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Futures Contracts in Islamic Finance: An Analytical Approach

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Abstract: Futures contracts provide a useful means of reducing risk because these are highly liquid instruments that can be entered into or liquidated at any time. However, the debate on the legitimacy or otherwise of these contracts in the Islamic commercial law continues to invoke different contentions. The paper accentuates the fact that futures contracts are at bottom a new phenomenon of this age which have no precedent or parallel in the conventional law of transactions (mu'amalat). Therefore their legality or otherwise should be looked into with the Islamic viewpoint of general permissibility in relation to transactions. The paper examines a number of jurisprudential and legal issues such as non-existence of the subject-matter, sale prior to taking possession, bai al-kali bil-kali, speculation and hedging, and concludes that futures contracts are allowed to benefit from. However, only hedgers can take advantage of them. These instruments can never be used for purely speculative purposes where making or taking delivery is not intended. Although it is not necessary to pay the complete price to the seller at the time of the contract yet some other precautionary measures such as a bank guarantee or a fair amount of money to be given to the seller should be taken to ensure that pure speculation is scrupulously forestalled and the delivery would certainly be made.

Keywords: Futures contracts, hedging, Islamic finance

Introduction

Futures contracts allow producers and commercial operators to fix the price of commodities wherein they trade in advance of making or taking physical delivery. Therefore these contracts are regarded as very effective in minimizing various forms of risk. Futures contracts facilitate production planning in agriculture, industry and commerce, and provide efficient marketing facilities for high volumes of trade. Kamali (1999b) asserts that contracts are concluded by qualified brokers and agents whose job is to ensure proper observance of market rules on a highly controlled and centralized basis. In order to guarantee the due performance of contracts in the future, clearing-house oversees the trading activities on the exchange and takes care of the solvency of all traders (Gurusamy, 2004: 568).

The debate on the permissibility or otherwise of futures contracts in the Islamic commercial law continues to invoke different opinions. Muslim scholars have generally taken the view that these contracts are not consistent with the *Shari'ah* on account of the following reasons:[1]

[1] For further details of the reservations expressed by the Muslim scholars about futures contracts, see Kamali 2002, pp 13-14; Al-Amine 2005, pp 76-77; International *Shari'ah* Research Academy for Islamic Finance 2011, pp 600-603; Sole 2007, pp 12-13

a) The counter values in futures contracts are non-existent at the time of the contract. At that time, no goods are delivered and no price is paid. It is just a paper transaction which is concluded for the sole purpose of speculative profit. From the *Shari'ah* perspective, it is necessary for a valid sale that at least one, if not both, of the counter values should be present at the time of the contract. *Salam* is a case in point wherein payment is made in advance by the buyer and delivery of the goods is deferred by the seller to a later date. Hence either the price or the delivery of the subject-matter can be deferred to a future date but it is impermissible to postpone both of them.
b) Futures contracts consist of short selling in which the seller neither owns nor possesses the commodity he sells, even though it is existent.[2] The purpose of any sale is, of course, to transfer ownership of the item being sold to the buyer. If the seller does not own the underlying commodity, he cannot transfer its ownership.
c) Futures contracts fall short of meeting the requirements of taking possession of the item prior to resale. Nearly all transactions in the futures market take place without physical delivery.
d) The deferment of both counter values to a future date turns effectively these contracts into the forbidden sale of one debt for another (*bai al-kali bil-kali*).
e) Futures contracts involve speculation that verges on gambling (*maysir*) and uncertainty (*gharar*). It is also asserted that gambling causes volatility in the prices of commodities in the cash market.

The issue of admissibility or otherwise of futures contracts incorporates all these dimensions to trade practices, and necessitates a thorough deconstruction of the aforementioned objections. Those who frown on financial derivatives or more specifically futures contracts overlook the fact that the pace of material development and the change in international relations, economics and finance have been unprecedented in many ways. Innovative techniques and new ideas have brought about completely new scenario that did not exist before and that was not known to the jurists of the past. To issue a prohibitive judgement on modern commercial transactions that have won international recognition with reference to the rulings of ancient jurisprudents without any decisive evidence is bound to prove detrimental to the Muslim community, and to retard the prospects for their development. Such a methodology is therefore inconsistent with the basic objectives of the *Shari'ah*. Futures contracts are at bottom a new phenomenon of this age which has no precedent or parallel in the conventional law of transactions (*mu'amalat*). Their validity or otherwise should consequently be looked into with the Islamic viewpoint of general permissibility in relation to transactions. Moreover, what is of the essence is to take their pros and cons into consideration as well. It is inadvisable to focus on the aspect of advantages only while ignoring the adverse effects which these contracts might bring forth or vice versa.

The discourse that follows is divided up into six broad sections altogether. Section 2 reviews critically the literature on the topic at issue. Section 3 canvasses the issue of non-existence of the subject-matter in the Islamic commercial law. Section 4 examines various contentions of the Muslim scholars in relation to the sale prior to taking possession. Section 5 explores the Islamic position on *bai al-kali bil-kali*. Section 6 thoroughly goes through speculation and hedging. Finally, Section 7 recapitulates the discussion and draws inferences.

Literature Review

Saunders and Cornett (2007) and Hull (2007) define that a futures contract is an agreement between a buyer and a seller at time 0 to deliver a specified asset at a certain time in

[2] Short selling means selling commodities, securities, currencies, etc, that one does not have. See Smullen & Hand 2005, p. 375; Naughton & Naughton 2000, p. 153; Kamali 2002, p. 110

the future for a certain price. Futures contracts provide a useful means of reducing risk because these are highly liquid instruments that can be entered into or liquidated at any time. These contracts are also paper transactions which do not involve the immediate transfer of the underlying assets. Low margin rates make futures trading relatively inexpensive. These contracts are normally traded on an organized exchange (Saunders & Cornett, 2007: 297). The exchange sets up certain standardized features of the contracts. As the counterparties do not necessarily know each other the exchange provides a mechanism that gives a guarantee to both parties that the contract would be honoured. Two largest futures exchanges in the United States of America are the Chicago Board of Trade (CBOT) and the Chicago Mercantile Exchange (CME). The largest exchanges in Europe are the London International Financial Futures and Options Exchange (LIFFE) and Eurex. Other large exchanges include the Tokyo International Financial Futures Exchange (TIFFE), the Singapore International Monetary Exchange (SIMEX) and the Sydney Futures Exchange (SFE).[3]

Futures contracts constitute an important instrument for managing or hedging against different kinds of risk in financial markets. Futures markets ensure to provide a permanent venue for traders in commercial instruments and commodities where prices are determined on the basis of genuine market forces of demand and supply. In the absence of this facility, potential buyers and sellers would be unable to find an appropriate outlet for their needs. Futures markets are highly organized. The maturities of different commodities are specified, and all prices are quoted for these maturities. The grades of each commodity are also precisely defined. For a successful futures market, the supply of and demand for the underlying commodity must be large, prices must be volatile, the commodity being traded must be quantifiable to allow standardization, and the market must be competitive. Hull (2007) observes that many participants in futures markets are hedgers. They want to use futures contracts in order to reduce a particular risk which they face. This risk might relate to the price of a certain commodity, the level of the stock market, foreign exchange rate or some other variable. A perfect hedge is the one that could completely eliminate the risk. Although hedgers make every endeavour to have a perfect hedge, it is few and far between.

Muslim commentators lack the concurrence of views on the juristic identification of futures contracts. Kamali (2005) states that Majd al-Din Azzam characterizes futures as *shibh al-salam* (quasi-*salam*) but rightly adds that these contracts could not be subsumed under *salam* because in *salam*, the price is paid at the time of the contract. Some scholars like Sami Hamoud consider futures as an exchange of promises which is permissible in all sales except for the sale of currencies. Some other scholars like Shaikh Mustafa al-Zarqa, referred to by Azzam, opine that futures are not congruent with the description of *salam* or a deferred sale (*bai al-mu'ajjal*) because in these contracts, one of the counter values is present at the time of the contract whereas in futures, both of them are deferred to a future date.

There is no parallel to futures contracts in the Islamic commercial law. Although some provisions of the Islamic commercial law are in sync with certain aspects of futures contracts, but the latter tends to depart from the basic framework of the conventional Islamic contracts.

Ebrahim and Rahman (2005) ascertain the efficiency of conventional futures over that of the classical *salam* contract and find that futures are pareto-optimal. The welfare, the authors conclude, of the emerging Muslim economies would be reinforced by substituting modern futures on Islamic commodities for *salam*.

Futures contracts are operated on the basis of margins which are determined by rides involved in the contract. The buyer and the seller have to deposit only a fraction of the contract value. It means that the traders in the futures market enter into more contracts than in a spot market and therefore make market more liquid, but what makes futures trading more prone to speculation is the high degree of leverage that comes from the low margin requirements. This

[3] For more details, see Hull 2007, p. 6

low margin facility is not available in the stock market, and this is the main factor that accounts for the high volume of speculative trading in futures contracts.

Naughton and Naughton (2000) point out that Islam does not forbid an agreement to sell a commodity in the future, although there are restrictions on how it is to be done. It is a requirement that a clearly defined commodity be specified in the contract. It is unlikely that a stock index futures would meet these requirements because a dollar value of an index is unlikely to be regarded as a clearly defined commodity. Without a clearly defined commodity, the ability to deliver anything physically is in doubt. The end result of a modern stock index futures is an exchange of cash representing the difference between the opening and closing price of the contract on the day of maturity. The fact that stock index futures are capable of being used by speculators does not invalidate their use. It is, the authors add rightly, not inconceivable that futures contracts can be restructured to overcome the technical problems that at present inhibit their use.

Kamali (2005) states that Muhammad Mukhtar al-Salami emphasizes that there is a pressing need for futures contracts. He calls upon Muslim scholars to address various jurisprudential issues about futures according to modern circumstances. Muslim scholars must not limit themselves by just quoting what is written in the jurisprudential books. They should refrain from passing prohibitive judgements on merely imitative basis. Similarly, Ali Abdul Qadir and Majd al-Din Azzam underscore that futures trading is a new mode of commerce that calls for a fresh response formulated in the light of the operative procedures of futures markets.

A similar analysis of futures contracts has been advanced, as Kamali (2002) states, by Abd al-Karim al-Khatib who admits that although futures contracts do not fulfil all requirements of a conventional contract yet they are carefully and precisely regulated, and satisfy the basic purpose of Islamic commercial law. Abdul Qadir, Azzam and al-Khatib share the view that the registration and clearance procedures along with the guarantee functions of the clearing-house are precise, and trading in futures is conducted by trained professionals in a highly centralized and controlled market.

Non-Existence of the Subject-Matter

The jurists are reported to be unanimous in the proscription of the sale of a non-existent object (*bai al-ma'dum*). The sale of something whose existence is doubtful is also invalid such as milk in the udders of a cow (Al-Zuhayli n.d., vol. 5: 3398-3399). It *ipso facto* signifies little that the non-existence is temporary or permanent. This requirement is generally maintained in regard to the sale of tangible objects but when the subject-matter of a sale contract could come about only in the future such as usufruct and labour, the requirement, according to the majority of scholars, is omitted on an exceptional basis. Hence when someone hires a lawyer, the services that he renders cannot be in existence at the time of the contract. Two kinds of conventional contracts, namely *salam* and *istisna*, legitimized by the cogent authority of the *Shari'ah*, are of the same stamp. Muslim jurisprudents consider these contracts to be anomalous and an exception to the norm. They put forward the *hadith* in support of their contention that Hakim bin Hizam asked the Prophet (Peace and Blessings of Allah be upon him): 'O Messenger of Allah! A man comes to me and asks me to sell him what is not with me, I sell him (what he wants) and then buy the object from the market for him (and deliver)'. The Prophet (Peace and Blessings of Allah be upon him) replied: 'Do not sell what you do not have' (Abu Dawud 2008, vol. 4: 140; At-Tirmidhi 2007, vol. 3: 43-44).

On the basis of this *hadith*, it is construed that the subject-matter of a sale contract must exist and be owned by the seller at the time of the contract (Kamali 2005: 28). The jurisprudents have three distinct interpretations with reference to this *hadith*:

Firstly, the *hadith* means that one should not sell what one does not own at the time of the contract. One of the basic requirements of a sale contract is that the seller had better own the object; otherwise the sale would go awry even though he buys and delivers it later. The only exception is the *salam* sale in which the ownership is not a prerequisite. This is the view of Imam Ahmad bin Hanbal.

Secondly, the *hadith* only applies to the sale of specified and unique objects rather than fungible items. Hence if *salam* is struck over fungible goods that are readily available in the market, it is quite permissible even if the seller does not own the object at the time of the contract. Imam Shafi'i takes the view that one might sell what one does not own provided that it is not a specific object because the delivery of a specific item cannot be guaranteed if the seller does not own it.

Thirdly, the *hadith* strikes down the sale of what is not existent and what cannot be delivered. So, the emphasis is on the seller's inability to deliver which entails risk and indetermination. If the *hadith* were taken at its face value, it would invalidate *salam* into the bargain. The Prophet (Peace and Blessings of Allah be upon him) forbade his disciple to sell particular commodities on account of, in all probability, uncertainty about his ability to deliver (Muhammad 2000, vol. 4: 153-154). It is quite possible, as Kamali (2005) highlights that the seller owns the object but is unable to deliver it or the seller possesses the object but does not own it. In either case, the seller would fall within the purview of this *hadith*. The emphasis is therefore neither on ownership nor on possession, but rather on the seller's effective control and ability to deliver. The market-place of Madinah in the prophetic era was too small that it could not guarantee the regular supply of a certain commodity. That is why the Prophet (Peace and Blessings of Allah be upon him) prohibited to sell those items which were not available at the time of sale. This is also signified by the statement of Hakim bin Hizam that people would ask him to sell items to them that he did not have. In other words, they wanted to ensure the availability of commodities which they could not find in the market.

Imam Malik has drawn a distinction between commutative contracts which are financial transactions among people and charitable contracts which do not involve exchange of counter-values such as gift and bequest. To him, the existence of the subject-matter is a requirement in only commutative contracts (Al-Zuhayli n.d., vol. 4: 3020). It is therefore allowed to make a present, for example, of what is in the womb of an animal, but disallowed to sell the same for some price.

Ibn Taymiyyah claims that the sale of a non-existent object is unlawful if it involves gambling and misappropriation of the people's property, but it is otherwise lawful. In respect of the assertion that the sale of a non-existent object is generally forbidden, he points out that there is neither an apocalyptic injunction nor a general consensus to support this view. The *Shari'ah* has, to the contrary, validated such sales. Thus it is not an issue of existence or non-existence of something which determines the legality or otherwise of its sale. Instead, these are the elements of misappropriation and gambling which vitiate the status of a sale contract. The same view is held by Ibn al-Qayyim who states that no evidence is found in the Book of Allah or in the teachings of the Prophet (Peace and Blessings of Allah be upon him) or in the statements of any of his disciples putting a ban on the sale of a non-existent object. The *Sunnah* admittedly forbids the sale of some things which do not exist but it prohibits some other things which do exist. Hence the effective cause (*illah*) of proscription is *gharar*, not the existence or non-existence of an item. *Gharar* is when a thing cannot be delivered whether it is existent or non-existent. The essential element of a sale is to deliver the object, and if the seller is unable to deliver, it entails *gharar*, gambling and risk (Al-Zuhayli n.d., vol. 4: 3021).

Al-Dhareer (1997) goes along with Ibn Taymiyyah and Ibn al-Qayyim observing that every non-existent object whose future existence is uncertain must not be sold and every non-existent object whose future existence is normally ascertainable may be sold. Mansuri (2005) also states that the *hadith* prevents only that non-existent object which involves *gharar* such as the sale of unborn calf but those things whose existence is certain in future are permissible to sell because they do not involve any *gharar* which may lead to dispute and litigation among the parties. *Salam* (sale of future goods with advance) and *istisna* (contract of manufacturing) are examples of this case. Both are permissible in the *Shari'ah*, although the subject-matter does not exist at the time of the contract.

In reference to the future availability or otherwise of an object, the sale of a non-existent item can be one of the following three types:

The first type is envisaged where the subject-matter exists in essence but nears completion thereafter. This type includes the sale of crops and fruits before they ripen. In spite of the element of *gharar* in the sale of these objects, the transaction is basically valid.

In the second type, the subject-matter does not exist at the time of the contract, but is certain to exist in the future. In this regard, there is a broad consensus of opinion among different schools of thought that the sale of something which does not exist at the time of the contract is null and void, even if it is certain to exist in the future.

The third type is germane to the situation where the subject-matter does not exist in essence at the time of the contract and its existence in the future is uncertain too. This is the third eventuality which Ibn al-Qayyim has discussed. He argues that when the subject-matter of a contract is non-existent at the time of the contract and its existence in the future is also doubtful, the sale involves substantial uncertainty and risk. Therefore the sale of milk in the udders or the sale of an unborn animal is frowned upon because it entails aberrant uncertainty.

It may thus be concluded, as Kamali (2002) notes, that *gharar* which the *Shari'ah* has forbidden relates to uncertainty about the existence of the subject-matter of a sale contract at that time when the delivery is due, and does not necessarily relate to its existence at the time of the contract.

Siddiqui (2008) finds that futures contracts are forbidden as they include the element of risk. The risk of these instruments is that at the time the contract is executed, the object or commodity to be sold does not usually exist. Kamali (2002) states that Subhi Mahmassani also claims that contracts concerning future things are basically invalid on account of non-existent items at the time of the contract except for *salam* and *istisna* which are permissible in the *Shari'ah*. The postponement of the transfer of ownership in proprietary contracts (*uqud al-tamlik*) is a form of gambling and thus prohibited.

Surprisingly, the authors make no mention of *salam* here wherein the object or commodity being sold is normally non-existent at the time of the contract but no one proscribes it. There is no doubt that the jurists of various schools of thought have invalidated the sale of non-existent object for fear of uncertainty (*gharar*) but, on the other hand, some jurisprudents such as Ibn Taymiyyah claim, as was stated above, that it is not an issue of existence or non-existence of something which determines the legality or otherwise of its sale. Instead, the effective cause (*illah*) of proscription is *gharar*; it comes about when a thing cannot be delivered whether it is existent or non-existent. The conventional *fiqh* equates, in all probability, the sale of non-existent object with *gharar* because the markets were very small in the early days of Islam but this is no longer the case. Trading in futures contracts generally proceeds over fungible goods and commodities (Kamali 1999b: 527). This aspect makes them highly selective. Commodity futures refer to staple food grains, pulses, oil and timber. These fungible commodities have market potential as they are always in demand. The clearing-house procedures tend to preclude any serious doubt or uncertainty concerning the existence and delivery of the subject-matter of sale. In futures contracts, uncertainty about the existence of the underlying commodity in the future is not an issue. Nor do the prospects of delivery or the fulfilment of all material aspects of the contract involve the issue of *gharar*. Whenever the buyer longs to take delivery, the clearing-house guarantees to deliver. The subject-matter of the contract is, in other words, certain to become available in the future.

With regard to the existence or non-existence of the subject-matter of a sale, Kamali (1996, 1999a, 1999b, 2002, 2005) also opines that the underlying rationale of the *hadith* on this issue is to prevent *gharar* that emanates from the seller's inability or failure to make delivery. If this is effectively prevented and ensured then the physical existence of the subject-matter is no longer an issue.

Khan (1988) takes the view that futures trading are alien to Islamic law as it involves the sale of non-existent goods and does not entail actual transfer of the commodity to the buyer. Therefore it is unlawful. He cites in support of his viewpoint the *hadith* of the Prophet (Peace and Blessings of Allah be upon him) which states: 'sell not what is not with you'.

As noted above the *hadith* applies only to the sale of specified and unique objects rather than fungible items. Hence if *salam* is struck over fungible goods that are readily available in the market, it is quite permissible even if the seller does not own the object at the time of the contract. Futures contracts do not come within the purview of this *hadith* because these are normally concluded on the basis of a description of the underlying commodity. Contracts in foodstuffs largely concern fungible agricultural commodities that are sold by measurement and weight. Futures contracts are generally standardized in terms of quality, grade and delivery. The standardization of contracts is an essential feature of futures trading, and compliance with the stated description is particularly emphasized for the smooth running of exchange operations. There are also provisions which compensate the buyer, if he accepts delivery, for any material variation in the stated quality and grade. The seller is granted some flexibility to deliver a low-grade commodity but in this case, the buyer can ask for compensation and may consequently pay a lower price. Futures sales are not exactly the sale of objects that are non-existent. This is due to the fact that the futures markets operate on a permanent basis and the underlying commodities are also expected to be available in the open market. Therefore it cannot categorically be said that the subject-matter of a futures contract is always non-existent.

Kamali (2002) states that Ahmad Yusuf Sulayman takes account of diverse rules of Islamic jurisprudence with regard to the sale prior to taking possession, the sale of objects that the seller does not own, deferred sale and the sale of a non-existent commodity. He directly applies Islamic jurisprudential rules of conventional sale to futures contracts and passes prohibitive judgements in almost every case he looks into. He also quotes the aforementioned *hadith*, namely 'sell not what is not with you' and explicates that the *Shari'ah* has only validated *salam*; this is the only framework in which a deferred sale involving a future delivery can lawfully be concluded.

In relation to the non-existent subject-matter, the effective cause (*illah*) of the prohibition is *gharar*. The author did not ascertain whether the inability of a seller to deliver a certain commodity is still a prickly issue in futures trading.

Sale Prior to Taking Possession

Another relevant issue is that of the sale before taking possession (*qabd*). The Prophet (Peace and Blessings of Allah be upon him) has been quoted as saying:

> '*He who buys foodstuffs should not sell it until he has taken possession of it*'.[4]

According to another *hadith*:

> '*He who buys foodstuffs should not sell it unless he is satisfied with the measure with which he has bought it*'.[5]

On the basis of foregoing *ahadith*, it is stated that the Prophet (Peace and Blessings of Allah be upon him) prohibited to sell those commodities which the seller did not possess

[4] Al-Bukhari 1997, vol. 3, p. 198

[5] Al-Hajjaj 2007, vol. 4, p. 225

because of uncertainty about their delivery (Kamali 2005: 31). The *ahadith* apparently intend to protect the buyer from harm in case the object of sale is destroyed ere delivery. Consequently almost all jurists are of the opinion that one cannot sell foodstuffs before possession (Muhammad 2000, vol. 4: 192). According to Imam Shafi'i it is not allowed to sell anything, moveable or otherwise, before taking possession (Al-Jazeeri 1986, vol. 2: 233-234). Imam Abu Hanifah invalidates to sell a moveable thing before possessing it, but possession is not a requirement in the sale of real property, assuming that the fear of destruction and loss, which seems to be the *raison d'etre* of the prohibition, is absent in this case (Al-Zuhayli n.d., vol. 5: 3380-3381). The *Hanafi* jurisprudents further uphold that a valid sale can be concluded prior to taking possession but it will fall into abeyance until *qabd* comes about. *Qabd* is therefore not a prerequisite of a valid contract, and it is lawful to postpone it to a future date. In case of currency exchange, it is, however, a sine qua non for a valid contract (Ibn Qudamah 2004, vol. 4: 39). Imam Malik takes the view that the *ahadith* apply to foodstuffs only, but nevertheless this requirement is applicable to such transactions that entail exchange of values, not to loans and gifts (Al-Kandhalwi n.d., vol. 11: 198). Thus a person who buys foodstuffs may pass it on to someone as a gift or loan even before possessing it. Ibn Hazm has confined the applicability of this decree to one item only, namely wheat. To him, everything could lawfully be sold before possessing it, except wheat (Ibn Hazm 1988, vol. 7: 472-481).

The requirement of taking possession is omitted in the sale of both foodstuffs and real property when the goods in question are owned by means of a gift or inheritance because they involve no financial exchange and the seller is not obliged to pay the price to somebody else (Kamali 2001: 127). In two forms of business transactions, namely *salam* and *istisna*, the requirement of *qabd* has also been forgone on account of popular utility and convenience. Also, no specific manner in respect of *qabd* has been stated in the *Shari'ah*. That is why the jurists unanimously opine that the prevalent custom (*urf*) is the norm in this regard. What is believed to be *qabd* according to the prevalent custom is also deemed *qabd* in the *Shari'ah* (Islamic Fiqh Academy of India n.d.: 12-13).

In the light of aforesaid explication, it goes without saying that the rationale behind the requirement of *qabd* is to ensure the delivery of the subject-matter. Therefore, if a subject-matter is certain to be delivered at its predetermined time, the requirement of *qabd* might rationally be omitted because the underlying cause (*illah*) does not exist any longer. Kamali (2001) espouses the same view that if there is no *gharar* with reference to the delivery of the subject-matter then the prevailing requirement of *qabd* should not, on the basis of *istihsan*, be insisted on.

Al-Amine (2005) states that the first institution that addressed the issue in question was the Mecca-Based Fiqh Academy. In its 1985 resolution, the Academy acknowledges some benefits of financial derivatives to farmers and commodity traders but asserts that these benefits are accompanied by such transactions which have explicitly been proscribed by the *Shari'ah* such as gambling, exploitation and selling of what one does not own or possess. It also admits that futures contracts have developed into a variety of transactions and each case should therefore be viewed and evaluated on individual basis. The Fiqh Academy's final resolution concludes that futures contracts are forbidden because they involve the sale of commodities which the seller does not own or possess. Futures sales are not genuine sales because they are concluded over things which do not exist at the time of the contract. The parties to a futures contract are also not interested in making or taking delivery. Instead, they just want to make a profit from price movement of the commodities concerned. Hence buying and selling of futures contracts are closer to gambling rather than trading.

Delivery is nevertheless an important factor. It is the possibility of eventual delivery that determines the prices of financial derivatives. Delivery remains a legal commitment, and the seller must deliver the commodity unless he closes his position by entering into a reverse transaction. Economically speaking, physical transfer of commodities at each stage involves a lot of human activity. Many people get jobs as a result of packaging, storage and transport. Therefore the Islamic insistence on the physical transfer of commodities by each seller has, on the whole, an encouraging effect on the economy.

The Academy has rightly called attention to the fact that in derivatives instruments, physical delivery of underlying assets is once in a blue moon. In most forward contracts, the commodity is actually delivered by the seller and accepted by the buyer but in futures contracts actual delivery takes place in around two per cent of the contracts traded. Most of them are settled before maturity by entering into a matching contract in the opposite direction.[6] However, the Academy would have received tumultuous applause if it had endeavoured to analyse, according to its own assertion, futures contracts on individual basis. For Examples futures trading in stock indices and currencies are governed by a different set of rules from futures trading in commodities. Likewise options and options on futures that are traded on commodity exchanges are completely different modes of trading which should have been evaluated separately. Moreover, the Academy did not attempt to come up with Islamic alternatives that could assure the procurement of motley advantages of futures contracts the Academy did recognize.

The Islamic Fiqh Academy of India (2001) examines only one aspect regarding futures contracts, namely the issue of taking possession. The Academy opines that as a principle, it is not permissible to sell anything off before actually possessing it. Therefore if the sale is struck before taking possession, the sale would be irregular (*fasid*) rather than null and void (*batil*). However, it will become valid after possessing the commodity being sold.

As noted before the *Shari'ah* commands do not proscribe the sale of what is not owned or possessed as long as it is of benefit to the general public. That is why *salam* has explicitly been validated. In futures contracts, delivery and taking possession are merely theoretical propositions which at bottom come about in around two per cent of all transactions. Traders sell before taking possession and sometimes sell what they do not own but with the assurance that identical items can be bought and sold instantaneously. There is normally no fear of the seller's inability to find and deliver the underlying commodity if he wishes to make delivery. There is, however, a general agreement that the rationale behind the prohibition of the sale of a certain commodity prior to taking possession is, in fact, uncertainty and doubt about its delivery (Obaidullah 1999: 15). If the seller is certain to deliver the commodity then the requirement of taking possession prior to sale remains no longer an obstacle. The Academy, however, sidestepped different juristic contentions and the change in material circumstances in this regard.

Al-Dhareer (1997) infers that futures contracts are forbidden because there is no condition in these contracts that the seller should own the commodity. It is enough that he is committed to deliver the commodity at the appointed time. There is also no condition in these contracts that the price should be paid in advance.

If the concept of taking possession or ownership is considered according to what is customary in futures markets, it might be simplified through an exchange. It is unanimously admitted that the concept of *qabd* is based on the prevailing custom, and it could be real (*haqiqi*) or constructive (*hukmi*). In the real form, the commodity is physically transferred from the seller to the buyer whereas in the constructive form, there is no physical delivery except for something that could be considered as a form of taking possession. So, taking possession of the document of a specific commodity recognized by the market participants as legal tender showing the transfer of ownership from one person to another is generally accepted by Islamic

[6] Since there is a matching sell for every buy the exchange does not have to worry about balancing both sides. Say that A buys a futures contract and B sells it. This transaction leads to two contracts: firstly, A buys and clearing-house sells; and secondly, B sells and clearing-house buys. Next day, A sells and C buys. A is out of the picture now. The clearing-house is seller to C and buyer from B. For further details, see Al-Suwailem 2006, p. 28; Dali & Ahmad 2005, p. 14; Ghoul 2008, p. 99; Apte 2007, p. 225

financial institutions as a form of constructive possession even though the commodity is not physically transferred. Therefore it could be argued, as Al-Amine (2005) maintains, that even though the underlying asset in commodity futures is a physical commodity but it is internationally recognized that in the futures markets, taking possession of underlying assets will occur through the transfer of documents confirming the transfer of ownership and liability from the seller to the buyer.

Bai Al-Kali Bil-Kali

A number of contracts have been included in Islamic jurisprudence under the rubric of *bai al-kali bil-kali* (sale of one debt for another) or *bai al-duyun* (sale of debts). Basically, *bai al-dayn* envisages the sale of an unpaid debt involving either two or, in some cases, three parties. Kamali (2002) quotes several instances of *bai al-kali bil-kali*. Some of them are as follows:

a) A buys a certain commodity from B on credit. When the time of payment comes and the debtor finds that he is unable to pay, he asks the seller: 'Sell it to me on credit again in return for some additional amount of money'. The seller concurs, and sells on credit what was already credit. Imam Malik deems this kind of transaction to be illicit.
b) A borrows two, for example, tons of wheat for his personal use from B, returnable after three months. Before the expiry of this period, B sells the same two tons of wheat to C in exchange for something else to be delivered after one month. Here the sale involves an exchange of debts which is considered to be impermissible on account of the uncertainty with respect to delivery.
c) A borrows £10 000 from B for a period of one year. Prior to the repayment of debt, B proposes to rent A's house in exchange for £10 000. This is unlawful as well because the transaction consists of the sale of one debt for another. If the proposed exchange is advantageous to one of them, it would be tantamount to *riba*.
d) A is indebted to B for, say, 20 ounces of gold and B owes 150 ounces of silver to C. A and C cannot settle up their debts with one another directly because this would amount to the sale of one debt for another. The *Hanbali* jurists prohibit such transaction when the two commodities are different, whereas the *Shafi* jurisprudents forbid it even though the commodities are identical in terms of genus and quantity.

The prohibition of *bai al-kali bil-kali* is derived from the *hadith* wherein the Prophet (Peace and Blessings of Allah be upon him) invalidated it (Al-Shawkani n.d., vol. 5: 165). Any contract where the settlement by both parties is deferred to a future date is a clear case of sale of one debt for another (Obaidullah 1999: 20). Hassan (1985) quotes a broad consensus of opinion on the prohibition of *bai al-kali bil-kali* in the Islamic jurisprudence. Muslim jurists, he says, necessitate taking possession of principal in *salam* before leaving the place of contract in order that the sale of one debt for another can be refrained from. The commodity purchased is, in effect, a debt which is to be acquired later on. If the seller does not receive money at the time of the contract, the transaction will become a sale of one debt for another which is frowned upon. Ibn Qudamah (2004) also maintains that *bai al-dayn* is unanimously impermissible. He cites Ibn al-Munzir's assertion that there is a complete agreement among the jurists about the illegitimacy of *bai al-dayn*. Imam Ahmad bin Hanbal is also reported to have said the same (Al-Shawkani n.d., vol. 5: 166). Usmani (2005) states that the prohibition of *bai al-dayn* is a logical consequence of the prohibition of *riba*. A debt receivable in monetary terms corresponds to money, and every transaction where money is exchanged for the same denomination of money, the price must be at par. Any increase or decrease from one side is tantamount to *riba*,and can never be allowed in the *Shari'ah*. Gilani (n.d.) argues that *bai al-kali bil-kali* is prohibited because it might precipitate untold disputes at the time of payment. Ibn Rushd (n.d.) and Rehman (1993) also deem *bai al-dayn* forbidden in the light of the *hadith*.

On the other hand, Ibn al-Qayyim holds the view that not all forms of *bai al-dayn* are prohibited. The prohibited form is that which involves the sale or exchange of one deferred debt for another. He further explains that there is neither explicit nor implicit text in the *Shari'ah* to proscribe it. On the contrary, the principles of the *Shari'ah* signify its permissibility. To Ibn Taymiyyah, the Prophet (Peace and Blessings of Allah be upon him) did not prohibit the payment of one debt in exchange for another debt when both are established and substantiated, especially when this process does not involve any third party, and is restricted to the debtor only. The *Maliki* jurists also upheld the permissibility of certain types of *bai al-dayn*, especially when the debts involved therein do not arise from the exchange of foodstuffs, and the transaction does not contain the element of *gharar* (Al-Zuhayli n.d., vol. 5: 3407).

It is a fundamental principle of the *Shari'ah* that the consensus of the Muslim jurisprudents on a certain issue is as binding as the precepts of the Koran and the *Sunnah*. The relevant verse says:

> *And whoever contradicts and opposes the Messenger (Muhammad) after the right path has clearly been shown to him, and follows other than the believers' way, We shall keep him in the path he has chosen and burn him in Hell – what an evil destination (4:115)!*

Since the jurists are unanimous in the proscription of *bai al-kali bil-kali* it cannot be validated by the contentions of a few scholars.

El Gari (1993) says that in futures contracts, the commodity in the first contract could be sold prior to taking possession which is not the case in *salam*. However, there is room for the validity of such a transaction because some scholars do not see any legal problem in selling the commodity purchased through *salam* before taking possession. He compares futures contracts with *istisna*, and deduces that both types of contracts involve *bai al-kali bil-kali* but *istisna* contract should be admitted in the Islamic law on the basis of necessity (*darurah*).

It is ironic that one of two similar contracts is legitimized on the basis of necessity whereas the other is being kept off. Obaidullah (1999) also admits that the profound implication of *bai al-kali bil-kali* in this area may be an obstacle for the development of a futures market.

It remains to be seen whether futures contracts involve *bai al-kali bil-kali* or not. These contracts are operated on the basis of margins which are determined by rides involved in the contract. The buyer and the seller have to deposit only a fraction of the contract value. It means that the traders in the futures market enter into more contracts than in a spot market and therefore make market more liquid, but what makes futures trading more prone to speculation is the high degree of leverage that comes from the low margin requirements. This low margin facility is not available in the stock market, and this is the main factor that accounts for the high volume of speculative trading in futures. Although it is not necessary to pay the complete price to the seller at the time of the contract yet some other precautionary measures such as a fair amount of money to be given to the seller should be taken to ensure that pure speculation is scrupulously forestalled and the delivery would certainly be made. Under the circumstances if, for example, a large amount of money is given to the seller at the time of the contract, the proscription of *bai al-kali bil-kali* would no longer be applicable because *bai al-kali bil-kali* comes about where the settlement by both parties is deferred to a future date, but that is not the case here.

Speculation and Hedging

Technically speaking, speculation means the purchase or sale of something for the sole purpose of making a capital gain (Smullen &Hand 2005: 383). Khan (1988) asserts that speculation is a mental activity in which a person formulates his judgement of the future course of the market. Prima facie, to take risks is an inalienable aspect of human life. From economic point of view, the willingness to take a risk is essential to the growth of a free market. If all savers and their financial intermediaries invested only in risk-free assets, the potential for business growth would never be realized. The specialists agree that risk can be managed, but not eliminated from economic activities. 'Nothing ventured, nothing gained' is the first maxim in the business world (Al-Suwailem 2006: 141). Economic development cannot be achieved without assuming risk. Therefore the Islamic directives that risk may not be severed from real commercial transactions are down-to-earth and conform to the economic realities.

Speculation consists of such risks that are necessarily present in the process of marketing. No business activity can, in this perspective, be said to be utterly devoid of speculation. That is simply because people carry out business activities in order to make a profit which necessitates speculation. Thus there is nothing objectionable in speculation in the Islamic framework. Khan (1988) emphasizes that no law can be enforced against speculation as it involves lawful activities of buying and selling. It is only the intent of the speculator that distinguishes speculation from genuine investment.

As was stated above speculation always involves an attempt to predict the future outcome of an event. But the process may or may not be backed by the analysis and interpretation of relevant information. The former case is completely consistent with the Islamic rationality. An Islamic economic unit is, however, required to assume risk after making a proper risk assessment with the help of information. Hence all business decisions involve speculation in this sense, and when speculation is based on information, it is not only permissible, but also desirable. It is only the flagrant absence of relevant information or the conditions of excessive uncertainty that speculation resembles gambling and is therefore unpalatable. If Islamic modes of investment are compared to the interest-based transactions, the former would turn out to be more inclined towards speculation than the latter. Kamali (1999b) finds that transactions such as *mudarabah* and *musharakah* are highly speculative – so much so that the element of risk and possible failure of the proposed business or enterprise is much greater in these contracts than in most of the interest-based transactions which move within relatively narrow range. Therefore speculative risk-taking, as Kamali (2005) suggests, in commerce which involves investment in assets, labour and skill is not forbidden. What is forbidden is excessive *gharar* and gambling.

Obaidullah (2001) concludes that speculation is against the norms of Islamic ethics and an Islamic market would be free from any mechanism that encourages speculation. Since the distinction between speculation and genuine investment is largely a matter of intention of the individual, the former cannot be directly prohibited. The observed difference is generally in terms of time horizons. An oft-repeated suggestion to curb speculation is to impose a minimum holding period requirement. However, this course of action may not be desirable because a genuine investor may need to liquidate his investment within a short period of time on account of either an unexpected individual need for liquidity or some adverse information about the company. To prevent some investors from disinvestment while allowing others on the basis of a minimum holding period would amount to injustice. Such an action is not only overly restrictive but also unnecessary. Khan (1988) argues that in the Islamic framework, although speculation is not unlawful, professional speculators cannot thrive on account of the following reasons:

a) Each transaction involves physical delivery which is against the temperament of the speculators.
b) Most of the speculation is made possible by funds borrowed on interest. The Islamic economy does not provide this facility.
c) In the Islamic economy, the liability of the borrower is unlimited. Therefore the speculators would not be inclined to borrow money for speculation, exposing all their assets to infinite risks.

There is a general agreement that speculation is indispensable to all trading, especially to stocks and futures; the futures market cannot function without it (Kamali 2002: 159). Al-Amine (2005) also comments that a limited level of speculation is not only needed, but also necessary for the smooth functioning of any exchange. to eliminate speculation altogether whether in ordinary sales or financial derivatives is impossible. However, the commentators have expressed serious reservations that the extent of speculative trading endemic in futures contracts might bring them closer to gambling. So, the legal verdict on their permissibility or otherwise must take this assessment into consideration.

Kamali (1999b) observes that the motivations of a speculator could well be identical with those of a gambler; the main difference is that speculation in financial derivatives reallocates risk from those who do not want it to those who do. In other words, speculation in derivatives is directed towards economically productive channels, and real commercial risks are taken. On the other hand, the underlying object of gambling is risk which does not relate to the exchange or production of goods and services.

Wilson (1991) enunciates that futures contracts are viewed as potentially corrupting by modern specialists in Islamic finance. Such transactions may be prompted by the desire to hedge or gain from arbitrage which is, admittedly, quite different from speculation. The problem, however, is that it is the speculator who provides liquidity in the market for such activities. Those who participate in hedging or arbitrage are therefore indirectly benefiting from, and to some extent encouraging, speculation.

One of the most important arguments against futures contracts is that they promote speculative activities in the market. It has been observed from different financial markets throughout the world that hardly one or two per cent of futures contracts is settled by actual delivery of the underlying assets (Gupta 2006: 16). Therefore speculation has become the primary purpose of the existence, evolution and growth of these contracts. Sometimes these speculative trading practices by professionals as well as amateurs affect adversely genuine producers and traders. Some financial experts and economists believe that speculation causes better allocation of resources, reduces fluctuations in prices, restores equilibrium between demand and supply, removes periodic gluts and shortages, and thus brings efficiency to the market, but it is to all intents and purposes unlikely to own all of these so-called assertions. Most of the speculative activities prevalent in the futures markets are professional speculations which trigger off instability in the markets. It is a reality that sudden and sharp variations in prices are normally due to common, frequent and widespread consequences of speculation.

Kamali (2005) states that Muhammad Taqi Usmani maintains that futures contracts are not valid according to the *Shari'ah* because what befalls in the futures market is not genuine trading. The purpose is to make a profit through sales that are akin to and consistent with gambling.

Futures trading appeals to speculators on account of the prospects of making huge profits from relatively small amounts of investment. This is due to the fact that a commodity contract requires a substantial amount of money to be paid but the margin is relatively small compared to the contract value. This high leverage allows brisk speculative trading that is not available in the open market. It is also easier for speculators to take long or short positions in futures contracts because no security or enormous financing is required. The buyer of a futures contract, for example, sells what he has bought to a third party prior to taking possession of the underlying commodity, and then the next party sells the same commodity to someone else before possessing it. In this way, a single commodity is bought and sold several times without any physical transfer or delivery. In this entire gamut of transactions, a certain buyer might wish to take delivery from the seller who probably sold him what he did not own or possess. With the exception of those sellers and buyers who genuinely make and take delivery, all other sales are settled on the basis of price differentials which may consist of a profit or a loss for the parties concerned. This is entirely similar to what happens between gamblers.

Dusuki and Mokhtar (2010) go through various commands of the Koran and the *Sunnah* in relation to hedging. They infer that risk management is important, and strategic actions must be taken to handle risk efficiently and promptly. Obaidullah (1998, 1999, 2002) is also of the opinion that hedging is quite in conformity with the Islamic rationality, but hedging with derivatives is fraught with grave dangers since large-scale speculation is now made possible with derivatives. He further elaborates that derivatives are invariably settled in price differences only and never result in actual delivery of the object of exchange. They also clearly violate the *Shari'ah* prohibition of sale of the non-existent or sale of what one does not have on grounds of *gharar*. In view of these objections, futures contracts are not quite acceptable. The rich Islamic *fiqh* literature on contracts does not quite provide a *Shari'ah*-approved contract on which derivatives could be modeled.

Ironically, the author simply imitated when he ruled out the likelihood of derivatives instruments by virtue of having no precedent in the Islamic jurisprudence. *Fiqh* is a ceaseless process without any lull to iron out different problems in accordance with the commands of the Koran and the *Sunnah*. What Muslim jurisprudents (*fuqaha*) have done is, indeed, laudable but every age has to face varied circumstances and it prima facie calls for contrasting strategy. To apply the same verdicts of one era to another era in spite of objective changes seems to be unlikely to chime with.

As far as speculation and hedging are concerned, it is one of the facts of life that the former is exciting whereas the latter is relatively dull. When a company hires a trader to manage interest rate, foreign exchange or price risk, at first he does the job diligently, and earns the confidence of top management. The trader assesses risk exposure of the company and hedges against it. As time goes by, he becomes convinced that he can outguess the market. Little by little, the trader becomes a speculator. At first everything is right but after a short spell, a loss is made. In order to make the loss up, the trader doubles the bets. Further losses are made and the consequences turn out to be catastrophic.

It is, somehow, difficult to draw a distinction between speculation and hedging. Precise market regulations may reduce speculation to an acceptable level. However, to curb speculation by looking at the traders' intentions might be impracticable. There is little empirical data to prove or disprove any hypothesis relating to the intention of the contracting parties (Obaidullah 1999, p. 18). It is therefore not realistic to oblige an investor to keep the shares he bought for a long time, say six months, to shun speculation. The *Shari'ah* does not impose a specific time for holding a commodity before reselling it (Al-Amine 2005: 69-70).

Kamali (1996, 1999a, 1999b, 2002, 2005) deduces that futures trading is not necessarily objectionable provided that adequate measures are taken to ensure that it is for genuine reasons, and that speculative risk-taking is kept down to acceptable levels. To take an unduly prohibitive view of commodity futures simply because they were not known to the *fuqaha* of earlier times, and then pass negative judgements on them without clear *Shari'ah* evidence are tantamount to acting contrary to *maslahah*. In addition, speculation is basically lawful but its propensity to gambling must be tackled through constant supervision and effective position limits.

Every business transaction necessarily contains an element of uncertainty. Probably an important reason for finalizing a deal is the difference in individual expectations over what will happen in the future and the perception of risk. A trader who buys a certain commodity to sell in due course takes a decision on the basis of his forecasts of future prices. Of course, there is no guarantee of the realization of such expectations. It is touch-and-go in almost every business activity whether one would make a profit or incur a loss. There is nevertheless an established link between the expected yield and the risk involved in investment activities. The more the risk due to the lack of certainty, the more the expected return is. It is, however, scrupulously emphasized that these activities should involve the production or exchange of real goods and services, and be devoid of pure speculation or gambling.

A trader who picks out to benefit from futures contracts might be a genuine hedger who buys or sells a contract in order to protect himself against drastic fluctuations in the prices of various commodities. The other and most likely possibility is that the trader might be a speculator who enters the market with the sole intention of making a profit on account of price movements during the contract period. Quite realistically, it is an uphill task to distinguish between hedgers and speculators in categorical terms because to some extent, hedgers are also speculators who take certain kind of risk, and tend to speculate on the likely changes in prices. What a hedger does is to confine, rather than eliminating, risk and he differs in general from a speculator because the variation in his outcome is, by and large, less. Apte (2007) opines that hedging is understood to mean a transaction undertaken specifically to offset some exposure arising out of the firm's usual operations, whereas speculation refers to the deliberate creation of a position for the express purpose of generating a profit from exchange rate fluctuations, accepting the added risk. Therefore a decision not to hedge against an exposure arising out of operations is also equivalent to speculation.

Since futures contracts do not involve physical movement of commodities, and deals are concluded on the basis of a low margin deposit they remain quite open to excessive risk-taking. The presence of speculators in the market enables hedgers to hedge because speculators assume risk that the hedgers want to refrain from. When speculators enter the market, the number of ready buyers and sellers increases, and hedgers are no longer limited by the hedging needs of others.

The covert and overt ramifications of inordinate speculative activities in futures contracts may not be overlooked. It is witnessed in the financial markets all around the globe that the trading volume in derivatives has increased over and above the value of the underlying assets but hardly one or two per cent of financial derivatives are settled by the actual delivery of these assets. It is noteworthy that more than 97% of derivatives are used for speculation (Al-Suwailem 2006: 48). Although speculation is deleterious to the society as a whole, some benefits of it are set forth into the bargain. It augments, for example, trading volume and liquidity. Increased trading volume reduces transaction costs, whereas liquidity reduces execution risk. If speculators are willing to take a risk, it means that hedgers have someone to pass their risks on. In spite of these beneficial effects, speculation can become an instrument of abuse that can easily compromise the integrity of the market when it is employed for improper purposes. Speculation can turn the market into a gambling den and lead to financial ruin. If that is the case, pure speculative activities in different financial markets can only be decried as a vehicle for corruption and misappropriation.

The huge losses incurred by the use of derivatives have made many financial institutions very wary. The stories behind the losses emphasize the point that derivatives can be used either to reduce risk or take a risk. Most losses came about when derivatives were used inappropriately. Employees who had an implicit or explicit mandate to hedge against risks faced by their companies decided to speculate instead.[7]

The key lesson to be learnt from the losses is the importance of internal controls (Hull 2007: 738). Gurusamy (2004) also observes that most of the episodes of losses in derivatives markets have arisen due to the lack of transparency and weak internal controls. Senior management should lay down clear and unambiguous guidelines in relation to the use of derivatives instruments.

[7] For further details, see Abdelwahab 2007, p. 123

Conclusion

Futures contracts allow producers and commercial operators to fix the price of commodities in advance of making or taking physical delivery. Therefore these contracts are regarded as very effective in minimizing various forms of risk. However, the debate on the licitness or otherwise of futures contracts in the Islamic commercial law continues to invoke different opinions. Muslim scholars generally opine that these contracts are not congruent with the *Shari'ah*. They lose sight of the fact that the pace of material development and the change in international relations, economics and finance have been unprecedented in many ways. Innovative techniques and new ideas have brought about completely new scenario that did not exist before and that was not known to the jurists of the past. To issue a prohibitive judgement on modern commercial transactions that have won international recognition with reference to the rulings of ancient jurisprudents without any decisive evidence is bound to prove detrimental to the Muslim community, and to retard the prospects for their development. Such a methodology is therefore inconsistent with the basic objectives of the *Shari'ah*. Futures contracts are at bottom a new phenomenon of this age which have no precedent or parallel in the conventional law of transactions (*mu'amalat*). Their acceptability or otherwise should consequently be looked into with the Islamic viewpoint of general permissibility in relation to transactions.

The paper examined a number of jurisprudential and legal issues such as non-existence of the subject-matter, sale prior to taking possession, *bai al-kali bil-kali*, speculation and hedging, and drew the conclusion that futures contracts are allowed to benefit from. Although it is not necessary to pay the complete price to the seller at the time of the contract yet some other precautionary measures such as a bank guarantee or a fair amount of money to be given to the seller should be taken to ensure that pure speculation is scrupulously forestalled and the delivery would certainly be made. Under the circumstances if, for example, a large amount of money is given to the seller at the time of the contract, the proscription of *bai al-kali bil-kali* would no longer be applicable because *bai al-kali bil-kali* comes about where the settlement by both parties is deferred to a future date, but that is not the case here. In addition, only hedgers can take advantage of futures contracts. These instruments can never be used for purely speculative purposes where making or taking delivery is not intended. Likewise those types of futures contracts which involve *riba*, and proceed on gambling, inordinate uncertainty, alcohol, pork and other inadmissible commodities are ruled out altogether and can never be taken advantage of.

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