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HALAKHIC INVESTING

Halakhic Law is the body of religious law practiced by Orthodox Jews. This law includes a substantial areas of monetary law according to which observers of Halakhic law conduct their interpersonal and commercial dealings. In addition, it includes many statutes whose spiritual significance and import many not be readily apparent. This document will attempt to delineate areas where Halakhic Law can influence investment choices.

It is important to preface by clarifying the purpose of Halakhic Law so that its objectives and demands are more readily understood by readers. Orthodox Judaism, and Halakhic Law makes demands from all mankind, knowns as the Seven Noachide Commandments, while also making additional demands which are applied only to Jews. This article will be restrained to the latter category.

While this article attempts to clarify Halakhic guidance on investing, it should not be viewed as a replacement for investment guidance based on moral values which one may choose to follow. Also, grading companies based on one's moral perception of a company's behavior, rather than on an objective G-d-given law, unfortunately encourages slander and character assassination. Employees can be punished for innocent actions which were depicted in a negative light. Halakhic law is therefore very reticent in imposing one's own moral viewpoint on others, and doesn't discourage investment as a result of perceived moral turpitude. This article will focus exclusively on immutable prohibitions of Halakhic law and will base its guidelines on those prohibitions.

Companies which should be excluded from a portfolio based on improper behavior:

1) A company of which 51% or more is owned by Jews who have Jews have legal control which is not operated in conformance with Halakhic Law. (This is not meant to include instances in which an operating agreement prevents the directors from following halacha should they so desire) A common issue is a company that is in operation during any part of the Jewish Sabbath without making this permissible through a Halakhic Shabbos sale. This applies only to companies where knowledge of its Jewish shareholders and control is a matter of public knowledge.

2) A company that manufactures or sells merchandise, or which offers a service, which is publically seen as immoral. This could be avoided through the Abortion Negative screen, and the Curbing Pornography Negative screen. Also to be excluded are companies which manufacture firearms for individual purchase. This would only apply to companies which are publicly perceived as being involved in these activities. Also it would not apply to companies which primarily engage in permitted activities and have an incidental involvement in these areas. For convenience and simplicity one can use existing abortion negative screens, although such screens may be more broad than what Halakhic law demands.

3) A company of which a majority of its business is the manufacture or sale of idols. This would only include companies which manufacture idols, and would only include idols which are actually



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worshiped, and would not include religious symbols.

4) This would also include Marijuana companies, and all recreational drug companies.

5) Companies which are known to advertise in a manner which conspicuously seeks to arouse prurient instincts.

6) Companies which are publicly associated with attempts to limit religious practice, promote atheism, and agnosticism. Because of the subjective nature of this criteria, I suggest relegating this to a positive screen and grading companies with regard to this issue.

Companies which it is praiseworthy to exclude the following from a portfolio²:

The following is a list of Halakhic considerations and guidelines by which the exclusion of companies and categories from a portfolio may be deemed to be proper and praiseworthy, while not being absolutely required. It may be said that investing in such companies is not in keeping with the highest Halakhic values³.

- *Lifnei Iveir*. *Lifnei Iveir* is literally translated as placing a stumbling block in a blind person's path. It is applied to aiding and abetting another to sin. This issue would only be relevant in the case of one who purchases a large amount of stocks during an IPO, when such stocks would not have been otherwise purchased by a non-Jew⁴.
- *Ribbis*. (Usury) Owning stock in financial institutions which lend to individual borrowers⁵ is something which is good to avoid⁶. This includes, and is limited to, direct investment in banks and credit card lenders. It is further recommended that one structure any Investment agreement in a way which avoids any other *Ribbis* issues which may not be included herein (see the Investment Agreement). It should be noted, that the Halakhic exclusionary guidelines followed by Magni will not of their own accord conclusively deal with this particular issue unless some other document was signed. It should also be noted, that according to the reasoning used for this screen, borrowing from a company that has Jewish shareholders should be prohibited. We don't suggest that this is prohibited; rather that it may be proper for one who seeks to follow a higher Halakhic standard, to abstain from investing in such companies.
- *Issurei Hana'ah*. (items from which Jews may not derive benefit) A company which derives a significant portion of its revenue from *Issurei Hana'ah*, and which pays dividends to investors is good to avoid. The definition of a "significant portion" is defined by considering whether the Investor suffer any loss should the *Issurei Hana'ah* portion of the company be completely eradicated. There are three common categories of items from which one may not derive benefit:

- *Chametz* on Passover. This issue can be avoided by executing a specific type of transaction before Passover known as *mechiras chametz*.



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· Wine or grape juice or anything derivative thereof. This also includes any foods which require grape juice as an important ingredient.. There is a question whether the prohibition against deriving benefit therefrom applies in contemporary times when idol worship is not common⁷, and therefore this is included in the category which is not prohibited, but rather only considered praiseworthy to refrain from investing in.

· Dairy foods and animal meat which were cooked together. There is considerable dispute whether there is a prohibition to derive benefit from dairy and meat which were not cooked together, but rather fried or baked together⁸. Since it is uncommon for a company to derive significant revenue from dairy and meat which were cooked (as opposed to baked or fried), the majority of such benefit derivation would be allowed; however, it is praiseworthy to be stringent and to refrain from investing in companies which derive significant revenue from dairy and meat which were baked or fried together.

Doing business with forbidden meat. There is a prohibition against buying and selling forbidden meat, which, in cases where a stockholder would be Halakhically considered an "owner", he would be guilty of transgressing. However, there is a caveat to this prohibition. If one chanced upon ownership of forbidden meat, one may sell those meats. Some extend this leniency to a company whose main source of revenue is non-meat items, where the argument can be made that the ownership of the meat items is incidental to the investor, and not what he was focused on buying⁹. In consideration of this opinion, and in consideration of the opinions quoted in footnote 3, which don't view the stockholder as an owner at all, one need not refrain from owning a minute portion of a company that buys and sells forbidden meats as long as this is not the main function of the company. The definition of a significant involvement which would qualify for being avoided, is, when an investor is motivated to invest in the company because of their involvement in the non-Kosher meats.

Additional areas of concern are companies which have certain unethical business practices. These include rampantly overcharging customers, and defrauding customers or others. These would only be an issue if it can be firmly established that these practices are frequent, and they also need to be supported by evidence; not the say so of some disgruntled customers. Defrauding would include false advertising (unless the company aggressively resolves issues which are brought to its attention), otherwise defrauding customers, and stealing intellectual property. Because of the inconclusive nature of any research regarding this screen, I would accept the recommendation to consider this area for the positive screen where no company would be banned, but rather awarded for good behavior so that they were more likely to be included in any given Halakhic portfolio.

[1] This section follows the guidance of one of the foremost Halakhic Authorities in North America.

[2] These categories are allowed by the Rabbi mentioned above according to the letter of the law, and he mentioned that seemingly the general practice is not to be concerned about these issues. My recommendation to avoid them is based on concerns brought to my attention by colleagues and by my own research.



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[3] There is considerable Halakhic dispute as to whether ownership of stock in a company is comparable to ownership in the company. While there are numerous opinions on the matter, including those who maintain that ownership of a company is not considered Halakhic ownership at all, the opinions that we will consider are those of Rabbi Moshe Feinstein of blessed memory *Igros Moshe Even Ha'ezer* 1:7, and Dayan Weiss of blessed memory *Minchas Yitzchok* 1:3. Rabbi Feinstein is of the opinion that cases of insignificant minority shareholders (as is generally the situation that we are dealing with) where the shareholder lacks the power to influence the behavior of the company, is not considered ownership Halakhically. Dayan Weiss, on the other hand, disagrees, and takes the position that any stockholder who has voting rights is considered an owner according to halacha. While the prevailing practice (and as per the consensus of the majority of Halakhic authorities) is to rely on the former opinion, it is praiseworthy to take the latter position into consideration. Most of the guidelines in the second section herein are offered in consideration of the latter, and more stringent position; while there are also other considerations to deal with as will be referenced in footnotes. For further discourse, see the attached thesis page.

[4] This is because of the concept of *chad avra d'nahara* found in *maseches Avoda Zara* 6b.

[5] As per the opinion of the *Igros Moshe* (*Yoreh De'ah* 2:63) *Maharsha"g* 4 39, and *Kovetz Teshuvos* 3:124 that there is no prohibition of *Ribbis* when lending to a corporation. Although his opinion is subject to dispute (see *Minchas Yitzchak Ibid.*, *Minchas Shlomo* 1:28, *Or Le'tziyon Yoreh De'ah* 1:5, *Har Tzvi Yoreh De'ah* 126, and others), since minute ownership is also a dispute as per footnote 3, there is little reason to be concerned in the case of corporate lenders.

[6] As per the opinion of the *Minchas Yitzchok* quoted in footnote 5. It should be noted that regarding *Ribbis* there is an additional lenient consideration of the *Mahari"t* 1:116 who writes that if one's money is being managed by a non-jew who receives a percentage of profit, there is no *Ribbis* concern.

[7] See *Chochmas Adam* 75:14, *Pischei Teshuva* 123:1, and *Sh"ut Mahara"m Shik Yoreh De'ah* 150

[8] See *Pri To'ar Yoreh De'ah* 87:3, *Chavas Da'as* *ibid* 1, *Pri Chadash* *ibid* 2, *Yad Yehuda* *ibid* 1, *Creisi Upleisi* *ibid*, *Rabbi Akiva Eiger Chulin* 108b, *Sh"ut Chasam Sofer Yoreh De'ah* 97. There is additional grounds for leniency in our situation, since the meat being used had not been properly slaughtered which paradoxically creates a leniency regarding benefitting from *Basar B'chalav* according to the *Ramba"m*. For elaboration see: *Beis Hillel Yoreh De'ah* 87, *Shvus Yaakov* 1:60, *Pri Megadim Psicha to Basar B'chalav* paragraph beginning *V'od*, *Sh"ut Chasam Sofer Yoreh De'ah* 92, *Yad Yehuda* 87:7

It is worth noting that this particular concern is not necessarily dependent on the discussion in footnote 3, as the prohibition against deriving benefit from these categories of forbidden items may not be dependent on actual ownership of these items.

[9] *Maharsha"g* 2:81