Shari’ah Standard No. (17)

Investment Sukuk

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IN THE NAME OF ALLAH, THE ALL-MERCIFUL, THE MOST MERCIFUL

All praise be to Allah, the Lord of all the worlds, and blessings and peace be upon our master, Muhammad, and his household and all his companions

Preface

The aim of this standard is to elaborate the Shari'ah rules for the issuance and trading of investment Sukuk (certificates) as well as the elaboration of their types, characteristics, Shari'ah regulations and the conditions for the issuance of Sukuk and dealings in them for trading by Islamic financial institutions (institution/institutions).(1)

(1) The word (Institution/Institutions) is used here to refer, in short, to Islamic financial institutions including Islamic Banks.

Statement of the Standard

The word 'certificates' used in the Standard may be read interchangeably for 'Sukuk'

1. Scope of the Standard

This standard covers investment Sukuk. These Sukuk include Sukuk of ownership of leased assets, ownership of usufructs, ownership of services, Murabahah, Salam, Istisna'a, Mudarabah, Musharakah, investment agency and sharecropping (Muzara'ah), irrigation (Musaqat) and agricultural (Mugharasah) partnerships. The standard does not cover shares of joint stock companies, certificates of funds and investment portfolios.

Clause 1: The following clarification is added as footnote to the clause: "As the standard covers various types of Sukuk, in case of any query, the provisions/rulings of relevant mode may be referred. For example, in case of query on Ijarah Sukuk, the Shariah Standard on Ijarah may be referred. Further, AAOIFI Resolution on Sukuk issued in February 2008 which provides necessary explanation to the subject Standard is also adopted with this standard

2. Definition of Investment Sukuk

Investment Sukuk are certificates of equal value representing undivided shares in ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity, however, this is true after receipt of the value of the Sukuk, the closing of subscription and the employment of funds received for the purpose for which the Sukuk were issued.

In this standard, Sukuk have been designated as Investment Sukuk in order to distinguish them from shares and bonds.

Clause 2: The following is added as footnote to the clause: The phrase 'undivided shares' appearing in the clause may be read as 'undivided share'

3. Types of Investment Sukuk

Investment Sukuk are of different types, and among these are:

3/1 Certificates of ownership in leased assets

These are certificates of equal value issued either by the owner of

a leased asset or a tangible asset to be leased by promise, or they are

issued by a financial intermediary acting on behalf of the ownerwith the aim of selling the asset and recovering its value through subscription so that the holders of the certificates become owners of the assets.

3/2 Certificates of ownership of usufructs

3/2/1 Certificates of ownership of usufructs of existing assets

These are two types:

3/2/1/1 Certificates of equal value issued by the owner ofan existing asset either on his own or through a finan-cial intermediary, with the aim of leasing the asset and receiving the rental from the revenue of subscription so that the usufruct of the assets passes into the ownership of the holders of the certificates.

3/2/1/2 Certificates of equal value issued by the owner of the usufruct of an existing asset (lessee), either on his own or through a financial intermediary, with the aim of subleasing the usufruct and receiving the rental from the revenue of the subscription so that the holders of the certificates become owners of the usufruct of the asset.

3/2/2 Certificates of ownership of usufructs of described future assets

These are certificates of equal value issued for the purpose of leasing out tangible future assets and for collecting the rental from the subscription revenue so that the usufruct of the described future asset passes into the ownership of the holders of the certificates.

Clause 3/2/2: The following is added as footnote to the clause which defines Ijarah Mowswoofa fi Zimmah certificates: 'The Ijarah Mowsoofa fi Zimmah' referred to in the clause means Ijarah of described but unidentified assets or services.'

3/2/3 Certificates of ownership of services of a specified party

These are certificates of equal value issued for the purpose of providing services through a specified provider (such as educational benefits in a nominated university) and obtaining the service charges in the form of subscription income so that

the holders of the certificates become owners of these services.

Clause 3/2/3: The following footnote is added to the clause: "The phrase 'subscription income' used in the clause may be read as 'subscription revenue'."

3/2/4 Certificates of ownership of described future services

These are certificates of equal value issued for the purpose of providing future services through described provider (such as educational benefits from a university without naming the educational institution) and obtaining the fee in the form of subscription income so that the holders of the certificates become owners of the services.

3/3 Salam certificates (Salam Sukuk)

These are certificates of equal value issued for the purpose of mobilising Salam capital so that the goods to be delivered on the basis of Salam come to be owned by the certificate holders.

3/4 Istisna'a certificates (Istisna'a Sukuk)

These are certificates of equal value issued with the aim of mobilising funds to be employed for the production of goods so that the goods produced come to be owned by the certificate holders.

3/5 Murabahah certificates (Murabahah Sukuk)

These are certificates of equal value issued for the purpose of financing the purchase of goods through Murabahah so that the certificate holders become the owners of the Murabahah commodity.

3/6 Musharakah certificates (Musharakah Sukuk)

These are certificates of equal value issued with the aim of using the mobilised funds for establishing a new project, developingan existing project or financing a business activity on the basis of any of partnership contracts so that the certificate holders become the owners of the project or the assets of the activity as per their respective shares, with the Musharakah certificates being managed on the basis of participation or Mudarabah or an investment agency.

3/6/1 Participation certificates

These are certificates representing projects or activities managed on the basis of Musharakah by appointing one of the partners or another person to manage the operation.

3/6/2 Mudarabah Sukuk

These are certificates that represent projects or activities managed on the basis of Mudarabah by appointing one of the partners or another person as the Mudarib for the management of the operation.

3/6/2 Investment agency Sukuk

These are certificates that represent projects or activities managed on the basis of an investment agency by appointing an agent to manage the operation on behalf of the certificate holders.

3/7 Sharecropping certificates (Muzara'ah Sukuk)

These are certificates of equal value issued for the purpose of using the funds mobilised through subscription for financing a project on the basis of Muzara'ah so that the certificate holders become entitled to a share in the crop according to the terms of the agreement.

3/8 Irrigation certificates (Musaqat Sukuk)

These are certificates of equal value issued for the purpose of employing the funds mobilised through subscription for the irrigation of fruit bearing trees, spending on them and caring for them on the basis of a Musaqat contract so that the certificate holders become entitled to a share in the crop as per agreement.

3/9 Agricultural certificates (Mugharasah Sukuk)

These are certificates of equal value issued on the basis of a Mugharasah contract for the purpose of employing the funds for planting trees and undertaking the work and expenses required by such plantation so that the certificate holders become entitled to a share in the land and the plantation.

4. Characteristics of Investment Sukuk

4/1 Investment Sukuk are certificates of equal value issued in the name of the owner or bearer in order to establish the claim of the certificate owner over the financial rights and obligations represented by the certificate.

4/2 Investment Sukuk represent a common share in the ownership of the assets made available for investment, whether these are non-monetary assets, usufructs, services or a mixture of all these plus intangible rights, debts and monetary assets. These Sukuk do not represent a debt owed to the issuer by the certificate holder.

4/3 Investment Sukuk are issued on the basis of a Shari'ah-nominated contract in accordance with the rules of Shari'ah that govern their issuance and trading.

Clause 4/3: The following is added as footnote to the clause: "The term 'Sharia-nominated' used in the clause may be read as 'Shariah-compliant'."

4/4 The trading of Investment Sukuk is subject to the terms that govern trading of the rights they represent.

Clause 4/4: The following clarification is made with respect to the clause: "The clause may be read as 'The trading of investment Sukuk is subject to the terms that govern trading of the assets they represent."

4/5 The owners of these certificates share the return as stated in the subscription prospectus and bear the losses in proportion to the certificates owned (held) by them.

5. Shari'ah Rulings and Regulations

5/1 Issuance of investment Sukuk

5/1/1 It is permissible to issue investment certificates by way of subscription on the basis of any of Shari'ah-nominated investment contract.

5/1/2 It is permissible to issue certificates for (to securitize) assets that are tangible assets, usufructs and services by dividing them into equal shares and issuing certificates for their value. As for debts owed as a liability, it is not permissible to securitize them for the purpose of trading.

5/1/3 The issue contract has all the legal effects of the contract upon which the issued certificates are based. This occurs after closing of the subscription and the allotment of the certificates.

5/1/4 The two parties of the issue contract are the issuer and the subscribers.

5/1/5 The relationship between the two parties to the issue contract is determined on the basis of the type of contract and its status in the Shari'ah as well as the following description:

5/1/5/1 Certificates of ownership of leased assets

The issuer of these certificates is seller of a leased asset or an asset to be leased on promise, the subscribers are the buyers of the asset, while the funds mobilized through the subscription are the purchase price of the asset. The certificate holders jointly own the assets through an undivided ownership sharing the profits and losses on the basis of the partnership that exists between them.

5/1/5/2 Certificates of ownership of usufructs

a) Certificates of ownership of the usufruct of existing assets

The issuer of these certificates is the seller of usufruct of an existing asset, the subscribers are buyers of such usufruct, while the funds mobilised through subscription are the purchase price of the usufruct. The certificate holders become joint owners of the usufruct sharing its benefits and risks.

b) Certificates of ownership of described usufruct to be made available in the future

The issuer of these certificates is the seller of usufruct of an asset to be made available in the future as per specification. The subscribers are buyers of the usufruct through, the funds mobilised through subscription are the purchase price of the usufruct. The certificate holders become joint owners of the undivided usufruct sharing its benefits and risks.

c) Certificates of ownership of services

The issuer of these certificates is the seller of services, the subscribers are buyers of the services, while the funds mobilised through subscriptionare the purchase price of the services.

The certificate holders are entitled to sell the profits of all the types that are listed at (a), (b) and (c) and are entitled to the income from the resale of such usufruct.

Clause 5/1/5/2 (c): The following is added as footnote to the clause: "The holders of these Sukuk listed at a, b, and c of the

clause are entitled to the revenue generated by onward sale of these services".

5/1/5/3 Salam certificates (Salam Sukuk)

The issuer of the certificates is a seller of the goods of Salam, the subscribers are the buyers of the goods, while the funds realised from subscription are the purchase price (Salam capital) of the goods. The holders of Salam certificates are the owners of the Salam goods and are entitled to the sale price of the certificates or the sale price of the Salam goods sold through a Parallel Salam, if any.

5/1/5/4 Istisna'a certificates (Istisna'a Sukuk)

The issuer of these certificates is the manufacturer (supplier/seller), the subscribers are the buyers of the intended product, while the funds realised from subscription are the cost of the product. The certificate holders own the product and are entitled to the sale price of the certificates or the sale price of the product sold on the basis of a Parallel Istisna'a, if any.

5/1/5/5 Murabahah certificates (Murabahah Sukuk)

The issuer of the certificates is the seller of the Murabahah commodity, the subscribers are the buyers of that commodity, and the realised funds are the purchasing cost of the commodity. The certificate holders own the Murabahah commodity and are entitled to its sale price.

5/1/5/6 Musharakah certificates (Musharakah Sukuk)

The issuer of the certificates is the inviter to a partnership with him in a specific project or determined activity. The subscribers are the partners in the Musharakah contract. The realised funds are the share contribution of the subscribers in the Musharakah capital. The certificate holders own the assets of partnership with the accompanying profits and losses and are entitled to their share in the profits of the partnership, if any.

5/1/5/7 Mudarabah certificates (Mudarabah Sukuk)

The issuer of these certificates is the Mudarib, the subscribers are the owners of capital, and the realised funds are the Mudarabah capital. The certificate holders own the assets of Mudarabah and the agreed upon share of the profits belongs to the owners of capital and they bear the loss, if any.

5/1/5/8 Certificates of investment agency (Wakalah Sukuk)

The issuer of these certificates is the investment agent, the subscribers are the principals and the realisedfunds are the entrusted capital of the investment. The certificate holders own the assets represented by the certificates with its benefits and risks, and they are entitled to the profits, if any.

5/1/5/9 Muzara'ah certificates (Muzara'ah Sukuk)

a) The issuer of these certificates is the owner of the land (the principal owner or owner of the usufruct of the land). The subscribers are the cultivators on the basis of a Muzara'ah contract (the cultivators or their assignees). The realised funds are the cultivation cost.

b) The issuer of these certificate may be the cultivator (the worker), the subscribers are the owners of the land (investors whose subscription amounts are used to buy the land); and the certificate holders are entitled to a share of the produce of the land as per agreement.

5/1/5/10 Musaqat certificates (Musaqat Sukuk)

a) The issuer of these certificates is the owner (or owner of usufruct) of the land that consists of trees; the subscribers are those who assume the obligation of irrigation through a Musaqat contract, while the realised funds are the maintaining cost of the trees.

b) The issuer of these certificates may be the irrigator (the worker) and the subscribers are the owners of the land (investors whose subscription amounts are used to irrigate the land). The certificate holders are entitled to a share of the produce of the trees as per agreement.

5/1/5/11 Mugharasah certificates (Mugharasah Sukuk)

a) The issuer of these certificates is the owner of land suitable for planting (trees), the subscribers are those who assume the obligation of planting on the basis of a Mugharasah contract, while the realised funds are the cost of maintaining the plantation.

b) The issuer may be the planter (the owner of the work), the subscribers are the owners of the land (investors whose subscription amounts are used to undertake plantation in the land), and the certificate holders are entitled to a share in both the trees and the land as per agreement.

Clause 5/1/5/10 & 5/1/5/11: The following is added as footnote to the clause: "The phrase 'maintaining cost' in these clauses may be read as 'maintenance cost'

5/1/6 The relationships between the parties, namely the issuer and the subscriber shall be governed by applicable contracts of issuing Sukuk. The mere conclusion of the contract will give rise to legal effects with respect to rights and obligations of the parties.

5/1/7 The issuance of the prospectus represents the issuer's invitation to subscription in which case the act of subscription represents an offer. As for acceptance, it is issuer's approval of the subscription, unless it is expressly stated in the prospectus that it is an offer. In this case, the prospectus will be considered as an offer and the subscription becomes an acceptance.

5/1/8 The following shall be observed in the prospectus of issue:

5/1/8/1 The prospectus must include all contractual conditions, adequate statements about the participants in the issue,

their legal position and rights as well as obligations, such as statements about the issue agent, issue manager, originator, investment trustee, the party covering the loss, payment agent as well as others along with the conditions of their appointment and dismissal.

5/1/8/2 The prospectus of Sukuk must include the identification of the contract on the basis of which the certificates are to be issued, such as sale of tangible leased assets, Ijarah, Murabahah, Istisna'a, Salam, Mudarabah, Musharakah, Wakalah, Muzara'ah, Mugharasah or Musaqat.

5/1/8/3 The contract that forms the basis of the issue must be complete with respect to its elements and conditions and should not include conditions that conflict with its objectives and rules.

5/1/8/4 The prospectus must explicitly mention the obligation to abide by the rules and principles of the Shari'ah, and that there is a Shari'ah Supervisory Board that approves the procedures of the issues and monitors the implementation of the project throughout its duration.

Clause 5/1/8/4: The following is added as footnote to the clause: 'Islamic bank investing in such Sukuk shall put in place a mechanism to satisfy itself regarding the Shariah compliance of the Sukuk during its entire duration'

5/1/8/5 The prospectus must state that the investment of the realised funds and the assets into which the funds are converted will be undertaken through Shari'ah-compliant modes of investment.

5/1/8/6 Taking into account item 3/1/5 of the Shari'ah Standard No. (12) on Sharikah (Musharakah) and Modern Corporations, the prospectus must state that each owner of a certificate participates in the profit and bears a lossin proportion to the financial value represented by his certificates.

5/1/8/7 The prospectus must not include any statement to the effect that the issuer of the certificate accepts the liability to compensate the owner of the certificate up to the nominal value of the certificate in situations

other than torts and negligence nor that he guarantees a fixed percentage of profit. It is, however, permitted to an independent third party to provide a guarantee free of charge, while taking into account item 7/6 of Shari'ah Standard No. (5) on Guarantees. It is also permitted to the issuer of the certificate to offer some tangible or personal guarantees with respect to its wrongful acts or negligence, while taking into account item 3/1/4/3 of Shari'ah Standard No. (12) on Sharikah (Musharakah) and Modern Corporations as well as the contracts stated in that standard.

Clause 5/1/8/7: The following is added as footnote to the clause: "The clause pertains to Sukuk based on Shirkatul Aqd and not on those based on Shirkatul Milk".

5/1/9 It is permissible for the institution to undertake to underwrite the unsubscribed issue, in which case the obligation of the underwriter is based on a binding promise. The underwriter should not receive any commission in lieu of such underwriting taking into account item 4/1/2/4 of Shari'ah Standard No. (12) on Sharikah (Musharakah) and Modern Corporations.

5/1/10 It is permissible to issue Sukuk on a short-term, medium-term or long-term basis in accordance with the principles of the Shari'ah. The Sukuk may also be issued without specifying a period depending upon the nature of the contract underlying the Sukuk issue.

5/1/11 It is permissible for the issuer or the certificate holders to adopt permissible methods of managing risk, of mitigating fluctuation of distributable profits (profit equalisation reserve), such as establishing an Islamic insurance fund with contributions of certificate holders, or by participating in insurance (*Takaful*) by payment of premiums from the income of the shares of Sukuk holders or through donations (*Tabarru'at*) made by the Sukuk holders.

5/2 Trading of Sukuk and their redemption

5/2/1 It is permissible, after closing subscription, allotment of Sukuk and commencement of activity, to trade in and redeem investment

Sukuk that represent common ownership of tangible assets, usufructs or services. As for trading or redemption prior to the commencement of activity, it is necessary to observe the rules of the contract of *Sarf* (currency exchange) along with the rules for debts (receivables) when liquidation is complete and the assets are receivables or when the assets represented by the Sukuk are sold for a deferred price.

5/2/2 In the case of negotiable Sukuk, it is permissible for the issuer to undertake, through the prospectus of issue, to purchase at market value, after the completion of the process of issue, any certificate that may be offered to him, however, it is not permissible for the issuer to undertake to purchase the Sukuk at their nominal value.

Clause 5/2/2: The following is added as footnote to the clause: "The impermissibility of undertaking by the issuer to purchase the sukuk at nominal value is not applicable on sukuk based on 'Shariktul Milk' or 'Ijarah'. Further, the term 'negotiable sukuk' used in the clause may be read as 'tradable sukuk'

5/2/3 The certificates may be traded through any known means, that do not contravene the rules of the Shari'ah, such as registration, electronic means or actual transmission by the bearer to the purchaser.

5/2/4 It is permissible, immediately upon issue and up to the date of maturity, but after the passing of ownership of the assets to the holders of the Sukuk, to trade in Sukuk that represent ownership of existing leased assets or assets to be leased on promise.

5/2/5 It is permissible for the issuer to redeem, prior to maturity, certificates of ownership of leased assets at the market price or at a rate agreed upon, at the date of redemption, between the certificate holder and the issuer.

Clause 5/2/5: The following is added as footnote to the clause: "This clause is applicable on sukuk issued on the basis of portfolio of already leased assets only."

5/2/6 It is permissible to trade in securities of ownership of usufructs of tangible assets prior to a contract for sub-leasing the assets. When the assets are sub-leased, the certificate represents rent receivables, which makes it a debt owed by the second lessor

subject to the rules and regulations for disposal of debts.

5/2/7 It is permissible for the issuer to redeem Sukuk of ownership of the usufruct of tangible assets from the holder, after allotment and payment of the subscription price, at the market price or at a price agreed upon between the parties at the time of redemption, on the condition that the subscription amount or redemption price is not deferred. [see item 3/4 of Shari'ah Standard No. (9) on Ijarah and Ijarah Muntahia Bittamleek]

Clause 5/2/7: The following is added as footnote to the clause: "In cases of sukuk based on sale-and- lease-back, the issuer shall not repurchase the leased asset from the sukuk holders before the completion of one calendar year."

5/2/8 It is not permissible to trade in certificates of ownership of usufructs of a described asset before the asset from which usufruct is to be made available is ascertained, except by observing the rules for disposal of receivables. When the asset is ascertained, trading in Sukuk of usufructs of such asset may take place.

5/2/9 It is permissible to trade in securities of ownership of services to be provided by a specified party prior to sub-leasing such services. When the services are sub-leased, the certificate represents rent receivables to be collected from the second lessee. In this case, the certificate represents a debt and is, therefore, subject to the rules and regulations of disposal of debts.

5/2/10 It not is permissible to trade in securities of ownership of services to be provided by a party to be specified in the future before the source from which the services would be provided is identified, except by observing the rules for dealing in debts. When the source of services is identified, trading in such Sukuk may take place.

5/2/11 It is permissible to set up a parallel Ijarah on tangible assets by employing the same description for the usufruct that was provided to the holders of the Sukuk in cases detailed in items 5/2/8 and 5/2/10 provided the two lease contracts remain independent.

5/2/12 It is permissible for the second buyer of the usufruct of existing

and specified assets to resell them. The buyer is also entitled to issue certificates in this respect.

5/2/13 It is permissible to trade in or redeem Istisna'a certificates if the funds have been converted, within the period of the Istisna'a, into assets owned by certificate holders. If the realised funds are immediately paid as a price in a parallel Istisna'a contract or the manufactured item is submitted to the ultimate purchaser, then trading in Istisna'a certificates is subject to rules of disposal of debts.

5/2/14 It is not permissible to trade in Salam certificates.

Clause 5/2/14: The following is added as footnote to the clause: "However, trading of Salam sukuk is permissible only after taking delivery of the goods and before their onward sale."

5/2/15 It is not permissible to trade in Murabahah certificates after delivery of the Murabahah commodity to the buyer. However, trading of Murabahah certificates is permissible after purchasing the Murabahah commodity and before selling it to the buyer.

5/2/16 It is permissible to trade in Mudarabah, Musharakah and investment agency certificates after closing of subscription, allotment of the certificates and commencement of activity with respect to the assets and usufructs.

5/2/17 It is permissible to trade in Muzara'ah and Musaqat certificates after closing of subscription, allotment of certificates and commencement of activity with respect to the assets and usufructs. This rule applies when the certificate holders own the land. Thus, trading in these certificates is not allowed where the certificate holders act as workers (who undertake to provide agricultural or irrigation works) in which case trading in these certificates is not permissible before the maturity of the fruits and plants.

5/2/18 It is permissible to trade in Mugharasah certificates after closing of subscription, allotment of certificates and commencement of activity irrespective of the certificate holders being owners of the land or workers.

6. Date of Issuance of the Standard

This Standard was issued on 7 Rabi' I, 1424 A.H., corresponding to 8 May 2003 A.D.

Adoption of the Standard

The Shari'ah Standard on Commercial Papers was adopted by the Shari'ah Board in its 10th meeting held on 2-7 Rabi' I, 1424 A.H., corresponding to 3-8 May 2003 A.D.

Appendix (A)
Brief History of the Preparation of the Standard

In its meeting No. (7) held in Makkah Al-Mukarramah during the period of 9-13 Ramadan 1422 A.H., corresponding to 24-28 November 2002 A.D., the Shari'ah Board decided to give priority to the preparation of the Shari'ah Standard for Investment Sukuk.

On Saturday 14 Shawwal 1422 A.H., corresponding to 29 December 2002 A.D., a Shari'ah consultant was commissioned to prepare a juristic study and an exposure draft on the Shari'ah Standards for Commercial Papers.

In its 2nd meeting of Committee (1), held in the Kingdom of Bahrain on 4-5 Safar 1423 A.H., corresponding to 17-18 April 2002 A.D., the Shari'ah Standard Committee discussed the exposure draft of the Shari'ah Standard on Investment Sukuk and asked the consultant to make additional amendments to reflect the comments made by the members of the committee.

In its meeting No. (4) held on 16 and 17 Rabi' I, 1423 A.H., corresponding to 28-27 June 2002 A.D., the committee discussed the exposure draft and made necessary amendments as per the comments and observations of the members and in the light of the recommendations of AAOIFI's First Fiqh Forum in respect to requirements of trading in investment portfolios held in Amman (The Hashimite Kingdom of Jordan) on 16 Rabi' I, 1423 A.H., corresponding to 27 June 2002 A.D.

In its meeting No. (5) held on 2 and 3 Rajab 1423 A.H., corresponding to 9-10 September 2002 A.D., and decided to merge the exposure of this Standard with the exposure draft of the Standard on Securitisation. In its meeting No. (6) held on 19 Rajab 1423 A.H., corresponding to 26 September 2002 A.D., in the Kingdom of Bahrain, the Committee further discussed the

exposure after the merger, made some amendments and decided to present it to the Shari'ah Board.

The revised exposure draft of the Shari'ah Standard was presented to the Shari'ah Board in its 9th meeting held in Makkah Al-Mukarramah during the period of 11-16 Ramadan 1423 A.H., corresponding to 16-21 November 2002 A.D. The Shari'ah Board made further amendments to the exposure draft of the Standard and decided that it should be distributed to specialists and interested parties in order to obtain their comments in order to discuss them in a public hearing.

A public hearing was held in Bahrain on 18 Dhul-Hajjah 1423 A.H., corresponding to 19 February 2003 A.D. The public hearing was attended by more than thirty participants representing central banks, institutions, accounting firms, Shari'ah scholars, academics and others who are interested in this field. Members of the Shari'ah Standards Committees (1) and (2) responded to the written comments that were sent prior to the public hearing as well as to the oral comments that were expressed in the public hearing.

The Shari'ah Standards Committees (1) and (2) held a joint meeting on 2 Muharram 1424 A.H., corresponding to 5 March 2003 A.D., to discuss the comments made about the exposure draft. The two committees made the necessary amendments in light of both the written comments that were received and oral comments that took place in the public hearing.

The Shari'ah Board in its meeting No. (10) held in Al-Madinah Al-Munawwarah during the period of 2-7 Rabi' I, 1424 A.H., corresponding to 3-8 May 2003 A.D., discussed the amendments made by the Shari'ah Standards Committee, and made necessary amendments. The Shari'ah Board unanimously adopted some of the items of the Standard and some items were adopted by the majority vote of the members of the Shari'ah Board, as recorded in the minutes of the meetings of the Shari'ah Board.

Appendix (B)
The Shari'ah Basis for the Standard

- The basis for the permissibility of issuing investment certificates is that such certificates are usually issued on the basis of Shari'ah-nominated contracts. Hence issuance of Sukuk on the basis of any of these contracts becomes acceptable as well.
- The basis for considering the issue prospectus as an offer and the fact of subscription as an acceptance is that valid contracts take place on the basis of anything that indicates consent without specifying a particular form of expression. It is thus not objectionable that an offer comes from one person and acceptance from a large number of persons.
- The basis for the right of certificate holders to management is that they own the property that their certificates represent, and management is part of ownership.
- The basis for permissibility of trading in investment Sukuk when such Sukuk represent shares in tangible assets or usufruct is that the trading is, in fact, on the assets and usufructs. Since these assets may be traded so too the certificates that represent them.
- The basis for impermissibility of trading in Salam certificates is that the certificate represents a share in the Salam debt in which case the certificates is subject to rules of debt trading.
- The basis for permissibility of trading in Istisna'a certificates after conversion of the realized funds into assets is that such assets represent properties that can be disposed of. The basis for the impermissibility of trading in Istisna'a certificates in case of using the realized funds as a price in a parallel Istisna'a and in case of delivering the manufactured asset to the ultimate purchaser is that the certificate represents the price in the liability of the purchaser. The price then is a monetary debt for which trading of the Sukuk at this stage is subject to the rules of debt trading.

- The basis for the impermissibility of trading in Murabahah certificates after the commodity is sold and delivered to the buyer is that the certificates represent a monetary debt against the buyer, in which case trading is not permissible except in accordance with the limitations of debt trading. However, if purchase of the commodity has taken place and is yet to be sold, trading in these certificates is permissible because the certificates represent assets that can be traded.

Appendix (C)
Definitions

Securitisation (Tawreeq)

Securitisation is known in Arabic terminology as *Taskik* (issues) and *Tasnid* (securities). Securitisation is a process of dividing ownership of tangible assets, usufructs or both into units of equal value and issue securities as per their value.

Issue Contract

Issue contract is the contract that form basis for issuance of the investment certificates.

Issuer of Investment Certificate

Issuer of investment certificate is the party who uses the realised funds in a Shari'ah-compliant investment instrument. The issuer could be a firm, an individual, a government or a financial institution. The issuer may delegate, for a consideration or commission, the process of arranging the operation of the issue to a financial intermediary, which may be stipulated by the issue prospectus.

Issue Agent

It is an intermediary institution that manages the process of issue and performs all procedural arrangements pertaining to the issue on behalf of the issuer against a specific fee to be agreed upon or to be stated in the prospectus of issue. The relationship between the issuer and the issue agent is governed agency contract with remuneration.

Issue Manager

Issue manager is the intermediary institution that acts for remuneration on behalf of the subscribers in executing the issue contract.

Payment Underwriter

Payment underwriter is the intermediary institution that undertakes to pay dues of certificate holders after when realised.

Investment Manager

Investment manager is the party appointed by the issuer or the issuemanager to perform all or part of investment operations as indicated in the issue prospectus.

Investment Trustee

Investment trustee is the intermediary financial institution charged with protecting the interests of certificate holders, supervising the performanceof the issue manager and safe custody of documents and guarantees for consideration stipulated in the issue prospectus on the basis of agency contract

Trading of Certificates

Trading of certificates refers to disposal of the ownership right containedin the certificate through selling, pledging, gift or any other permissible means of disposal.

Muzara'ah (Sharecropping)

Sharecropping is partnership in crops in which one party presents landto another for cultivation and maintenance in consideration for a commondefined share in the crop.

Musaqat (Irrigation)

Irrigating partnership is a partnership that depends on one party pre-senting designated plants/trees that produce edible fruits to another in order to work on their irrigation in consideration for a common definedshare in the fruits.

Mugharasah (Share-Agriculture)

Agricultural partnership is a partnership in which one party presentsa treeless piece of land to another to plant trees on it on the condition thatthey share the trees and fruits in accordance with a defined percentage.