CAPITAL MARKETS TRIBUNAL

File No. 2025-11

IN THE MATTER OF an application to review the May 21, 2025 decision of the Panel of the Board of Directors of CNSX Markets Inc.

BETWEEN:

JACK MARKS

Applicant

- and -

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

Respondents

APPENDIX B

MOTION
(Rules 1, 3, 21, 22 and 32)

A. Order sought

The Applicant, Jack Marks, requests that the Tribunal make the following orders:

- Permission under Rule 22 to amend the Application by adding the ground shown in the attached marked proposed amended Application.
- An order receiving the Applicant's August 14, 2026 supplemental memorandum and August 24, 2026 reply as submissions concerning the amended ground.
- If necessary, an order under Rule 3 waiving or modifying, prospectively or retroactively, any procedural requirement not satisfied by the Applicant's August 14 request and treating this motion as regularizing that request.
- Alternatively, directions for the narrow identification and production of any Board authorization, operative version, regulatory filing, classification, approval, non-objection, exemption, contemporaneous non-privileged memorandum or staff analysis, and any communication to CSE relating to the CSE appeal procedures used in the Applicant's matter, followed by brief submissions; where privilege is claimed, identification of the date, author, recipients, general subject, and privilege asserted.
- Without reopening the broader May 2026 production request, and only if the Tribunal considers the exact communications necessary to determine the matter fairly, directions requiring CSE to identify and produce the specific non-privileged email chain or chains on which it relies as constituting or recording the original suitability determination; alternatively, a direction that the alleged contents of those unproduced emails shall not be treated as proved or used as a foundation for deference.
- Such further and other relief as the Tribunal considers just.

B. Grounds

- The proposed amendment concerns an issue raised repeatedly during the hearing on May 8, May 13 and May 19, 2026. OSC Staff acknowledges that the principal issue was raised during the hearing.
- The proposed amendment particularizes existing pleaded grounds of delayed disclosure, failure to disclose governing standards, post hoc materials, lack of notice and opportunity to respond, and systemic procedural unfairness.
- The issue was joined in argument: CSE and OSC Staff were prepared to address it, and OSC Staff argued that the procedures were not Rules requiring approval.
- The evidence includes Mr. Faulkner's April 21, 2026 testimony that the procedures were internal policies, not publicly retrievable, not believed separately approved, and not the subject of public consultation.
- CSE and OSC Staff have not identified a Board resolution, adoption date, effective date, version history, regulatory filing, classification, approval, non-objection, or exemption for the procedures actually used.
- OSC Staff has not identified when, by whom, or under what authority the position that the procedures were not Rules was reached; whether that position predated this dispute; what instrument was reviewed; or whether the conclusion was communicated to CSE.
- Comparable OSC records show that Aequitas NEO Exchange appeal procedures were published for public comment and approved in 2016 even though described as administrative and as creating no new obligations,

and that TSX appeal and conflict procedures have likewise been the subject of OSC approval notices. The differential treatment requires a principled explanation on the regulatory record.

- The procedures had binding external effects, including a limitation period, submission deadlines, evidentiary and witness restrictions, hearing rules, quorum provisions, and conflict and recusal standards.
- The original Application pleads that approximately 4,000 NEWS shareholders suffered losses measured in millions of dollars after CSE halted the shares, and that the halt rested on the disputed suitability determination. The authorization and fairness of the process are therefore matters of investor protection and market confidence, not merely a private procedural dispute.
- Dziadecki v Canadian Investment Regulatory Organization, 2024 ONCMT 22 at paras. 11–14 confirms that a section 21.7 review is guided particularly by protecting investors from unfair or improper practices and fostering confidence in the capital markets, and restates the five independent Canada Malting grounds.
- Canada Malting recognizes a conflict between the exchange panel's and the Tribunal's perceptions of the public interest as an independent ground for intervention on a section 21.7 review.
- Materially different versions were disclosed during the Applicant's internal appeal, including a changed conflict and recusal formulation.
- The Applicant suffered actual prejudice in knowing the governing process, preparing evidence and submissions, assessing panel composition and recusal, and obtaining and testing the decisional record, including contemporaneous emails that were not produced.
- The Applicant acknowledges the Tribunal's May 2026 refusal of broader production relief and does not seek to reopen general discovery. CSE nevertheless continues to rely on internal emails as constituting or recording the alleged contemporaneous suitability determination, while the emails themselves remain outside the record.
- The cumulative context is now material: the Board appeal is relied upon as curing the original process, but the authorization, operative version, and regulatory treatment of that appeal process remain unestablished. The asserted contents, timing, authorship, participants, and reasons in the unproduced emails should therefore not be treated as proved or used as a foundation for deference.
- If the Tribunal considers the exact communications necessary, the proportionate alternative is production only of the specific non-privileged email chain or chains on which CSE relies as constituting or recording the original determination, rather than reopening broader discovery.
- Neither respondent identifies an unavailable witness, lost evidence, a position taken in reliance on the absence of the proposed ground, or any factual matter it cannot answer. Any residual prejudice can be cured by a short response limited to regulatory status.
- The Tribunal's May 4, 2026 order and June 12, 2026 reasons record that the Applicant sought a four-month adjournment shortly before the merits hearing after losing counsel, that CSE did not oppose and OSC Staff took no position, and that the request was denied. The Applicant then proceeded self-represented on a compressed timetable.
- CSE was permitted to expand the record through later and collateral evidence, including post-decision conduct and the April 7, 2026 injunction. The Applicant's amendment is narrower and principally applies official regulatory instruments and existing evidence to an issue raised at the hearing.
- The Applicant primarily relies on the existing hearing record and official legal and regulatory materials; no new witness or affidavit is proposed.
- The respondents have already answered the issue. Any residual prejudice can be cured by a short, confined response. The amendment causes no unfair prejudice within Rule 22.
- The Applicant is self-represented. Former counsel assisted with the original Application and earlier written materials but did not represent the Applicant at the merits hearing. Earlier assistance does not waive Rule 22 or prove tactical case splitting.
- Rules 1 and 3 support determining the issue on its merits and curing any formal defect in a proportionate manner before the Tribunal issues its decision.
- Such further grounds as are set out in the Applicant's August 14, 2026 memorandum and August 24, 2026 reply.

C. Evidence and materials

The Applicant intends to rely on:

- the existing record in this proceeding, including the May 8, May 13 and May 19, 2026 transcripts;
- the April 21, 2026 examination of Mark Faulkner already before the Tribunal;
- the October 3, 2024 and April 11, 2025 versions of the CSE appeal procedures already addressed in the Applicant's memorandum;

- the CSE Recognition Order, Rule Review Protocol and Tribunal Rules of Procedure;
- the Applicant’s August 14, 2026 memorandum and August 24, 2026 reply;
- the respondents’ August 21, 2026 positions; and
- such further evidence or materials as the Tribunal permits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: August 24, 2026

Jack Marks
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