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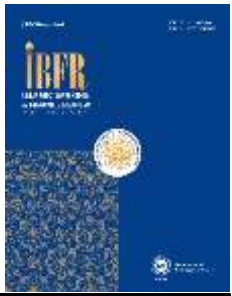

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Futures' Trading Practices in Pakistan: A *Shariah*-based Evaluation

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Abstract

In Pakistan, stock and commodity futures are frequently traded on the Pakistan Stock Exchange (PSX) and Pakistan Mercantile Exchange (PMX). Futures contract is an agreement between two parties, namely the seller and the buyer, to deliver an asset at a future date against a particular price. It is a contract which comes into effect at a future point of time. A futures contract allows the buying and selling of underlying stocks or commodities at a certain date in the future, at future prices. It is generally settled in cash without delivering or receiving the subject matter or contract. *Shariah* scholars have divergent opinions about the validity and permissibility of such types of contract. This study aims to explain the *Shariah* position of these contracts. In particular, this article examines the divergent opinions of *Shariah* scholars, finance experts and economists on the issue. The prevailing view in modern Islamic jurisprudence is that futures are merely a form of speculation and gambling. Besides, there is no productive economic activity involved in futures trading. It is suggested that, while examining the validity or invalidity of futures a distinction should be made between the purpose of futures trading, as to whether it is for making speculative gains or for a genuine hedging purpose. The distinction should also be made between deliverable futures and cash-settled futures. Futures can be structured on two independent promises as well as *wakalah* contract.

Keywords: commodities, contracts, forward, futures, Futures Market Act, *Shariah,* stocks

Introduction

In the stock market of Pakistan, the trading of stock futures contracts is a common occurrence. These futures contracts represent agreements between two parties, namely the seller and the buyer, to exchange an asset at a predetermined price on a future date. These contracts come into effect at a specified point in the future.

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A futures contract is a type of forward contract with well-defined and standardized terms. The main objective of engaging in futures trading is not necessarily to take possession of the underlying assets, such as stocks or commodities. Rather, it is to manage and minimize risks. As a result, the majority of contracts are closed out at the discretion of the involved parties before reaching maturity, without the actual delivery of the underlying goods.

The question of *Shariah* validity and permissibility of futures contracts remains a subject of intense debate and controversy among *Shariah* scholars, economists, and finance experts. A significant majority of *Shariah* scholars and economists maintain the position that futures contracts are not in compliance with the *Shariah* principles. However, some scholars do not perceive any *Shariah* concerns in futures contracts, as they believe that such contracts do not violate any *Shariah* principles.

This study seeks to evaluate futures contracts from the perspective of the *Shariah*. It examines the opinions of both the opponents and proponents of futures contracts and provides the preferred opinion based on both the classical and the modern Islamic juristic literature. It also provides an analysis of structured interviews conducted with *Shariah* advisors of Islamic finance industry, academicians, market practitioners, and law experts. Finally, it also proposes a *Shariah* compliant alternative to the current futures trading.

Literature Review

There is plenty of literature available on the concepts and practices of futures trading and its *Shariah* position. Many contemporary scholars have dealt with this issue in a comparative perspective. The available literature can be divided into two following parts.

- Literature on *Shariah* impermissibility of futures contracts
- Literature on *Shariah* permissibility of futures contract

***Shariah* Permissibility of Futures Contracts**

Shari'ah legitimacy of stock and commodity futures is a subject matter of intense debate and discussion among Shari'ah scholars and finance experts. Usmani (2017) holds current futures inconsistent with Shari'ah. In his celebrated work *"Islam Aur Jadid Muashi Masayil" (Islam and Modern Economic Issues)* devoted a chapter for the study of futures trading in stock market in which he explained the nature of futures contracts and the *Shariah* position of these contracts. He focused on the *Shariah* treatment of the issue. Mufti Taqi, however, did not discuss the legal and regulatory framework for futures trading in Pakistan. In another scholarly work titled *"Futures, Options, Swaps and Equity Instruments"*, he discussed derivatives and the *Shariah* position of these contracts thoroughly. In his opinion, derivatives contracts violate many *Shariah* rulings and principles. They are a form of gambling and games of chance (Usmani. 2017). The futures contracts from a *Shariah* perspective. The book explains the concept and nature of futures trading and examines it from the *Shariah* perspective. It surveys the issue thoroughly in light of classical juristic literature.

Future trading is not compatible with Shari'ah. Similarly, *Shariah Standards* issued by the Accounting and Auditing Organization for IslamicFinancial Institutions (AAOIFI, 2017) provide *Shariah* rules related to different financial and commercial transactions. They serve as a guideline for Islamic financial institutions in their operations around the globe. Standard no 21 titled "Sale of Commodities in Organized Markets" and Standard no 21 "Financial Papers" explain in a very lucid manner the position of trading in derivatives and commodity futures. According to these standards, futures do not conform to the principles of the *Shari* Anwar (1995) presented a critical appraisal of 'Islamic' capital market instruments and practices. The author criticized many Islamic securities on the grounds that these securities do not meet the *Shariah* principles and made recommendations for the Islamization of the Malaysian capital market. He also touched upon issues in futures trading from a *Shariah* perspective. Likewise, renowned *Shariah* scholar El-Gari (1993) discussed the issues in futures contracts and held them impermissible in the *Shariah*. Further, Al-Suwailem (2000), a renowned economist, maintained that futures are like insurance contracts. Hence, they are contradictory to the *Shariah* principles. Akin to the above examples, Al-Dhareer (1997) in his celebrated work "*Al-Gharar: In contracts and Its Effects on Contemporary Transactions"*, severely criticized futures trading practices in capital markets. The author espoused the view that "this is a kind of the forbidden sale by a person of what he does not have, and it does not fall within the scope of *salam* sale which is allowed in the *Shariah"*.

It is pertinent to mention that this strand of literature altogether rejects the derivatives and futures contracts. It does not make any distinction between commodity futures and securities futures, nor does it make any distinction between deliverable futures and cash settled futures. The purpose of futures also remains irrelevant. This is a rejectionist approach that invalidates futures contracts as a matter of principle. The International Fiqh Academy and AAOIFI have generally focused on passing prohibitory ruling without proposing any viable alternatives to futures trading.

Permissibility of Futures Contracts

Some authors subscribe to the view that futures trading is permissible. Kamali (1996) asserts that there is no *Shariah* issue in futures trading. This is because it serves the genuine purposes of hedging and risk management which are approved in *Shariah.* In his opinion, the delivery of counter values is guaranteed by the exchange. Thus, no uncertainty is involved in the transaction. The issue with this perspective is that it does not provide solid *Shariah* reasons for the permissibility of futures contract. Similarly, Khan (1996) favored futures contracts, being a hedging method. Although he suggested to remove prohibitory elements from the futures contract. In his opinion, futures contracts can be constructed on *salam* and *istisna'* contracts, even though he did not give any model through which *salam* could be applied in futures contracts. Similarly, Salehabadi and Aram (2002) and Kunhibava and Shanmugam (2010) in endorsed futures trading. Akin to the above authors, Shahabuddin (1988), contended that there are adequate safeguards to protect the users of the market. Another study in support of futures is *"Towards an Islamic Stock Exchange in a Transitional Stage"* by El-Ashkar (1995). The author maintains that speculation involved in futures cannot be viewed as gambling and game of chance. He concluded that Islamic capital market should not be expected to be a speculation free market. A reasonable degree of speculation would be required if the market is to remain active and operative.

The issue with these works is that they did not address the concerns of the first group. These authors allowed futures trading without examining its *Shariah* implications. In view of the foregoing discussion, the issue of futures trading should be construed in a much broader perspective. Issues such as the need of futures, its true *Shariah* position, and its possible *Shariah* compliant solutions should be explored.

Methodology

This is a descriptive and exploratory study that identifies and explains contemporary futures market practices and analyzes them against certain benchmarks reflected in the principles of the *Shariah*. For this purpose, 18 structured interviews with the *Shariah* scholars of Islamic finance industry, law experts, market participants, and regulators at SECP were conducted. Their views and opinions were obtained on the *Shariah* position of futures trading. The purpose behind these interviews was to identify *Shariah* issues in the current futures trading and to suggest *Shariah* compliant alternatives for futures trading practices.

The total number of interviews conducted was 18 including 7 with *Shariah* advisors, 5 with market participants, 3 with law experts, and 3 with academicians. *Shariah* advisors have reasonable exposure to law and finance. Similarly, market participants also possess fair knowledge of Islamic finance/law. The range of participant experience as *Shariah* advisor or market participant or law practitioner or academician ranged between 12 to 30 years. Many academicians act as *Shariah* advisors of Islamic finance industry as well. The interviews were conducted through various telecommunications sources, such as WhatsApp, direct phone calls, and emails. Direct interviews were also conducted.

Futures Trading Contracts in Pakistan

Futures contracts serve as derivative financial instruments employed within capital and commodity markets, catering to both speculative and hedging objectives. Speculative investors anticipate the future prices of securities or commodities. Thus, they endeavor to profit from favorable price movements, while bearing the risk of financial loss, should the prices move against their position. On the other hand, hedging investors utilize futures to mitigate the risks associated with price fluctuations in the underlying asset, be it a security or a commodity, thus safeguarding against potential losses.

Futures contracts, in this context, emerge as a valuable tool for risk management and hedging strategies. Businesses engaged in international trade frequently employ futures to effectively manage exposure to foreign exchange risk and price volatility. Additionally, futures contribute to the enhanced efficiency of underlying markets by reducing unforeseen costs associated with asset acquisition. Consequently, from an economic standpoint, futures offer traders the advantage of risk mitigation in the face of fluctuations in commodity prices.

A futures contract is described as an agreement for the future purchase of specific stocks or commodities, with the delivery set for a later date. Both parties defer their obligations to a predetermined future date. The purchaser of futures is not obliged to make the full payment at the time of the contract; instead, they are required to pay only a small margin. The value of the contract fluctuates in response to changes in the price of the stock or commodity.

Pakistan Stock Exchange (PSX) and Pakistan Mercantile Exchange (PMX) facilitate the trading of various futures contracts (Pakistan Stock Exchange, 2022). In PSX, the prominent forms of futures contracts include single stock futures and stock index futures. Meanwhile, in PMX or the commodity market, both deliverable futures contracts and cash-settled futures contracts are practiced.

To elaborate, single stock futures may be defined as contracts that permit the sale of certain stocks or commodities at a specified future date, all at a predetermined price. These contracts are settled in cash, with cash difference between the futures price and the final settlement price. The minimum trading lot for single stock futures is 500 shares of the underlying shares/stock. The contract matures 90 days after being listed.

A single index futures contract is a standardized contract for the purchase or sale of a standardized underlying stock index on a future date, at a pre-specified futures price. Single index futures contracts provide investors with the opportunity to trade in the relevant index futures, instead of individually buying the individual securities. These contracts have a contract multiplier of Rs. 5.00 and a maturity period of 90 days. The contracts mature or expire on the last Friday (or the preceding trading day in case of a holiday) of the expiry month, with settlement occurring on a T+1 basis. It's important to note that a distinct market exists for the trading of single index futures.

In PSX, four types of market indices are recognized, that is, KSE-100, KSE-10, KMI-30, and All Shares Islamic Index. Stock market indices have been developed to track the performance of various listed stocks, according to their market value. An index is composed of a basket of securities which captures change in market capitalization due to price variation.

In PMX or the commodity market, both deliverable futures contracts and cash-settled futures contracts are actively traded. A deliverable futures contract may be defined as an agreement that facilitates the purchase or sale of a standardized value of the underlying stock index on a future date at a predetermined price. Single stock futures offer investors the opportunity to participate in the relevant market by acquiring index futures associated with the underlying index, rather than purchasing individual securities of the index. Each contract has a multiplier of Rs. 5.00 and a maturity period of 90 days.

These contracts are subject to the regulations outlined in the Futures Market Act of 2016 and the Pakistan Stock Exchange Regulations of 2018.

The Futures Market Act, 2016 is the primary law for the regulation of futures market which includes futures based on securities, commodities, and financial instruments. It covers both commodity futures and stock futures. A futures contract is an agreement between two parties to buy and sell a specific asset of a specified quality in a specified quantity at a specified date in the future for a pre-determined price. Unlike a forward contract, a futures contract is a highly standardized contract which is completed in an organized exchange (Gazette of Pakistan, 2016). As stated earlier, both stock futures and commodity futures are either deliverable futures contracts or cash-settled futures contracts. A deliverable contract is a contract which is settled through on making the actual delivery of the underlying stock on final settlement after the expiry day. The cash-settled contract does not impose any obligation of making deliveries of underlying stocks after the expiry of contract. The profit/loss is transferred into the respective traders' accounts on the final settlement day, if their position remains open on expiry. However, the investors/traders have the right to square of their open position at any time before expiry and to book their profit/losses in terms of cash. Stock futures include contracts, such as index option contracts and stock index futures contracts. Cash-settled futures are traded at Cash-Settled Futures Contracts Market. Stock index futures are bought and sold in Stock Index Futures Market.

The Futures Market Act of 2016 defines a futures contract as follows:

> It is an arrangement where one party agrees to enter into a contract to deliver a specified quantity of a specified commodity or securities or financial instruments to another party at a designated future time

> and at a predetermined price payable at that time. Alternatively, the parties may agree to fulfill their contract obligations by settling the difference between the value of a specified quantity of a specified commodity or securities or financial instruments, as agreed at the time of contract formation, and the value at a specified future time. (Gazette of Pakistan, 2016)

From this definition, it becomes apparent that a futures contract is not a tradable item; rather, it is an arrangement to enter into a contract for the delivery of a commodity, security, or financial instrument at a future date. However, it can serve as a contract for settlement at a future date or a contract for trading in the future. Further clarification is provided by clause 27, sub-section 2, section 2 of the aforementioned act, which defines the futures market as follows:

> The futures market means any market or place at which, or any service or facility, whether electronic or otherwise, through which offers, promises, or invitations to sell, purchase, or exchange futures contracts are routinely made on a centralized basis. These are offers or invitations intended or reasonably expected to lead, directly or indirectly, to the acceptance or making of offers to sell, purchase, or exchange futures contracts.

The above definition sheds more light on the fact that contracts in futures markets can be initiated through offers, promises, or invitations for selling, purchasing, or exchanging.

***Shariah* Analysis of Futures Contracts**

Two views dominate the discourse on the *Shariah* position of futures. The predominant view among *Shariah* scholars and some eminent economists is that futures do not conform to *Shariah* principles, while a minority view states that futures are not repugnant to the *Shariah*. These two views and opinions are discussed below.

Opinion 1: Impermissibility of Futures Contracts

The prevailing view among contemporary *Shariah* scholars is the prohibition of futures contracts, as they are considered incompatible with *Shariah* principles. Notable scholars and institutions opposing futures contracts include Shaikh Siddiq Darir, Mufti Taqi ‘Uthmani, the International Fiqh Academy, and the Fiqh Academy of the World Muslim

League. These *Shariah* scholars and Fiqh institutions do not endorse or support the use of futures contracts, as they believe such trading involves numerous *Shariah* violations.

They provide the following arguments to support their position.

Argument 1: It is a sale of stocks or commodities that are non-existent at the time of sale

A futures contract is affected on an object that does not exist at the time of sale, while ownership is a necessary condition for a valid sale. Hence, it involves an agreement on a subject matter that does not exist at the time of the contract. In a futures contract, both counter values are deferred. In *salam* contract, commodity can be deferred but both the subject matter and price cannot be deferred. Furthermore, *salam* has been allowed as an exception to the general rule.

The International Fiqh Academy has adopted a similar stance, as evident in one of its verdicts,

> The futures contract involves the delivery of a specified subject matter at a future date, with payment of price at the time of delivery. This form of contract is not permissible because both the delivery and payment are deferred. However, it may be deemed permissible if structured as a *salam* contract.

The European Council for Fatwa (2004) has also endorsed the *fatwa* of OIC's Islamic Fiqh Academy regarding futures trading, whether they involve trading in stocks or commodities or currencies or indices. Mufti Taqi 'Uthmani firmly asserted that futures transactions are not compatible with the *Shariah* because sale contract cannot be attributed to a future date. Moreover, these transactions give rise to excessive uncertainty and speculation which are not allowed in the *Shariah*. He further stated,

> It is an established fact that in futures transactions generally, the delivery or possession of commodities is not intended by the parties. In many cases, these transactions ultimately result in the payment of price differentials only. This practice is not permissible in Shariah. (Usmani, 1996).

Another *Shariah* scholar Siddiq Alamin Dareer argued that "The futures contract constitutes a type of prohibited sale where a person sells what they do not possess, and it does not fall within the purview of a permissible *salam* sale" (Al-Dhareer, 1997)

Al-Suwailem , a distinguished scholar, contended that forwards and futures essentially function as pure insurance agreements. He maintained,

> A forward is a pure insurance contract. It does not involve any physical delivery. On maturity date, selling party simply compensates the purchasing party for any upward change in the existing price. This enables the buyer to obtain commodity from the spot market. If the spot price moves downward at the time of maturity, the seller is compensated for the difference. This demonstrates that the primary purpose of a forward contract is hedging, rather than physical delivery of counter values. (Al-Suwailem, 2000).

These viewpoints are grounded in numerous *Ahadith* and align with the opinions of revered classical and contemporary jurists. Distinguished scholar Wahabah Zuhayli asserted that

"The sale of non-existent objects is not valid in Shari'ah. Thus, sale of fruits on tree before maturity, pearls in shells, milk in the udders, and books before their printing are all deemed invalid."

Argument 2: Sale of Debt for Debt

Forward and futures contracts are in essence the sale of one debt for another or one future obligation for another. In Islamic law, sale is affected instantly. Hence, it cannot be made effective from a future date. In futures, both commodity and price are postponed to a future date which amounts to *bay' al-dayn bil dayn* or *bay' al-kali' bil kali* and it is prohibited according to the *Ahadith*. Therefore, selling through futures does not meet the criteria of a valid sale contract. In these contracts, both parties - the seller and the buyer - agree to postpone both the payment of the price and the delivery of the item to a future date. The primary objection raised against conventional futures and forward transactions revolves around the deferral of counter values, that is, the delivery of stock or commodity and the payment of price.

Argument 3: Sale Without Possession (Qabd)

The term *"Qabd"* denotes "lawful custody and ownership in a proprietary capacity, even if it doesn't involve the physical act of holding." In both forward and futures contracts, the seller and buyer share obligations to provide the goods and make the payment. However, in most conventional derivative contracts, both the buyer and seller do not physically take possession of the counter values. The transactions typically conclude by offsetting positions. In addressing the need for *"qabd"* possession before a sale in futures contracts, Muhammad Fahim Khan stated that "Futures contracts involve selling items before taking possession." Indeed, repeated sales of the same underlying asset in the chain without physical possession by the participants can impose an additional cost on end-users and customers.

Distinguishing futures contracts from *salam* contracts, the International Islamic Fiqh Academy clarified that "futures contracts differ from *salam* contracts in that, in futures contracts, the price is deferred, whereas in *salam* contracts, the price is paid during the contract session."

Prominent classical jurists unanimously concurred that selling an item before taking possession is not permissible. In forming this view, *Shariah* scholars relied upon a number of authentic *Ahadith.* For instance, Hadhrat Abu Hurairah (RTA) narrated that the Messenger of Allah (PBUH) said: "He who purchases food should not sell until he takes possession of it." Ibn Abbas said: "Every sale is subject to this condition".

Based on the above evidence, Zuhaili concluded that "the delivery of the item (underlying assets) in sales contracts is required, and if the seller is unable to deliver it, the transaction would involve *gharar*, gambling, and risk."

Argument 4: Futures Contracts as Akin to Gambling and Games of Chance

Futures contracts are commonly regarded as paper transactions designed for speculative profit, rather than genuine sales. According to al-Zarqa's opinion, "any transaction based on a false contract (suwari) or deception, not intended for the actual exchange of items and prices, is an invalid contract." This is notably evident in conventional futures contracts, where the contracting parties lack the intention to deliver the counter values. Instead, it amounts to a prohibited form of speculative activity aimed at maximizing gains through favorable price movements.

The Quran explicitly condemns gambling and describes it as a satanic act. It states:

> O you who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination, the handiwork of Satan. So, avoid such (abomination), that you may prosper. Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer. Will you not then abstain?

This verse highlights the rationale behind the prohibition of gambling, citing the incitement of enmity and distraction from worship. Moreover, the *Sunnah* extends this prohibition to not only gambling but also to the sale of *"gharar",* a term encompassing meanings such as peril, risk, hazard, speculation, and grave uncertainty. Qimar is defined as follows:

> Any gain or money acquisition that depends solely on luck and chance is considered qimar. This includes income derived from lotteries or lucky draws, as well as any money or benefit acquired at the expense of other parties with equal entitlement to that money or benefit. (Ghazi, 1998)

Considering the elements of *qimar* and *maysir,* the International Islamic Fiqh Academy and the Islamic Fiqh Academy of the Muslim World League ruled that "futures contracts are forbidden in *Shariah* because the primary objective of these contracts is to profit from price differentials, making them identical to gambling and, therefore, impermissible."

Opinion 2: Permissibility of Futures Contracts

In opposition to the above view, some scholars assert that *Shariah* does not prohibit futures trading. In their view, futures trading serves the genuine purpose of hedging and risk management. They construct an analogy between futures and *salam* contracts. *Salam* is a forward sale contract which is allowed in the *Shariah*. They argue that futures trading should be examined and judged in the broader perspective of public interest and *maqasid al-Shariah.* Indeed, futures contracts can be rendered *Shariah*-compliant by removing elements within them that are inconsistent with Islamic principles.

The above mentioned scholars assert that the rigid stance taken by the traditional scholars has restricted Islamic financial institutions from exploring diverse investment opportunities, which are readily accessible to their conventional counterparts. To support their viewpoint, they forward the following arguments.

i) Futures contracts do not comprise the sale of debt for debt.

These scholars do not subscribe to the majority view that futures trading involves *bay' al-kali bil Kali'* or sale of debt for debt. They contend that the *Hadith* on which this view is constructed is unauthentic and thus, cannot be relied upon for taking the above position.

ii) Futures trading does not involve uncertainty.

These scholars assert that futures contracts do not involve any uncertainty with regard to the fulfilment of contract and delivery of counter values. The clearing house guarantees the payment of price and the delivery of stocks or commodities. Thus, it does not fall under the prohibition of "Do not sell what you do not have." The emphasis in the *Hadith* is on the ability to deliver and not on ownership, as maintained by Allamah Ibn al-Qayyim.

Al-Masri provides the example of *ʿIstisnāʿ,* where the deferral of both the price and the item is accepted, a position affirmed by the International Islamic Fiqh Academy. He permits the postponement of the counter value for three days and, in some cases, for more than three days. This perspective implies that where *"jahalah"* and *"gharar"* are minimized, the sale may be permitted, even if the items are non-existent.

iii) Is it a sale without possession?

On the issue whether futures comprise the sale of an object before taking possession, the above scholars assert that the term *"qabd"* refers to lawful custody and ownership, which does not necessarily necessitate the physical act of holding. In this context, Hattab and Manṣūrī argue that selling a non-existent object or item whose future existence is certain is permissible. Hattab further states that food is an exception and must be possessed before selling; however, if the food is of a preserved type, it can be sold before taking possession.

Preferred Opinion

The preferred viewpoint on the issue is that the current practices of futures trading are incompatible with the *Shariah*. Current futures transactions are predominantly speculative, akin to gambling. Most futures contracts are cash-settled, indicating that their primary purpose is not hedging but revolves around chance and speculation. Given this, the position endorsed by the International Fiqh Academy, AAOIFI, and other collective *ijtihad* institutions is that futures trading is impermissible in the *Shariah*. These entities argue that futures trading, as currently practiced, contradicts *Shariah* principles. It is essentially a speculative endeavor, devoid of genuine trade intentions, often culminating in the netting-off of prices.

This goes without saying that in futures trading, parties settle obligations and neither party delivers nor receives counter values. According to the Islamic law, risk and liability for loss are integral parts of a valid transaction. This is based on the famous *Hadith* which states: *Al-Kharaj bil Daman* i.e., Profit depends upon risk and liability for loss. In the case of futures trading, an investor earns merely by luck and chance.

It is also necessary to determine whether the purpose of transaction is genuine hedging or mere speculation. According to Islamic law, the purpose and motivating cause of transaction should also be valid and permissible in the *Shariah*.

Analysis of Structured Interviews

The respondents were asked the following three questions:

1. What is the position of Shariah on stock futures trading?
2. Is there any Shariah-compliant alternative for stock futures?
3. Do you think that a stock future can be structured in the Shariah on Muwa'adah (promise from both sides) basis with actual sale taking place on settlement date and actual delivery of stocks?

All the respondents were of the view that futures are generally impermissible on account of there being a non-existent subject matter and a sale without possession. It is a form of gambling disallowed in the *Shariah*. The respondents from the category of market practitioners generally agreed that futures can be constructed on bilateral promises and *wakalah* through NCCPL. The respondents from the category of *Shariah* advisors and academicians held the view that bilateral promise amounts to contract and a sale contract cannot be made on a non-existent thing. One respondent from the category of academicians was of the view that since shares do not comprise a fungible commodity, futures of shares are not permissible in the

Shariah. He argued that stock futures are not allowed because stocks are not *salam* commodity. Futures or forward contracts can be made on the basis of *salam* on fungible goods. Stocks and shares are not *salam* commodities. *Salam* cannot be affected on an identified object.

Developing a *Shariah*-Compliant Alternative for Futures

Stock and commodity futures are generally held impermissible by the modern *Shariah* scholars on the grounds of the non-existence of subject matter and the involvement of the elements of gambling and speculation in them. However, it is also a fact that futures are not always used for gambling and speculative purposes. They may be used for hedging which is a genuine purpose. Hedging is used as a risk management technique and for the protection of wealth which is a genuine objective of the *Shariah*. For this purpose, some scholars have proposed that futures should be structured on two promises and *wakalah*. The seller, for example, should give an undertaking to NCCPL that it would sell a certain quantity of stocks, securities, or commodities at a certain price to be delivered on a specified date. Similarly, the buyer would give an undertaking and promise to NCCPL that it would buy a certain quantity of stocks, securities, and commodities at a certain price and would pay the price on a specified date. As such, there are no bilateral or face to face promises between the buyer and seller because in such a case, such promises become a contract and a contract cannot be affected on some future date. It is necessary that on maturity both the counter values should be delivered through NCCPL acting as an agent for both the buyer and seller. The Muslim jurists generally allow for a party to act as an agent for both the buyer and seller. On such basis, only deliverable futures would be allowed. This arrangement cannot be made for cash-settled futures in which no delivery of a commodity or stock by the seller and payment of price by the buyer is intended. The parties net-off their positions through the delivery of price differential.

Conclusion

Stock and commodity futures are frequently practiced in Pakistan. A considerable number of *Shariah* scholars and Muslim economists hold both types of futures contracts, that is, deliverable futures and cash-settled futures incompatible with the *Shariah*. The *Shariah* issue in deliverable futures contracts is that they comprise the sale of debt with debt or the sale of one obligation against another. This type of sale cannot be affected from the future.

Cash-settled futures contract is held invalid because it is not an actual sale and purchase. The parties to the transaction do not intend to buy the stock or sell it. This is only a speculation that if at the time of delivery the price fluctuates, then one party will pay the difference to the other party. So, no actual delivery or possession is given or taken and no actual sale is intended by the parties. Hence, this is just to earn some monetary gain by speculation which is known as *maysir* in Islamic law. *Maysir* is to get something too easily or to earn a profit without working for it. Thus, it is just a paper transaction which aims to make speculative profit. The above discussion establishes that the prevailing view in modern Islamic jurisprudence is that futures are merely a form of speculation and gambling. Besides, there is no productive economic activity involved in futures trading. The fact of the matter is that while examining the validity or invalidity of futures distinction should be made between the purpose of futures trading, as to whether it is for making speculative gains or for a genuine hedging purpose. The distinction should also be made between deliverable futures and cash-settled futures. As an alternative to current futures, some scholars have proposed that futures should be structured on two promises and *wakalah*. The proposed model suggests that the seller should give an undertaking to the NCCPL that it will sell a certain quantity of stocks, securities, or commodity at a certain price to be delivered on a specified date. Similarly, the buyer will give an undertaking and promise to NCCPL that it will buy a certain quantity of stocks, securities, commodities at a certain price and pay price on a specified date. As such, they are not bilateral, or face to face promises between the buyer and seller because in such case such promise become a contract and a contract cannot be affected on some future date. However, it needs a thorough deliberation at the platform of Auditing and Accounting Organization of Islamic Financial Institutions.

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