

**IN THE MATTER OF AN APPLICATION TO REVIEW THE MAY 21, 2025  
DECISION OF THE PANEL OF BOARD OF DIRECTORS OF CNSX MARKETS INC.**

BETWEEN:

**JACK MARKS**  
Applicant

-and-

**CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION**  
Respondents

File No. 2025-11

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## **I. PROCEDURAL HISTORY**

1. The Applicant applies to the Capital Markets Tribunal (the “Tribunal”) for an order setting aside the decision of the Panel of Board of Directors (the “Board”) of CNSX Markets Inc. (the “Canadian Securities Exchange” or the “CSE”) dated May 21, 2025. Alternatively, he seeks an order directing the CSE to reconsider the matter in accordance with the principles of procedural fairness and natural justice, with direction from the Tribunal.
2. The circumstances giving rise to this application are as follows:
3. Via a letter dated October 3, 2024, the CSE Listing Committee communicated their confirmation of a decision purportedly made in January 2024 pursuant to CSE Policy sections 2.16 to 2.18 stating that they would object to any association between the Applicant and New World Solutions Inc. (“New World”), barring him from being an officer, director, promoter or a shareholder with holdings greater than 10%. The relevant policies are reproduced as follows:

### **2.16 Prior Violations**

The Exchange will not approve a Listed Issuer for Listing if any Related Persons, or investor relations Persons associated with the Listed Issuer have been convicted of fraud, been found liable of a breach of fiduciary duty, been sanctioned pursuant to violations of securities laws (other than a minor violation that does not necessarily give rise to investor protection or market integrity concerns) or any other activity that concerns integrity of conduct unless the Listed Issuer severs relations with such Person(s) to the satisfaction of the Exchange.

**2.17** The Exchange may not approve a Listed Issuer for Listing if any Related Persons, or investor relations Person(s) associated with the Listed Issuer:

(a) have entered into a settlement agreement with a Securities Regulatory Authority or other authority;

(b) are known to be associated with other offenders depending on the nature and extent of the relationship and the seriousness of the offence committed; or

(c) have a consistent record of business failures, particularly failures involving public companies, unless the Listed Issuer first severs relations with such Person(s) to the satisfaction of the Exchange

**2.18** The Exchange may deem any Person to be unacceptable to be associated in any manner with a 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.

4. This was the first instance that the Applicant was advised of the January 2024 decision. The October letter was bare and failed to contain even the most basic disclosure to allow Mr. Marks to know the case to meet.
5. The supposed basis of the January 2024 decision was that in 1998, Starwood Media Group, of which the Applicant was CEO, entered into an agreement with the United States Securities Exchange Commission enjoining them from violations of section 17(b) and requiring them to pay a civil penalty of \$15,000. The agreement notably contains no admission or denial of the allegations. The letter then goes on to vaguely state that promotional materials published by the Applicant are significantly aggravating and give rise to protection concerns.
6. On November 1, 2024, the Applicant's counsel filed a Notice of Intention to Appeal to the Board. Additionally, counsel sought disclosure from the CSE, seeking production of various pertinent materials including:
  - a. all social media content at issue;
  - b. relevant policies, protocols and guidelines;
  - c. internal memoranda, communications and decision-making records;
  - d. all communications related to the decision; and,
  - e. any other materials relied upon in the decision-making process.
7. This request for disclosure was met with significant evasion or refusal, and materials underpinning the decision were not produced until months later, with one tranche being received in January 2025, and another three months later. Crucially, the memorandum of the Listing Committee underlying their January 8, 2024 decision was not disclosed until March 25, 2025, 15 months after it was purportedly rendered and nearly five months after a Notice of Intention to Appeal was filed. Concerningly, this memorandum references the Applicant's involvement with CEO.ca in which no online conduct had yet occurred as of that date. This called into serious question the authenticity of the document and whether it was fraudulently prepared and later misrepresented as a historical record.
8. Counsel for the Applicant has since pulled the meta data for the PDF containing the January 8, 2024 decision using Adobe Acrobat, a screenshot of which is attached at "Appendix A" to these submissions. The meta data show that the PDF was created on

January 14, 2025 by author Mark Faulkner using Microsoft Word for Microsoft 365. This creates significant further doubts as to whether the decision was actually drafted on January 8, 2024, or sometime much later, solidifying the Applicant's concerns about the document's authenticity.

### **1. Arguments Contained in the Applicant's Written Submissions**

9. On May 8, 2025, the Applicant filed written submissions in support of their Notice of Intention to Appeal, raising several persistent procedural and substantive issues requiring full consideration by the Board.

#### *i. Failure to Make Timely and Adequate Disclosure:*

10. First, the Applicant argued that the CSE failed to provide even the most basic disclosure in a timely manner, undermining the high level of procedural fairness that ought to be afforded, especially in light of the fact that the Applicant's professional and reputational standing were in issue. For example, at paragraph 2 the Applicant's counsel wrote:

2. At every stage, requests for disclosure were met with evasion or refusal. The materials underpinning the decision were not produced until months after they were requested with one tranche received in January 2025 and another three months later. The most significant document relied upon by the CSE, the purported decision of the Listings Committee dated January 8, 2024, was only disclosed on March 25, 2025. This was 15 months after it was allegedly rendered and nearly 5 months after the appeal was initiated. This delay cannot be dismissed as inconvenience. It cuts to the core of procedural fairness and the integrity of this process. This conduct is not an isolated defect in an otherwise fair process. It is a wholesale failure to comply with the basic requirements of transparency and fairness. As noted in the original Notice of Intention to Appeal, we submitted on November 1, 2024, the CSE failed to provide even the most basic disclosure to allow Mr. Marks to know the case he had to meet from its inception:

"This notice serves to preserve our client's right to appeal and to assert our position that the information provided in the decision letter is insufficient for the preparation of meaningful submissions. We respectfully request the production of the following [all social media content at issue, all relevant policies, internal memoranda, and other material that will guide the directors in the appeal]."

#### *ii. Failure to Provide Reasons or an Opportunity to Make Submissions*

11. Additional procedural fairness violations described in the written submissions include the CSE's failure to provide any reasons for their decision or any opportunity to allow the Applicant to make meaningful submissions. As will be later described, these are minimal

procedural necessities of any securities regulatory body, rendering the entire process of the Listing Committee unfair.

*iii. Authenticity of the Memorandum*

12. The written submissions then go on to question the authenticity of the memorandum disclosed on March 25, 2025. In addition to what was described above, the Applicant noted the memorandum contained no timestamps, circulations history and circumstantial guarantees of trustworthiness to support its purported provenance, namely, that it was actually created and finalized on January 8, 2024. These reliability concerns were bolstered by the fact that no explanation was made as to why it took nearly five months to produce following the Applicant's disclosure request once the appeal was initiated. At paragraph 8 of their written submissions, counsel for the Applicant writes:

We are instructed that the internal composition of the January 2024 memorandum, including stylistic markers, inconsistent references, and the inclusion of events that had not yet occurred, suggest the document may have been constructed after the fact. These features raise serious doubts about whether the document is genuinely contemporaneous or whether it was created to retroactively justify a decision that had already been made.

13. These concerns are now heightened by the fact that the meta data shows the PDF containing the January 8, 2024 decision which was sent to counsel for the Applicant was created on January 14, 2025.

*iv. Retroactive Justification*

14. Third, the Applicant elaborated that timing of disclosure of the January 8, 2024 memorandum aggravated the procedural unfairness at play. In addition to this delay, the CSE then disclosed significant amounts of social media content created after the fact that led to the inescapable inference that these materials were being used to retroactively bolster the decision with a barrage of allegations, undermining the Applicant's ability to respond. At no point was the Applicant given any opportunity to respond at the time of the alleged decision in January 2024:

20. The attempt by the CSE to bolster the decision with a barrage of allegations concerning Mr. Marks' conduct after that date is procedurally improper, substantively unfair, and legally unsupportable as it is improper and contrary to every principle of natural justice to now allow the CSE to flood the record with new 7 allegations and then seek to justify its earlier decision based on information that had not yet occurred and was not before the original decision-maker.

21. Mr. Marks was deprived of any opportunity to respond at the time of the alleged decision in January 2024. Had he been informed, we are instructed that he would have avoided entering into any corporate transaction that might later be unwound on the basis of undisclosed and disputed suitability concerns. The absence of timely notification has caused direct and measurable harm to Mr. Marks and to thousands of Canadian investors.

22. As we have repeatedly noted throughout earlier correspondence, the failure to provide reasons, to provide disclosure, and to allow a timely opportunity to respond has already rendered this process unfair. To now allow the CSE to rely on information that did not even exist at the time of the decision is to compound that unfairness. It is for this reason that none of the conduct postdating the January 2024 decision should be considered in this appeal. This Panel is charged with reviewing the decision communicated to Mr. Marks on October 3, 2024. It is not a roving mandate to evaluate or punish Mr. Marks for subsequent speech or activity unrelated to the record that was before the original decision-maker.

v. Passage of Time and Double Standards

15. Fourth, the written submissions highlight that the nearly 30-year-old agreement contained no admission of wrongdoing and was in relation to a minor infraction, particularly in the absence of any future sanctions or misconduct. The Applicant submitted that this could not possibly sustain a finding of unsuitability within the definition of the CSE policy and warrant permanent exclusion from the Canadian capital markets. Underlying this assertion was the fact that individuals closely associated with the CSE, including its Chairman and sitting director, have been the subject of recent and substantial regulatory sanctions, including multi-million-dollar settlements for securities violations.<sup>1</sup>

vi. Complete Lack of Transparency Regarding Applicable Discretionary Standards

16. Fifth, the written submissions highlighted the complete absence of any disclosure outlining the criteria through which “integrity concerns”, “investor protection concerns”, or conduct that could bring the Exchange into disrepute are applied. This is despite the fact that counsel requested on November 1, 2024 production of all policies, protocols and guidelines that inform the CSE’s treatment of social media content and how the above-noted terms are interpreted. The Applicant highlighted that this complete failure undermined his ability to know the standard to which he is being judged, a basic concept underlying procedural fairness in the administrative context.

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<sup>1</sup> <https://www.osc.ca/en/news-events/news/caldwell-investment-management-ltd-pay-18m-violating-trade-execution-rules?>

17. Relatedly, while the January 2024 decision appeared to place significant weight on Mr. Marks' public commentary on social media platforms, it failed to provide any indication or analysis as to how or why such commentary made prior to January 2024 was objectionable or had any bearing on the integrity of the Exchange. Likewise, it failed to how explain how it put investigators at any sort of material risk. On this point, the written submissions concluded:

32.If this Panel were to uphold the CSE's approach, it would be endorsing a precedent whereby expression alone—without adjudicated misconduct by a regulator—can be deemed grounds for exclusion. That would have a chilling effect on market participation, investor communications, and legitimate promotional activity. It would risk weaponizing vague internal standards against those who are merely outspoken or provocative.

33.It is no answer to say that the CSE is entitled to regulate tone or messaging through its discretionary powers. Discretion is not unfettered. A finding of unsuitability must be based on proven facts, relevant legal standards, and meaningful risk to investor protection—not on the subjective impression of tone or the appearance of controversy. If they were inappropriate or misleading, the appropriate venue would be a regulatory proceeding before a competent authority, with full procedural safeguards and the right of response. That has not occurred. No regulator has censured Mr. Marks for these expressions. The CSE cannot substitute its own judgment for that of the regulators. It cannot create its own regime of speech control under the guise of suitability, especially in the absence of clear standards or transparent processes.

vii. *Alleged Conflict of Interest:*

18. Finally, the written submissions noted that members of the Listing Committee involved in the January 8, 2024 decision may have held personal or professional relationships with competitors of Mr. Marks, raising serious concerns about the impartiality of the decision-making process.

**2. Oral Submissions Made at the Hearing Before the Board**

19. Further, in oral submissions at the hearing of this matter, the Applicant undertook a detailed analysis of the posts at issue and made specific submissions in respect of each of them. It was submitted that every post contained clear and sufficient cautionary language, appropriately qualifying the content and context in which the statements were made. On that basis, it was argued that none of the social media correspondence, whether considered individually or collectively, could properly be characterized as problematic in any meaningful way.

### **3. The Decision and Reasons of the Board**

20. On May 21, 2025, the Board released their Decision and Reasons, comprised of a five-page document that fails to critically analyze any of the arguments contained in the Applicant's written submissions and oral arguments. In fact, the decision baldly concludes that any procedural fairness issues identified by the Applicant were irrelevant without providing any reason to why that was the case.
21. In similar fashion, they conclude that the CSE has discretion under the CSE Listing Policies to make decisions regarding the suitability of a person to associate with a Listed Issuer, without providing any analysis as to whether that discretion was exercised reasonably. It contains no analysis of how the 1998 settlement raises any non-trivial concerns or how the promotional content on social media is aggravating to such an extent that it would justify the action taken by the Listing Committee, in light of the repeated use of disclaimers to clarify the nature and purpose of the content.
22. At its core, the Applicant submits that the Board's failure to meaningfully grapple with any of these issues and reject procedural fairness as a relevant consideration renders it wholly untransparent, unjustified and unreasonable in accordance with the principles enumerated in *Vavilov*.

## **II. THE BOARD'S DECISION IS UNREASONABLE**

### **1. The Presumptive Standard is Reasonableness**

23. Section 21.7(1) of the *Securities Act*, R.S.O 1990, c. S.5 (the "*Securities Act*") provides that individuals directly affected by a direction, decision, order or ruling made under a policy of a recognized exchange may apply to the Tribunal for a hearing and review of the direction, decision, order or ruling. Section 21.7(2) specifies that section 8 of the *Securities Act* applies, which in turn provides under subsection (3) that the Tribunal may by order confirm the decision under review or make such other decision as the Tribunal considers "proper".
24. The Ontario Superior Court in *Eley*,<sup>2</sup> analyzed the correct standard of review on a statutory appeal to an administrative tribunal. In doing so, they adopted the majority's decision in

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<sup>2</sup> *Eley v Ontario Securities Commission*, 2023 ONSC 2168 (*Eley*).

*Vavilov*, which presumes a starting point of reasonableness.<sup>3</sup> In applying the reasonableness standard to securities matters, the court went on to adopt the “*Canada Malting test*”, which outlined five distinct scenarios in which the reasonableness presumption could be rebutted:<sup>4</sup>

19 On a hearing and review before it, the OSC only interferes with an SRO decision on one or more of the following grounds (*Canada Malting Co. (Re)*, (1986), 9 OSCB 3565, para. 24; *Lockev. IIROC*, 2022 NSCA 31 (N.S. C.A.) (N.S. C.A.) , paras. 13-20):

(a) the SRO has proceeded on an incorrect principle;

(b) the SRO has erred in law;

(c) the SRO has overlooked material evidence;

(d) new and compelling evidence is presented to the Tribunal that was not presented to the SRO;

(e) the SRO's perception of the public interest conflicts with that of the OSC.

25. While the *Canada Malting test* is guiding, it is simply a historical embodiment of the reasonableness standard in securities cases, later adopted in post-*Vavilov* administrative decisions involving provincial securities regulators, and does not constitute its own distinct standard of review.

## **2. A Reasonable Decision Requires Intelligible and Rational Reasons**

26. Intelligible reasons are invaluable to ensuring the relevant issues have been carefully considered, especially when a decision can be appealed or is subject to judicial review.<sup>5</sup> In *Baker*, the court found that in cases where the decision has important significance for an individual and where there is a statutory right of appeal, written reasons should be required:<sup>6</sup>

43 In my opinion, it is now appropriate to recognize that, in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision. The strong arguments demonstrating the advantages of written reasons suggest that, in cases such as this where the decision has important significance for the individual, when there is a statutory right of appeal, or in other circumstances, some form of reasons should be required. This requirement has

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<sup>3</sup> *Eley*, para 20.

<sup>4</sup> *Eley*, para 19.

<sup>5</sup> *Baker*, para 39.

<sup>6</sup> *Baker*, para 43.

been developing in the common law elsewhere. The circumstances of the case at bar, in my opinion, constitute one of the situations where reasons are necessary. The profound importance of an H & C decision to those affected, as with those at issue in *Orlowski, Cunningham, and Doody*, militates in favour of a requirement that reasons be provided. It would be unfair for a person subject to a decision such as this one which is so critical to their future not to be told why the result was reached.

[Emphasis added]

27. In conducting a reasonableness review, 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".<sup>7</sup> As such, an administrative body's reasons have implications for the legitimacy of the decision both in terms of its substantive reasonableness and in terms of whether it is procedurally fair.<sup>8</sup>
28. Not only will a decision be unreasonable if it "could never be supported by intelligible and rational reasoning" but "an otherwise reasonable outcome also cannot stand if it was reached on an improper basis."<sup>9</sup> As stated by the Court in *Vavilov*, with emphasis by the writer:<sup>10</sup>

102 To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Ryan*, at para. 55; *Southam*, at para. 56. Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment" : RA Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 CJALP 123, at p. 139; see also *Mora Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750, 27 Imm. LR (4th) 151 (FC), at paras. 57-59.

103 While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the

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<sup>7</sup> *Vavilov*, para 81.

<sup>8</sup> *Vavilov*, para 81.

<sup>9</sup> *Vavilov*, para 86.

<sup>10</sup> *Vavilov*, paras 102-103

decision was based on an irrational chain of analysis: see Wright v. Nova Scotia (Human Rights Commission) 2017 NSSC 1123 Admin. LR (6th) 110(NSSC); Southam , at para. 56. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see Sangmo v. Canada (Minister of Citizenship and Immigration) , 2016 FC 17 (FC), at para. 21) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see Gamez Blas v. Canada (Minister of Citizenship and Immigration) , 2014 FC 629, 26 Imm. LR (4th) 92 (FC), at paras. 54-66; Reid v. Ontario (Criminal Injuries Compensation Board) , 2015 ONSC 6578 (Ont. Div. Ct.); Lloyd v. Canada (Attorney General) , 2016 FCA 115, 2016 DTC 5051 ( FCA ); Taman v. Canada (Attorney General) , 2017 FCA 1, [2017] 3 FCR 520 ( FCA ), at para. 47).

[Emphasis added]

29. Furthermore, when the impact of the decision on the individual involves significant personal impact or harm, the reasons provided by the decision maker must reflect their decision's consequences:<sup>11</sup>

133 It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker* , at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[Emphasis added]

30. Importantly, when credibility is at issue, an administrative body must explain in logical and convincing fashion why they found an individual to lack credibility. This is essential to a finding that reasons are intelligible. As stated by the Court in *Oyaga Pava*, “[t]he administrative decision maker has a duty to say why credibility is undermined without evading key points”.<sup>12</sup>

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<sup>11</sup> *Vavilov*, para 133.

<sup>12</sup> *Oyaga Pava c. Canada (Citoyenneté et Immigration)*, 2024 FC 390 (*Oyaga Pava*), para 25.

### 3. The Board Erred in Finding that Procedural Fairness was Inapplicable to the CSE Listing Committee

31. As administrative decision-makers, a duty of procedural fairness is owed by the CSE Listing Committee and the Board, and the conclusion by the Board that procedural fairness was irrelevant was a crucial legal error requiring intervention by the Tribunal.
32. The doctrine of procedural fairness applies to every public authority making an administrative decision which is not of a legislative nature, and which affects the rights, privileged or interests of an individual.<sup>13</sup> Accordingly, while the level of procedural fairness may vary from case to case, it is a general rule that the duty of fairness applies.<sup>14</sup>
33. Various decisions have recognized that procedural fairness applies to discretionary decisions made by stock exchanges:
34. Directly on point to the issues in this application is a news release dated September 27, 1999 notifying that the BC Securities Commission overturned a decision of the Vancouver Stock Exchange delisting the shares of Pan Pacific Gold Corporation and declaring its directors to be unacceptable as directors of the Exchange listed companies. In citing multiple reasons for overturning the decision, the BC Securities Commission found that the Vancouver Stock Exchange failed to comply with the requirements of procedural fairness since they did not hold a hearing and did not provide adequate notice of their concerns to the company and their directors. Likewise, they failed to provide adequate reasons for their decision, which could have serious consequences on the company and its shareholders.<sup>15</sup>
35. In *McLeod*, the primary issue on appeal was whether the TSX Venture Exchange afforded the appellants with sufficient procedural fairness. The Alberta Court of Appeal found that the exchange owed substantial procedural fairness, beyond merely the minimal requirements:<sup>16</sup>

[36] The persons challenging the decision are entitled to expect substantive and procedural fairness on the part of the Exchange. The exchanges are gatekeepers to access to capital markets and are required to act in the public

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<sup>13</sup> *Mavi v Canada (Attorney General)*, 2011 SCC 30 (*Mavi*), para 38.

<sup>14</sup> *Mavi*, para 39.

<sup>15</sup> <https://www.bcsc.bc.ca/about/media-room/news-releases/1999/commission-rejects-vse-decision-delisting-pan-pacific-gold-corp-orders-hearing>

<sup>16</sup> *McLeod v Alberta Securitis Commission*, 2006 ABCA 231 (*McLeod*), paras 36-37

interest to maintain confidence in those markets. Further, there are a very limited number of recognized exchanges in Canada over which public trading of securities is permitted. It is important that the exchanges act fairly and follow appropriate procedures in deciding what and whose securities will be permitted to trade and in decisions related to this listed corporations whose securities are traded over these exchanges. Having regard to their public responsibilities, which impact considerably upon the economy of this country, it is appropriate to hold them to a relatively high standard of conduct. In turn, their decisions, when made fairly in accordance with such expectations, attract deference on the part of those bodies reviewing them.

[37] In this case, similar to Baker itself, the balancing of the factors shows that the duty of fairness is more than simply “minimal” or “relaxed” and requires a full and fair consideration of the issues. This is particularly so given the importance or potential impact of the decision at issue and the context in which it is being made.

[Emphasis added]

36. The CSE Listing Committee is no different; as one of the few gatekeepers to the capital markets, it is required to act fairly in deciding which individuals they allow and deny entry into the capital markets. In light of the severe consequences of denying someone the ability to become a director, promoter or major shareholder of a listed corporation, the CSE Listing Committee owed the Applicant a significant level of procedural fairness, including the right to make responsive submissions and provide adequate disclosure. The failure of the Board to even entertain this issue in reviewing the Listing Committee’s decision amounts to a crucial legal error that renders its decision unreasonable.

#### **4. The Board Erred in Relying on Post Hoc and Unauthenticated Documents**

37. In coming to their decision, the Board relied not only on documents, the integrity of which were in dispute, but which were either allegedly created after the fact and/or not available to the Applicant until months later due to unexplainable delayed disclosure, namely, the January 8, 2024 decision. The Board failed to address any issues raised by the Applicant regarding the authenticity of this document; they engaged in no weighing exercise, assumed its authenticity and reliability, and failed to acknowledge concerning evidence that it had been doctored.

38. When the authenticity of documentary evidence is at issue, it is the duty of the administrative decision maker to assess such evidence and determine whether it should be afforded any weight. The evidentiary weighing process is revealed through a decision-maker’s reasons, which should outline the underlying rationalizing process of why a

particular document is given any weight. In this regard, the exercise is similar to a credibility assessment.

39. In *Osikoya*,<sup>17</sup> the applicant made a claim for refugee protection on the basis that her bisexual identity would put her at risk should she return to Nigeria. The Refugee Protection Division rejected the claim on the basis of credibility findings and the applicant appealed her decision to the Refugee Appeal Division (the “RAD”), who also dismissed the claim.<sup>18</sup> The Federal Court set aside the RAD’s decision on the basis that they failed to transparently analyze a letter from the applicant’s aunt corroborating her account of being sought after by Nigerian police.<sup>19</sup> Instead of making a finding as to authenticity, the RAD avoided the question all together, instead finding that the aunt’s letter should be given little weight, without providing any logical reasoning as to why that was the case.<sup>20</sup> The Federal Court explained the proper course to assessing authenticity as follows:<sup>21</sup>

[51] The letter purports to describe first-hand observations of events that are a key reason why Ms. Osikoya is claiming protection. If it is truthful, it corroborates Ms. Osikoya’s claims in key respects. On its face, it could only have high probative value. The real issue is one of weight, and this turns on the letter’s authenticity. The letter is either authentic or it is not. If it is not authentic, it should be given no weight and its contents can safely be disregarded. The problem with the RAD’s assessment is that while it must have had concerns about the letter’s authenticity, it does not reject the letter as inauthentic. Instead, the RAD accepts that it deserves some weight and has some probative value, only not enough to overcome other problems with the claim. But if the claim was corroborated in material respects by the letter, the other problems with the claim may be more apparent than real. The RAD needed to say a great deal more than it did to explain why the claim was rejected despite this corroborative evidence.

...

[53] Justice Anne Mactavish has observed that “[i]f a decision-maker is not convinced of the authenticity of a document, then they should say so and give the document no weight whatsoever. Decision-makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document ‘little weight’” (*Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20). Building on this, Justice Shirzad Ahmed stated recently: “Fact finders must have the courage to find facts. They cannot mask authenticity findings by simply deeming evidence to be of ‘little probative value’” (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 27). Respectfully, I

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<sup>17</sup> *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 (*Osikoya*).

<sup>18</sup> *Osikoya*, para 1.

<sup>19</sup> *Osikoya*, para 2.

<sup>20</sup> *Osikoya*, para 50.

<sup>21</sup> *Osikoya*, paras 51, 53.

agree with my colleagues. The RAD's treatment of the letter from Ms. Osikoya's aunt demonstrates the incoherence that can result from equivocal findings of fact.

[Emphasis]

40. This underlying reasoning process applies to the January 8, 2024 decision, albeit in somewhat reverse fashion. When the authenticity of the document was questioned by the Applicant, the Board had an obligation to make a factual finding as to its authenticity, clearing setting out why it had found the document to be credible despite the many valid concerns raised by the Applicant that undermined its provenance.
41. Instead, the Board skirted the question altogether, failing to engage in any meaningful analysis of a key argument advanced by the Applicant and, in turn, undermining the transparency of the decision-making process. As stated in *Vavilov*, a failure to address key arguments puts into question the reasonableness of the decision:

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (Newfoundland Nurses, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

42. Now aggravating this error is evidence contained in the meta data of the document purporting that it was made into a PDF by author “Mark Faulkner” on January 14, 2025, over a year after the document is dated. In light of this discovery, the Applicant submits that the principles enumerated in *Morabito*<sup>22</sup> regarding allegations of abusive conduct are apt. In sum, the Court found that were an applicant alleges unprofessional conduct or an abuse of some kind on the part of the BC Securities Commission, the evidentiary burden may shift to the Executive Director to respond in some meaningful way.<sup>23</sup> The Applicant submits that the Board failed to put the onus on the CSE to address the authenticity issues

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<sup>22</sup> *Morabito v British Columbia (Securities Commission)*, 2022 BCCA 279 (*Morabito*).

<sup>23</sup> *Morabito*, para 97.

raised with the January 8, 2024 decision and that this error is now exacerbated by the meta data, which further puts into question the document's authenticity.

43. In failing to address the authenticity of the January 8, 2024 decision, the Board further erred by potentially relying on a document created post facto the October 3, 2024 letter and thus, not part of the proper evidentiary record.
44. In fact, the CSE had improperly attempted to bolster the decision with a barrage of allegations concerning the Applicant's conduct after the fact on the basis of alleged conduct that had not occurred as of the purported date of the original decision on January 8, 2024. For example, the January 8, 2025 disclosure package relied on by the CSE during the appeal to the Board contained a bevy of social media posts made after October 3, 2024, and thus were irrelevant to any prior determination of the Listing Committee. Relatedly, of the social media posts dated prior to January 8, 2024, the screenshots disclosed are labelled as being made sometime in 2024 and, thus, providing evidence that they were not relied on in the original decision. A pertinent example is the document labelled "Screenshot\_7-11-2024\_103830". While the social media post was dated in 2023, the document name suggests that it was only screenshotted in November 2024, over 10 months later than the January 2024 decision. The Applicant submits that the Board's reliance on evidence either not relied on or non-existent during the time of the original decision is an error of law and constitutes an independent basis to render their decision unreasonable.
45. Judicial review is a review on the record, and it is not open to a court to accept new evidence except in highly limited and narrow circumstances. In reviewing the decision of the Listing Committee, the Board was acting in a quasi-judicial role and, as such, they were only entitled to limit their review to evidence before the Listing Committee at the time of the decision. In failing to do so, the Board essentially engaged in a hearing de novo, which is not the purpose of an appeal under the CSE Listing Policies.

**5. The Board Failed to Provide Any Meaningful Analysis of Submissions Made at the Hearing**

46. As stated in the Applicant's written submissions dated May 8, 2025, the Listing Committee's finding of unsuitability was driven by two key elements:
  - a. The 1998 settlement with the SEC; and

- b. The Applicant's historical use of social media in connection with issuers.
47. The Applicant advanced detailed written and oral submissions as to why these elements could not have reasonably justified the decision of the Listing Committee, however, the Board again failed to meaningfully address any of these key arguments. This failure renders the Board's decision unjustified in light of their duty to make findings of fact supported by a logical chain of analysis as emphasized in *Vavilov*. It is insufficient to make a peremptory conclusion without analyzing the evidence necessary to reach such a finding.
48. As to the first element, instead of making a finding as to how a 1998 settlement with the SEC had any bearing on the suitability of the Applicant to associate with a listed issuer, the Board simply avoided the issue. This is despite the fact that this settlement was clearly material to the decision of the Listing Committee who found that the use of promotional materials aggravated the investor protection concerns with the settlement. Counsel for the Applicant also made submissions surrounding the fact that the SEC matter occurred nearly thirty years ago, involved no admission of wrongdoing, and that the Applicant has not been followed by any misconduct or regulatory sanction since. He argued that to rely on it now—without any intervening issues—is plainly punitive and disregards the rehabilitative principles that underpin modern regulatory practice. The failure to address the argument that the settlement was given inappropriate weight by the Listing Committee leads to the inescapable inference that the Board's conclusion was not based on the actual evidentiary record before it.
49. This failure to grapple with key arguments and evidence is perpetuated by the Board's blanket conclusions that the material posted by the Applicant was "overly promotional" and contained "inconsistent disclaimers", without being able to point to any examples as to how that was the case. To the contrary, the Applicant's counsel provided detailed submissions regarding the promotional content in question, including with respect to the use of disclaimers.
50. In sum, the Applicant has been consistently cautious. He uses disclaimers. He distinguishes fact from opinion. He repeats again and again that his posts are not investment advice. There is no finding from any regulator—provincial or federal—that any of his communications violate securities laws or mislead investors. While the CSE pointed to tone, style, and perhaps even popularity, these are not bases for exclusion from the

capital markets. In a free society, especially one that values open capital formation, market participants must be permitted to communicate. Speech alone, absent adjudicated wrongdoing, cannot be grounds for unsuitability.

51. The recurring and varied use of cautionary phrases demonstrates a clear intention to educate, qualify, and disclaim rather than to promote securities in a manner that would contravene Canadian securities laws. The thematic patterns identified below underscore the consistent and robust approach taken by the speaker to avoid any misinterpretation of the content as formal investment advice or promotional material. For instance:

- a. Numerous statements emphasize that the speaker is not providing investment advice, such as 'not investment advice', 'not a buy recommendation', and 'do not take this as investment advice'. These declarations are placed prominently throughout the content.
- b. The speaker repeatedly describes the stocks discussed as 'highly risky', 'super high risk', and 'not for widows and orphans'. Likewise, there is emphasis that the stock value could decline to zero. This consistent emphasis communicates the speculative nature of the subject matter.
- c. In nearly every video, the speaker clearly states their personal financial interest in the companies mentioned, often describing themselves as a major shareholder or an incoming executive. Phrases like 'I'm biased', 'I own a ton of stock', and 'this is issuer-sponsored content' are used to reinforce transparency.
- d. The content explicitly avoids making guaranteed outcomes, often saying things like 'I'm not making any predictions', 'no price representation', or 'I can't say where it's going'. This mitigates the risk of the content being interpreted as financial forecasting.
- e. Viewers are repeatedly urged to do their own research, with the speaker emphasizing reliance on stock charts and fundamentals. Statements such as 'look at the charts', 'charts don't lie', and 'don't believe me, just look at the charts' support this educational tone.
- f. Each video contains multiple cautionary statements, often repeated for emphasis. This consistent repetition reinforces the intended message and reduces the likelihood of consumer confusion.

- g. The speaker frequently references his book 'Ten Bagger Blueprint' and presents the videos as informational, based on personal methods and experiences in evaluating speculative stocks. This is entirely consistent with the fundamental and technical analysis that the Applicant teaches in his book.
  - h. The speaker uses repeated cautionary statements to the effect that what the speaker is saying should be taken with a grain of salt.
52. These examples illustrate the extensive efforts that the Applicant went through to ensure viewers of his content were properly informed. Despite these arguments forming a central component of the Applicant's submissions to the Board, the Board did not critically analyze these issues. Rather, they rejected the argument in a single paragraph on the conclusory basis that the disclaimers are "inconsistent" and because they do not indicate the Applicant is a control person or was appointed as the Chair of the company. No explanation is provided however as to why they conclude the disclaimers are inconsistent or as to how the inconsistency results in sufficient market integrity concerns that warrant barring the Applicant from associating with a listed issuer. The Applicant submits that this is a clear example of summarizing the argument made and then making a peremptory conclusion, something the Court in *Vavilov* explicitly cautions against.
53. To the contrary, the Applicant submits that the record clearly establishes that he used consistent language throughout his promotional materials that makes it clear the content is informational, not investment advice, and that he has a personal stake in the companies recommended. The Board's finding to the contrary without pointing to any particular evidence that supports their conclusion renders the decision wholly unreasonable and unjustified.
54. The unreasonableness of the Board's decision is perpetuated by the failure to assess the Listing Committee's decision in light of their inconsistent and disparate application of the CSE Listing Policies, which creates perceptions of bias, partiality and the use of a double standard. These concerns were outlined in detail in the Applicant's May 8, 2025 written submissions:
26. Furthermore, the Exchange's invocation of reputational harm requires scrutiny in light of its own record. We are instructed that individuals closely associated with the CSE, including its Chairman and a sitting director, have been the subject of recent and substantial regulatory sanctions, including multi-million dollar settlements for securities violations. There is no evidence that such infractions

resulted in concerns regarding their suitability. The differential treatment of Mr. Marks invites the inference of a troubling double standard.

...

39. It is a matter of considerable concern that the internal CSE memorandum, said to form the basis of the January 2024 decision, refers to a June 2022 email indicating that the initial investigation into Mr. Marks was triggered by complaints from two individuals widely understood to be direct business competitors of Mr. Marks. Among them is Mr. George Tsiolis, whose regulatory history is not merely contentious but formally adjudicated. In public settlement proceedings before the Ontario Securities Commission, Mr. Tsiolis admitted to using hundreds of fictitious online identities to manipulate investor perception. He was sanctioned, fined \$125,000, and prohibited from registration for a period of ten years. This is not supposition but a matter of public record, published in 2010 by the Capital Markets Tribunal.

40. It is therefore deeply troubling that the CSE appears to have relied upon such a source in initiating a process that would ultimately result in a finding of unsuitability. Equally concerning is the apparent familiarity between Mr. Tsiolis and senior figures within the CSE, particularly Mr. Mark Faulkner and Mr. Rob Cook. We are instructed that there is evidence to suggest that these individuals were known to one another personally, that they interacted regularly on social media platforms, and that internal communications reflect a first-name basis among them. These facts raise the legitimate inference that the complaint may not have been handled independently or impartially. It is striking that no comparable scrutiny appears to have been directed at Mr. Tsiolis himself, despite the gravity of the findings made against him by the Ontario Securities Commission. Nor has any similar finding been made in respect of other complainants, including a media commentator and stock promoter known as Chris Parry. That Mr. Marks alone has been singled out for such a sweeping and irreversible designation strongly suggests that enforcement discretion has not been exercised in a fair or even-handed manner.

...

42. These concerns cannot be divorced from the broader institutional context in which this matter has arisen. The Canadian Securities Exchange is currently the subject of civil proceedings brought by its former General Counsel, Jamie Anderson, who has alleged constructive dismissal and a pattern of abusive and retaliatory conduct by senior executives of the Exchange. Among other things, the pleadings in that proceeding describe a toxic workplace culture, inappropriate conduct by senior officers, and the suppression of dissenting legal views. While those allegations remain to be adjudicated, they cast a long shadow over the credibility and culture of decision-making at the Exchange, particularly where the processes in question have been cloaked in opacity and delay.

55. To the Applicant's knowledge, Mr. Tsiolis, despite his acknowledged regulatory violations, has not been declared unsuitable. That Mr. Marks alone has been singled out for such a sweeping and irreversible designation strongly suggests that enforcement discretion has

not been exercised in a fair or even-handed manner. In light of these concerns being raised to the Board, it had a duty to explain why the Listing Committee's decision was proportionate to the market integrity concerns that had been alleged. The lack of any analysis on this point supports the Applicant's position that the Board failed to grasp key issues on appeal.

#### **6. The Board's Perception of the Public Interest was Flawed**

56. One of the grounds enumerated under the *Canada Malting* test is whether the self-regulatory organization's perception of the public interest conflicts with that of the Ontario Securities Commission. Adopted to this case, the Applicant submits that the CSE's perception of the public interest did not have due regard to the impact on third-party investors and the overall integrity of the capital markets. The failure to consider this impact in deciding to uphold the Listing Committee's decision is another independent basis upon which the Board's decision is unreasonable.

57. A core function of the CSE, as stated in their Listing Policies, is to protect investors from unfair, improper or fraudulent practice, however, the Listing Commission's decision had quite the opposite effect, causing disproportionate instability and harm to thousands of third-party investors, particularly shareholders of the issuer NEWS. Over four thousand investors have suffered avoidable harm due to the CSE's opaque and heavy-handed approach. The Applicant submits that the Board failed to reconcile the decision of the Listing Committee with their clear mandate to protect the public, including by protecting investors who invest in CSE listed stocks.

### **III. THE BOARD AND THE CSE DENIED THE APPLICANT NATURAL JUSTICE**

#### **1. The Standard of Review for Procedural Fairness Violations is Correctness**

58. While the presumptive standard is reasonableness, the appropriate standard of review in assessing whether an administrative decision maker has afforded the requisite level of procedural fairness to an individual is correctness.<sup>24</sup> This standard does not attract a level

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<sup>24</sup> *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 CAF 196, para 35.

of deference to the administrative decision maker. Overall, the ultimate question to be asked is “whether, in all the circumstances, the decision maker acted fairly.”<sup>25</sup>

59. Factors relevant in assessing the level of procedural fairness owed to a party include the nature of the decision and the process followed in making it, the nature of the statutory scheme, the importance of the decision to the individual affected, the legitimate expectations of the person challenging the decision and the choices of procedure made by the agency itself.<sup>26</sup>

## **2. Failure to Provide Reasons**

60. This is a classic example where reasons should be required – the decision of the Board had a serious impact by excluding the Applicant from participating in the Canadian capital markets and their decision was subject to review by the Capital Markets Tribunal. However, the Board’s Decision and Reasons dated May 21, 2025 contain no reason at all as to why the procedural fairness issues raised by counsel for the Applicant were irrelevant and should not be considered. Rather, the Board makes a blanket legal conclusion with no explanation as to how or why that decision was reached:

Counsel for Mr. Marks has raised concerns regarding procedural fairness and transparency of an earlier decision. The Panel is of the view that the only relevant issue before them under section 1.5 of the CSE Listing Policies is the appeal by Mr. Marks of the decision of the CSE Listing Committee.

61. While the adequacy of reasons goes to the overall reasonableness of the Board’s decision, the wholesale failure to provide any reasons on a crucial point is a distinct procedural fairness issue which attracts the correctness standard. In light of the principles enumerated in *Baker*, the Applicant submits that reasons as to why procedural fairness was irrelevant were required by the Board, especially in light of case law that says precisely the opposite.

## **3. Failure to Make Adequate Disclosure & No Right to be Heard**

62. The right to disclosure in the administrative context is innately intertwined with the basic principle that a litigant is entitled to know the case against them. The basic requirement that an administrative body provide adequate disclosure materials is amply supported by

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<sup>25</sup> *Nova-BioRubber Green Technologies Inc. v Investment Agriculture foundation British Columbia*, 2022 BCCA 247, para 71.

<sup>26</sup> *Baker v Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699 (*Baker*).

the Supreme Court of Canada in *May v Ferndale Institution*.<sup>27</sup> In finding that administrative decision makers must at least disclose all information they relied on, the Court stated as following:<sup>28</sup>

92 In the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction. As Arbour J. held in *Ruby*, at para. 40:

As a general rule, a fair hearing must include an opportunity for the parties to know the opposing party's case so that they may address evidence prejudicial to their case and bring evidence to prove their position....

93 Therefore, the fact that *Stinchcombe* does not apply does not mean that the respondents have met their disclosure obligations. As we have seen, in the administrative law context, statutory obligations and procedural fairness may impose an informational burden on the respondents.

63. In *Calgary (City) v Nortel Networks Corp.* (leave to appeal to SCC refused),<sup>29</sup> Nortel appealed its 2004 property tax assessment to the Assessment Review Board (“ARB”), who reduced the assessment. The City appealed further to the Municipal Government Board (“MGB”) who increased the assessment but did not set it as high as the original amount. Nortel applied unsuccessfully for a rehearing by the MGB and then successfully applied for judicial review to quash the decision of the MGB, which the City then appealed. The key issue was in relation to a list relied on by the City of 25 comparable properties to the one at issue before both the ARB and MGB. The list gave some general information about the properties but did not disclose their exact address or provide information about the leases on those properties. The main issue was whether Nortel’s procedural fairness rights had been violated by the failure to disclose the addresses of these comparable properties.

64. In overturning the ruling of the MGB, the Chambers Judge found that the failure to disclose said details deprived Nortel of the opportunity to present their case:

50 As part of that issue, a fair hearing envisages the concept that the parties must know the case being made against them, so that they can rebut the same, if desired. And I reference Jones and de Villars' *Principles of Administrative Law* 4th ed., Scarborough, Thomson Carswell, 2004, at 258 and 259. Additionally, the

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<sup>27</sup> *May v Ferndale Institution*, 2005 SCC 82 (*May v Ferndale Institution*).

<sup>28</sup> *May v Ferndale Institution*, paras 92-93.

<sup>29</sup> *Calgary (City) v Nortel Networks Corp.*, 2008 ABCA 370 (*Nortel Networks Corp.*).

parties must be afforded an opportunity to present the other side of the matter. The applicant was denied that here under several guises, including confidentiality, wrongly.

65. The majority of the Alberta Court of Appeal upheld the chambers judge's ruling, finding that Nordel's procedural fairness rights had been violated given disclosure of the addresses was fundamentally required to effectively address the comparable properties put forward by the city:

18 It is difficult to understand how the comparability of the properties put forward by the City as being "comparables" could be tested without the information sought by Nortel. What is the impact of tenant inducements, such as free rent for a portion of the term and contributions for improvements, upon the face rental rate? I agree with the chambers judge's observation that in these circumstances "it was impossible for Nortel to deal effectively with the" comparable properties put forward by the City.

...

20 Having regard to the factors outlined in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.), in determining the content of the duty of procedural fairness, and in particular both to the nature of the decision and the nature of the statutory scheme, Nortel was entitled to expect that the decision would be made using a fair and open procedure. In our view, the chambers judge rightly concluded that Nortel was deprived of procedural fairness, through the Board's failure to require disclosure of the information sought by Nortel to permit challenge of the evidence accepted and relied upon by the Board in its decision to allow the City's appeal from the Assessment Review Board.

66. In *Davidson*, the applicant applied for judicial review of the Canadian Human Rights Commission's decision to dismiss his complaint that Global Affairs Canada ("GAC") discriminated against him.<sup>30</sup> The key issue was whether the applicant's procedural fairness rights had been violated through the Commission and their investigator's failure to provide him with 131 pages of case management documents provided by GAC, which were then relied on heavily by the investigator to create a report relevant to an assessment of the applicant's job performance. This report was also relied on by the Commission in making their decision.

67. Given the Commission relied on the case management documents through its adoption of the investigator's report and to the detriment of the applicant, the court found that the

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<sup>30</sup> *Davidson v Canada (Attorney General)*, 2019 FC 997 (*Davidson*),

failure to disclose them to the applicant deprived him of the right to know the case against him, a basic principle of administrative law:

31 As noted above, I also find the Investigator and the Commission by extension through its adoption of the Investigator's Report, relied on these case management tracking documents to the detriment of the Applicant in terms of considering his job performance - which was very central to GAC's defence to the complaint. The relevance of these documents was not disputed in written or oral submissions and I accept it as a given. This was certainly the position of the Investigator, which the Respondent supported in written and oral submissions.

32 The problem with what happened here is that the Applicant was not afforded the right to know the case against him. This is a basic principle of administrative law. In addition, his right to respond to documents relied upon by the Investigator (and by extension, by the Commission's adoption of the Report) was denied because he did not have the documents that were relied upon by the Investigator, GAC, and ultimately, by the Commission itself. The general principles regarding the content of the duty of fairness in this connection are set out in *Re: Sound*, where the Federal Court of Appeal states:

[54] However, agencies must ensure that, if they obtain information from third parties, they do not thereby jeopardize parties' participatory rights: to know and to comment on material relevant to the decision; to have notice of the grounds on which the decision may be based; and to have an opportunity to make representations accordingly. The ultimate question for a reviewing court in every case is whether, in all the circumstances (including respect for administrative procedural choices), the tribunal's decision-making procedure was essentially fair. This involves a contextual and fact-specific inquiry.

[Emphasis added]

[Emphasis added]

68. The various principles enumerated above apply equally, if not with even greater force, to the systemic failures of the CSE to make basic disclosure crucial to allowing the Applicant to know the case to meet. The CSE owed a high level of procedural fairness to the Applicant and, as a matter of course, was required to make timely disclosure of all materials relied on by the CSE Listing Committee to render their decision. This material was directly relevant not only to the decision of the Listing Committee, but also to the Applicant's ability to make meaningful submissions to the Board as to why the Listing Committee's decision was unreasonable.

69. This failure is seen in the CSE's decision not to disclose highly relevant materials relied on by the CSE Listing Committee until months after the October 3, 2024 letter had been

released to the Applicant. This is despite the fact that said disclosure materials were requested on November 1, 2024, around the same time that the Applicant filed a Notice of Intention to Appeal.

70. The first tranche of disclosure relied on by the Listing Committee was only received on January 8, 2025, notably containing several screenshots of social media posts made after October 3, 2024 that the CSE intended to rely on before the Board. Of the social media posts made prior to January 2024, they nonetheless appear to be screenshotted months after, providing important evidence that they were not originally relied on. This disclosure package raises two related procedural fairness concerns. First, the substantial delay in producing these materials despite their availability denied the Applicant a meaningful opportunity to know and respond to the case against him in real time. Second, it results in an artificial bolstering of the Listing Committee's purported January 8, 2024 decision based on evidence not in existence and/or not relied on at the time and, therefore, irrelevant to the Board's review.
71. The second tranche contains the January 8, 2024 decision, which was not disclosed until March 25, 2025, resulting in a disclosure delay of 15 months after it is purported to be created and almost five months after the Notice of Intention to Appeal was filed. This unexplained delay simply confirms that the Applicant was not given any opportunity to participate or respond in real time. Rather, he was simply advised of the decision several months later and then only provided with the actual decision several months after he filed a Notice of Intent to Appeal it. Such complacency is incompatible with the CSE's mandate to act in the public interest. The substantial delay also resulted in direct prejudice in that the Applicant entered into arrangements in good faith that were later destabilized by such undisclosed retroactive findings.
72. The most basic levels of procedural fairness require that an individual be given notice and an opportunity to respond to the allegations against them. In this case, the failure to disclose this document until March 25, 2025 rendered both the proceedings by the Listing Committee and before the Board fundamentally unfair and incompatible with the high level of procedural fairness required.
73. The failings to make proper disclosure were aggravated by the failure to disclose the applicable standards through which "investor protection concerns", "integrity concerns" or

“disrepute to the Exchange” were assessed against. While the CSE Listing Policies reference these vague terms as relevant to whether a person should be barred from associating with a listed issuer, it provides no substantive guidance as to how they are actually assessed. They provide no indicia as to the content, scope, or weighting of those concepts, nor of the evidentiary thresholds required to satisfy them.

74. In refusing to disclose any further information about these terms, the Applicant was de facto deprived of the ability to make meaningful submissions before the Board. He was deprived of any meaningful ability to understand the case to be met, to test the relevance or sufficiency of the allegations, or to tailor submissions to the actual decision-making criteria being relied upon. The result was a process that was opaque, unpredictable, and fundamentally unfair, in which the Applicant was required to respond to conclusory labels rather than articulated standards. The Applicant submits that it is this lack of transparency that undermined his procedural fairness rights by compromising his ability to make properly informed submissions before the Board.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Date: January 30, 2026



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