." Both are considered authoritative by advocates of Shariah-compliant finance.

### Ideology and Views

#### On Jihad and Violence Against non-Muslims

Mufti Taqi Usmani is well-known for his uncompromising views on the mandatory nature of conducting offensive jihad against non-Muslims “in order to establish the supremacy of Islam” worldwide. His views on the subject are grounded in traditional and authoritative Shariah and he provides solid legal sources for his fatwas that offensive jihad is a necessity even when a non-Muslim land provides all the conditions for the free practice and spread of Islam.

According to Usmani, the key question is not whether a country allows the free preaching of Islam or not, but “whether aggressive battle is by itself commendable or not?” If it is, he answers, “why should the Muslims stop simply because territorial expansion in these days is regarded as bad? And if it is not commendable but deplorable, why did Islam not stop in the past?” The answer, Usmani argues, is rather obvious, “Even in those days...aggressive jihads were waged...because it was truly commendable for establishing the grandeur of the religion of Allah.”

Indeed, aggressive jihad against unbelievers is an Islamic obligation, according to Usmani and, as such, does not need any justification as evident from the following exchange with a Muslim inquirer:

*Questioner:* “Subjugating them (non-Muslims) to a Muslim government cannot achieve this change of heart and mind because in such a condition the subject people will be conscious of their subjugation and they will hardly have the inclination to hear about Islam with an attentive ear.”

*Usmani:* “I understand from what you have written that jihad is not necessary when a non-Muslim country permits Muslim missionary work to be conducted in it. If this is your opinion, I cannot agree with it. Obstacles in the way of missionary work are not only legal ones. For a non-Muslim state to have more pomp and glory than a Muslim state is itself an obstacle.... Therefore, to shatter this grandeur is among the greater objectives of jihad....

“Another point to consider is whether during the time of the Prophet (peace be upon him) or of the companions there is any instance of a mission being sent after awaiting permission for it.... Was any missionary party sent to Rome before mounting an attack on that metropolis? As far as my knowledge goes, there is not a single instance throughout the entire history of Islam where the intention was announced that warfare would be stopped if the enemy conceded to this condition (permission to carry out peaceful missionary work).”



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For Taqi Usmani, offensive jihad can be postponed for a time only in cases when the Muslims in question are not strong enough to battle or otherwise challenge the infidels. And so, he advises the Muslims to live peacefully in countries like Britain, for instance, but only until they gain enough power to carry out jihad.

### **On Martyrdom and Suicide Bombing**

Although Mufti Usmani does not openly condone suicide bombing (at least in the available English language publications), most of his relevant writings reveal a strong endorsement of the philosophy of martyrdom, which is the theological underpinning of both jihadism and suicide bombing. This of course is not surprising since it is grounded in traditional and authoritative Shariah. For instance, in an article apparently written shortly after the U.S. invasion of Iraq, Usmani bitterly attacks his fellow-Muslims for their ostensible passivity while “Pharaoh is roaming around without any fear.” “No one is found having any desire of Shahadah” (martyrdom), he laments, and compares today’s Muslims to a mythical Islamic nation of the past “where every single person preferred death to life.” “How many mothers are there,” he continues, “who want to sacrifice their sons for the cause of Islam?” “How many sisters are there who want to say goodbye to their brothers departing to wage jihad against non-believers.”

### **On America and the West**

Mufti Usmani’s writings are characterized by an animus toward the West and, more specifically, the United States, so strong as to turn his anti-Western polemics into sedition. Thus, for instance, Americans and their allies in Iraq are called by the mufti “stinking atheists” and the “the worst ever butchers and vultures of the world” who are “clawing off the flesh of bodies of innocent Iraqi Muslims.” In the same vein, America stands accused by Usmani of the “murder of unarmed and distressed Afghans” and the “simultaneous murder of values and universally accepted fundamental human principles” and of turning the whole world “into a perpetual inferno of violence and chaos.” These hateful descriptions, understood in context of Islamic law, are the necessary descriptors which allow Usmani to rule authoritatively that western Muslims are obligated to engage in Jihad against their host countries.

While Taqi Usmani’s anti-Westernism appears to have been inflamed to near hysterical levels by recent events in Afghanistan and Iraq, it has been a constant feature of his world-view and intellectual output for a very long time. Much of it appears to be generated by his deeply-held belief that

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Muslims who do not share his traditional Shariah-based views of what Islam is or should be have been corrupted by Western influence and modernism. This is especially true, in his view, of influential Muslim thinkers and scholars who have fallen under the sway of Western culture and are in turn corrupting Islam by trying to make it compatible with modernism. What Usmani really despises is the fact that this process, if allowed to take place, would rid Islam of its obscurantist legacy and violent jihadist traditions in which he and his fellow-Islamists firmly believe.

A good example of this attitude is contained in a 1995 Usmani diatribe against the prominent Islamic scholar, Prof. Fazlur Rahman, director of the Institute of Islamic Research in Pakistan and later professor at the University of Chicago. In it, Usmani accuses Prof. Rahman of having fallen under the influence of the “unholy ways of the West” and enumerates a litany of Western innovations that are said to be destroying the West and would also destroy Islam if accepted. These include a banking system based on interest and insurance, family planning, banning polygamy, co-education, doing away with the hijab, refusing to believe in miracles etc. All this, the mufti concludes, leads to changing the “established commandments of Islam” and “converting the entire Quran into a poetic and metaphorical book.”

Taqi Usmani is far from being just an intellectual opponent of the West, however. In his capacity as a prominent educator and executive of a Deobandi madrassa, a respected issuer of fatwas and his various political incarnations, he has been and is in the position of giving a forceful practical expression to his anti-Western and Shariah-driven Islamist views. Apart from being instrumental in the training and indoctrination of thousands of potential Islamic jihadists at Darul Uloom Karachi, he has directly provided material support to international terrorism through his numerous fatwas, interviews and writings all intended as legal dictates to the Shariah faithful worldwide.

### **Political Involvement**

As a former member of the Shariah Appellate Bench and the Federal Shariah Court of Pakistan and a leading member of the politically powerful Deobandi establishment, Mufti Taqi Usmani has played and continues to play an important political role. Invariably, he has promoted Shariah-based Islamist solutions in Pakistani politics and has contributed in no small measure to the progressive Islamization of the country since the late 1970s.

His earliest involvement in politics dates to the early 1970s when he became a key member of a group of Islamic authorities who pressured president Zulfikar Ali Bhutto to declare the Ahmadi Muslims infidels. A law to

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that effect formulated mostly by Usmani was passed on September 21, 1974, ushering in a period of vicious persecution for the moderate and peaceful Ahmadis that has continued to this day. What is their crime? They reject traditional and authoritative Shariah. Usmani was one of the clerics who continued to argue for much tougher measures against the Ahmadis and was instrumental in drafting a new harshly discriminatory anti-Ahmadi measure passed by military dictator Zia ul-Haq in 1984. It prohibited the Ahmadis from calling their places of worship mosques, and even to address each other with the traditional Muslim greeting *salam*.

Under General Zia ul-Haq, (1977-1988), himself a zealous advocate of Shariah, Usmani played a key role also in the introduction of the Shariah-based punishment code known as the Huddud Ordinance, as well as blasphemy laws and other Shariah injunctions, to the huge detriment of Pakistani justice and civil liberties. More recently, Usmani vigorously opposed proposed amendments to Shariah statutes that blatantly discriminated against women.

Beginning in 1980, Mufti Usmani also was one of the driving forces behind the effort to Islamize the Pakistani economy and drafted many of the regulations designed to transform banking into a shariah-compliant system. He is also the author of fatwas and various clerics' statements designed to steer Pakistan in a pro-Islamist and anti-Western direction.

### **Sheikh Yusuf Talal DeLorenzo**

Sheikh Yusuf Talal DeLorenzo is considered the leading authority on Shariah finance in the United States and one of the half-dozen best known Shariah advisors internationally. Although he has carefully avoided making public statements in support of Jihad, his religious background, professional affiliations, his high praise of fellow Shariah authorities such as Usmani, and his experience prove beyond much doubt that he subscribes fully to the Islamist agenda.

### **Background**

DeLorenzo was born in 1948 in Northfield, Massachusetts. Sheikh Talal DeLorenzo is the grandson of Italian immigrants from Sicily. He currently resides in Ashburn, Northern Virginia with his Pakistani wife and three children.

### **Education**

DeLorenzo attended the secular Northfield-Mount Herson Preparatory School in Northfield, Massachusetts. He then enrolled in the undergradu-

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ate program at Cornell University but dropped out. He studied Islamic sciences under prominent Deobandi scholars at madrassa Jamia Uloom Islamia, Binori Town, Karachi, Pakistan (see details below).

DeLorenzo completed three years of doctoral studies on the Legal Rulings of the Quran at Bahawalpur University, Pakistan, and allegedly studied in Egypt.

DeLorenzo’s professional experience and affiliations include teaching courses on “The Principles of Islamic Investment,” Dow Jones University. He is also the Director for the Master’s Program for Imams, Graduate School of Islamic and Social Sciences (GSISS), Leesburg, Virginia. He has served as Director of Education for the Islamic Saudi Academy, Fairfax, Virginia, as Guest Scholar at the American Learning Institute for Muslims (ALIM), Canton, Michigan and as an Advisor on Islamic affairs and education to the President of Pakistan, 1981-1984.

### **DeLorenzo has many affiliations with Islamist Organizations:**

- Secretary—Fiqh Council of North America (FCNA)
- Member of the Board—International Institute of Islamic Thought (IIIT)
- Director—Graduate School of Islamic and Social Sciences
- Director of Education—Islamic Saudi Academy

DeLorenzo is affiliated with a Shariah Finance Sponsoring Organization:

- Special Consultant—Islamic Financial Services Board (IFSB). Appointed to the position by the Asian Development Bank and the Islamic Development Bank, Jeddah

De Lorenzo is affiliated with a wide range of Shariah-Compliant Banks and Institutions:

- Chief Shariah Officer—Shariah Capital Inc. Greenwich, Connecticut and Dubai
- Member—Shariah board, Dow Jones Islamic Market Index
- Member—Shariah board, Guidance International Inc.
- Member—Shariah board, Brown Brothers Harriman Islamic Global Equity Fund, New York.
- Member—Shariah board, Muslim E-Financials, Washington D.C.
- Member—Shariah board, Ihilal.com, Dubai
- Member—Shariah board, Thahabi Ijara Fund I, UAE
- Member—Shariah board, Socially Acceptable Market Investments (SAMI), Toronto
- Sole Shariah Advisor—Devon Islamic Ventures-Offshore, Ireland

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### **Ideology and Views**

Although Talal DeLorenzo has been very careful to avoid public statements advocating Jihad and the broad Islamist agenda, his religious background and professional and Islamic affiliations virtually without exception reveal a strong commitment to Shariah, its purposes and methods.

Much of his long religious training in Pakistan, for instance, took place in Jamia Uloom Islamia, Binori Town, Karachi—one of the largest and most Shariah-centered Deobandi madrassas in the country and one that has long supported and funded well known terrorist groups. According to a study of Karachi madrassas by the International Crisis Group (ICG), a human rights think tank based in Brussels, the Jamia Islamia is the “fountainhead of Deobandi militancy countrywide,” has “carried the mantle of Jihadi leadership since the days of the anti-Soviet Jihad” and “boasts close ties with the Taliban.” Moreover, the ICG report further claims, the madrassa “has played a major role in helping to establish and sustain,” as well as provide many of the recruits, for some of the most violent Pakistani jihadi and terrorist organizations, such as Harkat ul-Mujahideen (HuM), Jaish -e Muhammad(JeM) and Sipah -e-Sahaba Pakistan (SSP).

Moreover, DeLorenzo’s spiritual guru in Binori Town was the Mufti of Pakistan, Wali Hassan, a classic Deobandi Shariah authority who predictably considers Shia Muslims to be infidels and issued fatwas to that effect.

Sheikh DeLorenzo is further reported to have worked between 1981 and 1984 as an advisor to the Pakistani President Zia ul-Haq on Islamic education. Zia was the military dictator and zealous Islamist who Islamized Pakistan from the top down, beginning in the late 1970s, and put into place the network jihadi madrassas that eventually produced the Taliban. It would appear that DeLorenzo may have assisted Zia in this process.

Most of the Islamic organizations with which DeLorenzo has been closely associated since his return to the United States have also proven Islamist credentials.

The Fiqh Council of North America (FCNA), a fatwa-issuing organization in which DeLorenzo served as Secretary, for example, is an offshoot of the Muslim Brotherhood-affiliated Muslim Student Association (MSA) and the Islamic Society of North America (ISNA). Several of its key officials have been implicated and at least one has been jailed for terrorism-supporting activities. One of its founders, Taha Jaber Al-Alwani, was declared an unindicted co-conspirator in the Sami al-Arian trial for reportedly funding the terrorist Palestinian Islamic Jihad (PIJ). A FCNA trustee, Abdurrahman Alamoudi, is currently serving a 23-year sentence for terrorism-related activities. After his sentencing, Alamoudi was found to have also provided large-

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scale financing to al Qaeda. Another individual identified by the U.S. Department of Justice as an unindicted co-conspirator in a terrorism trial is Muzamil Siddiqui, a FCNA president for a number of years.

In addition, the International Institute of Islamic Thought (IIIT) of which DeLorenzo was a board member, has provided funds to convicted Islamist Sami al-Arian and to the designated terrorist entity Al-Haramayn. IIIT has also been tied to the notorious terrorism-enabler and apologist for suicide-bombers, Yusuf Al-Qaradawi, and the Muslim Brotherhood.

As director at the Graduate School of Islamic and Social Sciences (GSISS), DeLorenzo has also been involved with two of the aforementioned Shariah advocates, Taha Jaber al-Alwani and Abdurrahman Alamoudi. Incredibly, they worked together on a program run by GSISS to train and certify Muslim chaplains for the *U.S. armed forces*. In fact, the GSISS and another Alamoudi operation, the American Muslim Armed Forces and Veterans Affairs Council were the only two Islamic educational institutions approved by the Department of Defense to provide this service to the United States government.

In the course of a 2003 Senate hearing examining these arrangements for securing Muslim chaplains for the military, Senator Jon Kyl of Arizona observed as follows: “It is remarkable that people who have known connections to terrorism are the only people to approve these chaplains.” The GSISS was raided by U.S. law enforcement agents in March of 2002 as part of Operation Green Quest as part of an investigation into terrorism financing Islamic networks in America.

Finally, DeLorenzo has also served as Director of Education at the Saudi Islamic Academy in Fairfax, Virginia, an organization funded by the Saudi embassy in Washington D.C. So egregious has been this school’s propagation of the Shariah-adherent and virulently intolerant Wahhabi creed that the congressionally mandated U.S. Commission on International Religious Freedom called on the Department of State in October 2007 to shut it down.

### **On Islamic Finance**

As noted above, DeLorenzo’s statements in English appear calculated to obscure, rather than reflect, his actual views. They certainly seem intended to allay concerns about the SCF industry in which he plays a large role, rather than provide transparency about its true character and purposes.

*DeLorenzo on benefits of SCF for Shariah more generally:* “Adapting Islam to modern finance” could influence other areas of Shariah which has “essentially been in a coma for several centuries ... and desperately needs reviving.” (Interestingly, this formulation belies the real dynamic at work in Shariah-

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compliant finance: Under the influence of Shariah advisors like DeLorenzo, modern finance is forced to adapt to Islam, not the other way around.)

*DeLorenzo on Shariah investment in Israeli companies:* In answering a question from a Dow Jones University student of Islamic investment on whether Israeli companies, or those that invest in Israel, should be excluded by Shariah screens like companies that deal with alcohol, pork, etc., DeLorenzo responds that there is no “Shariah dialogue involving investment prohibition” in such companies and reiterates that for the Dow Jones Islamic Index, considerations related to politics, culture, history, etc., are not relevant. And then he adds this:

“Having said all of this, though, it is important to note the difference between an index and a fund. The purpose of an index is to measure the market and provide a performance benchmark. A fund, however, is a different matter because it invests the money of Muslims and puts it to use. Funds have the ability to embargo companies, by screening them out of their portfolios, or to engage them, by investing in those companies and then using corporate democracy to leverage their point of view.”

*DeLorenzo on avoiding the use of the term Shariah in SCF-related business:* “In order to be more readily understandable to regulators in Muslim-minority countries, such as the U.S. and Europe, there is nothing wrong in using another term, like Ethical Advisory Board.”

*DeLorenzo on the benign role of Shariah advisors:* “It is of primary importance to understand Shariah supervision as consumer advocacy.” And “by assuming responsibility for the Shariah compliance..., the Shariah supervisor places himself in a position of directly representing the religious interests of the investor.” The problem with this remark, of course, is that it contradicts what Shariah authorities and even non-Muslim Shariah scholars have said repeatedly.

*DeLorenzo on Islamic finance as a modernizing force in Islam:* “Islamic finance is a modernist movement in Islamic communities. It has no political agenda—it’s about a new Islamic identity for moderate Muslims and an attempt to bring Muslims out of the mosque and into the market [as] they interact and trade with people.” The problem with this remark, of course, is that it contradicts what Shariah authorities and even non-Muslim Shariah scholars have said repeatedly.

Interestingly, DeLorenzo has been assailed for his public comments about Shariah-compliant hedge funds as “a thinly-veiled advertisement piece for the ‘Islamic hedge fund’ that retains his services” by Rice University professor of Islamic finance, Mahmoud El-Gamal. El-Gamal went on to denounce DeLorenzo’s conduct as “a case of willful fraudulent advertisement to



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unsophisticated investors, something that would not be tolerated in the developed world.”

### **Publications**

Sheikh Talal DeLorenzo is the author of *A Compendium of Legal Opinions on the Operations of Islamic Banks*, a collection of fatwas and legal rulings on Islamic finance that is considered an authoritative reference work on the subject. He also wrote the introduction to *Islamic Bonds*. His articles have appeared in journals and newsletters and as chapters in books, including *Euromoney Magazine’s Islamic Asset Management*, *Islamic Retail Finance* and *Islamic Finance: Innovation & Growth*. He is the author of entries on the terminology of Islamic Finance in the Oxford Dictionary of Islam.

DeLorenzo is also a well-known translator from Arabic, Persian, and Urdu with some twenty translated books to his credit.

### **Bassam Osman**

Bassam Osman has held leadership positions in Shariah-based Islamist networks that have either been closed down as terror-financing institutions or listed as unindicted co-conspirators in terrorism-funding trials. He is also a key figure in the American Shariah-compliant finance industry in his capacity as an executive in the Dow Jones Islamic Fund and affiliated entities.

### **Background**

Osman was born November 14, 1950 in Syria. Bassam Osman is a physician. He lives and practices neurology in Hinsdale, Illinois. His brother is Dr. Ayman Osman, a physician in Florida who is also active in the Islamic networks as a board member of the Islamic Academy of Florida.

### **Education**

Osman received his M.D. from Damascus University in 1973, and a Diploma in Neurology, University of Illinois, 1980 . His professional life is not Islamic but in fact is entirely focused on his successful medical affiliations as:

- Neurologist—Chief of Neurology at Mercy Hospital in Illinois
- Neurologist—Forest Medical Center in Justice, Illinois
- Professor—University of Illinois School of Medicine



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- Professor—Cook County Graduate Medical School
- Resident—University of Illinois Hospital and Clinic

He also is not just affiliated with, but leads major Islamist Organizations:

- President—The Islamic Academy of Florida
- Chairman—North American Islamic Trust (NAIT)
- Board Member—Islamic Society of North America (ISNA)
- President, Portfolio Manager and Chairman—Board of Allied Asset Advisors (AAA)
- Former Director—Quranic Literacy Institute
- Council Representative—Council of Islamic Organizations of Greater Chicago (CIOGC)

Osman is President of the linked groups associated with the Dow Jones Islamic Fund in his affiliations with Shariah Finance Banks and Institutions:

- President—Al-Sanabel International for Islamic Financial Investment (Sana Financial)
- President—Dow Jones Islamic Index Fund (IMANX)
- President—Iman Fund (new name of IMANX as of March 21, 2008)
- Registered Agent and President—Allied Asset Advisors Funds (investment advisor to IMANX)
- Chairman—Amana Mutual Funds Trust.

## Ideology and Views

Unlike many of his colleagues in the Islamist movement in America and the Shariah-compliant finance community, Bassam Osman seldom speaks out publicly and in English on controversial issues. Nonetheless, his numerous high-level positions and long-term associations with Islamist organizations and individuals leave little doubt as to his key role in pursuing Shariah's Islamist agenda.

Osman lacks a degree in religious studies. Therefore, his prominence and standing as a Shariah advisor largely derives from his long-time leadership of the North American Islamic Trust (NAIT). Founded in 1973, NAIT was one of the first organizations spun-off from the progenitor of all Islamist institutions in the United States, the Muslim Student Association (MSA), which, in turn, was founded by Muslim Brotherhood activists in 1963. NAIT's importance stems from its function as a religious foundation (waqf) that both finances and holds the title to a large number of American mosques, Islamic cultural centers and similar institutions.

This arrangement allows NAIT to have an unprecedented degree of control over such mosques so as to “ensure conformity to the Islamic purposes

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for which their founders established them,” a control that is often directly enshrined in their bylaws. Information on the number of mosques and Islamic centers to which NAIT holds title vary from 300—or 27% of their total number—to as much as 80% of the estimated **1200** such properties.

NAIT also works closely with most of the other Islamist organizations in America, especially the MSA and the Islamic Society of North America (ISNA). ISNA’s president is an ex officio member of NAIT’s Board of Trustees.

### **Un-indicted Co-conspirator**

Like ISNA (on whose board Osman also serves), NAIT has—under Osman’s chairmanship—advocated and implemented policies that advance Shariah and its objectives. These allegedly include financing terrorist organizations in the Middle East. Such activities have earned the organization (as it has ISNA) a designation by the Department of Justice as an un-indicted co-conspirator in a recent terrorism financing trial in Dallas, Texas (U.S. v Holy Land Foundation).

### **Financing Terrorism**

NAIT and Osman have also been implicated in the activities of the Islamic Academy of Florida (IAF)—a school wholly owned by NAIT, which was indicted by the U.S. government in February of 2003 as a criminal enterprise for having served effectively as a support base in the funding of the Palestinian Islamic Jihad (PIJ). PIJ is identified by the State Department as a terrorist organization responsible for the murder of over 100 people in Israel and the West Bank and Gaza.

Even before his appointment to NAIT’s top job, Bassam Osman had been associated with an incident in terrorism financing. In 1998, a Chicago-based Islamic charity, the Quranic Literacy Institute (QLI)—of which Ossam was at the time the director—was alleged to have steered large amounts of money to Hamas terrorists. The federal government seized \$1.4 million of its assets. The QLI and several other charities were then sued by the parents of American teenager, David Boim, murdered by Hamas in Israel, as complicit in the younger Boim’s murder. In 2004, a federal jury in Chicago found QLI and the other defendants guilty and the presiding judge awarded the Boim estate damages of \$156 million. QLI went defunct shortly thereafter. The case however was revived on appeal, and at the time of this writing, the Center for Security Policy is preparing an amicus curiae brief authored by the Center’s General Counsel, David Yerushalmi, on the role of Shariah and Shariah authorities in the financing of Jihad-terror worldwide.

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### **IMANX and Shariah-Centered Islam**

Mr. Osman has also been one of the pioneers of Shariah-compliant finance in the United States as the key player behind the Dow Jones Islamic Fund (IMANX) and the Amana Mutual Funds Trust. In his capacities as the president of IMANX, which is owned by NAIT, and as president and registered agent of Allied Asset Advisors Funds—IMANX’s investment advisor and another NAIT-owned entity—Osman has complete control of the index fund. It comes as no surprise, therefore, that IMANX relies on the Dow Jones Shariah advisory board which is staffed by Shariah-adherent Islamists, including Mufti Taqi Usmani who is, as noted above, on record advocating violent jihad against non-Muslims in the West and supporting suicide bombing.

### ***Abdul Sattar Abu Ghuddah***

Abdul Sattar Ghuddah is one of the half-dozen most prominent Shariah and Islamic finance experts in the world. He has carefully avoided making controversial political statements, but he too has close ties and affiliations with a number of Shariah-adherent Islamic organizations that reveal, as one would expect, clear Islamist sympathies. He is also a long-time, close associate of the Saudi billionaire, Shariah finance kingpin and suspected terror financier, Sheikh Saleh Kamel. Ghuddah currently sits on the Shariah advisory boards of 35 institutions.

### **Background**

Ghuddah was born in Haleb, Syria. Haleb is well-known in Syria as one of the bastions of the Muslim Brotherhood. Ghuddah comes from a very devout family with Islamist sympathies. His uncle Abdul Fatah Abu Ghuddah is an admirer of the oft-cited, Shariah medieval scholar Ibn Taymiyya and a prominent Syrian Islamic scholar with a doctorate from Al-Azhar University.

### **Education**

Ghuddah’s secular education includes a law degree from Damascus University in 1965. His Islamic religious education is extensive, with a B.A. in Islamic theology from Damascus University in 1964, an M.A. in Islamic Theology from Al Azhar University, 1966, an M.A. in prophetic revelations (Ilm al-Hadis) from Al Azhar University, 1967, and a Ph.D in Fiqh, specializing in Islamic finance and banking, from Al-Azhar University, 1975.

Ghuddah’s professional experience and affiliations start with Professor of Fiqh at Imam “Da’awa” University, Riyadh, 1966. He worked as a researcher

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and expert in Encyclopedia of Fiqh, Kuwait Ministry of Religious Affairs in 1967. He became a Professor for Fiqh and Hadith, Islamic Institute, Kuwait, from 1974-1976, and 1983-1986. He was a Professor in Islamic sciences, Faculty of Islamic Theology and Law, at Kuwait University in 1983, and a guest-professor at the Saleh Kamel Center for Islamic Economic Science, Al-Azhar University, from 1990-1991.

### **He is a long-standing member of key Islamist organizations:**

- Member—Islamic Fiqh Academy, Jeddah, Saudi Arabia since its establishment in 1981.
- Expert—Islamic Fiqh Academy of the Muslim World League (MWL), Mecca, Saudi Arabia.
- Member—International Shariah Organization of Zakat.
- Member—Fatwa Board in the Kuwaiti Ministry of Awkaf and Islamic Affairs 1982-1990.
- Member—International Union for Muslim Scholars (of which Sheikh Qaradawi is president).

### **His affiliations in Shariah Finance Sponsoring Organizations are diverse—and numerous:**

- Shariah Advisor—Dallah al-Baraka group (Saleh Kamel owner), 1991
- Director—Department of Financial Instruments and Islamic Research, Dallah al-Baraka Group, 1992 to present.
- Member—The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), Bahrain.
- Member—Shariah Supervisory Board, Dow Jones Islamic Market Index (IMANX)
- Chairman—Shariah Supervisory Committee, Islamic Bank of England.
- Chairman—Shariah Supervisory Board, Al Baraka Investment and Development Corporation (owned by Saleh Kamel)
- Chairman—Executive Committee, Unicorn Investment Bank,
- Chairman—Shariah Supervisory Committee, Islamic Bank of Britain,
- Chairman—Shariah Supervisory Board, Global Securities House Ltd.,
- Chairman—Shariah board, Al-Tawfiq Company for Investment Funds Ltd.,
- Member—Shariah Board—Union Bank of Switzerland (USB), Switzerland
- Member—Shariah Board, Saudi American Bank, Saudi Arabia
- Member—Shariah Board, Guidance Financial Group, USA
- Member—Shariah Supervisory Board, First Islamic Investment Bank, Bahrain

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- Member—Shariah Board, Meezan Bank
- Member—Shariah Board, Islamic Bank of Asia
- Shariah Advisor—Standard Chartered Group, Sadeeq Islamic Banking,
- Member—Shariah Supervisory Board, Venture Capital Bank,
- Member—Shariah Supervisory Committee, Amiri Capital,
- Member—Shariah Advisory Board, Calyon Credit Agricole CIB,
- Member—Shariah Advisory Board, Dar Al Istismar,
- Member—Shariah Advisory Board, BNP PARIBAS,
- Member—Shariah Advisory Board, Noor Islamic Bank,
- Member—Shariah Advisory Board, Al-Tawfeek Gulf Equity Fund,
- Member—Shariah Advisory Board, MSCI Global Islamic Indices,
- Member—Advisory Council, Islamic Finance Qualification,
- Member—Shariah Advisory Board, ARCAPITA,
- Shariah Advisor—Gulf Finance House,
- Shariah Supervisor—Zayan Finance,
- Member—Shariah Advisory Board, Gulf Clearing Company,
- Member—Shariah Advisory Board, International Investment Bank, Bahrain
- Member—Shariah Board, Investors Bank

### Publications

Abdul Sattar Abu Ghuddah is a prolific writer on the subject of Islamic finance having authored at least 19 monographs and 9 fatwa collections, including:

Monographs:

1. Al Khiaar (the Option) and its Effects in Contracts—PhD thesis
2. The Fiqh and Accountancy of Zakat
3. Zakat and Taxation
4. Fiqh Rules and Accountancy Principles of Waqf
5. Deferred Payment Sales (a series of lectures)
6. Fiqh Imam Bukhary and its Theory

Fatwa Collections:

1. Fatwas on Banking Services
2. Fatwas on Unified Shariah Institution
3. Fatwas on Mudaraba
4. Fatwas on Murabaha

He is also the author of three encyclopedic Shariah studies.

## Chapter 5: The Criminal and Civil Liabilities Associated with Shariah-Compliant Finance

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Until recently, no focused effort has been made to identify and analyze the implications for civil liability and criminal exposure for U.S. financial institutions and other businesses engaged in Shariah-Compliant Finance (SCF). Instead, the financial industry has heard almost exclusively from interested parties—particularly law firms, accountants and other SCF specialists—who have been uncritical cheerleaders for this new market.

All too often, such legal or accounting professionals serve as facilitators—driven by complex legal- or accounting-intensive tasks, and further motivated by exorbitant professional fees and the desire to develop a specialized expertise for yet-further marketing of services—while losing sight of the threshold issues for any new and novel market transaction: Does the transaction or business model comply with existing civil and criminal statutory and regulatory frameworks? Does the transaction expose the client to unique and elevated civil liability and criminal exposure or regulatory intervention?

The Conference analysis was drawn in large part from a legal analysis by David Yerushalmi that will be published in the *Utah Law Review* in September, 2008. Selections from this legal analysis were provided to the conference participants and formed the core of discussions on tactics and strategies for opposing Shariah-compliant finance. This chapter draws almost exclusively from that analysis.

On close examination, it is clear that Shariah-compliant finance does indeed expose the financial institutions and other businesses involved in this industry to a whole host of disclosure, due diligence, and compliance issues—all of which elevate substantially the civil liability and criminal exposure such companies otherwise factor into their business risk profiles. To date, however, very little of this increased civil and criminal exposure has been recognized or analyzed—let alone been guarded against—in any meaningful way.

The following are among the factors that give rise to significant and problematic exposure on civil and criminal grounds for those engaged in Shariah-compliant finance:

- The Shariah “black box” syndrome: U.S. financial institutions and businesses involved in SCF risk grave consequences by willfully disregarding what Shariah is—both in theory and in practice—and its intimate connection to Islamic terror and holy war against the non-Muslim world amounts to corporate recklessness.
- Putting Shariah in a black box and treating its prohibitions as if they were benign secular and objective “screens” ignores the duty of disclo-

## The Criminal and Civil Liabilities Associated with Shariah-Compliant Finance

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sure of the most important elements of Shariah: its purposes and its ultimate methods.

- Undoubtedly, a reasonable post-9/11 investor contemplating an SCF investment would consider (a) the purpose of Shariah (i.e., establishing Shariah as the law of a worldwide hegemony) and (b) the methods of Shariah (i.e., including Jihad) to establish this goal material to the investment decision.
- To the extent that U.S. Shariah authorities or foreign Shariah authorities retained by U.S. businesses advocate the implementation of traditional and authoritative Shariah, they risk being charged with a violation of 18 U.S.C. § 2385.
- U.S. financial institutions and businesses have a duty to conduct reasonable due diligence investigations to be certain that their respective Shariah authorities are neither advocating crimes in the name of Shariah nor promoting the material support of terror, either through legal rulings or through the funneling of “purification” funds to terrorists. Failure to conduct such due diligence might very well lead to civil liability, if not criminal exposure.
- The Shariah black box is yet another financial fad, *like the sub-prime market*, where transparency is sacrificed in the mad rush to market-share and quick profits. U.S. mutual funds are poised to embrace SCF without a word about the risks associated specifically with Shariah. U.S. banks are cavalierly promoting Shariah-compliant loans as “interest-free,” when in fact they are merely repackaged loans at standard interest rates. This violates any number of consumer protection statutes.
- Financial institutions are underwriting Shariah-compliant loans and bond issuances without really understanding the risks associated with default and bankruptcy treatment.
- Insofar as U.S. financial institutions participate in and cooperate with the Shariah authorities’ efforts to establish the rules and regulations for the SCF industry, antitrust issues such as rules collusion are likely to present still-more issues of exposure for those embracing this new industry.
- The current structure of the SCF industry in which roughly several dozen of the most influential Shariah authorities control the way funds go in and out of the largest financial enterprises in the world creates the paradigmatic pattern of predicate racketeering activity that any aggressive prosecutor or plaintiff’s lawyer looks for in a RICO cause of action.

The failure by corporate management and their legal advisors to confront these issues in any serious fashion is not surprising, given—until now—the

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wholesale failure of the participants and facilitators in this industry to undertake a serious analysis of these risks. Indeed, the legal academic and professional literature reads more like promotional material than serious legal analysis conducted by men and women trained to protect clients from their own blind enthusiasm. The legal industry has gone down this road too many times in the past. The difference this time is that the risk is not simply financial; it is potentially existential.

The following sections offer an overview of the details on the nature of the civil and criminal exposure believed to be associated with Shariah-compliant finance.

### **Racketeering**

The Racketeer Influenced and Corrupt Organizations Act (commonly referred to as RICO) is a United States federal law that provides for extended penalties for specific criminal acts carried out as a “pattern” and performed as part of an ongoing criminal enterprise. The predicate offenses which can qualify as part of the “pattern of racketeering activity” include bank fraud and money laundering. Since the passage of the Patriot Act, money laundering offenses include “material support of terrorism”.

Section 2339(A) of Title 18 of the U.S. Code, states: “Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be [guilty of a crime].”

“Material support” is defined in the U.S. Code as:

1. the term “material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe-houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials;
2. the term “training” means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and
3. the term “expert advice or assistance” means advice or assistance derived from scientific, technical or other specialized knowledge.



## **The Criminal and Civil Liabilities Associated with Shariah-Compliant Finance**

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The thrust of the RICO case that applies to Shariah-compliant financial transactions rests in part on the fact that, as has been noted above, such prominent Shariah advisors as Sheikhs Qaradawi and Usmani have both issued fatwas that provide material support to Jihadists the world over. These advisors intend for Shariah-adherent jihadists to use their fatwas as legal authority to engage in murder and terrorism. In other words, they know or have reason to believe that their fatwas constitute such support.

Moreover, all of the Shariah authorities who confer with Usmani and Qaradawi—even ones who do not personally issue such violence-inspiring fatwas—are guilty of aiding and abetting the material support of terrorism because they are knowingly participating by providing greater authority to such rulings even as they themselves avoid personally issuing rulings on Jihad.

RICO is violated when a defendant—or, in this case, a cadre of defendants acting as Shariah authorities—engage in a “pattern of racketeering activity” and have:

1. Invested income from a pattern of racketeering activity in an “enterprise”;
2. Acquired or maintained an interest in an “enterprise” through a pattern of racketeering activity;
3. Conducted or participated in the affairs of an “enterprise” through a pattern of racketeering activity; or
4. Conspired to do any of the above.

In Shariah-compliant finance, the pattern of racketeering activity is both the material support of terror (issuing fatwas towards that end) and the fraud and failure to disclose the connection with terror and jihad (bank fraud is also a predicate offense). The “enterprise” in this context is the SCF industry, including the financial institutions and their advisors which have opened their doors, sometimes naively, sometimes recklessly, and sometimes knowingly, to men seeking the West’s subjugation or destruction.

### **Fraud: A Lack of Disclosure and Due Diligence**

State and federal securities laws, and common law, and state consumer anti-fraud laws, all require disclosure of facts that are material to a post-9/11 investor. The nature of Shariah itself, particularly the requirement for aggressive jihad, is material to investors. The associations, fatwas and writings of the

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Shariah advisors are material to these investors. The possible disbursement of charitable Zakat funds and “purified” funds to terrorist and jihadist groups is material. Yet none of these topics is disclosed by Shariah-Compliant businesses to their post-9/11 investors. This constitutes a lack of disclosure giving rise to additional civil liability and possibly criminal exposure.

Further, because Shariah is understood as divine and the Shariah authorities are considered the trustees of its authority, integrity and interpretation, the application of Shariah’s well-established and ancient doctrines to the quite modern practice of SCF necessarily lacks transparency.

Shariah is, by its own terms, a divinely ordained law which can never be subordinated to a secular political, legal or regulatory system. As a result, Shariah is simply not a positive law or normative system that is articulated and enforced within a political structure of codified laws, procedures, courts and binding legal opinions. In the absence of such mechanisms and the precedence and effective enforcement mechanisms they provide, there will, by definition, be a lack of transparency in Shariah-governed transactions.

SCF represents nonetheless an attempt by the participants (financiers, businessmen, facilitators, and Shariah authorities) to apply divine law to a modern secular political, legal and financial system. Should a secular court or legislature attempt—in an effort to establish transparency—to codify Shariah’s precepts as they apply to SCF (setting aside the constitutional issues this would raise in the United States), it would fail its fundamental purpose: Shariah simply cannot be rendered subservient to secular law.

In stark contrast, domestic finance and commerce in the United States, and indeed international financial transactions more generally, are based upon Western legal financial structures which provide transparency. It is transparency that renders a complex transaction manageable and viable. When the parties to a transaction and the professionals facilitating it know that a given transaction format has previously been used successfully after being stress-tested and enforced in many forums under various circumstances, the risks of the deal are then limited to the specific business terms and market conditions, rather than the formalities of the documents and their enforcement.

The problem the SCF industry currently faces is that none of this analysis has been conducted, and if it has, the results of this analysis have been buried in the Shariah black box without any of the disclosures required by U.S. law. What follows is a survey of those laws and the implications for U.S. financial institutions engaged in SCF.

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### **Common Law Tort Action for Deceit or Fraud**

The common law of most states incorporates the tort action of deceit, commonly referred to as fraud, to allow private rights of action for misrepresentation.

The essential elements of a common law fraud action are:

1. a false representation of
2. a material fact which
3. the defendant knew to be false with the intent
4. to induce the plaintiff to rely upon it and
5. the plaintiff in fact justifiably relied upon the representation, thereby
6. suffering damages as a result.

Most states have relaxed many of the provisions governing common law fraud. For example, certain relationships under the common law (such as a fiduciary) might also give rise to a claim for constructive fraud which allows recovery for an omission of material fact. In other words, not providing material facts about Shariah and Shariah advisors could be such an omission, and the basis for a claim filed under the common law of the plaintiff's state.

### **Securities Statutes**

In addition to common law actions for fraud or misrepresentation, there are federal and state statutory regimes designed to govern disclosures in a myriad of business and financial contexts, including the sale of goods and the provision of loans; investments such as the formation of partnerships; and the sale of intangibles such as the offering of securities. In the world of SCF, the disclosure statutes most obviously implicated in civil and criminal liability issues are these federal and state securities laws.

In the main, the securities law relating to fraud and misrepresentation were modeled after common law fraud. However, Congress clearly intended the securities fraud statutes to have a far broader reach than the common law. As a result, securities laws sought to include within its enforcement misrepresentations, omissions, schemes, and artifices that would not otherwise be captured by traditional common law fraud.

In addition, many of the specific elements of common law fraud have been modified by statutes at the federal and state level—albeit in different

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ways. Recent federal legislation aimed at curbing abusive class action litigation and subsequent Supreme Court case law suggest a serious trimming of the broad reach previously granted federal securities laws. This federal trend is counter-balanced by a movement at the state level to extend the reach of the state securities laws and to interpret them more liberally than the federal counterparts.

Conference participants discussed applicability of both federal and state securities laws to the disclosure of the material facts and risks of SCF, including these possible initiatives to be used in investor and policymaker educational outreach efforts:

### **Applying Federal and State Securities Laws to Shariah-Compliant Finance**

There are principally seven federal statutes that govern securities transactions: the Securities Act of 1933; the Securities Act of 1934; the Trust Indenture Act of 1939; the Investment Company Act of 1940; the Investment Advisors Act of 1940; the Securities Investor Protection Act of 1970; and the Sarbanes-Oxley Act of 2002. Civil and criminal liability under the federal securities statutes for failure to disclose, what is broadly referred to as securities fraud, is regulated by the SEC and its principal weapons are the Securities Act of 1933 (“1933 Act”) and the Securities Exchange Act of 1934 (“1934 Act”).

The 1933 and 1934 Acts target different markets. The 1933 Act regulates initial offerings and the 1934 Act regulates all subsequent trading, but the overriding public policy is the same: “full disclosure of every essentially important element attending the issue of a new security” and a “demand that persons, whether they be directors, experts, or underwriters, who sponsor the investment of other people’s money should be held to the high standards of trusteeship.”

The SEC—through its rule-making authority and its regulatory responsibilities—dictates the specific kinds of minimal (and in some cases maximal) disclosure required by the specific provisions.

The main weapons against securities fraud are the civil and criminal remedies. Thus, the SEC, in addition to administrative sanctions, has access to the civil courts to seek injunctive relief, disgorgement and even civil fines, in addition to other equity-like relief. In addition, the Department of Justice (“DOJ”), often as a result of an SEC administrative investigation and criminal referral, is authorized to file criminal charges for violations of the federal securities laws when it appears the offending party had the requisite intent.

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Finally, private plaintiffs have expressed and implied rights of action under several provisions. The most used and abused of all such provisions is Rule 10b-5 promulgated under the 1934 Act which provides for civil litigation and criminal prosecutions. When the class-action club is added to the civil claims brought under Rule 10b-5—although curbed significantly by recent legislation—the weapons available to prosecute claims for misstatements and omissions of material fact in SEC filings and elsewhere in the public domain are considerable.

The private sector may also play a role in investigating the risks of SCF, in educating the public and in taking initiatives under existing regulations to enforce the law through civil litigations and to employ provisions such as Rule 10b-5 to hold SCF financial institutions accountable for knowingly or recklessly withholding the whole material truth about Shariah.

State securities laws, usually referred to as blue sky laws, are similar to the securities disclosure laws and securities fraud liability in federal securities laws. However, as a result of Congress' efforts to curb private securities fraud litigation and recent Supreme Court rulings, the more sweeping state securities laws will take on ever greater importance in the securities plaintiff's arsenal of litigation weapons.

### Material Support of Terror and Reverse Money-Laundering

SCF follows the Shariah obligation to tithe (known as *zakat*) and also requires the "purification" of profits earned in violation of Shariah. There are a number of questions that lawyers, investors, policymakers and the general public need to ask of Shariah-compliant funds and regulators:

- Who decides what happens to the *zakat* funds?
- Which charities are selected, and by what criteria?
- What tracking mechanisms are in place to trace these funds?
- If regulators usually do not know which charities are being funded, and no tracking mechanism is in place, is this due to ignorance of the potential for funding terrorism, or willful blindness?
- Who is liable if Shariah-compliant funds are indeed funding terrorism and training for jihadists: the funds themselves? The regulators? The investors? The shariah advisors?

Given the historical connection between some of the largest and best-known Muslim charities and the funding of terrorist groups, these questions take on added focus in the context of material support of terrorism. As the

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foregoing analysis makes clear, there is, in fact, a close nexus between Shariah and global terrorism. At the very least, efforts by corporate legal counsel to dismiss these concerns will invariably run up against the wall of common understanding linking the two. In fact, this common understanding has already begun to articulate itself in the debate over materiality in the context of what is a material or relevant disclosure with respect to shareholder proxy statements demanding disclosures of what has come to be termed “global severity risks.”

U.S. companies can no longer consider their associations with countries or entities tainted by terror a private, non-material or irrelevant matter. While the courts have not yet entered the fray, the executive and legislative branches have laid down some important markers. The closer a company gets to any association with terror, the more it has to disclose.

### **Reverse Money-laundering**

Shariah-compliant finance appears to constitute a form of what has been called “reverse money-laundering.” After all, it stands the classic money-laundering model on its head—moving perfectly legitimate funds into U.S. domestic businesses via SCF, then diverting those funds to domestic or overseas charities and organizations, at least some of which have ties to terrorism. Such transactions are very difficult to spot unless government regulators already have the specific recipient charities and organizations in question under surveillance.

As discussed above, this danger arises from two practices associated with Shariah-compliant finance. The first is through a charitable contribution made on behalf of individual investors by an SCF financial institution or business. This practice is rooted in the obligation of faithful Muslims to gift a certain percentage of their income to charity.

In the Middle East and Malaysia, SCF companies, banks, and investment funds seem to calculate the amount the individual Muslim investors owe from profits and to distribute those funds automatically to Shariah-approved charities. Only then would the net, after-Shariah-charitable-tax profits be distributed to the individual investor.

In the United States, although many of the reporting companies and mutual funds involved in SCF are unclear as to whether this service is offered, most appear to allow the individual investor to calculate and make his or her own charitable contribution.

Several questions arise for those SCF businesses and investments which net the returns to the investor after this charitable payment:

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- Which charities are Shariah-compliant?
- Who makes this determination?
- Do the businesses or financial institutions direct these contributions or are these decisions made by the Shariah authorities?
- Is there any vetting of the recipients of these charities to determine what they do with these funds?
- Why is this process not transparent?

A second troubling SCF practice contributing to reverse money-laundering arises when some of the gross income of a business deemed Shariah-compliant is generated by Shariah-prohibited sources. This can occur in several ways, but two are most common:

The first is via what one might term the exceptional event when the Shariah “filter” misses some tainted source of income altogether. This might happen, for example, when a Shariah-compliant company in a Shariah-compliant mutual fund acquires a forbidden company, the main business of which is in a forbidden industry (such as interest-based finance or hog farming). The equity position in that Shariah-prohibited company must be sold. The proceeds of that sale will include a certain amount of profits attributed to the forbidden assets. That amount must be calculated and “purified” by being donated to an approved “charity.”

The second occasion for purification is more typical. For instance, a mutual fund is permitted to invest in companies which routinely earn up to a fixed percentage of their income from interest (e.g., via overnight “float” operations). Notwithstanding this leniency, any profits thus accruing to the mutual fund from this forbidden income must be “purified.”

Not surprisingly, Shariah advisors typically insist that such purification be performed by the SCF institution so they will have the opportunity properly to assess the amount needed to be purified and, presumably, to determine to which charities the purified funds flow. As with the *zakat* charitable contributions, the purification of funds is, as a general rule, not fully disclosed in public filings of U.S. SCF financial institutions.

The three largest Muslim charities in the United States have all been implicated in financing terror, had their assets frozen, and they were effectively shut down. The criminal exposure arising from the “purification” process leads one to ask the following questions about any list of potential charities: Are these non-Muslim charities? If they are Muslim charities, have they been vetted and by whom?

In fact, the practice of Muslim charities funneling money to terrorists is so widespread and the problem so insidious that the U.S. government keeps a

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list of dozens of such organizations worldwide. It will not suffice, however, to simply determine that the charities are “well-known” Muslim charities and not currently listed as designated supporters of terrorism. At a minimum, the following questions would need to be answered:

- Who are the ultimate beneficiaries of the contributions?
- Who or what is the ultimate purpose served by the charities’ “good deeds”?
- Do these charities have overseas branches?
- Is the financial institution wiring the funds domestically or internationally?
- Who or what organization founded the charities and who controls them today?

### **Anti-Trust and Collusion**

Another area of civil liability exposure arises under antitrust law, imposed by the need for Shariah authority boards. At present, approximately sixty Shariah scholars monopolize the positions available on the Shariah advisory boards of major SCF institutions worldwide.

There has been a concerted effort among these Shariah authorities to impose universal standards to prevent materially divergent opinions. This effort has been spearheaded by the Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”) and the Islamic Financial Services Board (“IFSB”). The former seeks to establish accounting standards for the various SCF transactional structures. The latter is striving to set the standards by which Shariah authorities self-regulate and interact with the financial institutions which employ them. According to the IFSB, the AAOIFI and the independent writings of many of the Shariah authorities, there are designs to establish industry-wide minimal credentials a newcomer would be required to obtain to enter this lucrative consulting business. The initial antitrust issue raised by such efforts is the problem of “group boycotts” or, alternatively, the implication of “self-regulation” for a small, discreet and insular group of authorities who have almost total market share deciding how one gains entry into the market.

Applying their standard “rule of reason,” courts will look to the motivations and anti-competitive effects of such “industry standards.” This is especially problematic in SCF because, should a non-recognized Shariah authority attempt to market his services to the financial institutions seeking Shariah guidance, a ruling by the existing Shariah authorities that the newcomer has not satisfied their credentialing requirements would, as a practical matter,



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render the market closed to that newcomer.

The “closed-shop” quality of SCF will exacerbate this syndrome. Financial institutions that market SCF products to the Shariah-adherent consumer are extraordinarily sensitive to the problem that public disputes among the Shariah authorities over what is permitted or prohibited could devastate the demand for SCF products generally. At the very least, they could certainly render suspect any given SCF product.

The problem of “self-regulation” would become an issue for the financial institutions themselves if they play some material part in this effort to control entry into the market by newcomers, whether via *de jure* or *de facto collusion* with the dominant group. Another problem, however, which would certainly implicate liability for the financial institutions directly, is what has been described as “rules collusion.”

In the latter case, the effort by the financial institutions and their agents—the Shariah advisors—to agree upon what transaction structures and investments should be considered “Shariah-compliant” will most assuredly work to limit the development of new competitive products by the market players. The effect will be further to shape and minimize competition among cartel members in order to increase the profits of the parties to the agreement. SCF presents substantial antitrust liability exposure .

### Shariah-Compliant Finance and Sovereign Wealth Funds

The investing practices of sovereign wealth funds (SWF)—some of which have ties to Shariah Compliant Finance (SCF)—have been a matter of growing concern in recent months. Thanks in particular to vast transfers of petrodollars to SWFs of Shariah-based Islamist regimes, the connection between the two needs to be considered carefully in any assessment of the SCF phenomenon and its implications.

Sovereign wealth funds are widely seen as the new frontier in international capital markets. Currently, some three dozen SWFs control approximately \$3.2 trillion in assets, with various projections for growth to \$12-\$15 trillion by 2015.

A number of serious concerns have been expressed by Western political leaders and regulatory officials including:

- Chairman Christopher Cox of the Securities and Exchange Commission: Investment decisions of SWF “go beyond profit and loss.” They are “significantly less transparent than hedge funds,” and “present challenges to a (U.S.) regulatory system premised on free markets, the

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free flow of information and investor incentives based on profit and loss.”

- Clay Lowery, Acting Under Secretary of the Treasury for International Affairs: “Little is known about their (SWF) investment policies,” and they are “rarely subject to market disciplines, being controlled by public servants imperfectly accountable to the citizens for whom they were investing.” (“[I]mperfectly accountable” is of course a euphemism for “not accountable in any material way.”)
- Simon Johnson, Chief Economist, International Monetary Fund: SCF “financial flows were going increasingly through ‘black boxes’ and could pose risks to global stability.”
- Robert Kimmitt, Deputy Treasury Secretary: “The benefits of SWF investments to the recipient countries depend on the extent to which the behavior is economically driven... rather than politically driven.”
- Larry Summers, former Secretary of the Treasury: SWF activities are “cross-border nationalization.”

While these and other concerns are often raised, very little attention has been paid to date to another disturbing dimension of SWF—their increasingly close and synergistic relationship with Shariah-compliant finance in the Muslim world in general, and the Gulf in particular. Given the explosive growth of SCF compared to conventional banking in the Gulf and the strong government support behind this trend, it is very likely that SCF and Gulf-based SWF are rapidly becoming one and the same phenomenon. This would mean that—at some point in the near future, *if not already*—SWF will become an instrument for promoting and legitimating Shariah in the West.

There are several factors characterizing the political economy of the Gulf that intensify this concern:

- None of the Arab Persian Gulf states are run by representative governments; rather, all are governed by ruling families in a quasi-feudal manner.
- Most wealth in these states belongs to the ruling families and their coteries. These families are thus not only the rulers but also the *owners* of the states they preside over.
- Gulf sovereign wealth funds, therefore, do not in any real sense belong to the people (in contrast, for example, to the Norwegian SWF, which does), but to the respective ruling elites. They are run in accordance with the political and economic interests of the latter, not the former.
- For investment purposes, there is little difference between officially

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designated SWF, such as the Dubai Corporation for Government Investment, and sovereign wealth as represented, for example, by the vast holdings of Dubai ruler, Sheikh Maktoum.

- Most business and financial transactions in the Gulf are far from transparent and severe restrictions on ownership and investment by foreigners are in place.
- All Persian Gulf rulers support or otherwise appease Shariah-centered Islam, which demands jihad against the infidel. They are thus, to one extent or another, inherently inimical to U.S. and Western interests, although many of them simultaneously seek military protection from America.

It is these realities that make a synergistic nexus between SWF and SCF inevitable and highly troubling in its implications for Western capital markets. This dynamic is already in evidence and growing rapidly. Some of its visible manifestations include:

- Strong government support for Shariah-compliant finance throughout the Gulf: For instance, the huge Dubai Holding concern owned by Sheikh Maktoum, has recently been acquiring existing Islamic banks and sponsoring new ones. The Dubai government-owned Dubai International Financial Centre (DIFC) intends to become an international center for “Islamic finance regulations, standards and practices” by creating “an Islamic hedge fund platform, an Islamic finance portal, a commodity exchange (*murabaha*) and Islamic finance institutes.”
- Interlocking directorships between Islamist Shariah-compliant finance, sovereign wealth funds and sovereign wealth: For example, Sheikh Maktoum’s right-hand man and chief investment officer, Soud Baalawy, is simultaneously the chairman of the Noor Islamic Bank, executive chairman of the Dubai Group and vice chairman of Bourse Dubai, the world’s biggest bourse for Islamic bond (*sukuk*) listings.
- Direct sponsorship and financial support by Persian Gulf rulers for Shariah-centered Islamists and Shariah banks: The two Islamic banks in Qatar (the International Islamic Bank of Qatar and the Islamic Bank of Qatar) are both owned by the ruling Thani family and have the strident Islamist Sheikh Yusuf Al Qaradawi as the chairman of their Shariah advisory boards.

European nations and the U.S. government have slowly begun to demand greater transparency with respect to sovereign wealth funds. For example, on March 14, 2008, European Union leaders called for an international code

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of conduct governing sovereign funds. They reposed in member governments the power to shield strategic industries such as defense.

On March 20, 2008, U.S. Treasury Secretary Henry Paulson announced an agreement with the sovereign funds of Abu Dhabi and Singapore to adopt rules for greater disclosure. In particular, the latter pledged to ensure that their investments are for economic rather than “geopolitical” purposes.

Most oil exporting countries with sovereign wealth funds, however, are lobbying for the minimum amount of transparency. In April 2008, Bader al-Saad of Kuwait’s \$250 billion sovereign wealth fund said European Union and U.S. plans to force more disclosure could harm the global economy. He declared that increased scrutiny “will result in an adverse impact on global capital flows” and “won’t solve or prevent any future financial crises.”

Later that month, Neil Nicholson, a corporate partner at Denton Wilde Sapte Dubai—a leading firm in structuring both sovereign wealth fund and Shariah-compliant finance transactions—published an article at [www.thelawyer.com](http://www.thelawyer.com) highly critical of Western nations’ interests in transparency. Wrote Nicholson, “Tension has been increasing between East and West over the West’s calls for greater transparency and regulation for sovereign wealth funds (SWFs).

Nicholson’s thesis is that, since big international banks have lost money and—with the blessing of their governments—asked sovereign wealth funds to help stabilize Western capital markets by bailing out those financial institutions, the United States and other developed nations have no grounds for insisting on burdensome, new regulations of the SWFs. The author warns in a none-too-subtle fashion that the West needs to be cautious in its approach to Middle Eastern SWFs: “Its unnecessarily suspicious approach may have unwelcome consequences.... Voluntary codes of conduct are one thing, but any further regulation of SWFs by the West would be both unfair and a mistake.”<sup>7</sup>

Interestingly, these anti-regulation statements were issued at the time the U.S. Congress was holding hearings on regulations and sovereign wealth funds.

The non-transparent Islamic sovereign wealth funds are clearly in a position not only to make capital investments in strategic sectors of Western economies with potentially ominous implications. They can also be used to ensure widespread introduction of Shariah-compliant finance and, thereby, to legitimate—both directly and indirectly—Shariah. For all these reasons, their activities should be closely monitored and, where appropriate, regulated.

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<sup>7</sup> Nicholson, Neil. “Sovereign Rights.” April 28, 2008. Online publication: TheLawyer.com . <http://www.thelawyer.com/cgi-bin/item.cgi?id=132437&d=pndpr&h=pnhpr&f=pnfpr> .

# Case Studies:<sup>\*</sup>

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## I. Dow Jones, Shariah-Compliant Finance and Wall Street

The Dow Jones & Company brand name is considered by many to be Wall Street's gold-standard. Promoters of Shariah-compliant finance (SCF) have understood this and tried, in various ways, to exploit relationships with Dow Jones to facilitate their efforts to penetrate and influence American and other capital markets. This case study examines two examples, the Dow Jones Islamic Market Index (DJII) and the Dow Jones Islamic Fund.

The DJII provides a standardized universe of Shariah-compliant publicly-traded companies. Private investors and mutual funds who wish to invest only in Shariah-compliant companies can select the DJII or any of the **seventy some** other Shariah-compliant indexes licensed by Dow Jones for U.S., non-U.S. and specialty markets. One such mutual fund which had licensed the right to utilize the Dow Jones Islamic U.S. Index ("DJII-US") and the Dow Jones name is the Dow Jones Islamic Fund ("the Fund").<sup>9</sup>

### The Dow Jones Islamic Index

Dow Jones, which was recently acquired by News Corporation, was the first company to offer Shariah-compliant indexes. (Other industry leaders, such as Standard & Poor's, have subsequently introduced such indexes.) Dow Jones represents itself as "a leading provider of global business news and information services." It markets "Dow Jones Indexes [as] a leading full-service index provider that develops, maintains and licenses indexes for use as benchmarks and as the basis of investment products."

In its promotional and related materials, the Dow Jones Islamic Index provides an insight into what its management and lawyers consider reasonable due diligence and disclosure for one of the world's premier financial

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<sup>\*</sup> The section on "case studies" has drawn heavily from the unpublished legal memorandum "Civil Liability and Criminal Exposure for U.S. Financial Institutions and Businesses Engaged in Shariah-Compliant Finance," prepared for the Center for Security Policy by David Yerushalmi.

<sup>9</sup> Dow Jones learned of the facts and analysis of these case studies when *Investor's Business Daily* published an editorial in late February 27, 2008 based upon a press release of the material relating to the nexus between Dow Jones, Usmani, Jihad, and terror financing set forth below. According to Michael Petronella, the president of Dow Jones Indexes, in a letter to Frank Gaffney and David Yerushalmi dated May 8, 2008 ("the Dow Jones Indexes Letter"), Dow Jones terminated the license agreement with the Fund immediately. In March 2008, the Fund filed an amendment to its prospectus with the SEC deleting any reference to Dow Jones and changing its name to the Iman Fund (symbol: IMANX). Not surprisingly, neither the Iman Fund nor Dow Jones (or its parent company, News Corp.) filed any disclosures with the SEC about the reasons for the termination.

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research companies in the context of an index marketed to the world of Shariah-compliant Muslims as authoritative. For example, the following items are described as the DJII’s “Key Attributes”:

**Shariah Law Compliance:** The Dow Jones Islamic Market Indexes are stringently monitored to ensure their continued compliance with Shariah Law. The independent Shariah Supervisory Board supports index integrity by conducting periodic reviews.

**Liquidity:** The Dow Jones Islamic Market Indexes include only actively traded stocks that are easily accessible to investors. The selection universe for the family is the Dow Jones World Index, which covers approximately 95% of underlying market capitalization and expressly excludes the very smallest and most thinly traded stocks.

**Comprehensive Coverage:** The DJIM Index provides broad coverage across countries, regions, market cap ranges and Shariah-compliant industries. Subindexes allow the individual tracking of these various market segments.

**Systematic Methodology:** The Dow Jones Islamic Market Indexes are created and maintained according to a systematic and published methodology. The selection universe is constructed based on a quantitative set of rules, and stocks must pass consistently-applied industry and financial-ratio screens to be included in the index.

According to the DJII Internet site, the sum and substance of these “screens” are:

The DJIM Index includes all securities in the Dow Jones World Index that pass the following screens for Islamic compliance:

**Industry Type:** Excluded are companies that represent the following lines of business: alcohol, tobacco, pork-related products, financial services, defense/weapons and entertainment.

**Financial Ratios:** Excluded are companies whose:

- Total debt divided by trailing 12-month average market capitalization is 33% or more.

## Case Studies: Dow Jones, Shariah-Compliant Finance and Wall Street

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- Cash plus interest-bearing securities divided by trailing 12-month average market capitalization is 33% or more.
- Accounts receivables divided by 12-month average market capitalization is 33% or more.

In all of its public disclosures and representations, Dow Jones informs the public that the DJII Shariah Supervisory Board “was established to counsel Dow Jones Indexes on matters relating to the Shariah [sic] compliance of the indexes’ eligible components.” One question that comes to mind is why the DJII needs any Shariah authority on retainer if the “filters” are “quantitative rules” applied presumably by a software program? Assuming Muslim investors might not trust the DJII to maintain the “filters” and some supervision is required to keep everyone honest, why does the DJII keep six world-renowned Shariah authorities on retainer?

The answer suggested by the questions themselves is that there is still some component of Shariah supervision of the DJII that is not simply “quantitative.” If this is indeed the case, this fact is disclosed nowhere by the DJII or by any publicly reporting fund that licenses the DJII and is required to disclose the filters the fund has licensed.

It is, of course, possible that the answer is a simpler one. Perhaps, the DJII, seeking to be the “gold standard” in the industry, maintains an illustrious board to gild its reputation among Shariah-adherent investors. This theory is reinforced by the fact that, the Index’s Shariah supervisory board members—a veritable Who’s Who in the world of Shariah authorities—are listed prominently on all of the DJII promotional literature:

Shaykh Muhammad Taqi Usmani—Pakistan  
Shaykh Abdul Sattar Abu Ghuddah—Syria  
Shaykh Nizam Yaquby—Bahrain  
Shaykh Dr. Mohamed A. Elgari—Saudi Arabia  
Shaykh Yusuf Talal DeLorenzo—United States  
Shaykh Dr. Mohd Daud Baker—Malaysia

Prior to its acquisition by News Corporation, Dow Jones had long been a publicly-traded company. News Corporation, the company which recently acquired Dow Jones, is a publicly-traded company. After a careful review of all of the Dow Jones filings with the SEC and the filings by News Corporation relating to its acquisition of Dow Jones, there is absolutely no mention of any reputational, financial, or national security risks associated with operating a Shariah-compliant index.



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Neither is there any mention of the purposes of Shariah (i.e., world hegemony) and its methods (including violent jihad). Further, while Usmani was listed as a member of the DJII Shariah advisory board, no mention was made of the fact that this central figure on the DJII Shariah advisory board has publicly and in English called for violent Jihad against non-Muslims in the United States—even during peaceful times when Muslims are provided with the First Amendment right to freely exercise their religion and to convert non-Muslims through lawful means.

The questions regarding all of the disclosure and due diligence issues raised herein now confront not simply the Dow Jones’ lawyers—who appear to view Shariah as a beneficent black box—but the News Corporation lawyers.

Without going into an intricate analysis of all of the Dow Jones representations and disclosures relating to Shariah and SCF, one area is of interest because it confirms the earlier analysis of the intimate and integrated relationship between SCF, Shariah, and the law of jihad. The DJII describes its “screens” as being of two kinds. One screen is for the forbidden “vice” industries, such that companies engaged in any of the forbidden industries will be excluded from the universe of potential indexed companies.

The second-level screen eliminates companies from within the permissible industries whose financials indicate they carry too much debt or maintain too much liquidity, which would suggest they are paying or receiving, respectively, too much interest. (As indicated earlier, a minimum amount of interest may be tolerated *provided* the Shariah-compliant mutual fund or the individual Shariah-compliant investor “purifies” the portion attributed to forbidden profits, such as from interest, and donates that portion to a Shariah-compliant charity.)

In its various public representations, Dow Jones states that the following industries are forbidden and excluded from the DJII: “alcohol, tobacco, pork-related products, financial services, defense/weapons and entertainment.” Elsewhere on its website, however, Dow Jones explains that neither tobacco nor defense/weapons are strictly forbidden: “Although no universal consensus exists among contemporary Shariah scholars on the prohibition of tobacco companies and the defense industry, most Shariah boards have advised against investment in companies involved in these activities.”

The question for the U.S. publicly-traded company is: Does it have a duty to disclose why it is that Shariah would prohibit the defense industry? Does the *Shariah* prohibition apply to Muslims investing in a Muslim defense industry? To be sure, there is no legal issue relative to an index or a mutual fund which chooses not to invest in military or defense industries—whether



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out of a conviction that such industries are sources of evil or out of a moral position against war of any kind.

The question in this instance, however, does not arise in a vacuum but in a setting flowing from the black box of Shariah. That black box, once pried open, exposes a hostile and even violent doctrine targeting non-Muslims in the West for conversion, subjugation, or war. There literally are armies of Shariah-driven combatants at war with the West based upon that doctrine. It is in this context that the question about the motives for the prohibition becomes material to a post-9/11 U.S. investor and applicable disclosure laws.

The question hardens into an indictment when juxtaposed against the published legal edicts of the classical and contemporary Shariah authorities. To suggest that Shariah is opposed to the defense industry is absurd on its face, given the history of Shariah-based empires waging war against their enemies. The evidence is more than historical, however, as the contemporary evidence of Shariah-based regimes illustrates.

Iran, Saudi Arabia, Sudan, and the Taliban all have acquired massive weapons arsenals and, at least in the case of Iran, have developed an “Islamic defense industry.” The adoption of such a military posture on the part of these Muslim countries is not simply grounded in a geo-strategic policy. It is also *demande*d by Shariah, at least according to the leading Shariah authorities of our day.

For example, in Usmani’s book, *Islam and Modernism*, he makes the careful point that Shariah has no objections to science and technology per se. In fact, he opines that Shariah requires Muslims to invest in and to utilize all of modern warfare technology for its mandatory jihad:

The Grand Mufti of Pakistan, Mufti Muhammad Shafi, President, Darul Ulum, Karachi, has written in his treatise “Jihad” as under, Indeed, the Patience, the fear of Allah and total belief in and submission to Allah is the real and unconquerable strength of Muslims. Along with it, however, it is also essential that equipment of war and ammunition proper to the time and place should be acquired and stored. The Prophet (SA) always arranged for war exercises, and issued instructions to collect and acquire all those weapons that were in vogue anywhere in those days. [Usmani goes on to cite the case where two companions of Muhammad were excused from fighting because they were studying how to manufacture modern war weapons.]

This incidence (sic) also proves that it is obligatory for the Muslims to make their countries self-sufficient in war weapons and technology and

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should not depend on others.... We are bound to think it seriously how much our country is in need of all the equipment and weapons of war used in modern warfare so that we may not be lagging behind. We must put all our energy and resources to fulfill the aim that we become self-sufficient in the nearest possible future.

Moulana Zafar Ahmad Usmani, Sheikh-ul-*Hadith*, Darul-Ulum-al-Islamiya, Tando Allah Yar, writes in one of his recent articles:

War weapons and technology against the enemy should be raised to the extent that the enemy is overawed with them...our earlier Caliphs and Sultans religiously followed this rule....The Muslim nations should join together to build up factories for ammunition and other weapons, and a continued process of research and inventions must be carried out. All these efforts are in conformity with Quranic injunction.

Investors are of course free to exclude defense industries from their portfolios. Muslim nations are also free to purchase or manufacture armaments.

There is, however, a threshold disclosure issue for a U.S. company that is promoting SCF, which forbids investment in the defense industry. If that prohibition is due to the fact that Shariah considers Islam at war with the West, the promotion of Shariah and its “opposition” to defense industries is hardly full disclosure.

The aforementioned acknowledgement by Dow Jones that there is “no consensus” on the question of whether the defense sector is a forbidden industry suggests that someone in the inner circle at Dow Jones understands an unstated fact: DJII’s Shariah authorities are using SCF to weaken their enemies (i.e., the non-Muslim West), while mandating through their legal rulings (applied selectively) that Shariah-adherent subscribers should embrace the weapons industry *in the Muslim world* in the service of jihad. This rather patent implication suggests more than a reckless disregard for the duty to disclose material facts to the investing public.

It is simply untenable to argue that these omissions of purpose (i.e., Shariah hegemony) and methodology (i.e., jihad) in the disclosures and representations by Dow Jones as a U.S. public company are not material to the reasonable U.S. investor. There are two possible explanations for such omissions: 1) There has been a wholesale failure to conduct even a minimally acceptable due diligence by legal counsel on this issue. Or 2) legal counsel knows full well the purposes for such prohibitions—and, indeed, of Shariah

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and its methodologies—and has consciously opted to bury this political-military agenda deep inside the black box.

### The Dow Jones Islamic Fund

The Dow Jones Islamic Fund (DJIF) was the name given to an open-ended mutual fund marketed publicly mostly to the Muslim-American community. Recently, though, the fund's name was changed to the Iman Fund and the original licensing arrangement with Dow Jones was terminated. The official explanation for this termination was provided by Dow Jones Indexes in a letter from its president Michael A. Petronella to Frank Gaffney and David Yerushalmi at the Center for Security Policy dated May 28, 2008. In that letter, Mr. Petronella explained that Dow Jones learned only in late February 2008 for the first time that DJIF's principal shareholder (with 69.8%), the North American Islamic Trust ("NAIT"), had been identified by the Department of Justice as an un-indicted co-conspirator in a terrorism-financing case.

Here again, serious questions abound concerning Dow Jones' due diligence in connection with this and other Shariah-compliant finance initiatives. For example, on its Internet site, NAIT represents itself as follows:

The North American Islamic Trust (NAIT) is a waqf, the historical Islamic equivalent of an American trust or endowment, serving Muslims in the United States and their institutions. NAIT facilitates the realization of American Muslims' desire for a virtuous and happy life in a Shariah compliant way.

NAIT is a not-for-profit entity that qualifies as a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code. NAIT was established in 1973 in Indiana by the Muslim Students Association of U.S. and Canada (MSA), the predecessor of the Islamic Society of North America (ISNA). NAIT supports and provides services to ISNA, MSA, their affiliates, and other Islamic centers and institutions. The President of ISNA is an ex-officio member of the Board of Trustees of NAIT.

The trouble with Dow Jones' *post hoc* explanation, still not made public by Dow Jones, is that, long before February 2008, it was well-known that NAIT and its associated organizations—i.e., the Muslim Students Association and the Islamic Society of North America—have all been linked to organizations involved in the material support of terrorism. For example, prior to the start of the 2007 terror-financing trial of the Holy Land

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Foundation (“HLF”), the U.S. government submitted a trial brief with a list of unindicted co-conspirators (the “List of Co-Conspirators”) who had allegedly participated in some way in the conspiracy to fund Hamas’ terror-related activities against Israel. Hamas was at the time a designated foreign terrorist organization (FTO). In its trial brief, the government characterized Hamas as follows:

Hamas’ founding charter makes clear that Hamas is, in fact, the Palestinian branch of the Muslim Brotherhood, and calls for the annihilation of Israel through “jihad” (holy war), and the creation of an Islamic state in its place. Hamas defines jihad as including violent activities, with such violent activities being carried out by Hamas’ military wing, commonly known as the Izz Al-Din Al-Qassam Brigades (“Al-Qassam Brigades”). The charter also calls for charity as [a] means of securing the population’s loyalty. Through charitable support, the charter explains, “congeniality will deepen, cooperation and compassion will prevail, unity will firm up, and the ranks will be strengthened in the confrontation with the enemy.

As evidenced by documents seized in 2004 from the Virginia home of un-indicted co-conspirator and fellow Palestinian Committee member Ismail Elbarrasse, as well as other evidence, the Muslim Brotherhood directed its Palestinian Committees throughout the world, including the United States, to carry out the mandate of assisting Sheik Yassin’s newly formed Hamas.

NAIT and ISNA were both identified on the List of Co-Conspirators as “individuals/entities who are and/or were members of the U.S. Muslim Brotherhood.” Evidence at the trial linked these organizations to Hamas. Although the trial ended in a mistrial, the Government is preparing to retry its main case.

How, it might be asked, did the legal advisors to Dow Jones navigate the due diligence and disclosure issues associated with such a problematic principal licensee? The short answer is that they seem to have been willing, until publicly embarrassed by an editorial that was published on February 27, 2008 in *Investors Business Daily*, to ignore the implications of the intrinsic elements of Shariah (i.e., jihad) described above that the Fund inherited from the DJII. But even more troublesome is that the Dow Jones’ lawyers also appear to have looked-the-other-way on the record of organizational connections between NAIT and material support for terror.

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Other disturbing connections to the funding of terrorism arise. The Dow Jones Islamic Fund's portfolio manager is Dr. Bassam Osman. As noted above, he has also been the President and Chairman of the DJIF Fund Advisor for the past six years. He was also director to another suspect Muslim charity, the Quranic Literary Institute, an Oak Lawn, Illinois, organization that had \$1.4 million in assets seized by the Justice Department in June 1998 on the grounds it was used to support Hamas activities.

Finally, NAIT's well-known ownership of the mortgages of a majority of Shariah-adherent mosques in the United States—including a number that have been named as suspected centers of terrorist activity—raises further questions about its fitness to be a licensee on a Dow Jones-branded mutual fund. For example, in April 2004, the founder of a NAIT-owned mosque in Albany and the imam he had recruited to serve as its spiritual leader were arrested for participating in “a plot to import a shoulder-fired missile and assassinate a Pakistani diplomat in New York City.”

In light of these ties, the standard representation of compliance with the Patriot Act's anti-money laundering provisions contained in the DJIF's prospectus rings not just hollow, but misleadingly so:

Anti-Money Laundering. The Fund has established an Anti-Money Laundering Compliance Program (the “Program”) as required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT ACT”). To ensure compliance with this law, the Fund's Program provides for the development of internal practices, procedures and controls, designation of anti-money laundering compliance officers, an ongoing training program and an independent audit function to determine the effectiveness of the Program.

Procedures to implement the Program include, but are not limited to, determining that the Fund's Distributor and Transfer Agent have established proper anti-money laundering procedures, reporting suspicious and/or fraudulent activity and a complete and thorough review of all new opening account applications. The Fund will not transact business with any person or entity whose identity cannot be adequately verified under the provisions of the USA PATRIOT ACT.

Given the documented record creating at least associational ties between the Fund's principal owner (including the Fund Adviser) and individuals and organizations tied to the material support of terrorism, a pro forma recitation of compliance with the Patriot Act falls well short of the due diligence

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required by the relevant statutes. For example, during the period NAIT was operating as a Dow Jones licensee, what exact monitoring protocols did the Fund have in place to make certain that neither the Fund Advisor nor the Fund’s principal shareholder utilized any of the Fund’s distributions for criminal activity?

Other trenchant questions include: Did the Fund conduct a thorough investigation into the tens of millions of dollars raised by NAIT in tax-exempt contributions for the purchase of the Fund shares? Were these monies from domestic or overseas sources? Has anyone attempted to source these contributions? While the Fund might argue that sourcing an investment from NAIT is sufficient, given the history of NAIT, its associations, and more importantly its role as a “trust” holding the funds and property of individual Muslims, associations of Muslims and Muslim organizations, regulations promulgated under the Bank Secrecy Act likely require that the Fund verify the source of NAIT’s funds.

On March 21, 2008, presumably in response to the termination of its licensing agreement with Dow Jones, NAIT’s Dow Jones Islamic Fund renamed itself the Iman Fund, and the Fund’s website has been reworked. The Dow Jones Islamic Fund also attempted to cleanse the Fund’s public filing in a variety of ways including removing key information on Shariah and the Shariah advisors. It even went so far as to declare that “The section entitled ‘More Information about the Dow Jones Islamic Market Indexes SM’ on pages 6-7 and the section entitled “Shariah Supervisory Board” on pages 7-8 were each removed in their entirety.”<sup>10</sup> Such efforts, of course, merely serve to compound the problems with transparency of SCF-related activities described above. Would not an investor want to know why these changes were required? Would it not be material to a reasonable investor to know that Dow Jones had terminated its relationship with DJIF precisely because of its ties to financing terror? Indeed, the failure to disclose these material facts appears, to amount to a cover-up—a potential matter of civil, if not criminal exposure in its own right.

Dow Jones’ unsavory and still-unfolding experience with NAIT should be a cautionary tale for all financial institutions and investors contemplating involvement with Shariah-compliant finance and its proponents.

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<sup>10</sup> Supplement dated March 21, 2008 to the Dow JonesSM Islamic Fund Prospectus dated September 28, 2007.

## Case Studies:

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### II. Caribou Coffee, Shariah-Compliant Finance and Main Street

**C**aribou Coffee began as the dream of John and Kim Puckett, a young couple on a backpacking trip to Alaska. They wanted to change their life around and decided upon a new start-up venture: a coffee cafe chain envisioned as a competitor to the industry giant, Starbucks. In 1992, they opened up their first store in Minneapolis with an initial investment of \$50,000.

By December 2000, the upstart chain had raised \$40 million through several private investment rounds and had opened 149 stores in a half-dozen markets—a commendable achievement, but still a distant second to Starbucks' more than 3,000 stores. Poor management systems, board issues and a host of other problems prevented the company from exploiting the market and raising capital for further expansion. The company needed money badly. Investors were not going to invest further and some were even threatening to exercise their put options to get their money back, with interest.

By the end of the year, the Pucketts had arranged for an exit strategy, agreeing to sell approximately 84% of Caribou Coffee to an Atlanta-based company called Crescent Capital Investments, Inc., for a price tag of approximately \$84 million. Crescent was owned by a Bahrain-based investment bank called First Islamic Investment Bank, which was, in turn, funded by mostly wealthy Arab investors from the GCC states.

Over the next five years, with the added capital, Caribou grew substantially and by July 2005 was operating 337 coffeehouses. Notwithstanding the company's continued operating losses, the time apparently was ripe for a public offering to raise an additional \$90 million from the U.S. investing public. In July 2005, the company's lawyers and accountants began the registration process under the 1933 Act for an initial public offering.

One of the issues the lawyers for Caribou confronted was if and how to disclose the fact that its principal shareholder, Crescent, and its parent First Islamic Investment Bank (which had changed their names to Arcapita Inc. and Arcapita Bank BSC, respectively), were Shariah observant and required that Caribou also operate its business according to Shariah. That fact would, at the very least, have implications for the risks that might arise from the following: prohibitions that precluded the company from incurring interest-based debt; limitations on the kinds of foods it could serve its customers; and restrictions on the use of traditional, yet speculative, hedging strategies to guard against future price increases for its principal commodity, coffee.



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The problem with which the attorneys had to wrestle did not end there. Three years earlier, a public relations firestorm had erupted forcing Caribou Coffee to respond publicly to accusations that it had aligned itself with a supporter of terrorism. In July of 2002, an Internet-based campaign began accusing Caribou Coffee and its principal shareholder of being associated with and utilizing a Shariah advisory board, which included a controversial Shariah scholar named Yusuf Al-Qaradawi. As noted above, Qaradawi is well known for his statements in favor of jihad, including suicide-homicide attacks against Israeli citizens by Palestinian terrorists and legal rulings supporting jihad, such as that carried out by Hamas and Hezbollah against Israel.

At the time, both Hamas and Hezbollah were designated as “Foreign Terrorist Organizations” (FTOs) in the *2001 Report on Foreign Terrorist Organizations* released by the State Department’s Office of the Coordinator for Counterterrorism. This designation effectively criminalizes any person or organization which provides material support to the FTO. A flurry of mainstream media stories appeared and Caribou Coffee was inundated with bad press and angry customers, including talk of a boycott by some Jewish groups. After weathering the storm for several months, Arcapita severed its relationship with Qaradawi stating that Qaradawi had “resigned” (not unlike Dow Jones’ narrative that Usmani “resigned”).

Another facet of this affair was an accusation that Arcapita was funneling charitable contributions—presumably from its Shariah charitable tax contributions or its purification of forbidden profits—to terrorist organizations with connections to Qaradawi. When the Jewish Community Relations Council of Minnesota and the Dakotas heard about the possible connection between Caribou and Qaradawi, they initiated an investigation and the Minneapolis-based company cooperated.

According to local media, Caribou and its Bahrain-based majority shareholder offered to allow the Jewish community organization to investigate all of the company’s charitable donations. Arcapita reportedly hired the well-known law firm of Gibson, Dunn & Crutcher to certify that no charitable contributions were transferred to groups banned under U.S. law. According to news reports, that certification was made.

In the wake of these actions, the first draft of the IPO registration statement, which was filed with the SEC pursuant to the 1933 Act, contained the following disclosures: Under the “Risk Factors” rubric beginning:



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Arcapita will continue to have substantial control over us after this offering....Our compliance with Shariah principles may make it difficult for us to obtain financing and may limit the products we sell.

Our majority shareholder operates its business and makes its investments in a manner consistent with the body of Islamic principles known as Shariah. Consequently, we operate our business in a manner that is consistent with Shariah principles and will continue to do so for so long as Arcapita is a significant shareholder. Shariah principles regarding the lending and borrowing of money are complicated, requiring application of qualitative and quantitative standards. The negotiation and documentation of financing that is compliant with these principles are generally complex and time consuming. As such, if we have immediate liquidity needs, we may not be able to obtain financing that is compliant with Shariah principles on a timely basis. A Shariah-compliant company is prohibited from engaging in derivative hedging transactions such as interest rate swaps or futures, forward options or other instruments designed to hedge against changes in interest rates or the price of commodities we purchase. Also, a Shariah-compliant company is prohibited from dealing in the areas of alcohol, gambling, pornography, pork and pork-related products.

We may be subject to adverse publicity resulting from alleged statements about Arcapita or complaints or questions from our customers arising from such adverse publicity. **During 2002, we were subject to adverse publicity due to attempts to connect Arcapita with inflammatory and controversial statements made by one of its former outside advisors, in his individual capacity, regarding a variety of subjects, including events in the Middle East.** We may be subject to similar adverse publicity in the future. Even if unfounded, such adverse publicity could divert our management's time and attention and adversely affect the way our customers perceive us, our net sales or results of operations, in the aggregate or at individual coffeehouses, or the market price for shares of our common stock. (Emphasis added.)

No other disclosures were made relating to Shariah-Compliant Finance (SCF), other than some insights into the company's sale-lease-back financing arrangements which were treated as capital leases as required by generally accepted accounting procedures ("GAAP"). The SEC commented on the recitation of the 2002 affair in the registration statement requesting the following: "Please tell us, with a view to disclosure, more background about the statements, such as describe the statements made and identify who made them. Also revise the risk factor to clarify the risk."

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Caribou filed its first amended draft of the registration statement on August 15, 2005. While there was no change to the description of the 2002 affair, some additional risks were disclosed relative to financing:

We may, however, enter into a new lease financing arrangement or other financing arrangement or amend our current lease financing arrangement to provide us with additional liquidity. We expect that any such financing arrangement would be structured in a manner that would be compliant with Shariah principles. Shariah principles regarding the lending and borrowing of money are complicated, requiring application of qualitative and quantitative standards. The negotiation and documentation of financing that is compliant with these principles are generally complex and time consuming. As such, if we have immediate liquidity needs, we may not be able to obtain financing that is compliant with Shariah principles on a timely basis.

The SEC commented on the first amended registration statement by asking for some additional clarity on the “disclosure concerning the majority shareholder to briefly discuss the shareholder and compliance with Shariah principles.” Notwithstanding the written comments by the SEC, no material changes regarding Shariah or the 2002 affair were made to any of the subsequent four amendments to the registration statement or to the final prospectus. No changes to these disclosures have been made in any of the interim filings through the last Form 10-K annual report.

A cursory examination of the civil liability and criminal exposure issues confronting Caribou suggests that the company and its legal counsel opted to bury the Shariah black box and to ignore what it knows—or most certainly *should have known*—are the facts that require at the very least some further due diligence on their part and fuller disclosure.

### **Analysis**

A U.S. retail chain of coffeehouses is principally owned and operated by investors from the GCC states. These investors have organized themselves as an investment bank in Bahrain and incorporated a subsidiary in the United States. The financial structure of this company with numerous off-shore entities is complex and convoluted, utilizing literally dozens of Cayman Island offshore entities to hold the stock of Caribou. The parent company adheres to Shariah and to be certain of this has retained a

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### Caribou Coffee, Shariah-Compliant Finance and Main Street

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Shariah advisory board. The Shariah rulings of this advisory board control not just the parent company but also the operations of the retail chain.

The former chairman of the Shariah advisory board was forced to resign following the public exposure of his open support of Palestinian and Lebanese Islamic terrorist groups. The accusations of funneling charitable contributions from the principal shareholder's profits to terrorist groups were sufficiently problematic that the company requested a major U.S. law firm to make certain that none of the beneficiaries of the charitable contributions were specifically designated as terrorist organizations by the U.S. government.

Given the foregoing, and the intimate connection between Shariah, the law of jihad, and the actual conduct of jihad, the question must again be asked: Have the lawyers for Caribou willfully blinded themselves to this connection, even as they disclose and represent to the investing public that their client abides strictly by Shariah? Given the Qaradawi affair described above, the company and its legal counsel were certainly on notice that one of the world's most respected Shariah authorities had issued legal rulings based upon Shariah calling for terrorist acts against innocent civilians in Israel. Are the partial disclosures in the company's prospectus sufficient to provide the unsuspecting post-9/11 investor with the material information that Shariah advocates as a general, historical and traditional matter jihad against unbelievers who reject the "invitation to Islam"?

Moreover, after having experienced the 2002 affair with respect to Qaradawi, have the company's legal advisors fulfilled their fiduciary duties to conduct sufficient due diligence of the other Shariah authorities to determine if they adhere to traditional, historical and authoritative Shariah as it relates to the law of jihad? After a ten-minute Google search on the Internet, the only conclusion one could reach would be that neither the company nor its lawyers conducted even a minimal investigation, or if they did, they willfully ignored the results.

For example, one of Arcapita's long-standing and still-serving Shariah authorities is the same Mufti Usmani that haunted Dow Jones of late. As described at length above, Usmani has explicitly invoked his authority to demand "aggressive jihad" against the West. Usmani's condemnation of a peaceful, non-aggressive approach to non-Muslims in the West is beyond debate or doubt.

Had the lawyers for Caribou bothered to conduct even a minimal due diligence, they would have been confronted with three sobering facts:

1. Usmani, as a Shariah legal authority, has issued an absolute grant to Muslim terrorist combatants and their financial and logistical supporters

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to wage aggressive jihad against the West. Further, because Usmani is a Shariah authority, his declaration is not theory or theological; it is binding Islamic law and must be taken as such by Shariah-adherent Muslims.

2. If Usmani’s legal ruling is in fact traditional and authoritative, the Shariah black box of SCF is indeed a weapon in the jihad to destroy the Western world if it refuses to submit to Shariah. Usmani’s ruling strongly suggests by implication that SCF is hardly an embrace of the West’s domination, but rather a kind of modus vivendi with the Western world until such time as Muslims have the opportunity to wage violent Jihad. In this context, SCF is part of the jihad to end the “psychological subordination” Muslims supposedly suffer when Islam is not the dominant religion in the world.
3. To the extent that terrorists will use Usmani’s legal rulings to justify attacks against Western interests, and in view of Caribou’s indirect financial support of Usmani as a paid advisor to Arcapita and given Arcapita’s relationship to Usmani and its absolute control over Caribou, should Arcapita be charged with the material support of terrorism, Caribou and its assets could very well be on the blunt end of an executive blocking order or post-conviction forfeiture proceeding.

At the very least, the fact must be fully disclosed that Caribou is principally owned and operated by a company which embraces Shariah authorities such as Qaradawi and Usmani. And, it will hardly be sufficient to characterize Usmani and his legal rulings through some vague or oblique reference as an “outside advisor” to its principal shareholder. Usmani is a highly regarded and respected Shariah authority by all of the Shariah authorities in the world. He sits on all of the important Shariah boards and is a leader in the industry’s standards associations. His rulings cannot be marginalized because his role, along with the other co-members of the Arcapita Shariah board, in setting the Shariah policies for Caribou are absolute, given Arcapita’s controlling interest.

A final note regarding the third of the sobering facts above. According to Arcapita’s public representations, it pays both a Shariah charitable tax on its profits and purifies any forbidden “interest” income by contributing those funds to charity. For the 12 months ending June 30, 2007, Arcapita had set aside more than \$2.4 million for such charitable contributions. While Arcapita allegedly hired a law firm to confirm that it did not make charitable contributions to organizations designated as terrorist organizations by the

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U.S. government, this listing is hardly exhaustive of Muslim charities involved in funneling aid to terrorists.

While Arcapita's lawyers might have taken a list of charitable contributions *provided by Arcapita* and cross-checked them against the designated terrorist organizations, this is only a first step. Given the public record regarding the purpose and methodologies of Shariah, the published statements, writings and legal rulings from two of Arcapita's esteemed Shariah authorities on the law of jihad and their support of violence against Western (including Israeli) targets, such a casual due diligence of the beneficiaries of Arcapita's charitable contributions amounts to a serious dereliction of professional responsibilities. It is a prime example of factors contributing to significant civil and criminal exposure run by those involved in Shariah-compliant finance.

## Chapter 6: Next Steps and Recommendations

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1. *Recommendation:* Enforce and prosecute violations of current laws on disclosure, racketeering, anti-trust, material support for terrorism and sedition. U.S. regulatory agencies have tacitly aided a special, privileged position for Shariah-compliant finance by refusing to enforce laws that are routinely enforced for other financial products and practices. This U.S. government complicity in potential Shariah-Compliant Finance (SCF) civil liability and criminal exposure presents significant risks to national security and to the national economy. Shariah-compliant finance must be required to disclose fully: the specific laws and intent, including violent jihad, of Shariah; the beliefs, statements and affiliations of Shariah advisors; and the links between Shariah-enforced zakat and purification funds and material support of terrorism as part of compliance with existing laws on full disclosure of risks to post 9/11 investors.

*Next Steps:* Congressional oversight committees who are responsible for exposing and stopping government malfeasance have an obligation to investigate this consistent non-enforcement of existing laws for a “protected” group.

2. *Recommendation:* Develop state and federal initiatives to investigate and monitor mosques and Islamic community centers that promote adherence to authoritative Shariah and encourage Jihad, and inform communities of Shariah and jihadist materials and other imminent threats. Such monitoring of radical Islamic institutions is routine in Europe.

*Next Steps:* Private sector monitoring projects such as Mapping Shariah need to be expanded to more states, with closer coordination and support from local and federal law enforcement and Homeland Security officials. Local pilot projects to increase community defenses include local operations to monitor the threat, community education to increase local awareness of the threat, and state and federal legislation to identify and prohibit jihadist texts that increase the threat. Parallel efforts will work best, including information operations, community watch programs and state and federal initiatives.

3. *Recommendation:* Provide legal representation for U.S. citizens damaged by seditious acts of Shariah advisors and Shariah-compliant financial institutions through their material support of Shariah, of terrorism and of aggressive jihad against the United States.

## Next Steps and Recommendations

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*Next Steps:* Develop the research, legal arguments, and precedents necessary to compel the recognition of Shariah as sedition.

4. *Recommendation:* Educate and activate shareholders to protect their investments from the risks of criminal and civil liability due to Shariah-compliance.

*Next Steps:* Develop targeted public education and outreach efforts on the risks to individual and institutional investors of Shariah-compliant finance, through coordination with national and local organizations

5. *Recommendation:* For the few specific areas of disclosure and monitoring where existing regulations are inadequate for full disclosure of Shariah-compliant finance, such as reverse money-laundering, work with congressional oversight committees and regulatory agencies for enhanced regulations and statutory measures.

*Next Steps:* Develop the improved regulations for review and comment by regulators, legislators and industry for tracking zakat and purification of funds and ensuring full transparency of all Shariah-compliant funds.

6. *Recommendation:* Establish Know-Your-Beneficiary regulators for charitable donations sent abroad and require U.S. domestic charitable and non-charitable organizations to provide affidavits under penalty of perjury for compliance. The Know-Your-Beneficiary should be modeled after the export control enforcement laws and regulations such that a donor has an affirmative duty to know the real beneficiary of the donation.

*Next Steps:* Congress and Treasury should work together to draft legislation and regulations for this specific purpose.

## Resources

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[www.stopsharianow.org](http://www.stopsharianow.org)

[www.mappingsharia.us](http://www.mappingsharia.us)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1105101](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105101)

[www.nosharia.com](http://www.nosharia.com)

<http://womenagainstshariah.blogspot.com/>

[www.reformislam.org/](http://www.reformislam.org/)

<http://muslimsagainstsharia.blogspot.com/>

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[www.centerforsecuritypolicy.org](http://www.centerforsecuritypolicy.org)

[www.state.gov/s/ct/](http://www.state.gov/s/ct/)

[www.rewardsforjustice.net/](http://www.rewardsforjustice.net/)



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\* Not all participants are listed. Those individuals who participated in this working group took part in their private capacities. The views expressed herein constitute the consensus of members, rather than individual opinions or those of the institutions they represent. Not every member endorses every judgment or recommendation in this report.

# **McCormick Foundation Conference Series Call for 2009 Conference Proposals**

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McCormick Foundation constantly seeks to build on the quality and tradition of our Conference Series by addressing a range of timely and challenging issues.

We welcome submissions from academic institutions, policy experts, and public, nonprofit and private sector professionals from all fields.

For detailed submission guidelines, application instructions or to see a list of past conferences, visit the Foundation's Web site at [www.McCormickFoundation.org](http://www.McCormickFoundation.org).

Proposals must be received no later than August 29, 2008, to be considered for 2009 conference support.





## **About the McCormick Foundation**

The McCormick Foundation is a nonprofit organization committed to strengthening our free, democratic society by investing in children, communities and country. Through its five grantmaking programs, Cantigny Park and Golf, and three world-class museums, the Foundation helps build a more active and engaged citizenry. The Foundation was established as a charitable trust in 1955, upon the death of Colonel Robert R. McCormick, the longtime editor and publisher of the Chicago Tribune. The Foundation is one of the nation's largest charities, with \$1.2 billion in assets.

For more information, please visit [McCormickFoundation.org](http://McCormickFoundation.org).

## **About the Center for Security Policy**

The Center for Security Policy is a non-profit, non-partisan national security organization that specializes in identifying policies, actions, and resource needs that are vital to American security and then ensures that such issues are the subject of both focused, principled examination and effective action by recognized policy experts, appropriate officials, opinion leaders, and the general public. The Center was founded in 1988 and has worked to great effect since then in the establishment of successful national security policies through the use of all elements of national power—diplomatic, informational, military, and economic strength.

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