GUIDANCE
NATIONAL SHARIA BOARD
Ref.#: 80/DSN-MUI/III/2011
regarding

The Application of Sharia Principles
in Trading Mechanism of Equity Securities
at Stock Exchange Regular Market

National Sharia Board – Indonesian Council of Ulema (DSN-MUI)
Secretariat: Jl. Dempo No. 19, Pegangsaan - Jakarta Timur 10320
Tel. 021-390 4146, Fax. 021-3190 3288, Email: dsnmui@gmail.com
FATWA
NATIONAL SHARIA BOARD
Ref.#: 80/DSN-MUI/III/2011
regarding

THE APPLICATION OF SHARIA PRINCIPLES
IN TRADING MECHANISM OF EQUITY SECURITIES
AT STOCK EXCHANGE REGULAR MARKET

In the name of Allah, Most Gracious, Most Merciful

National Sharia Board – Indonesia Council of Ulema (DSN-MUI) after:

Considering :  a. the public curiosity concerning sharia suitability toward Trading Mechanism of Equity Securities at Stock Exchange Regular Market in Capital Market;
               b. that based upon the abovementioned consideration (point a), is it considered necessary by DSN-MUI to determine a fatwa regarding the Application of Sharia Principles in Trading Mechanism of Equity Securities at Stock Exchange Regular Market to serve as a guidance.

Observing :  1. The words of the Almighty, Allah s.w.t:
               a. Al-Maidah (5): 1:

               يَايَاكِحْرِيمَ أَوْفُواً بِالْعَقُودِ...

               “O you who believe! Fulfill the obligations…”

               b. An-Nisa (4): 58:

               إِنَّ اللَّهَ يَأْمُرُكُم مِّنَ النَّاسِ أَنْ تُؤْوِيْنَ الْأَمَانَاتِ إِلَى أُهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ...

               “Surely Allah commands you to make over trusts to their owners and that when you judge between people.. you judge with justice;…”

               c. Al-Baqarah (2): 275

               وَأَحْلَلَ اللَّهَ الْكُبْرَىٰ وَخَرَجَ رَبٍّاٰ
“…and Allah has allowed trade and forbidden usury….”

d. Al-Baqarah (2): 278

“O you who believe! Be careful of (your duty to) Allah and relinquish what remains (due) from usury, if you are believers.”

e. An-Nisa (4): 29

“O you who believe! do not devour your property among yourselves falsely, except that it be trading by your mutual consent;…”

f. Al-Qashash (28): 26

“Said one of them: O my father! employ him, surely the best of those that you can employ is the strong man, the faithful one.”

g. Al-Ma`idah (5): 2

“…and help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil).”

h. Al-Baqarah (2): 283

“…and if one of you trusts another, then he who is trusted should deliver his trust, and let him be careful (of his duty to) Allah, his Lord….”

2. Hadith of the Prophet Muhammad s.a.w.

a. Hadith of the Prophet as recited by Ibnu Majah from ‘Ubadah bin Shamit; Ahmad from Ibnu ‘Abbas, and Imam Malik from Yahya:
The Prophet s.a.w. has resolved: do not endanger/harm others, and do not avenge any danger (harm caused by others) with danger (harmful acts).

b. Hadith of the Prophet as recited by Muslim from Abu Hurairah:

Recited by Abi Hurairah r.a., he said: the Prophet s.a.w. forbids hashah trade and gharar-bearing trade. (Hadith recited by Muslim).

c. Hadith of the Prophet as recited by Tirmidzi from Hakim bin Hizam

Recited by Hakim bin Hizam, he said: I came to the Prophet s.a.w. and said: a man came to me and asked me to sell goods I did not have, I shall buy it for him at the market and then sell it to him. The Prophet answered: "Do not sell anything you do not have." (Hadith recited by Tirmidzi/V, 139).

d. Hadith of the Prophet as recited by Imam al-Bukhari:

Recited by Ibnu Umar r.a. that: the Prophet s.a.w. forbids najsy (false bids)," (Hadith recited by Bukhari).
Recited by Ibnu Abbas r.a. that: the Prophet s.a.w. said: “Do not go to the riders (goods, pen carriers) and do not make bai’hadhir li-bad (urban people sell to country people).” “He (the reciter) said: I asked Ibnu Abbas: what is the meaning of not making bai’hadhir li-bad? He answered: urban people may not become the intermediary (pander) for country people. (Hadith recited by Bukhari).

f. Hadith of the Prophet as recited by Tirmidzi from Anas bin Malik

Recited by Anas bin Malik r.a. that: the Prophet s.a.w. sold a sheet of hils (small carpet used to be spread out at home) and a qadah (glass). The Prophet said: “Who shall buy these hils and qadah?” Someone said: I’m ready to buy both for 1 (one) dirham. The Prophet said it again, twice: “Man yazid ‘ala dirhamin? (who intends to buy them more than 1 dirham)?” Someone gave 2 dirham to the Prophet. And the Prophet sold both of them to him.” (Hadith recited by Tirmidzi).

g. Hadith recited by Ibnu Majah from Ibnu Umar:

Recited by Ibnu Umar r.a. that: the Prophet s.a.w. said: “pay the workers’
wages before their sweat dried up.” (Hadith recited by Ibn Umar).

h. Hadith recited by 'Abd ar-Razzaq from Abu Humairah and Abu Sa'id al-Khudri, the Prophet s.a.w. said:

“Anyone who employs workers, let them know their wages.”

i. Hadith of the Prophet as recited by al-Tirmidzi from 'Amr bin 'Auf:

Recited by 'Amr bin 'Auf al-Muzani, from his father, from his grandfather, the Prophet s.a.w. said: “Reconciliation may be carried among Muslimin (Moslem people), unless the one that forbids kosher thing or allows illegal thing; and Moslem people are subject to their terms, unless those which forbid kosher thing or allow illegal thing.” (Hadith recited by al-Tirmidzi).

3. Fikih norms

"Basically, anything in muamalah is allowed, unless it is declared illegal by an argument (dalil)."

"Wherever possible, all madharat (danger, harm) must be avoided." (Ahmad bin Muhammad al-Zarqa, Syarh al-Qawa'id al-Fiqhiyah, h.62).
“All madharat (danger, harm) must be eliminated.” (al-Suyuthi, al-Asybah wa al-Nadza’ir, j.1,210).

“Any conduct or policy of an Imam (the regulator) toward the people, must be oriented on Mashlahat.” (al-Suyuthi, al-Asybah wa al-Nadza’ir, j.1, h.276).

“Preventing mafsadah (damage) should take precedence over taking mashlahat.” (al-Suyuthi, al-Asybah wa al-Nadza’ir, j.1, h.217).

“Anything that serve as intermediary (media) for illegal acts, shall be against the law as well.” (Yusuf Qardhawi, al-Halal wa al-Haram fi al-Islam [Kairo: Maktabah Wahbah, 1993], h.31).

Taking into account


Ju’alah akad (agreement/contract) can become isti’nas of Allah words: “...and he who shall bring it shall have a camel-load...” (Yusuf 12: 72).

“Camel-load (himl)” is a measurement form familiarly known among followers of the Prophet Yusuf, similar to wasaq. This words of Allah is considered only as isti’nas, not dalil for they cope with syari’ah of people before us; and they - according to rajih (strong) perspective – shall not become our syariah (followers of the Prophet Muhammad), eventhough there is dalil (hadith) in our syariah determining it (as our syariat).

2. The perspective of Ibnu Qudamah in al-Mughni, juz V h.56:
"When one of the parties buys the portion of the other party in partnership, it is legal for he/she buys other’s right."

3. The perspective of Ibn Qudamah in al-Mughni, juz VIII, h. 323:

“Public need requires ju’alah; as the work (to achieve certain objective) is occasionally in-obvious (the form and the implementation), e.g.: bringing a lost slave back, lost animal, etc. This kind of work requires no ijara'ah akad (rent/wage), but (the person/owner) wants both of the lost possessions back, and he/she finds nobody who intends to return them back voluntarily (without fee). Therefore, public need encouraging akad ju’alah for such purpose is allowed, though (the form and the implementation) such work is in-obvious.”

4. Perspectives of the Ulema, among others:

“The Prophet s.a.w. once gave authority to Unais to give punishment, to Urwah to buy a goat, and to Abu Rafi’ to carry out qabul nikah, (all) without giving any fee. The Prophet also sent his employees to take alms (zakat) and gave them fee.” (Ibn Qudamah, al-mughni, [Kairo: Dar al-Hadis, 2004], juz 6, h. 468).

The perspective of Imam Syaukani when he explained a hadith of Burs bin Sa’id:
“Hadith of Burs bin Sa’id also showed that one carrying out a thing with tabarru intention may receive fee.” (Al-Syaukani, Nail al-Authar, [Kairo: Dar al-Hadith, 2000], j. 4, h. 527).

“The followers (ulemas) have resolved that wakalah is principally legal. And every person cannot directly get what he/she wants. Consequently, there is a need for such wakalah.”

“Wakalah is legal, with or without fee, it is because the Prophet s.a.w. once sent his employees to take alms (zakat) and he gave them fee…. When wakalah is carried out with fee, its legality is similar to ijarah.” (Fath al-Qadir, juz 6, h. 2; Wahbah al-Zuhaili, al-Fiqh al-Islami wa Adillatuh, [Dimasyq; Dar al-Fikr, 2002], juz 5, h. 4058).

“(If) muwakkil allows agent to represent (to other person), it is allowed; for it is an akad that has been rendered to agent; therefore, he/she may do it (represent it to other person).” (Ibn Qudamah, al-Mughni, [Kairo: Dar al-Hadith, 2004], juz 6, h. 470).

5. The substance of DSN—MUI fatwa ref.#: 20/DSN-MUI/IV/2001 regarding


9. Inputs and comments from members of Plenary Meeting of DSN-MUI on Tuesday, March 8, 2011 M./Rabi'ul Akhir 3, 1432 H.

HAS DECIDED

To enact: THE APPLICATION OF SHARIA PRINCIPLES IN TRADING MECHANISM OF EQUITY SECURITIES AT STOCK EXCHANGE REGULAR MARKET

First: General Provisions

In this fatwa, the following words shall have the following meanings:

1. Equity Securities Trading -- herein referred to as Securities Trading -- at Stock Exchange Regular Market is a Securities buy-sell contract made by Member of Stock Exchange as provisioned in Stock Exchange regulation. This trading is inclusive of online trading conducted in one session under certain mechanism and regulation that guarantee the right and obligation fulfillment of parties.

2. Equity Securities are shares or securities which can be exchanged with shares or securities bearing the right to acquire shares as intended under Bapepam-LK Regulation Number IX.J.I regarding Articles of Association Principles of Company Performing Equity Securities Public Offering and Public Company;

3. Sharia Equity Securities are Equity Securities which are included in the List of Sharia Securities released by Bapepam-LK, arrangement of which involved DSN-MUI;

4. Regular Market is a market where Securities Trading in Stock Exchange is performed based on continuous auction process (bai’ al-Musawamah) by Member of Stock Exchange, and the settlement is conducted on the third day following the Securities Trading in Stock Exchange;

5. Stock Exchange is a Party that performs and provides system and/or facility to match securities sell and buy quotations of other parties for the purpose of transacting securities among them.

6. Member of Stock Exchange is Securities Company that has acquired business license from Bapepam-LK as Securities Broker Dealer as stipulated in Capital Market Law and has received exchange membership approval to apply exchange’s system and or facility in order to perform Securities Trading activities in Stock Exchange as provisioned in Stock Exchange regulation;

7. Fair Market Price is the market price of Equity Securities under sharia principles in accordance with orderly, fair, and efficient as well as proper...
market mechanism;
8. Clearing and Guarantee Institution is a Party that performs clearing and
guarantee services for Stock Exchange transaction;
9. Depository and Settlement Institution is a Party that performs central
depository activities for Custodian Bank, Securities Company, and other
parties;
10. Clearing Member is Stock Exchange’s Member that has fulfilled Clearing
and Guarantee Institution provisions and requirements to have clearing and
guarantee services for Stock Exchange transaction;
11. Securities Company is a Party that carries on business as Securities
Underwriter, Securities Broker Dealer, and or Investment Manager;
12. Novation is transfer of right and obligation between Clearing Member - sell
and Clearing Member - buy into right and obligation between Clearing
Member – sell/buy and Clearing and Guarantee Institution as the result of
guarantee activity of Clearing and Guarantee Institution upon Securities
Trading at Stock Exchange;
13. Ijarah is an akad of tenure/benefit transfer of certain object or service/work
performance within certain period of time with wage/ujrah;
14. Hawalah bil Ujah is an akad of debt transfer from party bearing such debt
to other party that is willing to or committed (iltizam) to carry (pay) it with
ujrah;
15. Ju'alah is a promise or commitment (iltizam) to give certain amount of fee
(ju'li) upon proceeds (natijah) predetermined from certain work;
16. Riba is extra amount given in ribawi (al-amwal al-ribawiyah) object and
extra amount upon debt principal with a compensation of absolute payment
deferment;
17. Bai’ is an akad of asset exchange aiming at transferring ownership of such
asset;
18. Bai’ al-Musawamah is buy-sell akad with fair market price deal through
continuous auction mechanism;
19. Gharar is uncertainty in an akad, either related to the quality or quantity of
akad object or related to the delivery;
20. Taghrir is an effort to persuade other people, either with falsified statements
or actions, in order to encourage them to make transaction;
21. Bai’ al-Ma’dum is buy-sell process, object (mabi’) of which is not available
when akad is made, or object (securities) buy-sell in which the seller has
not owned the object (securities) being sold.
22. Bai’ al-Maksyuf is a form of gharar-bearing buy-sell; which is cash buy-sell
upon object (securities) that does not belong to seller and the seller has not
permit from the owner to sell, or cash buy-sell upon object (securities) in
which the seller has not owned the object (securities) being sold.
23. Jalalah is an uncertainty in akad, either related to akad object, object
quality and quantity (shifat), object price (tsaman), or delivery time;
24. Ihtikar is to buy certain objects that are extremely required by the public
when the price is up and make it overstock in order to sell them back at a
higher price;
25. Ghabn is an imbalance between two objects being exchanged in an akad,
either in terms of quality or quantity;
26. Ghabn Fahisy is high-level ghabn, e.g. object buy-sell at a price far below
the market price;
27. Talaqqi al-rukban is part of ghabn, which is object buy-sell at a price far
below the market price due to seller ignorance upon the price of such
object.
28. Tadlis is an action that conceals akad object defect performed by seller to deceive buyer, as if the akad object has no defect;
29. Tanajusy/Najsy is a bargaining act at a higher price performed by buyer who do not intend to buy it, to make an effect of many parties interested to buy it;
30. Ghisysy is one of the forms of tadlis; which is the seller explains/describes the superiority/uniqueness of object being sold and conceals its defect;
31. Dharar is an action that may cause danger or harm to other party.

Second : Legal Provisions
Trading mechanism of Equity Securities at Stock Exchange Regular Market can be performed under specific guidance.

Third : Specific Provisions
1. Securities Trading
   a. Securities Trading at Stock Exchange Regular Market applies buy-sell akad (bai');
   b. Buy-sell akad is considered valid when a deal occurs on certain price and type as well as volume between buy and sell quotation;
   c. A buyer may sell securities after buy-sell akad is considered valid as intended under item b, eventhough the settlement of buy transaction is performed a few days later based on qabdh hukmi principles;
   d. Securities which serve as the trading object are only Sharia Equity Securities;
   e. The price in such buy-sell can be determined based on a deal that refers to fair market price through continuous auction mechanism (bai' al-musawamah);
   f. In Securities Trading, it is not allowed to perform activities and/or actions which collide with sharia principles as intended under item 3.
2. Securities Trading Mechanism
   a. Stock Exchange is not allowed to set up rules that:
      i. Securities Trading can be performed only by Stock Exchange Member
      ii. Securities buyer/seller of non Stock Exchange Member is required to perform the Securities Trading through Stock Exchange Member;
   b. Akad between Securities buyer or seller of non Stock Exchange Member and Stock Exchange Member applies ju’alah akad;
   c. Stock Exchange is required to set up a rule that forbids dharar and any action that collides sharia principles in sharia Securities Trading in Stock Exchange;
   d. Stock Exchange provides Securities trading system and/or facility, including but not limited to exchange regulation and system in accordance with securities trading surveillance, among others are: to detect and prevent any activity or action collided with sharia principles;
   e. Stock Exchange may impose Securities Trading fee (ujrah/rusum) based on ijarah principles upon the provisions of trading system and/or facility to Stock Exchange Member;
   f. Clearing and Guarantee Institution performs novation of Securities Trading performed by Stock Exchange Member based on hawalalah bil ujrah principles;
g. Clearing and Guarantee Institution may impose clearing and guarantee fee (ujrah/rusum) on Stock Exchange/Clearing Member upon services provided;

h. Depository and settlement of Securities Trading is performed by Depository and Settlement Institution;

i. Depository and Settlement Institution may impose depository and settlement fee (ujrah/rusum) on Stock Exchange Member as Securities Company.

3. The Actions which collide with sharia principles

It is required to conduct the Securities Trading based on prudent principle and it is not allowed to make speculation, manipulation, and other actions bearing dharar, gharar, riba, maisir, risywah, maksiat & cruelty, taghrir, ghisysy, tanajusy/najsy, ihtikar, bai’ al-ma’dum, talaqqi al-rukban, ghabn, riba, and tadlis. Those actions, among others, are:

a. Actions included in Tadlis category, among others:
   1. **Front Running**: is an action taken by Stock Exchange Member by performing transaction of certain Securities in advance based on information in which its client will perform the transaction of such Securities in bulk and it is predicted that it will influence the market price. The purpose is to get profit or minimize loss.
   2. **Misleading information**: is to make statement or immaterially provide incorrect or improper information that influence the Securities price in Stock Exchange.

b. Actions included in Taghrir category, among others:
   1. **Wash sale (false trade that do not change the ownership)** is transaction occurred between buying and selling parties that cause no change in the ownership and/or benefit (beneficiary of ownership) of such share transaction. The purpose is to form a increasing, declining, or stable price by giving impression as if such price is formed through fair transaction. Also, it is to give an effect that such Securities are actively traded.
   2. **Pre-arrange trade** is transaction occurred through buy and sell order within almost the same time due to predetermined deal between buyer and seller. The purpose is to form the price (increasing, declining or stable) or other purposes, either in or outside the exchange.

c. Actions included in Najsy category, among others:
   1. **Pump and Dump**: are transaction activities of Securities initiated by the fluctuation of uptrend price that is caused by series of buy initiator transactions forming uptrend prices up to the highest level. After reaching the highest price, the parties involving in the uptrend price forming will conduct series of sell initiator transactions in significant volume and encourage price declining. The purpose is to create the opportunity to sell at the highest price for profit.
   2. **Hype and Dump**: are transaction activities of Securities initiated by the fluctuation of uptrend price followed by positive information, which are incorrect, excessive, misleading, and it also caused by series of buy initiator transactions forming uptrend prices up to the highest level. After reaching the highest price, the parties involving in the uptrend price forming will conduct series of sell initiator transactions in significant volume.
and encourage price declining. This transaction pattern is similar to the one in pump and dump, aiming at creating the opportunity to sell at the highest price for profit.

3. **Creating fake demand/supply:** 1 (one) or more parties input buy/sell order at best price, but when the buy/sell order input reach the best price, those orders will be deleted or amended (in terms of volume and/or price) repeatedly. The purpose is to give impression to the market as if there is high demand/supply so the market will get influenced to buy/sell.

d. Actions included in Ikhtikar category, among others:
   1. **Pooling interest:** transaction activities of Securities that seemed liquid, whether or not it is followed by price fluctuation, within certain period of time and only performed by a group of certain Stock Exchange Member (buy or sell). Besides, daily transaction volume within such period is always in the same and/or within certain period of time, the transaction activities suddenly increase significantly. The purpose is to create opportunity to sell or collect shares or to turn certain shares activities into benchmark.
   2. **Cornering:** this transaction pattern occurs on shares with limited public ownership. Shareholders majority tries to create fake supply that causes declining price in the morning and makes public investors perform short selling. Then, there will be buying activities performed by shareholders majority that inflict price increase in the afternoon session and cause short sell players experience default or loss for they have to buy at a higher price.

e. Actions included in Ghisy category, among others:
   1. **Marketing at the close** (closing price forming): buy or sell order placement performed at end trading day, aiming at creating closing price at expected amount. It can make the price closed at higher, lower or similar amount compared to previous closing price.
   2. **Alternate trade:** transactions of a group of certain Stock Exchange Member as buyer and seller alternately in a fair-impression volume. It can make the price constant, higher, or lower. The purpose is to give an impression that certain securities are actively traded.

f. Actions included in Ghabn Fahisy category, among others: **Insider Trading**, that is illegal activities in financial market industry to earn profit commonly by taking advantage of internal information, e.g. company’s plans or decisions which are not published yet.

g. Actions included in Bai’ al-ma’dum category, among others: **Short Selling** (bai’ al-maksyuf/blank sell), that is a method used in the selling of shares not yet owned at a high price with an expectation of buying them at a low price.

h. Actions included in riba category, among others: **Margin Trading** *(Transaction with Financing)*, that is to perform Securities transaction with interest-based loan facility for the Securities buying settlement obligation

**Fourth : Settlement of Dispute**

Parties agree that any dispute and disagreement arising as a consequence of the implementation of this Agreement shall, as far as possible, be settled by
amicable deliberations. Any dispute which cannot be settled by amicable deliberation will be settled through Sharia Arbitration Board or subject to the prevailing laws and regulations under sharia principles.

Fifth : Closing
This fatwa shall take into effect as from the enactment date, provided that in the event of misinterpretation in the coming years, it shall be properly amended and revised as necessary.

Enacted in : Jakarta
Date : Rabi’ul Akhir 3, 1432 H
March 8, 2011 M.

NATIONAL SHARIA BOARD
INDONESIAN COUNCIL OF ULEMA

Chairman

Secretary

DR. K.H. M.A. SAHAL MAHFUDH

DRS. H.M. ICHWAN SAM