

## I. INTRODUCTION & QUALIFICATIONS

I have been retained by counsel to the defendant Omar Kalair as an expert witness on Islamic financial institutions reporting issues with respect to the above-referenced matter, regarding various transactions between companies managed by Mr. Kalair (UM Financial and UM Capital, collectively referred to herein as “UM”), Central Credit Union of Ontario (“Central”), various Shariah scholars, and the customers of UM, and more generally regarding whether or not certain transactions were consistent with Islamic financial principles. References to the application of certain Islamic finance principles shall be made to the Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”) of which one member of my staff holds the AAOIFI<sup>1</sup> designation of Certified Shariah Auditor & Advisor.

I am the President and Founder of the SHAPE Group of Companies which includes SHAPE for Economic Consulting, WLL (a Kuwait limited liability company), SHAPE Financial Corp. (a Delaware corporation), and SHAPE Knowledge Services SDN BHD (a Malaysian limited liability company). Both SHAPE Financial Corp. and SHAPE Knowledge Services SDN BHD are wholly owned by SHAPE for Economic Consulting WLL (collectively referred to herein as “SHAPE”). My firm provides clients with advice and training on matters relating to Islamic banking and finance. Our services include consulting on the transaction structures; assisting with developing, implementing, and applying Islamic financial principles in the banking and capital markets; developing policies and procedures; and delivering Shariah advice. Along with a fellow member of staff, I have developed courses for regulators, banks, financial institutions, universities, and international training companies. I am the co-founder of more than one Islamic home finance entity in the United States, and have experience with a competitor of UM as well as entities in the United Kingdom and beyond.

I am an adjunct professor of finance for IE Business School of Madrid and have served as an adjunct professor for the Kellstadt School of Business, DePaul University for courses delivered at the Bahrain Institute of Banking & Finance. I have experience in the supervision of start-up home finance operations in the United States and United Kingdom. A focus of my career for the past 30 years has been the implementation, interpretation, and application of Islamic financial principles governing transactions and financial instruments of the type that are the subject of this Report. This work has entailed significant exposure to Shariah boards, and I have served as an industry expert on Shariah boards for Bank Muscat (Oman), Sterling Bank PLC (Nigeria), and University Bank (Michigan). I am chairman of the Sterling Bank Advisory Committee of Experts. I have supervised the delivery of Shariah advisory services to the Arab Petroleum Investment Corporation (Dammam, Saudi Arabia) and its banking operations (Bahrain). Prior to founding SHAPE, I enjoyed a diversified career in banking, securities, and financial start-ups.

In addition to being a frequent participant in conferences and workshops on Islamic finance including housing finance, I am widely published as a contributor, lead author, or contributing

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<sup>1</sup> The full AAOIFI Shariah Standard in English (and other languages) is available on AAOIFI’s website for free. Please refer to <http://aaoifi.com/shariaa-standards/?lang=en> This was only made available for free 2018 onwards. The standards have been available for purchase online since 2016. Prior to that, one had to buy a hard copy of the standards directly from AAOIFI, which was not always easy.

editor in the following books:

*The CIFA Guide to Islamic Finance* lead author (Kuala Lumpur: RedMoney, 2011).

*Interest in Islamic Economics* contributing editor. (Oxford: Routledge, 2005).

*Structuring Islamic Finance Transactions* co-author with Stella Cox, Lawrence Oliver, Bryan Kraty. (London: Euromoney Books, 2005).

*Housing the Nation* contributor (Kuala Lumpur: Cagamas, 2013).

*Affordable Housing Finance in the IDB Member Countries: Challenges and Currently Practiced Modes of Islamic Housing Finance*, contributor with Shirazi, Nasim Shah & Syed Ali, Salman & Zafar, Atiq-uz, (Jeddah: Islamic Research & Training Institute, 2014).

*The Guide to Understanding Islamic Home Finance* co-author with Virginia Morris (New York: Lightbulb Press, 2002).

My most downloaded paper is *Methods of Islamic Home Finance in America*<sup>2</sup> which I first authored in 2003 and have updated periodically since then.

I have served as an expert witness in an ongoing bankruptcy case in the Second District Court of New York. In this case, I discussed Islamic financial principles in relation to the safe harbor provisions of the United States Bankruptcy code.

I graduated with general honors from the University of Chicago in 1979 with a degree in Near Eastern Languages & Civilizations specializing in Arabic & Islamic Studies. I then earned a Master of Arts in Law & Diplomacy from the Fletcher School of Law & Diplomacy.

My curriculum vitae is attached as Appendix 4 to this Report.

## II. COMPENSATION STATEMENT

For my work in this matter, I am being compensated at a rate of C\$150 per hour subject to a cap. My compensation is not contingent on any action or event resulting from the analyses, conclusions, or the use of this Report.

Appendices 1 and 2 are a glossary and list of abbreviations used in this Report. Appendix 3 is a Statement of Assumptions and Limiting Conditions and is an integral part of this Report.

In the course of forming my opinions, I relied on my training and experience and the documents, testimony, and Islamic finance literature cited in this Report. In addition, I considered various documents produced in the case, pleadings, background materials provided by counsel, and relevant publicly available information. I read or reviewed the materials listed in Section III.

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<sup>2</sup> Accessible at <https://www.consultshape.com/wp-content/uploads/methods2017.pdf>.

### III. DOCUMENTS REVIEWED

I was researched or was provided with the following documents, which are relevant to this Report:

1. January 30, 2005 UM Fatwa re mudaraba with Central
2. April 11, 2005 Business Loan General Security Agreement
3. April 11, 2005 Master Mortgage Assignment Security Agreement
4. July 4, 2005 UM Fatwa re mudaraba with financial institutions
5. July 4, 2005 UM Fatwa re home finance diminishing musharaka
6. August 26, 2005 letter from Central to UM affirming that their relationship is a mudaraba.
7. February 15, 2006 Amended and Restated Commitment Letter
8. November 2, 2006 Master Mortgage Sale and Administration Agreement
9. June 7, 2007 Commitment Letter
10. April 11, 2010 UM website screenshot
11. July 12, 2010 Executed UM Musharaka Agreement for Housing Finance
12. September 19, 2011 Affidavit of Mufti Yusuf Panchbaya
13. September 26, 2011 Invoice #011 Multicultural Consultancy Canada Inc.
14. October 21, 2011 letter from Shahzad Siddiqui on behalf of Multicultural Consultancy Canada Inc. relating to safekeeping of payment received.
15. November 10, 2011 Examination of Omar Kalair, Ontario Superior Court of Justice
16. November 10, 2011 Examination of Yusuf Panchbaya, Ontario Superior Court of Justice
17. 2012 Forensic Accounting Report
18. UM Financial Brief of Evidence

#### IV. SUMMARY & CONCLUSIONS

Upon reviewing the documentation, I have made the following conclusions:

1. Relying upon the letter from Central and consistent with certain market practices, UM was operating with Central on the basis of a Mudaraba model.
2. UM was operating with its homeowners on the basis of a declining musharaka model similar to others used in Canada, the US and the Middle East.
3. Although UM did not always follow best practices of Islamic Finance, Mr. Kalair's management of the relationship between UM, Central, and the homeowners, appears to have been conducted with a bona fide attempt to comply with generally accepted principles of Islamic Finance.
4. Mr. Kalair would have had a reasonable expectation that funds paid into UM by homeowners as part of the mudaraba's revenues were available for use by UM to pay reasonable expenses of the mudaraba project including legal fees and scholars' invoices.
5. The invoice for deferred payment remitted by MCC would appear to someone in Mr. Kalair's position as being legitimate and actionable.

## V. DISCUSSION

### A. ROLE OF ISLAM AND SHARIAH IN HOUSING FINANCE

Islamic banking and finance is a revival of faith-based rules governing how commercial and financial transactions are executed. There are three primary layers of religiously mandated governance. The first is the prohibition of interest. The second relates to the execution of contracts. The third is the exclusion of certain activities for moral reason. The first and second of these processes affect how Islamic banks and mortgage companies manage liquidity and provide home financing. The third typically requires a financial institution to engage an independent Shariah advisor or form a Shariah Supervisory Board (“SSB”).

Because of the prohibition of interest, the risk assets of most Islamic financial institutions (“IFI”) are predominately sales receivables, investments in assets subject to customer leases, and equity-like operations. For instance, a home financing operation may be based by the IFI purchasing a house from a third-party seller at a customer’s direction and selling it onwards to the same customer in an operation called murabaha. Alternatively, the IFI might jointly buy the house with the customer in an operation called musharaka (we will diagram the musharaka home buying operation below).

The liabilities (sources of funds) for IFIs are interest free loans which are used for checking accounts at banks, sales payables, obligations under equity-like operations and trade obligations. The most common form of equity-like funding is called mudaraba (we will diagram a typical mudaraba below). The typical IFI may be operated to compete with conventional financial institutions (“FI”), but is built on unique credit and liability structures. The asset and liability structure of an IFI will have different liquidity characteristics compared to a conventional FI. This is because certain assets like sales receivables are not discountable. The Shariah treats receivables akin to cash. Hence, sale at a discount or premium would generate interest, *riba*.<sup>3</sup>

The prohibition of interest means that IFIs neither borrow nor lend in the traditional sense. Instead, they create risk assets using selling and investing contracts. When the obligors pay late, the Islamic bank is not permitted to charge late or penalty interest. Nonetheless, some IFI charge penalty interest and give it to charity.<sup>4</sup>

The second concern is an instruction to avoid or minimize *gharar*. This is generally translated to mean forms of contractual ambiguity or conditions which make a contract uncertain or open to disputes.<sup>5</sup> The concept of *gharar* may arise if conditionality is introduced into a sale, then the sale is not valid. An example would be a Purchase & Sale agreement for a house in Connecticut. The Connecticut agreement will contain many contingencies that must be completed for the sale to proceed. The Shariah would view the contingencies as rendering the agreement as

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<sup>3</sup> Muhammad, Marjan and Mezbah Uddin Ahmed, eds., *Islamic Financial System: Principles & Operations* (Kuala Lumpur: International Islamic Research Academy, 2016), p. 419.

<sup>4</sup> AAOIFI (2010) Shariah Standard 3 Appendix B Article 7 permits penalty interest only if it is stipulated in the contract and given to charity in the name of the obligor. Generally, the contractual stipulation is structured as an instruction from the obligor to the bank.

<sup>5</sup> Saleh, Nabil, *Unlawful gain and legitimate profit in Islamic law* (Cambridge: Cambridge University Press, 1986). See pages 49 - 85 for a detailed discussion of *gharar*.

non-contractual. The Shariah does, however, allow unilateral promises to bind the promissor with no obligation on the receiver of the promise.

Shariah also introduces moral exclusions which affect the way certain contracts are used. For instance, an IFI may receive mudaraba funding from a conventional FI. In contrast, an IFI will not make an equity-like placement (i.e. a wakala, mudaraba or musharaka placement) with a conventional FI because the source of repayment is linked to interest and could be interest generated by loans to businesses morally repugnant to the Islamic bank. IFIs frequently make equity placements with each other as the sources of payment are free from interest and other problematic activities. Please see Appendix 1 for a glossary of Islamic financial terms and others applicable to this testimony.

Finally, moral aspects are overseen by an SSB. The SSB should meet periodically with management to discuss business. The SSB may also perform or rely upon Shariah reviews or audits to determine whether or not management is engaging in the business in an acceptable way. The role of the SSB is discussed in detail in Section V.D. of this document.

This report will make references to AAOIFI and its standards. Although AAOIFI is a multi-lateral organization that aspires to set the best practices for Islamic finance, its standards are not applied by every IFI and may not be feasible in many countries under current law and regulation.

## B. MUSHARAKA AND DECLINING MUSHARAKA

### B.1. UNDERSTANDING MUSHARAKA

In order to avoid interest, IFIs have been very adaptive. Depending upon local laws and regulations, different arrangements may be made. From a Shariah perspective, the challenge for asset and liability management is that murabaha<sup>6</sup> receivables may not be discounted.<sup>7</sup> As a result, IFIs seek to originate assets which may be discounted or securitized from a Shariah perspective. These include assets subject to lease in a rent-to-own relationship, or equity partnership in property.<sup>8</sup> Within certain parts of the Islamic community, it is fashionable to prefer equity risk in a relationship called musharaka.

In a musharaka, all parties invest. Theoretically, all investors may manage a musharaka. As this is often impractical, one member of the partnership is elected to manage the operations. A typical musharaka or *constant musharaka* is illustrated below:

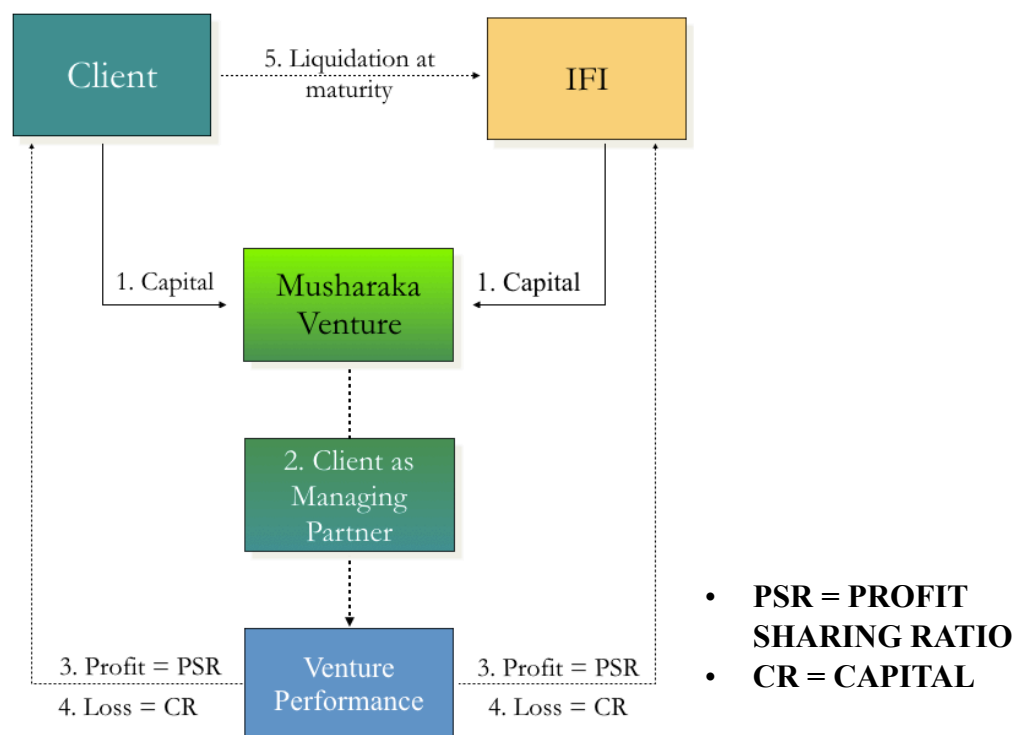


Figure 1: Basic Musharaka<sup>9</sup>

The form of musharaka used by UM for housing finance, however, was a *declining musharaka*. In this method, typically, there are two approaches. The property is co-owned<sup>10</sup> and

<sup>6</sup> Murabaha is an installment sale contract.

<sup>7</sup> Once an asset has been sold, the receivable is treated as money. Hence, the gain to a buyer is viewed as riba. Mokhtar, Shabnam, ed., *The CIFA Guide to Islamic Banking & Finance* (Kuala Lumpur: RedMoney, 2011), p. 20.

<sup>8</sup> In these cases, one is discounting a real asset and not a cash flow.

<sup>9</sup> Derived from CIFA Guide, p. 33.

<sup>10</sup> This may be by contract, though a limited purpose company, or in a trust.

the customer leases the property from the musharaka, and the customer makes periodic payments to buyout the investors.<sup>11</sup> In this structure, the customer often holds legal title and grants a mortgage to the investor.<sup>12</sup> The other approach is for the co-owners to form a limited liability company or trust to hold the property.

Figure 2 shows the model used by UM which is a form of the typical model:

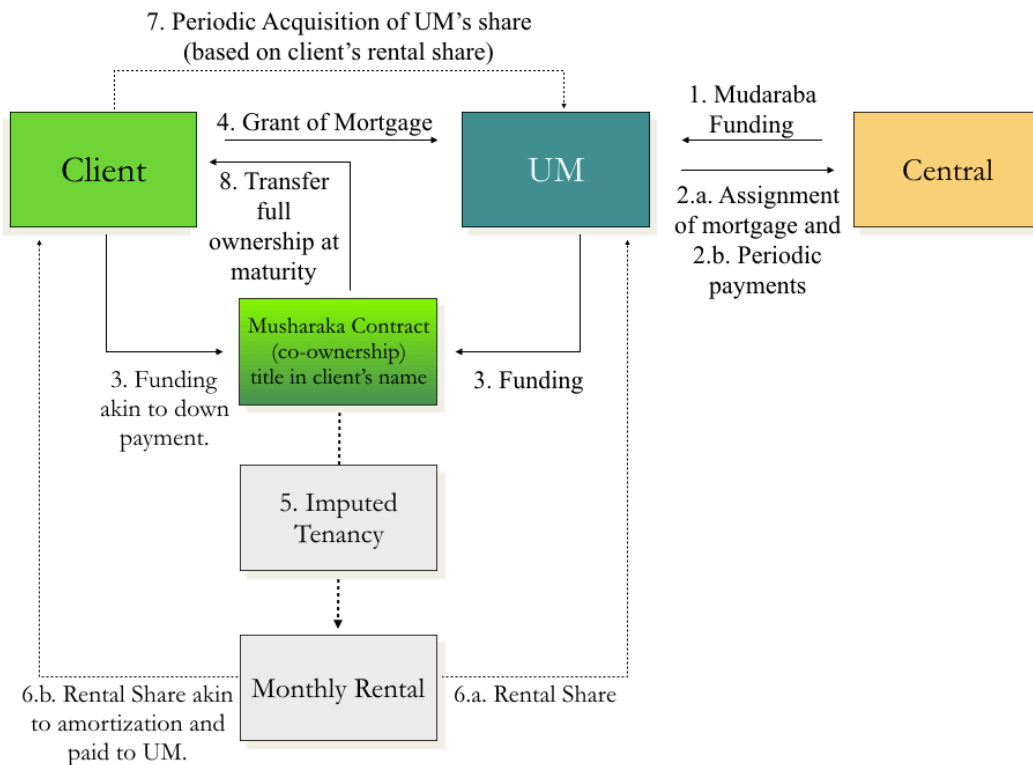


Figure 2: Declining Musharaka used by UM Financial<sup>13</sup>

Step 1: UM established a mudaraba funding line with Central.

Step 2: a. As and when transactions took place UM mortgaged underlying musharaka properties to Central.  
b. UM pledged periodic payments to Central and passed these on as collected.

Step 3: UM and the Client enter a co-ownership or musharaka contract to purchase the houses. UM used funds raised under the mudaraba. The Client's contribution was akin to a traditional down payment. Title is in the Client's name.

Step 4: The Client grants a mortgage to UM or at UM's direction to Central.

<sup>11</sup> This is the method used by Guidance Residential in the United States.

<sup>12</sup> This is the method used by banks like Bank Muscat Meethaq in the Sultanate of Oman.

<sup>13</sup> Derived from: CIFA Guide, p. 33. Adapted to UM documents.



Step 5: Under the musharaka agreement, the client enjoys the implied right to undisturbed occupancy as in a lease.

Step 6:       a. A portion of the payment is UM's share of the rent and is a form of profit.  
              b. A portion of the payment inures to the Client's benefit and is used to buy UM's stake in the property.  
              c. In a Musharakah, the parties may agree on any profit sharing ratio. Losses are always absorbed according to the capital ratio.<sup>14</sup>

Step 7: With each periodic payment, UM's share in the house diminishes and the Client's increases.

Step 8: Once the Client has completed the contractual payments, the property is deeded to the Client and the relevant mortgage is to be released.

The general rule of musharaka is that one partner cannot guarantee or provide collateral to the other. Because of the asymmetry favoring the consumer in a declining musharaka, the common practice is for the consumer to grant a mortgage over the property to the investor. This is a widely accepted practice.<sup>15</sup> An alternative perspective is that in declining musharaka, the purpose is to lease. AAOIFI allows collateral to be granted to assure fulfillment of the lessee's obligations.

## B.2. MUSHARAKA ACCOUNTING AND SHARIAH EXPENSES

The AAOIFI accounting standard does not have a dedicated standard for Musharaka Mutanaqisa. However, in the Accounting for Musharaka standard (FAS 4), there is a discussion on Musharaka Mutanaqisa accounting. Capital is recognized when disbursed, and measured at historical cost net of amount transferred to the customer.<sup>16</sup> Profit is recognized when distributed.<sup>17</sup> Since there is an element of lease embedded in the Musharaka, the profit to UM is pre-determined. AAOIFI Shariah Standard No 9 (Ijarah) allows taking collateral to secure rental payment from the lessee,<sup>18</sup> and includes a rental acceleration clause.<sup>19</sup> However, any rental acceleration is subject to final settlement, where the IFI may only claim rental that is due, and not future rental.<sup>20</sup> In this case, any payment of any kind made by a customer to UM should be treated as fulfillment of a contractual

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<sup>14</sup> Para 3/1 Shariah Standard No 12 (Musharaka), AAOIFI Shariah Standard 2015, Bahrain.

<sup>15</sup> This is the practice of Bank Muscat Meethaq which uses a similar product for home finance in Oman. I served as an industry expert on Bank Muscat Meethaq's Shariah Supervisory Board from 2013 through 2017. The practice is common with other Islamic banks for similar for different products. For instance, Abu Dhabi Islamic Bank which I have advised since 2008 uses a lease to own product, but allows the renter to hold title in trust for the Bank. The renter then grants a mortgage to the Bank.

<sup>16</sup> Para 2/3 of FAS 4 Accounting for Musharaka, AAOIFI Accounting Standard (2015).

<sup>17</sup> Para 2/4 of FAS 4 Accounting for Musharaka, AAOIFI Accounting Standard (2015).

<sup>18</sup> Para 6/1 Shariah Standard No 9 Ijarah and Ijarah Muntahia Bittamleek, AAOIFI (2015).

<sup>19</sup> Para 6/1 Shariah Standard No 9 Ijarah and Ijarah Muntahia Bittamleek, AAOIFI (2015).

<sup>20</sup> Para 6/5 of Ijarah Standard: "6/5 In case of foreclosure of the security provided by the lessee, the lessor may deduct from such amounts only what is due in respect of rental for previous periods, and not all rental instalments, including instalments which have not yet fallen due and in respect of periods for which the lessee has not had the benefit of the leased asset. The lessor may also deduct from the security all legitimate compensations necessitated by the lessee's breach of contract."

obligation. Prepayments, which are not covered by AAOIFI, would be subject to either agreement, law or custom. Based on my extensive experience in the North American Islamic home finance market, prepayments are by contract or custom used for early curtailment.<sup>21</sup>

On the one hand, the housing customers would correctly never expect that their payments would be used for other than acquiring and using the house.<sup>22</sup> On the other hand, once the payment is made to UM, we will examine whether or not paying expenses from the musharaka proceeds was a valid action by UM as mudarib for Central.

## C. MUDARABA AND CENTRAL'S FUNDING OF UM

### C.1. MUDARABA AND ITS INTERPRETATIONS

The mudaraba contract is a widely used form of placement made to IFIs. Within the Islamic banking industry, mudaraba might also be referred to as Profit Sharing Investment Account ("PSIA") or Unrestricted Investment Account ("URIA"). There are two forms of mudaraba: restricted and unrestricted. Most Islamic banks receive unrestricted mudaraba placements. This allows them to use the money as they please. Often PSIA and URIA deposits have features that make them very secure. But, most non-bank IFI receive restricted mudaraba as was the case with Central's placements with UM Financial.

We could diagram the UM case as follows:

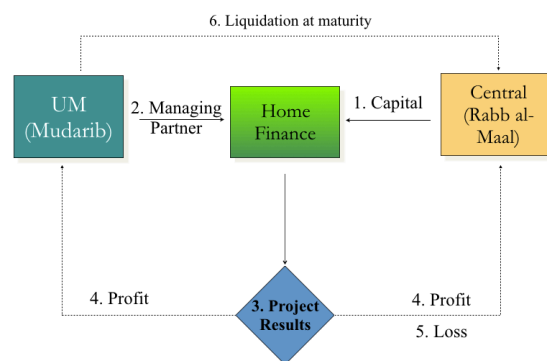


Figure 3: Restricted Mudaraba<sup>23</sup>

Based on Central's letter to UM date August 6, 2005, the mutual interpretation of the documents is as a mudaraba. Under this, Central agreed to:

Step 1. inject funds solely into UM's home finance business (making this a "restricted mudaraba"), allowing

<sup>21</sup> In addition to my work with Guidance Residential and University Bank, I briefly consulted for UM's competitor Salam Financial. I was also a member of the Islamic Cooperative Housing Corp. of Toronto from the mid 1980s until the mid 1990s.

<sup>22</sup> As a housing customer, I would expect UM and its business partners like Central to have responsibility for any Shariah or other operational expenses.

<sup>23</sup> Adapted from: Mokhtar, Shabnam, ed., The CIFA Guide to Islamic Banking & Finance (Kuala Lumpur: RedMoney, 2011).

Step 2. UM to be the transaction manager, servicing manager, and marketing agent. This meant that pursuant to a profit sharing ratio,

Step 4. Central and UM would share profits. In the event of a loss,

Step 5. Central would bear any losses unless UM was negligent or malfeasant in the operation of the business. At such time that Central and UM agreed,

Step 6. the mudaraba would terminate, the assets be liquidated for cash or transferred to Central as rab al mal.

Based on this understanding of a mudaraba operation and Central's letter of August 26, 2005, UM would logically believe that Central would behave as a silent partner as opposed to a secured lender.

Two important features of a mudaraba are the exposure of the financier to the risk of financial loss, and the nature of termination. Mudaraba documentation may be very simple or quite complex. As a rule, the documentation should state how profit sharing takes place and which expenses of the mudaraba are to be paid from the capital or proceeds of the business activity. This is not always the case. Since Shariah compliance is the foundation of UM's business, UM might easily conclude, unless it were stipulated, that Shariah expenses belonged to the mudaraba. In other words, UM would treat payments as a pass-through to Central, net of expected or relevant mudaraba expenses and UM's profit share.<sup>24</sup>

Termination in the classical period was straight forward. The objective of a mudaraba was met. The members divided the profits, liquidated the assets, and the financial partner received back his capital or what was left of it. Generally, the profit payment date was the liquidation date. In modern times, the mudaraba is engaged in a continuous business operation. UM's housing business would have monthly payments and would remit this as a partial return of capital and a payment of profit. AAOIFI and modern Islamic scholars term the monthly payments as "constructive liquidation". In short, constructive liquidation refers to distribution based on the valuation of the assets.<sup>25</sup> This allows the mudaraba to continue to operate. Some mudaraba contracts have a fixed term, some do not. The latter are deemed "continuous".

The features of the UM - Central relationship were documented in a business loan agreement, two commitment letters and two collateral agreements. The business loan and commitment letters align to a mudaraba. But, this requires interpretation. Just prior to the formation of UM, the former rector of Al Azhar University Dr. Mohamad Tantawi issued a fatwa

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<sup>24</sup> AAOIFI gives wide flexibility to profit sharing and allows profit sharing from gross revenue, operating revenue or EBITDA.

<sup>25</sup> Para 3/1/2/1 of AAOIFI Shariah Standard No 40 (Distribution of Profit in Mudarabah-Based Investment Accounts) defines constructive liquidation as follows "in addition to cash amounts, non-cash assets are valued by experts, along with valuation of all debts with regard to possibilities of collection and appropriate allocations for bad debts". In the Shariah basis section of the standard, AAOIFI highlights that constructive liquidation is acceptable in Shariah and has been approved by other bodies including the International Fiqh Academy.

which gives an interpretation that would allow one to view an agreement like the business loan agreement, CL 06 and CL 07 as forms of mudaraba.<sup>26</sup>

During the time of the UM - Central commitment letters, a number of mudaraba sukuk were issued. In many of them, the expected return uses the same formula that is used to calculate interest.<sup>27</sup>

The UM-Central relationship is termed a commitment letter and uses the terms borrower/lender. These are not prima facie disqualifications. In cases like UM and Central, when an IFI deals with a conventional FI, Arabic terminology like “mudaraba” may not be applied. The arrangement may use plain English terms such as “funding agreement”, “facility”, “credit agreement” or the agreement may not have a specific name. It may also use conventional finance terminology.<sup>28</sup> It is also an unfortunate reality that even experts and the press specializing in Islamic finance often label the counter-parties to such arrangements as “borrowers” and “lenders”.<sup>29</sup> As a result, determining whether or not a structure complies with the rules of mudaraba often requires interpretation. In the case of the UM-Central relationship, this interpretation is buttressed by the August 2005 letter.

In the typical mudaraba, there is a written contract. This may be very brief, as short as one paragraph. Or, it may be detailed an expansive reaching tens of pages. The most important characteristic of the contract is that it identifies the mudarib (the investment manager), the rab al mal (funding, investing party), and identifies a profit sharing ratio. The counter-signatures indicate an offer and an acceptance formalizing the contract for Shariah purposes. From time to time, the

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<sup>26</sup> El-Gamal, Mahmoud, The recent Azhar fatwa: Its logic, and historical background, 2003 accessed at <http://www.ruf.rice.edu/~elgamal/files/azharfatwa.pdf>. El-Gamal notes the range of discussion including opposition to the fatwa. It is likely, that if known to UM’s scholars, they would not have had the capacity to make a determination contrary to the fatwa.

<sup>27</sup> Many mudaraba sukuk were issued from 2005 - 2007. One of these was DP World Sukuk Ltd. which raised USD 1.5 billion for Dubai Ports World. In the offering memorandum dated June 27, 2007, it states both a profit sharing ratio and “...the Issuer will pay Periodic Distribution Amounts (as defined herein) to Certificateholders calculated on the basis of 6.25 per cent. per annum, on the outstanding principal amount of the Certificates.” See page 3 at <http://web.dpworld.com/wp-content/uploads/2014/01/DP-World-Sukuk-Limited.pdf>. In an independent unpublished study for the International Shariah Research Academy in 2011, Shabnam Mokhtar analyzed the structure of periodic payment clauses during this period and found the formulas like DP World to be widespread among sukuk based musharaka and mudaraba. Although the market changed in 2008 and this style ceased to be followed, it was endorsed by leading global scholars at the time of the UM - Central agreements.

<sup>28</sup> In many complex transactions, the use of Islamic and Arabic terminology is eschewed in favor of plain English. For instance, cross border agreements arranging investment into the United States are often either musharaka, mudaraba or investment wakala from a Shariah perspective. But, the documentation will state that they are “funding agreements”. This will create capacity for interpretation as debt for tax purposes. An example is the East Cameron Gas Company Sukuk Trust of 2006 which issued musharaka certificates from the Cayman Islands. The arrangement for funds flowing into the US was a “funding agreement” (p. 3 of the offering memorandum) which the fatwa clarified to be a musharaka (p. 127 of the offering memorandum). The transaction was later challenged in US bankruptcy court under which the bankrupt operator attempted to argue that the arrangement was an unsecured loan and not a form of securitization under musharaka. The courts ruled in favor of the investors: see Harvard Law School Islamic Finance Panel September 26, 2011 Islamic Finance: Bankruptcy, Financial Distress and Debt Restructuring: A Short Report.

<sup>29</sup> See <https://www.velaw.com/uploadedFiles/VESite/Resources/IslamicSyndicatedFinancingUnderdevelopedMethodShariaCompliantFinancing.pdf> Vinson & Elkins operates a major Islamic finance business from its Dubai office and still calls the counterparties borrower and lender. In a recent article about an Islamic finance platform in India, Salaam Gateway (a Thomson Reuters website focused on Islamic finance and economy) referred to the customers who buy cars on installments as “borrowers”. See [https://www.salaamgateway.com/en/story/indias\\_first\\_shariahcompliant\\_p2p\\_platform\\_targets\\_growing\\_vehicle\\_finance\\_market-SALAAM27082018063422/](https://www.salaamgateway.com/en/story/indias_first_shariahcompliant_p2p_platform_targets_growing_vehicle_finance_market-SALAAM27082018063422/).

parties operate normally under the mudaraba without having signed and are deemed to have contracted by their behavior. Taking the into account the August 2005 letter, these factors are apparent in the Commitment Letter. The profit sharing ratio, however, must be inferred against the formula and the anticipated yield from the underlying musharaka housing instruments.<sup>30</sup>

## C.2 MUDARABA EXPENSES

The primary position on collateralizing a mudaraba is that it may not guarantee the capital or return on capital. Collateral, however, may be used to assure adherence to the mudaraba terms and protect the investors in an asymmetrical relationship. The asymmetry is a result of the mudarib having full control of the business and holding assets in the mudarib's name. Collateral levels the playing field. Hence, it is not surprising that UM acceded to Central's request to enter into Master Mortgage Assignment Security Agreement of April 11, 2005 ("MMSA 05") and later the Master Mortgage Sale and Administration Agreement of November 2, 2006 ("MMSA 06"). Although MMSA 06 is entitled a sale agreement, it runs in tandem with the Commitment Letters dated February 15, 2006 ("CL 06") and June 13, 2007 ("CL 07"). The Commitment Letters are silent about the application of disbursed funds so long as they are used for the purpose "...to finance residential mortgages..." as stated in clause 1.(D) in CL 06 and "...to provide UMC with funds to finance residential mortgages..." in CL 07.

As highlighted in the Musharaka section, in Shariah, parties to a mudaraba have flexibility in agreeing to any profit sharing ratio. AAOIFI's Shariah Standard No 40 (Distribution of Profit in Mudarabah-Based Investment Accounts) reiterates that "the method of profit distribution should be well known so that no room is left for uncertainty and dispute." (para 4/1). In this case, since there was no detailed agreement on the matter, I will highlight a few practices in the market.

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<sup>30</sup> Para 5/2 AAOIFI Shariah Standard No 40: 5/2 There is no prohibition against setting an expected rate of return which is not considered to be binding if not achieved, even if it is reached through a feasibility study. However, final distribution of profits should be based on realization of profit after actual or constructive liquidation, rather than on such expected rate of return.

## 1. AAOIFI's discussion of expenses in the context of liquidation of the investment account.

Para 3/2 of AAOIFI Standard No 40, highlights the following:

Realization of profit in investment accounts does not take place before the following steps:

3/1/2/1 Liquidation of Mudarabah assets, which can be either actual liquidation where all the assets are converted into cash and all debts are collected, or it can be constructive liquidation where, in addition to cash amounts, noncash assets are valued by experts, along with valuation of all debts with regard to possibilities of collection and appropriate allocations for bad debts.

3/1/2/2 Covering of the following expenses:

- (a) Expenses relating to utilization of the balances of the investment accounts by charging each operation with the **direct expenses** incurred in its execution.
- (b) The share of the balances of the investment accounts from **shared expenses**, excluding expenses relating to the institution's own activities.
- (c) Investment accounts **should also not be charged with the expenses of the tasks which have to be performed by the Mudarib**. Such expenses include the expenses of the investment departments and the bodies which endorse their decisions as well as the expenses of the follow-up and accounting departments. It is also permissible to specify a ceiling for the expenses above which all the expenses are to be borne by the Mudarib

3/1/2/3 Deduction of the **allocations and reserves** relating to the investment, from investment income so as to arrive at distributable profit. In this case, allocations for bad debts and reserve for rate of returns have to be deducted from gross profit, whereas reserve for investment risks has to be deducted after deduction of the Mudarib's share.

In summary, AAOIFI Shariah Standard No 40 allows deduction of direct expenses and shared expenses, but not indirect expenses that is the responsibility of the Mudarib. This discussion is general, and the standard discusses this in the context of unrestricted investment account, where the investor is participating in the general pool of the IFI. In unrestricted mudaraba, the Mudarib (i.e. the IFI) is managing many activities and portfolio.

## 2. Practices of Islamic banks in the market

The Islamic banks usually have an internal profit determination method for distribution to their investment account holders (i.e. their depositors). These may differ from bank to bank, unless the regulators specifies certain guidelines. For example:

- a. Kuwait Finance House Bahrain does not have a note to account on how the line item "Return on equity of investment account holders before Group's share as mudarib" in the income statement was derived.<sup>31</sup> Note 21 discusses the changes in the profit sharing ratio, and the amount of the investment account holder deposit, but not the details of the profit calculation.
- b. Dubai Islamic Bank (UAE) has a note to account on depositors and Sukukholders share of profit<sup>32</sup> however the note focuses on overall changes in the profit paid to the investment accountholders instead of how the profit was calculated.

<sup>31</sup> Refer page 32 [https://www.kfh.bh/bahrain/en/reports/bahrain/Annual-Reports/Annual-Report-2017/document\\_en/KFH%20Annual%20Report%202017.pdf.pdf](https://www.kfh.bh/bahrain/en/reports/bahrain/Annual-Reports/Annual-Report-2017/document_en/KFH%20Annual%20Report%202017.pdf.pdf)

<sup>32</sup> Refer page 11 for income statement [https://www.dib.ae/docs/default-source/financial-reports/2017\\_annualreport\\_en.pdf?sfvrsn=4069ce97\\_24](https://www.dib.ae/docs/default-source/financial-reports/2017_annualreport_en.pdf?sfvrsn=4069ce97_24)

- c. Meezan Islamic Bank (Pakistan) interestingly shed some light on the profit calculation for the investment accountholders in the annex to the Directors Report.<sup>33</sup>

AAOIFI Accounting Standard, FAS 1 (General Presentation and Disclosure in the Financial Statements of Islamic Banks and Financial Institutions) shows a sample statement for the restricted investment account. Please refer to Figure 4. In this statement, on top of the management fee, the administrative expenses are also deducted.

Since expenses are not specified, UM would interpret that the provision of Islamic mortgages would require fatwa and Shariah audit. The market generally requires a party independent of the business to review products. Likewise, the same or other independent party should periodically review the business for Shariah compliance. (Please see Section C below.) As a result, UM would likely believe that financing *Shariah compliant* residential mortgages would allow UM to use mudaraba funds to establish and maintain evidence of Shariah compliance.

This view would have been supported in UM's view by the treatment of expenses in the collateral agreements. In MMSA 06, expenses are covered in Article 8 Servicing & Administration of the Mortgages section 8.2(q) "The Assignor may deduct, at its option, expenses and fees authorized pursuant to the Agreement and ...". This follows an identical clause in Article 6.2(vii) MMSA 05. As the mudaraba did not, in UM's view, allow much option, the Shariah expenses, except for meeting fees, were deferred until Central forced the liquidation of the mudaraba. Intriguingly, CL 06 and CL 07 appear to be restrictive on UM paying expenses whereas MMSA 05 and MMSA 06 give UM more freedom.

Finally, UM would account for the home finance musharakas on their own internal balance sheet, tracking any pre-payments or lump sum payments from homeowners in settlement of their total obligation. As the mudarib in the relationship with Central, such payments form part of the mudaraba project assets and may be used to pay eligible expenses under the mudaraba.

### C.3. MUDARABA TERMINATION

A mudaraba termination is stipulated in the agreement as in CL 06 and CL 07 for each drawing giving each one a maturity of one to five years. On the assumption that the underlying investments have maturities of twenty five years, UM would reasonably assume that the drawings would be continuously renewed. If not, then instead of liquidation, the mudaraba should have been terminated.

As noted in B.1., a termination would mean liquidation of the underlying assets. In the case of UM and Central, these would have been the housing musharakas. Since Central agreed that these assets could have a term of twenty five years, it would be impractical for Central demand cash or a sale of the underlying houses. Indeed, Central took a charge on the housing assets. Therefore, the first step in termination would have been an accounting of the financial position of UM, whether

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<sup>33</sup> Refer page 84: <https://www.meezanbank.com/wp-content/themes/mbi/downloads/annualreport2017.pdf>

or not there were legitimate mudaraba expenses like the Shariah expenses, and then a determination of final profit or loss.<sup>34</sup>

The final accounting, taking into account settlement of outstanding expenses, should have had two clear outcomes:

a. The status of payments to UM as mudarib/obligor/servicing administrator from the housing musharakas. All payments into UM as servicing administrator should have then shown customers as either up to date or in arrears. But, in all cases, settled through their last payment of any type including prepayments.<sup>35</sup>

b. Once the cash was in from the housing musharakas, the mudaraba would allow UM to settle related expenses. As noted above, UM would have understood these to include the long unattended Shariah scholars. In this case, the mudaraba might have terminated with a loss to the rab al mal being Central. .

AAOIFI does not contemplate that the rab al mal is a traditional creditor. In other words, the rab al mal has the right to terminate and seek restitution from the mudarib in only two cases: negligence and malfeasance.

a. Negligence would mean that UM failed to adhere to Central's underwriting standards set out in the various agreements; UM failed to keep proper books and records; UM failed to make timely collections; and UM failed to convey contractually required payments to Central.

i. Although the housing market deteriorated, there does not appear to be any assertion that UM failed to observe Central's underwriting standards.

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<sup>34</sup> AAOIFI Standard No 40 discusses about liquidation, whether actual or constructive, should take into account expenses.

### 3/1/2 Actual and constructive liquidation

Realization of profit in investment accounts does not take place before the following steps:

3/1/2/1 Liquidation of Mudarabah assets, which can be either actual liquidation where all the assets are converted into cash and all debts are collected, or it can be constructive liquidation where, in addition to cash amounts, non cash assets are valued by experts, along with valuation of all debts with regard to possibilities of collection and appropriate allocations for bad debts.

3/1/2/2 Covering of the following expenses:

Expenses relating to utilization of the balances of the investment accounts by charging each operation with the direct expenses incurred in its execution.

The share of the balances of the investment accounts from shared expenses, excluding expenses relating to the institution's own activities.

Investment accounts should also not be charged with the expenses of the tasks which have to be performed by the Mudarib. Such expenses include the expenses of the investment departments and the bodies which endorse their decisions as well as the expenses of the follow-up and accounting departments. It is also permissible to specify a ceiling for the expenses above which all the expenses are to be borne by the Mudarib

3/1/2/3 Deduction of the allocations and reserves relating to the investment, from investment income so as to arrive at distributable profit. In this case, allocations for bad debts and reserve for rate of returns have to be deducted from gross profit, whereas reserve for investment risks has to be deducted after deduction of the Mudarib's share.

<sup>35</sup> In the Guidance Residential and University Bank cases in the US, home finance prepayments are applied to the early curtailment, shortening the term of the transaction.



ii. Although Central never availed itself of its rights to audit UM's books and records, the supporting documentation in this case is that UM maintained records of both the housing musharakas and UM's own business.<sup>36</sup>

iii. UM appears not only to have made timely collections, but even forwarded payments on behalf of underlying musharakas which were not current.<sup>37</sup>

iv. UM under the MMSA 06 and MMSA 07 appears only to have an obligation to process the current portion of any payment to Central. This appears to allow UM to hold on behalf of the mudaraba any prepayments or lump sum payments beyond the anticipated monthly servicing charge. Although it appears that Central, during the course of the receivership, interpreted these same documents as creating an obligation to pass-through *all* funds collected by UM under the musharaka contracts, such a view does not necessarily comport with the mudarib's decision making role in a mudaraba project. The schism appears to arise from Central's point of view as being in a traditional lender/borrower relationship as contrasted with UM's point of view of engaging in an Islamic mudaraba with the purpose to finance homes with declining musharaka contracts.<sup>38</sup>

b. Malfeasance would mean that UM sought to defraud Central or the underlying homebuyers. On the one hand, this is the essence of the case. On the other hand, the expansion of Central's funding to UM through 2007 indicates that UM was honorably generating new housing assets, processing payments, and even accepting a downward adjustment in its share of transaction profits. During the ordinary course of operations, UM appears to do no more or no less than was required under the various agreements.

Any lack of transparency in UM's dealings with Central would have been easily rectified had Central availed itself of its right to audit UM at any time. Moreover, had Central performed its audits, it could have easily addressed four fundamental questions central to this case:

- i. Central would have been able to determine if UM had suitable operational controls.
- ii. Central would have determined if UM maintained correct books and records.
- iii. Central would have been in a position to identify malfeasance of any kind.
- iv. Central and UM would have been able to validate what are acceptable expenses.

Although the termination of a mudaraba might result in either the rab al mal or the mudarib becoming insolvent, the means of termination is not to force the mudarib into insolvency. Nonetheless, the successor to Central does not seek to terminate in a customary manner.<sup>39</sup> Nor does

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<sup>36</sup> Unfortunately, the Shariah board fees do not appear to have been accrued. This is because of an apparent verbal agreement to defer them.

<sup>37</sup> This would mean that UM's operational controls were poor, even if the books and records properly maintained.

<sup>38</sup> This means that the underlying customer's musharaka account is partially discharged. But, the mudaraba, subject to final accounting may or may not have an obligation to pay the collected prepayments on to Central.

<sup>39</sup> This would have meant that the relationship would be terminated and Central paid in kind with a direct transfer of the musharaka units. UM would have bowed out. The capital risk associated with the transferred musharaka transactions would have solely belonged to Central.

it seek arbitration to address any concerns relating to how UM has operated the business. Instead, Central forced UM into receivership. The implications of this unorthodox termination included:

- i. UM was unable to abide by its obligations to its SSB, which had long been unpaid.
- ii. UM was unable to assure customers that their contracts would continue to be treated in a manner compliant with Shariah.
- iii. This, in turn, would cause harm to both the reputations of UM and Omar Kalair both within and without the Islamic community.

Forcing UM into insolvency proceedings also contradicted the assertions of mudaraba made in Central's letter of August 26, 2005.

## D. SHARIAH GOVERNANCE

### D.1. BACKGROUND ON SHARIAH GOVERNANCE

The first modern Islamic banks and financial institutions were launched in the 1960s and 1970s. The pioneering institutions<sup>40</sup> faced two clear problems. The first was determining the methods that would comply with Shariah and applicable regulations. The second was public acceptance. Until today, these challenges affect IFIs in many countries.

Although the formation of AAOIFI in 1992 promised to standardize Islamic financial instruments, even AAOIFI standards allow for latitude in interpreting how an instrument may be structured. Moreover, AAOIFI may not align to common practices, accounting standards or regulations in many countries.<sup>41</sup> As a result, the Shariah advisor or supervisor may have considerable freedom to instruct on what does or does not comply with Shariah.

The management of an IFI are typically financial experts and wont to rely upon the opinion of their Shariah Board in the structuring of instruments. This creates an interesting tension. The Shariah scholar does not wish to manage the business. But, his or her view on certain matters may cause managers to pursue a particular course. This leads to IFIs having their own personalities which are framed by a blend of management's style and the Shariah perspective of a lead scholar.<sup>42</sup>

### D.2. SHARIAH GOVERNANCE.

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<sup>40</sup> Tabung Haji (Malaysia) 1962, Dubai Islamic Bank (UAE) 1975, Kuwait Finance House (Kuwait), 1977, Albaraka Banking Group (Bahrain) 1979, and Ibdar Bank (formerly Faysal Islamic Bank and Shamil Bank), 1982.

<sup>41</sup> Malaysia, one of the most advanced Islamic financial service markets, does not apply AAOIFI and has substantive differences of view for certain instruments. This is notable in leasing.

<sup>42</sup> For instance, I served for five years as a technical expert on the Shariah Board of Bank Muscat Meethaq. During this time, the Bank conformed to the style of the chairman of the Shariah Board Dr. Ali Al-Qaradaghi (a Qatari national of Iraqi Kurdish origin). This meant that the bank often took views that were distinct from its competitors. For instance, the financing of Muscat Grand Mall was approved by many leading scholars and all Omani banks except Bank Muscat participated. The reason was relating to a differing opinion about when and how a lease may be the object of investment. In this very technical matter, Sh. Ali's view caused the largest bank in Oman to refrain from what was at the time the most prestigious Islamic financing in Oman.

There are three layers of Shariah governance. The first is the role of a Shariah Board. This is akin to an independent committee of the Board of Directors. The members are not drawn from management.<sup>43</sup> The members have specific authority to perform certain duties, but have no managerial role. The members may collectively reject transactions, activities, behaviors, and the like for failing to comply with Shariah and instruct management to cease. The members collectively oversee the distribution of certain monies collected for infractions against Shariah. UM appears to have instituted this layer of Shariah governance.

The second layer is Shariah audit. This might be performed by the Shariah board as was the case with UM.<sup>44</sup> But, is now increasingly performed by an independent third party. This is a review of business operations and transactions for compliance with the Shariah standards and rulings of the Shariah board, or any national Shariah body as would be the case in countries like Oman, Pakistan, and Malaysia. UM and its SSB claim to have instituted this level of Shariah governance.

The third layer is an internal Shariah function. This is rare in smaller companies like UM. In larger institutions like banks, the internal Shariah function may assist management in its liaisons with the Shariah board, facilitate product development, and perform internal Shariah reviews. I have not been given evidence that UM had an internal person or team charged separately from management with Shariah duties.

From time to time, some scholarly groups seek to exert influence directly or indirectly on the industry. For instance, the Association of Muslim Jurists of America (“AMJA” see <http://www.amjaonline.org/en/about-amja>) takes the view that all Islamic finance is incorrectly executed unless they or their associates have opined favorably. Their lead scholar is an Egyptian Sh. Salah Asawy who wields considerable influence within Arabian and Egyptian communities who style themselves as “salafi”. Different institutions take different views on AMJA’s criticisms. For instance, Guidance Residential has apparently made product adjustments to meet their position. But, University Bank has taken the view that bona fide scholars have approved their products and has gone ahead without AMJA's endorsement. What I cannot answer is whether or not the UM scholars were reaching out to Sh. Asway’s acolytes. If so, it would have been more straight forward to approach Sh. Asway who lives much of the year in New Jersey.

This leads to the question of whether or not UM and its Shariah board followed best practices. Structurally, UM put in place the basic required arrangement. UM appeared to arrange periodic Shariah audits by its Shariah board. To this end, UM appears to have made a sincere effort to follow its Shariah governance mandate. Nonetheless, one might have expected UM to attempt to

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<sup>43</sup> This is not the case in Malaysia which as its own approach to Shariah governance.

<sup>44</sup> The AAOIFI Governance Standard No 2 (Shariah Review) contemplates that the Shariah Supervisory Board conducts the Shariah review.

Para 13: The SSB shall document their conclusions and prepare their report to the shareholders based on the work done and discussions held.

Para 14: The SSB shall implement adequate quality control policies and procedures to ensure that the review is conducted in accordance with this standard.

AAOIFI Governance Standard No 3 (Internal Shariah Review) discusses an independent division/department/internal audit of the IFI conducting an internal Shariah review, which is different from the Shariah review in Governance Standard No 2.

be clear on the terms of engagement, including compensation, with the Shariah board. To this end, UM did not follow best practice as it did not contract in writing with the Shariah board members either collectively or individually.<sup>45</sup>

### D.3. UM FATWAS

There is a contemporary argument that fatwas should be detailed documents explaining how and why the signatories came to their conclusion. Historically, this is not the case. Fatwas may be quite simple and state nothing more than one or more scholars have reviewed something and approve or reject it. In the financial industry, fatwas often list the documents reviewed, perhaps the required procedures, and any specific ongoing requirements for compliance. In form, the four fatwas<sup>46</sup> that UM received align with the third form and align the procedures of the products. They do not, however, appear to be deeply considered as I will explain below.

In my experience working as a bank manager or IFI manager, I can attest that a fatwa may represent years of interrogatory research with one or more scholars. Even the Guidance Residential diminishing musharaka required nearly one year of work with Sh. Yusuf DeLorenzo being deeply involved in brainstorming with management and counsel, and then several months of correspondence with his peers on the Shariah board. This is not to say that this was Sh. DeLorenzo's sole activity. Rather, his devotion to the project could easily have been in excess of 100 hours. His peers who joined in the final review might have spent less than eight hours each.<sup>47</sup>

Although the structure and consideration that went into the UM fatawa were similar to those at Guidance, two issues stand out:

a. The degree to which the UM Shariah board solicited the insights of international scholars is not shown. There is no statement or later revision to say anything to the effect of "We have consulted with our peers and validated our views" with reference to the Egyptian scholars.

b. The capability of the Shariah Board is undermined by referencing the very elementary book *Islamic Finance* written by Sh. M. Taqi Usmani.<sup>48</sup> On the one hand, the book is designed to help consumers understand Islamic Finance. On the other hand, the reference appears to be a ham handed attempt to drop Sh. Usmani's name.

### D.4. THE ENGAGEMENT AND COMPENSATION OF SHARIAH BOARDS

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<sup>45</sup> For instance, my contracts with Bank Muscat Meethaq were individual. But, my company SHAPE contracts on behalf of scholars who will assist a client. In the second case, companies like Hartree Partners contract with SHAPE and we provide the advice through scholars in our employ.

<sup>46</sup> January 30, 2005 relating to the mudaraba with Central, July 4, 2005 relating to mudarabas received from FIs, July 4, 2005 relating to the diminishing musharaka product, and June 1, 2006 relating to the mudaraba products offered by the McMaster credit union.

<sup>47</sup> The Guidance project is sponsored by the billionaire Hammour family (Canadian and French citizens of Syrian origin. In the Guidance case, the scholars were not asked to make any concessions on compensation and their compensation was similar to the amounts to the example given below of Bank Muscat Meethaq. The Guidance fatawa are posted on their website <https://www.guidanceresidential.com/islamic-finance-scholars-ruling-fatwa>.

<sup>48</sup> Usmani, M. Taqi, *Islamic Finance* (Karachi: Idarutul Ma'arif, 1998). This was later re-issued by Kluwer. I do not know to which edition the fatwas refer.

#### D.4.a. ENGAGEMENT OF SHARIAH BOARDS

When IFIs engage a Shariah scholar, the shareholders and management often take two key considerations into account. The first is with which scholars can they work. The second is the public perception of these scholars.

For instance, when I worked on the establishment of Guidance Residential, I recommended Sh. Nizam Yaquby of Bahrain and Sh. Yusuf DeLorenzo of the US. I had worked extensively with Sh. Nizam since the early 1980s and was familiar with Sh. DeLorenzo. I knew that we could work together well. My business partners and I agreed to approach Sh. M. Taqi Usmani of Pakistan<sup>49</sup> for two reasons. First, I had worked on projects with him since the early 1990s. Second, my partners felt that his role would attract customers of South Asian descent who form the majority of the target market in the US. My partners also sought to add even more prestige to the board, and we also engaged a number of well known global scholars.

Our mix was meant to cover a key target market by offering a fatwa from a trusted authority, Sh. Usmani, and to address the Arabian market with Sh. Nizam and the Saudi Arabian Dr. Mohamed Elgari.

On the one hand, UM appears to have believed that the Canadian scholars of South Asian heritage were sufficient to assuage the Shariah concerns of most Canadian Muslim customers. On the other hand, with the large concentration of Canadians of Arabian background, they were encouraged to solicit the support of Egyptian scholars. This is not unusual per se. Most Shariah boards in Muslim minority countries are meant to balance these community interests. It is not unusual for each ethnic, even each community by national origin to prefer the opinions of people from their group.

Since an arrangement was recommended to UM to secure the support of Egyptian scholars, I expect that management would have welcomed this as a means to expand their market. What is highly unusual is that the Egyptian scholars are not named. Moreover, I have not been presented with any evidence of any fatwa issued by them. I have not received proof of the dialogue between UM's scholars and the Egyptians.<sup>50</sup> However, as a manager, Mr. Kalair would have taken at face value any assertion of research by his SSB as managers at IFIs are reliant on their opinions. Mr. Kalair was not in a position to question or verify the involvement of Egyptian scholars with his SSB. Indeed, AAOIFI standards require the preservation of separation and independence of SSBs from the IFI. The IFI (ie: Mr. Kalair in this case) is reliant on representations of its SSB upon which it then must act to maintain Shariah compliance.

#### D.4.b. COMPENSATION OF SHARIAH BOARDS

A typical Shariah board should have no fewer than three members. Some boards have up to five members including religious scholars as well as legal or business experts. The UM board of

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<sup>49</sup> He was also the long serving chairman of the AAOIFI Shariah Board

<sup>50</sup> In the November 10, 2011 Superior Court Examination of Mr. Yusuf Punchbaya, question 73 seems to indicate that Mr. Punchbaya sought to make queries with the unnamed Egyptian scholars through an intermediary.

five local scholars is not unusual. The claim that as many as twenty unnamed Egyptian scholars were consulted by the Shariah board is exceptional and unusual.<sup>51</sup>

The compensation for Shariah boards varies widely. If one takes the example of Bank Muscat Meethaq into consideration, two of the leading global scholars Sh. Ali Al Qaradaghi and Sh. Essam Ishaq were, during my time, joined on the board by a well-respected Omani scholar, an Omani industry expert with IMF experience and myself. The annual bill for the full Shariah board ranged between USD 150,000 and USD 210,000.<sup>52</sup> Islamic banks and IFI in Africa, start-ups in the US and Europe often only pay a limited compensation to Shariah board members. For instance, the annual compensation for the Shariah Board (called the Advisory Committee of Experts) members of Sterling Bank Plc (Nigeria) of which I am the chairman is between USD 8,000 - USD 12,000 p.a. per scholar. When I was involved, Guidance Residential paid within the Bank Muscat Meethaq range. When I established SHAPE Financial Corp.<sup>53</sup> we paid our scholars, despite their fame, USD 5,000 p.a.<sup>54</sup>

The basis of compensation is availability. The scholar is expected to be available to answer questions, provide insights, review documents, assist in the preparation to instruct counsel, and provide an annual opinion on how Shariah compliance is implemented at an IFI. As a result, the compensation tends to be a fixed annual amount along with payment for meetings and related travel.

As a result, scholars are not asked to submit hourly rate invoices or to account for their hours. Indeed, I have warned some institutions with which I have been involved that when they don't use the service, they are losing the value of the fee. Some IFI don't mind as they see the expense as blending governance, product development and marketing.

A number of scholars are keen to promote the growth of the Islamic finance industry. As a result, they may agree to defer their compensation or reduce it. When SHAPE faced some economic challenges in 2004, our scholars agreed to defer their compensation until the company righted itself. Therefore, the arrangement between UM and its scholars to defer payment until UM was financially sound is not peculiar.

Most scholars do not send invoices. In one discussion with a leading scholar, he exclaimed that he did not have any idea of which institution owed him how much.<sup>55</sup> Unlike the UM case, they are frequently engaged by large IFI and have clear contracts. Given the concern that the board had performed a substantial amount of work from 2004 until 2011, the scholars would have been worried that they would never be compensated. Whether advised by counsel or as a prudent measure to have a claim on UM, they submitted their invoice.

The Multicultural Consultancy invoice may be analyzed from the following perspectives:

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<sup>51</sup>The industry norm is for scholars to be named and fatwas to be distributed.

<sup>52</sup> The actual amounts were not disclosed. This is based on payments between USD 28,000 - 70,000 p.a. per member.

<sup>53</sup> SHAPE began business as Samad American Holding Corp.

<sup>54</sup> I will discuss below an alternative arrangement that we later made with our scholars.

<sup>55</sup> Private conversation with Sh. Nizam Yaquby in 2005.

i. As noted before, the scholars appear to have wished to stake a claim for their work lest UM and affiliated companies be liquidated.

ii. The volumes invoiced are high given the relative obscurity of the Canadian scholars and the total obscurity of the Egyptian scholars. Nonetheless, management appears to have recognized the substantial claim of the scholars. Given the straightened circumstances at UM, one would have imagined a much lower invoice. Having said this, in many South Asian Muslim communities, there is great deference to a mufti and Mr. Kalair may have found it difficult to negotiate with such a senior member of his community. Moreover, because the industry has not imposed tracking on scholars and in the absence of a clear contract, it would have been very difficult for Mr. Kalair to challenge the basis of the invoice.

iii. I am not aware of any scholars or Shariah boards being compensated in other than the currency of the country in which they operate or USD. Payment in precious metals would not be permitted by a bank. But, a non-bank IFI might not have any reason to query the request. On the other side of the equation, the Arab Spring was highly disruptive to countries like Egypt and many citizens sought to protect their wealth by converting to USD or precious metals like gold. Even the Canadian dollar with its weakness compared to the USD would not be attractive to payees in Egypt.<sup>56</sup>

iv. Given UM's activities beyond home finance, I find it difficult to justify that the full Shariah invoice is allocable to home finance or the mudaraba with Central. As the main business, I would expect that the bulk is related thereto.

## E. CONCLUSIONS

- a. It is clear that best practices were not followed by the various parties to the UM process including Central.
- b. UM relied on Central's August 26, 2005 letter to interpret the relationship as an operational mudaraba.
- c. As a mudaraba, Central should have honored payments made to UM and embraced the operational loss or the mudaraba or otherwise challenged the expenses.
- d. UM, given its size, was not unreasonable to believe that Shariah expenses would be covered by the mudaraba.
- e. Market practice allows for the mudaraba, in this case prepayments and lump sum payments collected from homeowners under the musharakas were legitimately used to offset the accrued expenses of the mudaraba venture. This included payment of legal fees and the consultancy fees of the SSB.
- f. The use of precious metals to effect SSB payment, while unusual and not in accordance with industry standard, is not prohibited in Sharia law and may be explicable in the context of a Canadian IFI making payments to international Egyptian scholars around the time of the Arab Spring.
- g. UM's management may have been overly deferential to its scholars, but acted in a way that is understandable in the industry and cultural context.

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<sup>56</sup> For a contemporaneous report on citizens from Arab Spring countries seeking gold, see: <https://www.zerohedge.com/news/turkey-exports-%E2%80%9Cmassive-quantities-gold%E2%80%9D-iran-and-arab-spring-nations>. The Financial Times also reported on the role that gold played in Libya during the 2011 revolution: <http://www.ft.com/intl/cms/s/0/17f7346c-7fda-11e0-b018-00144feabdc0.html#axzz1MiPfQuIA>.

## Appendix 1: Common Terms

fatwa - an interpretation of religious rules, a ruling on Shariah.

Gharar - a lack of clarity or the presence of ambiguity that renders a contract invalid or leads to disputes.

hadith - a saying attributed to the Prophet Muhammad.

Mudaraba - a form of managed partnership or financing in which the beneficiary of financing uses the funds. Profits are shared according to a profit sharing ratio. Losses, other than negligence or malfeasance, are born by the financier.

Mudarib - the manager of a mudaraba.

Mufti - a person who is eligible by dint of education or experience to issue a fatwa or religious interpretation.

Murabaha - a deferred payment sale in which the cost of goods and profit thereon is disclosed to the buyer. The common forms are goods which is used to supply consumer and commercial goods; agency murabaha which uses an agent to facilitate one or more steps of the transaction; and murabaha commodity in which a commodity is traded to facilitate a financing or trading activity.

Musharaka - a partnership mixing capital between two parties and sharing profits according to a profit sharing ratio. Losses are shared by the capital contributed. Some musharaka invest jointly in property in order to lease it to one of the members. These may be called variously “declining” or “diminishing” or in Arabic “mutanaqisa”.

Profit Sharing Investment Accounts and Unrestricted Investment Accounts are investment accounts in which an Islamic bank manages the customer’s funds on the bank’s balance sheet.

Rab al Mal - the investor or financier in a mudaraba.

Riba - interest or a gain in certain types of currency transactions.

Scholar - a person trained in Islamic rules and practices.

Shariah - the rules of Islamic jurisprudence.

Sukuk - an Islamic capital market instrument akin to a bond.



## Appendix 2: Abbreviations

AAOIFI - Accounting & Auditing Organization for Islamic Financial Institutions

IFI - Islamic Financial Institution

FI - Financial Institution

SSB - Shariah Supervisory Board

### Appendix 3: STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

This Report has been prepared pursuant to the following general assumptions and general limiting conditions:

1. In preparing this Report, I relied on information relating to the disputed matters or controversies that are the subject of this Report (“the Dispute”) that was provided to me. However, I assume no liability for any inaccuracies of such sources. I assume no responsibility for the legal description or other legal matters herein described.
2. This Report should not be construed as an opinion rendered in connection with an audit, examination, review, compilation, or other engagement governed by any accounting body.
3. This Report should not be construed as an opinion or finding rendered in conjunction with a Shariah audit, examination, review, compilation, or other engagement governed by AAOIFI Standards including Auditing Standard for Islamic Financial Institutions No. 4.
4. Prior to the time I testify at deposition or trial, I plan to review additional documents that are provided to me. Therefore, the opinions expressed herein may change as a result of my review of additional documents. Accordingly, I reserve the right to supplement, update, or otherwise modify this Report at a later date.
5. This Report is only applicable for the stated purposes of this engagement; therefore, it may not be used or relied on by any person other than as necessary for purposes of the resolution of the Dispute. It is understood that this Report will be filed in the public record of the Dispute proceedings and will be available to the public and to the parties to the Dispute, their legal counsel, other consultants to legal counsel in this matter, and any court or other tribunal in which the Dispute is then pending. Possession of this Report, or a copy thereof, does not carry with it the right of publication except by the parties to this Dispute or the court as necessary to the disposition of the Dispute.

## EDUCATION

Master of Arts in Law and Diplomacy - 1981, **FLETCHER SCHOOL OF LAW & DIPLOMACY**, (Tufts & Harvard Universities) Medford, MA.

Areas of Specialization: Development Economics & International Commerce.

Thesis: The Political Economy of Egyptian Food Subsidies. Research conducted in Cairo using **original Arabic sources**.

Bachelor of Arts with **Honors** - 1979, **UNIVERSITY OF CHICAGO**.

Major: **Near Eastern Language & Civilizations** with a specialization in **Arabic & Islamic Studies**

## EXPERIENCE

Adjunct Professor, DePaul University (Chicago) & IE Business School (Madrid): Teach specialist Islamic finance courses as part of DePaul's Master of Finance delivered at the Bahrain Institute of Banking and Finance and as part of IE's Master in Leadership Development & Islamic Finance.

Technical Member of Shariah Supervisory Board of Bank Muscat Meethaq (Oman) 2013 - 2017 and Chairman of the Advisory Committee of Experts of Sterling Bank PLC (Nigeria) since 2013. Shariah consultant to University Bank (Michigan) since 2006.

Group CEO, **SHAPE for Economic Consulting, W.L.L.**, Kuwait and **SHAPE® Financial Corp.**, Virginia and Director, **SHAPE Knowledge Services (M), Sdn. Bhd.** Consultants and trainers to the financial services industry on matters relating to Islamic banking, finance and capital markets. January 2002 to present.

- < Consultant to Islamic and conventional institutions on the structuring of products, delivery of Islamic products, and *Sharia'a* compliance.
- < University Bank of Ann Arbor, Michigan. Manage long-term *Sharia'a* product licenses, including product development and supervision contract.
  - License product development including *ijara* and *Murabaha* mortgage alternative products, *mudaraba* deposits, and *Sharia'a* audit and approval. Lead *Sharia'a* processes and audits. Assist bank to secure new regulatory approvals and expand product utilities. Products are based on FDIC and OCC regulatory approvals secured by SHAPE® and SHAPE® principals. 2003 - present
  - Set up and staff net branch to allow bank to compete effectively in local market for Islamic products (three competitors) in its sub-market within three months of offering Islamic products. 2003 – 2005.
- < Bank Muscat Meethaq, Oman. Act as consultant for launch of Islamic window. Prepare strategic plan, Asset and Liability Management policy, and work on product line-up. **Member** of *Sharia'a* board from 2013 - 2017. 2011 – Present.

- < Sterling Bank, Plc, Nigeria. Act as consultant for launch of Islamic window. Prepare strategic plan, assist with new product development and review branding. **Member** since 2013 of the *Sharia'a* board. 2011 – Present.
- < Abu Dhabi Islamic Bank, United Arab Emirates. Develop product manuals for core Islamic finance products inclusive of *Sharia'a* foundations and deliver related training. Staff enroll in CIFA (see below) online training for head office and Egyptian subsidiary.
- < Ahli United Bank of Kuwait (launch client for CIFA – see below) assist in conversion process, revision product policies and procedures, assisting in treasury conversion, and training over 600 staff in preparation for conversion of the bank into an Islamic bank. Ongoing training support to the group in Bahrain and Egypt.
- < Advisor and Sub-Advisor to issuers and international investment banks with respect to the structuring of *Sharia'a* compliant capital market transactions. Transactions range include consumer occupied residential properties, auto leases, and equipment under manufacture. Since 2002
  - Advisor to English Premier League football team on the restructuring of its debt to comply with *Sharia'a* and the delivery of project finance for a new stadium.
  - Support Sanabel International to introduce securities reform and *sukuk* to the Jordanian market.
  - Managed contract with Munich based FWU Group for GCC and Southeast Asian *takaful* and wealth management product development and *Sharia'a* process management. Work included *Sharia'a* compliant alternatives to factoring.
  - Manage long term contract with Dammam based APICORP to achieve capacity to serve MENA energy markets with Islamic products and services. Work includes transaction structuring, development of comprehensive Islamic project finance and treasury manuals, and generalized internal training.
  - Second staff to Bank Al Jazira, Jeddah to develop funds and structured notes for the bank's portfolio and client distribution network. Support *Sharia'a* process. Provide training and product development consultancy.
  - Completed structuring of €30,000,000 equity European real estate fund for Kuwait based investment company.
  - Provide *Sharia'a* screening basis to a \$100,000,000 Pan Arabian real estate fund for Siraj Capital, Ltd. of Jeddah.
- < Responsible to raise capital and manage regulatory process for the establishment of a new community bank (project deferred). Work on product development including contingent interest (profit sharing) deposits, auto installment credit, consumer credit, and alternative mortgage structures. Develop products for third party delivery via regulated banks, close relationships with regional banks to validate market and product hypothesis for regulators. Hire initial team, assemble *Sharia'a* supervisory (Ethical Advisory Board) and community advisory boards, and secure strategic alliances and vendor relationships.
  - Secure first FDIC approval for Islamic profit sharing deposit with legal indication of insurability from Atlanta FDIC, ratified at Chicago FDIC.

- < Provider of Islamic banking and finance training to Euromoney Seminars, Terrapinn, Euromoney Training, DC Gardner, ARK Group, IIR, Islamic Finance Training/Red Money (Kuala Lumpur), and IslamicFinance.de. Develop *fiqh* based and case defined materials and interactive presentations. Key clients include Al Rajhi Bank, Islamic Bank of Thailand, Monetary Authority of Singapore, Asian Development Bank, Institute of Banking Studies (Kuwait, Saudi Arabia and Jordan) and Commercial International Bank.
- Lead team in development of comprehensive Islamic Finance Assessment Based Training & Certification program (Certified Islamic Finance Analyst or CIFA). Project includes comprehensive online training, collateral materials, and classroom delivery. Development began roll out in 2008. Related courses include:
  - Introduction and Intermediate Islamic Banking & Finance Courses: one day through five day specialized courses covering the integrated operations and regulation of Islamic financial institutions.
  - Trade Finance: Islamic methods of sales, letter of credit, and default management.
  - Capital Markets: *sukuk* (Islamic bonds), syndication, real estate, derivatives and funds.
  - Islamic Treasury & Derivatives: simulation linked overview of why and how the treasury of an Islamic bank functions distinctly from a traditional bank's treasury.
  - Multi-Disciplinary Islamic Finance Courses: accounting, regulatory, risk and default management, and asset and liability structures.
- Qatar First Investment Bank, Doha. Engage in multi-year contract to train all staff and qualify with CIFA using online and in person elements. Since 2011.
- Co-Editor and Contributor for the *Islamic Finance Qualification* (Securities Institute, UK and Ecole Superiere des Affaires, Beirut): edit and prepare materials for first formal qualification program in the United Kingdom supervised by a Self Regulatory Body.
- Directorships and Advisory Positions:
  - Director, Alkhabeer Capital, Jeddah. Member of the Audit Committee and member of Nomination and Remuneration Committee. Since March 2008.
  - Chairman, Alkhabeer Capital (DIFC). Since 2017.
  - Chairman, Alkhabeer International, Bahrain. Director since 2008 and Chairman since February 2011.
  - Member, International Advisory Committee, Securities Commission Malaysia. Since March 2008.
  - Member, International Advisory Committee, FWU Group, AG, Munich. May 2007 - 9.

Publisher & Chairman: **AJIF.org, LLC** (doing business as **The American Journal of Islamic Finance** or "AJIF"). McLean, VA. 1989 to 2009. Originally paper journal, then web based research resource.

Provide specific consulting services to the Islamic financial services community:

Dow Jones Islamic Markets Indexes: August 2001 – January 2002. Assist Dow Jones Islamic Markets Indices to solve the analytic problems related to including real estate securities and real estate investment trusts in an Islamic real estate securities index. Provide ongoing support for development of related index. Responsible to persuade Sharia'a Supervisory Board to approve applicable screening methodology.

iHilal.com: January 2002 – 2005. Assist Dubai based securities brokerage to develop real estate securities fund and to secure *Sharia'a* approval for the same.

Lightbulb Press: 2001 – 2009. Produce *The Guide to Islamic Home Finance* with Virginia Morris and work on various consumer finance education concepts for future delivery.

**Guidance Financial Group:** January 2002 – August 2002. Assist to assure *Sharia'a* compliance of real estate finance product, train staff in all aspects of core Islamic product, and prepare materials for distribution to public including white papers and marketing materials across all media web to person-to-person.

**Oversee** collation of articles, edit and **supervise research.**

Originally a quarterly periodical, the web only journal **reviews techniques, analyzes entities engaged in, and literature about Islamic finance.** Distribution in 50 US states and 65 countries.

**Conduct statistical analyses and surveys** of North American Muslims for marketing and product development projects. Major survey with focus groups of Financial

Demographics of US Muslims conducted. Micro surveys of California, Michigan, and other state and regional markets performed for corporate clients.

**Distribute articles and briefs** to conventional press and supply domestic US Islamic press. From 2004 a supplier of content to ISI Emerging Markets, a Euromoney unit, relating to Islamic finance and banking.

Member Management Committee, **Guidance Financial Group, LLC**, (formerly Muslim eFinancials, Inc. doing business as MEF Money, Inc.) a joint venture of Capital Guidance Corp. and International Community Marketing, Inc. (Orlando and the founding entity), McLean, VA, May 2000 to December 2001.

Mission: Determine best means to develop comprehensive Islamic financial services program for United States, raise initial venture partner and funding of \$20,000,000.00, and launch project for the delivery of securitizable Islamic mortgage instruments.

Complete comprehensive review of business options for founders, deliver banking charter for acquisition, and deliver venture partner in form of Capital Guidance Group.

Work on implementation of Islamic mortgage bank, development of standardized documents for US government-sponsored entities, and structuring of short term and money market funds.

Develop declining balance partnership model for home finance that will fit Securitization with US government sponsored entities.

Convene *Sharia*'a committee and manage product process with scholars.

Structure Islamic money market fund with and asset originators including leading Islamic and western banks.

Acting Chief Executive Officer: **Islamic Investment Banking Unit**, a division of the **United Bank of Kuwait**, London, December 1999 - May 2000.

Missions: Replace departed team in asset management and international sales without losing clients. Determine where business was under-managed and implement improvements.

Businesses: \$1 billion international asset management business geared towards the Arabian Peninsula; Al Manzil Islamic Financial Services (US and UK) providing domestic Islamic financial services in the US and UK. US is limited to consumer mortgage products. UK includes investment and consumer mortgage products. Deliver first cross border syndicated *murabaha* for investment grade US corporation (\$62.5 million for ATT) and implement means for Bank to grow the business.

Expand Treasury products and management services for high net worth Islamic investors and Islamic banks.

Work on rescue of severely impaired leasing fund. Raise capital to replace redemptions and allow on-going operations.

Chief Executive Officer: **Al Manzil Islamic Financial Services (North America)**, a business of the **United Bank of Kuwait**, New York: October 1998 - December 1999.

**Missions:** Develop and deliver a broad array of world class Islamic financial services in the US market, building communities and achieve acceptance within the financial service regulatory, financial service companies, and consumer of Islamic financial services.

**Businesses:** Manzil USA™ Islamic home finance product, Mosque and School Program, Commercial Real Estate, and International Advisory Services.

**Home Finance:** Build team to apply Islamic home finance contract and engage in the relevant public education. Prepare expansion into four states and achieve professional market (title, escrow and legal services) recognition and acceptance of the product). Supervised implementation of regulatory approval of novel product as permissible banking instrument. Supervised process of product design and implementation. Build US portfolio.

**Mosque, School and Commercial Property:** Provide acquisition, construction and replacement finance for non-residential properties applying a commercial version of the residential product and *murabaha*, the later for which secured regulatory approval on a liberal basis as a banking product.

**Advisory Services:** Launch REIT fund, develop equity fund products, adapt international products to US market, and assist Kuwait Awqaf Public Foundation to develop a \$85 million commercial project to endow the Islamic Cultural Center in New York City .

General Manager: **The United Bank of Kuwait PLC**, New York Branch: October 1995 - October 1999.

**Missions:** Reposition New York Branch as premier banking intermediary for Gulf Cooperation Council (“GCC”) capital inflows directed to the United States; Broaden client basis beyond Kuwait; enhance cross marketing within UBK’s Investment Division; Establish Islamic financial services business in the US market; Introduce higher caliber US real estate contacts; assist in recovery of troubled US real estate portfolio; and improve inspection rating from primary regulator The Office of the Comptroller of the Currency.

**Achievements:**

- < Secure first US regulatory approval for retail Islamic financial products on bank’s balance sheet, directly contracted with October 1997 Net Lease approval (covers both residential and commercial financings) Build Islamic home, school and mosque financing teams. Implement Manzil USA™ home financing program. Later secure regulatory approval for Murabaha (covers trade finance and mortgaging).
- < Analytic work pursued for major GCC co-investor in mosques and schools. Build national mosque and school financing business.
- < Build commercial real estate and corporate lending group focused supporting GCC investors in the US.
- < Successful negotiation and implementation of strategic alliance with Westmark Realty Advisors LLC (7<sup>th</sup> ranked US institutional advisor and wholly owned subsidiary of CB Richard Ellis, largest US real estate services firm). Provide institutional asset management services to GCC clients including structuring of tax efficient offshore Real Estate Investment Trust fund (launched July 1997). Upon restructuring of Westmark, develop independent advisory abilities.
- < Act as *Sharia*’a board interface and convener for IIBU.
- < Secure contract to advise development of 300,000 + s.f. New York apartment block as waqf project for major GCC charitable foundation. Assist client in execution of all pre-development roles, and negotiation with developer, as well as ultimate monitoring of the project.



- < Develop REIT products for Islamic and conventional investors. Engage Andrew Davis as fund manager. Coordinate closely with Sharia'a committee of Sh. Nizam Yaquby and Sh. Mohammad Taqi Usmani to develop REIT and equities screens.
- < Supervise due diligence and negotiate equity fund relationship with significant equity fund manager for launch of Islamic screened equity mutual fund for global and US distribution (project not launched due to our market timing views).
- < Coordinate with Committee for Islamic Home Finance on the introduction of their structure on commercial basis as Manzil USA™. Achieved regulatory approval and adapt to California, New York, Connecticut and North Carolina.
- < October 1997. Supervised test market for California and GCC home purchasers. Product launch follows detailed market analysis and survey work. Hire suitable staff to build and develop product and to add on new Islamic retail services.
- < Obtained regulatory approval for *murabaha* and *ijara* Islamic financing structures and close first *ijara* transaction in August 1996.
- < Achieve improved inspection rating from The Office of the Comptroller of the Currency, including highest ranking for compliance with consumer lending regulations. Following two years in position, Branch elevated from MOU to Category 1 in all levels of inspection, the highest possible regulatory standard.
- < Expand client base for single family home loans for Kuwaitis and Saudis buying US vacation and student homes.
- < Bring forward new strategies for asset recovery and achieve broader bidding base than previously enjoyed by the Bank.
- < Successful introduction of a major Saudi contractor and Islamic Investment Company of the GCC relationships resulting in \$10 million of net take on Holy Cities project in December 1995.

Vice President & Manager, Real Estate/Project Finance Group: **The Sumitomo Bank LTD.** - Los Angeles Branch: June 1990 - October 1995.

**Manager:** Appointed in August 1993. Supervise Business Development Group III (also called Structured Finance) including with **primary responsibility for project and real estate**. Assist public finance and work-out groups and **coordinate with the banks securities, leasing and derivatives subsidiaries**. Manage five team members and **portfolio in excess of \$1.2 billion**, and two lenders originating project and real estate transactions in our branch satellite office in Seattle. Responsibilities include **budget formulation, profit reporting, and long term strategic planning**. Supervise business **plan execution** for three business sectors. Unit is consistently branch **profit leader**. Write North America **credit policy** for real estate and for **unsecured revolving** loans.

Member of the Branch's Risk Operations Compliance and Asset Quality Review (ROCA) team for Federal Reserve Bank examination preparation.

**Assistant Manager:** Appointed in August 1992. Primary manager of real estate group.

Second in command of Business Development Group III. Responsible for **business plan development and plan execution**. Coordinate with public finance and work out groups. Develop first comprehensive business plan for Sumitomo to develop an Islamic finance business.

**Vice President:** Appointed March 1991. Team leader real estate and public finance. Responsible to develop and execute business plan, **manage problem transactions**, and report on profits to management. Achieve the **rescue** of major **multi-national client**.

**Team Leader - Real Estate:** Hired June 1990 as International Banking Officer, appointed Assistant Vice President in September 1990. **Responsible** for loan origination. Manage three lending officers and three support staff. Oversee \$600 million of performing real estate risk assets including construction loans, permanent financing, credit enhancement for real estate related public finance transactions, and **securitization**.

**Achievements:** Developed and **executed first marketing program** for top tier US developers, expanding direct relationships. From February 1992, **assume responsibility** for active Japanese developer relationships. Initiate **cross marketing** with global non-Japanese client base, including Sumitomo's Middle Eastern clients.

President and Principal Shareholder: **FirstPath Financial Services, Inc.** - Detroit, MI. May 1989 - June 1990.

Provided private **investment banking** services to Middle Eastern & Southeast Asian investors about US venture capital and real estate investments. Sought to develop and mutual funds. **Securities & Exchange Commission registered investment advisors**.

Publisher, **FirstPath Advisory Letter**. Reviewed investment strategies. Focused on **analysis of global securities markets** and credit issues. Circulation in 14 countries. Later became *The American Journal of Islamic Finance* (see above).

**Managed** investor partnerships and served as **director** of client companies. Performed **due diligence and asset monitoring**. Investment range: industrial, real estate (majority), financial, and sales & marketing. Investments were geographically diverse.

Director: **SAMAD Group, Inc.** - Dayton, OH. May 1988 - June 1990. (6% shareholder)

Syndicated leveraged and all cash **venture capital** and real estate limited partnerships. Member of corporate **due diligence** committee.

Formed a joint venture **Samad Securities Corp.** Vice President & Detroit branch manager (1988 - 1989). Joint venture was the predecessor of FirstPath Financial Services, Inc. Joint venture **structured real estate securities** and **collateralized mortgage obligations** targeted for distribution to institutional and international investors.

Financial Consultant: **Christopher Weil & CO.** (Subsidiary of **Public Storage, Inc.** - Glendale, CA), Torrance, CA. 1987-1988.

Financial planning and **securities** sales. **Series 7 and 63 registered representative**. Specialized area was the syndication of limited partnerships. Sold partnerships to **overseas institutional investors**.

Assistant Manager, Banking & Corporate Finance: **Gulf Riyad Bank, E.C.** (Credit Lyonnais and Riyad Bank), Manama, Bahrain. 1983-1987.

Initially part of **redevelopment team** for consortium bank. Work to move bank from **syndicated construction lending** to direct lending and **trade finance**.

**Negotiated workouts** with agent banks for international construction loans. Managed workouts and collections with direct borrowers for residential real estate and office construction loans. Frequently worked in under-secured environment.

**Developed and executed marketing program** for Saudi Arabia. Identified opportunities for long term business. **Achieved diversification of loan portfolio** through the establishment of a trade finance client base, new products, and **asset swaps**.

**Managed** syndicated loan portfolios and asset swaps. Oversaw sale of Bank's syndicated loan portfolio and mitigation of exposure to non-GCC states. This included restructuring Latin American bonds and swapping loan exposures into bond exposures.

International Lending Officer: **Citibank, NA**. New York, Athens and Bahrain. 1981-1982.

Following graduation from **Credit Administration Course** in Athens, assisted in the **design of micro-computer Management Information Systems** reporting for GCC branches.

**Trade Finance Unit**. Performed credit analysis and maintained client relationships.

## **RELEVANT PUBLICATIONS**

**Frequent speaker and author in the field since 1987.**

*Managing Fund Flows, Risks and Derivatives: Applications in Islamic Institutions* lead author (Kuala Lumpur: Sweet & Maxwell, 2012). Sponsored by the Securities Commission of Malaysia.

*The CIFA Guide to Islamic Finance* lead author (Kuala Lumpur: RedMoney, 2011).

*Sukuk* contributing editor. (Kuala Lumpur: Sweet & Maxwell, 2009). Sponsored by the Securities Commission of Malaysia.

*Interest in Islamic Economics* contributing editor. (Oxford: Routledge, 2005).

*Structuring Islamic Finance Transactions* co-author with Stella Cox, Lawrence Oliver, Bryan Kraty. (London: Euromoney Books, 2005).

*Islamic Bonds: Your Guide to Issuing, Structuring and Investing in Sukuk* co-author with Nathif Adam. (London: Euromoney Books, 2004).

*The Guide to Understanding Islamic Home Finance* co-author with Virginia Morris (New York: Lightbulb Press, 2002). Consumer guide to the methods of Islamic finance available for application in the United States.

*What is Permissible Now?!*, (Singapore: The Muslim Converts' Association, 1996). Introductory book to Islamic finance and banking.

Authorized translator of the memoirs of Dr. Ahmed Elnaggar, founder of the modern Islamic banking movement. Project scheduled for completion and prospective publication by the Securities Commission of Malaysia. Dr. Elnaggar was the founder of the modern Islamic banking movement.