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Modus Operandi of the Islamic Money Market: A Proposal for Holistic Shariah Adaptation

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Abstract:

This paper advocates a holistic Shariah adaptation of the modus operandi (operational model) of the Islamic interbank money market. It presents the reasons for the need for the substitution of the conventional methods of 'tendering', 'auction' and brokerage procedures in the market with the Shariah compliant methods of 'al-Munaqasah,' 'al-Muzayadah' and 'al-Samsarah' which are known and rooted in the Islamic law of transaction. It concluded that the adaptation of such procedures will lend more credence to the Islamic financial system that continues to receive criticism from various quarters. The study is a qualitative Shariah legal research. It is restricted to

the jurisprudential analysis of the modus operandi of the market vis-a-vis the underpinning contracts of its procedure, in both the primary and the secondary stages of the markets.

Keyword: Islamic Interbank Money Market, Modus Operandi, Shariah Adaptation.

1. Introduction:

The Islamic financial industry has developed a highly sophisticated mechanism for the management of its liquidity. That is, the interbank money market. The mechanism is comparable to that of the conventional banks. It includes the primary and the secondary stages of the interbank money market, as well as the issuing and tendering of the Islamic money market instruments through an electronic system. Nevertheless, there is a need for the Shariah adaptation of the underpinning contract of the mechanism, which is commonly known as money market or interbank money market. Such adaptation will pave the way for a holistic Shariah compliance in the system. The current study is based on the practice in Malaysia being the leading best sharia jurisdiction practice in the world today.

2. General Activities in the Islamic Interbank Market and the Need for Shariah Adaptation:

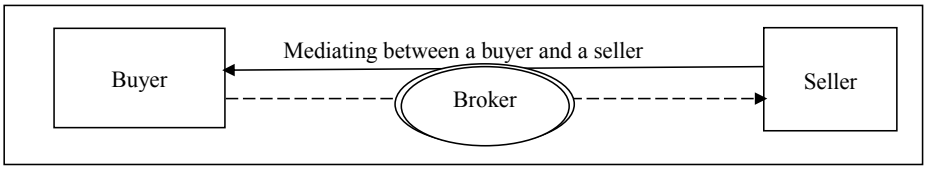
The Islamic interbank money market activities are of two folds. This includes the issuing of the instrument by the issuing institution which is termed as 'the primary market', and the trading of the issued instrument between the market participants, which are the approved financial institutions. This activity is termed as the secondary market. However, both the primary market and secondary markets are hinged in the brokerage intermediary which is a quasi-stage of the market activities. The stages of the market activities are discussed bellow in the order of brokerage intermediary, primary market and secondary market.

3. Brokerage Intermediary:

Brokerage is defined as the process of intermediating between a buyer and a seller. That is, the facilitation of bringing the transacting parties in a business in touch with each other. It is a known- process in stock brokering, commodity brokering, insurance brokering, shipping brokering for chartering and etc. Brokers charge commissions for the service they render in this regard' (John Black, 2002). Brokerage is also referred to as 'the fee which is normally a small percentage of the price, charged by a broker for the service of putting buyer and seller in touch with one another, (John Black, 2002). In short, brokerage is the process of which an intermediary, known as broker or a broking company facilitates the buying and selling of financial instruments between buyers and sellers. It plays the role of clientele for investors that trade in public securities and stocks. The function of brokerage is important in transactions, as it assists the transacting parties by its knowledge, expertise and experience which they mostly lack.

However, there is a need for the Shariah adaptation of the brokerage which is currently a conventional system. Brokerage under Islamic law is known as al-Samsarah. Discussion on of al-Samsarah is as follow.

Figure 1: Illustration of Brokerage:



3.1. Shariah Adaption of the Brokerage System of the IIMM

The adaptation of the brokerage system in the processes of the Islamic interbank money market will take the form of substituting it with the Shariah based equivalent contract. That is, the contract of al-Samsarah that is known to the Islamic commercial law system. The following is discussion of al-Smasarah.

3.2. Concept of al-Samsarah and its Rule under Shariah

al-Samsarah, is simply translated into English as 'Brokerage' (Qal'aji, Muhammad Rawwias & Another, 1985). Al-Samsaar is a person who intermediates between a buyer and a seller to facilitate the purchasing process (Sayd Sabiq, 1983). Thus, al-Samsarah is the process of mediating between two transacting parties and bringing them together based on the expertise of the broker. The process is allowed by al-Imam Malik, (Al-Mudawanah,1994), al-Imam Shafi'i and the host of other contemporary scholars, such as Abdul Aziz Bin Baz, (http://islamqa.info/ar/ref/45726). The requirement in the process is its compliance with the rule in the maxim 'al-Muslimun 'ala Shurutihum', that is, 'Muslims are bound by their stipulations' (Ibn Qudamah, "n.d"). According to al-Imam al-Bukhari, Ibn Sirin and other scholars, they do not see anything wrong with al-Samsar. According to Ibn 'Abass, 'There is nothing wrong in saying 'sell this cloth, any amount that accrues from it above the specified amount belongs to you'. Likewise, Ibn Sirin said; 'if a person said to another person 'take this cloth and sell it on so-and-so amount. Whatever profit you made from it above that belongs to you. It is permissible,'(Sayd Sabiq, 1983).

The Contemporary Shariah scholars agree that al-samsarah which is the Shariah equivalent of the conventional brokerage is permissible under Islamic law. It is the process whereby an intermediary or agent will be appointed for the purpose of trading of shares of the Islamic banks. They maintain that since the broker is considered an agent of the seller or buyer, he/she can charge fee for the services he renders as an agent. This is under the concept of al-Wakalah 'agency' for fee. The intermediary who is otherwise known as broker can charge either parties, or one of them, as they might have agreed upon, in the transaction, (http://isra.my/fatwas/topics/asset-management/trading-of-shares-a-sukuk/item/124-profit-sharing-fund.html ?qh=YToxOntpOjA7czo5OiJicm9rZXJhZ2UiO30%3D). It is argued that another area where brokerage is permissible is in the leased property.

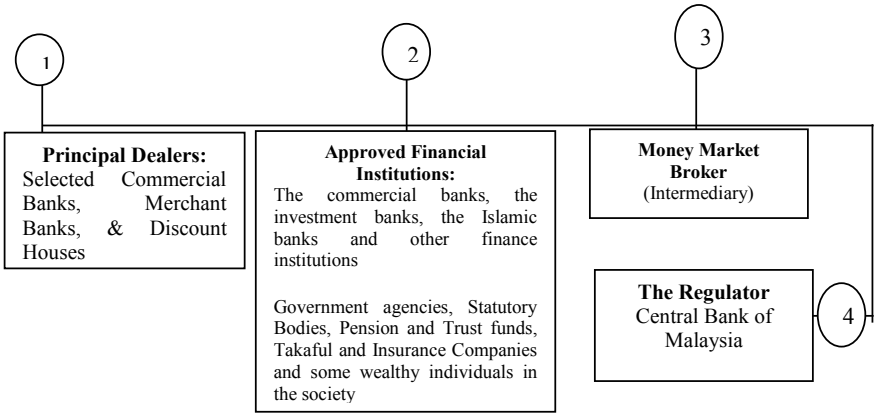
Since the current process is the conventional tender process, it can be said that there is a need for the Shariah adaptation of al-Samsarah into the Islamic interbank money market system to substitute the conventional brokerage

process. The adaptation will allow al Samsaar (broker) to play the role of intermediary between the transacting parties in the Islamic interbank money market and to receive fees for their services, (al-Fatawa al-SharÑiyyah fil-MasÉ'il al-IqtiÎÉdiyyah (http://isra.my/fatwas/topics/asset-management/tradingofsharesasukuk/item/124profitsharingfund.html?qh=YToxOntpOjA7czo5OiJicm9rZXJhZ2UiO30%3D).

3.3. Participants and Venue of the Islamic Interbank Money Market

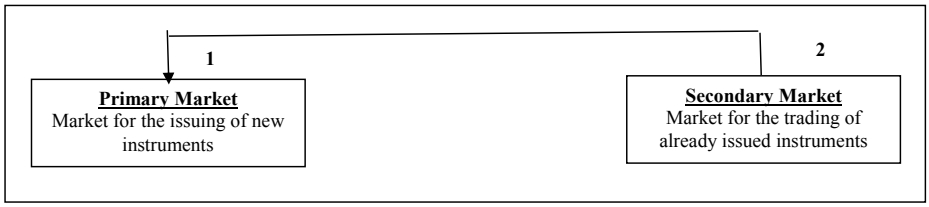
The Islamic interbank money Market consists of four parties. These are the principal dealers (PDs), the investee financial institution, the investor financial institution, the intermediary who is the money broker, and the Central bank or Securities Commission which are the regulator of the market. This is illustrated bellow:

Figure 2: Parties to IIMM



The market place includes methods of Over-the-Counter Market (OTC), Exchange Traded Commodities (ETC), and The Commercial Money Market. The brokerage stage is followed bytwo levels of primary and secondary market as illustrated bellow.

Figure 3



4. Primary Market:

In the broader sense, primary market is the market in which loan/asset is granted to a borrower, or government securities are sold to the Primary Dealers, who will in turn trade the securities in the secondary market to investors. The market includes the market where securities, futures contracts are offered for sale. Therefore, primary market is the market where securities of any type are first issued. This is, referred to as secondary market, which is a market where receivable loan/assets are traded to the investors. The primary market is the market where the transacting parties, that is, the buyer and the seller negotiate their transaction directly without any intermediation, (http://www.businessdictionary.com/definition/primary-market.html).

In other words, the primary market, that is 'the market for the issuing of new instrument' is the first of the two markets that make up the money market mechanism, the second being the secondary market. The market is where investors can invest in a new security. The issuing company or group receives cash proceeds from the sale, which is then used to fund operations or expand businesses. However, once the initial sale is complete, the next level is to proceed to the secondary market, which is where the bulk of exchange trading occurs each day, (http://www.investopedia.com/terms/p/primarymarket.asp#axzz1fIWhLSKw).

In Malaysia, the operational structure of the activities of the Islamic interbank money market includes the issuing and tendering of the instruments of the Islamic interbank money market through the 'Fully Automated System for Issuing/Tendering' (FAST), the dissemination of information through the 'Bond Information and Dissemination System' (BIDS), and the payment

and settlement system which is carried out through the 'Real time Electronic Transfer of Funds and Securities' (RENTAS). This section discusses the activities of the markets based on the various guidelines and rules that are issued by the main regulator which is the Malaysian Central Bank, Bank Negara Malaysia (BNM). The flow of the activities is discussed below.

5. Primary Market of IIMM under FAST:

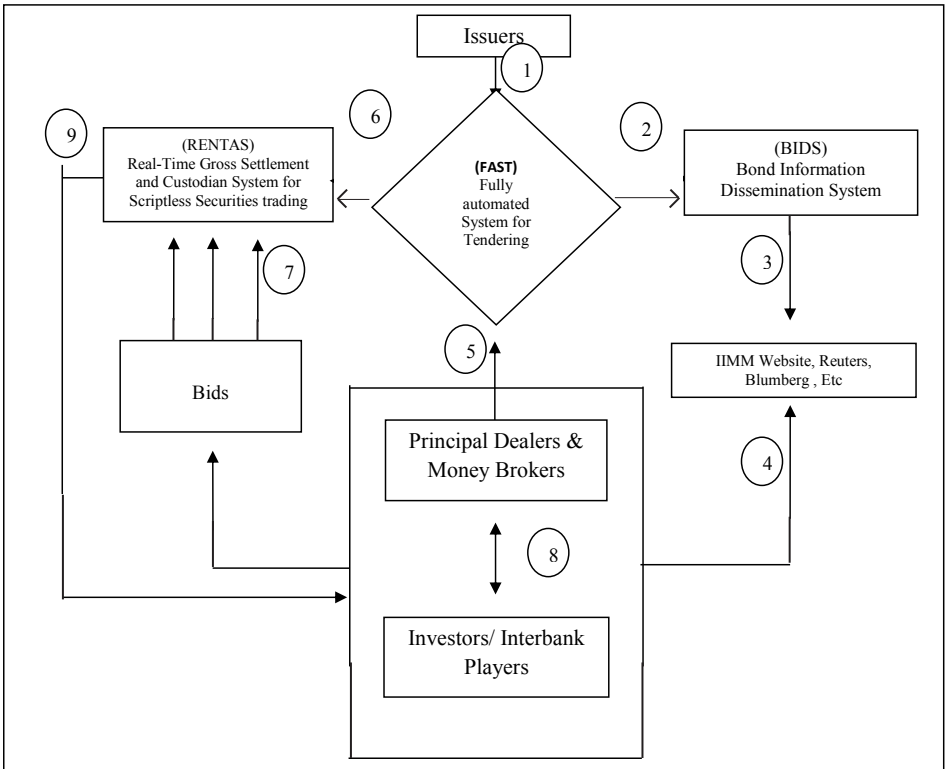
As explained earlier, generally, primary market, (Isam Husain, 2008) is the market in which loan/asset is granted to a borrower, or where government securities are sold to the Primary Dealers who will in turn sell the securities to investors in the secondary market. The market includes the market where securities and futures contracts are offered for sale, and the option is bought. Thus, primary market is the market where securities of any types are first issued. This is at variance to the secondary market, which is a market where receivable loan/assets are traded to the investors, (http://www.businessdictionary.com/definition/primary-market.html). However, the primary market in the Islamic interbank money market needs to conform to the principles of Shariah.

6. Issuing of IIMM Instruments in the Primary Market:

The primary market is facilitated by underwriting groups, that consist of investment banks which set a commencing price range for a given security and also oversee its sale directly to investors. In short, the primary market is where investors can purchase a newly issued security. The company or group that issues such security receives cash proceeds from the sale, which are then used to fund their operations or expand their business, (http://www.investopedia.com/terms/p/primarymarket.asp#axzz1fIWhLSK).

In short, in the strict sense of the Islamic interbank money market instruments, primary market is the venueless market in which instruments of the Islamic money market are first issued by the issuer through the intermediaries that is the broker to the investor. Therefore, the parties that participate in the primary market are Islamic banks, commercial and investment banks with Islamic window, the principal dealers and the investors. The flow of the primary market is illustrated in the following diagram.

Figure 4: Flow of Primary Market



NOTE

1. The issuer issues new instrument in the primary market through FAST and invites for tender
2. FAST transmits the information on the new issue to BIDS
3. BIDS disseminate the information to the prospective participant and the general public through IIMM Website, Reuter, Blumberg and etc.
4. The prospective participants access the information in the new issue
5. The prospective participants tender for bids through FAST system
6. FAST makes allotment to the successful bidders through RENTAS
7. The bidders make payment through RENTAS
8. Transactions between the Principal Dealers, Money Brokers and the investors.
9. At the maturity of the business/transaction redemption are made and profits are paid by the issuer of the instrument to the participants

The infrastructure of the Islamic interbank money market in Malaysia is very advanced to the extent that it accommodates modern practices. The procedure for the tendering of the securities is through the 'Fully Automated System for Issuing/Tendering (FAST) as mandated by Bank Negara Malaysia. The Fully automated System for Issuing/Tendering (FAST) is an automated tendering system, from where the invitation to tender, the submission of bids and the processing of tenders for scripless [what is this word?] securities and private debts securities are conducted electronically. Under the system, the Malaysian Central Bank, Bank Negara Malaysia acts as the facility agent for both the government and its owns securities. However, as for the Private Debt Securities, the issued companies appoint financial institutions as their arrangers and facility agents. FAST also capture the primary and secondary issuance of the entire unlisted instruments, (Harun Salleh, 2005).

The FAST system is governed and regulated by the 'Rules on Fully Automated System for Issuing/Tendering (FAST), 2005, ("Rules on Fully Automated System for Issuing," 2005). The issuing of the 'Rules on Fully Automated System for Issuing /Tendering (FAST) is introduced pursuant to Section 126 of the Banking and Financial Institutions Act 1989, ("Section 126, Banking and Financial Institutions Act" 1989). The Section provides for uniformity of procedure and practices for the governance of issuing/ tendering of all instruments that operate under the purview of FAST, ("Rules on Fully Automated System for Issuing," 2005). The 'Rules' also lay down procedures for the governing of primary issuing of all instruments that are approved by the Malaysian Central Bank, Bank Negara Malaysia (BNM) which are captured under FAST, ("Section 2 (2.1), Rules on Fully Automated System for Issuing/Tendaring (FAST)," 2005). It is applicable to Money Market Tender as well as the Securities that are specified under RENTAS, Private Debt Securities, Repo Tenders and any other instruments that are specified by the Central Bank of Malaysia, Bank Negara Malaysia (BNM), ("Section 3 (3.1), Rules on Fully Automated System for Issuing/ Tendering (FAST)," 2005).

However, prior to the development of FAST (FAST), 2005, by the Central Bank of Malaysia, Negara Malaysia (BNM) in the 1996 to automate the procedure of the tendering of the Government Securities/Bank Negara Papers, the channel for the issuing of the instruments was through the network of the principal dealers (PDs). This is also the case with the commercial papers and medium term notes that are issued by tender and private placement which are included in FAST in 1997. The upgrading of FAST in 2005 by the issuing of the 'Rules' due to the application of the Web-Based system of FAST was able to cater for the introduction of new instruments into the market, the system includes 'on-line facility submission to Central Bank for activation of facility codes, removal of SSTS forms, centralization of news, facility and stock information, liquidity position, auction calendar, Malaysian Government Securities (MGS) price list and most especially, the information is accessible to the public without the need to become a member of FAST', ("Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). This in turn enables market participants to streamline and improve the procedure for the handling of the instruments and the procedure of issues. It also improves transparency in the transaction of the Malaysian Islamic money market, ("Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005).

7. The Procedure for the 'Issuing' of IIMM instruments under FAST:

As part of the objective of FAST 2005', the 'Rules', provides for the procedure of issuing of money market instruments through and the conduct of the participants, ("Part V, Section 1 (1.1) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). The said procedure is discussed below;

7.1. Invitation for Tender

The Islamic interbank money market activities start with an invitation for tender by the Central Bank of Malaysian, Bank Negara Malaysia (BNM). Such invitation will be directed to prospective bidders. Therefore, the

Central Bank of Malaysia can invite for tender at any time within the trading days. The tender will be allowed to be conducted for the period of up to seven days. However, in the situation whereby the submission of the tender is required in the same day of the invitation, sufficient time will be given between the invitation and the deadline of submission of bids, ("Section 2 (2.1) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). This is the first step.

7.2. Bidding in the Primary Market

The second step is the bidding for the tender by the prospective bidders. However, the Participants must be the Approved Financial Institutions. The only institutions that are allowed to participate in the tendering process are the approved institutions for the money market by the Malaysian Central Bank (BNM), regardless of whether such institution is a FAST member or not, ("Section 2 (2.2) (a), Rules on Fully Automated System for Issuing/ Tendering (FAST)," 2005).

However, the submission of bids may made be through Direct Bidders or Principal Dealers. The 'Direct Bidders' are the FAST members that are invited by the issuer/Facility Agent, that is, the Central Bank of Malaysia, to submit bids directly to the Facility Agent / Arranger. Nevertheless, in the case of the securities that are issued through the Principal Dealers (PD) network, the Principal Dealers are the Direct Bidders for such securities. However, as for other securities, the Direct Bidders are the 'Tender Panel Members (PTM), ("Section 4(4.1) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). The Tender Panel Members are the invited FAST members. In short, the entire approved FAST members for interbank institutions are considered as Direct Bidders, ("Section 2 (2.3) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). The bids are required to be submitted electronically. Nevertheless, any bids that are submitted by the Direct Bidders on their behalf and on behalf of their customer which does not reach the minimum requirement of RM 5,000,000 and in multiples of RM 1,000,000 will be rejected by FAST, ("2 (2.6) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005).

8. Bidding Process through Tender:

Under Shariah based practice of the Islamic interbank money market, it is required that the submission of tenders must be through the Direct Bidders. This includes the situation of 'until further notice.' Even then the Direct Bidders are allowed to submit a bid that contains the Shariah -based profit-sharing ratio, as well as that of the conventional [financing/transactions?] that involve interest rates, ("Section 2 (2.7) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). Thus, both the Shariah practice and the conventional money market follow the same process in this regard, however, the Shariah -based differs in that, in the tendering for Islamic interbank money market instruments under FAST, the transaction must be on the basis of the principle of Shariah, as opposed to that of the conventional system which is based on 'lending and borrowing principle that attracts interest, ("Section 2 (2.9) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005).

Moreover, all the bids that are submitted and accepted are irrevocable. They are final. Therefore, the bidders are required to honor their obligations in the situation wherein the bids happen to be among the successful one, ("Section 2 (2.11) (a), Rules on Fully Automated System for Issuing/ Tendering (FAST)," 2005) and it is a requirement that the submission of bids must be within the stipulated deadline. In other words, the submission of bids by the Direct Bidders must be made before the period of the manual cut-off as may be specified by Bank Negara Malaysia (BNM), ("Section 2 (2.8) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). The operation of the primary market is based on tender process. The position of tender under Shariah is discussed in the following.

9. Contract of Tender:

Currently, the mechanism for the bidding process of IIMM is the same with that of the conventional money market; it is through the tender process. Tender is 'an offer to supply or to purchase goods or services'. It can also be defined as 'an offer of performance, acceptance of which requires the

concurrence of the other party'. Thus, a tender must be accepted to create a contract. The example of this is the offering of prices of goods to a seller by a buyer, (Elizabeth A. Martin & Jonathan Law, "n.d."). In other words, it is a method of purchasing goods or services through the invitation for bids or tenders and then the choosing of the most suitable from among the bids that are received. The choice normally falls on the cheapest tender. However, in order to make the best choice, the purchasers usually need the technical guidance of the experts who are conversant with the transaction and therefore render their services as intermediaries. Competitive tendering is used in selecting applicants to run franchised or contracting-out public services, (John Black, "n.d."). However, tender in the context of the current research is 'the offer of the securities of a company to the public (that is flotation) at a uniformed price (above a specified minimum price) that is determined by the bids received and ensures that all the securities are taken up, (Elizabeth A. Martin, "n.d.").

Nevertheless, the submission of tender document is considered nothing but an offer, while the invitation for tender is merely an invitation to treat, (Nurdianawati Irwani Abdullah, & others, 2011). This concept is explained in the case of Diskon Trading (S) Pte Ltd v Transmarco Ltd, where the plaintiffs and the Tays were invited to tender in their bids for all the issued shares of HG ("the share"). HG was a wholly owned subsidiary of the defendants. The defendants decided to proceed with the sale of the share to Tays although the plaintiffs bid for a higher price compared to the Tays. The plaintiffs therefore applied for an interlocutory injunction to restrain the defendants from disposing off or parting with the shares. The plaintiffs claimed that the bids were in the nature of a unilateral contract and that the plaintiffs by submitting a higher bid concluded the contract for the sale of the shares. Conversely, the defendants claimed that their invitation was only an invitation to treat and that they were not bound to accept the highest offer. The court held that;

> *.. the tender was an invitation to bid. The bids did not result in a synallagmatic contract (that is, mutual agreement that imposes obligation on the parties) between them and the defendants, (Nurdianawati Irwani & others, 2011).*

This being the nature of the tender process and its current situation under the Islamic interbank money market which is a conventional process. Thus, since the present process is conventional in nature, there is a need for adaption of the Shariah based equivalent of the contract which the contract of al-munaqasah. This is discussed below.

10. Shariah Adaptation of the Tender-Bidding Process:

The contemporary jurists unanimously agree that the tender process is permissible under Shariah. Although, tender is a new phenomenon, however, the Fiqh Academy of the Organization of Islamic Conference (OIC), in its 2th session of 25th of Jumada al-Thani, 1421 A. H. to the first of Rajab, 1421 A. H., (corresponding from Sept. 23 to Sept.. 28, 2000) in Riyadh, Kingdom of Saudi Arabia, resolved that 'tender' as compared to 'auction' is permissible under Islamic law, ("Resolution No. 107 (1/12), International Islamic Fiqh Academy," 2000). Moreover, the Academy explained that the tender process (al-Munaqasah) is a procedure for the searching for affordable offer on the sale of commodities or services. The seeker of the offer often invites interested parties to present their offers based on lay-down rules and terms. The Fiqh Academy therefore rules that the process is permissible under Shariah , on the basis of its similarity to al-Muzayadah 'auction' and it concluded that the rules of auction applies to tender, ("Resolution No. 107 (1/12) International Islamic Fiqh Academy," 2000).

Furthermore, the Shariah Advisory Council of the Central Bank of Malaysia equally resolved that tender is permissible under Shariah. The Council views the tender process in IIMM as a contract of interest free loan, 'al-qardh al-hasan' and declared its permissibility in its 55th meeting on 29th of December 2005 corresponding to 27th of Zulka'dah.

Resolution:

The Council, in its 55th meeting, held on 29th December 2005 / 27th Zulkaedah 1426 resolved that the liquidity management instrument based on qardh, which is a contract of interest free loan between Islamic financial

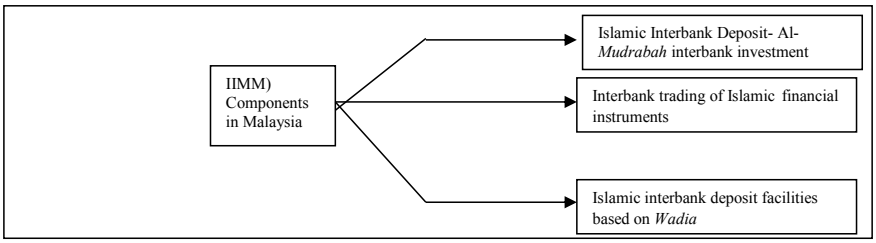
institutions and the Bank Negara Malaysia to facilitate the need of short-term loan, is permissible. Nevertheless, Bank Negara Malaysia, as the borrower, may pay back more than the borrowed sum in the form of hibah, provided that it is at the sole discretion of the borrower and there is no pre-condition clause, (http://isra.my/fatwas/topics/ treasury/related-matters/item/276liquiditymanagementinstrumentbasedonqardh.

In the context of the Islamic interbank money market, tender is utilized for the management of liquidity mismatch in the Islamic banks. The system worked on the basis that the Malaysian Central Bank, Bank Negara Malaysia will issue a tender through FAST (Fully Automated System for Issuing or Tendering) for the disseminating of information to the Islamic banks to advance loan to the apex bank and disclosing the amount to be borrowed. The tender process allows for competitive bidding between the financial institutions. They will bid for the total nominal amount that they wish to advance to the Central bank. The loan will be provided to successful bidder, and the Central bank will refund the amount to the bank at the expiration of the tenure in addition with al-Hibah 'gift' subject to the discretion of the Central Bank, (HYPERLINK "http://isra.my/fatwas/topics/treasury/relatedmatters/item/276liquiditymanagementinstrumentbasedonqardh.html?qh=YToyOntpOjA7czo2OiJ0ZW5kZXIiO2k6MTtzOjk6InRlbmRlcmluZyI7fQ%3D%3D" http://isra.my/fatwas/topics/treasury/relatedmatters/item/276liquiditymanagementinstrumentbasedonqardh.html?qh=YToyOntpOjA7czo2OiJ0ZW5kZXIiO2k6MTtzOjk6InRlbmRlcmluZyI7fQ%3D%3D).

In short, tender is the process that is employed in the context of the Islamic interbank money market for solving the problem of liquidity mismatch in the Islamic banks. The mechanism is that Bank Negara Malaysia while issuing a new instrument, will invite for tender through FAST (Fully Automated System for Issuing or Tendering) from the Islamic banks to advance loan to the Central Bank, and it will disclose the amount to be borrowed. The tender process allows for competitive bidding between financial institutions. They will bid for the total nominal amount that they wish to advance to the Central bank. The successful bidder will provide the loan, and the Central bank will refund the amount to the bank at the expiration of the tenure in

addition with al-hibah 'gift' subject to the discretion of the Central Bank. Therefore, the issuing of the instruments of the Islamic Interbank Money Market in the primary market in Malaysia, on the basis of tender is valid and permissible under Shariah. However, the interbank money market is of three categories. This is illustrated in the following diagram.

Figure 5: Structure of the Components of the Islamic Interbank Money Market (IIMM)



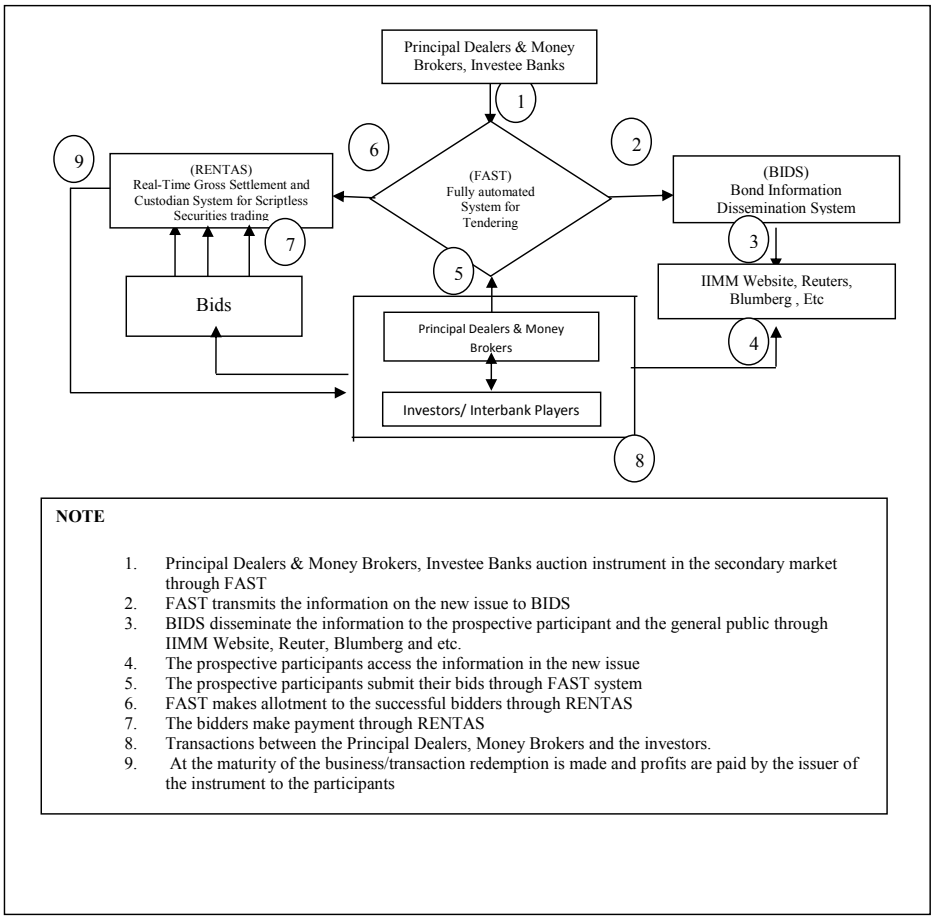
11. Secondary Market of IIMM

Secondary Market of the IIMM refers to the trading of the Islamic Money Market Instruments after it was first issued in the primary market. The secondary market is also available in the Capital market. In another word, the secondary market is the market whereby the instruments of the Islamic interbank money market are traded, that is, sold and bought, after it has been issued in the primary market. Thus, the secondary market is the market where investors buy securities or assets from other investors other than the issuing institutions, (HYPERLINK "http://www.investopedia.com/terms/s/secondarymarket.asp" \l "axzz1fSoELkmK"http://www.investopedia.com/terms/s/secondarymarket.asp#axzz1fSoELkmK). That is,secondary market connotes the 'enabling of the trading of securities that have already been issued in the money market, (Habiba Anwar, 2008). if the instrument is listed on the stock exchange, it will be allowed to trade through bids.

The instruments on the Islamic interbank money market are tradable in the secondary market. That is, the market whereby the participants sell and buy any of the instruments on the Islamic money market. Some of

the characteristics of the IIMM secondary market in Malaysia are; easy access to the instruments, the provision of liquidity, that is, the possibility of the easy conversion of the instruments to cash at the discretion of the holder. It also allows for its trading, and arbitraging, that is, the buying of the instrument in a market where the price is low and its sale in another market where the price is higher. This occurs between the instruments of the same tenor, and between instruments of tenors of the same class, ("Islamic Treasury Operations," "n.d.").

Figure 6: Flow of the Secondary Market



12. Bidding Procedure through Auction in Secondary Market:

The procedure for the bidding for instruments of the Islamic interbank money market in Secondary Market is similar to that of the issuing process, except for the method of the sorting of bids that are submitted by the direct bidders and the indirect bidders'. This is followed by the names of the direct bidders and the amounts of their bids, ("Section 2 (2.12) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005). Another significant difference is that 'tendering procedure' is implemented for the primary market, while the procedure in the secondary market is 'auction' process.

Nevertheless, in the case of 'competitive processes', the sorting out of bidders is of two ways, that is, either in the ascending order of interest rate in the conventional system and profit-sharing ratio in the Shariah -based system, for borrowing and acceptance of tender, or in the descending order of the interest/profit –sharing ratio for lending and investment tenders. This process will continue until the amount on the tender in completely taken up, ("Part V, Section 2 (2.13) (a), Rules on Fully Automated System for Issuing/Tendering (FAST)," 2005).

In short, the allotments for money market tender to the successful bidders that tendered through FAST are in multiple of RM 1,000,000. Therefore, it is the FAST system that automatically allocates it to the successful bidders, ("Section 2 (2.14) (a), Rules on Fully Automated System for Issuing/ Tendering (FAST)," 2005). The operation of the secondary market is based on the auction process. This brings us to the discussion on auction.

13. Auction Procedure:

Auction is defined in the legal context, as 'a method of sale in which parties are invited to make competing offers (bids) to purchase an item in its classified form'[reference?] . The auctioneer, who acts as the agent of the seller until the fall of the hammer announces completion of the sale in favour of the highest bidder by striking his desk with a hammer (or in any

other customary manner). Until then, any bidder may retract their bid and the auctioneer may withdraw the goods. The seller may not bid unless the sale is stated to be subjected to the seller's right to bid. However, the mere advertising of an auction does not constitute an offer. It is an invitation to treat. It is the bidders that make offers and the contract will be concluded when the hammer is brought down by the choosing of the highest bidder. In Payne v Cave,, the defendant made the highest bid but withdrew it before the fall of the hammer. The court held that every bidding is nothing more than an offer on one side, which is not binding on either side until it is assented to. Therefore, invitation to auction is not a promise that the buyer of a specific chattel will get title of a good, (Elizabeth A. Martin Jonathan Law, "n.d.").

An auction is a process of 'a sale where the price is fixed by an auctioneer who invests for bids, and awards the article being auctioned to the highest bidder,' (John Black, "n.d."). For instance, in each stage of the bids there will be public announcement of the highest bid. Therefore, any other interesting party will be given the opportunity of making higher bid. This is in the case of open bids. However, in sealed bids, all bids will be submitted sealed, and after the expiration of the time that is set for the bids, there will be no invitation for bids, anymore. Then, the auctioneer will open the sealed bids and award the sale object to the highest of the bids, (John Black, "n.d.").

14. Shariah Adaptation of the Auction Process (Bay' al-Muzayadah):

The process of auction is similar to the process of 'Bay' al-Muzayadah' which is a recognized contract under Shariah, (Treasury Operation, "n.d."). Bay al-Muzayadah' is defined as the intermediation between seller and buyer, or between lessor and lessee, in order to determine the amount of the price of the commodity or services that is intended to be acquired, or the value of the leased item, based on mutual acceptances of the countervalues by the parties, (Muhammad Ali al-Hashmiri, & others, 1997). Shariah scholars are of two opinions on the permissibility of auction 'Bay' al-Muzayadah'. These are as follows:

i. Majority Opinion:

The majority of the scholars of the Islamic schools of law, argues that Bay al-Muzayadah, 'auction' is permissible under Shariah. Some of the scholars that hold this opinion include, Kasani, a jurist of the Hanafi School of law, (Al-Kasani, 2003), and Imam Bukhari who specified a topic for it in his book. In another opinion, Bay' al-Muzayadah' was practiced during the time of the holy Prophet, S. A. W. by his companions in the sale of war booties, (Nazih Hammad, "n.d."). In addition, the companion of the Holy Prophet Anas Bin Malik reported that the holy Prophet (S.A.W) once sold a carpet and a water vessel by calling out to people for bid. A man offered to purchase it in one dirham, but the Prophet demanded higher bid. However, when another person offered to purchase it in two Dirham the Holy Prophet accepted it and sold it to him, (Sunnan Al-Tirmidhi, 1996). Other jurists who hold similar opinion are Ibnu humam, (Ibn Humam, "n.d."), a jurist of Hanafi school of law, Ibn Juzaiy, a Maliki jurist, (Ibn Juzaiy, "n.d.") and Ibn Qudamah, (Ibn Qudamah, "n.d."), who is a jurist of Hanbafi school of law who insisted that there is al-Ijma' 'consensus of opinion' on the permissibility of al-Muzayadah 'auction' across the various Islamic school of law.

ii. Minority Opinion:

However, some scholars opposed to the practice of Bay' al-Muzayadah 'auction'. Their contention emanates from the interpretation of the hadith of the Prophet that prohibit the bargaining of a Muslim over the bidding of another person. The hadith states that; 'A Muslim shall not bargain on the transaction of his brother (fellow human being), (Sahih Muslaim, No. 3088, 1314). They therefore contend that Bay' al-Muzayadah is not permissible based on this hadith, (Ibn Rushd, 1995). However, this argument is rejected by the majority of scholars. They maintain that the biding or bargaining on the bid of another person cannot be prohibited except after the acceptance of the offer. They maintain that this is not the case of Bay' al-Muzayadah where there is no acceptance yet. Therefore, the transaction cannot be said to have been concluded except after the auctioneer has accepted the highest bid.

Based on the above arguments, the Malaysian Shariah Advisory Council (SAC) resolved on 16 -17, October, 1997, to adopt the opinion of the majority of scholars and passed a resolution stating that;

Bay' al-Muzayadah' was permissible according to Islamic jurisprudence. The concept can be used as a reference for developing an instrument in the Islamic capital market in Malaysia, (HYPERLINK "http://www.mifc.com/index.php?ch=menu_know_ftw&pg=menu_know_ftw_reso&ac=502&mode=view"http://www.mifc.com/index.php?ch=menu_know_ftw&pg=menu_know_ftw_reso&ac=502&mode=view).

Furthermore, the practice of auction 'Bay' al-Muzayadah' under Shariah is established by the practice of the holy prophet Muhammad S. A. W. as narrated by Jabir Bin Abdullah (R. A.) that;

'… the Holy Prophet S. A. W. said to the effect that: 'Who will buy this slave from me? Nu'aym bin Abdullah (R. A.) offered to buy it for so- and-so price and the Holy Prophet S. A. W. the slave to gave him.

Therefore, it can be inferred from the above hadith that auction is permissible under Shariah as it reflects the practice of the Holy Prophet (S. A. W). The initiative of the companion Nu'aym amounted to an offer while the given of the slave to him by the Holy Prophet S. A. W. constituted an acceptance. Thus, it can be said that auction is a permissible basis of the practice of the Holy Prophet S. A. W., (Nurdianawati Irwani Abdullah, & Others, 2011) . In short, Bay' al-Muzayadah' is a contract which is permissible under Shariah and can be adapted to substitute the conventional auction process in the secondary market activities of the Islamic interbank money market. This process occurs in the central bank and the security commission level. However, the players are the various banks that transact with each other through their money market and liquidity department. This is as follows.

15. Conclusion:

To sum up, it can be concluded from the foregoing, that the modus operandi of the Islamic interbank money market in Malaysia is in the position of a global standard[what does this mean?] and it is worthy of being adopted as a model in other jurisdictions. Nevertheless, the operational framework of the market requires a holistic Shariah adaptation. Such adaptation is necessary for its credibility and acceptability across the world. The contracts such as tender, auction and brokerage in its modus operandi can be adapted as bay' al-Munaqasah, bay' al-muzayadah, and al-samsarah / al-wasatah respectively.' Although, these contracts are all rooted in Shariah law, nonetheless, this study suggests further research in this area.

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طريقة عمل السوق النقدي الأسلامي: مقترح لتكيف شريعي شامل

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ملخص البحث:

تقترح هذه الدراسة التكيف الشريعي الشامل لعملية السوق النقدي فيما بين البنوك والموسسات المالية الإسلامية. ولقد تم عرض الأسباب الضرورية لاستبدال الأساليب المتبعة في السوق من الوساطة (السمسرة)، والمناقصة والمزايدة التقليدية بما يوافقها من العقود والأساليب الشرعية، وخلصت إلى أن تكييف هذه الأساليب والإجراءات تكيفا شرعيا شاملا ستضيف إلي مصداقية النظام المالي الإسلامي التي ما زالت تتلقى انتقادات من جهات مختلفة. سلكت الدراسة طريقة البحث القانوني الشرعي النوعي. وتقتصر الدراسة على تحليل فقهي للأساليب والطرق المتبعة في السوق وعقودها الملزمة في كل من مرحلتيها سوق الابتدائية وسوق الثانوية.

الكلمات الدالة: التكيف الشريعي، النظام المالي الإسلامي، السوق الأساسية و السوق الثانوية السوق النقدي، والموسسات المالية الإسلامية.