

Re Beechey

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada (IIROC)

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Matthew Beechey

2011 IIROC 80

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District Council)

Hearing: December 7, 2011

Decision: February 17, 2012

Hearing Panel:

Honourable Stanley R. Kurisko, Q.C. (Chair), Mr. Guenther Kleberg and Mr. Donald Lawson

Appearances:

Kathryn Andrews, Senior Enforcement Counsel

Robert Brush and Kate McGrann Counsel for Matthew Beechey

Matthew Beechey, the Respondent

DECISION AND REASONS

¶ 1 As a result of a Settlement Agreement executed by Matthew Beechey (**Respondent**) on October 25, 2011 and Senior Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada (**IIROC**) on October 31, 2011,¹ a Settlement Hearing was conducted in Toronto on December 7, 2011 pursuant to the IIROC Dealer Member Rules.

¶ 2 A Settlement Hearing Book of Documents prepared by IIROC was filed consisting of:

Tab 1 - The Settlement Agreement

Tab 2 - IIROC Dealer Member Disciplinary Sanction Guidelines, March 2009

Tab 3 - Guideline 3.1: Recommended Sanctions re Unsuitable Recommendations

Tab 4 - Guideline 3.2: Recommended Sanctions re Failure to Know Your Client

Tabs 5- 9 previous Settlement Hearing decisions of Hearing Panels

¶ 3 After hearing submissions regarding: (i) why the Settlement Agreement meets the appropriate criteria of IIROC Dealer Member Disciplinary Sanction Guidelines, March 2009² (**Disciplinary Sanction Guidelines**) and (ii) the governing principles re accepting or rejecting a proposed settlement, the Hearing Panel unanimously accepted the Settlement Agreement and made an Order to this effect on December 7, 2011. At that time, the Panel advised that written Reasons would be provided.

¹ Annexed to these Reasons as SCHEDULE I

² Tab 2 of the Settlement Hearing Book of Documents

¶ 4 The Reasons are set out below under the following headings:

- A. The Contraventions by the Respondent
- B. The proposed Terms of Settlement
- C. Global Credit Preferred Corporation
- D. Conduct of the Respondent
- E. Summary of the Disciplinary Sanction Guidelines
- F. Submissions of Counsel for IIROC Staff
- G. Governing Principles re accepting or rejecting a Proposed Settlement
- G. Decision

A. THE CONTRAVENTIONS BY THE RESPONDENT

¶ 5 The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

COUNT 1: During 2005 and 2006, Matthew Beechey did not exercise sufficient due diligence to ensure that he fully understood the complexities and risks of Global Credit Preferred Corporation contrary to IDA Regulation 1300.1 (a) (now IIROC Dealer Member Rule 1300.1 (a)).

COUNT 2: During 2005 and 2006, Matthew Beechey did not exercise sufficient due diligence to learn and remain informed of the essential facts relative to three clients, contrary to IDA Regulation 1300.1(a) (now IIROC Dealer Member Rule 1300.1(a)).

COUNT 3: During 2005 and 2006, Matthew Beechey failed to make suitable investment recommendations for six clients, contrary to IDA Regulation 1300.1 (q) (now IIROC Dealer Member Rule 1300.1 (q)).

¶ 6 The specific dealings with the three clients referred to in COUNT 2 and the six clients referred to in COUNT 3 are detailed in paragraphs 27– 49 inclusive of the Settlement Agreement and need not be set out in the body of these Reasons. The Hearing Panel unequivocally concludes that these details fully support the allegations that the Respondent:

- failed to exercise sufficient due diligence to ensure he knew or understood Global Credit Preferred Corporation. (COUNT 1);
- did not exercise sufficient due diligence to learn and remain informed of the essential facts relative to three clients (COUNT 2);
- failed to make suitable investment recommendations for six clients (COUNT 3).

B. THE PROPOSED TERMS OF SETTLEMENT

¶ 7 IIROC Staff and the Respondent agree to payment of the following fines to IIROC:

- \$20,000.00 with respect to count 1
- \$15,000.00 with respect to count 2
- \$15,000.00 with respect to count 3

¶ 8 IIROC Staff and the Respondent agree that the Respondent will pay \$1,399.88 to IIROC as disgorgement of commission for the Global Credit Preferred Corporation transactions detailed in the Settlement Agreement.

¶ 9 IIROC Staff and the Respondent agree that the Respondent will pay IIROC the sum of \$3,000.00 towards the costs of the investigation and prosecution.

C. GLOBAL CREDIT PREFERRED CORPORATION

¶ 10 Global Credit Preferred Corporation (GCP) was a high risk structured product created by TD Securities

Inc. and Gatehouse Capital Inc. with objectives set out in the prospectus. These objectives were not necessarily achievable. The initial public offering took place in the summer of 2005. The original subscription price was \$25.00 per share. The prospectus' objective was to obtain a dividend of 5.25% and repayment of the subscription price on the redemption date on or about July 2015 (a ten year term). The dividend and redemption proceeds were derived from a portfolio of credit default swaps, a derivative security that was akin to insurance against corporate debt defaults. The actual dividend and redemption proceeds were based on the return of underlying swap securities and were therefore uncertain.

¶ 11 The return of the investment was linked to the number of defaults (such as bankruptcy) within a reference portfolio of 129 companies. In the best case scenario, if less than 11 of 129 companies experienced a default, then the investor should receive dividends and their initial investment returned at maturity. Should the number of defaults exceed 11, however, the investor would suffer a partial loss of their investment. If the reference portfolio experienced 14 or more defaults, the investor would lose their entire investment.

¶ 12 There was a very significant amount of volatility in the net asset value (NAV) (and thus in the market price) of GCP. If there were even a few defaulting events, the price could decrease significantly during the term. In addition, the NAV was affected by the movement of credit spreads (i.e. the difference in yield between the 129 companies in the reference portfolio and a benchmark, such as Government bonds of the same term) as this is seen as an indication of future potential defaults.

¶ 13 The clients were inexperienced and did not fully understand the complexities or risks inherent in GCP.

¶ 14 By December 2008, five defaulting events had occurred and the NAV of GCP had declined to \$3.45 (from its original value of approximately \$25.00). The GCP share price had declined to 66 cents.

¶ 15 The size of the loss sustained by the clients was substantial. As a generalization it can be said that the clients sustained an unrealized loss of approximately 50 per cent of their investment as at the date the Respondent ceased to be the Registered Representative of these clients.³

D. CONDUCT OF THE RESPONDENT

¶ 16 During the period of the offences the Respondent was a Registered Representative of TD Waterhouse Canada Inc. in Waterloo, Ontario.

¶ 17 The due diligence efforts of the Respondent respecting GCP included asking questions of the head of TD Waterhouse Canada Inc.'s syndication group and a product specialist with the Credit Product Group of TD Securities Inc. who actually worked on the structuring of GCP. This was inadequate due diligence.

¶ 18 Because of the failure to take adequate steps to inform himself of the complexities and risks inherent in GCP the Respondent did not understand the structure, details or risks involved with GCP. Consequently:

- he was initially unsure as to the maturity date;
- he was not aware at the time that the principal amount could vary at maturity;
- he thought GCP was suitable for clients who wanted income;
- he did not adequately understand the concept of credit default swaps and only became aware of the risk of credit default swaps after he had recommended GCP to his clients;
- he mistakenly thought the principal would be returned if clients held GCP for a certain time period.

¶ 19 In 2005 and 2006 the Respondent recommended GCP to several clients in circumstances where it was

³ The Table at paragraph 51 of the Settlement Agreement sets out the number of GCP shares and the amount invested by each of the clients: \$42,500.00 (one client), \$30,000.00 (three clients), \$25,000.00 (two clients), \$20,000.00 (one client), \$14,700.00 (one client) and \$9,800.00 (one client). The Table also sets out the value of the GPS shares on October 2007, the date the Respondent ceased to be the Registered Representative for these clients.

not suitable because these clients wanted safe investments to provide for their retirement. In the case of three clients, their new account application forms did not accurately set out their true investment objectives and risk tolerance levels.

E. SUMMARY OF THE DISCIPLINARY SANCTION GUIDELINES

¶ 20 The Disciplinary Sanction Guidelines provide a framework for assessing the gravity of a particular breach of the Dealer Member Rules and help determine sanctions that are reasonable in the circumstances. Following is a summary of the portions of the General Principles of the Disciplinary Sanction Guidelines (**Guidelines**) relevant to this proceeding.

1. Main concerns when determining an appropriate penalty

¶ 21 As set out in *Re Derivative Services Inc.*, [2001] I.D.A.C.D. No. 26 at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

- Protection of the investing public;
- Protection of the Investment Industry Regulatory Organization's membership;
- Protection of the integrity of the Investment Industry Regulatory Organization's process;
- Protection of the integrity of the securities markets, and
- Prevention of a repetition of conduct of the type under consideration.

¶ 22 The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

2. Disciplinary Sanctions as Deterrence

¶ 23 Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

¶ 24 General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations.

¶ 25 As was observed by the Hearing Panel in *Re Mills*, [2001] I.D.A.C.D. No. 7, at page 3:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understanding would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment. (emphasis added)

3. Key Considerations When Determining Sanctions

¶ 26 Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including but not restricted to the following:

Harm to clients, Employer and/or Securities Market

Actual harm can sometimes be quantified by considering the type of transactions, the number of transactions, the size of the transactions, the number of clients affected by the misconduct, the length of time over which the misconduct took place and size of the loss suffered by the clients.

Blameworthiness

In appropriate cases, distinctions should be drawn between conduct that was intentional or negligent and conduct that involves manipulative, fraudulent or deceptive conduct.

Extent to which the Respondent was enriched by the Misconduct

In cases where the registrant benefited financially from the misconduct in question, it may be appropriate to require that any profits, commissions, fees, or other compensation be disgorged.

Prior Disciplinary Record

The fact that a respondent has no prior disciplinary record should, in the absence of evidence to the contrary, lead to a presumption that the respondent was of good moral character prior to the misconduct. A first conviction may be seen as a measure of punishment in and of itself, given the stigma attached to the process of charging, finding of guilt and imposition of sanction.

Acceptance of Responsibilities, Acknowledgment of Misconduct and Remorse

An admission of wrongdoing by a respondent is usually considered to be a mitigating factor because it implies remorse and an acknowledgment of responsibility.

Credit for Cooperation

Respondent should be given credit for cooperation if they acted in a reasonable manner during the course of investigation and disciplinary process by self-reporting and self-correcting the misconduct in question.

Voluntary Rehabilitative Efforts

Remediation efforts prior to (or even subsequent to) detection or intervention by IIROC should be taken into consideration as mitigating the seriousness of misconduct. There will no doubt be concerns that subsequent rehabilitative efforts are self-serving, but they warrant credit because they show both recognition of misconduct and a commitment to remedy it.

A respondent is entitled to mitigating credit for voluntary acts of reparation, including disgorgement of commissions.

Vulnerability of Victim

The disciplinary process must be seen to provide some degree of protection for the investing public, and in particular, the client with a lower level of sophistication. Consequently, the vulnerability of a victim should be taken into account in determining relative culpability, and hence the relative measure of sanction imposed.

Significant Economic Loss to the Client

A finding of significant monetary loss by the respondent's clients arising out of the respondent's misconduct can be seen as an aggravating factor to the extent that investing has as its core capital preservation and returns. If that core function is significantly eroded by regulatory misconduct, then it should be taken into account when the appropriate penalty is imposed.

4. Use of Sanctions

¶ 27 As set out above, sanctions should be remedial in nature and “fit” the misconduct. Sanctions should effectively address the conduct in question in such a way as to discourage and prevent future misconduct by the respondent, and at the same time, promote general adherence to industry rules and standards.

Fines

It is generally accepted that monetary fines serve to express general condemnation of specific misconduct. Fines will generally increase in relation to the relative severity of specific misconduct. Severity is measured in

relation to all of the factors set out above.

F. SUBMISSIONS OF COUNSEL FOR IIROC STAFF

¶ 28 There are several mitigating considerations that have a bearing on the terms of the Settlement Agreement.

¶ 29 The Respondent did not fraudulently or intentionally mislead the clients for the purpose of personal gain. By failing to fully understand the product he was unable to engage in a proper suitability assessment for his clients and could not adequately explain the structure, terms, risk or mechanics of GCP to his clients. In some instances he mistakenly provided clients with incorrect information about GCP.

¶ 30 The Respondent co-operated with the investigation and prosecution of this matter.

¶ 31 The Guidelines set out the recommended sanctions with respect to Failure to Know Your Client (COUNT 1 and COUNT 2). Having regard to the nature and extent of failure to know your client, the magnitude of losses directly attributable to the failure to know your client, the level of sophistication of the client and the extent of due diligence conducted to determine the essential facts of the client, the recommended sanctions are:

- Fine: Minimum of \$10,000.00
- Re-write of CPH
- Period of close and/or strict supervision
- Period of suspension (in most egregious cases)

¶ 32 The Guidelines set out similar considerations and recommended sanctions for “Unsuitable Recommendations”. Counsel says this applies to COUNT 3.

¶ 33 The fines proposed in the Settlement Agreement are: COUNT 1: the sum of \$20,000.00, COUNT 2: the sum of \$15,000.00 and COUNT 3: the sum of \$15,000.00. These fines are slightly higher than the recommended minimum because of the number of clients and the riskiness of the product.

¶ 34 The Respondents re-wrote and passed the Conduct and Practices Handbook examination in October, 2010.

¶ 35 The Respondent has been a Registered Representative since October 1996 to the present time. Apart from this case he does not have any disciplinary history.

¶ 36 The circumstances of this case, although serious, are not egregious. A period of suspension would constitute punishment and cannot be justified.

G. PRINCIPLES RE ACCEPTING OR REJECTING A SETTLEMENT AGREEMENT

¶ 37 The power of a Hearing Panel is restricted by Dealer Member Rule 20.36 to either accept or reject the Settlement Agreement.

¶ 38 The Hearing Panel adopts the following principle stated in *Re Milewski*⁴:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 39 Winkler R.S.J. (as he then was), in another context, set out the principles to be applied in considering a

⁴ [1999] I.D.A.C.D. No.17

negotiated settlement. In *Gilbert v. Canadian Imperial Bank of Commerce*⁵ he said:

There is a presumption of fairness when a...settlement negotiated at arm's length...is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable.... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition necessitates give and take....

H. DECISION

¶ 40 A Hearing Panel cannot reject a settlement unless it views the sanctions as clearly falling outside a reasonable range of appropriateness.

¶ 41 Notwithstanding the deductibility of fines⁶ it cannot be said that the fines and costs totaling \$53,000.00 plus disgorgement of \$1,399.88 commissions fail to strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offence.

¶ 42 The Respondent does not have a previous disciplinary history and his conduct since the period of these offences has been without incident. In these circumstances the Hearing Panel does not take issue with the fact that there is no provision in the Settlement Agreement for a period of suspension.

¶ 43 The circumstances of this case, although serious, are not egregious. The mitigating considerations outlined above are significant. A period of suspension would constitute punishment and could not be justified.

¶ 44 The Hearing Panel concludes that the proposed terms of Settlement adhere to the key considerations set out in the Guidelines and are reasonable in the circumstances.

¶ 45 The Hearing Panel confirms the Order to this effect made on December 7, 2011.

¶ 46 The above is approved and released February 17, 2012.

Hon. Stanley R. Kurisko, Q.C., Panel Chair

Donald Lawson, Panel Member

Guenther Kleberg, Panel Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Matthew Beechey, consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Matthew Beechey (“Beechey” or the “Respondent”).
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and

⁵ [2004] O.J. 4260

⁶ As a result of the Supreme Court of Canada decision in *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, fines imposed by a self-regulatory organization on its members may be deductible as business expenses for income tax purposes. Hearing Panel could consider income tax deductibility in determining the appropriate amount of the fine.

Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which the Respondent 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

COUNT 1: During 2005 and 2006, Matthew Beechey did not exercise sufficient due diligence to ensure that he fully understood the complexities and risks of Global Credit Preferred Corp., contrary to IDA Regulation 1300.1 (a) (now IIROC Dealer Member Rule 1300.1 (a)).

COUNT 2: During 2005 and 2006, Matthew Beechey did not exercise sufficient due diligence to learn and remain informed of the essential facts relative to three clients, contrary to IDA Regulation 1300.1(a) (now IIROC Dealer Member Rule 1300.1(a)).

COUNT 3: During 2005 and 2006, Matthew Beechey failed to make suitable investment recommendations for six clients, contrary to IDA Regulation 1300.1 (q) (now IIROC Dealer Member Rule 1300.1 (q)).

Terms of Settlement:

8. Staff and the Respondent agree that he will pay the following fines to IIROC:
 - (a) \$20,000 with respect to count 1;
 - (b) \$15,000 with respect to count 2; and
 - (c) \$15,000 with respect to count 3.
9. Staff and the Respondent agree that he will pay \$1,399.88 to IIROC as disgorgement of commission for the Global Credit Preferred Corp transactions indicated below.
10. Staff and the Respondent agree that he will pay costs to IIROC toward the costs of the investigation and prosecution in the sum of \$3,000.

III. STATEMENT OF FACTS

Acknowledgment:

11. Staff and the Respondent 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.

Overview:

12. In 2005 and 2006 Beechey recommended a structured product named Global Credit Preferred Corp (“GCP”) to various clients, a product which he did not fully understand. He did not take adequate steps to inform himself or his clients of the complexities and risks inherent in GCP. In some instances he mistakenly provided clients with incorrect information about GCP.
13. Furthermore, in the case of 3 clients, their new account application forms did not accurately set out their true investment objectives and risk tolerance levels. Beechey also recommended GCP to several clients in circumstances where it was not suitable as these clients wanted safe investments to provide for their retirement.

Background:

14. At all material times Beechey was a Registered Representative (“RR”) at TD Waterhouse Canada Inc. (“TDW”) in Waterloo, Ontario. In November 2007, Beechey became employed as an RR at CIBC World Markets Inc.

Counts 1, 2 and 3: Failure to understand the product, his clients and suitability:

Global Credit Preferred Corp:

15. Unlike a conventional preferred share offering, GCP was a structured product with certain objectives set out in the prospectus. These objectives, however, were not necessarily achievable. GCP was a high risk product as indicated below.
16. GCP was created by TD Securities Inc. (“TDSI”) and Gatehouse Capital Inc. (“Gatehouse”). Its initial public offering took place in the summer of 2005. The original subscription price was \$25 per share. The prospectus’ objective was to obtain a dividend of 5.25% and repayment of the subscription price on the redemption date, on or about July 2015 (a ten year term). The dividend and redemption proceeds were derived from a portfolio of credit default swaps, a derivative security that was akin to insurance against corporate debt defaults. The actual dividend and redemption proceeds were based on the return of underlying swap securities and were therefore uncertain.
17. The return of the investment was linked to the number of defaults (such as bankruptcy) within a reference portfolio of 129 companies. In the best case scenario, if less than 11 of 129 companies experienced a default, then the investor should receive dividends and their initial investment returned at maturity. Should the number of defaults exceed 11, however, the investor would suffer a partial loss of their investment. If the reference portfolio experienced 14 or more defaults, the investor would lose their entire investment.
18. There was a very significant amount of volatility in the net asset value (“NAV”) (and thus in the market price) of GCP. If there were even a few defaulting events, the price could decrease significantly during the term. In addition, the NAV was affected by the movement of credit spreads (i.e. The difference in yield between the 129 companies in the reference portfolio and a benchmark, such as Government bonds of the same term) as this is seen as an indication of future potential defaults.
19. By December 2008, 5 defaulting events had occurred and the NAV of GCP had declined to \$3.45 (from its original value of approximately \$25.) The GCP share price had declined to 66 cents.
20. TDSI’s Confidential Information Memorandum for GCP, (the “Memo”) which Beechey reviewed, stated that the Preferred Shares had been assigned a preliminary rating of P-1 (Low) by Standard & Poor’s. The Memo also stated that the net proceeds of the Offering would be used to purchase a credit linked note which would have a rating of A-1 from Standard and Poor’s at closing, which rating would be based on a number of factors.
21. The Memo also stated that “this Memorandum should be read in conjunction with the Amended Preliminary Prospectus. The information contained herein, while obtained from sources which we believe to be reliable, is not guaranteed as to accuracy or completeness”.
22. Mr. Beechey has advised Staff that his due diligence efforts respecting GCP included asking questions of the head of TDW’s syndication group and a product specialist with the Credit Products Group of TDSI who actually worked on the structuring of GCP.
23. Based in part on his discussions with these individuals, Mr. Beechey formed the opinion that GCP was a suitable product for clients who wanted to protect their capital and sought income.

Failure to know the product:

24. Beechey did not fully understand the structure, details or risks involved with GCP. For example:
 - (a) he was initially unsure as to the maturity date;
 - (b) he was not aware at the time that the principal amount could vary at maturity;

- (c) he thought GCP was suitable for clients who wanted income;
 - (d) he did not adequately understand the concept of credit default swaps and only became aware of the risk of credit default swaps after he had recommended GCP to his clients;
 - (e) he thought the principal would be returned if clients held GCP for a certain time period.
25. By failing to fully understand the product, Beechey was not in a position to adequately explain the structure, terms, risk or mechanics of GCP to his clients. For example, the concept of credit default swaps was not explained to most of the clients by Beechey. These clients were unsophisticated investors with limited investment experience. Accordingly, the clients did not fully understand the complexities or risks inherent in GCP.
26. By failing to know the product, Beechey was unable to engage in a proper suitability assessment for his clients.

Client EJ:

27. EJ became a Beechey client in 2005. EJ disagreed with the noted risk factors on her account documentation (noted as 90% high risk). Although EJ signed the new account application form (the "NAAF"), she told Staff that it did not accurately reflect her risk factors, which were actually low.
28. EJ has advised Staff that her investment objectives were incorrectly noted as capital gains on the NAAF, when her actual objectives were income and preservation of capital. EJ also told Staff that, at her initial meeting with Beechey, she stressed to him that she wanted safe investments that would protect her principal. According to EJ, they discussed preferred shares in general and Beechey told her that they were safe, backed by the bank, her principal would be returned and that they had a 5 year maturity.
29. EJ purchased GCP in July 2005 on Beechey's recommendation. EJ told Staff that he told her it was very safe and had a five year maturity, both of which were incorrect.
30. When EJ received the prospectus and realized that the maturity date was in fact in 2015, contrary to her understanding, she contacted Beechey. EJ indicated to Staff that Beechey then told her that there was a change to the prospectus and that every year on the anniversary date she could get back her principal investment at the purchase price of \$25 per share, which was incorrect.
31. EJ told Staff that in June 2006 she contacted Beechey as she wished to sell GCP at the anniversary date at \$25. According to EJ, Beechey told her that he had made a mistake and that in fact she had to hold it for a minimum of 2 years. EJ was concerned about the declining share price; according to EJ, Beechey's response was that she had nothing to worry about.
32. According to EJ, during the next year she continued to voice her concerns to Beechey about the declining share price and his response was not to worry about it. In June 2007, EJ asked Beechey to redeem the shares at \$25 per share. According to EJ, Beechey told her that at that time she could receive the NAV which had not been set but would be close to \$25.
33. Beechey failed to ensure that EJ fully understood the terms of GCP at the time of purchase nor was it suitable for her based on her investment objectives and risk tolerance.

Client SK:

34. SK had been a Beechey client since August 2005. She was retired. Her NAAF notes 100% medium risk factors, average knowledge/experience and goals of 50% income and 50% long term capital gains. She signed the NAAF. SK has advised Staff that she actually wanted investments with minimal risk. When she purchased GCP in August 2005, SK recalls telling Beechey that she was interested in very low risk investments.
35. SK told Staff that at a later meeting with Beechey, he told SK and her husband (collectively "the Ks") that GCP would not reduce in value if cashed at maturity, which was incorrect.

36. Beechey failed to ensure that SK fully understood the terms of GCP, nor was it suitable for her based on her investment objectives and risk tolerance.

Client AN:

37. AN and her husband MN (collectively “the Ns”) were clients of Beechey. AN opened an account in 2003 and the Ns opened a joint account with Beechey in January 2006. The joint account NAAF documentation indicated that they wanted 100% income and 100% medium risk. Their account documentation also indicated that they had average knowledge and experience about investing and investment products. The N’s signed the NAAF. The Ns have advised Staff that they actually wanted lower risk investments and they wanted investments that would permit them to access the capital in 5 years.

38. According to the Ns, in 2005 Beechey told the Ns that GCP was low risk and that it would mature at \$25 per share, which was incorrect. AN invested in GCP in July 2005 in the amount of \$20,000. This position was transferred to the Ns joint account in February 2006. It was held until it was sold in January 2008 for approximately \$7,700. The Ns were compensated by TDW in the amount of \$9,573. Beechey left TDW in October 2007.

39. Beechey failed to ensure that AN fully understood the complexities of GCP, nor was it suitable for her based on her investment objectives and risk tolerance.

The Hs:

40. CH and RH were a married couple (collectively “the Hs”) and were clients of Beechey since 2003. Their NAAF indicates that they wanted 100% long term capital gains, 100% medium risk and had average experience and knowledge. The Hs have advised Staff that, as they were approaching retirement, they told Beechey that they wanted to preserve capital and were willing to settle for less growth in exchange for low risk.

41. CH purchased GCP in two of his accounts in July 2005 and the Hs purchased GCP in their joint account in September 2005.

42. The Hs have advised Staff that they met with Beechey in March 2007 as they were concerned about their portfolio and GCP in particular. According to the Hs, Beechey indicated that they should not be overly concerned about GCP’s performance and that it would mature at \$25 per share.

43. Beechey failed to ensure that the Hs understood the complexities and risks of GCP nor was GCP a suitable recommendation for them based on their investment objectives and risk tolerance.

The Ms:

44. The Ms were a married couple and were clients of Beechey since 2005. They were both retired. Mrs. M’s NAAF information indicates that she wanted 50% income and 50% long term capital gains as well as 100% medium risk. Their joint account documentation had similar information except that their objectives were noted as 50% medium term gains and 50% long term gains.

45. The Ms purchased GCP in 2005 in both Mrs. M’s account and in a joint account. According to the Ms, Beechey assured them that it was a safe investment and that at maturity they would get a return of \$25 per share. The Ms do not recall Beechey mentioning defaults to them. The purchase in Mrs. M’s account was then transferred to another joint account held by the Ms.

46. Beechey failed to ensure that the Ms understood the complexities and risks of GCP nor was GCP a suitable recommendation for them based on their risk tolerance.

The W’s:

47. NW and MW were a married couple (collectively “the Ws”) and were clients of Beechey since 1999. Their NAAF indicates that they wanted 10% short term gains, 90% long term capital gains and 100%

medium risk. The Ws signed the NAAF. The Ws have advised Staff that they actually wanted low risk investments to provide safe returns over their retirement years.

48. The Ws purchased GCP in July 2005. The Ws indicated to Staff that they were given a note from Beechey which indicated that the maturity was in 5 years at \$25 per share, and that it was principal protected if held to maturity. The Ws also indicated to Staff that Beechey told them that there was no risk of principal loss in their investment in GCP.
49. Beechey failed to ensure that his clients the Ws understood the complexities of GCP nor was GCP a suitable recommendation for them based on their risk tolerance.

Disgorgement of Commission:

50. Beechey received net commission in the amount of \$1,399.88 for the GCP transactions set out in the chart below.

Unrealized losses re: GCP:

51. As of month end October 2007 (when Beechey ceased to be the RR for these clients), the clients had the following unrealized losses relating to GCP:

Client	# shares	Value of Original Investment in Global Credit Preferred	Value October 2007 of Global Credit Preferred	Unrealized Loss
EJ	1200	\$30,000	\$15,900	\$14,100
SK	400	\$9,800	\$5,300	\$4,500
AN (then transferred to joint account)	800	\$20,000	\$10,600	\$9,400
The Hs (joint account)	600	\$14,700	\$8,000	\$6,700
CH (account 1)	1000	\$25,000	\$13,300	\$11,700
CH (account 2)	1000	\$25,000	\$13,300	\$11,700
The Ms (joint account 1)	1700	\$42,500	\$22,500	\$20,000
Mrs. M (then transferred to joint account 2)	1200	\$30,000	\$15,900	\$14,100
The Ws (joint account)	1200	\$30,000	\$15,900	\$14,100

Other:

52. The Respondent does not have a previous disciplinary history.
53. The Respondent wrote and passed the Conduct and Practices Handbook examination in October 2010.
54. The Respondent has co-operated with the Investigation and prosecution of this matter.

IV. TERMS OF SETTLEMENT

55. 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.
56. The Settlement Agreement is subject to acceptance by the Hearing Panel.
57. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
58. 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.
59. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under

IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

60. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
61. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
62. Staff and the Respondent 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.
63. Any monetary penalties and costs imposed upon the Respondent are payable immediately on the date that the Settlement Agreement is accepted by the Hearing Panel.

AGREED TO by the Respondent at the City of Toronto, in the Province of Ontario, this 25 day of October, 2011.

“Witness”

“Matthew Beechey”

Respondent

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this 31st day of October, 2011.

“Rob DelFrate”

“Kathryn Andrews”

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

Accepted at the City of Toronto in the Province of Ontario, this 7th day of December, 2011, by the following Hearing Panel:

Per: “Stanley Kurisko”

Panel Chair

Per: “Guenther Kleberg”

Panel Member

Per: “Donald Lawson”

Panel Member

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