

Citation: 2024 BCSECCOM 260

Settlement Agreement

Fieldhouse Capital Management Inc. and William Douglas Sereda

Securities Act, RSBC 1996, c. 418 (the Act)

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director), Fieldhouse Capital Management Inc. (FCMI) and William Douglas Sereda (Sereda) agree as follows:

Agreed Statement of Facts

Background

1. FCMI is a company incorporated in the Province of British Columbia that has been registered with the British Columbia Securities Commission (the Commission) as a portfolio manager (PM) since 2010 and as an investment fund manager (IFM) and exempt market dealer (EMD) under the Act since 2015. FCMI is also registered under various statutes regulating the trade in securities in multiple categories in four other Canadian jurisdictions.
2. FCMI acts as an IFM and PM for its own proprietary funds and as the discretionary PM to the majority of its clients who are invested in its funds, while solely acting as an EMD to other clients. Between July 1, 2017 and September 4, 2020 (the Relevant Period), one of the investment funds offered by FCMI was the Fieldhouse Pro Funds Inc. Class M Global Macro Core Fund (Class M).
3. Sereda is a resident of Vancouver, British Columbia. In the Relevant Period, he was the Ultimate Designated Person (UDP), Chief Executive Officer and an advising representative of FCMI. He was also the Chief Compliance Officer (CCO) of FCMI between April 2019 and January 2022. Sereda voluntarily ceased to act as FCMI's UDP and CEO as of March 2022, and is no longer FCMI's CCO. During the Relevant Period, Sereda was not the only CCO of FCMI.

Misconduct

4. In August 2021, Commission staff completed a limited-scope compliance examination (2021 Exam) of FCMI to evaluate its compliance system and operations. During the 2021 Exam, staff reviewed the accounts of sixteen clients who collectively invested approximately \$4.3 million in Class M. For those accounts, FCMI had discretionary management authority and Todd David MacSween was acting as an advising representative (the MacSween Clients).¹

¹ The Executive Director entered into a [settlement agreement](#) with Todd David MacSween (2023 BCSECCOM 175), and issued an [order](#) against him (2023 BCSECCOM 176).

5. The 2021 Exam identified deficiencies in FCMI's overall compliance system, portfolio management and UDP and CCO functions.
6. Specifically, FCMI:
 - (a) with respect to the MacSween Clients:
 - i. incorrectly classified Class M as a low-to-medium risk investment until October 2018, then medium-to-high until February 2020 when, actually, it was a higher-risk or alternative investment since Class M began operating due to the use of short sales as an investment strategy;
 - ii. did not maintain sufficient and up-to-date information regarding the MacSween Clients' investment needs and objectives, financial circumstances, and risk tolerance (collectively, the KYC Information) to ensure that investments were suitable for them; and
 - iii. allowed the MacSween Clients, many of whom were low-risk investors, to be placed into Class M, which was unsuitable for their needs, objectives and personal and financial circumstances.
 - (b) placed itself in a conflict of interest with certain clients (collectively, the Ticket Charge Clients) by having an agreement with the executing broker to add a "ticket charge" for each trade, which was paid to FCMI in addition to management fees and incentive fees. FCMI provided some disclosure of the ticket charges but such disclosure lacked adequate details and specificity. FCMI took no other steps to address this conflict;
 - (c) failed to maintain current and sufficient records in the areas of KYC and suitability information, due diligence and research, conflicts, personal trading and risk management.
7. Because of the deficiencies, FCMI failed:
 - (a) to establish an adequate and effective compliance system that meets the requirements of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103);
 - (b) in its duty as a PM by not taking steps to maintain sufficient KYC Information and ensure that the MacSween Clients were suitably invested, contrary to sections 13.2(2)(c) and (4) and 13.3 of NI 31-103;
 - (c) to adequately respond to a conflict of interest between itself and the Ticket Charge Clients, contrary to section 13.4 of NI 31-103; and

(d) to deal fairly with the Ticket Charge Clients, contrary to section 14 of the *Securities Rules*, B.C. Reg. 194/97 (Rules).

8. Section 5.1 of NI 31-103 imposes compliance supervision and promotion obligations on a UDP, and section 5.2 imposes compliance policy, monitoring, assessment, and reporting obligations on a CCO. Sereda failed to adequately perform his functions as the CCO and UDP, which led to FCMI's contraventions of NI 31-103 and section 14 of the Rules.

Factors relevant to settlement

9. In 2015, Commission staff reviewed FCMI's operations and compliance system in a limited-scope examination. The 2015 exam identified a significant number of deficiencies, and the Commission imposed registration terms and conditions on FCMI in September 2016. In June 2017, after FCMI corrected the deficiencies, the Commission removed the terms and conditions.

10. On March 18, 2022, as a result of the 2021 Exam, the Commission imposed eleven registration terms and conditions on FCMI that were intended to mitigate ongoing risks to FCMI's clients and bring FCMI's compliance system to the standards required of a registrant.

11. FCMI retained an independent compliance monitor for one year, at its own cost, as required by the terms and conditions. The compliance monitor confirmed that FCMI corrected each deficiency identified in the 2021 Exam. On May 31, 2023, the Commission removed the registration terms and conditions.

12. FCMI chose to engage a compliance consultant until December 31, 2024, at its own cost, to support the current CCO and UDP maintain and update FCMI's compliance system.

13. FCMI paid \$64,800 to the Commission for the costs of the 2021 Exam.

14. Certain FCMI clients filed civil suits, or complaints with the Commission and the Ombudsman for Banking Services and Investments.

15. FCMI paid \$1,350,523 to certain clients, including some of the MacSween Clients, through civil suits and other processes. In those settlement payments, FCMI repaid \$138,491.36 in management fees and ticket charges to the affected clients.

16. FCMI received a net benefit, less the amounts repaid to the clients, as follows:

(a) Managements fees of the MacSween Clients: \$12,718.09;

(b) Ticket charges: \$380,739.38.

Mitigating Factors

17. It is a significant mitigating factor that FCMI entered into this settlement and allowed the Commission to avoid a potentially lengthy hearing to determine liability.
18. FCMI cooperated with the Commission during the 2021 Exam and throughout the investigation and enforcement process leading to this settlement.

Public Interest

19. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

Undertakings

20. FCMI undertakes:
 - (a) to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines;
 - (b) not to increase its fees or take any other steps that would result in its clients directly bearing the costs or expense of any cash rebate relating to this Settlement Agreement;
 - (c) to pay a total of \$468,457.47 in respect of settlement of this matter as follows:
 - i. \$12,718.09 to the MacSween Clients;
 - ii. \$380,739.38 to the Ticket Charge Clients;(i and ii collectively, the Compensation)
 - iii. \$75,000 to the Commission;
 - (d) to pay the amount of \$468,457.47 outlined at subsection (c) as follows:
 - i. 50% of the total amount of the Compensation by July 1, 2025;
 - ii. the remaining 50% of the total amount of the Compensation by July 1, 2026;
 - iii. \$75,000, and any remaining amount of the required Compensation that FCMI tried but was unable to repay, to the Commission by October 1, 2026;
 - (e) to pay the Compensation through a process agreed to by the Executive Director; and

- (f) to retain, at its own expense, an external consultant, to be approved by the Commission, to monitor and report to the Commission on the process by which FCMI is paying the Compensation.

21. Sereda undertakes:

- (a) to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines;
- (b) not to seek registration as a CCO or a UDP of any registrant for a period of five years; and
- (c) to pay \$25,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.

Waiver

- ¶ 2 The Respondents waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

- ¶ 3 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

- ¶ 4 June 25, 2024

- ¶ 5 Fieldhouse Capital Management Inc.
Fieldhouse Capital Management Inc.
(Signing Authority)

Redacted)
 Witness Signature)
Redacted)
 Witness Name (please print))
Redacted)
)
Redacted)
 Address)
Redacted)
 Occupation)

¶ 6 June 25, 2024

¶ 7 William Douglas Sereda
William Douglas Sereda

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Witness Signature)

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Witness Name (please print))

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Address)

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Occupation)

Peter J Brady
6/28/2024 | 10:40 AM PDT

¶ 8 Peter J. Brady
Executive Director