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Form versus substance: AAOIFI projects and Islamic fundamentals in the case of *sukuk*

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Abstract

Purpose – The purpose of this paper is to investigate the role of standard-setting bodies and rating agencies which compete for authority in Islamic finance. It does so through a consideration of a recent debate over the permissibility of *sukuk* financing.

Design/methodology/approach – The methods used are a combination of archival and bibliographic research, coupled with the author's previous research on Islamic banking and finance.

Findings – While the debate over *sukuk* hinged on whether the structures are *shari'a* compliant in form only, not in substance, the role of *sukuk* in neoliberal reform and the privatization of state resources reveal a deeper potential conflict between Islamic standard-setting bodies and global neoliberal projects more broadly.

Research limitations/implications – The implications are significant for other Islamic finance contractual forms and modes of finance. They are also significant in light of the global financial crisis, and the recent debt crisis in Dubai. The research limitations have to do with the fact that this is a fast-moving field and the global financial crisis has destabilized many institutions – both conventional and Islamic – in structured finance.

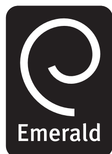
Originality/value – Few scholars have considered *sukuk*'s legitimacy, or the competition between Islamic standard-setting bodies and non-Islamic global rating agencies.

Keywords Financing, Standards, Bonds, Islam

Paper type Research paper

1. Introduction

The global financial crisis that began in 2007 deeply affected the market for Islamic finance. One indicator of the crisis's impact on Islamic finance is the rate and size of issuances of *sukuk*. *Sukuk* are Islamic bond structures that securitize leases (*ijara*) as well as other Islamic financing contracts such as *murabaha* (sale with markup), *musharaka* (partnership based on the mingling of capital contributions and proportionate profit and loss-sharing), and *mudaraba* (profit and loss-sharing partnership based on funds provision by one source and effort by another source) (Obaidullah, 2007; McMillen, 2007). From 2007 to 2008, *murabaha*-based *sukuk* issuances declined by almost 60 percent; *musharaka*- and *mudaraba*-based *sukuk* declined by 83 and 68 percent, respectively, (Hijazi, 2009, p. 7). Interestingly, *ijara sukuk* structures declined by only 8 percent (Hijazi, 2009). Nevertheless, in April 2009, when the Indonesian Ministry of Finance issued its first international *sukuk* through Perusahaan Penerbit SBSN Indonesia (PPSI-I), with a low-"BB" rating, it was oversubscribed to the point where



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the enterprises arranging and running the books for this issuance, HSBC, Standard Chartered Bank, and Barclays Capital, were forced to halt ordering (Parker, 2009).

The PPSI-I *sukuk* was heralded by some as a rebound for the global *sukuk* market, and as a sign of economic revival. This paper argues that the fall and seeming return of global *sukuk* during the worldwide credit crisis needs to be understood in the context of changing accounting rules and procedures promulgated by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) as well as by a sleight-of-hand whereby "*sukukization*" has gone together with privatization of state resources. The former, I argue, have often served to mask the latter, even as some prominent critics of contemporary *sukuk* structures argue that their potential for privatizing state resources may be their only real virtue (El-Gamal, 2006, p. 110). As a result, debates over whether *sukuk* are *shari'a* compliant in form but not substance may be beside the point, when *sukuk* operates as part of a larger project of neoliberal reform in spite of, not because of, global economic crisis. Whether one agrees with AAOIFI or not – viewing it as a true arbiter of Islamic norms for finance, or viewing it as a participant in "*shari'a* arbitrage" and rent-seeking (both terms used by El-Gamal (2006)), this larger project may itself challenge emerging Islamic financial norms and the role of institutions such as AAOIFI in setting the agenda for global Islamic finance.

AAOIFI was founded in 1991 by a consortium of Islamic finance and banking industry participants. It is "industry sponsored," not a state-backed regulatory agency (El-Gamal, 2006, p. 11) and is composed of jurists, many of whom also sit on *shari'a* supervisory boards of Islamic financial services providers. AAOIFI represented a shift from the authority of independent *shari'a* supervisory boards set up in individual Islamic banking and finance operations, to a centralized model for the dissemination of standards, procedures and best practices (Maurer, 2002; Gambling *et al.*, 1993; Pomeranz, 1997). It has been controversial, for three main reasons.

First, some practitioners see it as an effort to create and concretize the Gulf States as the putative "center" of Islamic financial services. This re-centering is a political and ideological project, not just an economic one, and not the result of the "origins" or pre-existing "centers" of Islamic finance in the Gulf – for, arguably, those origins and pre-existing centers lie elsewhere, in India and Pakistan, and their diasporas in the West, as well as in Malaysia (Maurer, 2005).

Second, as noted by El-Gamal (2006), AAOIFI is a standards-setting body with quasi-regulatory functions made up of jurists who also advise the institutions it would then regulate. Those jurists, in engaging in collective *ijtihad*, or interpretation, have tended to follow the classical Islamic jurisprudential model of the *fatwa*, rulings issued in response to specific questions (El-Gamal, 2006, p. 11). These two features combined – the dual (or triple or more) roles filled by the same *shari'a* scholars, plus the emphasis on the fatwa method – have led to a "first-mover advantage" for existing participants in Islamic finance and a "form-oriented jurisprudence" (El-Gamal, 2006, p. 35). And this, in turn, has "enabled those [initial, first-mover] practitioners to shape Islamic jurisprudence of financial transactions for future generations" (El-Gamal, 2006). So, for example, *murabaha*, a cost-plus-markup contract that looks suspiciously like credit with interest is difficult to dislodge from Islamic financial practice, because it was adopted by first-movers and because it was rendered legitimate by early *fatwas* (El-Gamal, 2006).

Third and finally, AAOIFI had tended to "start with objectives established in contemporary accounting thought, test them against Islamic *shari'a*," and "accept those that are consistent with *shari'a* and reject those that are not" (Hassan and Lewis, 2007, p. 11), rather than beginning from Islamic principles and objectives (Maurer, 2002; Archer and Karim, 2007; Gambling and Karim, 1991).

The fall and rebound of *sukuk* put front and center the role of AAOIFI in creating global standards, and the possible divergence between the reality of Islamic financial practices, Islamic jurisprudence as codified in AAOIFI guidance statements, and fundamental principles of Islam itself like the prohibition of *riba* (interest) and *gharar* (speculation or gambling). How do practitioners interpret and attempt to adhere to – or to diverge from – Islamic legal opinion when those opinions are seen to interfere negatively with "the market," which, more often than not, is their most immediate concern? And how do those who have assumed the authority to come up with those opinions square them with Islamic fundamentals as they try to work with, not against, market fundamentals?

During the global financial crisis, opinion in the Islamic financial community attributed the decline in *sukuk* offerings and size not just to the credit squeeze, but also to AAOIFI and, especially, its chair at the time, Sheikh Muhammad Taqi Usmani. In a paper widely circulated and hotly debated over the internet, Sheikh Usmani argued that most *sukuk* held "nearly all of the characteristics of conventional bonds" and were therefore "inimical in every way to the higher purposes and objectives" of Islamic economics (Usmani, 2008, p. 13). For some, Usmani's salvo was a long overdue and much needed corrective to what they saw as the excesses of *sukuk* issuances and structured financing vehicles that came very close to mimicking conventional bonds. To others, it was an overreaction, born of impatience with the pace of development of Islamic financial institutions and markets, and an unrealistic appraisal of what Islamic finance can actually accomplish in a globally interconnected and interdependent world. Furthermore, as one commentator noted in an online discussion group, Sheikh Usmani had to have served on the *shari'a* boards of some of the *sukuk* offerings he was now decrying (Dar, 2008), suggesting a whiff of overreaching idealism, if not outright hypocrisy, in Usmani's position.

By the Spring of 2009, the time of the Indonesian *sukuk* issuance, the debate had been framed by Moody's, the credit-rating agency, as a conflict between "form" and "substance." Were existing *sukuk* formally compliant with emerging Islamic financial norms? Or was it more important to focus on their substantial features, which made them look more like conventional bonds? And where would Islamic principles stand in relation to either position? Moody's firmly came down on the side of "substance" over "form," and its report was very widely disseminated through online and print media. In elevating substance over form, Moody's was challenging AAOIFI's authority over, and approach to, global Islamic finance (and using without attribution some of the language, but not entirely the premises of Mahmoud El-Gamal's writings on the matter). AAOIFI's response may have pulled it further away from the substance of Islamic principles and retrenched its emphasis on specific forms of *ijtihad* and jurisprudence.

The paper proceeds as follows. First, it reviews the distinction between asset-backed and asset-based *sukuk* issuances, and AAOIFI's 2008 Statement of Principles on *sukuk*. It then considers AAOIFI's statement on accounting for investments and "investment fair value reserve" valuation and accounting measures for *sukuk*, also issued in 2008. Next, it counter poses to AAOIFI guidance Moody's assessment of the global *sukuk*

market, and Moody's call for "substance over form." Then, the paper turns to the PPSI-I Indonesian *sukuk* offering. Finally, it considers whether and how AAOIFI functions in the global Islamic financial arena and how its projects come up against both Islamic and market fundamentals.

2. The problem with *sukuk*

As a kind of securitization, *sukuk* can be grouped in that large basket of financial products that have come under intensive scrutiny as the global financial crisis has unfolded. The disaggregation and re-bundling of objects of property into new securitized products, the high degree of abstraction such processes entail, the increasing distance from assets and the distribution and potential amplification (and simultaneous masking) of risk all make securitization a potentially dangerous business. At the same time, however, without securitization, modern credit and capital markets could not function. Without securitization, for example, no modern stock market, no partible shares and no trading in debt, or moving of debt instruments off balance sheet. While the latter have come under attack, few, if any, commentators or critics are calling for the abolition of the modern joint stock corporation. Still, as the economist and critic of much currently practiced Islamic finance, El-Gamal (2006) notes, the "very definition of securitization (transforming one type of financial exposure into another) suggests the myriad ways it can be abused."

Since trading in debt is forbidden in Islamic finance, *sukuk* structures often involve a formal transfer of assets – even if only the asset of the *sukuk* certificate – and the renting back of the asset. Where a conventional bond is a debt obligation that returns interest to bondholders, a *sukuk* is – at least in theory – an ownership stake in an underlying asset that provides returns based on profit and/or rent. *Sukuk* must also be issued based on or backed by assets that in themselves do not violate Islamic law; so, there cannot be a *sukuk* issuance for any enterprise that engages in forbidden activity, such as the production of pork products, alcohol, or interest-bearing debt. Most *sukuk* have been issued for airlines, real estate, petroleum extraction enterprises and infrastructure projects, among other things. From the point of view of global capital markets, they can be and are rated just like any conventional bond, and can be traded as such, as well.

The main difficulty with *sukuk*, however, has to do with whether they are in fact asset-backed, or whether they are asset-based. The distinction is critical to the debate over their permissibility. Most *sukuk* do not actually involve the transfer of ownership of the underlying asset to holders of *sukuk* certificates – the *sukuk* investors. Moody's notes that this results in a "requirement for 'tangibility'" which has "significant – and problematic – effects" (Howladar, 2009, p. 4). *Sukuk* originators seemed to have solved the problem of asset backing and tangibility by including an asset somewhere in the *sukuk* structure. This results in "sometimes hundreds of pages" of *sukuk* documentation, which makes it difficult to assess the "actual source of risk and source of the profit and principal/capital payments" (Howladar, 2009). From Moody's point of view, however, at the end of the analysis, most asset-based *sukuk* structures "replicate the risk and return characteristics of a fixed income bond" (Howladar, 2009).

And this is the problem highlighted by Sheikh Usmani and other critics like El-Gamal. As the latter writes:

> [. . .] contemporary jurists seem to insist on costly (and possibly anachronistic) symbols of material ownership of the underlying asset, whether in double-sale (murabaha) or lease (ijara) financing, to maintain the fiction that interest (collected as price mark-up or rent, respectively)

> is in fact a return based on risk associated with the ownership of a physical asset (El-Gamal, 2006, p. 101).

Many current *sukuk* issuances have an asset somewhere in the mix, but in most cases actual cash flows from the issuances are not derived from that asset, but from the rest of the structure. Thus, the presence of an asset gives the *sukuk* the "form" of an Islamically permissible financial product, but not the "substance." For example, a true asset-backed structure – one based on real estate, for example – would involve the actual transfer of title to land (for example) to the *sukuk* investors. The *sukuk* structure would be secured by the land, and the investors would hold title to the land. Asset-based *sukuk* structures, in contrast, are unsecured.

Still, many *ijara* or lease *sukuk* structures may look asset-backed, but actually are asset-based, and that "base" may in fact be a fiction, as well. El-Gamal (2006, pp. 107-10) discusses the case of the Qatar Global Sukuk QSC, issued in 2003 for $700 million. As El-Gamal explains, this *sukuk* issuance involved issuing lease-backed securities in land parcels in Doha slated to be developed as the new Hamad Medical Facility. Rather than float a conventional bond for this large-scale medical facility project, the Government of Qatar issued a *sukuk* through a special purpose vehicle (SPV). The SPV purchased the land parcels from the Government of Qatar for $700 million and sold *sukuk* certificates to investors, who received periodic distributions that derived from the rent payments the Government of Qatar paid to the SPV leasing back the property. On maturity of the certificates, the SPV returns the land to the government.

Sheikh Usmani in his 2007 criticism of *sukuk* structures, and AAOIFI in its 2008 release of new standards (Financial Accounting Standard (FAS) 17), would come to some of the same conclusions that El-Gamal reached regarding this particular case. At issue is whether there can be said to be actual ownership of the tangible property here. The "fundamental test of ownership in classical and contemporary Islamic jurisprudence," El-Gamal (2006, p. 109) writes, "is the risk of loss in case of property destruction." Yet here, "the sale and lease are merely fiction" serving to dress what appears to be nothing other than a conventional state-issued bond in Islamic garb through the intercession of the property and the leases. El-Gamal (2006, p. 110) continues, "Since the issued debt was essentially identical to other unsecured debt by the issuing government, there are no gains to be made from securing the debt with physical assets." In fact:

> [. . .] the additional transaction costs of an *ijara sukuk* issuance must be viewed as deadweight efficiency losses from the view point of the issuing entity, *were it not for potential buyers who are restricted to this type of investment* (El-Gamal, 2006, emphasis mine).

AAOIFI made quite clear in its 2008 standards on *sukuk* that ownership must be transferred to the *sukuk* certificate holders in order for the structure to be *shari'a* compliant:

> Sukuk, to be tradable, must be owned by Sukuk holders, with all rights and obligations of ownership, in real assets, whether tangible, usufructs or services, capable of being owned and sold legally as well as in accordance with the rules of Shari'ah [. . .]. The Manager issuing Sukuk must certify the transfer of ownership of such assets in its (Sukuk) books, and must not keep them as his own assets (AAOIFI, 2008a, pp. 1-2).

AAOIFI here explicitly sought to enhance asset-backed over asset-based structures. Of course, AAOIFI took this position right at a moment when the global financial crisis

led capital markets in general away from unsecured structures anyway (Howladar, 2009, p. 10). Regardless, the controversy over ownership of the underlying asset – and whether the underlying asset even matters at all or merely supports a convenient fiction to achieve *shari'a* compliance – is rendered moot when one considers the part of El-Gamal's statement I emphasized above: if there are potential buyers, if there is a market interested in purchasing the "Islamic brand," no matter how it is couched or whether it even is in compliance with standards set by AAOIFI, such investment products will be purchased and will likely be profitable. AAOIFI thus has had to be responsive to the needs of those potential buyers – softening some of its stances in the process, and potentially setting up conflicts with its own assessment of Islamic principles in the name of flexibility and listening to market participants.

3. AAOIFI vs Moody's accounting for losses

Such a conflict came quickly after AAOIFI's February 2008 statement on *sukuk*. In October of the same year, AAOIFI, in response to pressures from market participants, altered one of its accounting standards, and did so in an unprecedented fashion. Market participants perceived conventional bond issuances as having an unfair advantage over *sukuk* issuances during the global downturn. According to International Financial Reporting Standards (IFRS) set by the International Accounting Standards Board (IASB), conventional bonds could write down losses as a temporary negative change in equity rather than income. In effect, IFRS has built into its standards a characterization of negative fair value changes, such as those that occur during economic downturns, as a temporary matter. For *sukuk*, however, changes in negative fair value were being recorded as changes in income. In an effort to place *sukuk* on a "level playing field" with conventional bonds, AAOIFI (2008b) issued a "guidance statement on accounting for investments." It revised its existing FAS 17, allowing losses financed by investment account holders in *sukuk* structures to be recorded under a new, "investments fair value reserve" heading, effectively mimicking the manner in which such losses are recorded for conventional bonds. This also allowed *sukuk* to be rated based on the same kinds of data as conventional bonds, as *sukuk* and conventional bonds would each deal with negative fair value losses in a way that would not "adversely affect the owners' equity instead both the equity and investment account holders would be affected proportionately according to their respective shares in the case of losses" (AAOIFI, 2008b, p. 2).

But, perhaps the most interesting thing about AAOIFI's guidance statement was its rhetorical structure. The statement contains repeated reference to its exceptional nature and to its speed of issuance. The meeting that led to the revision of FAS 17 is described as "urgent," as are the revisions themselves. The guidance statement also provides a chronicle of its own creation:

> In the usual course of work, AAOIFI only revises Standards after issuance of exposure draft [sic] and considering comments from all stakeholders in a public hearing context. However, given the requests received from the stakeholders of Islamic financial industry [sic] requesting a revision of this Standard or issuance of a guiding statement on an immediate basis on account of recent turmoil in financial markets around the world, AAOIFI has decided, on an exceptional basis, to proceed directly for issuance of this guiding statement and amendment in Para 7 of the Financial Accounting Standard (FAS) No. 17 (AAOIFI, 2008b, p. 1).

The Secretary General of AAOIFI, Dr Mohamad Nedal Alchaar, underscored AAOIFI's rapid responsiveness to industry concerns during the global crisis:

> The revision also reflects AAOIFI's ability to work closely with major stakeholders of the industry and to come out with timely reactions to market development [sic]. We will continue to review our standards to ensure that they remain supportive of the industry without compromising the overriding principles of accounting and *Shari'a*,

he told the *Bahrain Tribune* (2008).

A picture emerges here of a conflict of authority between AAOIFI and other standard setting bodies like IASB and rating agencies like Moody's. It served AAOIFI to claim that the global decline in *sukuk* issuances was due to Usmani's and AAOIFI's February 2008 ruling on *sukuk*. For example, writing for ArabianBusiness.com, Richter (2009) claimed that the *sukuk* market "received a double blow this year" from both the credit crisis and "a controversy over which types of *sukuk* are compliant with Islamic law." In its January, 2009 report, Moody's was willing to grant that "*shari'ah* compliance issues" may have had "some impact" on the decline in *sukuk* issuances (Hijazi, 2009, p. 1). Yet, by May 2009, Moody's burst that bubble, demonstrating that the decline was due more to the global liquidity freeze than the opinions of the jurists, and arguing that "substance" – here, market fundamentals – matter more than Islamic fundamentals. In short, the debate over *sukuk* during the global financial crisis was not just about the real cause of the decline of issuances, or which *sukuk* are more *shari'a* compliant, or substance or form, but rather: who has the authority to "rate" Islamic bonds, and in what weight should be given to various ratings, *shari'a* or otherwise?

4. The Indonesian *sukuk* offering: real assets and the fair value of privatization

Let us turn to examine the *sukuk* issuance that was heralded as marking the return of the industry. The Indonesian *sukuk* was issued by a PPSI-I, a SPV set up and wholly owned by the Indonesian Ministry of Finance. PPSI-I issued certificates representing stakes in ownership of 66 parcels state-owned properties in the cities of Jakarta and Bandung. What was to have been originally a $500 million issuance, marketed at 9.5 percent with a five-year maturity, it was rapidly oversubscribed to the tune of $3 billion (Parker, 2009). This, despite the fact that it was rated below investment grade by two of the leading rating agencies, Fitch and Moody's (Walker, 2009). As Walker (2009) reported, the issuance was significant in a number of ways:

> It was the largest *sukuk*, or Islamic bond, since Dubai Ports in June 2007; the first from a country outside the Gulf Cooperation Council (GCC) since Pakistan in 2005; and only the second Regulation S, Rule 144A registered sovereign *sukuk* since Malaysia in 2002.

Yet, it was also strikingly similar if not identical in form to the Qatar *sukuk* discussed above, which was criticized by El-Gamal for being in essence a way to float sovereign debt. In the PPSI-I case, the structure was designed to raise foreign currency to shore up Indonesia's foreign reserves. The Ministry of Finance set up the SPV, which purchased and leased back to the government the formerly state-owned properties, selling shares in the leases to international investors and promising a portion of the rental payments from the government back to the certificate holders.

For both of these reasons – its similarity to a conventional government bond, and its goal of raising foreign reserves – Standard & Poor's (S&P's) rated it BB – slightly

higher than the other agencies yet still below investment grade, and based its rating on its comparable treatment of Indonesia's own paper:

> The issue represents the sovereign's first foray into the global Islamic debt market as a source of foreign currency funding. S&P's decision to rate this issue on par with the sovereign's commercial financial obligations takes into account representations of the republic, indicating that all payments under the deal are viewed as equal ranking in priority to other external debt obligations of the republic,

explained S&P's credit analyst Agost Bernard (Parker, 2009).

It is telling that the remainder of Parker's article, published by ArabNews.com, considers the Government of Indonesia's fiscal position, and the role that a *sukuk*-inspired infusion of foreign reserves will have on its public debt as well as ongoing structural reforms. Those reforms include privatization of state-owned resources, which, conveniently, this *sukuk* issuance also facilitates.

What is the real asset backing this *sukuk*, then, if not two kinds of faith operating simultaneously – and, arguably, separately from the tenets of Islam? The first is faith in the Government of Indonesia to implement reforms – neoliberal reforms. The second is faith in the market as a regulatory force and, to put it indelicately, as a way to make a lot of money, regardless of religious precepts or pre-commitments. That the *sukuk* structure itself may introduce additional and unnecessary transaction costs is simply beside the point here: if the brand helps sell the product – even a product rated below investment grade by all the major rating agencies – then the brand succeeds.

5. Conclusion: *shari'a* arbitrage, *shari'a* pushback, and the market

At the heart of the debate sparked by Usmani's paper and the global crisis was the role of AAOIFI in creating, disseminating and sustaining norms and standards of practice for Islamic finance – and, potentially, the irrelevance of both those norms for actual practice, and of AAOIFI in the global development of Islamic banking and finance. This may be a controversial claim. AAOIFI has become the ultimate global arbiter of *shari'a* compliance for all Islamic financial activities. As already noted, many have criticized the kind of "*shari'a* arbitrage" that goes on in Islamic finance, and that is implicitly and explicitly encouraged by AAOIFI, as jurists and practitioners seek rulings that favor their particular product or approach (El-Gamal, 2006). Yet, at the same time, other institutions and agencies – in this story, Moody's is the major player – and the workings of "the market" itself, often times obviate anything promulgated by AAOIFI. In the case at hand, the global financial crisis and the continued effort at the privatization of state property and resources turned out to have more significance to *sukuk* issuance than did AAOIFI statements. And in choosing "substance" over "form," global *sukuk* investors were encouraged to side with Moody's over AAOIFI. As Moody's put it:

> AAOIFI has its views, but market participants can, and will, make their own decisions [. . .] From a *Shari'ah* perspective, it may be the sincere *niyyah* or *intention* of the parties that is probably most important (Howladar, 2009, p. 3).

Still, in this debate over *sukuk*, AAOIFI did manage to exert its influence. Even if market participants do not take its advice, most now recognize the greater legitimacy of *ijara sukuk* over other forms. As one set of commentators argued, this may have represented "the first real evidence of how Aaoifi's [sic] influence could manifest itself

in the world of sukuk" and to express some *shari'a* scholars' "growing discontent at the direction the industry has taken over the last five years" (Khan *et al.*, 2008, p. 36).

To return to the "form versus substance" discussion with which this paper began: Mahmoud El-Gamal has argued persuasively for an Islamic banking that focuses on substance rather than form. For him, substance means meaningful understanding of and adherence to the prohibition of *riba*. As he writes:

> The form-over-substance juristic approach to Shari'a arbitrage has also been shown to squander the prudential regulatory content of premodern Islamic jurisprudence, while reducing economic efficiency for customers through spurious transactions, not to mention legal and jurist fees (El-Gamal, 2006, p. 190).

Moody's too, put the emphasis on substance rather than form. But for Moody's, the substance at issue seems to be the characteristics of a *sukuk* offering that make it more amenable to the kind of risk and valuation assessments that Moody's conducts for conventional bonds, and that make *sukuk* attractive to investors. Where El-Gamal seeks an Islamic finance that is true to the substance of Islamic fundamental principles rather than engaging in analytical or semantic tricks to achieve a "form" that appears in compliance with Islamic norms but introduces a host of inefficiencies and transaction costs, Moody's seeks an Islamic finance that is true to the market fundamentals. The two, obviously, need not be in conflict (and I think that El-Gamal would agree). Yet, in the case of the debate over *sukuk* and its apparent resolution by AAOIFI, profitability and neoliberal reform seem to trump commitments to social justice, collective responsibility and community investment, the "mutuality" that Islamic finance offers as a promise to the rest of the world (El-Gamal, 2007; Maurer, 2005). The extent to which AAOIFI can recapture the debate and reshape the practice remains to be seen. Its recent guidance on *sukuk* is perhaps a step in the right direction; however, as the Indonesian *sukuk* offering demonstrates, it may ultimately prove to be a step that practitioners disregard in the pursuit of profit, despite the noblest of intentions.

References

AAOIFI (2008a), *Guidance Statement on Accounting for Investments and Amendment in FAS 17*, Accounting and Auditing Organization for Islamic Financial Institutions, Manama.

AAOIFI (2008b), *Statement on* Sukuk, Accounting and Auditing Organization for Islamic Financial Institutions, Manama, available at: www.aaoifi.com/aaoifi_sb_sukuk_Feb2008_Eng.pdf

Archer, S. and Karim, R.A.A. (2007), "Accounting standards for Islamic financial institutions", in Hassan, M.K. and Lewis, M.K. (Eds), *Handbook of Islamic Banking*, Edward Elgar, Cheltenham, pp. 302-9.

Bahrain Tribune (2008), "New norms for Islamic financial institutions", *Bahrain Tribune*, 30 October.

Dar, H. (2008), "Re: recent AAOIFI paper on *sukuk* by Mufti Taqi Usmani", available at: IBFNet@Yahoogroups.com (14 September 2008), Copy in author's position.

El-Gamal, M. (2006), *Islamic Finance: Law, Economics and Practice*, Cambridge University Press, Cambridge.

El-Gamal, M. (2007), "Mutualization of Islamic banks", in Hassan, M.K. and Lewis, M.K. (Eds), *Handbook of Islamic Banking*, Edward Elgar, Cheltenham, pp. 310-24.

Gambling, T. and Karim, R.A. (1991), *Business and Accounting Ethics in Islam*, Mansell, London.

Gambling, T., Jones, R. and Karim, R.A. (1993), "Credible organizations: self-regulation v. external standard-setting in Islamic banks and British charities", *Financial Accountability & Management*, Vol. 9, pp. 195-207.

Hassan, M.K. and Lewis, M.K. (2007), "Islamic banking: an introduction and overview", in Hassan, M.K. and Lewis, M.K. (Eds), *Handbook of Islamic Banking*, Edward Elgar, Cheltenham, pp. 1-17.

Hijazi, F. (2009), "Global *sukuk* issuance: 2008 slowdown mainly due to credit crisis, but some impact from *Shari'ah* compliance issues", *International Structured Finance Special Report*, Moody's Investors Service, New York, NY, 21 January.

Howladar, K. (2009), "The future of *sukuk*: substance over form? Understanding Islamic securitization, asset-backed and AAOIFI principles", *International Structured Finance Special Comment*, Moody's Investors Service, New York, NY, 6 May.

Khan, N., McViety, P. and Brandt, L. (2008), "Scholarly debate prompts reform", *International Financial Law Review*, Vol. 27 No. 8, pp. 36-7.

McMillen, M.J.T. (2007), "Islamic project finance", in Hassan, M.K. and Lewis, M.K. (Eds), *Handbook of Islamic Banking*, Edward Elgar, Cheltenham, pp. 200-39.

Maurer, B. (2002), "Anthropological and accounting knowledge in Islamic banking and finance: rethinking critical accounts", *Journal of the Royal Anthropological Institute*, Vol. 8, pp. 645-67.

Maurer, B. (2005), *Mutual Life, Limited: Islamic Banking, Alternative Currencies, Lateral Reason*, Princeton University Press, Princeton, NJ.

Obaidullah, M. (2007), "Securitization in Islam", in Hassan, M.K. and Lewis, M.K. (Eds), *Handbook of Islamic Banking*, Edward Elgar, Cheltenham, pp. 191-9.

Parker, M. (2009), "Indonesia *sukuk*: is this a sign of revival?", *ArabNews.com*, 20 April.

Pomeranz, F. (1997), "The Accounting and Auditing Organization for Islamic Financial Institutions: an important regulatory debut", *International Journal of Accounting, Auditing and Taxation*, Vol. 6, pp. 123-30.

Richter, F. (2009), "Global *sukuk* market seen dormant until mid '90", *ArabianBusiness.com*, 12 June.

Usmani, S.M.T. (2008), "*Sukuk* and their contemporary applications", available at: http://sukuk.net/library/education/MuftiTaqiSukukpaper.pdf, Copy in author's possession.

Walker, R. (2009), "Indonesia issues maiden $650 million *sukuk*", *FinanceAsia.com*, 20 April, available at: www.financeasia.com/article.aspx?CIaNID=101268b

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