

WITH SHARIA IN MIND: DEVELOPING THE ISLAMIC FINANCIAL MARKET IN PAKISTAN

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INTRODUCTION

The Securities and Exchange Commission of Pakistan (SECP) has been focusing recent efforts on promoting sustainable growth and development of the Pakistani markets.¹ To achieve this end, part of Pakistan's Capital Market Development Plan includes the development of Islamic products in order to strengthen the Islamic sector of the market.² Unlike other Islamic states such as Iran, who claim to have a fully Sharia compliant financial system, Pakistan's Islamic market is still being developed and Pakistan is looking to provide more Sharia-compliant options.³ As will be discussed, in order to develop the Islamic Financial Market, Pakistan has been developing new regulatory regimes as well as establishing a Sharia Advisory Panel. Furthermore, recently promulgated regulations for the Islamic sector reflect an effort on the part of the SECP to address issues facing the Pakistan markets, as well as, demonstrate an understanding of international best practice principles.

This article will first provide a brief history and structure of the SECP, and then an overview of the market in Pakistan. Next will be a discussion of the SECP's recent developments for the Islamic Financial Market by first providing an overview of Sharia market principles and international best practice principles. The next section will focus on the SECP's more recently promulgated *Modaraba*, *Sukuk*, and *Takaful* rules, as well as, the establishment of a Sharia Advisory Board.⁴ Finally, this paper will conclude by arguing that the SECP's commitment to the development of the Islamic Financial Market is in line with the

¹ Press Release, Sec. & Exch. Comm'n of Pak. Med. & Publ'n Wing, SECP: Capital Mkt. Dev. Plan (2011), http://www.secp.gov.pk/news%5CPDF%5CNews_11%5CPR_Sep26_2011.pdf.

² *Id.*

³ *Id.*; Humayon Dar, *Shariah compliant: Islamic banking and finance—where does Pakistan stand*, THE EXPRESS TRIBUNE (Feb. 9, 2014), <http://tribune.com.pk/story/669516/shariah-compliant-islamic-banking-and-finance-where-does-pakistan-stand/>. Iran and Pakistan are both an “Islamic Republic.” *World Fact Book: Iran*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html> (last visited March 23, 2014); *World Fact Book: Pakistan*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html> (last visited March 23, 2014). Sharia is Islamic jurisprudence. See INT'L ORG. SEC. COMM'N, *infra* note 29, at 5.

⁴ *Modaraba*, *Sukuk*, and *Takaful* are Islamic market tools that comply with Sharia principles. For definitions or descriptions, see *infra* Parts III(C)(1)–(3) (discussing *Modaraba*, *Sukuk*, and *Takaful*).

SECP's vision and mission statement, and that the steps taken to develop the Islamic sector should be taken as an indication that the SECP is on the path to strengthening Pakistan's market as a whole.⁵

I. HISTORY AND STRUCTURE OF THE SECP

Established in 1997, pursuant to the Securities and Exchange Commission of Pakistan Act (Act of 1997), the SECP became operational in January 1999.⁶ In addition to the capital market, the SECP now supervises and regulates “insurance companies, non-banking finance companies and private pensions.”⁷ The Act of 1997 provided for a chairman and a policy board consisting of seven members.⁸ The Act of 1997 also provided an avenue for disclosing conflicts of interests, disqualification, removal, resignation and vacancies.⁹

Pursuant to the Act of 1997, the SECP has the power to perform the following functions (this is not a comprehensive list): (1) “regulating the issue[s] of securities[;]” (2) supervising “any central depository” and or exchange clearing house; (3) prohibiting unfair and or fraudulent practices; and (4) “encouraging the organized development of the capital market and the corporate sector in Pakistan[.]”¹⁰ Part VIII of the Act of 1997 details the enforcement and investigation abilities of the SECP, and Part X describes the jurisdiction and procedure for prosecuting offences.¹¹ Part XI is the Act of 1997's section on rules and regulations.¹² Pakistan publishes proposed rules and

⁵ See *id.* *About SECP: The Establishment of the Commission, SEC. & EXCH. COMM'N PAKISTAN*, http://www.secp.gov.pk/about_secp.asp (last visited Feb. 10, 2014) (“Mission[:] To develop a fair, efficient[,] and transparent regulatory framework, based on international legal standards and best practices, for the protection of investors and mitigation of systemic risk aimed at fostering growth of a robust corporate sector and broad based capital market in Pakistan.”; “Vision[:] The development of modern and efficient corporate sector and capital market, based on sound regulatory principles, that provide impetus for high economic growth and foster social harmony in the Country.”).

⁶ *About SECP, supra* note 5.

⁷ *Id.*

⁸ Securities & Exchange Commission of Pakistan Act, No. F.9(51) of 1997, ¶¶ 6, 12, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Dec. 26, 1997, <http://www.na.gov.pk/uploads/documents/SEC-Dec26-1997.pdf>.

⁹ *Id.* ¶¶ 16, 18.

¹⁰ *Id.* ¶ 20(4)(a), (c), (g), (m).

¹¹ *Id.* at Parts VIII & X.

¹² *Id.* at Part XI.

regulations in order to solicit public opinion prior to publication.¹³

The SECP has multiple divisions, including: Company Law, Securities Market, Specialized Companies, and Insurance.¹⁴ The Company Law Division has two departments, the Enforcement Department and the Corporatization and Compliance Department which:

[I]s responsible for administration of the Companies Ordinance 1984, and the rules and regulations made there under along with other relevant laws. Its primary functions include registration of companies, regulating their statutory functions, and monitoring of corporate compliance through examination of statutory returns and accounts. These functions are performed by the eight regional offices of the SECP, the Company Registration Offices (CROs).¹⁵

The Securities Market Division monitors, regulates, and develops the securities market.¹⁶ This Division “. . . regulates the primary and secondary markets as well as market intermediaries through registration, surveillance, investigation, enforcement, and rule making, with the objective of protecting investors interest.”¹⁷ Within Pakistan, there are three stock exchanges: Karachi Stock Exchange, Lahore Stock Exchange, and the Islamabad Stock Exchange.¹⁸

The Specialized Companies Division “strives to provide a regulatory environment which is conducive for development and promotion of a robust Non-Bank Financial (NBF) Sector.”¹⁹ The Insurance Division is “[r]esponsible for policy reform, actuarial work, re-insurance treaty, facultative reinsurance approval, NOC for purchasing insurance policy from abroad, registration and de-registration[,]” and “[r]esponsible for centralized function of On-site Inspection, Off-site Surveillance and Enforcement.”²⁰

As will be discussed in the next sections, since the SECP has

¹³ *Id.* ¶ 40(2).

¹⁴ *See Securities and Exchange Commission of Pakistan*, SEC. & EXCH. COMM’N PAKISTAN, <http://www.secp.gov.pk/index.asp> (last visited Feb. 10, 2014).

¹⁵ *The Company Law Division*, SEC. & EXCH. COMM’N PAKISTAN, http://www.secp.gov.pk/CLD/cld_index.asp (last visited Feb. 10, 2014).

¹⁶ *The Securities Market Division*, SEC. & EXCH. COMM’N PAKISTAN, http://www.secp.gov.pk/SMD/smd_index.asp (last visited Feb. 10, 2014).

¹⁷ *Id.*

¹⁸ *Daily Market Report 1-Apr-13: Stock Market Summary*, SECURITIES MARKET DIVISION, http://www.secp.gov.pk/divisions/Portal_SMD/DailyMarketReport/DMR-2013/01_04_13.pdf.

¹⁹ *The Specialized Companies Division*, SEC. & EXCH. COMM’N PAKISTAN, http://www.secp.gov.pk/SCD/scd_index.asp (last visited Feb. 18, 2014).

²⁰ *The Insurance Division*, SEC. & EXCH. COMM’N PAKISTAN, http://www.secp.gov.pk/ID/id_index.asp (last visited Feb. 18, 2014).

become operational, it has been working toward a more robust regulatory regime, as evidenced by its actions concerning the Islamic Financial Market. Given the problems facing Pakistani markets, the SECP's actions toward the development of the Islamic Financial Market should be considered a positive sign for the market system because it not only creates an avenue in which to grow the Pakistani market as a whole, but also demonstrates an initiative to provide a more stable and regulated market scheme by making, and suggesting, changes that address some of the structural problems the current market is faced with.

II. THE PAKISTANI MARKETS AND GROWTH OF THE ISLAMIC FINANCIAL SECTOR

It has been noted that problems for the Pakistan capital markets include lack of investor confidence, lack of options, and a lack of a robust regulatory regime.²¹ In Pakistan there is a problem with market depth due in part to the fact that a limited number of families are the primary holders of listed companies.²² Additionally, information sharing is low, putting general investors at a disadvantage and leading to a lack of investor confidence.²³ One of the SECP's main objectives is to "develop a robust regulatory framework which encourages development of fair, efficient and transparent capital markets"²⁴

In keeping with this objective, the SECP developed a three-year development plan for 2012–2014.²⁵ Some information about the plan was made available the SECP annual report of 2012.²⁶ The annual report noted that the Capital Market Development Plan (2012–2014) identified:

[E]ssential areas of key structural and regulatory reforms

²¹ Syed Fazle Hasan, *Finance & Markets: Capital Markets in Pakistan*, PAKISTAN ECONOMIST (2000), <http://www.pakistaneconomist.com/issue2000/issue19&20/f&m.htm> (last visited Feb. 18, 2014); *Capital Market*, BUSINESS DICTIONARY, <http://www.businessdictionary.com/definition/capital-market.html> (last visited March 28, 2014) (noting that a capital market is a type of financial market).

²² Hasan, *supra* note 21 (noting that families hold approximately fifty-one percent).

²³ *Id.*

²⁴ SEC. & EXCH. COMM'N PAKISTAN, ANNUAL REPORT 73 (2012), <http://www.secp.gov.pk/annualreport/2012/Annual-Report-2012.pdf>.

²⁵ *Id.* at 76.

²⁶ SEC. & EXCH. COMM'N PAKISTAN, *supra* note 24, at 76; Press Release, *supra* note 1.

including measures for the development of equity, derivative, debt, commodities and currencies markets, development of Shariah-compliant investment alternatives, measures for improving governance, risk management, efficiency and transparency in capital market operations and expanding the market outreach.²⁷

The decision to focus part of the comprehensive market development plan on the Islamic sector is not surprising. As previously noted, Pakistan is an Islamic state, and furthermore, the Islamic Financial Market is rapidly evolving and expanding. According to the Securities and Exchange Commission of Malaysia:

Sharia-compliant assets worldwide are worth an estimated \$500 billion and have grown at more than 10 per cent per year over the past decade, placing Islamic finance in a global asset class all of its own. In the Gulf and Asia, Standard & Poor's estimates that 20 per cent of banking customers would now spontaneously choose an Islamic financial product over a conventional one with a similar risk-return profile.²⁸

As will be illustrated in the next sections, in order to develop the Islamic sector of the market in Pakistan, the SECP has recently promulgated new regulations that not only show an adherence to international best practices, but safeguard Sharia principles and address some of the market issues Pakistan is faced with as well.

III. DEVELOPING THE ISLAMIC FINANCIAL MARKET

The SECP has begun to develop a Sharia Advisory Board and has already developed new guidelines for *Modaraba*, *Sukuk*, and *Takaful*, which should help the SECP capitalize on the growing prominence of the Islamic Financial Market. It is important to have a basic knowledge of Sharia principles, as well as regulatory concerns, before discussing these developments in order to appreciate the changes implemented by the SECP, and those changes currently under review.

²⁷ SEC. & EXCH. COMM'N PAKISTAN, *supra* note 24, at 76.

²⁸ Ass'n of Islamic Banking Insts. Malaysia, *What is Sekuk?*, AIBIM.COM, <http://aibim.com/content/view/149/77/> (last visited Feb. 18, 2014) [hereinafter *Sekuk*].

A. *Sharia Principles*

Sharia is the set of Islamic laws and rules that make up Islamic jurisprudence.²⁹ When considering financial matters [m]uch of the laws, rules and interpretations of *Shariah* take[] into consideration issues of social justice, equitability, and fairness as well as practicality of financial transactions . . . [t]he major prohibited elements under *Shariah* are *riba* (interest), *gharar* (uncertainty), *maisir* (gambling), non-*halal* (prohibited) food and drinks[,] and immoral activities.³⁰

It has been noted that under Sharia, money is not considered an asset, but a tool to measure value.³¹

B. *Regulatory Issues*

The International Organization of Securities Commission (IOSCO) has set the benchmark for international best practices, and one of the main principles promoted by the IOSCO is “the protection of investors, the reduction of systemic risk and ensuring that markets are fair, efficient and transparent.”³² This principle is similar to that of the SECP’s objective of developing efficient and transparent markets.³³ As will be discussed in the next section, the SECP has been, and is in the process of developing a more robust regulatory regime for the Islamic sector, which is important given the IOSCO’s contention that “[a]n effective legal, regulatory and supervisory framework provides the essential foundation for the functioning of a modern capital market. For a rapidly growing market like the Islamic capital market, it is important to ensure that an enabling and conducive regulatory environment exists to adequately regulate the Islamic capital market.”³⁴

The IOSCO has set out several principles geared toward the Islamic Market. In regards to regulators, the IOSCO believes that “[t]he regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers; and . . . [that t]he regulator should adopt clear and

²⁹ INT’L ORG. SEC. COMM’N, ISLAMIC CAPITAL MARKET FACT FINDING REPORT 5 (2004), <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD170.pdf>.

³⁰ *Id.* at 6.

³¹ *Sekuk*, *supra* note 28.

³² INT’L ORG. SEC. COMM’N, *supra* note 29, at 45.

³³ SEC. & EXCH. COMM’N PAKISTAN, *supra* note 24, at 73.

³⁴ INT’L ORG. SEC. COMM’N, *supra* note 29, at 50.

consistent regulatory processes.”³⁵

Additionally, in regards to issuers and listings, there should be full, accurate and timely disclosure of financial results and other information which is material to the investors’ decision . . . [The h]olders of securities in a company should be treated in a fair and equitable manner . . . [and a]ccounting and auditing standards should be of high and internationally acceptable quality.³⁶

Furthermore, statements should be provided regarding the Sharia aspects of a product, such as the responsibilities of the Sharia advisor where applicable.³⁷

The IOSCO noted that the “objectives and principles of securities regulation can be applied to the Islamic capital market” since the Islamic Capital Market could be considered merely a subset of the securities market as a whole.³⁸ However, Pakistan believes that the conventional framework for the securities market is not enough to manage the Islamic market, and that there needs to be some specific regulatory requirements concerning the Islamic sector in addition to conventional objectives and principles.³⁹

C. SECP: Reforms to the Islamic Market

As will be discussed, the SECP has been updating policies that existed before its establishment, and introducing new regulations, to foster the development of the Islamic Market, and that these implemented or proposed regulations help ensure compliance with Sharia principles, and encourage market participation, among other things. It will be shown that the changes implemented, or proposed, mirror some of the recommendations and principles put forth by the IOSCO, and target specific Islamic Market tools. Recently, the SECP has focused on *Modaraba*, *Sukuk*, *Tafaful*, and the development of a Sharia advisory board.

³⁵ *Id.* at 52.

³⁶ *Id.* at 56.

³⁷ *Id.*

³⁸ *Id.* at 70–71.

³⁹ *Id.* at 50–51.

1. *Modaraba*

The principle of *Modaraba* was established before the SECP. It is a “business in which a person participates with his money and another with his efforts or skill or both his efforts and skill and shall include Unit Trusts and Mutual Funds by whatever name called[.]”⁴⁰ *Modaraba* are managed by *Modaraba* companies.⁴¹ These companies can raise a *Modaraba* fund and issue certificates to investors as a way of the company acknowledging receipt of the money invested.⁴²

In Pakistan, *Modaraba* first appeared as a finance tool when the government began Islamization of the economy in 1980.⁴³ *Modaraba* are controlled by the Modaraba Companies & Modaraba (Floatation & Control) Ordinance, 1980 and Modaraba Companies, and Modarabas Rules 1981.⁴⁴ In its 2012 report, the SECP noted that even with a recession going on, *Modaraba* have performed well.⁴⁵ *Modaraba*

implement[s] the financial aspects of the Shariah, in addition to the conventional good governance and risk management. It allows a wide range of Islamic financial products and services under the principles of the Shariah. Currently, most of the modarabas are providing financial services while a few are engaged in the industrial and trading business activities.⁴⁶

The SECP has strengthened oversight of *Modaraba* through the establishment of a specific wing within the SECP.⁴⁷ The specialized *Modaraba* Wing “is responsible for the registration, authorization, regulation and enforcement of regulatory provisions pertaining to Modaraba Management Companies and

⁴⁰ Modaraba Companies and Modaraba (Floatation and Control) Ordinance § 2(ab), No. 31 of 1980, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Jun. 26, 1980 (updated through 2012), <http://www.secp.gov.pk/corporatelaws/pdf/ModarabaCompaniesModarabaFloatationControl02-04-2012.pdf>.

⁴¹ *Id.* § 2(c).

⁴² *Id.* §§ 2(b), (d).

⁴³ *The Specialized Companies Division, supra* note 19.

⁴⁴ *Id.*

⁴⁵ SEC. & EXCH. COMM’N PAKISTAN, *supra* note 24, at 93 (“[T]he total equity of the modaraba sector stood at Rs12.171 billion which shows an increase of Rs0.610 billion as compared to Rs11.561 billion during the previous year. For the FY ending June 30, 2011, out of 26 modarabas in operation, 18 modarabas declared cash dividend to their certificate holders ranging from 1.20% to 73.5%”).

⁴⁶ *Id.*

⁴⁷ *See id.* at 95–97 (detailing current and future actions to strengthen *Modaraba* oversight); *The Specialized Companies Division, supra* note 19.

Modarabas.⁴⁸ The *Modaraba* Wing works in conjunction with a Religious Board to approve the activities of a *Modaraba*.⁴⁹ The existence of the Religious Board can be seen as indirectly supportive of the IOSCO's recommendation of providing statements regarding Sharia aspects of the activity, given that the existence of a Religious Board probably provides some assurance to participants as to the validity of the *Modaraba* being Sharia compliant and of meeting some set standard of Islamic Finance.⁵⁰

However, there had been a gap in oversight of *Modaraba*. After *Modarabas* were approved and floated, it was noted that there was nothing in place to ensure that *Modarabas* were continuing to run in a Sharia compliant manner.⁵¹ The SECP Annual Report 2012 noted that this oversight was fixed when “[i]n compliance with the directives of Religious Board, a formal mechanism named ‘Shariah Compliance and Shariah Audit Mechanism’ (SCSAM) was devised and implemented to eliminate the risk or possibility of any violation of Shariah principles by modarabas.”⁵²

The SECP Report also noted that changes to the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980, were approved by Parliament.⁵³ These changes allowed the SECP and the *Modaraba* registrar to:

[M]ake regulations and to issue directives, circulars, codes and guidelines for modaraba sector. The strengthening of the regulatory powers of the Commission and the Registrar would affectively safeguard the interests of modaraba investors, bring efficiency in the modaraba management and strengthen the non-banking finance companies sector as a whole.⁵⁴

This change in *Modaraba* regulation reflects the IOSCO's principle that regulators should have adequate power and resources and is able to make consistent regulation.⁵⁵ Given that the SECP is focusing in part on the growth of the Islamic

⁴⁸ *The Specialized Companies Division, supra* note 19.

⁴⁹ *See id.* (“The Religious Board comprises of a Chairman and two Shariah Scholars appointed by the Federal Government.”).

⁵⁰ *Id.* *See* INT'L ORG. SEC. COMM'N, *supra* note 29, at 70–71; SEC. & EXCH. COMM'N PAKISTAN, *supra* note 24, at 96.

⁵¹ SEC. & EXCH. COMM'N PAKISTAN, *supra* note 24, at 96.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See* INT'L ORG. SEC. COMM'N, *supra* note 29, at 56.

financial sector, the SECP may continue to develop *Modaraba*. The Annual Report may give some insight to the next step for *Modaraba* control:

Although, there are plenty of risk management guidelines which are available to the conventional financial institutions, however, the risk profile Islamic financial institutions is different to that of conventional one and the *Modarabas* are also exposed to that risk. Therefore, it is imperative to explore the possibility to introduce risk management guidelines for the *Modarabas* to bring in uniformity in their operations and to strengthen their asset portfolio.⁵⁶

If this were the next step for the SECP, it would be in line with the SECP's goals and IOSCO's principles of protecting investors and a step toward putting the Islamic Financial Market on par with the rest of Pakistan's market.⁵⁷ In addition to changes in *Modaraba*, one of the most recent developments for the Islamic market has been new regulations drafted for *Sukuk*.

2. *Sukuk*

Sukuk has been described by many as bonds that comply with Islamic principles.⁵⁸ The SECP defines *Sukuk* as "a financial instrument in the nature of redeemable capital evidencing undivided beneficial ownership of the holder in certain specific assets based on Shariah principles and concepts approved by a Shariah Advisor appointed by the issuer for this purposes[.]"⁵⁹ *Sukuk* "are securities that comply with the Islamic law and its investment principles, which prohibits the charging, or paying of interest."⁶⁰ Changes to *Sukuk* were proposed in part because Pakistan's central banks are attempting to increase Sharia compliant assets to fifteen percent, and as of September 2013, Sharia compliant assets have increased from 8.1 percent to 9.5.⁶¹

⁵⁶ SEC. & EXCH. COMM'N PAKISTAN, *supra* note 24, at 97.

⁵⁷ *About SECP*, *supra* note 5 (See Mission Statement); INT'L ORG. SEC. COMM'N, *supra* note 29, at 45, 51.

⁵⁸ See, e.g., *Sekuk*, *supra* note 28.

⁵⁹ *Notification*, Issue of Sukuk Regulations (2012), S.R. & O. 1223(I) (Pak.), ¶ 2(h), http://www.secp.gov.pk/DraftAmendments/Draft_Sukuk_Regulations_2012.pdf (publication of draft regulation).

⁶⁰ *Sekuk*, *supra* note 28.

⁶¹ Bernardo Vizcaino, *Pakistan Central Bank Steps Up Islamic Banking Push*, REUTERS (Jan. 28, 2014, 6:31 AM), <http://www.reuters.com/article/2014/01/28/islamic-finance-pakistan-idUSL6N0KO05320140128>; Carla Main, *Pakistan Sukuk Rules, Nifty Index Rout, SEC: Compliance*, BLOOMBERG

Draft rules for *Sukuk* were posted by the SECP in September of 2012 for comment.⁶²

The draft regulations require that any company that wishes to issue *Sukuk* has no overdue loans, has a credit rating not lower than BBB-, and has a Sharia Advisor that is recognized by the SECP.⁶³ Chapter three of the draft regulations lists disclosure requirements for the issuance of *Sukuk*, one requirement being the distribution of prospectus.⁶⁴ These requirements reflect the IOSCO's principles of full, accurate, and timely disclosure.⁶⁵ Appendices I and II of the draft regulation spell out the disclosure requirements and contents of information memoranda.⁶⁶

These minimum requirements help establish a more level playing field for investors by promoting the flow of information, a previously noted concern for Pakistan's market.⁶⁷ It also reflects the IOSCO's suggestion that Sharia compliance is shown, as well as, the name and role of the Sharia Advisor.⁶⁸

3. *Takaful*

Takaful is typically described as a form of insurance offered that is based on Islamic principles.⁶⁹ The basic premise of *Takaful* is that members contribute to a common pool.⁷⁰ This structure allows for an insurance option that is Sharia compliant because it upholds "the principle of 'bear ye one another[']s burden.'" Commercial insurance is strictly not allowed for Muslim[s] . . . because it contains the following elements: i) Al-Gharar (Uncertainty) ii) Al-Maisir (Gambling) iii) Riba (Interest)[.]⁷¹

In January of 2012, draft *Takaful* rules were posted for public

(Oct. 8, 2012, 8:48 AM), <http://www.bloomberg.com/news/2012-10-08/pakistan-sukuk-rules-nifty-index-rout-sec-compliance.html>.

⁶² *Notification*, *supra* note 59.

⁶³ *Id.* ¶¶ 5(a)–(b), 6(2)(c).

⁶⁴ *Id.* ¶ 9.

⁶⁵ INT'L ORG. SEC. COMM'N, *supra* note 29, at 56.

⁶⁶ *Notification*, *supra* note 59, at apps. I and II.

⁶⁷ *See* Hasan, *supra* note 21.

⁶⁸ *See* INT'L ORG. SEC. COMM'N, *supra* note 29, at 70–71; *Notification*, *supra* note 59, at app. II.

⁶⁹ *See, e.g.*, Ass'n of Islamic Banking Inst. Malaysia, *Takaful*, AIBIM.COM, <http://aibim.com/content/view/18/35/> (last visited Feb. 06, 2014).

⁷⁰ *Id.*

⁷¹ *Id.*

comment.⁷² These rules were the result of a 2007 committee that had been tasked with reviewing the 2005 *Takaful* rules.⁷³ “One of the prominent features of the Takaful Rules, 2012, is that . . . the rules contain requirements for allowing conventional insurance companies to commence takaful business through specialized ‘window’ operations.”⁷⁴ This would allow regular insurance companies to offer *Takaful* in addition to their regular insurance products provided they received approval,⁷⁵ which would allow for increased participation in the Islamic sector. In July 2012, the SECP approved the *Takaful* rules.⁷⁶ However, in August of 2012, the SECP was prohibited from implementing the rules by the Sindh High Court.⁷⁷

Existing *Takaful* operators argued that the rules would allow conventional insurance companies to operate in a manner inconsistent with Sharia.⁷⁸ As of the writing of this paper, the 2012 rules have not been implemented and the 2005 *Takaful* rules are still in place.⁷⁹ However, there has been movement in the legal battle surrounding the 2012 *Takaful* rules as *Takaful* Pakistan removed itself as one of the petitioners objecting to the 2012 Rules in early 2014.⁸⁰

⁷² Notification, Takaful Rules (2012), S.R. & O. 29(I) (Pak.), <http://www.secp.gov.pk/notification/pdf/2012/Takaful-Rules-2012.pdf> (draft rules posted for comment).

⁷³ SEC. & EXCH. COMM’N PAKISTAN, *supra* note 24, at 103.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Fraaz, *SECP Launches New Takaful Rules*, PAKISTAN TODAY (July 14, 2012), <http://www.pakistantoday.com.pk/2012/07/14/news/profit/secp-launches-new-takaful-rules/>; Takaful Rules (2012), S.R. & O. 877(I) (Pak.), [http://www.secp.gov.pk/Notification/pdf/2012/SRO_877\(I\)_2012_Takaful_Rules_2012.pdf](http://www.secp.gov.pk/Notification/pdf/2012/SRO_877(I)_2012_Takaful_Rules_2012.pdf).

⁷⁷ *Enforcement of New Takaful Rules Restrained*, THE EXPRESS TRIBUNE (Aug. 3, 2012), <http://tribune.com.pk/story/416790/enforcement-of-new-takaful-rules-restrained/>.

⁷⁸ *Id.*

⁷⁹ *See Laws and Policies*, SEC. & EXCH. COMM’N PAKISTAN, http://www.secp.gov.pk/Services/laws_policies.asp (last visited Feb. 06, 2014).

⁸⁰ Kazim Alam, *Legal Quandry (sic): Takaful Pakistan backs off from SECP case*, THE EXPRESS TRIBUNE (Jan. 23, 2014), <http://tribune.com.pk/story/662070/legal-quandry-takaful-pakistan-backs-off-from-secp-case/>.

4. Sharia Advisory Board

The SECP has recently finalized a Sharia Advisory Board.⁸¹ The IOSCO had noted that several entities “indicated the need to have formal regulatory requirements for the establishment of *Shariah* advisory bodies to act as central reference points in assessing *Shariah* compliance of Islamic capital market products and services.”⁸² The establishment of a Sharia Advisory Board likely answers this call given its nature and purpose. The SECP gave an initial indication of the board’s likely structure, function, and purpose in the 2012 SECP Annual Report, when it indicated the board would be comprised of:

[E]minent Islamic scholars and market professionals to ensure that all products/services offered under this umbrella are in conformity with the *Shariah* principles. Also, efforts will be made for consolidation of existing Islamic institutions and development of innovative *Shariah*-compliant institutions, products and services in order to deepen the capital market.⁸³

While the board has been anticipated, its formation received approval from SECP, and was announced on May 8, 2013, “pursuant to Section 9 of the Securities and Exchange Commission of Pakistan Act 1997 (XLII of 1997).”⁸⁴ The board will consist of nine members experienced in “Islamic accounting, finance, economics and *Shariah* law.”⁸⁵ Mufti Muhammad Hassan Kaleem has been named as the board’s chairman, and the first meeting has occurred.⁸⁶ The SECP has indicated that among other tasks, the board will be advising the SECP on *Shariah* compliance and provide guidance on new laws.⁸⁷ The hope is that the *Shariah* Advisory Board will promote investor confidence, *Shariah* compliant alternatives, and, thus, development of the Islamic Financial Market as a whole.⁸⁸

⁸¹ Press Release, Sec. & Exch. Comm’n Pakistan, SECP Forms *Shariah* Advisory Board (Aug. 23, 2013) [hereinafter August Press Release], http://www.secp.gov.pk/news/PDF/News_13/PR_Aug23_2013.pdf.

⁸² INT’L ORG. SEC. COMM’N, *supra* note 29, at 63.

⁸³ SEC. & EXCH. COMM’N PAKISTAN, *supra* note 24, at 76.

⁸⁴ Press Release, Sec. & Exch. Comm’n Pakistan, SECP Announces the Establishment of *Shariah* Advisory Board, (May 8, 2013) [hereinafter May Press Release], http://secp.gov.pk/news/PDF/News_13/PR_May08_2013.pdf.

⁸⁵ *Id.*

⁸⁶ August Press Release, *supra* note 81.

⁸⁷ *Id.*

⁸⁸ *See id.*; May Press Release, *supra* note 84.

CONCLUSION

The SECP has chosen to develop the Islamic Financial Market as part of its overall approach to developing the Pakistan market as a whole. The SECP has recently promulgated updated Islamic market policies. By not relying solely on the development of the Islamic Financial Market, the SECP is mitigating risks as it is still growing and developing the regulatory regime and market as a whole. However, the SECP is taking advantage of a growing sector of the international economy and using it for a domestic advantage. Given that Pakistan is an Islamic State, the SECP is potentially opening the market to those that might not otherwise invest due to a lack of Sharia compliant options, as well as, increasing the opportunity for market participation.

The new rules promulgated by the SECP reflect a growing appreciation of the need for transparency, market depth, and investor protection. The most recently promulgated rules reflect the principles promulgated by the IOSCO. These developments illustrate that the SECP is adhering to its mission to “develop a fair, efficient and transparent regulatory framework, based on international legal standards and best practices, for the protection of investors and mitigation of systemic risk aimed at fostering growth of a robust corporate sector and broad based capital market in Pakistan” as well as its vision of “[t]he development of modern and efficient corporate sector and capital market, based on sound regulatory principles, that provide impetus for high economic growth and foster social harmony in the Country.”⁸⁹ As the SECP continues to develop Pakistan’s market domestically, as well as, internationally, its focus on the Islamic Financial Market as part of its overall comprehensive market plan, and its recent changes to that sector, should be taken as a clear indication that the SECP is willing, and on track, to create a stronger and more sustainable market for Pakistan.

⁸⁹ *About SECP: The Establishment of the Commission, supra* note 5.