

# **INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**IN THE MATTER OF:**

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA (IIROC)**

**AND**

**GLOBAL MAXFIN CAPITAL INC.**

**AND**

**ISSAM EL-BOUJI**

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff (“Staff”) and the Respondents, Global Maxfin Capital Inc. (“Global Maxfin”) and Issam El-Bouji (“El-Bouji”) consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of the Respondents.
3. The Investigation discloses matters for which the Respondents may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

### **II. JOINT SETTLEMENT RECOMMENDATION**

4. Staff and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondents admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

- a) Between June 30, 2012 and September 25, 2012, Global Maxfin Capital Inc. failed to maintain Risk Adjusted Capital at a level greater than zero as calculated in accordance with IIROC Form 1 and was capital deficient in sums ranging from \$253,841 to \$2,205,698 and thereby contravened IIROC Dealer Member Rule 17.1.
  - b) Between June 30, 2012 and September 25, 2012, El-Bouji failed to ensure that he supervised the activities of the Dealer Member that are directed towards ensuring compliance with IIROC's Dealer Member Rules and promote compliance by the Dealer Member and individuals acting on its behalf and thereby contravened IIROC Dealer Member Rule 38.5.
6. Staff and the Respondents agree to the following terms of settlement:
- a) payment by Global Maxfin a fine in the sum of \$40,000;
  - b) payment by El-Bouji a fine in the sum of \$15,000; and
  - c) payment of costs by the Respondents in the sum of \$5,000.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

7. Staff and the Respondents agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

#### **(ii) Factual Background**

##### **The Respondents**

8. Global Maxfin Corporation Inc. is a Type 2 Introducing Broker and has been a member of IIROC since February 2002. As an IIROC Dealer Member, Global Maxfin has specific financial reporting obligations and is required to accurately disclose its financial position for regulatory purposes.
9. At all relevant times, El-Bouji was an officer, director, the controlling mind and the Ultimate Designated Person ("UDP") of Global Maxfin. As such, he was required to ensure that he supervised the activities of the Dealer Member that are directed towards

ensuring compliance with IIROC's Dealer Member Rules and promote compliance by the Dealer Member and individuals acting on its behalf.

### **The Early Warning System**

10. The Early Warning system is designed to measure a number of characteristics which are likely to identify the potential for financial difficulty of a Dealer Member. If a firm is placed in Early Warning, it is monitored more closely. Certain restrictions, including more frequent financial reporting obligations, can be imposed.
11. At various times between March 2007 and June 2012, Global Maxfin had been designated in Early Warning Level 1.
12. From July 2012 to June 2013 and again from August 2013 to September 2013, Global Maxfin was in Early Warning Level 2. Level 2 is a more serious designation than Level 1 and financial reporting obligations, as well as other business restrictions, are increased.
13. In October 2013, Global Maxfin returned to Early Warning Level 1 and in November 2013, it was no longer designated in any level of Early Warning.
14. Global Maxfin has remained out of the Early Warning system since November 2013, with the exception of June 30, 2015 when it was designated in Early Warning Level 1.
15. The reporting of accurate financial information, particularly when a Dealer Member is in Early Warning, is critically important to allow for proper regulatory assessment of any potential financial risks. The Early Warning system is designed to detect and prevent potential situations of capital deficiency from arising.

### **Minimum Capital Requirements and Securities Concentration Charge**

16. IIROC Dealer Member Rule 17.1 describes the requirement to maintain risk adjusted capital ("RAC"). The calculation of RAC is the primary means by which the financial status of a Dealer Member is prescribed and monitored.
17. In particular, Dealer Member Rule 17.1 provides:

Every Dealer Member shall have and maintain at all times risk adjusted capital greater than zero calculated in accordance with Form 1 and with such requirements as the Board of Directors may from time to time prescribe. If at any time the risk adjusted capital of a Dealer Member is, to the knowledge of such Dealer Member, less than zero, such Dealer Member shall immediately notify the Corporation.

18. In addition, IIROC Dealer Member Rule 100.20 prescribes a mandatory calculation known as a securities concentration charge which must be performed and included in RAC calculations in specific circumstances. This concentration rule is intended to provide a capital cushion for the amount of likely fluctuation in the market value of securities which a firm or its clients might have in their portfolios. The concentration rule provides an additional cushion in the case where a firm is exposed to a significant degree to the securities of one issuer.

### **The Capital Deficiencies**

19. IIROC Financial & Operations Compliance Staff (“FinOps Staff”) is responsible for monitoring the financial position of Dealer Members. FinOps Staff receives periodic financial reporting from Dealer Members and also conducts on-site Field Examinations.
20. In the course of a routine Field Examination, FinOps Staff reviewed the Monthly Financial Report for July 31, 2012 which had been filed by Global Maxfin. FinOps Staff noted that Global Maxfin had incorrectly omitted the securities concentration charge and was, in fact, capital deficient as at September 25, 2012 by approximately \$300,000.
21. The securities concentration charge was required to be included in the RAC calculation as a result of certain securities positions of Ourico Gold Inc. held in client accounts and securities positions of Barrick Gold Corporation held in Global Maxfin’s inventory account.
22. In light of the incorrect filing of the July 2012 MFR, FinOps Staff recalculated Global Maxfin’s figures submitted for June 2012 to September 2012 and noted that Global Maxfin had, in fact, been capital deficient from June 30, 2012 to August 24, 2012 and then again from September 7 to September 25, 2012.
23. FinOps Staff notified Global Maxfin by letter dated September 25, 2012 of the capital deficiencies findings. Global Maxfin was required to remedy the deficiencies by close of business on September 26, 2012.
24. By correspondence dated September 28, 2012, Global Maxfin’s then-CFO advised that the deficiencies had been rectified by selling the securities positions or receiving cash into the accounts which were subject to the securities concentration charge.
25. The full extent of the capital deficiencies are set out in Appendix “A”. In addition to monthly financial reporting obligations for June, July and August, 2012, Global Maxfin was required to make weekly financial reports of RAC estimates to FinOps Staff.
26. As set out in Appendix “A” only one financial report (the August 31 MFR) is positive. All other reports, when correctly calculated, show a capital deficiency ranging from \$253,841 to \$2,205,698. Eight (8) of the sixteen (16) reporting periods demonstrate

capital deficiencies in excess of \$1,000,000. Three (3) of the sixteen (16) reporting periods demonstrate capital deficiencies in excess of \$2,000,000.

### **Aggravating Factors**

27. In August, 2011, Global Maxfin was specifically advised by IIROC FinOps Staff about the requirement to include a securities concentration charge in appropriate circumstances. This was identified as a significant deficiency and conveyed to Global Maxfin and to El-Bouji on August 15, 2011 when FinOps Staff concluded its 2011 FinOps Compliance Examination. El-Bouji wrote to FinOps Staff on September 21, 2011 acknowledging the issue and explaining that matters had been rectified with Global Maxfin's carrying broker.
28. Accordingly, both Global Maxfin and El-Bouji were aware of the previous improper financial reporting and were in a position to correctly report on a going-forward basis.
29. Global Maxfin's financial reporting of June 2012 to September 2012 again omitted the securities concentration charge, despite having been advised by FinOps Staff of its importance.
30. The inaccurate financial reporting took place when Global Maxfin was designated in Early Warning Level 2 and at a time when accurate regulatory reporting was critically important.

### **Mitigating Factors**

31. Upon notification by IIROC of the capital deficiency, the problem was rectified within one day.
32. The CFO who was responsible for the calculations is no longer employed by Global Maxfin and the current CFO has correctly applied the securities concentration charge on subsequent regulatory filings.

## **IV. TERMS OF SETTLEMENT**

33. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
34. The Settlement Agreement is subject to acceptance by the Hearing Panel.
35. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

36. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
37. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
38. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
39. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
40. Staff and the Respondents agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
41. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable immediately upon the effective date of the Settlement Agreement.
42. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of "Richmond Hill" in the Province of "Ontario",  
this "17th" day of "November" , 20"15".

"General Counsel"

**Witness**

**"Global Maxfin Corporation Inc."  
"CAPITAL"**

**AGREED TO** by the Respondent at the City of "Richmond Hill" in the Province of "Ontario",  
this "16" day of "November", 20"15".

"General Counsel"

**Witness**

**"Issam El-Bouji"**

**AGREED TO** by Staff at the City of "Toronto" in the Province of "Ontario",

this "12th" day of "November", 20"15".

**"Vito Pedone"**

"Staff Investigator, IIROC"

**Witness**

**"Andrew P. Werbowski"**

Senior Enforcement Counsel on behalf of  
Staff of the Investment Industry Regulatory  
Organization of Canada

**APPENDIX A**

**GLOBAL MAXFIN CAPITAL INC.  
CAPITAL DEFICIENCIES**

<b>Date of MFR or RAC Estimate</b>	<b>RAC as submitted by Global Maxfin</b>	<b>Securities Concentration Charge</b>	<b>Adjusted RAC (Capital Deficiency)</b>
June 30, 2012 MFR	499,000	(752,841)	(253,841)
July 6, 2012 RAC estimate	510,000	(939,244)	(429,244)
July 13, 2012 RAC estimate	384,000	(1,199,704)	(815,704)
July 20, 2012 RAC estimate	156,000	(2,337,290)	(2,181,290)
July 26, 2012 RAC estimate	127,000	(2,034,637)	(1,907,637)
July 31, 2012 MFR	122,000	(1,681,028)	(2,107,528)*
August 3, 2012 RAC estimate	217,000	(2,210,209)	(1,993,209)
August 10, 2012 RAC estimate	625,000	(2,830,698)	(2,205,698)
August 17, 2012 RAC estimate	411,000	(1,683,218)	(1,272,218)
August 24, 2012 RAC estimate	281,000	(1,377,234)	(1,096,234)
August 31, 2012 MFR	591,000	(437,345)	153,655
September 7, 2012 RAC estimate	330,000	(1,154,720)	(824,720)
September 13, 2012 RAC estimate	607,000	(932,396)	(325,396)
September 19, 2012 RAC estimate	600,000	(1,831,163)	(1,231,163)
September 21, 2012 RAC estimate	642,000	(942,161)	(300,161)
September 25, 2012 RAC estimate	470,000	(1,208,314)	(738,314)

\* - includes other adjustments identified during the FinOps field examination.

**ACCEPTED** at the City of "Toronto" in the Province of "Ontario" ,  
this "3rd" day of "December", 20"15", by the following Hearing Panel:

Per: "Thomas Lockwood"  
Panel Chair

Per: "Michael Walsh"  
Panel Member

Per: "Richard Austin"  
Panel Member