

CAPITAL MARKETS TRIBUNAL

BETWEEN:

JACK MARKS

Applicant

– and –

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

Respondents

File No. 2025-11

NOTICE OF MOTION (NEW EVIDENCE MOTION)

The Applicant, Jack Marks, will make a motion to the Capital Markets Tribunal on May 8, 2026, at 11:00 a.m. (or as soon thereafter as the motion can be heard), by videoconference as directed by the Tribunal.

RELIEF REQUESTED

The Applicant seeks:

1. An order admitting the following new evidence:
 - (a) the affidavit of Mark Faulkner dated April 21, 2026;
 - (b) the transcript of Mark Faulkner’s cross-examination;
 - (c) a presentation (PDF slideshow) organizing and summarizing the evidentiary record and issues in this proceeding;
2. Such further and other relief as this Tribunal deems just.

GROUND FOR THE MOTION

A. Governing Principles

1. The Tribunal may admit new evidence where:
 - (a) the evidence is **relevant and material**;

- (b) the evidence was not previously available or could not reasonably have been adduced earlier; and
 - (c) admission is necessary to ensure a **fair hearing**.
2. The Tribunal's process must comply with **procedural fairness**, including ensuring that decisions are made on a **complete and reliable evidentiary record**.

B. Overview of the Proposed Evidence

3. The Applicant seeks to introduce three categories of new evidence:
- (a) the affidavit of Mark Faulkner dated April 21, 2026;
 - (b) the transcript of Mr. Faulkner's cross-examination; and
 - (c) a presentation summarizing and organizing the evidence, including procedural fairness and reliance issues.
4. This evidence is **new, highly probative, and central** to the issues before the Tribunal.

C. Materiality of the Faulkner Evidence

5. The Faulkner affidavit and cross-examination establish:

(1) After-the-Fact Creation of the Record

- The January 8 memorandum was **created after the fact**;
- Supporting materials, including screenshots and alleged evidentiary records, were created **months later**;
- The record relied upon is therefore **retrospective rather than contemporaneous**.

(2) Shifting and Evolving Rationale

- The basis for unsuitability **evolved over time**;
- New reasons were introduced, including **criticism of issuers**;
- The decision relied on **after-the-fact justifications**.

(3) Knowledge Without Notice

- Concerns regarding the Applicant's alleged conduct were **known as early as April 2022**;
- Despite that knowledge, the Applicant was **never notified, warned, or given an opportunity to respond**.

(4) Timing of the Alleged Determination

- The issue of unsuitability **arose only weeks after the relevant transaction had closed**;
- No objection was raised during the transaction or at the time of the Applicant's involvement.

(5) Admissions Regarding Disclosure Requirements

- The Applicant **was not required to disclose his status as a control person** in the manner later relied upon.

(6) Regulatory Process Concerns

- The CSE appeal policy and procedure had **not been approved by the Ontario Securities Commission**.

D. The Presentation

6. The Applicant seeks to introduce a **PDF presentation** which:
 - compiles and organizes the evidentiary record;
 - summarizes the **timeline of events**;
 - synthesizes key evidence from the Faulkner affidavit and cross-examination;
 - addresses **procedural fairness and detrimental reliance**;
 - responds to assertions raised by the Respondents;
 - highlights **inconsistencies, evolving rationale, and differential treatment**; and
 - may include examples demonstrating **inconsistent treatment of similar conduct**.
7. The presentation is intended to assist the Tribunal by providing a **clear and accessible synthesis** of the evidence.
8. To the extent the presentation includes supporting materials or excerpts, those materials are relied upon as part of the Applicant's **new evidence**.

E. Relevance

9. The proposed evidence is directly relevant to:
 - whether the Applicant received **timely notice**;
 - whether the Respondents' case was **fixed, transparent, and contemporaneous**;
 - whether the record reflects a **genuine decision or a reconstructed rationale**;
 - whether the Applicant was afforded a **meaningful opportunity to respond**;
 - and whether the process complied with **procedural fairness**.

F. Availability and Diligence

10. This evidence was not previously available because:
 - it arises from **recent affidavit evidence and cross-examination**;
 - the issues relating to **timing, record creation, and evolving rationale** only became clear through that evidence;
 - the Applicant is **self-represented** and has acted diligently in bringing this evidence forward promptly.

G. Interests of Justice

11. Admission of this evidence is necessary to ensure that the matter is determined on a **complete and accurate record**.
12. Excluding this evidence would:
 - prevent the Applicant from fully responding to the case against him;
 - risk reliance on an **incomplete or unreliable evidentiary foundation**;
 - undermine the fairness of the proceeding.

H. No Prejudice to the Respondents

13. There is no unfair prejudice:
 - the evidence originates from the Respondents' own witness;
 - the Respondents are fully aware of its contents;
 - any procedural concerns can be addressed by the Tribunal.

EVIDENCE

14. This motion is supported by:
 - the Affidavit of Jack Marks;
 - the affidavit of Mark Faulkner dated April 21, 2026;
 - the transcript of Mark Faulkner's cross-examination;
 - the Applicant's presentation;
 - and such further materials as the Tribunal may permit.

APPLICABLE RULES

15. This motion is brought pursuant to the Tribunal's Rules of Procedure and its authority to ensure procedural fairness.

DATE: May 6, 2026

Jack Marks

Applicant (self-represented)