

NOTICE OF MOTION (ADJOURNMENT)

ONTARIO SECURITIES COMMISSION

IN THE MATTER OF Jack Marks v CNSX Markets Inc - File No 2025-11

NOTICE OF MOTION

The Applicant, Jack Marks, will make a motion to the Ontario Securities Commission (the “Commission”) on a date to be fixed by the Commission, or as soon as the motion can be heard, for an order:

RELIEF SOUGHT

1. An order **adjourning the hearing currently scheduled for May 8, 2026**;
2. Directions permitting the Applicant additional time to:
 - Review and respond to newly introduced evidence;
 - Prepare a complete evidentiary record;
 - Address serious procedural fairness issues;
3. Such further and other relief as this Commission deems just.

GROUND FOR THE MOTION

This motion is brought on the following grounds:

(a) Self-Represented Status

- The Applicant is **no longer represented by counsel** and is now self-represented;
- This transition occurred in close proximity to the scheduled hearing;
- The Applicant must now independently:
 - Review the evidentiary record;
 - Analyze newly introduced materials;
 - Prepare legal submissions without assistance;

The Applicant’s recent transition to self-representation materially impacts his ability to adequately prepare within the current timeline and weighs strongly in favour of granting an adjournment.

(b) Overlapping Proceedings and Scheduling Impossibility

- The Applicant is subject to a **separate proceeding initiated by the Respondent**, including:
 - An Ontario **injunction hearing scheduled for May 4**;
- The current OSC hearing is scheduled for **May 8**, only four days later;

The proximity of these proceedings makes it practically impossible for the Applicant, as a self-represented party, to adequately prepare for both matters, particularly where the issues overlap.

(c) New Evidence Introduced by the Respondent

- The Respondent has introduced **new evidence and arguments** not previously part of the record;
- These materials materially alter the case;

(d) Backdating and Procedural Irregularities

- The Respondent has admitted that certain documents were **post-dated or backdated**;
- This raises serious concerns regarding:
 - The integrity of the process;
 - Whether reasons were constructed after the fact;

(e) Decision Without Evidentiary Foundation

- The finding of “unsuitability”:
 - Lacks a defined standard;
 - Is unsupported by evidence;

(f) Reliance on Non-Existent Rules and Retroactive Standard-Setting

- In its **May 2025 decision**, the Respondent’s appeals panel introduced a **new rationale** to uphold the finding of “unsuitability,” namely that the Applicant allegedly failed to disclose that he was a “control person” when making promotional statements;
- This rationale was **not part of the original decision** and represents a further instance of **post hoc justification and shifting grounds**;
- Critically, the Respondent **has no rule, policy, or published guidance** requiring promoters—or any market participants—to use the specific term “control person” when making public statements;
- The Applicant, in all relevant communications, **disclosed his relationship to the issuer**, including that he was:
 - the **Chairman** and/or
 - a **major shareholder**,and explicitly disclosed **conflicts of interest**;

The Respondent's position therefore elevates **form over substance**, penalizing the Applicant not for failing to disclose a material relationship, but for failing to use a specific label that is not required by any rule.

- The absence of such a requirement has now been **confirmed in evidence**, including admissions that there is **no specific rule mandating the use of the term “control person” in promotional materials**;

The introduction of this requirement after the fact amounts to **retroactive standard-setting**, where the rule is effectively created only once the alleged breach is identified.

- This conduct reflects a continued pattern in which the Respondent **moves the goalposts**, introducing new and previously undisclosed standards to justify an already-determined outcome;

A regulatory body cannot impose liability based on requirements that do not exist. Such an approach is inherently arbitrary, ultra vires, and incompatible with the principles of procedural fairness.

This is not a case of non-disclosure—it is a case where full and substantive disclosure was made, yet deemed insufficient only because it did not conform to a terminology that the Respondent itself acknowledges is not required by any governing rule.

g) Selective Enforcement, Shifting Grounds, and Double Standard

- The Respondent has introduced **yet another new basis** to support the finding of “unsuitability,” namely that the Applicant **criticized an issuer using allegedly aggressive language**, which the Respondent now claims could cause reputational harm to the exchange;
- This allegation was **not part of the original decision** and represents a further example of **shifting grounds and post hoc justification**;
- The Applicant's communications were made in the context of **raising concerns regarding potential misconduct by an issuer**, i.e., conduct consistent with a **whistleblowing or investor-protection purpose**;
- The Respondent has not identified any **clear rule, policy, or standard** prohibiting such communications;
- Moreover, the Applicant has identified **multiple instances of other market participants** engaging in comparable or more aggressive public criticism of issuers **without any enforcement action** taken against them;

The introduction of this new allegation, combined with the absence of any articulated standard and the inconsistent treatment of similarly situated parties, reinforces the conclusion that the Respondent is applying its discretion in an arbitrary and selective manner.

- To the extent the Respondent seeks to characterize the Applicant's conduct as harmful, it ignores that the Applicant's concerns were **substantive and ultimately borne out by subsequent market performance**, including a significant decline in the issuer's share price;

This further underscores that the Applicant's conduct was directed toward **investor protection**, not misconduct, and highlights the unreasonableness of penalizing such activity while tolerating similar conduct by others.

A regulatory regime that penalizes one participant for raising concerns, while permitting others to engage in similar conduct without consequence, is the very definition of arbitrary enforcement and gives rise to a reasonable apprehension of bias.

(h) Bad Faith and Abuse of Process Concerns

- The Respondent has:
 - Shifted positions;
 - Introduced post hoc justifications;
 - Escalated allegations mid-process;

(i) Prejudice to the Applicant

Requiring the Applicant to proceed would result in significant prejudice and deny a meaningful opportunity to be heard.

(j) No Prejudice to the Respondent

- Any delay is justified by the seriousness of the issues;
- Ensuring fairness outweighs any scheduling inconvenience;

MATERIAL TO BE RELIED UPON

- The Affidavit of Jack Marks, sworn April 28, 2026;
- Documentary evidence, including:
 - Newly disclosed materials;
 - Evidence of backdating;
 - Comparative evidence of inconsistent enforcement;
- Such further materials as permitted.

DATED at Las Vegas NV, this 28 of April, 2026

Jack Marks

Self-Represented Applicant