



## Contemporary Financial Issues

Shaykh Dhia' al-Dīn Qādirī Naqshbandī<sup>1</sup>

Translated by Aḥmad Siddīqī<sup>2</sup>

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### The *Shar'īy* Ruling on Shares Trading

#### Question:

These days in the world of investments the biggest business is shares trading. This trading takes place on such a grand scale that most of the major companies in the world rely on this mode of operation (i.e., getting publicly listed on the stock exchanges and trading in shares). This business is taking place all over the world - Islamic nations included.

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<sup>1</sup> Shaykh Muftī Syed Dhia'al-Dīn Qādirī Naqshbandī *ḥafīzahullāh*, was born on the 15<sup>th</sup> of August, 1975, in the Indian town of Hangarga-Nizamabad in the state of Andhra Pradesh in India. His father is his esteemed eminence, al-Ḥāj 'Abd al-Nabīy Naqshbandī Qādirī *ḥafīzahullāh*. The shaykh resides in the metropolitan city of Hyderabad in Andhra Pradesh, India, where he teaches and issues *fatāwa* at the *Jāmi'a Nizāmiya*, an institution for classical and orthodox higher learning of *Ahl al-Sunnah wa al-Jamā'ah*. Here he gained his own education in classical Sunni Islam and was a double gold medalist. He also graces the general public of the Deccan plateau with his services to the *dīn* through various print and electronic media including television and other means such as writing books and delivering sermons. His shaykh is the gnostic, his esteemed eminence, Shaykh Syed Khalīlullāh Shāh Naqshbandī Mujaddidī Qādirī *raḥimahullāh*, a pillar of classical Sunni Islam in recent times in the Deccan plateau who is a guide who derived his spiritual lineage and brilliance from both the esteemed *Mujaddidī* wing of the *Naqshbandī tariqah*, attributed to Mujaddid Alf Thāni Imam Rabbāni *raḥimahullāh*, as well as the ever luminous *Qādirī tariqah*, the spiritual path of the chieftain of saints, our master 'Abdul Qādir al-Jaylānī *raḥimahullāh*.

<sup>2</sup> Translated from <http://www.ziaislamic.com/jadeed%20masael/main.htm>

Does Islam permit the trading of shares? Is the trading of shares in accordance with the *Qur'ān* and *Sunnah*?

- *Muhammad Abdul Kareem, Sikandrabad, India*

**Answer:** In the Islamic economic system, the rules and regulations for investment and trading have been explained. If any trade takes place in accordance with the basic tenets and the rules governing such matters, such a trade is permissible.

One fundamental tenet of transactions in Islam (*mu'āmalāt*) is that neither party involved in the transaction should be at a loss (out of exploitation); nor should there be any dishonesty or fraud involved as has been narrated in *Mustadrak 'alā Saḥīḥain* (Hadith Number 2305, Book on Selling):

It has been reported on the authority of *Sayyidina* Abu Sa'īd al-Khudrī ؓ that the Messenger of Allāh ﷺ said, the meaning of which is, "There should not be harm nor the imposition of harm."

Shares, in reality, are a part of the company's overall capital and assets. They may belong to one person, or be jointly shared by a few people. In this regard, some basic principles should be kept in mind:

1) The company whose shares are sought should be involved in permissible (*ḥalāl*) forms of business. The company should be manufacturing such items which are of themselves *ḥalāl* to be bought and sold, such as computers, medicine, etc. Trading in shares of such companies is allowed. On the other hand, it is not permitted to trade the shares of those companies that manufacture impermissible (*ḥarām*) products such as alcohol. The shareholder's position is effectively that of a representative of the company (*wakīl*). In Islam, as it is forbidden to buy and sell *ḥarām* products, it is also forbidden to appoint a representative or be appointed as a representative to buy and sell *ḥarām* products.

Please have a look at this segment from a lengthy narration by *Sayyidina* 'Abdullāh b. 'Abbās ؓ in the *Musnad* of Imām Aḥmad b. Ḥanbal:

It is narrated on the authority of ‘Abdul Raḥmān b. W’alah ؓ that *Sayyidina* ‘Abdullāh b. ‘Abbās ؓ was asked regarding the trade of alcohol. He replied, the Messenger of Allāh ﷺ has said, which means: “Indeed, the One who has forbidden its consumption has also forbidden its sale.”

It is stated in *Fatḥ al-Qadīr*, Vol. 6, Book of Sales, Chapter on Corrupt Sales, on pages 403, 404:

“And if a Muslim appoints a Christian representative for the sale or purchase of alcohol and swine it is permissible according to Abu Ḥanīfa, *raḥimahullāh* ... and Abu Yūsuf, Muḥammad, Mālik, Shāfi’ī, and Aḥmad *raḥimahumullāh* do not permit such a representation. According to them, that which the principal cannot have ownership of himself cannot be held in trust for him by someone else... and it is attributed in Qudūrī to Abu Ḥanīfa that such a representation (*wakālah*) is reprehensible with the greatest of reprehensibilities and it is nothing other than prohibitive reprehensibility - so there is no benefit in the soundness of this representation”

It is further stated in *Durr al-Mukhtār*, in the *hāshiyah* (notes) of *Radd al-Mukhtār*, Vol. 4, Book of Selling, page 135, on the same topic:

“... and they said that it is not correct and that is the manifest opinion – Shurunbulāliyyah ‘an al-Burhān”

2) If the company’s primary business is in *ḥalāl* products but the company takes a loan from banks on interest or deposits money in banks on interest in order to increase capital or avoid income tax, then the ruling in *Dār al-Islām* (land of Islam) and *Dār al-Ḥarb* (land of war, i.e. a country where Islamic rule is not applied) will be different.

Otherwise forbidden transactions (in Islam) are allowed between Muslims and non-Muslims in *Dār al-Ḥarb*, with the condition that there is no fraud or dishonesty. In a

transaction where, without the occurrence of dishonesty and fraud, any additional amount is charged to a non-Muslim in addition to the principal, this does not qualify as interest (*riba*).

As mentioned in *Fath al-Qadīr*, Vol. 7, Book of Selling, Chapter on Interest (*riba*), pages 37 through 39:

“... and there is no *riba* between a Muslim and a non-Muslim citizen of *Dār al-Ḥarb* (*Ḥarbīy*) [and Abu Yusuf and al-Shāfi’ī opposed this] .... And likewise if he sold them carrion or swine or gambled with them and earned money, it (the money so earned) is permissible ... (and because their money is permissible for the Muslim) and this applies with certainty to (all kinds of) prohibited money (except that) it is *ḥarām* for the Muslim if it is earned by dishonest means (if it is not obtained by dishonesty, it is permissible, no matter which way it is obtained), after consent has been obtained.”

As shown, *riba* (interest) does not come into effect in a transaction between a Muslim and a non-Muslim in *Dār al-Ḥarb*. Therefore, in *Dār al-Ḥarb*, it is permitted to buy shares of those firms that deposit their capital in banks, while the same is impermissible in *Dār al-Islām*.

Without a pressing need, taking an interest-based loan is not allowed. However, in the presence of an extremely pressing need, the scholar Ibn Nujaym al-Miṣrī *raḥmatullāhi ‘alayh*, has permitted taking out an interest based loan. It is mentioned in *al-Ashbāh wa al-Nazā’ir*: “...and an interest-based loan is permitted for the needy”.

Based on this, some leeway can be found to buy shares of companies that take loans from banks - with the condition that, the apparent income tax owed by the company would be equal to the amount of interest it would pay the bank. In any case, the safer option is to avoid buying shares of such companies as it is not a pressing need for the company to take out an interest-based loan from the bank in order to avoid income tax or increase capital.

Some scholars opine that buying shares of such companies is tied to certain conditions:

- 1) There should be opposition to such a practice of taking out interest-based loans during the company's annual general meeting due to the fact that the company holds the position of the de facto representative (*wakīl*) of the shareholder in business matters pertaining to it. If the shareholder expresses an opposition to an interest-based transaction, he would be rid of his personal obligation to protest and detest such a transaction, even though the company may not act on his advice.
- 2) The shareholder should find out the details of the profit percentage incurred due to interest-based transactions, and he should donate such a percentage of his profits to the poor and the needy.

Even as per the conditions and details mentioned herein, not all shares or not all transactions are permissible even with those companies who fulfill the above requirements. In fact, some transactions under some conditions, with such companies are allowed while others are not.

Those situations and transactions in which the shares are present in the account of the shareholder (i.e., he has already acquired ownership of them), along with those transactions where a "sale on margin" is made and the broker is paid his principal money that he contributed<sup>3</sup> towards the purchase of shares for his client back without interest are allowed.

However, in situations where the shares are not actually present in the account (i.e., they are not in one's ownership), paying the broker interest on the money he contributed towards the purchase of shares for his client, and all those situations where there is an element of gambling or betting or playing a game of chance, are not allowed.

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<sup>3</sup> This money is different from his service charge/commission, which is allowed by the *Sharī'ah*.

## Sale on Margin

### Question:

I trade in shares and I have a question in this regard - I request you to please provide an enlightening answer. May Allāh ﷻ reward you for your effort. One of the transactions in shares trading is “sale on margin.” In this method, the buyer pays a certain amount from the cost of the shares. The broker pays the balance and buys the shares and then transfers them to his client’s (the original buyer’s) account. A date is fixed to repay the broker his contribution in the initial transaction. If the client repays the broker by this fixed date, he pays no amount extra other than the amount he owed the broker for the remaining cost of the shares. However, if the client does not pay the broker by the agreed due date, he is obliged to pay interest. Is this method of trading in shares allowed?

- Afzal Hussain, Bangalore, Karnataka, India

**Answer:** In the shares trading transaction that you have described in your question, the partial amount contributed by the broker in the purchase of the shares is in reality a loan he is giving to his client since, in this situation, a condition has been placed on the buyer that in the event he does not pay the loan by a due date, he will be charged extra on the principal amount he owes the broker. It is clear, therefore, that this is a case of interest (*riba*). In the Islamic *Sharī’a*, any contract which stipulates a condition where profit is mandatory is really *riba*, which is *ḥarām*.

Therefore, this situation of “Sale on Margin” is not allowed. It has been explained in *Radd al-Mukhtār* Vol. 4, The Book on Buying: “Demand of profit on any loan is *ḥarām*.” It states on pg. 194 that demanding or charging a profit is *ḥarām* even if it is conditional.

However, if the broker is paid back this amount by the due date, this transaction is allowed, as there is no involvement of charging profit on a loan.

## Broker's Commission in the Stock Markets

**Question:** Not everyone can trade in the Stock Exchange. Transactions can only be performed by brokers who are members in the stock exchanges. The brokers charge a commission for their services (trading in the exchange on behalf of the client). Is this commission charged by the brokers allowed?

- *Feroz Sharif, Mehdipatnam, Hyderabad, India*

**Answer:** The broker's status is that of an agent. He connects the buyer to the stock exchange. In the blessed *Sharī'a*, giving a commission to an agent (broker, commission agent, etc.) is allowed. It has been mentioned in Radd al-Mukhtār Vol. 5, Pg. 44, "... a wage needs to be paid to the dealer or broker."

Therefore, a broker who connects the buyer to the stock market and transfers shares to the buyer's account is perfectly allowed to charge a commission of 0.05% for his services.

