

## ***The Jurisprudential Boundaries of Gharar and Maysir in Secondary Equity Markets: A Synthesis of Exegetical Principles and Modern Financial Practice***

**Muhammad Zubair Nadeem**

*Ph.D Islamic Scholar, Lahore Garrison University*

[mzubairnadeem45@gmail.com](mailto:mzubairnadeem45@gmail.com)

**Muhammad Muavia Nadeem**

*Ph.D Islamic Scholar, Lahore Garrison University*

[muavianadeem45@gmail.com](mailto:muavianadeem45@gmail.com)

### **Abstract**

*This paper investigates the jurisprudential legitimacy of modern secondary equity market practices through the prism of Gharar (excessive uncertainty) and Maysir (gambling/speculation). While equity ownership is fundamentally permissible within the Shari'ah (Islamic law) framework, the rapid proliferation of high-frequency day-trading, short-selling, and complex derivatives trading necessitates a critical re-evaluation of financial conduct. Utilizing a qualitative methodology rooted in Quranic exegesis (Tafsir), Prophetic traditions (Hadith), and classical jurisprudence (Usul al-Fiqh), this study delineates the boundaries between Mukhatarah (legitimate entrepreneurial risk) and prohibited speculation. The findings suggest that while equity investment serves essential economic functions by facilitating capital allocation, practices that decouple price movement from the underlying asset's economic reality, or that violate the prohibition against selling what one does not possess (Bay' al-Ma'dum), definitively fall into the category of Gharar Fahish (excessive uncertainty). By integrating empirical data from contemporary market dislocations, such as the early 2021 GameStop short squeeze, this paper bridges classical theological axioms with contemporary financial realities. It concludes by proposing actionable boundaries for Muslim investors, emphasizing the importance of Niyah (intention), the mechanics of constructive possession (Qabd Hukmi), and adherence to asset-backed, ethically screened investment standards aligned with the preservation of wealth (Hifz al-Mal).*

**Keywords:** *Gharar, Maysir, Secondary Equity Markets, Day-Trading, Short-Selling, Derivatives, Najash, Mixed-Asset Companies, Quranic Exegesis, Hadith, Shariah Boundaries.*

### **1. Introduction**

The secondary equity market serves as a cornerstone of the modern global economy, theoretically facilitating market liquidity, efficient capital allocation, and accurate price discovery. Historically, the exchange of shares in a joint enterprise aligns seamlessly with the classical Islamic principles of *Musharakah* (partnership) and *Mudarabah* (profit-sharing), where capital providers and entrepreneurs share in both the risks and rewards of tangible economic output. However, the mechanisms of contemporary financial markets-increasingly characterized by near-instantaneous algorithmic transactions, the widespread use of margin leverage, and the proliferation of synthetic financial derivatives-present profound theological and jurisprudential challenges.

The core dilemma resides in the accelerating financialization of the global economy, wherein the volume of trading heavily outweighs the actual creation of goods and services. This systemic shift forces a critical inquiry: At what precise point does legitimate investment and business risk (*Mukhatarah*) devolve into illicit gambling (*Maysir*) and excessive uncertainty (*Gharar*)?

In Islamic jurisprudence, the validity of any commercial contract (*'Aqd*) rests upon absolute transparency, the equitable sharing of risk, and the presence of a tangible economic benefit to the broader society. These requirements are anchored in *Maqasid al-Shari'ah* (the higher objectives of Islamic law), specifically the mandate of *Hifz al-Mal* (the preservation and productive

circulation of wealth). The theological tension arises when market mechanisms prioritize speculative volatility over substantive value creation, effectively hoarding wealth within a closed loop of zero-sum exchanges.

This study contends that while standard equity ownership remains structurally sound and legally valid, specific ubiquitous practices in secondary markets—namely high-frequency algorithmic trading, naked and covered short-selling, and speculative options trading—inherently violate the fundamental Quranic and Prophetic injunctions against *Gharar* and *Maysir*. By synthesizing classical theological principles with contemporary financial mechanics from the 2021 market landscape, this paper aims to establish clear, robust boundaries to safeguard both the macroeconomic stability of the market and the moral agency of the individual Muslim investor.

## **2. Literature Review: Exegetical and Hadith Foundations**

The theoretical foundation of Islamic financial ethics is heavily reliant on classical exegesis and jurisprudential interpretations of risk, ownership, and societal harm. To navigate modern markets, one must first deconstruct the primary textual sources governing Islamic commerce.

### **2.1 The Quranic Paradigm of *Maysir* and Wealth Circulation**

The prohibition of *Maysir* is explicitly addressed in the Quran as an action that not only corrupts individual morality but structurally hinders societal productivity. In Surah Al-Ma'idah (5:90), it is decreed: "O you who have believed, indeed, intoxicants, gambling, sacrificing on stone alters, and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful." Classical exegetes, notably Ibn Kathir (1999) and Al-Qurtubi (2003), interpret *Maysir* not merely as literal games of chance (like rolling dice), but as any financial exchange where the gain of one party is strictly contingent upon the loss of another, devoid of any genuine productive contribution to the real economy. This zero-sum paradigm serves as the primary theological filter for rejecting speculative financial practices. Furthermore, Surah Al-Hashr (59:7) establishes the economic imperative that wealth should "not merely make a circuit between the wealthy among you." *Maysir*, by its nature, concentrates wealth among speculators without expanding the overall economic pie, directly contradicting this Quranic injunction.

### **2.2 The Prophetic Paradigm of *Gharar* and *Bay' al-Ma'dum***

Complementing the prohibition of *Maysir* is the Sunnah's strict embargo on *Gharar*-defined jurisprudentially as ambiguity, deception, or uncertainty in a contract's object, price, or deliverability. The Prophet Muhammad (peace be upon him) explicitly forbade the "sale of the birds in the sky" and the "sale of fish in the water" (Sahih Muslim, Book 21, Hadith 4758). This metaphor targets *Bay' al-Ma'dum* (the sale of the non-existent), establishing that an asset must be tangible, clearly defined, and physically or legally deliverable at the moment of the transaction.

Furthermore, the foundational Prophetic command narrated by Hakim ibn Hizam—"Do not sell what you do not have" ("*La tabi' ma laysa 'indak*") (Sunan al-Tirmidhi, Hadith 1232)—establishes the absolute prerequisite of *Qabd* (possession). Classical scholars universally agree that one cannot transfer ownership of an asset over which they do not exercise actual or constructive control, a principle that poses immediate challenges to modern margin and short-selling mechanisms.

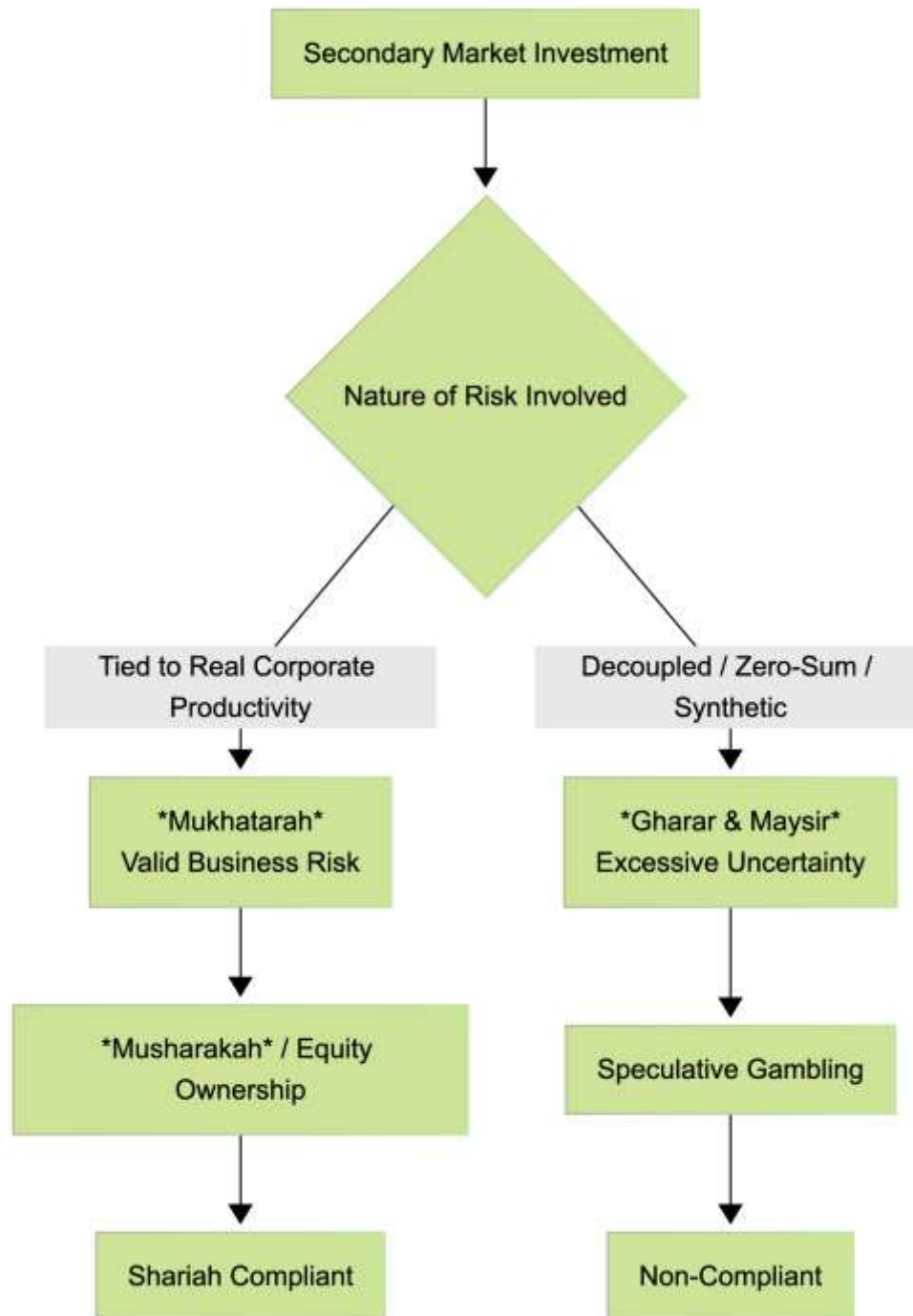
**Table 1: Classical Textual Sources and Extracted Economic Principles**

Source Type	Reference	Key Concept	Derived Principle for Financial Markets
<b>Quran</b>	Surah Al-Ma'idah (5:90)	<i>Maysir</i> (Gambling)	Prohibition of zero-sum transactions where profit relies purely on chance and another's loss.
<b>Quran</b>	Surah Al-Hashr (59:7)	Wealth Circulation	Capital must be deployed productively; prohibition of hoarding or enclosed speculative loops.
<b>Hadith</b>	Sahih Muslim (Book 21, #4758)	<i>Gharar</i> (Uncertainty)	Assets must be tangible, deliverable, and exist at the time of the contract.
<b>Hadith</b>	Sunan al-Tirmidhi (#1232)	<i>Qabd</i> (Possession)	Prohibition of selling unowned assets (e.g., short-selling and unbacked derivatives).

### 2.3 Distinguishing *Mukhatarah*, *Gharar Yasir*, and *Gharar Fahish*

Islamic commercial law does not prohibit risk; rather, it demands that risk be structurally tied to value creation. The literature heavily distinguishes between *Mukhatarah* (valid entrepreneurial risk), *Gharar Yasir* (minor, tolerable uncertainty), and *Gharar Fahish* (excessive, invalidating uncertainty).

Classical jurists such as Al-Ghazali and Ibn Rushd maintained that because all agricultural and commercial enterprise involves inherent risk (e.g., crop yields, market demand), *Gharar Yasir* is forgiven out of necessity (*Darurah*). However, *Gharar Fahish*-where the core subject of the contract is unknown, undeliverable, or subject to pure chance-invalidates the contract entirely (AAOIFI, 2017; Zarqa, 2011). The jurisprudential divergence between permissible business risk and prohibited uncertainty is visualized below.



### 3. Methodology

This research employs a qualitative, textual-analytical methodology grounded in the epistemological framework of *Usul al-Fiqh* (Islamic jurisprudence). Because modern stock exchanges did not exist during the era of classical revelation, this study heavily relies on *Qiyas* (analogical deduction). *Qiyas* allows jurists to extend the ruling (*Hukm*) of a primary textual source (the *Asl*) to a new case (the *Far'*) based on a shared effective cause (*'Illah*).

For example, the underlying *'Illah* in the Prophet's prohibition of selling "fish in the water" is the

inability to guarantee delivery and the sale of an unpossessed asset. This methodology applies that same *'Illah* to the modern practice of selling synthetic shares.

The primary data corpus comprises the Holy Quran and canonical *Hadith* texts, analyzed hermeneutically through classical *Tafsir*. Secondary data includes contemporary institutional standards from the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), alongside recent peer-reviewed literature in Islamic commercial law published up to 2021. This deductive reasoning approach extracts foundational legal axioms and rigorously tests the structural mechanics of modern equity trading against them.

#### **4. Analysis and Discussion: Applying Fiqh to Modern Market Mechanics**

Applying the established theological framework to modern equity markets reveals profound points of friction between standard Wall Street industry practices and the ethical constraints of Islamic commercial law.

##### **4.1 High-Frequency Day-Trading, Algorithmic Speculation, and Najash**

Day-trading involves the rapid acquisition and disposal of assets within a highly compressed timeframe (often spanning hours, minutes, or milliseconds via High-Frequency Trading algorithms). Analyzed through the lens of *Maqasid al-Shari'ah*, this practice entirely abandons the intent of long-term partnership or corporate stewardship.

When algorithmic traders decouple a stock from the underlying economic fundamentals of the issuing company-viewing the equity merely as a digital abstraction to capture micro-fluctuations in order flow-the transaction transitions from *Mukhatarah* to *Maysir*. The velocity of these trades also raises severe issues regarding *Qabd Hukmi* (constructive possession). In modern T+2 (trade date plus two days) settlement cycles, a day-trader frequently buys and sells a stock multiple times before the initial trade has legally settled at the clearinghouse, meaning they are trading capital they do not technically possess yet.

Furthermore, algorithmic trading strategies such as "spoofing" (placing massive fake orders to manipulate price direction before canceling them) constitute a direct modern manifestation of *Najash*. In classical *Fiqh*, *Najash* is explicitly forbidden by the Prophet (PBUH); it refers to the act of bidding up the price of an item without the intention to buy it, merely to deceive other buyers. High-frequency arbitrage that creates artificial illusions of market liquidity or demand falls squarely within the prohibition of *Najash* and *Gharar Fahish* (Zulhibri, 2020).

##### **4.2 The Mechanics of Short-Selling and Systemic Fasad**

Short-selling represents perhaps the most egregious jurisprudential violation in the modern secondary market, acting in direct defiance of the Prophetic injunction prohibiting the sale of unowned assets.

The linguistic and jurisprudential weight of the Hadith reported by Hakim ibn Hizam is absolute. When the merchant asked the Prophet (peace be upon him) about selling goods he had not yet acquired from the market, the Prophet commanded: "*La tabi' ma laysa 'indak*" ("Do not sell what is not with you"). The verb *tabi'* (to sell) coupled with the prepositional phrase *'indak* (with you / in your possession) establishes the absolute, uncompromising necessity of ownership and possession prior to execution. Modern scholarship permits *Qabd Hukmi* (constructive possession, such as a settled digital entry in a brokerage account), but short-selling bypasses even this relaxed standard.

By borrowing a security on margin merely to dump it into the market-with the speculative hope of repurchasing it later at a depressed valuation-the short-seller transacts an asset over which they hold no ownership rights. This mechanism artificially manipulates downward market pressure by

flooding the exchange with synthetic supply. It fosters a malignant financial ecosystem wherein participants extract profit directly from the economic degradation of an enterprise, violating the Islamic economic ethos of *Ta'awun* (mutual cooperation) and introducing profound moral hazard. The systemic fragility, *Darar* (harm), and *Gharar Fahish* inherent in leveraged short-selling were empirically demonstrated during the early 2021 GameStop (GME) short squeeze. Prior to the squeeze, institutional short interest in GameStop reached an unprecedented  $\approx 140\%$  of the publicly available tradeable float (SEC, 2021). This mathematical impossibility—where institutions sold  $40\%$  more shares short than physically existed to be traded—serves as the ultimate modern manifestation of *Bay' al-Ma'dum* (selling the non-existent).

Consequently, the stock experienced a violent decoupling from fundamental corporate valuation, surging from  $\approx \$20$  to an intraday high of  $\$483$  in January 2021. This speculative mania forced the Depository Trust & Clearing Corporation (DTCC) to issue multi-billion-dollar margin calls to retail brokerages, nearly precipitating a macroeconomic liquidity crisis (SEC, 2021). This unprecedented market dislocation practically validates the classical jurisprudential foresight that trading unpossessed, synthetic assets inevitably cultivates systemic instability (*Fasad*).

#### **4.3 Derivatives: Options Trading and *Bay' al-'Urbun***

Options trading (Calls and Puts) represents another dominant sector of the secondary equity market requiring Shariah scrutiny. An option contract gives the buyer the right, but not the obligation, to buy or sell an underlying stock at a specified strike price before a certain expiration date.

The vast majority of contemporary Islamic jurists classify standard, cash-settled options trading as impermissible. The primary jurisprudential argument, extensively detailed by Kamali (2000), is that options trade a pure "right" or "privilege" rather than a tangible asset or usufruct (*Manfa'ah*). In Islamic law, a mere right cannot be the standalone subject matter of a sale.

When options are used purely for speculative leverage—where traders bet on price movements without ever intending to take physical delivery of the underlying stock—the premium paid is widely considered akin to a wager, thus falling under *Maysir*. While some minority scholarly opinions have attempted to validate certain forms of options by drawing analogies to *Bay' al-'Urbun* (earnest money or down-payment contracts), standard Wall Street options markets, which are overwhelmingly cash-settled and highly leveraged, are undeniably saturated with *Gharar Fahish*. The expiration mechanics, where options expire worthless out-of-the-money, perfectly mirror the zero-sum wealth transfer condemned in Surah Al-Ma'idah.

#### **4.4 Mixed-Asset Companies and the Mechanics of *Tathir* (Purification)**

In the contemporary global market, purely Shariah-compliant equities (companies with zero debt and zero impermissible revenue) are virtually non-existent. Most publicly traded companies hold interest-bearing debt (*Riba*) or generate a fraction of their revenue from impermissible sources.

To facilitate Muslim participation in the global economy, institutional bodies like AAOIFI and the Dow Jones Islamic Market (DJIM) Index have developed stringent screening methodologies. The prevailing scholarly consensus permits investment in these "mixed-asset" companies provided non-compliant activities remain below specific thresholds. For example, AAOIFI standards dictate that a company's total interest-bearing debt must not exceed  $30\%$  of its market capitalization, and impermissible revenue must not exceed  $5\%$  of total revenue.

However, this jurisprudential concession is strictly conditional upon mandatory *Tathir*

(purification). Because a fraction of the company's profits is derived from *Riba*, the Muslim investor cannot consume that portion. Investors must calculate the exact proportion of dividends derived from non-compliant activities and purge this component by donating it to a charitable cause with no expectation of divine reward (*Sawab*). This mathematical purification process ensures the spiritual purity of the retained capital and prevents the consumption of illicit wealth (Khan, 2015).

**5. Practical Implications: Establishing Institutional Shariah Boundaries**

To navigate these immense complexities, actionable boundaries must be institutionalized for both retail investors and Islamic asset managers. The intersection of Islamic finance and modern equity markets represents a fundamental philosophical divergence: Neoclassical economics views maximum liquidity and volatility as market efficiencies, whereas Islamic economics prioritizes asset-backing, risk-sharing, and systemic stability.

The practical implications of classical jurisprudence applied to modern trading are synthesized in the compliance matrix below.

**Table 2: Shariah Compliance Matrix for Equity Market Practices**

Market Practice	Underlying Objective	Shariah Ruling	Primary Jurisprudential Concern
Value Investing (Long-Term)	Capital growth & shared economic success.	Permissible	None. Aligns with <i>Musharakah</i> and <i>Mukhatarah</i> .
Day-Trading / HFT	Capturing intra-day algorithmic price volatility.	Impermissible	Resembles <i>Maysir</i> ; lack of <i>Qabd</i> ; instances of <i>Najash</i> (market manipulation).
Short-Selling	Profiting from an asset's price decline.	Impermissible	Direct violation of selling unowned assets ( <i>Bay' al-Ma'dum</i> ); introduces systemic <i>Darar</i> (harm).
Options/Derivatives	Speculative leverage on price direction.	Impermissible	Trading non-tangible rights; zero-sum wagers constituting <i>Gharar Fahish</i> .
Investing in Mixed-Assets	Portfolio diversification in	Permissible (Conditional)	Requires rigorous financial screening

	conventional markets.		and mandatory dividend purification ( <i>Tathir</i> ).
--	-----------------------	--	--

**Recommended Operational Boundaries:**

1. **Primacy of Intention (*Niyyah*):** Investors must orient their capital toward long-term corporate growth and tangible dividend yields, firmly rejecting strategies reliant purely on capturing micro-volatility.
2. **Prohibition of Leverage and Shorting:** Islamic asset management mandates must explicitly hardcode the exclusion of short-selling, margin trading, and unbacked derivatives from their institutional trading protocols.
3. **Verification of *Qabd Hukmi*:** Brokerages catering to Islamic clients must ensure that capital is not redeployed until T+2 settlement cycles are fully cleared, establishing undeniable constructive possession.
4. **Automated Purification:** With the rise of Islamic fintech in 2021, institutions must deploy automated algorithmic screening and real-time dividend purification protocols to eliminate the margin of human error in calculating *Riba* extraction.

**6. Conclusion**

The Quranic decrees and Prophetic traditions regarding commerce were not formulated for an archaic agrarian society, but rather established a timeless, transcendent framework designed to protect individual wealth and enforce macroeconomic stability. By clearly delineating between productive *Mukhatarah* (entrepreneurial risk) and destructive *Gharar* (excessive uncertainty), Islamic jurisprudence ensures that financial markets function as engines of societal good, rather than enclosed arenas for exploitative, zero-sum speculation.

This study conclusively demonstrates that while the foundational concept of equity ownership remains structurally sound, contemporary secondary market mechanisms—specifically short-selling, high-frequency day-trading, and leveraged derivatives—severely breach fundamental *Shari'ah* boundaries. The empirical evidence of the 2021 GameStop market dislocation vividly illustrates the systemic *Fasad* (corruption/instability) that ensues when markets abandon the requirement of tangible asset ownership and *Qabd*.

As global financial architecture continues to evolve in complexity, the deductive methodology of classical *Usul al-Fiqh* remains vibrantly vital. It offers an adaptable, robust ethical compass for the modern investor navigating the dangerous intersection of digital capital generation and theological compliance. The future of Islamic finance relies not on merely mimicking conventional Wall Street products with Arabic terminology, but on firmly enforcing these classical boundaries to foster an equitable, asset-backed global economy.

**7. References**

AAOIFI. (2017). *Shari'ah standards*. Accounting and Auditing Organization for Islamic Financial Institutions.

Abbas, F., & Iqbal, M. (2019). The concept of *Gharar* in Islamic finance: A review. *Journal of Islamic Finance*, 8(1), 45–56.

Al-Qurtubi, M. (2003). *Al-Jami' li-Ahkam al-Quran* [The collection of the rulings of the Quran]. Dar al-Hadith.

Aydin, N. (2017). The philosophy of Islamic economics. *Journal of Islamic Economics, Banking*

and Finance, 13(1), 11–28.

Bacha, O. I., & Mirakhor, A. (2013). *Islamic capital markets: A comparative approach*. Wiley.

Chapra, M. U. (2014). *The future of economics: An Islamic perspective*. Kube Publishing.

Dusuki, A. W., & Bouheraoua, S. (2011). The framework of Maqasid al-Shari'ah and its implications for Islamic finance. *ISRA International Journal of Islamic Finance*, 3(2), 22–36.

Hassan, M. K., & Lewis, M. K. (2013). *Handbook of Islamic banking*. Edward Elgar Publishing.

Ibn Kathir, I. (1999). *Tafsir al-Quran al-Azim* [Interpretation of the great Quran]. Dar Tayyibah.

Iqbal, Z., & Mirakhor, A. (2011). *An introduction to Islamic finance: Theory and practice*. Wiley.

Kamali, M. H. (1996). Islamic commercial law: An analysis of futures. *American Journal of Islam and Society*, 13(2), 197–224.

Kamali, M. H. (1997). Islamic commercial law: An analysis of options. *American Journal of Islam and Society*, 14(3), 17–37.

Kamali, M. H. (2000). *Islamic commercial law: An analysis of futures and options*. Islamic Texts Society.

Khan, M. F. (2015). *Islamic economics and finance: A glossary*. Routledge.

Lewis, M. K., & Algaoud, L. M. (2010). *Islamic banking*. Edward Elgar Publishing.

Obaidullah, M. (2014). *Islamic financial services*. Islamic Economics Research Center.

Rosly, S. A. (2010). *Critical issues on Islamic banking and financial markets*. Dinamas Publishing.

Sahih Muslim. (n.d.). *The book of transactions* (Kitab al-Buyu').

SEC. (2021). *Staff report on equity and options market structure conditions in early 2021*. U.S. Securities and Exchange Commission.

Siddiqi, M. N. (2012). *Islamic finance: Concepts and prospects*. Islamic Research and Training Institute.

Sunan al-Tirmidhi. (n.d.). *The book of sales* (Kitab al-Buyu').

Tariq, A. A. (2015). *Managing financial risks in Islamic finance*. Islamic Finance Publications.

Usmani, M. T. (2011). *An introduction to Islamic finance*. Arham Publication.

Visser, H. (2013). *Islamic finance: Principles and practice*. Edward Elgar Publishing.

Wilson, R. (2014). *Islamic finance: A guide for international business and investment*. Edinburgh University Press.

Zarqa, M. A. (2011). *The nature of Gharar in Islamic law*. Journal of King Abdulaziz University.

Zineldin, M. (2015). *Islamic banking: Theory, practice and challenges*. Al-Falah Consulting.

Zulqarnain, M. (2018). Short selling in Islamic finance. *Journal of Islamic Financial Studies*, 4(2), 1–15.

Zulhibri, M. (2020). *Contemporary issues in Islamic finance*. Springer Nature.