Summary

Islamic finance is based on principles of shariah, or “Islamic law.” Major principles of shariah are a ban on interest, a ban on uncertainty, adherence to risk-sharing and profit-sharing, promotion of ethical investments that enhance society, and asset-backing. The international market for Islamic finance has grown between 10% to 15% annually in recent years. Islamic finance historically has been concentrated in the Persian Gulf countries, but has expanded globally to both Muslim and non-Muslim countries. There is a small but growing market for Islamic finance in the United States. Through international and domestic regulatory bodies, there has been effort to standardize regulations in Islamic finance across different countries and financial institutions, although challenges remain. Critics of Islamic finance express concerns about possible ties between Islamic finance and political agendas or terrorist financing and the use of Islamic finance to circumvent U.S. economic sanctions. Proponents argue that Islamic finance presents significant new business opportunities and provides alternate methods for capital formation and economic development.

Background

Islamic finance is based on shariah, an Arabic term that is often translated into “Islamic law.” Shariah provides guidelines for aspects of Muslim life, including religion, politics, economics, banking, business, and law. Shariah-compliant financing (SCF) constitutes financial practices that conform to Islamic law. Major principles of shariah that are applicable to finance and that differ from conventional finance are:

- **Ban on interest (riba):** In conventional forms of finance, a distinction is made between acceptable interest and usurious interest. In contrast, under Islamic law, any level of interest is considered to be usurious and is prohibited.

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• **Ban on uncertainty:** Uncertainty in contractual terms and conditions is not allowed, unless all of the terms and conditions of the risk are clearly understood by all parties to a financial transaction.

• **Risk-sharing and profit-sharing:** Parties involved in a financial transaction must share both the associated risks and profits.

• **Ethical investments that enhance society:** Investment in industries that are prohibited by the *Qur’an*, such as alcohol, pornography, gambling, and pork-based products, are discouraged.

• **Asset-backing:** Each financial transaction must be tied to a “tangible, identifiable underlying asset.” Under *shariah*, money is not considered an asset class because it is not tangible and thus, may not earn a return.2

Some question how lenders profit from financial transactions under Islamic law. For instance, in a real estate setting, SCF takes the form of leasing, as opposed to loans. Instead of borrowing money, the bank obtains the property and leases it to the *shariah*-compliant investor, who pays rent instead of interest. Earnings of profits or returns from assets are permitted so long as the business risks are shared by the lender and borrower.3

**International Scope of Islamic Finance**

Modern Islamic finance has existed internationally since the 1970s. Currently, Islamic finance represents a small but growing segment of the global finance industry. Estimates vary of the total size of assets held internationally under Islamic finance, ranging upwards from $800 billion and with growth rates of 10% to 15% annually over the past ten years.4 The global market for Islamic bonds, known as *sukuk*,5 is estimated to be $70 billion currently and is projected to reach $100 billion by 2010.6 Global issuance of *sukuk* has increased more than five-fold from 2004 to 2007 (see Figure 1).7

In some countries, such as Iran and Pakistan, Islamic banks are the only mainstream financial institutions. In others, SCF exists alongside conventional banking.8 The Persian Gulf region and Southeast Asia, led by Malaysia, historically have been the major centers for SCF. For oil producers in the Gulf region, Islamic finance may offer investment opportunities for their growing revenues from oil exports. There also has been a growing

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5 Islamic bonds are constructed as profit-sharing or rental agreements that are tied to physical assets.

6 Standard & Poor’s, “Islamic Finance Outlook 2008.”


awareness of and demand for Islamic finance options by Muslim consumers. In recent years, SCF has expanded into Africa, particularly Sudan.⁹

Support for Islamic finance varies in the Middle East. In some countries, such as Libya and Morocco, Islamic banks are considered by some to be tied to Islamic political parties and consequently have been refused licenses. Other countries, including Jordan, Tunisia, and the Sudan, have been receptive to Islamic finance, viewing Islamic financial products as an opportunity for creating capital and fostering economic development.¹⁰

Islamic finance is growing in Europe and North America, areas in which Muslims are in the minority. In August 2004, the United Kingdom’s Financial Services Authority (FSA) approved a banking license for the Islamic Bank of Britain (IBB), the country’s first Islamic bank. The IBB would serve the consumer market with shariah-compliant products.¹¹ In March 2006, the FSA licensed the European Islamic Investment Bank as the United Kingdom’s first independent bank for shariah-compliant investments.

### Islamic Finance in the United States

With an estimated five to seven million Muslims in the United States, there is growing interest for Islamic finance and business opportunities for lenders. Some have suggested Islamic finance may be an attractive option for investors as conventional finance faces challenges from the U.S. subprime lending crisis and recession concerns.¹² In the United States, SCF largely exists in personal home mortgages. Guidance Residential (Reston, Virginia) reportedly has financed over 5,000 shariah-compliant mortgages since

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¹⁰ Ibid.

¹¹ Standard & Poor’s, “Islamic Finance Outlook 2008.”

2002. Other financial intermediaries that provide Islamic-based home mortgages include University Islamic Financial (Ann Arbor, Michigan), Devon Bank (Chicago, Illinois), and American Finance House Lariba (Pasadena, California). HSBC is the only large commercial bank that offers U.S. Islamic finance and is focused on New York. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Corporation (Freddie Mac) purchase shariah-compliant mortgage contracts from financial intermediaries, allowing providers to originate further mortgages. In 2007, Freddie Mac reportedly purchased more than $250 million in Islamic home loans, a small but notable fraction of the enterprise’s $1.77 trillion in business activities.

Other forms of shariah-compliant services are offered in the United States as well. For instance, Devon Bank and Zayan Finance offer SCF for commercial real estate. Shariah-compliant mutual funds are offered by intermediaries such as the Amana Mutual Funds Trust, Azzad Funds, and the Dow Jones Islamic Fund. In 1999, the Dow Jones presented its first Islamic market index, which follows shariah-compliant stocks internationally. The Dow Jones maintains more than 70 indices in its Islamic series and is advised by an independent Shariah Supervisory Board counsel.

International financial intermediaries also provide SCF in the United States. Islamic investors from the countries of the Gulf Cooperation Council (GCC) have sought to diversify their financial portfolios geographically and to invest their oil wealth in U.S. assets. For instance, the Bahrain-based Arcapita Bank has structured many shariah-compliant transactions in private equity and real estate in the United States. Additionally, U.S.-based companies have taken advantage of alternative funding sources through Islamic-financing abroad. According to Standard & Poor’s, Loehmann’s Holdings, Inc. and East Cameron Gas Company have issued rated shariah-compliant bonds.

Islamic Finance Regulation

Financial institutions seeking to offer shariah-compliant products typically have a shariah supervisory board (or at a minimum, a shariah counselor). The shariah board would review and approve financial practices and activities for compliance with Islamic

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principles. Such expertise raises the attractiveness of shariah-compliant financial intermediaries to investors considering SCF.20

Shariah is open to interpretation and Islamic scholars are not in complete accordance regarding what constitutes SCF. Islamic finance laws and regulatory practices vary across countries. The lack of concurrent viewpoints makes it difficult to standardize Islamic financing.21 Many observers view standardization of SCF regulations as important in increasing the marketability and acceptance of Islamic products.

International institutions have been established to promote international consistency in Islamic finance. For instance, the Islamic Financial Services Boards (IFSB) puts forth standards for supervision and regulation.22 As another example, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), issues international standards on accounting, auditing, and corporate governance.23 Many leading Islamic financial centers around the world have adopted international SCF regulation standards.24

U.S. federal banking regulators have provided some formal guidance about Islamic products. The Office of the Comptroller of the Currency (OCC) issued two directives concerning shariah-compliant mortgage products. In 1997, the OCC issued guidance about ijara (“lease”), a financial structure in which the financial intermediary purchases and subsequently leases an asset to a consumer for a fee. In 1999, the OCC recognized murabaha (“cost-plus”), under which the financial intermediary buys an asset for a customer with the understanding that the customer will buy the asset back for a higher fee.

**U.S. Policy Concern and Issues for Congressional Interest**

As Islamic finance activities grow in the United States, critics raise concerns about the related capital adequacy and system risks. Proponents of Islamic finance assert that the ban on risk-taking mitigates many concerns. Some also view the integration of ethics and values into finance as a positive development, especially in light of recent U.S. business corruption scandals. Many investors reportedly consider SCF to be more reliable than conventional financing, given the recent global credit crisis and fears of economic recession.25 Some observers suggest that full disclosure of SCF-related risks may alleviate investor concerns and increase accessibility to Islamic financial products.26

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22 Ibid. Information about standards issued by the IFSB are available at [http://ifsb.org].

23 AAOIFI standards are available on AAOIFI’s website, [http://www.aaoifi.com/].


The growth of Islamic finance in the United States may have implications for congressional oversight. Congress may be interested in evaluating the relationship between the current U.S. banking legal and regulatory framework and Islamic finance. Current U.S. laws and regulation may be broad enough to accommodate some aspects of Islamic finance. Others aspects of Islamic finance may pose some unique challenges to U.S. laws and regulations, such as applying rules created for conventional, interest-based products to Islamic products. There is debate about whether or not, or the extent to which, regulators should apply rules on conventional products to Islamic product counterparts.

Some express concerns about the national security implications of Islamic finance, specifically that Islamic banking transactions may channel funds to terrorists or “facilitate terrorists’ access to funds.” Others assert that the risks of Islamic finance are not significantly greater or different than those from conventional finance and that the majority of recent terrorist financing cases related to SCF have been thrown out of court. In congressional testimony, one observer stated “there is no reason - in theory - to suspect that Islamic finance would be particularly immune or particularly vulnerable to abuse by money launderers or terrorist financiers.” Some proponents also assert that security-related concerns about Islamic finance stem from a lack of understanding of SCF or from stereotyping. There may be a “conflation” of Islamic finance with hawala, an informal trust-based money transfer system prominent in the Middle East and many Muslim countries. Hawala transactions are based on an honor system, with no promissory instruments exchanged between the parties and no records of the transactions. Some analysts consider the hawala system particularly susceptible to terrorist financing.

Congress also may be interested in the possibility of Islamic finance as a vehicle for sidestepping U.S. and international economic sanctions. For example, the Sudanese government reportedly issued Islamic bonds to Gulf investors in order to circumvent U.S. sanctions.


