



**INVITED ARTICLE**

# **THE PERMISSIBILITY AND POTENTIAL OF DEVELOPING ISLAMIC DERIVATIVES AS FINANCIAL INSTRUMENTS**

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## **1. Introductory Remarks\***

This paper is presented in two parts. Part one is devoted to a discussion of the potential of developing Islamic financial instruments in the derivatives market of Malaysia. Since this part consists mainly of exploring the future prospects of developing such instruments, it is based largely on my personal observation and analysis of the likely development of events in this context. The second part of this paper addresses the issue of the permissibility or otherwise in *Sharī'ah* of trading in derivatives. I have here attempted to relate this area of contemporary commerce to some of the general directives of the *Qur'ān*. The remaining part of the discussion is issue-oriented and looks into some questions of juristic concern as to the permissibility of trading in derivatives.

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\* Much of the data in this essay is drawn from my book entitled, *Islamic Commercial Law: An Analysis of Futures and Options*, due to be published shortly in Cambridge, U.K. (forthcoming).

## 2. What is the Potential?

The two aspects of the topic that I have addressed, namely the potential of developing Islamic derivatives, and their permissibility in *Sharī'ah* are obviously interrelated. This is because the potential growth of Islamic derivatives in Malaysia would depend on the participation and support of Muslim individuals and institutions and this would necessarily raise the question over their permissibility in *Sharī'ah*. This latter question is by no means a settled issue and it remains the focus of current debate among *Sharī'ah* scholars and experts on *mu'āmalat*. It would indeed be presumptuous to address the potential of Islamic derivatives without ascertaining whether they are permissible in Islam. I have, therefore, addressed this aspect of the discussion in greater detail. The applied aspect of derivatives is mainly a question of designing suitable trading formulae and products that would appeal to the market participants and ensure the viability and survival of this line of trading on the market floor. This is, of course, equally important and must, to some extent, be seen as an evolving process that moves along with attending circumstances. We are, however, in many ways addressing an existing reality. The KLCE (Kuala Lumpur Commodity Exchange) came into being over a decade ago, whereas the KLOFFE (Kuala Lumpur Options and Financial Futures Exchange) and the MME (Malaysian Monetary Exchange) were added during the last couple of years. For all this time, it seems that attention was focused on the viability and survival of derivatives and now that the initial steps have been taken, we are asking ourselves the question of whether we can also have a component of the derivatives market that would be acceptable from the Islamic perspective. The basic pattern of future developments has thus been laid down in the past and it is likely to be one of continuity and building upon the existing status quo while, in the meantime, exploring new and additional avenues to enhance the existing framework. One of the consequences of this would seem to be that there are likely to be many common issues concerning the market viability and strength of the derivatives in Malaysia, whether in the conventional sector or newly created Islamic ones and that strength or weakness in one is likely to be reflected in the other. Trading in commodity futures and financial derivatives has so far been limited to a relatively small number of contracts in Malaysia. The market needs to be diversified and its potential is clearly determined by the level of capital outlay, liquidity and participation. Since derivatives proceed over an underlying asset or trade, and do not represent

a totally independent vehicle, issues of viability and potential development in them would in many ways be related to developments in the underlying sector.

Futures trading in Malaysia began in the mid-80's, apparently not in an Islamic framework but along parallel lines to those of its American antecedent. In the early years of its operation, American experts were frequently invited to Malaysia to advise on the development of the derivatives market here. I personally do not envisage a major departure from the existing pattern of events. The potential of Islamic derivatives as financial instruments is therefore likely to follow a similar pattern to that which Malaysia has experienced in the area of Islamic banking. The broad outline of the expected pattern would be a dual market. One component more familiar and modeled on the American prototype and the other a newcomer and something of an unknown quantity perhaps. But unlike the conventional-versus-Islamic banking scenario in which the latter still remains the unequal party in the duo, the derivatives market may not be faced with the same kind of duality. The dichotomy of banking is premised on an internal disharmony of principles. Yet we also note that dual banking in Malaysia has evolved into a somewhat happier-than-expected scenario, and this might bode well for the future of the derivatives market in Malaysia. Public support for this sector may be expected to develop in tandem, perhaps, with Islamic banking and people are likely to look at the Islamic banking experience in a favourable light. We are aware, of course, that the derivatives market is an arena mainly for institutional players and in this regard, it is likely that an Islamic derivatives market will be supported by the Islamic banking sector and institutions in Malaysia. But the challenges ahead are likely to be faced by both the Islamic and conventional components of the derivatives market in that both will be preoccupied with issues of viability and diversification not only in the Malaysian context but also in the highly sophisticated and competitive international market. A successful Islamic derivatives market in Malaysia is likely to attract participants from other Muslim countries where this facility is generally absent. In Malaysia itself, as I said earlier, the potential is such that success in one of the two components of the derivatives market is likely to play an encouraging role also in the development of the other. This may partly be a function, perhaps, of the inherent diversity of the derivatives market which is potentially more versatile than the banking sector. Whereas the essence of the distinction between the conventional and Islamic banks boils down to more or less a single factor, namely the interest/*ribā* factor, no single factor as such is likely to play a focal role in the field of derivatives. We

may therefore expect that in some areas of derivatives trading, in the commodities sector for instance, the lines of division between the Islamic and conventional financial instruments would hardly be noticeable, as both will probably operate over the same underlying assets.

Diversifying the financial instruments and providing an adequate mix of products is a challenging prospect, not only in the Islamic components of the derivatives market, but for derivatives generally. As we are aware, new contracts are often introduced but fail to take off and are eventually abandoned for lack of liquidity and volume. This is likely to be an aspect of the Islamic derivatives that would require sustained effort and careful engineering. A selective process is likely to be involved so as to identify and publicize derivative instruments whose underlying assets are clear of *ribā*, gambling and trading in prohibited substances. The range and number of derivative instruments and products are on the whole not expected to be large, for obvious reasons of standardization and volume. The range here is not nearly as wide or diverse as that of the stock market where standardization and bulk trade are not among the market imperatives. I may refer here to a recent development in the Malaysian capital market which relates to our discussion of the potential of Islamic derivatives. This is the identification in the stock market of the so-called *ḥalāl* counters. A large number of such counters have been recently verified and designated as such. This development can be seen as a step forward in the general picture concerning the potential of Islamic derivatives. Since trading in the designated *ḥalāl* counters is deemed permissible, the derivative instruments that proceed over them, say in stock index futures and options, would also be deemed permissible. Similarly, if we have a financial product such as the Islamic Private Debt Security (IPDS), which was introduced in the Malaysian capital market in 1990, this will be seen as a likely candidate for a derivatives instrument to proceed over it. The Malaysian capital market has, in other words, already taken some of the initial steps that would be necessary for developing Islamic derivative instruments.

### **3. A *Sharī'ah* Perspective on Derivatives**

To determine the permissibility or otherwise of derivatives in *Sharī'ah* we need to address the following two questions. Firstly, whether trading in derivatives can be subsumed under the *Qur'ānic* declaration that "God permitted

sale and prohibited usury” (*Qur’ān*, 2:275). And secondly whether derivatives trading can qualify according to the terms of another *Qur’ānic āyah* which addresses the believers to “devour not each others’ properties wrongfully unless it be by means of trading through your mutual consent,” (*Qur’ān*, 4:27). This latter *āyah* begins with a reference to the wrongful devouring of the property of others, which is the principal theme of the *āyah*. The text then tells us that the way that this can be avoided is by trading through mutual consent. This, too, is a major theme in that it designates mutual consent as the single most important requirement of lawful transactions and contracts. The two *āyāt* we have cited set the basic framework of our enquiry. The latter of the two *āyāt* is more general and can, in fact, subsume the former, in the sense that usury, which is mentioned in the first *āyah*, falls under “wrongful devouring of the property of others”. Similarly, sale can be subsumed under the second clause of the latter *āyah*, that is “trading by mutual consent”. The text before us is indeed comprehensive: “wrongful devouring of the properties of others” includes not only *ribā* but gambling, commercial fraud, tampering with measurements and weights (including the balance sheet), bribery and a range of other property offences. The ultimate question, of course, resides in the *ḥalāl* and the *ḥarām* and what we have here are criteria by which to measure the propriety of our responses to relevant questions concerning derivatives.

It will be noted at the outset that the *Qur’ānic* style of legislation differs with regard to the *ḥalāl* and the *ḥarām* in that the *ḥarām* is specifically identified and explained as the *Qur’ān* itself declares (cf. *Qur’ān*, 6:119), whereas the *ḥalāl* is often expounded in general terms. The *Qur’ān*, for example, specifically declares certain substances to be *ḥarām* in the area of food and drink, but declares in a broad sweep that “all pure food” has been made lawful to the believers, without itemizing specifically what “pure food” might include.

We also note here that permissibility (*ibāḥah*) is a basic presumption concerning civil transactions and *mu‘āmalāt*. This is once again in contrast with devotional matters, or *‘ibādāt*, where the basic presumption of *Sharī‘ah* is prohibition (*ḥazar*). One of the consequences of this distinction is that the *‘ibādāt* require affirmative proof as to their validity, whereas the *mu‘āmalāt* require negative proof as to their permissibility unless there is evidence to show that they partake in the wrongful devouring of the property of others, gambling or *ribā*. This is a methodological issue which is fairly well-known but which often tends to be confused with the more rigorous approach that is required with respect to *‘ibādāt*. An act of *‘ibādah* is thus presumed to be

unlawful unless it is specifically validated, whereas a business transaction is presumed to be lawful unless proven otherwise.

Derivatives are a new phenomenon for which we find no precedent in the works of authority in *fiqh*. Commentators have differed as to the permissibility of futures and options from the Islamic perspective. There is still no consensus on issues and the scant literature that is available is on the whole negative. We often hear of prohibitive verdicts by individual commentators, *Sharīah* advisors and *fiqh* committees that proscribe derivatives trading on various grounds. I have looked into the details and have found weaknesses in the evidential bases of these verdicts, some of which tend to ignore the actual mechanics of derivatives trading and apply the rules of conventional sale to a new and substantially different mode of trade. Some commentators have, on the other hand, taken the opposite stance and declared derivatives to be permissible. We cannot afford to ignore their efforts on both sides and it is for reasons of brevity alone that I am unable to review their works here.<sup>1</sup> Although my own conclusion on the question of the permissibility of derivatives trading is affirmative in principle, this conclusion seeks to apply only to derivative instruments whose underlying trade is clear of what is *ḥarām* in Islam. We thus preclude derivative instruments which proceed on interest-bearing transactions, gambling, and trading in such things as alcohol and pork. Provided that these are avoided, and we can show that derivatives are also clear of the wrongful devouring of the property of others, then trading in derivatives may be subsumed under the *Qur'ānic* provision of permissible sale. Then, it may be added that the potential of developing Islamic derivative instruments is also limited by reference to these prohibitions.

As for the question of whether derivatives are clear of the wrongful devouring of others' property and whether they are concluded by mutual consent of the trading parties, the answer to both of these is in the affirmative. For what we have in derivatives is speculative risk-taking, or *gharar*, which is an issue that needs to be separately examined, as I have attempted below, but not the wrongful devouring of others' property. There is no underhand activity and no dishonest trading involved in futures and options. This is because the price quotations are published on a daily basis in the media together with the relevant information that is necessary for the conclusion of a valid contract. Traders conclude transactions in derivatives through deferred sales and purchases of contracts that proceed over underlying assets. A valid offer and acceptance, which is what a contract must consist of, can be ascertained in all

derivatives trading as they all proceed on contract basis, and they are also free of elements that vitiate consent. Traders are required to register with the exchange and this is where issues of legal capacity to conclude a valid contract are normally ascertained. Contracts are concluded, not by the parties themselves, but through qualified brokers and agents whose job is to ensure proper observance of market rules on a highly controlled and centralized basis.

In *SFC Finance Company v. Masri* [1986] 1 All England Report 44, Legget J. defined the futures contract as “a legally binding commitment to deliver at a future date, or take delivery of, a given quantity of a commodity, or a financial instrument, at an agreed price.” It is a firm legal agreement between a buyer or a seller, and an established commodity exchange, or its clearinghouse, in which a trader agrees to deliver, or accept delivery, during a designated period, of a certain commodity, asset or financial instrument. The contract is verified for details and then registered at the exchange.

Several issues tend to arise when verifying the validity of this contract from the *Sharīah* point of view. One of these is concerned with the non-existence of the subject matter of contract, in the case of both futures and options, which is said to consist of a mere exchange of promises without anything changing hands at the time of contract. A case has thus been made that a contract of sale in which delivery and payment are both deferred to a future date amounts to unwarranted risk-taking and *gharar* that is imbued with uncertainties over the prospects of fulfilment. The *Sharīah*, it is argued, validates sale in which at least one of the two countervalues, either delivery of the subject matter, or the payment of the price, is deferred to a future date, but not if both are so deferred. The *Sharīah* thus validates the *salam* sale in which the price is paid at the time of contract and delivery is postponed to the future. It also validates deferred sales or *bay' biḥaman ājil* where delivery takes place at the time of contract but the price is payable later. A futures contract is thus said to indulge in excessive risk-taking, *gharar*, as it involves deferment of both sides to the bargain. This is the typical response that we have seen. I have submitted, however, that the *gharar* that is anticipated still obtains in a conventional future sale (*al-ʿaqd al-mudāf*) but that it does not arise in futures and options. This is due to the guarantee function of the clearinghouse, which is a peculiarity of the derivatives market and exists for the specific purpose of preventing uncertainty and *gharar* over the fulfilment of contract.

The clearinghouse guarantees that the contracting parties meet their

obligations according to the terms of their agreement. This is an unprecedented *gharar*-prevention measure in the history of commerce in that the guarantee function we have here leaves nothing to chance, to the vagaries of climate, politics, or market-place. Since the guarantee is 100% there is no room for *gharar* on account of the parties' failure to meet their obligations.

Futures and options are also clear of *ribā* as sales and purchases therein do not involve payment of interest by any of the parties involved. The only money that is deposited is the margin money, be it initial margin or maintenance margin, which is kept in the customer's own account and is returnable to him when not needed. No interest accrues on the margin deposit. Futures and options which do not proceed on interest-bearing transactions are therefore acceptable from the viewpoint of *Sharī'ah*. Hence we need to say that interest rate futures and options are unacceptable. I would imagine that an Islamic derivatives market would have a natural propensity to develop its potential in the commodities sector.

The question as to whether the type of speculative commerce that is typical of derivatives is acceptable from the viewpoint of *Sharī'ah* is a more worrying one. We know, of course, that speculation cannot be altogether eliminated, either in conventional sales or in derivatives. It is also a fallacy to say that Islamic commerce is non-speculative. On the contrary, speculation is an accepted feature of many modes of trading that the *Sharī'ah* has clearly validated. We note, for example, that transactions such as *muḍārabah* and *mushārah* are highly speculative so much so that the element of risk and possible failure of the proposed business or enterprise is much greater in these than in most of the interest-bearing transactions which move within a relatively narrow range that is often pegged to the prevailing interest rate.

Defining speculation or identifying the speculator is always difficult and many have stated that no clear definition can be given. This is because the distinguishing lines between investment, speculation and gambling are not always clear, and ambiguity tends to persist regardless of definitions. What can be said, however, is that speculation deals in risks that are necessarily present, but gambling creates the risk that would otherwise be non-existent. As the wheat crop grows, is harvested, concentrated and dispersed, the obvious risks of price changes must be taken by those who own the wheat or have a commitment to buy it. These risks would be present whether futures markets existed or not. If the speculators were unwilling to take them, someone else would have to do so. The motivations of a speculator could well be identical to



those of a gambler, the main difference being that futures speculation reallocates risk from those who do not want it to those who do. Futures speculation, in other words, directs the risk-taking motive into an economically productive channel, and the risks that are taken are real commercial risks. To equate derivatives with gambling is also unfounded simply because they lack the vital element of gambling, namely the wrongful misappropriation of the property of others, or *akl al-māl bi'l-bāṭil* as we have earlier discussed. Furthermore, derivatives are premised on valid objectives as they facilitate production planning in agriculture, industry and commerce and also provide efficient marketing facilities for high volumes of trade. The derivatives market also creates trading vehicles and an arena for profitable commerce that can avert the flight of much needed funds to foreign markets. Price discovery is yet another benefit of derivatives in that they have surpassed all other previously known price forecasting mechanisms.

The weight of research so far indicates that speculation probably does more to smooth price fluctuation than to increase it. Admittedly, the derivatives are susceptible to excessive speculation, but high levels of speculation are also seen in conventional trade. Speculation as such cannot be avoided but what can be done is to develop sound regulatory controls. Malaysia has gone a long way in this direction, especially in 1995 when new regulations were introduced following reports of extensive losses in currency futures by Malaysian financial institutions.

The next issue to be addressed is that derivatives consist of short-selling in which the seller neither owns nor possesses the object of sale. This is said to invoke the ruling of the *ḥadīth* which simply declares “sell not what is not with you – *lā tabī‘ mā laysa ‘indak.*” Many commentators have consequently passed prohibitive judgements on derivatives. But the *ḥadīth* has provoked a variety of interpretations from the *ulamā’* and we need to ascertain its import by looking not only at its words but also its underlying rationale and intent. For if we apply the *ḥadīth* at its face value, it would proscribe *salam*, and certain other sales, which is clearly not intended. Three different interpretations which are given to this *ḥadīth* are as follows:

- a) The *ḥadīth* before us means that one should not sell what one does not own. Since the basic purpose of sale is to transfer ownership to the buyer, this purpose cannot be achieved in the event that the seller does not own the object himself. “Sell not what is not with you,”

therefore, means do not sell what you do not own.

- b) The *ulamā'* of *ḥadīth* and also many jurists have specified the import of this *ḥadīth* only to the sale of particular objects (*i.e. buyū' al-ā'yān*). This is because fungible goods can be easily replaced. The buyer can make good his commitment by purchasing the goods in the open market even if he did not own them at the time of contract. The *ḥadīth* before us is, therefore, meant to apply only to the sale of particular items which may be difficult to find in the market, hence the fear of unwarranted risk-taking *gharar*. If we follow this interpretation, futures and options would evidently fall outside the scope of this *ḥadīth* simply because sales and purchases in derivatives proceed exclusively in fungible goods in standardized quantities. The derivatives can simply not accommodate *buyū' al-ā'yān*.
- c) The third interpretation of the *ḥadīth* before us has it that this *ḥadīth* is basically concerned with the seller's ability to deliver. The emphasis in the *ḥadīth* is not so much on ownership, nor even on possession, but on the seller's effective control and ability to deliver (*qudrah' alā al-taslīm*). For one may own an object but may still be unable to deliver, or may possess it without owning it. The actual cause (*'illah*) and purpose of the *ḥadīth* is therefore to prevent uncertainty *gharar* that emanates from the seller's inability to deliver. Applying this interpretation to derivatives, one must conclude that the *ḥadīth* only contemplates conventional sale, which is the original context of its pronouncement, but not futures and options. This is due, once again, to the guarantee function of the clearinghouse, which is a peculiarity of the derivatives market. The clearinghouse exists for the very purpose of ensuring timely fulfilment of contracts that are traded on the exchange. The question of ability to deliver and the fear of *gharar* relating to it simply does not arise.

Our next issue is over the offsetting transaction in futures and options. With the exception of about 2% of contracts which are held to maturity and lead to actual delivery of the underlying commodity, the vast majority of contracts are closed out by offsetting transactions prior to maturity, that is, before the delivery time. This raises the question as to the validity or otherwise

of the sale of debt (*bay' al-dayn*) which is a controversial issue in *fiqh* and many have declared it to be forbidden.

A sale of debt in futures is one in which an asset is bought on the exchange and before the buyer has paid the price, he sells it to someone else, and then this second buyer transacts over what is an unsettled debt again and so on. The sale of debt can take a variety of forms and the main objection to it is that it involves risk-taking *gharar* over fulfilment. It is reported in a *ḥadīth*, that Mūsā bin 'Ubaydah bin Nashīṭ al-Rabdhi reported from 'Abd Allāh Ibn 'Umar, simply that "the Prophet (p.b.u.h.) prohibited *bay' al-kāli' bi'l-kāli'*."<sup>2</sup>

The *ḥadīth* appears only in some collections, and many prominent scholars, including Imām al-Shāfi'ī, Imām Aḥmad bin Ḥanbal, Yahyā bin 'Alī al-Shawkānī and Ibn Taymiyyah have considered it to be weak and stated that no *ḥadīth* has been verified on the sale of debts. Having reviewed the evidence, Shaykh Siddīq al-Ḍarīr has concluded that the "*bay' al-dayn* is lawful absolutely, whether the sale is to the debtor or to the third party, for cash or for credit, provided that the sale is clear of *ribā*, and no textual injunction has declared it forbidden."

My own analysis of the issue of *bay' al-dayn* focuses on the *Qur'ānic āyah* of *mudāyanah*, which clearly applies to the sale of debts, but thanks to restrictive interpretations that were given to it, many jurists have confined its import exclusively to *salam*.

The *āyah* reads to the effect:

"O you who believe! When you deal with each other in a transaction involving future obligations for a fixed period (*idhā tadāyantum bi-daynin ilā ajalīn musamman*) reduce it into writing. Let the scribe write faithfully as between the parties . . ." (*Qur'ān*, 2:282).

Accurate documentation of transactions involving future obligations for a fixed period, or *dayn*, is thus the central theme of this *āyah*. We know that the text here endorsed the then prevailing realities of Arabian commerce including deferred sale (*bay' bithaman ājil*), *murābahah* (cost plus profit sale), *al-ijārah*, *salam* and *istiṣnā'* that were in vogue when this *āyah* was revealed. These were contracts of exchange in which at least one, if not both, of the countervalues were deferred to a future date. Notwithstanding this, in a

statement attributed to Ibn ʿAbbās, it is reported that this *āyah* was revealed concerning the contract of *salam* and that it did not apply to other varieties of deferred sales. Imām al-Shāfiʿī has held, on the other hand, that the *āyah* under discussion is general which can include all varieties of *dayn*, not just the one incurred in *salam*. The *Qurʾān* has, in other words, permitted all deferred liability transactions. Since the text does not specify the scope or type of such transactions, there is no compelling reason to depart from this general position and confine its purport only to *salam*. Futures sales are all credit sales which proceed over *dayn*. Provided that they are accurately recorded and documented, which indeed they are, they are lawful, and *bayʿ al-dayn* is a permissible variety of sale.

The last issue I take up is concerned with the requirement of *qabḍ*, or the taking into possession of the subject matter of sale. The purchaser may accordingly not sell the goods he has bought, especially in the case of foodstuffs, until he takes delivery first. Since there is no physical delivery of goods, nor of the underlying assets, in the derivatives, it is said that they fall short of the requirement of *qabḍ*. The basis of this requirement is a *ḥadīth* which simply declares: “He who buys foodstuff should not sell it until he has received it.”

In a different version of this *ḥadīth*, the last word is rendered as “*yastawfih*” (i.e., weighs and measures it). Ibn ʿAbbās, who reported this latter version added that the requirement of *qabḍ* applies to all other things as well. The *ḥadīth* is clearly confined to foodstuffs, especially to perishable food, because of uncertainty over the delivery to the buyer of food that is not in the seller’s possession. When there is no such uncertainty, such as in the sale of real property, then *qabḍ* is not a requirement. *Qabḍ* is also not a requirement in the event that the goods, whether foodstuff or otherwise, are owned through gift and inheritance, which involve no financial exchange and the seller is not committed to the payment of a price to someone else.

The issue, in other words, is once again concerned with uncertainty and risk-taking *gharar*. Two points may be noted when we attempt to apply the *ḥadīth* before us to futures. The first point is that the clearinghouse fully guarantees fulfilment of all contracts that are traded on the exchange. If failure to fulfill one’s contract is the essence of the *gharar* which the *ḥadīth* seeks to prevent, then it may be said that the market mechanism in futures has eliminated the *gharar* in question and the issue over *qabḍ*, therefore, does not arise.

The second point to note concerns the meaning of *qabḍ*. *Qabḍ* is a

juristic concept and has been variously interpreted by the *ulamā'*. *Qabḍ* can mean holding and retention, taking into custody, evacuation, measuring, separating, and even viewing. It is thus concluded that *qabḍ* should be understood in the light of the prevailing custom. *Qabḍ*, in other words, is a relatively open concept which is amenable to the changing realities of commerce. Could we not say then that *qabḍ* in contemporary commerce can also mean computerized debiting and crediting of the relevant accounts, which is what happens in the trading of contracts. Have we not seen this in scripless trading which commercial custom has now accepted in stocks and shares, and by analogy also in futures and options, where *qabḍ* may be said to occur when a sale or an offsetting transaction is verified by the exchange and the parties, and accounts are duly adjusted as a result?

Since the *Qur'ān* validates sale and encourages lawful commerce, including deferred liability transactions, and there is no specific prohibition in the *Qur'ān* or *Sunnah* on trading derivatives, then it remains for us to say that they are permissible provided that they are clear of *ribā*, gambling and *gharar*. The exchange authorities and the government need to be engaged in a continuous process to enhance vigilance and develop more refined methods of keeping the derivatives clear of manipulation and excessive risk-taking that jeopardize the integrity of the market and erode customer confidence in its procedures.

#### 4. Conclusion

Derivative instruments require an unusually high level of trading volume and wide-ranging participation, and Islamic derivative instruments would be no exception to this. To encourage Muslim participation and involvement in the future development of such instruments, it is necessary that we come to grips with the *Sharī'ah*-related issues concerning them especially in view of the fact that derivatives trading is a relatively new phenomenon in Malaysia and the rest of the Muslim world outside Malaysia.

I hope that the brief analysis of issues that I have attempted here can be developed further into an *ijtihād*-oriented discourse that would merit the credibility and recognition of our *Sharī'ah* scholars and all those who are concerned with the economic success and prosperity of the *ummah*.

## **End Notes**

1. A more detailed discussion and review of these verdicts can be found in my article, "Islamic Commercial Law: An Analysis of Futures," *The American Journal of Islamic Social Sciences*, 13 (1996): 197-225.
2. Ibn al-Qayyim equates this form of trade with *ribā al-nasī'ah*.