

BETWEEN:

JACK MARKS

Applicant

– and –

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

Respondents

File No. 2025-11

NOTICE OF MOTION (LEAVE 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 granting leave to bring:
 - (a) a motion to introduce new evidence (the “New Evidence Motion”); and
 - (b) a motion for disclosure of further relevant documentary and testimonial evidence (the “Discovery Motion”);
2. An order admitting the proposed new evidence described below;
3. Such further and other relief as this Tribunal deems just.

GROUND FOR THE MOTION

A. Governing Principles

1. The Tribunal has discretion to grant leave where:
 - (a) the proposed evidence is **relevant and material**;
 - (b) the evidence was not previously available or could not reasonably have been adduced earlier; and
 - (c) granting leave is necessary to ensure a **fair hearing**.
2. Procedural fairness is a **fundamental principle**, particularly where a decision affects a party’s rights, reputation, and economic interests.

B. Overview of the Proposed New 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 (PDF slideshow) organizing and highlighting the evidence, including procedural fairness and reliance issues.
4. This evidence is **new, highly probative, and central** to the issues before the Tribunal.

C. Material Findings from the Faulkner Evidence

5. The Faulkner evidence establishes:

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

- The January 8 memorandum was **created after the fact**;
- Supporting materials (including screenshots) were created **approximately 10 months later**;
- The record is therefore **retrospective rather than contemporaneous**.

(2) Shifting and Evolving Rationale

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

(3) Knowledge Without Notice

- Concerns regarding alleged conduct were **known as early as April 2022**;
- The Applicant was **never notified or given an opportunity to respond**.

(4) Timing of the Alleged Determination

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

(5) Admissions Regarding Disclosure

- The Applicant **was not required to disclose control person status** as later alleged.

(6) Regulatory Process Concerns

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

D. Presentation (Summary and Analytical Evidence Aid)

6. The Applicant seeks to introduce a **PDF presentation** which:
 - compiles and organizes the evidentiary record;
 - summarizes the **timeline**;
 - synthesizes Faulkner evidence;
 - addresses **procedural fairness and detrimental reliance**;
 - responds to Respondents' assertions;
 - highlights **inconsistencies, evolving rationale, and differential treatment**;
 - may include examples of **inconsistent treatment of similar conduct**.
7. The presentation is intended to assist the Tribunal and does not improperly expand the record beyond the proposed evidence.

E. Relevance and Materiality

8. This evidence is directly relevant to:
 - lack of **timely notice**;
 - absence of a **fixed and transparent rationale**;
 - reliance on a **reconstructed record**;
 - denial of a **meaningful opportunity to respond**;
 - compliance with **procedural fairness**.

F. Detrimental Reliance and Prejudice

9. The Applicant relied on the **absence of notice**.
10. Based on that reliance, the Applicant proceeded with a transaction and leadership role.
11. That reliance was **reasonable** and resulted in **significant avoidable harm**.
12. With proper notice, the Applicant would have:
 - challenged the determination; or
 - avoided involvement.

G. Availability and Diligence

13. This evidence was not previously available because it arises from **recent affidavit and cross-examination evidence**.
14. The Applicant is **self-represented** and has acted diligently.

H. Request for Leave to Bring Discovery Motion

15. The Applicant seeks leave to bring a **narrowly tailored Discovery Motion**.

16. The Applicant will seek disclosure of:

- **Internal communications (including emails)** between:
 - Mark Faulkner
 - Rob Cook
 - Rob Theriault
 - Trista Cook
 - Alexandra Cosgrove

relating to:

- the Applicant's **Personal Information Form (PIF)**;
- the Applicant's **suitability or unsuitability**;
- internal discussions of his involvement;
- the **January 8 memorandum** (creation, timing, basis);
- knowledge of the Applicant's conduct.

17. This request is limited to the period from **April 2022 through the communication of the alleged determination**.

I. Cross-Examination Requests

18. The Applicant seeks:

- cross-examination of **Rob Cook and Rob Theriault**;
- limited further cross-examination of **Mark Faulkner**, confined to:
 - timing of decision
 - record creation
 - evolving rationale
 - unanswered prior questions

J. Necessity of Discovery

19. Discovery is required to:

- test the **accuracy and reliability of the record**;
- determine **when the decision was actually made**;
- assess **procedural fairness and notice**;
- prevent reliance on a **retrospectively constructed record**.

K. Proportionality

20. The request is:

- limited by **subject matter (PIF + suitability)**;
- limited to **specific individuals**;
- limited by **timeframe**.

L. Prejudice

21. No prejudice to Respondents:
 - evidence comes from their own witness
 - issues already known
22. Significant prejudice to Applicant if denied:
 - inability to challenge record
 - unfair hearing

EVIDENCE

23. This motion is supported by:
 - Affidavit of Jack Marks
 - Affidavit of Mark Faulkner
 - Cross-examination transcript
 - Presentation
 - Exhibits

APPLICABLE RULES

24. This motion is brought under the Tribunal's Rules and procedural fairness jurisdiction.

DATE: May 6, 2026

Jack Marks

Applicant (self-represented)