Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Global Maxfin Investments Inc. and Issam ("Sam") El - Bouji

Heard: June 17, 2015, in Toronto, Ontario
Reasons for Decision: June 23, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Robert Christianson	Industry Representative
Brigitte J. Geisler	Industry Representative

Appearances:

Maria L. Abate	)	For the Mutual Fund Dealers Association of Canada
David Di Paolo	)	For the Respondents

Background

1. This is a settlement hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on Wednesday, June 17, 2015. The full Settlement Agreement, dated May 27, 2015, entered into between Staff of the MFDA and Global Maxfin Investments Inc. ("Global Maxfin") and Issam ("Sam") El-Bouji ("Mr. El-Bouji") (collectively, the "Respondents") is available on the MFDA website and will not be set out in detail here. Mr. El-Bouji and officers of Global Maxfin appeared at the settlement hearing and were represented by counsel.

2. The Panel accepted the proposed Settlement Agreement at the June 17, 2015 hearing, with reasons to follow. These are our reasons.

3. Global Maxfin has been a Member of the MFDA since June 7, 2002 and is registered as a mutual fund dealer in a number of provinces and territories throughout Canada, operating at first as a level 2 dealer, then a level 3 dealer, and from February 15, 2007 in its present category as a level 4 dealer.

4. Global Maxfin is part of a group of companies that operate under the Global banner, such as Global RESP Corporation (formerly operating under the name Global Education Marketing Corporation), Global Maxfin Capital Inc., a registered investment dealer and member of The Investment Industry Regulatory Organization of Canada ("IIROC"), and Global Growth Assets Inc, a registered investment fund manager.

5. Mr. El-Bouji is the sole owner of Global Maxfin and was the Chairman and Chief Executive Officer of Global Maxfin from May 1, 2000 to January 16, 2015. From December 21, 2009 to January 16, 2015, Mr. El-Bouji was registered as the Ultimate Designated Person for Global Maxfin.

6. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated May 27, 2015. The Respondents had entered into a Settlement Agreement on May 27,

2015, in which the Respondents agreed to a proposed settlement of matters for which they could be disciplined pursuant to ss. 20 and 24.1.2 of By-law No. 1.

Allegations

7. The proposed Settlement Agreement concerns allegations that:

a) Global Maxfin failed to have and maintain at all times risk adjusted capital greater than zero for the period May 2004 to September 2009, and except for the months of April, May, July and August 2007, contrary to MFDA Rule 3.1.1(a);

b) Global Maxfin and Mr. El-Bouji failed to immediately notify Staff in October 2009 that Global Maxfin's risk adjusted capital was less than zero, contrary to MFDA Rule 3.1.2;

c) from October 30, 2009 to November 3, 2009, Global Maxfin failed to file with the MFDA within 20 business days of the month end of September 30, 2009, the Financial Questionnaire and Report for the period ending September 30, 2009, which report disclosed a capital deficiency, contrary to MFDA Rule 3.5.1(a); and

d) from May 2004 to November 3, 2009, Mr. El-Bouji failed in his capacity as the Ultimate Designated Person to ensure that Global Maxfin established, implemented, maintained and communicated an adequate compliance program to ensure the timely and accurate monitoring and reporting of Global Maxfin's capital position, contrary to MFDA Rule 2.5.1 and MDA Policy 2.

8. Global Maxfin admits in the Settlement Agreement to the conduct alleged in 7(a), 7(b), and 7(c) above. (See paragraphs 55, 56, and 57 of the Settlement Agreement). Mr. El-Bouji admits in the Settlement Agreement to the conduct alleged in 7(b) and 7(d), above. (See paragraphs 56 and 58 of the Settlement Agreement.)

Risk Adjusted Capital Deficiencies and Minimum Capital Requirements

9. The allegations arose as a result of Global Maxfin and Mr. El-Bouji signing a Guarantee to the Bank of Nova Scotia in 2004, whereby Global Maxfin agreed to act as guarantor for a loan taken by one of the Global companies, Global Education Marketing Corporation. The loan was for $2,900,000. A loan affects the Member's Risk Adjusted Capital ("RAC").

10. To protect the financial integrity of individual MFDA firms, their clients, the MFDA and the securities markets, Members must maintain Risk Adjusted Capital greater than zero. Member firms must report their Risk Adjusted Capital to the MFDA monthly through a Financial Questionnaire and Report ("FQR"). As the MFDA Reference Manual, March 2014 (at page 7), states:

> "RAC is derived from the Member's working capital and is the primary means of financial reporting to the MFDA. RAC is a measure of the Member's liquidity and its ability to withstand any adverse fluctuations in operations...The capital formula seeks to assess the Member's ability to continue as a going concern."

11. By signing the 2004 Guarantee, Global Maxfin assumed a contingent liability which it was required to report in its monthly FQR. Risk Adjusted Capital is a conservative calculation for regulatory purposes so that the regulator has warning about a Member's possible financial difficulties. A Member is required to report a deduction in its capital equal to 10% of the value of any outstanding loan guarantees. This was not done by Global Maxfin. If it had reported and included the guarantee, it would have resulted in a negative Risk Adjusted Capital position.

12. In September 2008, Mr. El-Bouji signed a second Guarantee with the Bank of Nova Scotia on behalf of Global Maxfin, guaranteeing a mortgage taken out by Global Maxfin Developments, another Global company. This guarantee was for over seven million dollars. It was also not reported in its monthly FQRs. Nor were the two guarantees revealed in the MFDA Financial Compliance Examination Questionnaire for the period February 1, 2008 to January 31, 2009.

13. In 2009, Global Maxfin guaranteed an additional loan from another lender to enable it to purchase a member firm, Professional Investment Holdings (Canada.) This purchase required MFDA approval. The $150,000 capital deduction was disclosed to MFDA staff, but not the earlier 2004 and 2008 guarantees.

14. The Settlement Agreement states in paragraph 35: "On or about Friday, October 16, 2009, the CFO of the Global Group, after preliminary discussions with the CFO of Global Maxfin, advised [Mr. El-Bouji] of a potential oversight in past FQR's filed with the MFDA." The circumstances of notifying the MFDA of the failure to report the earlier Guarantees is detailed in paragraphs 35 to 51 of the Settlement Agreement. The Settlement Agreement notes in paragraph 43 that by the time of the purchase of Professional Investment Holdings (Canada) Global Maxfin had been removed as guarantor for the 2008 Guarantee and so produced a positive RAC figure just prior to closing the purchase.

Terms of Settlement

15. Global Maxfin agreed to the following terms of settlement (Settlement Agreement paragraph 59):

a) Global Maxfin shall pay a fine in the amount of $50,000 pursuant to section 24.1.2(b) of MFDA By-law No. 1;

b) In addition to the two individuals required to sign the "Certificate of Partners or Directors" that comprises part of Form 1, henceforth Mr. El-Bouji shall also sign the "Certificate of Partners or Directors' on all Form 1's filed by Global Maxfin with the MFDA for as long as Mr. El-Bouji remains an officer, director, partner or owner, directly or indirectly, of Global Maxfin, pursuant to section 24.1.2(f) of MFDA By-law No. 1;

c) Global Maxfin shall pay costs of the investigation and of this proceeding in the amount of $15,000 pursuant to section 24.2 of MFDA By-law No. 1; and

d) Global Maxfin shall in the future comply with MFDA Rules 3.1.1(a), 3.1.2, and 3.5.1(a).

16. Mr. El-Bouji agreed to the following terms of settlement:

a) Mr. El-Bouji shall pay a fine in the amount of $25,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1;

b) Mr. El-Bouji shall be prohibited from acting as the Branch Manager or as a supervisor of Global Maxfin for a 2 year period from the date of acceptance of this Settlement Agreement, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

c) Mr. El-Bouji shall sign the "Certificate of Partners or Directors" on all Form 1's filed by Global Maxfin with the MFDA for as long as Mr. El-Bouji remains an officer, director, partner or owner, directly or indirectly, of Global Maxfin, pursuant to section 24.1.1(f) of MFDA By-law No. 1;

d) Mr. El-Bouji shall pay costs of the investigation and of this proceeding in the amount of $10,000 pursuant to section 24.2 of MFDA By-law No. 1; and

e) Mr. El-Bouji shall in the future comply with MFDA Rules 3.1.2 and 2.5.1 and MFDA Policy No. 2.

Approval of Settlement

17. As stated above, the panel approved the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it. We found that the proposed penalties were reasonable and proportionate in the circumstances of this case. They provide specific deterrence to the Respondents and general deterrence to others in the industry.

18. No harm was suffered by investors in this case. Further, by entering into a Settlement Agreement the Respondents have accepted responsibility for their misconduct and recognize its seriousness.

19. A fine of $50,000 for Global Maxfin and costs of $15,000 and a fine of $25,000 plus costs of $10,000 for Mr. El-Bouji are significant amounts. The fines are in line with the MFDA Penalty Guidelines, where the minimum fine for breach of MFDA financial requirements is $25,000 in the case of a Member and $10,000 in the case of an approved person.

20. The penalties imposed are also in line with the cases cited by counsel, such as a MFDA disciplinary decision, *Re: Monarch Wealth Corporation*, 2012, File No. 201019 and several IDA disciplinary decisions, *Re: GRS Securities Inc.*, [2006] I.D.A.C.D. No. 7, and *Re: RBC Dominion Securities Inc.*, [2006] I.D.A.C.D. No. 28.

21. The Respondents have never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into their conduct. By entering into the agreement, the Respondents saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations. A full hearing in the present case would likely have been complicated and lengthy.

22. In negotiating the Settlement Agreement and in particular the period of prohibition imposed on Mr. El-Bouji, the parties – we were told – took into account the penalty that had been imposed in 2014 by the Ontario Securities Commission and Mr. El-Bouji in a case involving other Global companies. A reference to those proceedings is contained in a footnote on page 13 of the Settlement Agreement. It reads as follows:

> "Pursuant to the terms of an Order, dated April 16, 2014, approving a settlement agreement entered into between [Mr. El-Bouji] and Staff of the Ontario Securities Commission ("OSC"), the OSC ordered that [Mr. El-Bouji] is prohibited from becoming or acting as a director or officer of any reporting issuer, registrant, including the Member, or investment fund manager for nine years and permanently prohibited from becoming or acting as a UDP or CCO of any registrant, including the Member, or investment fund manager."

The nine-year prohibition would apply to Mr. El-Bouji's relationship with Global Maxfin.

23. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

24. Hearing panels should respect settlements worked out by the parties. As a recent panel stated (*Re Menashe Keshet*, September 3, 2014, File No. 201419 at paragraph 7) "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA and IIROC panels.

25. The penalties agreed to in this case fall within "a reasonable range of appropriateness."

26. For the above reasons we approved the Settlement Agreement.

DATED this 23rd day of June, 2015.

"Martin L. Friedland"

Martin L. Friedland, C.C., Q.C.
Chair

"Robert Christianson"

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Industry Representative

"Brigitte J. Geisler"

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