Capital Markets Tribunal
Tribunal des marchés financiers
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20, rue Queen ouest
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Citation: *Marks v CNSX Markets Inc,* 2026 ONCMT 30
Date: 2026-08-28
File No. 2025-11

BETWEEN:

JACK MARKS

(Applicant)

- and -

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

(Respondents)

REASONS AND DECISION

(Sections 8 and 21.7 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Andrea Burke (chair of the panel) Jane Waechter Dale R. Ponder	
Hearing:	May 8, 13, and 19, 2026	
Appearances:	Charlie Pettypiece	For the Ontario Securities Commission
	Andrew McCoomb Sandy Lockhart	For CNSX Markets Inc.
	Jack Marks	On his own behalf

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REASONS AND DECISION

1. OVERVIEW

[1] Jack Marks applies for an order setting aside the decision of a Panel of the Board of Directors of CNSX Markets Inc. (the **Board Panel** of the **Exchange**) dated May 21, 2025 (referred to as the **Board Decision** or **Board Reasons**).[1] CNSX operates the Canadian Securities Exchange (**CSE**) and carries on business under that name. We therefore use the defined term "Exchange" to refer to both CNSX and the CSE. The Board Panel found that Marks was unsuitable to be associated with an issuer listed on the Exchange, namely, New World Solutions Inc. (**New World**). Alternatively, Marks asks for an order directing the Exchange to reconsider the matter in accordance with the principles of procedural fairness and natural justice, with direction from the Tribunal. Marks filed his application for hearing and review under ss. 8 and 21.7 of the *Securities Act*[2] on June 19, 2025.

[2] Marks submits that we should overturn the Board Decision because of numerous alleged violations of procedural fairness in the Exchange's processes leading up to and including the Board Decision. The Exchange submits that there are no grounds that warrant us interfering with the Board Decision. In the alternative, the Exchange submits that we should make our own finding that Marks is unsuitable, based upon the record that was before the Board Panel and new evidence of Marks' behaviour after the Board Decision. The Ontario Securities Commission submits that, while it remains open to us to affirm the Board Decision, its preferred approach is for us to make our own finding that Marks is unsuitable based on the Exchange's new evidence.

[3] We have concluded that the Board Reasons were inadequate and, in this manner, the Board Panel proceeded on an incorrect principle and made errors in law. We were therefore unable to defer to the Board Panel and instead, considered Marks' suitability afresh. In newly deciding the suitability question,

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[1] *Marks v CNSX Markets Inc,* Decision and Reasons of the Panel of the Board of Directors of CNSX Markets Inc, dated May 21, 2025

[2] RSO 1990, c S.5 (the ***Act***)

we declined to rely on new evidence proposed by both Marks and the Exchange and relied instead on the same evidence that was available to the Board Panel.

[4] For the reasons set out below, we concluded that Marks is unsuitable to be associated with the Exchange-listed issuer, New World.

2. PRELIMINARY ISSUE: MODE OF HEARING

[5] On May 4, 2026, Marks made a request by email for permission to attend the hearing by videoconference as he is located outside of Canada. We confirmed that, although the hearing would proceed in-person, Marks and any other party could participate by videoconference.

[6] Marks then objected to the in-person hearing format, claiming that it would create a "material imbalance" and place him at a "procedural disadvantage" giving "rise to a reasonable apprehension of unfairness" if the Exchange and the Commission appeared in person, while he appeared by videoconference. Marks requested that all parties participate by videoconference and clarified that he did not object to the panel convening in person.

[7] In response, we advised the parties that the panel would attend the merits hearing in person and that all parties could choose to participate in person or by videoconference. In doing so, we relied on r. 9(1) of the Tribunal's *Rules of Procedure* (**Rules**) and the parties' positions during the case management process, including that Marks never previously objected to an in-person hearing. Marks' counsel (who represented him until shortly before the merits hearing) always intended to participate by videoconference.

[8] After receiving our decision on this issue, Marks renewed his objection to the format of the hearing. He submitted that as a self-represented party appearing only by videoconference, he would be at a disadvantage in terms of participation, interaction with the panel, management of documents and submissions, and the overall ability to effectively present his case relative to parties physically present in the hearing room.

[9] At the outset of the hearing on May 8, 2026, we addressed Marks' continuing objection and provided Marks with an opportunity to speak to the related email correspondence and have the emails marked as exhibits. Marks reiterated that

he believed he was at a disadvantage being self-represented and participating remotely.

[10] We allowed the hearing to proceed in person, with Marks participating by videoconference. In our view, this process is permitted by the Tribunal's Rules and there was no procedural unfairness to Marks. Marks could and did fully participate in the hearing by videoconference.

3. BACKGROUND AND CHRONOLOGY LEADING UP TO THE APPLICATION BEFORE THE TRIBUNAL

[11] As noted above, the CNSX operates the CSE, a stock exchange recognized by the Commission and the British Columbia Securities Commission. The Exchange operates across Canada under recognition and exemption orders from the securities regulatory authority in each province and territory. The Exchange's role is to facilitate capital formation and maintain a fair and efficient market that fosters confidence and protects investors from unfair, improper or fraudulent practices.

[12] The Exchange has policies to support its role in the Canadian capital markets. Three sections of Exchange Policy 2 – Qualifications for Listing (**Exchange Policy**) are relevant to this application:

a. Section 2.16 provides that the Exchange will not approve an issuer for listing if any related persons or investor relations persons associated with the issuer have been sanctioned for violations of securities law (other than minor violations), unless the issuer severs relations with those persons;

b. Subsection 2.17(a) provides that the Exchange may not approve an issuer for listing if any related persons or investor relations persons associated with the issuer has entered a settlement with a securities regulator, unless the issuer severs relations with those persons;

c. Section 2.18 provides that the Exchange may deem any person to be unacceptable to be associated in any manner with an Exchange-listed issuer (**listed issuer**) if the Exchange "reasonably believes such association will give rise to investor protection concerns, could bring the Exchange into disrepute or it is in the public interest to do so".

[13] Marks has been involved in the capital markets for many years. His written submissions before the Board Panel describe his experience as follows:

a. Marks worked in the commodities futures industry as a trader's assistant and then became a licensed broker and worked at several brokerage firms.

b. In 1993, Marks transitioned from traditional brokerage work to the field of issuer-sponsored equity research.

c. In 1997, Marks founded WallStreetReporter.com, which featured CEO interviews in streaming audio and video format and provided insights into corporate strategy, operations, and market outlooks.

d. In 2022, Marks published a book, Ten Bagger Blueprint: Learn How to Make 10x to 100x Profits in Cheap Stocks – Discover the Insider's Systems for Big Profits, which sets out his methodology for investing for retail investors.

e. Marks claims to have helped Canadian issuers raise approximately $1 billion in capital in the past five years and to have driven trading volumes that have directly benefited the Exchange through increased visibility, liquidity, and listing fees.[3]

[14] Against the backdrop of these policies, Marks has had a tumultuous relationship with the Exchange over recent years. There were three separate findings within the Exchange relevant to Marks' application for a hearing and review:

a. an unsuitability finding of the Exchange Listing Committee (the **Listing Committee**) on January 8, 2024 (the **AI/ML Suitability Assessment**);

b. a second unsuitability finding of the Listing Committee dated October 3, 2024 (the **New World Suitability Assessment**); and

c. the Board Decision which is the subject of this application.

3.1 The AI/ML Suitability Assessment

[15] On January 8, 2024, the Listing Committee found that Marks was unsuitable to be associated as an investor relations person with a listed issuer, AI/ML Innovations

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[3] Exhibit 9, Tab 3C, Submissions of the Appellant to the Appeal Panel of the Board of Directors of CNSX, dated May 8, 2025, paras 11-14

Inc. (**AI/ML**), under ss. 2.16, 2.17(a) and 2.18 of the Exchange Policy. The finding did not culminate in any formal communication or action, and Marks was not given an opportunity to be heard. However, we learned that the AI/ML Suitability Assessment was documented in a memorandum dated January 8, 2024 (the **January 8, 2024, memorandum**) that was drafted or updated after January 8, 2024, with references to events and information after that date.

[16] The January 8, 2024, memorandum sets out the following reasons for the AI/ML Suitability Assessment:

a. a 1998 settlement of a Securities Exchange Commission (**SEC**) complaint against Marks; and

b. Marks publishing and posting overly promotional materials on a variety of media that raised investor protection and Exchange reputational concerns.

[17] The Exchange explained that it did not communicate its unsuitability finding to either Marks or AI/ML, as AI/ML had severed its relationship with Marks by the time of the finding. The Exchange explained that it would have been inappropriate to communicate its unsuitability assessment to AI/ML because of Marks' privacy interests. The Exchange further claimed that its only responsibility concerning an unsuitability finding would be to communicate with the relevant issuer, a questionable assertion given that it assessed whether a person (Marks) was "unacceptable to be associated in any manner" with a listed issuer.[4]

[18] This lack of communication meant that, in August 2024, when Marks became involved with a transaction involving a listed issuer (New World), he was not aware that he had already been assessed as unsuitable to be associated with another listed issuer (AI/ML).

3.2 The New World Suitability Assessment

[19] New World submitted a proposal to the Exchange to acquire dialMKT (the **New World Transaction**) in August 2024. After conducting inquiries into the nature of dialMKT's business and the terms of the transaction, the Exchange initially concluded that it would not object to the transaction. The Exchange's review

[4] Exchange Policy, s 2.18

revealed, amongst other things, that although Marks would be a significant shareholder of the merged entity, his shareholding would be just below 20% and, accordingly, the New World Transaction would not create a new control person. New World's counsel confirmed this in writing to the Exchange. This information was relevant to the Exchange because its policies require shareholder approval for certain transactions that create a new control person.

[20] The Exchange reviewed the September 11, 2024, news release issued by New World after completion of the transaction. As a result, the Exchange learned that Marks owned 22.9 percent of the newly combined entity (and therefore became a new control person) and that he also had been appointed chair of the board of directors.

[21] The Exchange followed up with New World about the disclosure that the transaction had, in fact, created a new control person. This led the Exchange to take another look at Marks. On September 26, 2024, the Exchange advised New World that the Exchange had previously determined that Marks was unsuitable. The Exchange advised that it expected the results of research based on Marks' Personal Information Form (**PIF**) (previously filed in November 2023) to reach the same conclusion about Marks' suitability, but it offered Marks the opportunity to submit an updated PIF. Marks did not file an updated PIF prior to the New World Suitability Assessment.

[22] The Listing Committee again concluded that Marks was unsuitable to be associated with a listed issuer and conveyed this finding (i.e. the New World Suitability Assessment) to Marks in a letter dated October 3, 2024. The Exchange advised that it would object to any association between Marks and New World that involved Marks being any of the following: officer, director, promotor or shareholder with shareholdings greater than 10%. The New World Suitability Assessment referred to the prior AI/ML Suitability Assessment in a way that could be interpreted as indicating that it was simply confirming that prior finding of unsuitability, rather than conveying a new finding.

[23] The New World Suitability Assessment cited ss. 2.16, 2.17 and 2.18 of the Exchange Policy. The Exchange's objection to Marks' suitability was based on a 1998 SEC settlement and also on Marks publishing and posting overly

promotional materials on a website, social media platforms, and investor forums. The SEC settlement related to Marks' non-disclosure of compensation received from issuers exceeding $10,000 in value. The settlement did not involve admissions by Marks. The New World Suitability Assessment noted that although the SEC settlement raised investor protection and reputational concerns for the Exchange, because of the significant passage of time since the settlement, the Exchange would not have found Marks unsuitable solely on this basis. Marks' more recent overly promotional posts and activity were described as significant aggravating factors giving rise to investor protection concerns and a belief that Marks' association with a listed issuer would bring the Exchange into disrepute.

[24] The New World Suitability Assessment explained that, under s. 1.5 of Exchange Policy 1 – Interpretation and General Provisions (**Exchange Policy 1**), Marks (as a person directly affected by a decision made under the Exchange's policies) may appeal the decision to the Exchange's Board of Directors.

3.3 The Board Decision

[25] On November 1, 2024, Marks filed a notice of intent to appeal the New World Suitability Assessment (the **Notice**) to the Board Panel. In the Notice, Marks requested that the Exchange produce various documents, including all internal communications and records relating to the decision under appeal. Marks asserted he needed these records to make meaningful submissions on the appeal. Marks and the Exchange filed written submissions and the appeal was heard in May 2025.

[26] Marks' written submissions to the Board Panel raised alleged procedural fairness issues in the Exchange's processes, including:

a. failing to make adequate and timely disclosure to Marks in connection with the appeal;

b. failing to communicate the earlier AI/ML Suitability Assessment to Marks when it was made;

c. depriving Marks of the opportunity to make submissions or respond to the AI/ML Suitability Assessment when it was made;

d. first disclosing on March 25, 2025, a copy of the January 8, 2024, memorandum, despite requests made months earlier;

e. concerns about the integrity and contemporaneity of the January 8, 2024, memorandum given delays in its disclosure and the fact that its contents included justifications that post-dated January 8, 2024;

f. failing to consider the passage of time since the 1998 SEC settlement and the comparatively minor infraction involved, while applying different treatment to other Exchange participants subject to regulatory sanctions and settlements for securities violations;

g. lack of transparency regarding the discretionary standards underlying its unsuitability finding; and

h. conflict of interest in that members of the Listing Committee were alleged to have personal or professional relationships with Marks' competitors who Marks alleged had provided information used to initiate the suitability assessment process for him.

[27] It is noteworthy that for the appeal, Marks treated the AI/ML Suitability Assessment as the operative decision. Marks also asserted that it was procedurally unfair for the Exchange to rely upon any conduct post-dating January 8, 2024, to justify the unsuitability finding.

[28] On May 21, 2025, the Board Panel issued its Decision and Reasons dismissing Marks' appeal and upholding the unsuitability finding.

[29] The Exchange's submissions note that on an appeal to a Board Panel, the Board Panel engages in a hearing *de novo*, or a new hearing process akin to a "hearing and review". Although the Exchange's policies describe it as an "appeal", it is much broader: the process allows for new evidence, and the Board Panel is free to substitute its own conclusions for those of the Listing Committee.

[30] We identified the following substantive findings in the Board Reasons:

a. to arrive at the New World Suitability Assessment, the Listing Committee reviewed its previous AI/ML Suitability Assessment and the supporting material, as well as additional information provided by the Exchange's research department (which included social media posts and other promotional activity of Marks that occurred after he was appointed as chair of New World);

b. the Listing Committee acted objectively in determining that Marks is unsuitable to be associated with a listed issuer under s. 2.16 of the Exchange Policy, and its decision is supported by the information that was before it at the time;

c. concerning Marks' procedural fairness and transparency concerns related to the earlier AI/ML Suitability Assessment, the Board Reasons state that the only relevant issue before the Board Panel was the appeal by Marks of the New World Suitability Assessment;

d. the Exchange has clear discretion to make decisions about the suitability of a person associated with a listed issuer at any time;

e. under s. 2.18 of the Exchange Policy, if social media posts could raise investor protection concerns, could bring the Exchange into disrepute, or it is in the public interest to do so, the Exchange may use its discretion to determine that a person engaged in such activities is unsuitable;

f. Marks posted overly promotional content on social media concerning a company (New World) for which he serves as chair;

g. the disclaimers and qualifications in Marks' social media and other posts reviewed by the Board Panel were "inconsistent and do not indicate that he is a control person or that he was appointed as Chair of the company"; and

h. the New World Suitability Assessment applies only to New World.

4. MOTIONS

4.1 Marks' motion for leave to bring a discovery motion

[31] As part of an adjournment request Marks made shortly before the start of the merits hearing, Marks advised that he wanted to obtain further documentary and testimonial evidence from the Exchange. We ordered[5] that, given the late stage

[5] *Marks v CNSX Markets Inc,* (2026) 49 OSCB 4251; https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260504_marks.pdf; and *Marks v CNSX Markets Inc*, 2026 ONCMT 28 at paras 23–25

of his request for relief, Marks would require permission (or leave) to bring a motion (**discovery motion**) to obtain further evidence from the Exchange. Because Marks' motion for leave to bring a discovery motion and his discovery motion were brought so close to the scheduled merits hearing, we heard both motions on May 8, 2026, the first date set aside for the merits hearing. Both the Exchange and the Commission objected to these motions. We dismissed the motion for leave to bring a discovery motion by order dated May 11, 2026[6], for reasons to follow. Our reasons are set out below.

[32] The evidence that Marks wanted to obtain through his discovery motion included:

a. internal Exchange communication documents dating from the period April 2022 to October 3, 2024, including emails, relating to its decision-making process, Marks' suitability, Marks' PIF and the creation of the January 8, 2024, memorandum;

b. evidence through cross-examinations of six individuals at the Exchange involved in the unsuitability finding about the decision-making process, the rationale for the unsuitability finding, and the timing of the preparation of the January 8, 2024, memorandum; and

c. the complete record of the appeal before the Panel Board.

[33] During the hearing, Marks withdrew his request for production of item (c) above (i.e., the complete appeal record) and confirmed that he was satisfied that he had received it.

[34] We dismissed Marks' motion for leave to bring the discovery motion because we agreed with the submissions of the Exchange and the Commission that the discovery motion was untimely and Marks failed to establish any extenuating circumstances that would justify bringing such a motion a mere two days before the scheduled start of the merits hearing. There was plenty of opportunity for Marks to bring his discovery motion earlier. The application was outstanding since June 2025 and there were numerous prior attendances to address and

[6] *Marks v CNSX Markets Inc,* (2026) 49 OSCB 4406; https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260511_marks_1.pdf

schedule procedural matters, including the first case management hearing on August 28, 2025, where a timetable for the application was scheduled and the parties were canvassed about their intentions to bring any motions.

[35] Marks acknowledged that the documents he was seeking in his discovery motion were documents that he had previously and repeatedly requested from the Exchange through his prior counsel. These requests date back to November 2024 and Marks' written submissions filed for his appeal to the Board Panel and for the merits of this application both assert that the lack of disclosure of such documents is a defect in the Exchange's process. Further, the evidence that Marks wanted to obtain through cross-examinations is not new and relates to issues that he raised on his appeal to the Board Panel. Marks ought to have brought his discovery motion at a much earlier stage.

[36] The only explanation that Marks offered by way of justification for seeking to bring the discovery motion so late was the fact that he only recently became self-represented, and the counsel who represented him failed him by not bringing a discovery motion sooner. We do not accept this as a satisfactory justification or extenuating circumstance, given that Marks was represented by counsel and we should be able to accept at face value that steps taken (or not taken) by counsel are attributable to, and binding on, their client.

[37] In *Odorico (Re)*,[7] the Tribunal refused to permit the applicant in a review proceeding to seek to introduce new evidence because the appropriate time to introduce additional evidence had long passed and it would be unfair and prejudicial to the other parties. Similarly, if we were to allow Marks to pursue additional evidence for the first time at this late stage in the proceeding, we concluded it would be unfair and prejudicial to the other parties.

[38] Accordingly, we dismissed Marks' motion for leave to bring a discovery motion. Since we dismissed the leave motion, it is not necessary to address the merits of the discovery motion.

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[7] 2024 ONCMT 5 at paras 14–15

4.2 Marks' motion for leave to bring a new evidence motion

[39] Also as part of Marks' adjournment request made shortly before the start of the merits hearing, Marks advised that he wanted to file and rely on new evidence for the merits hearing. In a hearing and review proceeding, new evidence is not automatically admitted. A party must bring a motion (**new evidence motion**) for permission to introduce and rely on new evidence not included in the record of the original proceeding under r. 17(5) of the Tribunal's Rules*.*

[40] Marks had the opportunity to file a new evidence motion by September 26, 2025, under the timetable established in an August 28, 2025, case management order[8]. While represented by counsel, he let that deadline pass without filing a motion and he never sought to extend that deadline. As a result, when he made his adjournment request, Marks was no longer entitled to bring a new evidence motion without permission (or leave). We ordered[9] that Marks could bring a motion to ask for leave to bring a new evidence motion. Because Marks' motion for leave to bring a new evidence motion and his new evidence motion were brought so close to the scheduled merits hearing, rather than hearing the motion for leave first, we heard both motions together on May 8, 2026, the first date set aside for the merits hearing. We reserved our decision on both motions. We granted the leave motion on May 11, 2026 (with reasons to follow) but continued to reserve our decision on Marks' new evidence motion until now.

[41] The Exchange was prepared to consent to these motions, while the Commission objected. Regardless of consent, the Tribunal requires the moving party to establish that the requirements of the Rules are met.

[42] One item of Marks' proposed new evidence, the January 8, 2024, memorandum, was already in the record of original proceeding and a new evidence motion was unnecessary. Marks' proposed new evidence also included a PowerPoint presentation he intended to use as an aid to his oral submissions in the merits hearing. The PowerPoint itself was not evidence, although it contained various

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[8] *Mark v CNSX Markets Inc,* (2025) 48 OSCB 7497; https://www.capitalmarketstribunal.ca/sites/default/files/2025-08/rad_20250828_marks.pdf

[9] *Marks v CNSX Markets Inc,* (2026) 49 OSCB 4251; https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260504_marks.pdf; and *Marks v CNSX Markets Inc*, 2026 ONCMT 28

references to evidence found in the record of original proceeding as well as various additional assertions of facts not found in the record of original proceeding. With the other parties' consent, we permitted Marks to file the PowerPoint for use during his oral submissions, with the caution that any assertions of facts referred to in the PowerPoint would be disregarded unless they were already in the record of original proceeding or otherwise admitted as new evidence.

[43] This left the following new evidence that Marks wanted permission to adduce:

a. an affidavit of Mark Faulkner, the Exchange's Senior Vice President, Listing & Regulation sworn April 21, 2026 (the **Affidavit**), filed in a civil court injunction proceeding brought by the Exchange against Marks; and

b. a transcript of Faulkner's cross-examination by Marks on April 21, 2026 (the **Transcript**) in the same injunction proceeding.

[44] For the following reasons, on May 11, 2026,[10] we granted Marks' motion for leave to bring a new evidence motion. The Exchange did not oppose the leave motion or the new evidence motion on any grounds. The Commission opposed the motion for leave to bring a new evidence motion on grounds that Marks had not demonstrated urgency or extenuating circumstances that would justify modifying the ten-day notice requirement for bringing a motion under r. 32(1)(c) of the Rules.

[45] We found that Marks could not have brought his new evidence motion with respect to the Affidavit and the Transcript within the deadlines imposed in the August 28, 2025, case management order because the Affidavit and Transcript did not exist at that time. In the circumstances, we also found that Marks raised the prospect of seeking permission to introduce this new evidence reasonably promptly (that is, on April 24, 2026[11]) following the April 21, 2026, date on which it became available to him. We also found that Marks responded promptly in bringing his motions when the need to do so became apparent to him and he

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[10] *Marks v CNSX Markets Inc,* (2026) 49 OSCB 4406; https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260511_marks_1.pdf

[11] Marks' email of April 24, 2026 (sent at 10:11 a.m. EDT), marked as Exhibit 11 following the hearing.

filed his motion materials in accordance with the timelines set in our May 4, 2026, order.[12]

4.3 Marks' new evidence motion

[46] We reserved our decision on Marks' new evidence motion until now because the existence of new and compelling evidence is both a test that must be met for permission to introduce new evidence and is also a factor used in assessing whether to intervene in a decision of an exchange under the *Canada Malting Co (Re)*[13] framework, which is discussed in more detail below. We were swayed by the Commission's submission that if we were to decide Marks' new evidence motion in Marks' favour and find that the new evidence was "new and compelling", we risked also pre-deciding one aspect of the *Canada Malting* test without having heard the parties' merits submissions on the application of *Canada Malting*.

[47] For the reasons set out below, we dismiss Marks' new evidence motion.

[48] Marks submits that the Affidavit and Transcript are relevant and material to the issues in the merits hearing and he should be permitted to rely on them.

[49] Marks submits that the Affidavit and Transcript include these significant admissions:

a. the January 8, 2024, memorandum was drafted well after January 8, 2024, and contains references to events after January 8, 2024, suggesting after-the-fact justifications for the AI/ML Suitability Assessment;

b. Faulkner wrote a December 2023 internal memo that disclosed different reasons for the AI/ML Suitability Assessment—namely that Marks had allegedly made derogatory and unprofessional posts about a listed issuer—which confirmed that the Exchange's basis for that unsuitability finding had changed over time;

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[12] *Marks v CNSX Markets Inc*, (2026) 49 OSCB 4251; https://www.capitalmarketstribunal.ca/sites/default/files/2026-05/rad_20260504_marks.pdf

[13] (1986) 9 OSCB 3565 (***Canada Malting***)

c. the Exchange prepared screenshots of Marks' social media activity from 2023 in November 2024 as evidence of over promotion—ten months after the AI/ML Suitability Assessment;

d. Marks was not given notice of the AI/ML Suitability Assessment and was not given an opportunity to respond to it;

e. the Exchange did not initially object to Marks' involvement with New World and its objection only arose after the New World Transaction closed;

f. the Exchange's appeal procedures are internal policies that were not approved by the Commission or the British Columbia Securities Commission;

g. the Exchange received complaints about Marks' promotional activities as early as April 2022;

h. the Exchange does not have published policies or standards that define "over promotion" or govern criticisms of listed issuers; and

i. the Exchange policies do not prescribe specific disclosure language to be used in stock promotion by someone who is a control person.

[50] The Tribunal has taken a restrained approach in exercising its discretion to admit new evidence in a hearing and review.[14] The Tribunal has declined to admit additional evidence in such proceedings unless the evidence is "new and compelling", or unless exceptional circumstances otherwise warrant admission.[15] The "relevant and material" threshold suggested by Marks is not supported by authority. In the "new and compelling" test, "compelling" has been interpreted to mean the evidence would have changed the decision under review had it been available at the time of the decision.[16]

[51] The Affidavit and Transcript were both dated April 21, 2026, and were therefore very recent. Marks established that portions of Faulkner's evidence in both the Affidavit and Transcript (namely, the evidence summarized in (a) and (b) of paragraph [49] above) was evidence that was not previously available to him. As

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[14] *Northern Securities Inc (Re),* 2013 ONSEC 48 (***Northern***) at para 28, citing *Hahn Investment Stewards & Co Inc (Re),* 2009 ONSEC 41 (***Hahn***) at para 197

[15] *Eley (Re),* 2021 ONSEC 19 (***Eley***) at para 37

[16] *Debus (Re),* 2021 ONSEC 1 (***Debus Motion***) at para 33

such, these documents contain some evidence that was clearly "new" for purposes of the test for admitting new evidence. We find, however, that the evidence summarized in subparagraphs [49] (c) through (i) was not "new", as it was previously available to Marks or could have been available to Marks in some form at the time of Marks' appeal to the Board Panel. Although evidence that is not "new" but is otherwise compelling may be admitted if the party seeking to adduce the evidence demonstrates exceptional circumstances for why it was not previously adduced, Marks did not offer any such explanation.[17]

[52] We next turn to consider whether the new evidence identified above is also compelling, and we find that it is not. This is because it is limited to evidence relevant to internal processes predating the Board Decision and the New World Suitability Assessment, in particular, processes relating to the AI/ML Suitability Assessment. We are not satisfied that evidence about earlier internal processes at the Exchange would have altered the outcome of the Board Decision, because (a) the Board Decision was not based on the AI/ML Suitability Assessment and (b) the concerns about procedural fairness and transparency of the AI/ML Suitability Assessment were not relevant to the appeal of the New World Suitability Assessment to the Board Panel since the appeal to the Board Panel was in the nature of a hearing *de novo*.[18] We also agree that the new evidence identified above about processes relating to the AI/ML Suitability Assessment does not bear directly on the question of Marks' suitability.

4.4 The Exchange's new evidence motion

[53] The Exchange's motion for permission to adduce new evidence related to numerous social media posts made by Marks both in the six weeks before the Board Panel hearing and also in the period after the Board Panel hearing up to April 2026. We reserved our decision on this new evidence motion for the same reason that we reserved our decision on Marks' new evidence motion.

[54] The Exchange submits that the proposed new evidence establishes that, since the Board Decision, Marks has continued and escalated the pattern of conduct

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[17] *Debus (Re),* 2021 ONSEC 22 at para 49; *Eley* at paras 37–38

[18] *Ball v McAulay*, 2019 ONSC 3775 (Div Ct) at para 63, citing *Harelkin v. University of Regina*, 1979 CanLII 18 (SCC)

that was evident in the social media posts that were considered by the Board Panel. The proposed new evidence includes social media posts that demonstrate a continuing pattern of overly promotional messaging. As well, many of the posts contain highly abusive and defamatory content about the Exchange and its personnel and their families.

[55] The Exchange submits that we should admit this evidence because it is both "new" and "compelling" evidence that Marks is unsuitable.

[56] The Exchange submits that the social media posts that post-date the Board Panel hearing are clearly "new". Although the Exchange acknowledges that the posts from the six-week period predating the Board Panel hearing are admittedly not "new" because they existed at the time of the Board Panel hearing, the Exchange submits (and the Commission agrees) that there are exceptional circumstances why these posts were not part of the original record before the Board Panel. There are 43 posts from this period, including posts made only ninety minutes before the Board Panel hearing. The Exchange submits that its record for the Board Panel hearing had to be finalized at some point, and that it would have been impractical for it to continually update its record as Marks continued his posting in the lead-up to the Board Panel hearing.

[57] The Exchange acknowledges that the proposed new evidence does not meet the "compelling" test as it is currently articulated in decisions of this Tribunal, i.e., that the proposed new evidence would have "changed" the underlying decision, had it been available at the time of the decision.[19] This is because the Exchange, as a respondent on this application, is seeking to have the Board Decision that Marks is unsuitable upheld and not changed. The Exchange submits that the current articulation of the "compelling" test in Tribunal decisions is an insurmountable standard for a respondent to meet. Instead, it submits that on a motion to admit new evidence brought by a respondent on an application for hearing and review, we should take a purposive approach, similar to that taken by the Supreme Court of Canada in *Barendregt v Grebliunas*[20] regarding the test for adducing fresh evidence on an appeal. Based on *Barendregt*, the Exchange

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[19] *Debus Motion* at para 33
[20] 2022 SCC 22 (***Barendregt***) at paras 47–63

submits that where a respondent on a hearing and review brings a new evidence motion, we should adopt a "sufficiently probative" test to admit the new evidence. In other words, we should consider whether the proposed new evidence would have been “sufficiently probative” of the issues at the hearing, had it been available.

[58] The Exchange submits that the focus of this review must be on reaching a just result. It submits that the proposed new evidence is highly probative because it reinforces and supports the Board Decision that Marks is unsuitable because he continues to engage in overly promotional postings and defamation of the Exchange and its personnel, bringing the reputation of the Exchange into disrepute. The Exchange also submits that the proposed new evidence is exceptional, because it is rare for a self-regulated organization to ask to submit new evidence at a hearing and review. The Exchange further submits that if we grant Marks’ requested relief and either set aside the Board Decision or send it back for reconsideration, the Exchange will consider this additional evidence on a new or reconsidered suitability assessment; and so, it is more efficient and in the interests of finality for us to consider the new evidence now.

[59] In its original written submissions filed for the Exchange’s new evidence motion, the Commission did not take a position on whether the proposed new evidence should be admitted. In written submissions filed for the merits hearing, the Commission altered course and submits that the proposed new evidence should be admitted in light of an April 7, 2026, endorsement of the Ontario Superior Court of Justice[21] in civil defamation proceedings brought by the Exchange against Marks. The Court granted an interim injunction restraining Marks from continuing to make defamatory statements about the Exchange and contacting Exchange personnel and their families and found that Marks’ posts are likely to cause irreparable harm to the Exchange’s credibility and reputation.

[60] The Commission’s submissions are consistent with those of the Exchange, with emphasis on the characterization that this motion presents exceptional circumstances. The Commission also submits that the proposed new evidence would “change the decision below” by adding a new ground to find Marks

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[21] *CNSX Markets Inc v Marks*, 2026 ONSC 2023

unsuitable, namely that he made ongoing abusive and defamatory statements about the Exchange and its personnel.

[61] Marks submits that the Exchange's proposed evidence is not new and compelling and there are not exceptional circumstances to warrant its admission. He submits that "compelling" means that the evidence would likely have affected the outcome and it is impossible for these records to change an outcome that already favoured the Exchange. Marks cautions against using "sufficiently probative" as the test because it would lower the existing threshold.

[62] Marks submits that the social media posts that pre-date the Board Panel hearing were available but not filed, and so were not new for purposes of the test. Posts dated after the Board Panel hearing could not affect the outcome of the Board Decision because they did not exist at the time. He further argues that it is inappropriate to expand the record to reflect a hypothetical future suitability review by the Exchange.

[63] The Tribunal will only permit the admission of new evidence that was known at the earlier stage where there are exceptional circumstances to support its introduction.[22] While we accept that the social media posts that post-date the Board Panel hearing are "new", we do not have evidence of exceptional circumstances to support admitting the social media posts that pre-date the Board Panel hearing. What we see is a decision by the Exchange to rely on the evidence that it already submitted to the Board Panel, rather than making the effort to file more evidence in the lead-up to the Board Panel hearing. That is a perfectly acceptable approach, which results in the Exchange accepting the risk that it will not be able to file and rely on that evidence later. We apply the applicable standard, and find that the social media posts that pre-date the Board Panel hearing are not "new" evidence.

[64] We recognize the perceived logical impossibility of the "compelling" standard for respondents in a hearing and review. However, this Tribunal has repeatedly held that "compelling evidence" is evidence that would have changed the result, or decision below. We are not satisfied that a case, such as this, where the new

[22] *Northern* at para 28, citing *Hahn* para 197

evidence would simply have the impact of amplifying the available grounds for the result, or decision below, warrants an exercise of our discretion to admit new evidence on this application. We are also impressed by the point made by the Tribunal in *Eley*:

> The Commission has taken a restrained approach, generally declining to admit additional evidence unless such evidence is new and compelling. Such caution promotes fair, just and efficient proceedings by *ensuring the review process does not provide a party the opportunity to re-litigate the original proceedings before the Commission on an augmented evidentiary record.*[23] [Emphasis added]

[65] Furthermore, we do not read *Barendregt* as offering support for the notion that a respondent seeking to have a decision upheld on a hearing and review can adduce new evidence if it is sufficiently probative simply to amplify the grounds on which the original decision was based or could have been based. Those were not the facts in *Barendregt*, where the Court considered the test for the admissibility of new evidence proposed by an appellant who was seeking to have the original decision overturned on appeal. Although the Court in *Barendregt* did accept a purposive approach to the test for admitting new evidence on appeal and focused on whether the evidence was "sufficiently probative" of the trial issues, it did not discard the requirement that such "sufficiently probative" evidence could have affected the result at trial.

[66] We conclude that this is not the case in which to modify the "new and compelling" standard adopted in earlier Tribunal decisions because the new evidence the Exchange seeks to have admitted is just more evidence of the same type of behaviour by Marks that was found to be unsuitable by the Board Panel or was otherwise before the Board Panel. This finding does not preclude the Tribunal in the future from modifying the "compelling" requirement based on an appropriate factual and legal foundation.

[67] Having dismissed both new evidence motions, we now turn to consider the merits of the application.

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[23] *Eley* at para 34

5. MERITS OF THE APPLICATION

5.1 Standard of review is the *Canada Malting* test

[68] The Tribunal's powers when reviewing a decision of an exchange are well-established. Subsections 21.7(2) and 8(3) of the *Act*, read together, empower the Tribunal to confirm the exchange's decision or make such other decision as the Tribunal considers proper.

[69] On an application of this kind, the Tribunal exercises original jurisdiction rather than a more limited appellate jurisdiction.[24]

[70] The Tribunal recently confirmed its approach to reviews of exchange decisions in *Mithaq Canada Inc (Re)*.[25] While the Tribunal is not required to defer to decisions of entities listed in s. 21.7 of the *Act*, it has acted with restraint when asked to intervene in decisions of exchanges.[26] That restraint is particularly appropriate where the decision under review is discretionary and the issues are within the exchange's expertise.[27] The Tribunal's restrained approach is also grounded in the expectation that exchanges exercise their regulatory responsibilities with care and diligence.[28]

[71] The Tribunal will intervene in a decision only where the applicant meets the "heavy burden of demonstrating that its case falls squarely within one" of the five factors in *Canada Malting.*[29] Those five grounds for intervention are:

a. the decision maker proceeded on an incorrect principle;

b. the decision maker erred in law;

c. the decision maker overlooked material evidence;

d. new and compelling evidence is presented to the Tribunal that was not presented to the decision maker; or

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[24] *Wilks Brothers, LLC (Re),* 2021 ONSEC 25 (***Wilks***) at para 20; *HudBay Minerals Inc (Re),* 2009 ONSEC 15 (***HudBay***) at paras 106–107

[25] 2024 ONCMT 9 (***Mithaq***) at paras 157–158

[26] *Wilks* at para 21

[27] *Mithaq* at para 157; *Hudbay* at paras 103–104

[28] *Wilks* at para 56; *Eco Oro Minerals Corp (Re),* 2017 ONSEC 23 at para 79

[29] *Mithaq* at para 157; *Canada Malting* at para 24

e. the Tribunal's perception of the public interest conflicts with that of the decision maker.

[72] Marks submits that the standard in *Canada Malting* has been tempered by the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*.[30] Marks says that *Vavilov* establishes a presumptive reasonableness standard for reviewing administrative decisions and that *Canada Malting* does not create a more onerous standard of review than the presumptive reasonableness standard. The Exchange and the Commission submit that the *Canada Malting* standard remains the applicable standard, unmodified by *Vavilov.*

[73] The Divisional Court confirmed in *Eley*[31] that *Canada Malting* expresses the standard of review for this Tribunal on a hearing and review. The Divisional Court did so while applying *Vavilov* to its own review of the Tribunal's decision, demonstrating that *Vavilov* applies to courts when reviewing administrative decisions.[32] The Tribunal has reaffirmed that the *Canada Malting* standard applies in other decisions that post-date *Vavilov*.[33] Accordingly, we find that the *Canada Malting* standard applies without modification.

5.2 What "decision" is engaged in this hearing?

[74] The parties disagreed about which decision is the subject of this hearing and review. For reasons that follow, we are only reviewing the Board Decision.

[75] Marks submits that the following decisions are all under review:

a. the Board Decision;

b. the AI/ML Suitability Assessment; and

c. the New World Suitability Assessment.

[76] The application clearly states that it is an application for hearing and review of the Board Decision only. Marks' application asks for the following relief:

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[30] 2019 SCC 65 (***Vavilov***)

[31] *Eley,* aff'd *Eley v Ontario Securities Commission*, 2023 ONSC 2168 (Div Ct)

[32] *Vavilov* at paras 16–17

[33] *Wilks* at para 58; and *Mithaq* at para 157

a. an order setting aside the Board Decision dated May 21, 2025;

b. in the alternative, an order directing the Exchange to reconsider the matter in accordance with the principles of procedural fairness and natural justice, with directions from this Tribunal; and

c. such further and other relief as Marks may request and this Tribunal may deem just.

[77] We find that Marks chose the scope of our review when he challenged the Board Decision by filing his application. The processes and administrative steps for the AI/ML and New World Suitability Assessments, which impacted Marks, are not before us for review. Because the Board Panel hearing was a hearing *de novo*, we are only able to treat the AI/ML and New World Suitability Assessments as background to the Board Decision.

5.3 The grounds for Marks' application

[78] On this application, Marks advances the following grounds to support his request for relief:

a. the Board Panel relied on documents and materials that were either created after the AI/ML Suitability Assessment or were not in existence at the time of the AI/ML Suitability Assessment, violating the rule that appellate review must be based on the record before the decision-maker (i.e., the Listing Committee that made the AI/ML Suitability Assessment);

b. the Board Reasons were inadequate;

c. the Board Panel placed inappropriate weight on the 1998 SEC settlement;

d. the Board Panel failed to adjourn the appeal to conduct an investigation;

e. there was a breach of procedural fairness in connection with the appeal to the Board Panel through delayed disclosure by the Exchange, denying Marks a meaningful opportunity to know and respond to the case against him;

f. the Exchange failed to disclose any policies, guides or analytical criteria relevant to the exercise of its discretion under s. 2.18 of the Exchange Policy;

g. the Exchange delayed notice to Marks of the AI/ML Suitability Assessment, depriving him of an opportunity to respond and causing him prejudice because he entered into an arrangement with New World without knowledge of the AI/ML Suitability Assessment;

h. the Board Panel improperly treated Marks' lawful and constitutionally protected opinion-based expressive activity as evidence of unsuitability;

i. the Board Panel applied different treatment to other Exchange participants subject to regulatory sanctions and settlements for securities violations, raising inferences of bias, bad faith, or institutional arbitrariness; and

j. the "unfounded decision" and flawed process have catastrophically harmed Canadian investors and New World shareholders and have undermined confidence in Canadian capital markets.

[79] We consider these grounds below and note that Marks has the burden of proving at least one *Canada Malting* factor to support his submission that he is entitled to relief on this application in respect of the Board Decision.

5.4 Additional ground Marks sought to raise mid-hearing and after the hearing

[80] Before addressing the grounds in Marks' application, we first address Marks' attempt to raise a new ground for his application mid-hearing and again almost three months after the hearing ended and we had reserved our decision.

[81] In his oral submissions, Marks asserted that the Exchange violated Ontario securities laws, and the Exchange's appeal processes and procedures were illegal because they were not approved by the Commission or the British Columbia Securities Commission. Marks submitted that the Commission's recognition order[34] for the Exchange has a requirement that the Commission must approve Exchange rules, policies and procedures and this was never done.

[82] On May 15, 2026, three days before the final hearing day, Marks also filed written submissions addressing this issue. His written submissions emphasized that since the Exchange may not have had their appeal procedures and related

[34] *CNSX Markets Inc (Re),* (2023) 46 OSCB 4486; https://www.osc.ca/sites/default/files/2023-06/cnsx_20230601_order-varying-recognition-order.pdf - we note that this recognition order has since been amended on September 4, 2025, however that amendment postdates the issues in this application and does not change the text of s. 6.1 which relates to the "due process" for a decision made by the Exchange.

disciplinary mechanisms properly approved by the Commission this raised issues regarding jurisdiction, procedural fairness, the legality of the Exchange process, the scope of deference owed to the Exchange and whether the Exchange acted pursuant to properly authorized and approved rules.

[83] During the hearing on May 18, 2026, we explained to Marks that it is unusual to file written submissions after the completion of his oral submissions on the merits where there has been no request that he to do so from the panel, permission was not sought and obtained from the panel, and while the respondents were midway through their oral submissions.

[84] The Exchange's position was that Marks was asserting a new ground for his application and that the issue was not properly before us for consideration. However, both the Exchange and the Commission did advise that they were prepared to speak to the issue in their oral submissions.

[85] We accepted Marks' additional written submissions and agreed to consider them as appropriate. We clarified that this was not an acknowledgment that this new issue is an added ground for the application. We explained that it is the application that defines the scope for this hearing and review proceeding.

[86] In oral submissions, the Commission advised that while the predecessor recognition order had an explicit requirement to approve Exchange procedures, the current recognition order does not. As a result, the Exchange's procedures are not rules that are required to be filed with or approved by the Commission.

[87] Almost three months after the hearing ended, Marks sought to renew his submissions with respect to this issue. On August 14, 2026 he sent two emails (the **August 14 request**) addressed to the panel requesting that: (a) we consider the written submissions made in a "Further Revised Supplemental Memorandum" relating to whether the Exchange's internal appeal policies and procedures were required to be submitted to, reviewed by, or approved by the Commission under the Exchange's recognition order, and (b) permission to provide a supplemental authority relating to the issue of the appeal procedures of the Exchange also requiring approval by the Exchange Board and (c) leave under r. 22 to amend or particularize his application to add these issues as a new ground.

[88] We invited the Exchange and the Commission to advise of their positions on Marks' August 14 request. Both the Exchange and Commission filed written submissions on August 21, 2026, objecting to Marks' request. The Exchange objects because:

a. the evidentiary record is closed;

b. the hearing is finished and Marks (or his former counsel) had ample time to raise these issues earlier in the process;

c. raising new issues at such a late stage disrupts the process and is abusive, permits Marks to split his case, constitutes improper reply and would create "unfair surprise, prejudice and confusion";[35]

d. a late amendment to the application is prejudicial to the Exchange and r. 21(1) of the Tribunal's Rules requires that leave to amend an application should be denied if "the amendment would be unfairly prejudicial to a party"; and

e. Marks has provided no adequate explanation for the delay in raising these issues.

[89] The Commission argues that Marks' request should be denied because it is an untimely attempt to reopen and reargue the merits hearing, would prejudice the parties, undermines procedural fairness and efficiency, undermines the orderly conduct of litigation, and, if permitted, would encourage tactical behaviour by parties, and does not raise a relevant issue or exceptional circumstance warranting further submissions. The Commission also emphasizes that r. 22(1) of the Tribunal's Rules requires a motion to be filed and Marks has not filed a motion or an amended application. In absence of this, the Commission cannot fully assess the scope of the request.

[90] On August 24, 2026, Marks filed a reply to the Exchange's and the Commission's written submissions. His reply submissions contain an extensive review of why we should grant his request. He argues that the Exchange's internal appeal procedures were unauthorized, changed during the appeal, and were never properly explained or approved. He further argues that these issues, together

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[35] *Schick v Boehringer Ingelheim (Canada) Ltd*, 2011 ONSC 63 at para 15, citing *Krause v The Queen*, 1986 CanLII 39 (SCC)

with internal Exchange emails relating to the Listing Committee decision-making that were not disclosed to him, raise serious procedural fairness and public-interest concerns. In our view, this is an improper reply. The parts of his submissions that could fairly be considered reply include that: Marks raised the recognition order issue during the hearing; the Commission and the Exchange did not respond to the substance of his request; there is no prejudice, case splitting or abuse; and the authorities filed by the Commission and the Exchange do not apply in these circumstances. Along with his reply submissions, Marks also filed a great deal of other material for a further motion to amend his application, request additional discovery, including of Exchange materials related to the new recognition order issue, and more (the **August 24 motion**). He even seeks disclosure of some of the same internal Exchange emails that we refused to give him leave to pursue in a discovery motion at the outset of this hearing.

[91] We agree with the submissions of the Exchange and the Commission. Marks' August 14 request is denied. It would be inappropriate, at this late stage, to accept and consider additional written submissions on a new ground for Marks' application or to permit Marks to bring a motion to amend his application. We find that it would be highly prejudicial to the parties to grant Marks leave to bring a motion to amend the application to add new issues and grounds three months after the merits hearing was concluded. Marks was made aware during the hearing that any ground related to approval of Exchange rules, policies and procedures was not a part of his application. The application defines the scope of the hearing and review.

[92] It is procedurally confounding that, despite not having been granted leave to file the August 24 motion, Marks did so anyway, ostensibly as part of his reply submissions. Given our denial of his August 14 request, we did not consider his August 24 motion.

5.5 The Board Panel did not improperly consider evidence that post-dates the decision on appeal

[93] Turning next to the original grounds in Marks' application, Marks submits that the Board Panel improperly considered and relied upon evidence that did not exist at the time of the decision under appeal to the Board Panel. He treats the

AI/ML Suitability Assessment as the relevant decision for his appeal to the Panel Board. He objects to the Board Panel having considered both the January 8, 2024, memorandum that refers to events and materials that post-date January 8, 2024, as well as social media posts made by Marks after that date. He submits that the Board Panel should have restricted its consideration to the record that was before the Listing Committee when it made its suitability assessment.

[94] We note that the Board Panel was clear that it was considering the New World Suitability Assessment, and not the earlier AI/ML Suitability Assessment, on the appeal. We are satisfied from the submissions of the Exchange that on an appeal to the Board of the Exchange from a Listing Committee unsuitability finding, the practice and procedure of the Board Panel is that it proceeds "*de novo*" and engages in a process akin to a hearing and review, rather than a strict appeal. In doing so, it allows new evidence and arguments to be introduced and the Board Panel to substitute its own findings for those of the Listing Committee. Given the evergreen nature of suitability findings by an exchange, we accept that the Board Panel should be free on an appeal from a suitability finding to consider evidence relevant to suitability that post-dates the Listing Committee's initial suitability finding. We do, however, suggest that the Exchange consider including clarifying or explanatory language in its policies or appeal procedure to make the *de novo* nature of the appeal process clearer to stakeholders.

[95] Accordingly, we reject this ground advanced by Marks on this application.

5.6 The Board Reasons are inadequate

[96] Marks submits that the Board Reasons were inadequate, and that this constitutes an error of law or proceeding on an incorrect principle under the *Canada Malting* test. For the reasons set out below, we agree.

[97] Marks also submits that the Board Reasons should be intelligible and rational, but they were not. Intelligible reasons are needed to ensure that key issues have been carefully considered. Marks submits that a court (or tribunal) is to look at the reasons provided for the administrative body's decision given "they are the

primary mechanism by which administrative decision makers show that their decisions are reasonable".[36]

[98] Furthermore, Marks submits that when the impact of a decision on the individual involves significant personal impact, such as we accept is the case here, the reasons provided by the decision maker must be of a caliber that reflect the consequence of the decision to the individual.[37]

[99] The Exchange responds that the Board Reasons, read in the context of the record, are transparent and intelligible in addressing Marks' submissions. According to the Exchange, the Reasons, read in conjunction with the record, disclose a reasonable chain of analysis and meet the standard set out in *Vavilov*. The Commission adds that reasons should not be assessed against a standard of perfection but should be read holistically and contextually to understand the basis for the decision.

[100] In *Vavilov*, the Supreme Court of Canada addressed the issue of adequacy of reasons. Although, as explained above, *Canada Malting*, and not *Vavilov,* sets out the standard of review for a hearing and review at the Tribunal, *Vavilov* provides valuable guidance in assessing the adequacy of a decision maker's reasons. In particular, we rely on the Supreme Court of Canada's findings that:

a. a decision must be based on reasoning that is both rational and logical;

b. reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court (or tribunal) in understanding the rationale underlying a decision;

c. a decision should reveal a rational chain of analysis;

d. the reasons read in conjunction with the record should make it possible to understand the decision maker's reasoning on a critical point;[38] and

e. a decision must address key issues or central arguments.[39]

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[36] *Vavilov* at para 81
[37] *Vavilov* at paras 133–134
[38] *Vavilov* at paras 102–103
[39] *Vavilov* at para 128

[101] Following the guidance in *Vavilov*, we struggled to find a clear analytical path in the Board Reasons for the finding that Marks is unsuitable. The Board Panel concluded that:

> … the [Exchange] Listing Committee acted objectively in determining that Mr. Marks is unacceptable to be associated with a Listed Issuer under section 2.16 of the [Exchange Policy], and that its decision is supported by the information that was before it at the time. As a result, we dismiss the appeal.
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> …
>
> … Under section 2.18 of the [Exchange Policy], if social media posts 'could raise investor protection concerns could bring [sic] the Exchange into disrepute, or it is in the public interest to do so', the Exchange may use its discretion to determine that a person engaged in such activities is unsuitable. …
>
> Mr. Marks posted overly promotional content on social media concerning a company for which he serves as Chair. [Mr. Marks' counsel] indicated that the posts have been qualified, and disclaimers suggest that the information should be taken 'with a grain of salt'. However, the disclaimers are inconsistent and do not indicate that he is a control person or that he was appointed as Chair of the company.[40]

[102] We were unable to sufficiently understand from the Board Reasons why the Board Panel concluded that Marks is unsuitable. The Board Reasons quoted above suggest that s. 2.16 of the Exchange Policy and the 1998 settlement with the SEC provided a sufficient basis for an unsuitability finding, while also seeming to confirm the Listing Committee's conclusion that the SEC settlement, in and of itself, would not be sufficient for an unsuitability finding given the passage of time. This contradiction makes us uncertain about the Board Panel's reasoning. Importantly, s. 2.16 does not apply to regulatory settlements such as Marks' settlement with the SEC – instead, s. 2.17 was the correct provision for the Board Panel to apply. Further, the Board Reasons fail to tie its statement

[40] Exhibit 9, Tab 5, Decision and Reasons of Panel of Board of Directors of CNSX Markets Inc. dated May 21, 2025, pages 4–5

about s. 2.18 to any actual social media posts by Marks. We would have expected to see an analytical path that included an explanation, referring to supporting evidence, showing why Marks is unsuitable to be associated with a listed issuer. What we saw instead was a conclusion with no examples or explanation.

[103] Although the Board Panel concluded that Marks posted overly promotional content on social media about a company for which he serves as chair, we find that Marks was understandably concerned about what "overly promotional" means. While we are able to infer that the Board Panel was referring to Marks' social media posts about New World contained in the original record before the Board Panel, we do not know which social media posts caused the Board Panel to come to this conclusion. This would not require a written analysis of every post presented to the Board Panel but requires something more to help the reader understand what aspects of the social media posts the Board Panel thought were overly promotional.

[104] We are further concerned about whether, in concluding that Marks' social media posts were "overly promotional", the Board Panel applied the standard in s. 2.18 of the Exchange Policy or was substituting a different standard. The Board Panel made itself vulnerable to Marks' argument that it applied a standard that was not sufficiently transparent to him or to other market participants by neglecting to connect the concept of "overly promotional" conduct to s. 2.18, which requires that the Board Panel "reasonably believes such association will give rise to investor protection concerns, could bring the Exchange into disrepute or it is in the public interest to do so".

[105] We also struggle to understand from the Board Reasons how the findings that (a) Marks' disclaimer language was inconsistent and (b) that Marks failed to disclose in his posts that he is a control person and the chair of New World, factored into the Board Panel's conclusion that Marks' posts were overly promotional. The Board Reasons do not explain whether and how appropriate disclaimer language or disclosure of Marks' relationship with New World would have mitigated any perceived overly promotional posts.

[106] Marks also submits that the Board Panel ignored most of his submissions on appeal. He provided detailed submissions to the Board Panel about various instances of alleged procedural unfairness as described in paragraph [26] above. The Board Reasons referred to Marks' procedural fairness and transparency arguments in relation to the AI/ML Suitability Assessment but did not deal with them, saying that " … the only relevant issue before them [sic] under [s] 1.5 of the [Exchange Policy 1] is the appeal by Mr. Marks of the decision of the [Exchange] Listing Committee [i.e., a reference to the New World Suitability Assessment]".[41] This conclusion possibly means that the Board Panel did not consider Marks' procedural fairness allegations in relation to the AI/ML Suitability Assessment because Marks did not appeal that decision. In any event, the Board Reasons do not consider or address the other procedural fairness issues raised by Marks. While it is not incumbent on a decision-maker to include in its reasons a consideration of every submission by a party and reasons for a decision need not be "perfect",[42] in this case Marks' procedural fairness submissions were significant to him and the Board Panel ought to have added reasons for its conclusion that Marks' procedural fairness arguments were not relevant.

[107] For the reasons set out above, we find that inadequacies in the Board Reasons trigger the following *Canada Malting* factors:

a. the Board Panel proceeded on an incorrect principle; and

b. the Board Panel erred in law.

5.7 The remaining grounds advanced by Marks do not satisfy the *Canada Malting* test

[108] Below we consider the remaining grounds Marks advanced and conclude that none of them satisfy the *Canada Malting* test.

[109] Marks submits that the Board Panel placed inappropriate weight on the 1998 SEC settlement. Section 2.17 of the Exchange Policy contains language that suggests that any settlement with a securities regulatory authority such as the SEC may

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[41] Exhibit 9, Tab 5, Decision and Reasons of Panel of Board of Directors of CNSX Markets Inc. dated May 21, 2025, page 4

[42] *Vavilov* at para 91

be sufficient grounds for the Exchange to find a person unsuitable to be associated with a listed issuer. As noted in paragraph [102] above, the Board Panel's reasoning about the 1998 SEC settlement is not clear, and therefore Marks' premise that the Board Panel gave the SEC settlement too much weight is not established. In the circumstances, we decline to find that the weight that the Board Panel placed on the 1998 SEC settlement engages any of the *Canada Malting* grounds.

[110] Marks' application includes the ground that the Board Panel should have adjourned the appeal and conducted an investigation. His written and oral submissions did not elaborate on this ground. In the circumstances we do not have any basis to find that this ground satisfies the *Canada Malting* test.

[111] Marks submits that there was a breach of procedural fairness because there was a delay in disclosing to him materials he required for the appeal to the Board Panel. One tranche of disclosure was not provided to him until January 2025, and the January 8, 2024, memorandum was only disclosed to him on March 25, 2025. Although prompt disclosure would have been preferable, we are not satisfied that the timing of the disclosure deprived Marks of a meaningful opportunity to know and respond to the case against him. We rely on the facts that (a) the appeal was delayed after the disclosure, to early May 2025 and (b) Marks filed extensive written submissions for the appeal on May 8, 2025, after the disclosure was made.

[112] Marks also submits that the Exchange was not transparent, and failed to disclose to him any policies, guidelines or analytical criteria relevant to the exercise of its discretion under s. 2.18 of the Exchange Policy. We are satisfied that the relevant Exchange policies were available to Marks. As for other guidelines or analytical criteria, we are also satisfied that no such documents exist and that nothing in this regard was withheld from Marks. Indeed, Marks' own submissions to the Board Panel stated that there is no evidence that the Exchange has published any guidelines regarding the applicable standards under s. 2.18 of the Exchange Policy.[43]

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[43] Exhibit 9, Tab 3C, Submissions of the Appellant to the Appeal Panel of the Board of Directors of CNSX, dated May 8, 2025, para 30

[113] Marks also submits that he was deprived of procedural fairness because the Exchange delayed providing notice to him of the AI/ML Suitability Assessment. For the reasons stated in paragraphs [76] and [77] above, the AI/ML Suitability Assessment is not the subject of this hearing and review.

[114] As an aside, we asked the parties whether the AI/ML Suitability Assessment made by the Listing Committee was a "decision" as described in the Exchange's policies. We were surprised to receive different answers from the Exchange and the Commission. The Exchange said that the Listing Committee made a "decision" when it made the AI/ML Suitability Assessment, which is consistent with its documentation throughout. In contrast, the Commission said that the Listing Committee only gave an advisory opinion and did not make a decision that could be appealed to the Board Panel. Our review of the wording of Exchange Policies 1 and 2 indicates that either of these interpretations could be correct but, of course, they cannot both be correct. Given our conclusion that the Board Decision is the only decision before us on this application, we are not required to resolve the ambiguity in the language of Exchange Policies 1 and 2, but the language merits review by the Exchange, given that it may have implications for procedural fairness related to suitability assessments by the Listing Committee.

[115] Marks also submits that the Board Panel improperly treated his lawful and constitutionally protected opinion-based expressive activity as evidence of unsuitability. He did not formally raise a constitutional question and therefore we do not have any basis for a constitutional law assessment. Although we had issues with the Board Reasons, we nevertheless find that the Board Panel was entitled to consider Marks' social media statements in assessing his suitability under s. 2.18 of the Exchange Policy. We find that Marks' statements about New World and the Exchange are clearly relevant to an assessment of Marks' suitability. Our consideration of Marks' social media statements is set out in paragraphs [126] to [137] below.

[116] Marks submits that the Exchange treated other Exchange participants differently than him. His position appears to be that others should have been found unsuitable by the Exchange. He gave names but no evidence. We have no basis to verify this allegation he made, nor to make any assessment of those other

people. Given the scope of this application, we are only able to review and assess Marks' own conduct and suitability, which we do below.

[117] Marks alleges that both he and Canadian investors were harmed, undermining confidence in the Canadian capital markets. He did not provide evidence to support this assertion. We also question the relevance of the alleged harm to the question of his suitability.

5.8 The Board Decision does not merit deference

[118] The Tribunal will generally show deference to the expertise of an exchange. It is important that the Tribunal does not second-guess an exchange, particularly on matters central to its expertise.[44] Such an approach recognizes that market participants need regulatory certainty.[45]

[119] In the circumstances of this case, we cannot defer to the Board Panel as its Reasons are lacking. To be clear, the Board Panel may have made the right decision for the right reasons, but we are unable to clearly discern the logical path for those reasons. The Board Reasons are simply conclusory and have other failings amounting to the Board Panel proceeding on an incorrect principle and an error in law, as noted above. For these reasons, we do not defer to the Board Decision. We are also troubled by the Exchange's submissions that "[p]ut bluntly, Mr. Marks is doomed to fail any further review by the CSE"[46] and "[t]here is no realistic prospect that the CSE would ever be comfortable revisiting its determination that Mr. Marks is unfit to participate in its exchange."[47] Given these submissions, there is a real risk that the Exchange has predetermined the issue and is incapable of objectively reviewing Marks' suitability if we were to direct the Exchange to reconsider the matter. We have determined that it is appropriate for us to consider Marks' suitability afresh, based on the original record that was before the Board Panel.

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[44] *Hahn* at para 83

[45] *HudBay* at para 114

[46] Factum of the Respondent CNSX Markets Inc, dated March 6, 2026 (**Exchange Written Submissions**) at para 94

[47] Exchange Written Submissions at para 95

5.9 Our fresh consideration of Marks' suitability

[120] When this Tribunal considers a matter afresh, the applicant does not have the onus of proving the original decision (in this case, the Board Decision) was incorrect.[48] Instead, our task is to apply the relevant provisions of the Exchange Policy to assess Marks' suitability. In this case, the appropriate provisions to consider are ss. 2.16, 2.17 and 2.18 of the Exchange Policy. This requires us to consider Marks' suitability in light of the 1998 SEC settlement under ss. 2.16 and 2.17 and also to consider whether Marks is unsuitable to be associated with a listed issuer under s. 2.18 due to his social media posts. Since we dismissed the new evidence motions of both Marks and the Exchange, we base our findings on the evidence that was before the Board Panel, which was included in the record of original proceeding marked as Exhibit 9 at the hearing and the January 8, 2025, Disclosure Record marked as Exhibit 10 at the hearing.

[121] The Commission submits, and we agree, that s. 2.18 of the Exchange Policy confers broad discretionary authority to deem a person unacceptable to be associated with a listed issuer where that association raises investor protection concerns, could bring the Exchange into disrepute, or where doing so is otherwise in the public interest. This section of the Policy is forward-looking and protective in nature. It does not require a finding of regulatory misconduct or a breach of securities law but instead reflects the Exchange's gatekeeping role and public interest mandate.

[122] Marks submits that the Board Panel did not have sufficient evidence to find him unsuitable. Otherwise, he generally failed to engage with the contents of the social media posts in the record of the original proceeding. The Exchange submits that Marks is clearly unsuitable. The Commission declined to offer any assistance to us about how we should assess Marks' suitability unless we admitted the Exchange's proposed new evidence, which we did not do.

[123] For the reasons set out below, we find Marks is unsuitable to be affiliated with New World. While we find that the 1998 SEC settlement is an insufficient basis for concluding that Marks is unsuitable, we find that his social media posts raise

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[48] *HudBay* at para 107, citing *Boulieris (Re),* 2004 ONSEC 1 at para 29

investor protection concerns and could bring the Exchange into disrepute and therefore warrant a finding pursuant to s. 2.18 of the Exchange Policy that Marks is unsuitable.

5.9.2 The 1998 SEC settlement

[124] We have considered whether the 1998 SEC settlement makes Marks unsuitable in light of s. 2.17 of the Exchange Policy. We note that s. 2.17 is permissive, rather than mandatory. In other words, the Exchange "may" (but not "will" or "shall") find a person unsuitable where that person has entered into a settlement agreement with a securities regulatory authority, such as the SEC. In contrast, s. 2.16 of the Exchange Policy uses mandatory language, i.e. "will not approve" a listed issuer where it is affiliated with persons sanctioned for securities laws violations, but the section carves out minor violations that do not necessarily give rise to investor protection or market integrity concerns. In our view, a proper exercise of the discretion in s. 2.17 of the Exchange Policy requires a consideration of the context in which the settlement agreement arose, and whether that context gives rise to investor protection or market integrity concerns that s. 2.17 is intended to address.

[125] We are satisfied that the 1998 SEC settlement is not a reason for finding Marks unsuitable today, given the significant passage of time since the 1998 SEC settlement, the subject-matter of the settlement, its one-time nature and the fact that there was no evidence that the objectionable behaviour has been repeated or that any regulatory authority has found that Marks has breached any other securities laws. In the circumstances, we are satisfied that the 1998 SEC settlement does not raise investor protection concerns today.

5.9.3 Marks' social media posts about New World

[126] We reviewed numerous social media posts that Marks made about New World. In our view, those social media posts raise clear investor protection concerns and engage s. 2.18 of the Exchange Policy. These investor protection concerns are further heightened because even after Marks received the New World Suitability Assessment on October 3, 2024, and he was aware of the Listing Committee's concerns about overly promotional posts, he continued to post promotional material about New World.

[127] In reviewing the social media posts, we noted that New World traded on the Exchange as **$NEWS** and on the US OTC as **REGRF**. It also traded as **RT5**, a Frankfurt symbol. In the New World Transaction, New World acquired an interest in **dialMKT**, a business involving luxury wristwatches.

[128] Marks made social media posts about New World when he was a control person and the chair of New World. These posts included the following:

a. The website wallstreetreporter.com included an article entitled "Get Your Share of the $31 BILLION Watch Market!" which stated "New World Solutions (OTC: REGRF) (CSE: NEWS) is a PURE PLAY on the $31 Billion Wrist Watch enthusiast market … the company's Chairman reveals a potential path to $10 million in annualized revenues in next 12 months … How? Do the math: Based on a valuation multiple of 10X revenues (typical for stocks in early hyper-growth stage of growth cycle) this equated to a $100 million market valuation. Now, divide by 300 million shares outstanding (which is what could be expected with potential M&A) and this equals = $0.35 per share. Now Check out the chart below, which is <u>flashing *multiple* technical "BUY" signals</u> including the charts BREAKOUT of a wide double bottom base, and a BREAKOUT above 50 & 200 day moving averages! …"

b. On September 17, 2024, on X.com: "[siren emoji, rocket ship emoji] #BEASTMODE #BREAKOUTSTOCKS #STOCKSTOTRADE #STOCKSTOWATCH CSE: $NEWS $REGRF [three rocket ship emojis] "volume precedes price action" LOOK at the #charts!!! Not advcie [sic] -issuer sponsored content [image of table of market activity with handwritten annotation #1 $NEWS]"

c. On September 30, 2024, on X.com: "[siren emoji] Today's #BeastMode ACTION #pennystocks [money bag emoji] $PRME $MTC $GSIW $DNAX $CNEY $PDPG $GCAN [siren emoji] $REGRF [money bag emoji, rocket ship emoji] (CSE $NEWS) #Breakoutstocks #charts double bottm [sic] w 50&200MA #BreakoutStock not advce [sic]-issuer sponsored content [image of New World stock price chart with handwritten arrow going up]"

d. On October 8, 2024, on X.com: "no, dummy! the right answer would be @federalreserve is going ALL IN $REGRF (CSE: $NEWS)! The only PURE PLAY stock in $31 BILLION #WatchMarket #Rolex"

e. On October 9, 2024, on X.com multiple posts were made stating:

i. "GET YOUR PIECE OF $31 BILLION WATCH MARKET! (OTC:REGRF) (CSE:NEWS)"

ii. "wanna #getRICH w #pennystocks that INCREASE +1000%? You need the BLUEPRINT to BUILD your WEALTH #TenBaggerBlueprint … [rocket ship emoji] $REGRF (CSE:$NEWS) [rocket ship emoji] $ASII $WW $VIRI $SIRC $GRLT $MASN $DNAX $BURU $NWPN $NOUV not advice- issuer sponsored content [photo image of Ten Bagger Blueprint Book by Jack Marks]

iii. "Today's #BeaskoutStocks [sic] #Pennystocks $ASII $WW $VIRI $SIRC $GRLT $MASN $DNAX $BURU $NWPN $NOUV $REGRF (CSE: $NEWS) LOOK: #Charts #Breakout …"

f. On November 11, 2024, on X.com: "Possibly only REAL stock in #canada is (CSE $NEWS). Up +100% since 9/3 because of U.S. chairman."

g. On November 12, 2024, on X.com: "$REGRF (CSE: $NEWS) .03 "pure play" on $31 billion #WatchMarket w multiple CATALYSTS for EXPLOSIVE #UPSIDE potential! [three rocket ship emojis]"

h. On November 13, 2024, on X.com: "SREGRF (CSE: $NEWS) This will be an exciting 7-10 days for shareholders Do you like ROLLER COASTERS lol? Readers of #TenBaggerBlueprint know that the PATH to #10X #TenBaggers is – a ROLLER COASTER. It's page 151 in my book!"

i. On November 13, 2024, on CEO.ca: "… dialMKT Auction is December 4 = REVENUES $$$. That means the rubber hits the road, and you will know if $NEWS is legit or not. Very simple. How YUGE will the revenues be? Once the catalog is posted, you can take out your calculators and add up ALL the lots and starting prices. After the sale you can do the same and know the revs. It's all public info and transparent. p.s. you're only seeing the tip of the iceberg so far....LOTS in the pipeline will start coming out"

j. On November 13, 2024, on CEO.ca/news: "We have another **NEW** $$ contract ready to announce for dialMKT. INFLECTION POINT is here! $NEWS should be $0.07 based on todays news. But it's not – because it's halted. …"

k. On November 21, 2024: "Could $REGRF (CSE: $NEWS) hit $5-10 Mil revenue run rate in '25? Revenue pipeline growing daily. Do.the.math."

[129] Marks also made promotional statements on a video posted on his "Wallstreet Reporter 1843" YouTube channel. In a YouTube video from October 23, 2024 entitled "NEXT SUPER STOCK (OTC: REGRF) $0.03 pure play on $31 BILLION Watch Market (ROLEX, PATEK etc.)", he discussed that dialMKT (which was acquired by New World) was a goldmine, had the potential for high revenues in the range of 10 million or more and shared a PowerPoint slide which stated:

a. "Organic Growth: Collectible watches are high volume business. *Inventory is liquid and can be financed.* <u>$10 million inventory can be turned +10X annually</u> = $100 million revenue run rate = **$1 BILLION + valuation potential."** [emphasis in original]

b. "M&A: Watch Sellers doing $10 million revenue = highly fragmented market – **can be acquired at low multiples.**" [emphasis in original]

c. "Opportunity to scale to $100 million run-rate within 18-24 moths via M&A – targets include e-commerce companies selling watches and content/media brands."

d. "We believe market could award **dialMKT** + 10X Revenue multiple – based on VELOCITY/Hyper-growth first 18 months." [emphasis in original]

[130] The record of original proceeding also contained a list (with internet links) describing 31 additional social media video posts by Marks on TikTok in the period September 3, 2024, to October 2, 2024, but without the full videos themselves. The material at the noted links was not preserved by the Exchange and the internet links in the list available to us were not active links. Although the descriptions of such posts prepared by the Exchange suggest that at least some of them were promotional posts about New World, we were not able to review the posts themselves and we have not taken these posts into account.

[131] In the social media posts described above, while chair of New World, Marks was clearly engaged in promotional behaviour regarding New World stock. A person who is chair of the Board of the issuer will be reasonably construed by market participants as speaking with knowledge and authority. Moreover, because Marks

was also a related party of the issuer due to the extent of his shareholdings, he was in a position to gain financially from his own promotional behaviour by influencing the market. Posts by such a person that suggest increases in share price or increases in revenues that are not authorized statements made by the issuer and that appear without the benefit of any of the customary risk disclosure precautions provided by the issuer itself are not appropriate for an officer of a listed issuer.

[132] We could not review the disclaimers that Marks submits he had on his social media accounts and that were addressed by his counsel in the oral submissions to the Board Panel, as they were not part of the record of original proceeding. It was not clear whether such disclaimers should have been preserved as part of the Exchange's original record of proceeding. Marks did not show us any examples of any disclaimers, whether in his social media accounts or in the relevant media posts themselves, or explain how any such disclaimers mitigated investor protection concerns regarding his promotional posts. While Marks' application pleaded the nature of various disclaimers or qualifications he relies on, we only saw some examples of qualifications attached to posts made by Marks, including: i) "all posts going forward should be considered personal opinions of Jack Marks/dialMKT (who also happens to be #yuge shareholder in $REGRF)", and ii) "not advice-issuer sponsored content". That said, we are satisfied that given the nature of Marks' posts and his relationship with New World, the disclaimers described in Marks' application would not have been adequate to meet the standard of investor protection required given the promotional content in his posts. The fact of Marks' relationship with New World as chair of the Board, combined with his significant shareholdings, is what makes his posts particularly concerning.

5.9.4 Marks' social media posts about the Exchange

[133] We also reviewed numerous social media posts in the record of original proceeding[49] that Marks made about the Exchange prior to the Board Decision.

[49] See Exhibits 9 and 10

We are satisfied that these posts were such that they could bring the Exchange into disrepute.

[134] Marks made various social media posts that were directed at the Exchange (@CSE_NEWS in the examples below). Some examples follow:

a. On CEO.ca on November 13, 2024, Marks made the following posts:

i. "…Too bad the stock is halted and we CANT [sic] announce news – and investors like YOU are needlessly suffering because of a (Canada flag) facist [sic] regulators. Elections have consequences. Hopefully Putin invades Canada soon and De-Nazifies this shithole country run by a cabal of pedophiles"

ii. "This premise is completely incorrect. The company is in full compliance. $NEWS is halted due to ABUSE OF POWER by smug, petty tyrant Mark Faulkner (pictured) who is single-handedly destroying the [Exchange's] reputation as a [sic] entrepreneurial stock exchange – and causing billions in dollars of losses for Canadian citizens – like YOU. If you don't want to lose your entire investment in $NEWS – which could EASILY happen – I suggest you contact his bosses and ask why Faulkner is VIOLATING agreements he made with $NEWS, and not following [Exchange] procedures, and making up his own laws as he sees fit."

b. On X.com on November 14, 2024, Marks made the following posts:

i. "Sadly, the stock is halted because @CSE_News scumbag crook Mark Faulkner is a rabid racist and #antisemite and pursuing his personal vendetta – at the expense of thousands of #canada shareholders. Faulkner is a rogue "regulator" who is abusing power and due process, and making up things as he goes along. Worse: he has ZERO understanding of #stocks & investment analysis. He is a DISGRACE to @CSE_News. Now [sic] wonder their index is DOWN -90% over past 5 years. Falkner [sic] needs to be FIRED asap and replaced by a competent regulator who has a basic fundamental understanding of capital markets and investment analysis. …"

ii. "Why is @CSE_News stock index down a SCHOCKING -90%. Millions of #Canada citizens have lost their life savings. THOUSANDS of #Canadian citizens have LOST JOBS because growth companies had to shut down. WHY? Because of this man. His name is Mark Faulkner and he is the incompetent and "crooked cop" who regulates this market. Mark is too stupid to know the difference between a REAL company and a "Scamcouver Special". Maybe he is just CORRUPT. But he sure HATES to see a real company succeed – even worse for investors to make money."

c. On X. com on November 21, 2024: "Fun facts: @JustinTrudeau's "white colonial settler" ancestors settled #Canada by stealing land from the indigenous people & killing them. #Canada refused entry to #Jewish refugees escaping from Hitler & Holocaust. Famously saying: "One Jew (in Canada) would be too many". After #WW2 [Canada] welcomed in in [sic] thousands of #Nazie #ukraine SS members who murdered Jews- build [sic] them a monument in #Toronto. And recently applauded one of them in parliament. That's the DNA of @CSE_News"

d. On X.com on November 25, 2024: "#canada deep institutional #antisemitism exemplified by the shameful @CSE_News"

e. On X.com on November 27, 2024: "Is @CSE_News #Racist? Looking at pic of their execs & directors not a single #black #asian or #minority! NOT ONE! (except for clip art black woman -paid $0.15) $REGRF (CSE: $NEWS) halted for weeks w no good reason by @CSE_News . Because 75% of its 4,000+ shareholders, execs #immigrants #minority ?? #BLM #BlackTwitter @TheRevAl #racism #canada"

f. On X.com on November 28, 2024 Marks made the following posts:

i. "is @CSE_News & (TSX: $URB) #Racist? - 50% of CSE-listed issuers have minority execs or directors. - 55% of #toronto is minority - YET - the ONLY minority at CSE is a clipart #black female (getting $0.01 license fee.) @CSE_News "team" page: looks like #KKK meeting in #alabama 1933 …"

ii. "@CSE_News = Canada Scam Exchange. They claim CSE "lowering the cost of capital for entrepreneurial public companies." LIES! …"

g. On X.com on December 3, 2024, Marks made the following posts:

i. "@JustinTrudeau admits #canada is klepto-state. @CSE_News @tsx_tsxv = #scam export Machines"

ii. "Is #Canada #Scam #Exchange @CSE_News even more #CORRUPT than @JoeBiden ? "personal bias rather than legal principles" sounds like @CSE_News mark Faulkner"

iii. "DO you believe @CSE_News Canadian Securities Exchange brand is essentially an "Exchange of #SCAMS" & fugazy [sic] ["poop" emoji] #pennystocks? [poll buttons included asking for responses Yes/No]"

h. On X.com on December 6, 2024, Marks made the following posts:

i. "$REGRF (CSE:$NEWS update: 2 more sales for dialMKT today w yuge [sic] margins to a very smart collector. …Stock still halted due to corrupt @CSE_NEWS abuse of power"

ii. "… speaking of parasitic pigs… have you met Mark Faulkner @CSE_News who destroys #canada investors life savings? …"

i. On X.com on December 10, 2024, Marks made the following posts:

i. "Wanna know what other CORRUPT org silences critics? @CSE_NEWS the #Canada #Scam Exchange & crooked Mark Faulkner who financially RAPES #canadian investors. No wonder CSE #stocks index DOWN -90% over past 5 years…"

ii. "…Now CSE attempting desperate COVER UP of their crimes! (sound familiar?) Corrupt @CSE_News emblematic of everything wrong with [Canada flag emoji] failing economy. CSE down -90% and WORST performing stock index filled w hundreds of fugazy [sic] stocks costing Canadians $$ BILLIONS in LOSSSES …"

j. On X.com on December 17, 2024: "@CSE_NEWS EXPLOITS #BLACK #WOMEN to score "woke Branding" points. Here is a screenshot of @CSE_NEWS "TEAM" page (whiter than #KKK meetup) features 1 FAKE black employee (stock photo licensed for $0.02) …"

k. On X.com on December 27, 2024: "Is #Canada Scam Exchange @CSE_News run by a CRACK HEAD? …"

l. On X.com on January 9, 2025, Marks made the following posts:

i. "Investors #canada has lost faith in @CSE_NEWS because of crooked cop [pig emoji] Mark Faulkner That's what happened when you hire UNSUITABLE person w ZERO legal/business/investing background to be regulator [sic] #canada is a JOKE …"

ii. "…Faulkner UNSUITABLE to be regulator of CSE or ANY stock exchange. ZERO qualifications! No education! No business/cap market experience! Committed FRAUD by halting (CSE:$NEWS) $REGRF w no basis. …"

m. On X.com on March 11, 2025: "Why would @CSE_News "regulator" [pig emoji] Mark Faulkner FABRICATE false charges to suspend (CSE:$NEWS) as REVNEUS skyrocket – causing 4,000 [Canadian flag emoji] to lose ALL their savings? …"

[135] Marks conceded that these posts were extreme, unquestionably aggressive and juvenile. We would go further and find that these posts were intentionally provocative and abusive in a way that shows Marks to be ungovernable. It is never appropriate for a board chair of a listed issuer to publish posts that are blatantly and profanely abusive of the company's regulator. Marks' submission that these posts were not seen by many of his social media followers misses the point. Once published, the statements are broadly available and cannot be erased.

[136] Marks also submits that his statements in his posts were legitimate criticism of the regulator. We do not see reasoned criticism in these posts but instead see abuse and harassment. We have referred to several of Marks' abusive social media posts, any number of which support a finding that they could bring the Exchange into disrepute and that Marks is unsuitable to be associated with New World.

[137] The Board Panel did not rely on or refer to these provocative and abusive posts in concluding that Marks is unsuitable to be associated with a listed issuer.

Nevertheless, they were part of the record before the Board Panel and, since we are considering the matter of Marks' suitability afresh, we are entitled to consider these materials in making our decision.

6. CONCLUSION

[138] For the reasons set out above:

a. we dismissed Marks' motion for leave to bring a discovery motion;

b. we granted Mark's motion for leave to bring a new evidence motion;

c. we dismissed Marks' new evidence motion;

d. we dismissed CNSX's new evidence motion;

e. we denied Marks' August 14 request for permission to provide additional written submissions on a new ground for his application and to bring a motion to amend his application to plead a new ground; and

f. we set aside the Board Decision and considered the matter afresh based on the record that was before the Board Panel and found, pursuant to s. 2.18 of the Exchange Policy, that Marks is unsuitable to be associated with New World.

Dated at Toronto this 28th day of August, 2026

"Andrea Burke"

Andrea Burke

"Jane Waechter"

Jane Waechter

"Dale R. Ponder"

Dale R. Ponder