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Mr. Michael McMillen, Partner, Corporate Practice Group, Fulbright & Jaworski LLP

# ISLAMIC FINANCE AND THE GLOBAL ECONOMIC CRISIS

“Islamic finance is the only example of a financial system directly based on the ethical precepts of a major religion . . . .”

- Shaykh Yusuf DeLorenzo



Dr. John Duke Anthony, President and CEO, National Council on U.S.-Arab Relations

By JAMES A. WINSHIP, Ph.D.  
Vice-President, Programs  
National Council on U.S.- Arab Relations

More than two hundred leaders from the international business and financial community, the diplomatic community, the United States Congress, government agencies, the military, and the academic worlds came together in February of this year to discuss the emerging and rapidly growing role of Islamic finance in the international financial community. Meeting at the **Ronald Reagan Building and International Trade Center in Washington, D.C.**, participants were addressed by two of the world's leading experts on *Shari'ah* (Islamic law) compliant financial instruments. Dr. John Duke Anthony, Founding President and CEO of the National Council on U.S.-Arab Relations convened the session and moderated the animated question and answer period that followed the formal presentations.

**Shaykh Yusuf DeLorenzo** is Chief *Shari'ah* Officer and Board member at Shari'ah Capital. He is currently a member of the Islamic Development Bank's Task Force on the Global Financial Crisis. Dr. DeLorenzo serves as *Shari'ah* advisor to more than twenty global financial entities and has been a member of the Shari'ah Supervisory Boards of several international Islamic financial institutions, including the Dow Jones Islamic Market Index, ihilal.com, Muslim e-Financials and Brown Brothers Harriman Islamic Global Equity Fund. He has also advised non-profit organizations such as Action Against Hunger (Bosnia).

Fulbright & Jaworski LLP's **Michael McMillen** is a partner in corporate practice focusing on Islamic finance, project finance, and structured finance. Mr. McMillen teaches Islamic finance at the University of Pennsylvania Law School and its Wharton



Dr. Yusuf Talal DeLorenzo, Shari'ah Capital



Mr. Tony Hughes, Senior Vice-President - the Americas, Qatar Airways



(L-R) Patrick Mancino, Vice President and Director of Development, National Council on U.S. - Arab Relations and HRH Prince Abdulaziz bin Talal bin Abdulaziz Al-Saud, Kingdom of Saudi Arabia



Dr. James Winship, Vice President - Programs, National Council on U.S. - Arab Relations and Professor Ghiyath Nakshbendi, Executive-in-Residence, Kogod School of Business, American University

School of Business. He has twice been the recipient of the award for Best Legal Advisor in Islamic finance by *Euromoney Magazine* and has received the Sheikh Mohammed bin Rashid Al-Maktoum Award as the Best Legal Advisor in Islamic Finance in North America. Mr. McMillen is also a member of the Task Force on the Global Financial Crisis of the Islamic Development Bank and has consulted with member states of the Organization of the Islamic Conference (OIC) regarding securities and capital markets laws as they relate to Shari’ah compliant instruments, structures, and transactions in OIC jurisdictions.

Shaykh DeLorenzo emphasized that, “Islamic finance is the only example of a financial system directly based on the ethical precepts of a major religion, providing not only investment guidelines but also a set of unique investment and financing products.” Islamic finance is based on *Shari’ah*, the Islamic law that provides guidelines for multiple aspects of Muslim life, including religion, politics, economics, banking, business and aspects of the legal system. *Shari’ah* is not a static set of laws but is, instead, a principles-based legal system drawn from the teachings of the *Qur’an*, the *hadith* – the sayings and actions of the Prophet Muhammad and his

companions, *ujma* – consensus between legal scholars, *qiyas* – reasoning by legal analogy, as well as the historic record of debate, interpretation and precedent developed among Islamic legal scholars. As such *Shari’ah* is capable of development and subject to interpretation.

“God did not say, ‘Build me a bank,’ ” observed Dr. DeLorenzo. What *Shari’ah* compliant financing (SCF) seeks to do is to shape financial practices and accompanying legal instruments that conform to Islamic law. Major financial principles of *Shari’ah* include a ban on interest, a ban on uncertainty, adherence to risk-sharing and profit-sharing, promotion of ethical investments that enhance society and do not violate practices banned in the *Qur’an* and tangible asset-backing. Money, according to Islamic teachings is a measure of value, not a commodity. Debt is a relationship in which risk and responsibility are shared by all parties to a contract. Islamic finance, Shaykh DeLorenzo observed, is a different way of structuring financial dealings; but, it is not a totally different financial system.

Michael McMillen, made a similar point when he insisted that Islamic finance “is business, both practical and principled. It is finance in the context of a developed jurisprudential and legal framework. All of which is to say: there are more similarities than differences between Islamic financial principles and those that are more familiar to us in the United States and Europe.” He also observed that adherence to *Shari’ah* compliant finance could yield a competitive edge in international business with the Muslim world and was culturally enriching to global economic dealings and international understanding. “This is about business,” he reiterated, “that is based on an ethical paradigm.”

Dr. Yusuf Talal DeLorenzo, Shari’ah Capital (Speaker)  
Abdul Malik Mujahid, President, Sound Vision Foundation  
Nida Davis, Chief Technology Architecture Offices, Federal Reserve Board of Governors  
Amin Mahmoud, Alliance of Egyptian Americans  
Kahled Beshir, Standard and Poors





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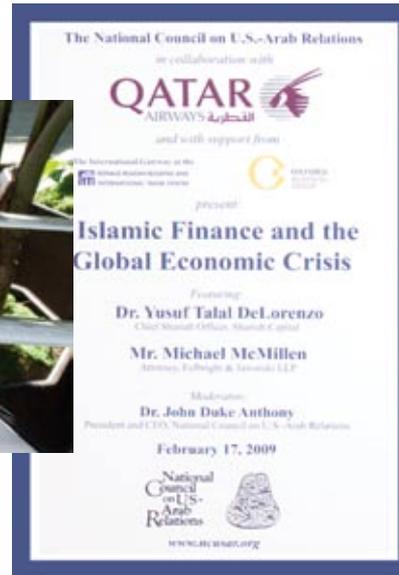
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McMillen noted two developments that have been critical to the expansion of Islamic financial markets. In 1998, the so-called “Dow Jones Islamic Indexes *fatwa*” played a transformative role because it opened the door to a limited degree of “permissible impurity” in financial transactions and institutionalized a notion of cleansing and purification whereby small amounts of impermissible interest income could be cleansed or purified by donation to charity. In turn, this led to a series of equity investment tests that could be used to evaluate potential investments for *Shari’ah* compliance. A second critical innovation was the introduction of *sukuk* – a *Shari’ah* compliant substitute for bonds – where capital protection is achieved not as a loan but as a binding agreement by the issuer to repurchase certain assets over a period of time. *Sukuk* has now become one of the backbones of Islamic capital markets and has enabled the rapid growth of Islamic financial transactions.

Both analysts cited multiple reasons for the growth of the Islamic financial sector in recent years: (1) the flow of funds into Muslim oil-producing states; (2) growing political and social desire in the Muslim world for financial alternatives to banking and investment institutions that have been historically dominated by the West; (3) the spreading credit crisis in global financial markets and the need to access new sources of investment capital; (4) the growth of sovereign wealth funds and the desire to have *shari’ah* compliant instruments through



which to invest them; and, (5) the rapidly accelerating number of cross-border multi-jurisdictional financial transactions that are possible and required in a globalized world economy

Assets held by Muslim investors worldwide now exceed \$1.6 trillion, and that amount is expected to grow to \$2.7 trillion by 2010. *Shari’ah* compliant finance has become an accepted and vibrant element in international financial transactions. It offers a fresh opportunity to emphasize the moral and ethical aspects of business and finance that reaches beyond the Arab and Islamic worlds to prompt a reexamination of the core values underlying all global financial transactions – making available the financial resources needed to develop the human capital that will sustain economic and social progress.

HRH Prince Abdulaziz bin Talal bin Abdulaziz Al-Saud from the Kingdom of Saudi Arabia attended this event.

(R-L) HRH Prince Abdulaziz bin Talal bin Abdulaziz Al-Saud, Kingdom of Saudi Arabia and Dr. John Duke Anthony, President and CEO, National Council on U.S.-Arab Relations

