IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended

- and -

IN THE MATTER OF
BRIAN PETER VERBEEK

Hearing:

December 6,7,8,9 and 10, 2004; February 14 and 15, 2005; and March 2, 2005, with written argument including that from Verbeek, received on April 26, 2005.

Panel:

Wendell S. Wigle, Q.C.	-	Chair of the Panel
Suresh Thakrar	-	Commissioner

Counsel:

Brian P. Verbeek	-	On his own behalf
Karen Manarin	-	For Staff of the Ontario Securities Commission

DECISION AND REASONS

INTRODUCTION

[1] This is a hearing under sections 127 and 127.1 of the *Securities Act* (the "Act"), pursuant to a Notice of Hearing issued on October 8, 2003 and amended on July 27, 2004, regarding Brian Peter Verbeek ("Verbeek"). The Commission previously approved settlements with Lloyd Hutchinson Ebenezer Bruce and Dundee Securities Corporation ("Dundee") dealing with the same circumstances as this matter.

[2] At the request of Staff and Verbeek, the panel ordered a bifurcated hearing with the issues of whether Verbeek breached the Act or acted contrary to the public interest being heard first, followed by submissions on sanctions, if necessary.

[3] During the presentation of Staff's evidence on December 9, 2004, the then Chair of the panel, Commissioner Robert L. Shirriff, became aware that one of his partners had previously represented Verbeek, and he recused himself and withdrew from the panel.

[4] Verbeek was granted an adjournment and the opportunity to obtain independent legal advice, at the Commission's expense, on whether the hearing should continue with a panel of the two remaining commissioners pursuant to section 4.4(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "SPPA"). On January 14, 2005, after obtaining independent legal advice, Verbeek advised that he had no objection to continuing the hearing with a panel of the remaining two Commissioners.

BACKGROUND AND STAFF'S ALLEGATIONS

[5] At the heart of this matter are arrangements, which Staff refers to as "schemes", that involved advertisements offering "fast financial assistance" or low interest loans to persons wishing access to funds in their locked-in registered retirement savings plans ("locked-in RRSPs"). Normally, holders of locked-in RRSPs ("holders") cannot access the money in locked accounts until they retire, with the exception of a government administered hardship program. Any funds accessed are immediately taxable. Funds or assets held in retirement savings plans cannot be used as collateral nor can they be used for loans.

[6] The arrangements involved the following sequential steps:

(a) Members of the public responded by phone to newspaper advertisements that offered loans to persons holding either RRSP or locked-in RRSP accounts. Holders were provided with information over the phone and meetings were arranged. Salespeople working for the promoters met with the holders and the required documents were signed, often in blank.

(b) At a meeting, a holder signed documents to create a new self directed locked-in RRSP account at the brokerage through which Verbeek was

registered or, while he was not registered, at a third party trustee. A New Client Application Form ("NCAF") was generated for each holder at the brokerage where Verbeek was employed. The holder signed a letter of direction to his or her current trustee directing it to transfer the locked-in RRSP to the new trustee, often including a direction to liquidate the holdings into cash prior to transferring the proceeds.

(c) Holders were advised by the promoters' salespeople that the majority of funds in their locked-in RRSP, once transferred, would be used to purchase shares of various private companies ("Canadian Controlled Private Corporations" or "CCPCs") that were purported to be qualified investments for locked-in RRSPs. The CCPCs were selected for the holders, with many holders unaware of even the name of the CCPC where the investment was to be made.

(d) The final step was a loan to the holder by the owner or promoter of the CCPC. The amount of the loan was typically 60% to 80% of the purchase price of the CCPC shares, the remainder being retained or distributed by the CCPC owner/promoter as fees and commissions. The CCPC shares were held as collateral for the loan. In some cases, holders made interest payments and principal repayments to the CCPC owners/promoters with the understanding that if the loans were fully paid back including interest, the CCPC shares would be redeemed. The CCPC promoters provided valuations of the CCPC shares prior to the purchase, but the CCPC shares have proven to be worthless.

[7] Verbeek participated in at least 670 such arrangements. His role in the arrangements between 1998 and 2000 (the "material time") is the subject of five allegations:

(a) Verbeek participated in illegal distributions of securities, contrary to section 53(1) of the Securities Act, by trading securities for which there was no exemption available;

(b) Verbeek failed to ascertain the general investment needs and objectives of his clients and the suitability of the purchases or sales of the securities for his clients, and thus acted contrary to the public interest and contrary to section 1.5 of Ontario Securities Commission Rule 31-505;

(c) Verbeek acted contrary to the public interest by participating in the scheme that involved the subsequent loans to investors of approximately 65% of the share purchase and by charging an administration fee to the investors of 35% of the loan proceeds;

(d) Verbeek acted contrary to the public interest by processing documents that referenced "Lafferty, Harwood and Partners Ltd." without Lafferty's

knowledge and at a time when Verbeek was not registered through Lafferty; and

(e) On or about February 14, 2001 and February 22, 2001, in response to inquiries made by Staff, Verbeek advised Staff that he did not know that advertisements had been placed; that he did not know that the transactions involved loans to the investors; and that he had not received compensation for his involvement in these transactions. At the time Verbeek made these representations to Staff, he knew that they were misleading or untrue and, therefore, acted contrary to the public interest.

DECISION AND OVERVIEW OF THE REASONS

[8] We find that Verbeek violated the above-noted provisions of the Act and Rule 31-505 and that he acted contrary to the public interest.

[9] As discussed, below, we find that Verbeek participated in distributions of CCPC shares for which no prospectus exemptions were available. He participated in the arrangements not merely as an administrative conduit between the CCPC promoters and the trust companies, but on behalf of the CCPC promoters, and as a registered representative on behalf of the holders. He failed in his obligation to ascertain the general investment needs of his clients, the holders. He failed to ascertain the suitability of the purchase of the CCPC shares for the holders, largely low-income earners who were in immediate need of cash. Verbeek participated in the arrangements despite published warnings by the Commission that schemes like the arrangements were considered harmful to investors and contrary to the public interest. His participation was for his own financial benefit at the expense of unsophisticated investors who needed financial assistance. Although he had intimate knowledge of the arrangements, he misled Staff during the investigation of this matter.

THE AGREED STATEMENT OF FACTS

[10] An "Agreed Statement of Facts", signed on September 20, 2004 by Staff and Verbeek, was filed at the commencement of the hearing. Verbeek disagreed with, or claimed he had no knowledge of, facts in paragraphs (n), (s), (v), (w), (gg), and (hh) of the Agreed Statement of Facts. For convenience, the statements that Verbeek claimed he disagreed with or had no knowledge of are marked with an asterisk.

Agreed Statement of Facts

(a) Brian Peter Verbeek resides in the province of Ontario.

(b) During the material period, Verbeek was registered with the Commission as a branch manager and/or salesperson for an office located in Nepean. The only other staff that was present in the office were clerical staff.

(c) Verbeek is currently not registered under the Act. He was previously registered as follows:

i. from January 16, 1996 to March 10, 1997, Verbeek was registered as a salesperson with Manulife Securities International Limited, a dealer in the category of Mutual Fund Dealer;

ii. from April 18, 1997 to August 27, 1999, Verbeek was registered as a salesperson with Fortune Financial Corporation ("Fortune"), a dealer in the category Securities Dealer. From July 3, 1997 to August 27, 1999, Verbeek was registered as a branch manager of 38 Auriga Drive, Suite 225, Nepean, Ontario. On February 2, 1998, this branch office moved to 57 Auriga Drive, Suite 204, in Nepean;

iii. from August 27, 1999 to May 1, 2000, Verbeek was registered as a registered representative with Dundee, a dealer in the category of Broker/Investment Dealer – Equities, Options and Managed Accounts. Dundee is registered as a Dealer in the categories of Broker/Investment Dealer under the Act. From February 18, 2000 to May 1, 2000, Verbeek was registered as a branch manager of 57 Auriga Drive, Suite 204, in Nepean; and

iv. on August 21, 2000, Verbeek was registered as a salesperson with Buckingham Securities Corporation ("Buckingham"), a dealer in the category of Securities Dealer. Verbeek was registered as a branch manager of 57 Auriga Drive, Suite 204, in Nepean. Verbeek's registration was subject to these terms and conditions: Verbeek's activities were to be approved and supervised by Buckingham. For a period of one year, Verbeek's supervisor at Buckingham was required to submit quarterly reports on the prescribed form to the General Manager, Registration, regarding Verbeek's sales and client activities.

(d) By letter dated December 29, 2000, Buckingham suspended Verbeek from conducting business as a registered representative of Buckingham pending completion of an internal investigation and investigation by the Ontario Securities Commission. By letter dated May 23, 2001, Verbeek was reinstated by Buckingham as a registered representative.

(e) On June 21, 2001, Verbeek was terminated for cause by Buckingham due to numerous unresolved client complaints, concerns that he was violating the terms and conditions of his registration, and concerns that he was involved in questionable private placements.

The Distribution

(f) Verbeek's involvement in these transactions can divided into three overlapping periods:

i. The Petrement Group: August 1998 – November 2000;

ii. Lafferty, Harwood, & Partners Inc. ("Lafferty"): May – August 2000; and

iii. The Tremblay Group: December 1999 – June 2001.

(g) The Petrement Group and the Tremblay Group were separate organizations, and Verbeek's involvement in each is different.

(h) From approximately August 1998 to November 2000, Verbeek participated in a scheme whereby advertisements were placed in newspapers throughout Ontario and other provinces to attract investors. The advertisements offered "fast financial assistance" to persons wishing to access funds in their locked-in Registered Retirement Savings Plan ("RRSP").

(i) The investors, with Verbeek's assistance in processing application forms, purchased shares in Canadian Controlled Private Corporations ("CCPCs") using money located in the investor's locked-in RRSPs. Verbeek facilitated the purchase of shares and the processing of the loans, as discussed below. His name appears as the registered representative on all of the documentation.

(j) Through Verbeek, the investors' funds in their locked-in RRSPs were used to purchase the shares. In exchange, these individuals obtained a loan representing approximately 60% to 80% of the value of the share proceeds. The remaining 20% to 40% was charged as an "administrative fee". With respect to the Petrement Group, Verbeek met directly with at least 8 investors and referred them to the Petrement Group. Verbeek processed the purchase of shares for the other investors without meeting with them. Verbeek, or staff under his supervision, explained the loans (regarding the Petrement Group) to the 8 investors, completed the various documents for opening accounts, and referred them to the Petrement Group. In the majority of cases Verbeek simply processed the documentation. Verbeek was not involved in deciding what percentage of the funds was charged as an administrative fee.

(k) Verbeek processed over 670 transactions in excess of $17 million while registered with Fortune, Dundee, and Buckingham. In addition, approximately 100 NCAFs were submitted by Verbeek in which the transactions were never processed.

(l) The majority of investors who participated in this scheme were Quebec and Ontario residents, with a few investors from other provinces. Many of these individuals were low-income earners. Generally, these investors became involved in this scheme because they were in financial difficulty and needed access to the funds located in their locked-in RRSPs.

(m) Verbeek was initially registered with Fortune when he began procession these transactions. Some investors purchased shares on more than one occasion. From about August of 1998 to August of 1999, while Verbeek processed approximately 149 NCAFs and facilitated the purchase of CCPC shares through Fortune for a value of approximately $3.8 million. On August 30, 1999, Dundee acquired selected assets of the Fortune Companies. From approximately September 1999 to May 2000, while Verbeek was registered as a registered representative and, for a period of time, branch manager with Dundee, Verbeek processed approximately 255 NCAFs and facilitated the purchase of approximately $6.8 million in CCPC shares through Dundee. From approximately September of 2000 to June of 2001, while Verbeek was registered as salesperson at Buckingham, Verbeek processed approximately 91 NCAFs through Buckingham for a value of approximately $2.6 million. In addition, while Verbeek was registered with Buckingham, he processed approximately 113 NCAFs, but these transactions were never completed.

The Distributions (i) August 1998 to November 2000 – The Petrement Group

(n) Sometime in 1998, Verbeek became involved in these transactions with Messrs. Petrement and Rolland. Verbeek's role, as a registrant, was to process accounts and process share transactions. [*]

(o) From approximately August 1998 to November 2000, advertisements were placed in a number of Ontario and Quebec newspapers to attract investors. In some advertisements, Verbeek's office phone number was published. Various investors also made contact with Verbeek through referrals (but only in a handful of cases).

(p) Verbeek, or clerical staff under his supervision, met directly with at least 8 investors. They explained that they would assist these individuals in accessing their funds that were held in their locked-in RRSPs. Verbeek, or clerical staff under Verbeek's supervision, advised these investors that the funds in their locked-in RRSPs would be used to purchase shares of various private companies (CCPCs) that were purported to be qualified investments for locked-in RRSP accounts. Under Verbeek's direction, the investors' locked-in RRSPs were collapsed. The cash was transferred to secondary trustees. Verbeek facilitated the purchase of shares of the various companies by setting up client accounts at Fortune, Dundee, and then Buckingham. Under Verbeek's supervision, the majority of the cash was transferred to the dealer to effect the sale of securities. Verbeek's

name appears as the "registered representative" on all of the documentation.

(q) Through Fortune, Dundee, and Buckingham, Verbeek facilitated the purchase of the shares from the following companies:

	Company Name	Province of Incorporation	Activity		No. of Investors	Dollar Amount
			From	To		
1	Atlas Mckenzie Inc.	Ontario	Jul-99	Mar-00	14	228,600
2	Data Safenet Inc.	Ontario	Aug-98	Mar-00	49	1,117,000
3	Distribution Perilandaise Inc.	Quebec	Sep-98	Mar-00	47	1,186,027
4	Eau-Necessaire Inc.	Quebec	Dec-99	Sep-00	42	1,663,270
5	Eurontario Inc.	Ontario	Feb-99	Sep-00	48	1,290,600
6	Flash VDO PC Inc.	Quebec	Jul-00	Oct-00	40	914,200
7	Generatrices 2000 Plus Inc.	Quebec	Aug-98	Nov-98	15	473,500
8	LMN Techno-Soft Inc.	Quebec	Oct-99	Sep-00	45	1,752,600
9	Logiciels St. Malo Inc.	Quebec	Aug-98	Nov-99	9	207,900
10	Mainmont Inc.	Quebec	Sep-98	May-99	23	645,900
11	NAV et LOGI-CIEL Inc.	Quebec	Feb-00	Sep-00	41	1,727,100
12	Sylkon Security Inc.	Ontario	Jul-00	Sep-00	1	100,400
13	Vilcorp Inc.	Ontario	Jul-00	Oct-00	7	277,400
	Total				**380**	**11,584,997**

(r) In total, Verbeek facilitated approximately 380 transactions for a total of approximately $11.5 million involving these thirteen private companies. In most cases, the investors did not know the identity of the company because the name of the company that the investors purchased from was only disclosed after the purchase was made.

(s) The investors then obtained a loan from the scheme's promoters, representing a portion of the purchase price of the CCPC shares. Verbeek, or clerical staff under Verbeek's supervision, explained and processed the loans of at least 8 investors who had purchased shares in one of the above-noted thirteen companies. These investors were advised that they would receive a loan that represented approximately 60% to 80% of the total amount of the private company shares that they had purchased. The remaining 20% to 40% of the total was deemed to be an "administrative fee". [*]

(t) Verbeek processed the purchase of shares for the other investors without meeting with them.

(u) Investors who commenced repaying loans may still be repaying these loans. The payments were made to a company owned by Mr. Petrement.

(v) These transactions may be subject to taxation since the CCPC shares were used as collateral for the loans. The Canada Customs and Revenue Agency is now in the process of identifying and notifying the investors whose "investment" has now become subject to taxation. [*]

(w) In November of 1999, the Senior Vice-President of Compliance of Dundee visited Verbeek in his office in Nepean due to a number of concerns Dundee had with Verbeek. During the meeting, the Senior Vice-President of Compliance showed Verbeek a copy of an investor alert (the "Alert") issued by the Ontario Securities Commission. According to the Alert, "clients eager to access money tied up in Registered Plans … [should] be wary of often illegal investment schemes." Verbeek assured the Senior Vice-President of Compliance that he was not involved in any illegal loan arrangements with investors and that he was not receiving any commission for these types of transactions. [*]

The Distributions (ii) May 2000 to August 2000 – Lafferty

(x) Verbeek contacted Lafferty, Harwood and Partners Inc., a Montreal-based brokerage firm. During this period of unemployment and non-registration, Verbeek continued to process transactions involving the purchase of shares and subsequent loans to investors. Verbeek processed documents that referenced Lafferty without Lafferty's knowledge. Verbeek was never employed by Lafferty. During this period, Verbeek was waiting for his registration to be processed.

(y) From approximately August 2000 to December 2000, Verbeek was employed as a registered representative at Buckingham. During Verbeek's employment with Buckingham, Verbeek's investors signed Letters of Indemnity that continued to be addressed to Lafferty.

The Distributions (iii) December 1999 to June 2001 – The Tremblay Group

(z) Sometime in late October of 1999, Verbeek became involved with Jean Tremblay, the President of Financiere Telco Inc. Verbeek, as registrant, facilitated and processed transactions using funds located in locked-in RRSPs to purchase shares in private companies.

(aa) Advertisements were placed in a number of newspapers in Ontario to attract investors. The phone number of Consultant Financement Multiples Inc. ("CFM"), located in Montreal, was listed as a contact. CFM is owned by Tremblay.

(bb) Investors called the office of CFM in Montreal, Quebec. A telephone response form was completed. Subsequently, individuals hired by CFM were sent to meet with investors to complete the necessary documentation to process the transfers of the locked-in RRSPs. The documentation was then sent to Verbeek's office. Throughout this period, Verbeek was registered with Dundee and Buckingham. Verbeek's name appears as the "registered representative" on all documentation. Verbeek did not meet with or advise any investors.

(cc) Through Dundee and Buckingham, Verbeek facilitated the purchase of shares from the following companies:

	Company Name	Province of Incorporation	Activity		No. of Investors	Dollar Amount
			From	To		
1	Edimax Technologie Inc.	Unknown	May-00	Nov-00	48	1,171,275
2	Inter Technologie Inc.	Quebec	Dec-99	Mar-00	33	828,900
3	Intermax Technologie Inc.	Quebec	Oct-99	Feb-00	49	1,294,950
4	Via Net Tech Inc. CL-B	Quebec	Dec-99	Aug-00	49	1,151,900
5	Vox Technologie Inc.	Ontario	Apr-00	Oct-00	47	1,080,510
	Total				**226**	**5,527,535**

(dd) In total, Verbeek facilitated approximately 226 transactions for a total of approximately $5.5 million involving these five private Canadian companies.

(ee) Through CFM, the investors obtained a loan representing approximately 60% to 80% of the value of the share proceeds. The remaining 20% to 40% was charged as an "administrative fee". Late in 2000, when some investors did not receive their loans, they contacted Verbeek.

(ff) These transactions may be subject to taxation since the CCPC shares were used as collateral for the loans. The Canada Customs and Revenue Agency is now in the process of identifying and notifying the investors whose "investment" has now become subject to taxation.

(gg) All of the complaints that were received were from investors who had purchased shares from the Tremblay Group. [*]

Verbeek's Registration – Conditions

(hh) On May 1, 2000, Verbeek resigned from Dundee Securities. [*]

(ii) Subsequent to Verbeek's resignation, Dundee received a number of complaints, causing Dundee to re-submit the Uniform Termination Notice. As a result, the Investment Dealers Association sent Verbeek a warning letter and various conditions were attached to Verbeek's registration.

FACTS IN DISPUTE

[11] Because in oral testimony Verbeek disagreed with, or claimed he had no knowledge of certain facts in the Agreed Statement of Facts he had signed, Staff tendered a significant amount of documentary evidence and called seven witnesses. Verbeek testified on his own behalf and tendered several documents into evidence. This additional evidence is addressed below in the analysis of each allegation.

[12] In general terms, Verbeek disagreed with Staff's characterization of:

(a) his role in the arrangements. He submits that his role was not that of an adviser or registered representative in the arrangements. He was simply an "administrative conduit", moving documents between the Petrement or Tremblay Groups, and the brokerage or trustee involved in the purchase of CCPC shares;

(b) compensation that he allegedly received for participating in the arrangement. He claims that he received no compensation for acting as an administrative conduit in the arrangements;

(c) his knowledge of the loans involved. He submits that he was not involved in the loan transaction between the CCPC and the individual RRSP holder, and he played no role in devising the structure of the loans.

(d) his knowledge of advertisements for loans as they relate to the arrangements operated by the Tremblay Group;

(e) his knowledge of the tax consequences of the arrangements; and

(f) the supervisory role of the brokerage firms that employed him and his reliance on others involved in the arrangements.

SUBMISSIONS AND ANALYSIS

1. Participation in an illegal distribution

[13] Staff's first allegation is that Verbeek participated in illegal distributions of securities, contrary to section 53(1) of the Securities Act, by trading securities for which there was no exemption available.

Staff's Submissions

[14] Staff submits that Verbeek traded in shares sold to the public through advertisements, where no exemptions existed at that time for these individuals to purchase the securities. He opened a NCAF for every client and processed the trades. He was the "registered representative" in the CCPC transactions and his conduct was consistent with the definition of "trade" as defined in section 1(1) of the Act.

[15] Staff submits there is no evidence to the contrary, and that the trades in question were distributions because the securities that Verbeek traded in had not been previously issued.

[16] Verbeek cannot rely on the exemption for private companies contained in section 73(1)(a) and paragraph 10 of section 35(2) of the Act, because such an exemption would only be available in the case of "securities of a private company where they are not offered for sale to the public." Staff submits that Verbeek traded in shares offered to the public, solicited through advertisements, where no exemptions existed at the time for these individuals to purchase the securities.

[17] Staff submits that Verbeek was aware at all times that the public was solicited through advertisements. From approximately August of 1998 to November of 2000, he participated in arrangements whereby advertisements were placed in newspapers throughout Ontario and other provinces which offered "fast financial assistance" to persons wishing access to funds in their locked-in RRSPs. Verbeek admitted that some of the purchasers of shares of the Petrement Group of Companies were originally solicited via the advertisements and also admitted to placing one such ad himself. Staff argues that it is inconceivable Verbeek did not know that advertisements were placed with respect to the arrangements involving the Tremblay Group, because these arrangements were the same as those of the Petrement Group and, during a certain period, he participated in arrangements concurrently with both Groups.

[18] Staff's submits that Verbeek has failed to meet the burden of proof that an exemption existed. Verbeek did not explain why he, as a registered representative, participated in a transaction without a preliminary prospectus or prospectus having been filed.

Verbeek's Submissions

1(a) No "trade" was involved

[19] Verbeek submits that the CCPC share transaction was not a "trade" as defined by the Act. Therefore he could not have participated in an illegal distribution.

[20] All of the CCPC transactions with the Petrement Group and Tremblay Group involved the purchase of shares from a CCPC issuer for the purpose of giving collateral for a loan or debt made in good faith, and the Act specifically excludes such a transaction from the definition of a "trade":

> "trade" or "trading" includes,
>
> > (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, *but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,* [emphasis added]

[21] Verbeek submits that Staff's allegations are groundless as he could not have acted as a registered sales person or dealer because both of these roles, as they are defined in the Act, involve making trades. Verbeek submits the trade was in the private transaction between the holder and the CCPC. It would be impossible to evaluate the suitability, merits and risk of the investment, because there was no "investment" here: the shares were purchased solely for the purpose of giving collateral for a loan. The only risk for the holder would be that the Petrement or Tremblay Groups would fail to grant the loan.

1(b) Argument in the Alternative – Verbeek's Role in the Arrangements

[22] Verbeek argues that he did not participate in the purchase and sale of the CCPC shares, but acted solely as an administrative conduit between the CCPC and the trustee. He says that the opening of the new self-directed locked-in RRSP and the transfer of assets from the existing locked-in RRSP to the new account do not constitute participation in the CCPC share transaction or in the loan. He argues that until the transfer (and liquidation of any non-cash assets), the holder had many investment options available within the new locked-in RRSP, such as investment in conventional publicly traded stocks or mutual funds. The holder was free to back out of the CCPC share purchase and the loan transactions at this time.

[23] He submits that the CCPC share purchase was a private transaction. The only person who dealt with the holder was a salesperson hired by the Petrement or Tremblay Groups, who provided a Letter of Direction to Purchase the CCPC shares to the holder for signature. This letter indicated the number of CCPC shares, the purchase price per share, and the total purchase price. The letter directed the trustee to issue a cheque for the full price to the CCPC from funds in the holder's new account, and to provide the cheque to Verbeek's office.

[24] The Letter of Direction to Purchase was part of a complete "CCPC package" of documents provided by the salesperson and signed by the holder at the time of their meeting. The CCPC package consisted of: the Letter of Direction to Purchase; letters of indemnity to Verbeek and the dealer/trust company; letters from the CCPC, including declarations from accountants stating the fair market value of the shares and that the CCPC was a qualified investment for RRSP purposes; and a share certificate in the name of the dealer/trust company in trust for the holder.

[25] Verbeek's office took delivery of and forwarded the CCPC package to the trust company. When he was registered, this was done via the compliance department of the dealer. When he was not registered, he sent the CCPC package directly to the independent trust company. The trustee processed the CCPC Package, executed the CCPC share purchase for the holder's account, issued a cheque from the holder's account, and sent it to Verbeek's office. A representative of the Petrement or Tremblay Group picked up the cheque or Verbeek mailed it to the CCPC.

[26] Verbeek maintains that no part of the CCPC package required his signature, nor did any document direct him to perform any action with respect to the trade. The trustee required no further information from or participation by Verbeek in order to process and execute the purchase of the CCPC shares for the holder's self-directed locked-in RRSP account.

[27] Verbeek argues that the trustee was responsible for opening a registered plan account as a locked-in RRSP under the *Income Tax Act*. The holder was solely responsible for determining that each asset acquired by the self-directed locked-in RRSP was a qualified investment, and that they were aware of the tax consequences with respect to non-qualified investments therein.

[28] Verbeek submits that he did not meet or advise clients with respect to the CCPC transaction; they were unsolicited and treated as such.

[29] Verbeek denies he was compensated for his role as an administrative conduit in the arrangements. Any compensation he received related to transactions that he conducted on behalf of the holders outside the CCPC share purchase and the CCPC loan. In cases where the holder's locked-in RRSP was transferred to the brokerage or independent trustee prior to being liquidated (transferred "in kind"), Verbeek acted as the holder's registered representative and sold the shares for cash within the locked-in RRSP. Verbeek submits that he did not direct the holders to transfer or liquidate their locked-in RRSPs; rather the holders directed their existing institutions to transfer the assets of their existing plans to the new self-directed locked-in RRSP at the trustee. In many other cases, a small amount of cash remained in the holder's new locked-in RRSP after the completion of the arrangement. Verbeek would then act as the holder's registered representative for the purchase of investments such as mutual funds or pre-authorized chequing plans. In both types of cases, Verbeek says he was compensated normally.

Analysis

[30] With respect to staff's first allegation, we must determine whether (1) a trade was involved that (2) constituted a distribution for which (3) no preliminary prospectus or prospectus was filed, and there was no available exemption from the prospectus requirement. If all elements are present, we must determine whether Verbeek traded in the securities in question.

[31] The relevant statutory provisions are as follows:

[32] Section 53(1) of the Act provides:

> No person or company shall *trade* in a security on his, her or its own account or on behalf of any other person or company where such trade would be a *distribution* of such security, unless a preliminary *prospectus* and a prospectus have been filed and receipts therefore obtained from the Director. [emphasis added]

[33] The term "trade" is defined in section 1(1) of the Act:

> "trade" or "trading" includes,
>
> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,

(c) any receipt by a registrant of an order to buy or sell a security,

(d) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of "distribution" for the purpose of giving collateral for a debt made in good faith, and

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[34] The term "distribution" is defined in section 1(1) of the Act to mean "a trade in securities of an issuer that have not been previously issued".

[35] Section 73(1)(a) together paragraph 10 of section 35(2) of the Act set out an exemption to the prospectus requirement of section 53. Section 73(1) provides:

73(1) Sections 53 and 62 do not apply to a distribution of securities,

(a) referred to in subsection 35(2), excepting paragraphs 14 and 15 thereof;

[36] The relevant portion of section 35(2) reads:

35(2) Subject to the regulations, registration is not required to trade in the following securities:

…

10. Securities of a private company where they are not offered for sale to the public.

Trade, distribution, and prospectus requirement

[37] Verbeek argues that the CCPC share transactions were solely purchases and, therefore, under paragraph (a) of the definition of "trade", not a trade. We disagree. Paragraphs (h) and (o) of the Agreed Statement of Facts, among other evidence, establish that Verbeek was acting on behalf of the CCPC promoters, in addition to acting for holders who responded to advertisements.

[38] The exclusions in paragraph (a) of the definition of a trade shield a purchaser or a debtor, but not a seller or person disposing of a security to the purchaser in a transaction. The act of purchasing a security is not, from the perspective of the purchaser, a "trade". Similarly, pledging shares as collateral for a loan is also not a trade from the perspective of a debtor who does have a controlling interest in the issuer. The exclusions in this paragraph do not apply to sellers, dealers, or persons acting on their behalf in a sale or disposition, whose conduct may be caught by paragraphs (a) to (e) of the definition. In conclusion, the same transaction may constitute a "trade" as it relates to the seller, dealer,

or other person acting on their behalf, even if it may be not be a "trade" as it relates to the buyer or debtor.

[39] It is because of Verbeek's role on behalf of the sellers/promoters in the arrangements that he was trading in securities in the course of a distributions.

[40] In the circumstances of this case, we find that the CCPC transaction was a "trade" within the meaning of the Act. It was a sale of CCPC shares by the CCPC for cash from the purchaser's self-directed locked-in RRSP account at Fortune, Dundee, Buckingham or an independent trustee, depending on Verbeek's employment situation. We need not consider whether the loan transaction itself constituted a "trade" within the meaning of the Act.

[41] The CCPC share transactions constituted "distributions" of the shares in the respective CCPCs for each arrangement. We heard no evidence or submissions that the shares in the CCPCs had been previously issued.

[42] There was no evidence that a preliminary prospectus or prospectus was filed with respect to any of the arrangements or that any particular exemption was relied upon. Any trade would be contrary to section 53(1) of the Act in the absence of a prospectus exemption.

[43] An exemption is provided in sections 73(1)(a) and 35(2)(10) of the Act. When read together, the sections state that no prospectus is required for a distribution of securities of a private company where those securities are not offered for sale to the public. This prospectus exemption is not applicable to the circumstances of the arrangements, because the shares in the CCPCs were offered for sale to the public.

[44] The holders became involved in the arrangements by responding to newspapers advertisements.

[45] Elizabeth Williams, a holder who participated in an arrangement through the Tremblay Group, testified that she responded to a newspaper advertisement. Following a review of the documentary evidence produced by Staff we note that many holders who corresponded with Staff about their participation in the arrangements stated that they became aware of the arrangement through newspaper advertisements.

[46] Jean-Paul Belanger, an agent for Mr. Petrement, testified that he placed newspaper advertisements for the loan arrangements and that Verbeek's office processed the paperwork for the arrangements. Jennifer Carbino, Verbeek's administrative assistant, testified that she knew that Petrement, Tremblay, and Belanger had placed such ads. She testified that in May 1999, at Verbeek's direction, she placed an order with the Ottawa Sun for an advertisement promoting a similar loan arrangement. The advertisement read:

> **6% LOW RATE LOAN PROGRAM** Need Financial Help? If You Own an RRSP or LIRA, We Can Help. Fast! No Credit Check. **Jennifer**

Verbeek testified that he had ordered the May 1999 advertisement and one other in the Ottawa Sun.

[47] The advertisements offered some variant of the phrase "fast cash" or loan for locked-in RRSP holders but did not directly refer to CCPCs.

[48] Verbeek argues in his written submissions that the holders were ultimately interested in the loan, not the CCPC transaction; however, the CCPC transaction and loan were inextricably linked. The holder was obliged to purchase CCPC shares before being granted a loan, and the loan amount was tied to the purchase price of the CCPC shares.

[49] We find, therefore, that the newspaper advertisements offering loans effectively offered the shares of the CCPCs to the public. Accordingly, the prospectus exemption under sections 73(1)(a) and 35(2)(10) is not available.

[50] Verbeek has not persuaded us that any other prospectus exemptions were available.

Verbeek's Role in the Arrangements

[51] There was no dispute about the mechanics of the arrangements, the contents of the CCPC package, or about how Verbeek's office received or transferred the CCPC package.

[52] While Verbeek was registered with Fortune and Dundee, an NCAF was completed for each holder as part of the package of documents for the arrangement. We reviewed a number of such document packages submitted into evidence and have also reviewed Ms. Carbino's evidence about the process. She identified some of the handwriting of the NCAFs as hers and the investment adviser's signature on them as Verbeek's. While Verbeek was not registered, no NCAFs were completed at the time of the CCPC share purchase transaction.

[53] Verbeek acted in a dual role: on behalf of the CCPC promoters involved in selling the CCPC shares, and on behalf of holders as their representative (registered representative in some cases).

[54] Verbeek's participation in the CCPC share purchase transactions also falls within paragraph (c) of the definition of "trade" of section 1(1) of the Act: "any receipt by a registrant of an order to buy or sell a security". The CCPC package of documents received by Verbeek contained a Letter of Direction to purchase CCPC shares. It was addressed to either Fortune or Dundee while Verbeek was registered with those firms. The letter was from a client, a person who had signed an NCAF that Verbeek also signed as the investment adviser. We find the letter of indemnity irrelevant to Verbeek's role in the trade in these circumstances.

[55] While Verbeek's involvement in the arrangements varied, based on whether he was registered or whether the group he dealt with was the Petrement or Tremblay Group, he was much more than a mere conduit as he suggests. He was a registrant who also

provided administrative services in the course of an arrangement that required the holder (who had completed a NCAF) to purchase a security in order to obtain a loan.

[56] Verbeek's submissions treat the sequence of steps in the arrangement as discrete sub-transactions. His submissions compartmentalize his role and responsibility in the steps. We do not accept that view. It is an artificial division that does not reflect the reality of his involvement.

[57] In any case, the Act defines a "trade" broadly and inclusively. It includes, in paragraph (e), "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing." It includes Verbeek's role in the arrangements.

[58] For the reasons discussed, we find that Verbeek participated in an illegal distribution of the CCPC shares, contrary to section 53(1) of the Act.

2: Failure to Ascertain Suitability of the Investments

[59] Staff's second allegation is that Verbeek failed to ascertain the general investment needs and objectives of his clients, the holders, and the suitability of the purchases or sales of the securities for his clients, and thus acted contrary to the public interest and contrary to section 1.5 of Commission Rule 31-505.

Staff's Submissions

[60] Staff submits that Verbeek has admitted all of the facts necessary to establish this breach of Rule 31-505 in the Agreed Statement of Facts. He admitted he processed over 670 transactions but he only met with 8 investors involved with the Petrement Group and did not meet with any investors involved with the Tremblay Group. Although he did not meet with the vast majority of clients that were involved in the arrangement, nonetheless he acted as their registered representative and signed New Client Application Forms without knowing the circumstances of the particular client. Most of the clients did not have good investment knowledge and did not fit the high risk profile ascribed to them by Verbeek in the NCAFs.

[61] Verbeek opened a NCAF for every client and processed the trades. Staff submits he was indeed the "registered representative" in the transactions and he had an obligation to carry out his duties as a registered representative in these transactions.

Verbeek's Submissions

[62] Verbeek argues that no registered representative was required to complete a CCPC transaction as it was an exempt transaction or administrative procedure carried out by the head offices of the registered dealers or by the trustees. He had no input in the transaction as a registered representative, and these parties received the administrative fee for transferring the locked-in RRSP accounts prior to the CCPC transaction.

[63] Verbeek submits that the CCPC package was all that was required for the trustee to process the transaction and effect the purchase of the shares of the CCPC. Verbeek claims that he was able to act as an administrative conduit even while unregistered. The trust companies did not require the participation of a registered representative. They carried out similar CCPC share purchases through Guy Petrement, without Verbeek's involvement, before and after the material time.

[64] Verbeek submits that the NCAF was a mere formality to help open a registered account and to perform "trades" in that account (although, he submits again, the CCPC transaction was not a trade as defined in the Act). In the periods when he was registered, NCAFs were completed as directed by the dealers through which he was registered.

[65] Verbeek argues that his status as a branch manager during the material time is not relevant, because every CCPC transaction he was involved with was directed, supervised, and cleared by responsible parties. The transactions were overseen by the compliance departments of the brokerages through which he was registered, and they dictated the required investor profile and demanded a letter of indemnity addressed to Verbeek and the dealer. The CCPC transaction was also overseen by the compliance departments of the related or independent trust companies. They required certificates from accountants and lawyers stating the value of the CCPC shares and that these were qualified investments for a locked-in RRSP under the *Income Tax Act*. Such letters were included in CCPC package.

[66] Verbeek submits that the compliance departments of the dealers instructed him on completing a NCAF in the proper manner. Dundee required that holders fit an investment profile before it would allow CCPC transactions to be processed through it.

[67] Between May and September 2000, while he was not registered, Verbeek was involved in about 160 CCPC arrangements of the same structure as those that he participated in while registered at Fortune and Dundee. No NCAFs were completed during this time because none were required by a registrant. When Verbeek became registered through Buckingham, he asked clients to sign NCAFs, and many did do so. He requested them to do so, he claims, because he wanted to perform future transactions for these clients as their registered representative; however, Verbeek emphasized that he was not their registered representative during the CCPC transaction. Verbeek also notes that the clients also signed a letter of indemnity addressed to him even in the period when he was not registered.

Analysis

[68] Verbeek's submissions and claims confirm that he was acting in a dual role, both for the CCPC promoters and for the holders, not that he was a conduit not acting for anyone.

[69] Registration is required to trade in securities. It is an essential element of the regulatory framework established to achieve the purposes of the Act. It serves as a gate-keeping mechanism which ensures that only properly qualified and suitable individuals

are permitted to be registrants. The public is entitled to rely on the fact that anyone who acts as an adviser has satisfied the necessary proficiency and character requirements. See *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584.

[70] We have found that Verbeek's participation in some trading and distributing of CCPC shares was as a registered representative.

[71] The cornerstone of a registrant's obligations is knowledge of the client's investment objectives and the suitability of investments for the client. These are set out in section 1.5 of Ontario Securities Commission Rule 31-505, which states:

> **1.5 Know your Client and Suitability**
>
> 1) A person or company that is registered as a dealer or adviser and an individual that is registered as a salesperson, officer or partner of a registered dealer or as an officer or partner of a registered adviser shall make such enquiries about each client of that registrant as
>
> > (b) subject to section 1.7, are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to ascertain the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client.

[72] The NCAFs used by the registered dealers in this matter allow the registrant to ascertain and record the client's investment objectives, risk tolerance, and investment knowledge. The suitability of the proposed purchase or sale of a security can then be considered in relation to these factors.

[73] In a few instances, NCAFs were completed in Verbeek's office. Ms. Carbino testified that she and Verbeek met personally with some holders and that some of them completed forms initially for the share purchase and transfer. Ms. Carbino met with 50 or 60 people and Verbeek himself met directly with 25 to 30 people.

[74] We are satisfied that Verbeek and Ms. Carbino did not meet or speak to the vast majority of the holders in the 670 arrangements in which Verbeek was involved. Ms. Carbino testified that Verbeek's office provided a template or precedent NCAF form to the Petrement and Tremblay Groups for their salespeople to complete in meetings with holders. The precedent NCAF highlighted the information to be filled in by the holder. Verbeek's office provided a hundred blank forms at a time in advance to the Petrement or Tremblay Groups.

[75] Ms. Carbino testified that Verbeek showed her how to fill out the NCAFs so that they could be processed by the dealers' head office. The dealers required a client having investment objectives of 100% short-term capital appreciation/speculative trading, a high risk tolerance, and good investment knowledge.

[76] Mrs. Williams testified she signed the NCAF, but that it was completed by the salesperson who visited her. Her NCAF fits the above profile: Investment Objectives – 100% short-term capital appreciation/speculative trading; Client risk tolerance – 100% high; Investment knowledge – good. She testified she did not have good investment knowledge. She did not know the meaning of the terms investment objectives or risk tolerance, and these terms were not explained to her. She testified that she needed the loan to because she was not able to make mortgage payments on her home. Clearly Mrs. Williams did not fit the client profile ascribed to her.

[77] We find that Verbeek did not speak to Mrs. Williams about her NCAF. He signed Mrs. Williams' NCAF, after the fact, as "I.A." ["investment adviser"], just as he did for every other NCAF before us. In the case of Mrs. Williams, Verbeek violated section 1.5 of Rule 31-505. He failed to make enquiries about her investment needs and objectives, and the suitability of the CCPC transaction to her needs and risk tolerance.

[78] Verbeek submitted that the dealer's compliance department dictated the client profile that would be acceptable for the CCPC transaction. He went through an NCAF in the evidence as an example. A holder's NCAF with Dundee from February 2000 was completed as follows: Client Investment Objectives – 10% income, 10% long-term capital appreciation, and 80% short-term capital appreciation/speculative trading; Client risk tolerance – 10% medium, 90% high; Investment knowledge – limited. Dundee would not process this application and returned it to Verbeek's office. The NCAF was amended to the following profile: Client Investment Objectives – 100% short-term capital appreciation/speculative trading; Client risk tolerance – 100% high; Investment knowledge – good. All changes were initialled by the holder; the NCAF was accepted and the CCPC transaction was processed through Dundee. Verbeek states that the Petrement and Tremblay Groups and their clients were told that the holders would have to fit that investor profile otherwise their forms would be sent back and the arrangement would be delayed.

[79] Instead of making enquiries to ensure that the high-risk CCPC share purchase suited the client's investment profile, Verbeek altered the client's investment profile to suit the high-risk investment. This was the antithesis of his obligations under Rule 31-505.

[80] Verbeek could not fulfil his obligations as registered representative under Rule 31-505 or as branch manager by directing the Petrement and Tremblay Groups without ensuring that holders had the proper investment profile to participate in the CCPC transaction. We heard no evidence that he made enquiries of any holders. Our review of the NCAFs indicates that most of the holders earned low incomes and had few if any investments outside of their locked-in RRSP or RRSP. Verbeek knew or ought to have known that client profiles listed in the NCAFs did not match the reality of the holders' profiles. He ought to at least have made the enquiries required of him under Rule 31-505.

[81] Verbeek's clients did not come to him asking to participate in the risky transaction. He was an integral part of an arrangement that funnelled clients into the CCPC transaction as a condition of the loan process. As Verbeek has stated, the clients

were interested primarily in obtaining loans. Verbeek allowed the Petrement and Tremblay Groups to use his status and legitimize their scheme by passing it through registered dealers.

[82] We do not accept Verbeek's arguments that he relied on the compliance departments of the registered dealers or of the trust companies. His breach of his obligations under Rule 31-505 makes such reliance unreasonable.

[83] In the circumstances of this case, where the client's investment profile was altered or disregarded to effect the transaction, we do not accept that the letter of indemnity discharged Verbeek's obligations under Rule 31-505.

[84] It is significant that he was a branch manager during this time. The branch manager holds a crucial role in compliance in the securities industry. In *Re Mills* (2000), 23 O.S.C.B. 6623, the Investment Dealer's Association considered this point and held as follows:

> Branch managers have an important role under the self-regulatory system in our securities markets. The obligations requiring supervision of retail client accounts are intended to ensure appropriate handling of client accounts for the benefit of both the client and the firm, as recognized in Burns Fry's Manual. The performance of these obligations takes place in a wide variety of circumstances, involving many clients and many accounts, each having its own characteristics and objectives. It is for this reason that the Policy establishes only minimum standards and expressly states that in some situations a higher standard may be required. That standard is reasonableness, which is frequently determined in hindsight and is invariably fact-driven in its application to the specific relationships and circumstances under consideration.

[85] Registration is an essential element of the regulatory framework established to achieve the purposes of the Act. In determining whether a course of conduct is contrary to the public interest, we must look to these same purposes of the Act: (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets. Verbeek's conduct as a registrant and a branch manager in these circumstances constitutes not only a breach of section 1.5 of Rule 31-505, but is such that it is also contrary to the public interest.

3. Verbeek's Participation in the Scheme Being Contrary to the Public Interest

[86] Staff's third allegation is that Verbeek acted contrary to the public interest, by participating in a scheme that involved the subsequent loan to the investor of approximately 65% of the CCPC share purchase price and an administration fee of 35% of the loan, requiring repayment of 100% of the loan with interest, and that he took advantage of people who were in dire straits, in a manner that resulted in a financial benefit to himself. This conduct is not becoming of a registrant.

Staff's Submissions

[87] Staff submits that, in the Agreed Statement of Facts, Verbeek admits he knew that the investors who participated in this scheme were low income earners who became involved in these transactions because they were in financial difficulty and needed to access the funds in their locked-in RRSP.

[88] Verbeek was not acting merely as an administrative agent, as he claimed, but was dealing with the public, handled the public's funds, and received orders to buy and sell securities.

[89] Between March 2000 and November 2000, Verbeek received approximately two million dollars from companies controlled by Guy Petrement and Jean Tremblay. This money flowed through foreign exchange accounts related to Verbeek at Jameson International ("Jameson") before being deposited in the account of Bryden Investment Corp. ("Bryden") in the Turks and Caicos Islands or other investment vehicles directed by Verbeek. Staff maintains that Bryden was Verbeek's company or that, at the very least, Verbeek was involved with Bryden. This evidence shows that Verbeek received a payment from the Tremblay Group for his role in the arrangements which is clearly a commission for his efforts.

Verbeek's Submissions

[90] With respect to the Petrement Group, Verbeek acknowledges that he or his assistant may have explained the loan to clients referred to him, but these clients were ultimately referred back to the Petrement Group if they intended to obtain a loan. He claims he was not involved in arranging, issuing or administering the loans, or deciding the percentage of funds charged as an administrative fee.

[91] Verbeek also relied on the fact that the compliance departments of the dealers and trustees processed the CCPC transactions with full knowledge that a loan was involved. He notes that many of the share certificates in the CCPC package examined by these departments contained statements that the corporation has a "lien on the shares represented by this certificate for any debt of the shareholder to the Corporation".

[92] Verbeek further relied on the representations of the Petrement or Tremblay Groups, and their respective professional advisers, that the arrangements were legitimate.

[93] Verbeek denies that his participation in the arrangement was for his financial benefit, and denies he was compensated. He submits that the evidence adduced was insufficient to prove he was compensated for his administrative role in the arrangements. He characterizes the evidence of his direct compensation by the Tremblay Group as unreliable and submits it should be disregarded in favour of a letter from Jean Tremblay (which predates Tremblay's examination under oath) which states, among other things, that Verbeek did not receive compensation for his role in the arrangements. Verbeek says that any payments received by Bryden from the Petrement or Tremblay Groups were private investments in Bryden, unrelated to his role in the arrangements.

Analysis

(a) Verbeek's knowledge of loans

[94] We find that Verbeek had knowledge at the material time that loans were involved in the arrangements and of the basic structure of the loans.

[95] Ms. Carbino testified that she or Verbeek explained the loans to holders who visited Verbeek's office. She identified a document in her handwriting that was used to explain the loans to the holders, and she testified that Verbeek taught her how to explain the process and the numbers to use in the example. Verbeek admits that he explained the loan process to several holders involved in arrangements with the Petrement Group, but denies that he had knowledge that loans were involved in arrangements involving the Tremblay Group, as he understood the Tremblay Group arrangements involved dividends. He claims he terminated his relationship with the Tremblay Group following complaints from holders that they had not received the promised loans from the Tremblay Group.

[96] We do not find Verbeek's evidence and submissions to be credible on this point. His involvement in arrangements with the Tremblay Group overlapped with those of the Petrement Group over a period of many months. He played a similar role in the arrangements of both groups. Prior to working with the Tremblay Group in December 1999, Verbeek knew that these arrangements were based on loans: he knew of the form of arrangements from his first involvement with Guy Petrement for a Mr. O'Connor in early 1998, and he placed at least one advertisement for loans in May 1999 (although he claims to have received no responses). We heard no other evidence to support Verbeek's contention the Tremblay Group's arrangements involved dividends.

[97] Mrs. Williams, who participated in an arrangement with the Tremblay Group, testified that the Tremblay Group salesperson referred her to Verbeek when she asked about the status of her loan and that she then spoke to Verbeek. Although Verbeek denied speaking to her, her testimony was not challenged successfully and we accept her evidence.

(b) Verbeek's Knowledge of the Holders' Circumstances

[98] We find that Verbeek was aware at the material time that the holders were unsophisticated investors who earned a low income and who required immediate access to cash, and he has admitted this in the Agreed Statement of Facts.

(c) Compensation

[99] We find that Verbeek received direct and indirect compensation for his participation in the arrangements.

[100] We heard conflicting and ambiguous evidence on this issue. Verbeek testified that he was not compensated for his participation in the arrangements. Jennifer Carbino testified that that the commissions he earned were based on mutual fund sales and a

percentage of pre-authorized chequing plans sold to the holders, but was not aware of compensation connected to the CCPC transactions. Jean Paul Belanger testified that he received a commission of four to five percent from Guy Petrement, but he did not know whether Verbeek earned any commissions.

[101] Staff presented evidence of Verbeek's direct compensation by the Tremblay Group. We were shown a series of documents indicating that Verbeek received a payment equal to 4% of the CCPC share purchase price.

[102] Rima Pilipavicius, senior forensic accountant in the enforcement branch of the Commission ("Enforcement"), testified that the Quebec Securities Commission ("CVMQ") investigated Financiere Telco Inc. and CFM, the companies owned by Jean Tremblay that provided the loans in the arrangements involving the Tremblay Group. In May 2002, the CVMQ included Enforcement in its investigation. It provided Ms. Pilipavicius with documents that it had seized from the offices of the two companies. Included were documents titled "Honoraires & Remboursements", or "Fees and Repayments" (the "Honoraires documents"), which provided some details on amounts transferred from holder's RSP to purchase CCPC shares, related loan amount, fees charged, loan interest and principal repayments and a section on commissions.

[103] Ms. Pilipavicius reviewed the Honoraires documents during her testimony. In one example, the holder purchased 1477 shares in Edimax Technolgie, a Tremblay Group CCPC, for a total purchase price of $36,925. For this holder the Honoraries document showed the following:

(a) The *loan amount* was shown as 80% of $36,925 (the transferred amount), or $29,540.

(b) Fees of 12% of the $36,925 ($4,431), 3% of the $36,925 ($1107.75), and $500 (for a total of $6,038.75) were deducted from the loan amount by CFM and another company.

(c) The total amount of the *cash* received by the holder was $23,501.25, or about 64% of the original amount transferred by the holder.

(d) A repayment schedule followed. The investor's monthly payments were derived from the initial base loan amount of $29,540.

i. Interest was calculated at an annual rate of 5%, with interest payable monthly ($123.08). This payment amount was fixed at the calculation level of the first payment, and was not adjusted for the reduction in the loan balance due to the monthly principal repayments;

ii. The principal was payable over 7 years (84 months) on a flat monthly basis in the amount of $351.67;

iii. The total amount repayable by the holder to CFM over the 7 years was shown as $39,879, paid on a monthly basis at $474.75 per month.

(e) These amounts were in addition to the initial 20% deducted of $6,038.75.

(f) A schedule of commissions, calculated against the total amount transferred of $36,925.00 was placed below the loan amount, fee, interest and repayment schedule. A commission of 3% was paid to the salesperson, 0.25% to the president of the CCPC, 1% to the Danielle Tremblay, and 4% to "Verbeek".

[104] The effective interest paid by the holders would be significantly higher than the 5% annual rate shown in the calculation once we include the initial fees deducted and adjust the interest calculations to reflect the diminishing loan balance resulting from the monthly principal repayments.

[105] Staff submitted approximately 110 sheets of Honoraires documents. In 41 of them, "Verbeek" is explicitly shown receiving a 4% commission. Other sheets do not show a commission payable to "Verbeek", but to "Courtier" ("broker"). Still others list "Dundee" instead of "Verbeek" or "Courtier". Holders whose Honoraires sheets list commissions payable to "Dundee" or "Courtier" had all completed NCAFs signed by Verbeek. Staff submits that Verbeek received commission in all of these cases.

[106] Ms. Pilipavicius testified that she participated in an investigation interview of Jean Tremblay with the CVMQ on June 22, 2002. The transcript of this interview (the "Tremblay transcript") was tendered into evidence in this hearing, and Ms. Pilipavicius was examined on it.

[107] We have reviewed the Tremblay transcript and the testimony relating to it. During the interview, Ms. Pilipavicius showed Mr. Tremblay one of the Honoraires document. Reading from it, Mr. Tremblay identified Verbeek as having received a commission of four percent. He said that the percentages were set beforehand, and that either he himself decided on the percentages "or it was a group decision." He said that Verbeek acted as broker for the company, as others had before him. Verbeek participated in hundreds of transactions for the company in the year 2000 and would have earned a commission of 4% on total sales of approximately $10,000,000. He said that he created about 10 to 15 CCPCs, each of which had 49 clients. The money earned by the individual CCPCs in the Tremblay Group was invested in Telco.

[108] Verbeek argues that we should give the Honoraires documents no weight. The sheets are not dated. There is no indication about who prepared them or what information was used in their preparation. The set of sheets is also incomplete, in that one of the CCPCs in the Tremblay Group has no corresponding sheets. He accuses Staff of using false information in compiling summaries from the Honoraires documents.

[109] Verbeek also argues that we should give no weight to the transcript, other than the parts of it that would benefit his defence. He indicates several comments made by Mr.

Tremblay about commission payments that are contradictory or vague. Mr. Tremblay could not explain one Honoraires document that listed Dundee as receiving a commission. Mr. Tremblay also contradicted himself by saying that some commissions to Verbeek were not paid. Verbeek argues that the statements in the transcript contradict the evidence of Ms. Carbino, that Verbeek received no commissions other than commissions from pre-authorized chequing plans from the remaining funds in the holders' self-directed locked-in RRSPs following the CCPC transaction.

[110] Verbeek argues that the transcript should not be given any weight because he had no opportunity to cross-examine Mr. Tremblay and there is a risk of prejudice to him if we were to rely on the transcript. He argues that we should rely on a letter from Jean Tremblay that he entered into evidence (the "Tremblay letter") instead of the transcript. The Tremblay letter is dated January 9, 2001 (before the evidence given under oath by Tremblay), is signed, is marked "Without Prejudice", and is addressed to "Brian Verbeek and Whom Else it May Concern". The letter states *inter alia* that Verbeek did not receive commissions.

[111] The Tremblay letter, the Honoraires documents, and the Tremblay transcript were admitted into evidence pursuant to section 15 of the SPPA, along with the other documentary evidence tendered by Staff and Verbeek. We accord these documents appropriate weight based on their reliability in the absence of cross examination and Verbeek's submissions. The Honoraires documents, which were seized from Tremblay's business premises by the CVMQ, are business records of the Tremblay Group arrangements which find generally reliable. Where there are contradictions in the contents of the Tremblay letter and the Tremblay transcript, we give greater weight to the Tremblay transcript, because it was made under conditions that give us greater assurances of its reliability.

[112] Having considered the evidence and submissions, we find that Verbeek received commissions for his role in the Tremblay Group arrangements. Similar direct evidence or submissions with respect to the Petrement Group of arrangements was not introduced.

[113] Staff did lead substantial evidence of payments made by several Petrement Group companies that were transferred through Canadian foreign exchange accounts related to Verbeek and, ultimately, to Bryden in the Turks and Caicos Islands. Scott Boyle, senior investigator with Enforcement, testified about his analysis of banking records, wire transfers, and other documents which were presented to us. Joy Stevenson, the Chief Financial Officer of Jameson International Foreign Exchange ("Jameson"), testified about the accounts related to Verbeek at Jameson and the transactions that related to those accounts. Ms. Carbino testified that she signed letters of direction, at the instruction of Verbeek, directing the flow of money into and out of those accounts and ultimately into the account of Bryden. She testified that Verbeek told her Bryden was established offshore because he was going through a divorce and he wanted to hide money from his wife.

[114] We also heard the evidence of Michael Smythe, CEO of a company called Impact Revenue Inc. Smythe testified that Verbeek agreed to purchase a 10% equity share in the

company for US$500,000. Smythe opened an account at Jameson and received a wire transfer from Bryden as part payment for the shares. He also received from Verbeek part payment in the form of bank drafts from Petrement Group companies and cheques from Financiere-Telco Inc. of the Tremblay Group.

[115] We note that:

(a) the Petrement Group companies that purchased the bank drafts were among those listed in the Agreed Statement of Facts;

(b) Tremblay Group accounting records seized by the CVMQ and presented to us through Mr. Boyle recorded the payments made to Michael Smythe; and

(c) in the Tremblay transcript, Tremblay said Verbeek asked that payments to him be made in the name the president of another company because Verbeek did not want the cheques to bear his name.

[116] Mr. Smythe testified that, upon receiving payment in full for the 10% equity share, he delivered the share certificate in the name of Bryden to Verbeek's office in Nepean. He said that Verbeek was his only point of contact with Bryden and that he knew nothing more about Bryden or its shareholders.

[117] We accept Staff's extensive and detailed evidence with respect to the Jameson accounts, the payments of almost two million dollars made by Petrement Group companies that were transferred through them to the Bryden account, and the payments made by Bryden and the Petrement and Tremblay Group companies to Smythe.

[118] Verbeek admitted that funds did go through Jameson and that he directed those transfers to Bryden and other investments; however, he denied that he personally received any of the funds, or that the funds were related to his role in the arrangements.

[119] The evidence about Bryden itself was unclear. Verbeek testified that it is a mutual fund that he established through Temple Trust in the Turks and Caicos Islands in 1998. He named the company. He directed Bryden's investments and stood to benefit from the performance of the investments by receiving 25 percent of all profits, but said he was not the beneficial or legal owner. He described, in general terms, some of the investments that Bryden had entered into and said that Bryden investors "lost their shirts". Verbeek did not provide any documentary evidence about Bryden that could assist us to understand it further.

[120] We have insufficient evidence to make a finding about the exact nature of Bryden and its activities. We also have insufficient clear evidence that the payments made by the Petrement or Tremblay Group companies consisted entirely of the commissions made by Verbeek for his role in the arrangements. Furthermore, we are not confident that we have the complete picture of the payments received from the Petrement or Tremblay Groups to Bryden; we note, for example, the Petrement Group payments to Bryden are issued from only three of the Petrement Group companies listed in the Agreed Statement of Facts.

[121] We do have sufficient, cogent evidence to find that (a) Bryden received at least two million dollars through the Petrement and Tremblay Groups, (b) Verbeek was intimately related to Bryden at the material time and is still so related, and (c) Verbeek personally stood to receive substantial financial rewards from the investment of this money from the Petrement or Tremblay Groups. We consider this to be, at very least, indirect compensation to Verbeek, the *quid pro quo* for his participation in the arrangements.

[122] Accordingly, we find that Verbeek received direct compensation from the Tremblay Group and indirect compensation from both the Petrement and Tremblay Groups for his participation in the arrangements.

(d) Reliance

[123] We also do not accept Verbeek's submissions on reliance. There was no evidence that the dealers who employed Verbeek or the independent trustees knew that a loan was made after the CCPC transaction. The notice printed on the share certificates in the CCPC package only gives notice of a lien on the shares *in the event* of a debt by the shareholder to the corporation. We do not find that it gives any notice to a dealer or trust company a private loan *would* follow the purchase of "qualified CCPC" shares within the self-directed RRSP.

[124] Ms. Carbino testified that Verbeek instructed her not tell the trust companies that loans were involved with the purchase of the CCPC shares. She testified that Verbeek "stated that it was a loophole through Revenue Canada that they probably wouldn't want to be involved with." When Staff cross examined Verbeek on Ms. Carbino's statement, he stated:

> why would you want to involve the trust company in something that they would question as opposed to knowing that it was actually legitimate? If they asked questions, there would have been the prospect of perhaps losing the trustee. They may have chosen not to do business even though we would give them the comfort of having known that Revenue Canada has okayed this type of transaction.

It appears that Verbeek deliberately omitted telling the independent trustees and Dundee all the details of the loan transaction.

[125] In the Agreed Statement of Facts, Verbeek agreed he misled Dundee's Vice President of Compliance, Frank Hurst, about his participation in RRSP transactions that involved loans. In cross examination, Verbeek said that he did not lie to Mr. Hurst, who asked him whether he was involved in any illegal loans, when he told Mr. Hurst he was unaware of illegal loans. Verbeek testified that, based on Revenue Canada's clearance of the loan to Mr. O'Connor, he believed that the loans in the arrangements were legal.

[126] Mr. Hurst showed Verbeek the Alert issued by the Commission in November 1999. The Alert stated: "The Ontario Securities Commission warns investors, eager to access money tied up in Registered Plans (e.g. RRSPs, RRIFs, LIFs and Locked-in RRSPs), to be wary of often illegal investment schemes." It went on to describe a

scheme identical to the arrangements in which Verbeek was participating. The Alert stated the Commission's view that the schemes were contrary to the public interest and harmful to investors. It provided reasons based on securities law considerations.

[127] Verbeek's reliance on other parties was unreasonable in all the circumstances.

(e) Conclusion

[128] This is not a narrow allegation about the nature of the loans or the exorbitant fees taken by the promoters of the arrangements. It is about the participation by a registered representative for his financial benefit in a scheme that abused securities laws and harmed investors.

[129] Verbeek may have received some comfort about the tax implications of the arrangements; however, as a registered representative and branch manager, he should have been aware that the arrangements involved securities law issues. Upon reading the OSC Investor Alert in November 1999, he knew or ought to have known that the arrangements presented serious securities law concerns to the extent that the Commission considered them scams, harmful to investors and contrary to the public interest.

[130] For the above reasons, we find that Verbeek acted contrary to the public interest by participating in the arrangements.

4. Referencing Lafferty without being registered and without Lafferty's Knowledge

[131] Staff's fourth allegation is that Verbeek acted contrary to the public interest by processing documents that referenced "Lafferty, Harwood and Partners Ltd." without Lafferty's knowledge and at a time when Verbeek was not registered through Lafferty. Verbeek has admitted all the facts necessary to establish this violation at paragraphs (x) and (y) of the Agreed Statement of Facts.

[132] Verbeek submits that the references to Lafferty in the letter of indemnity were made during the time that he was awaiting approval for his registration with Lafferty. He claims that Lafferty's compliance officer, Nolan Trudeau, advised him that his registration was imminent. Verbeek's registration with Lafferty was not approved. He submits that there was no deceit or misdirection intended in using the Lafferty name, but he was trying to save a step of having to send out NCAFs and letters of indemnity once he became registered with Lafferty.

[133] Verbeek explained that he relied on the representations of the principals of Ionian Securities, who were in the process of purchasing of Lafferty. Verbeek claims that he showed the letters of indemnity to the principals of Ionian Securities beforehand. They did not object to his use of the name, so Verbeek proceeded to use the letter of indemnity that mentioned Lafferty.

[134] Verbeek submits his continued use of documents that referred to Lafferty after he was registered with Buckingham was an "extreme oversight on his part, and was not meant to harm or mislead any party in any way."

[135] We do not accept Verbeek's submissions with respect to this allegation. Staff took us to several documents used by Verbeek in the arrangements that refer to Lafferty and imply that he was registered there. Verbeek has admitted that he was not registered with Lafferty and he never obtained registration through Lafferty.

[136] Under these circumstances, Verbeek's reference to Lafferty was improper. He misled investors by leading them to believe that he was registered with that firm and that they were protected by all of the safeguards that registration imports. Verbeek's continued reference to Lafferty after he joined Buckingham may have been an "extreme oversight", but it is inexcusable.

[137] Staff referred us to a memo from Lafferty's compliance officer Nolan Trudeau in which he notes Lafferty's disapproval of transactions that Verbeek had entered into, including opening a foreign account at Jameson in Lafferty's name and transferring amounts offshore. We heard evidence from Verbeek that he knew that Ionian Securities had not completed the purchase of Lafferty during the material time. We find his "oversight" and explanations unsatisfactory.

[138] Accordingly, we find that Verbeek improperly referenced "Lafferty, Harwood and Partners Ltd." without Lafferty's knowledge and at a time when Verbeek was not registered through Lafferty.

5. Making misleading or untrue statements to Staff

[139] Staff's fifth allegation is that, on or about February 14, 2001 and February 22, 2001, in response to inquiries made by Staff, Verbeek advised Staff that:

(a) he did not know that advertisements had been placed;

(b) he did not know that the transactions involved loans to the investors; and

(c) he had not received compensation for his involvement in these transactions.

Staff submits that at the time Verbeek made these representations, he knew that they were misleading or untrue and, therefore, acted contrary to the public interest.

[140] Staff submits that the statements in the above transcripts are conclusive evidence of the fact that Verbeek misled Staff.

[141] We agree with Staff's submissions. Based on our findings on the other allegations, we find that, as at February 2001, Verbeek knew that:

(a) advertisements had been placed in respect of the arrangements. He knew that the majority of holders became involved in the arrangements by answering advertisements placed in newspapers by the Petrement and Tremblay Groups. He placed advertisements for similar arrangements himself, though we have no evidence that anyone responded to these;

(b) the arrangements involved loans to holders. As he submitted, the main purpose of the arrangements was to allow holders to receive a portion of the value of their locked-in RRSPs via a loan from the Petrement Group or the Tremblay Group; and

(c) he had received compensation for his involvement in the arrangements. We have found that Verbeek was compensated by the Tremblay Group for his role in the arrangements. Even if we restrict his knowledge to compensation in this group of arrangements, we find Verbeek's statement to Staff in 2001 at least misleading if not untrue.

[142] Because Verbeek made misleading or untrue representations to Staff during the course of Staff's investigation, he acted contrary to the public interest.

CONCLUSION

[143] For the above reasons, we find that Verbeek violated the Act and engaged in conduct that is contrary to the public interest. Specifically, we find that Verbeek:

(a) participated in illegal distributions of securities, contrary to section 53(1) of the Securities Act, by trading securities for which there was no exemption available;

(b) failed to ascertain the general investment needs and objectives of his clients and the suitability of the purchases or sales of the securities for his clients, and thus acted contrary to the public interest and contrary to section 1.5 of Ontario Securities Commission Rule 31-505;

(c) acted contrary to the public interest by participating in the scheme that involved the subsequent loan to the investor of approximately 65% of the share purchase and by charging an administration fee to the investors of 35% of the loan proceeds;

(d) acted contrary to the public interest by processing documents that referenced "Lafferty, Harwood and Partners Ltd." without Lafferty's knowledge and at a time when Verbeek was not registered through Lafferty; and

(e) acted contrary to the public interest by making misleading or untrue representations to Staff on or about February 14, 2001 and February 22, 2001, in response to inquiries made by Staff during the investigation of this matter.

[144] Having regard to these findings, the Secretary of the Commission is requested to arrange a date to hear submissions concerning whether it is in the public interest for the Commission to make one or more orders under section 127(1) and 127.1 of the Securities Act .

Dated at Toronto, this 26th day of July, 2005

"Wendell S. Wigle"	"Suresh Thakrar"
Wendell S. Wigle, Q.C.	Suresh Thakrar