IN THE MATTER OF THE SECURITIES ACT

R.S.O. 1990, c.S.5, as amended

JACK MARKS

(Applicant)

- and -

CNSX MARKETS INC. and ONTARIO SECURITIES COMMISSION

(Respondents)

SECTIONS: 8 and 21.7

PUBLIC

PURPOSE: Motion/Merits hearing

VOLUME: 3

HELD ON: May 19, 2026

HELD AT: Ontario Securities Commission
20 Queen Street West, 17th Floor
Toronto, Ontario

HELD BEFORE:

Adjudicator Andrea Burke - Chair of the Panel

Adjudicator Jane Waechter

Adjudicator Dale Ponder

APPEARANCES:

Charlie Pettypiece	For the Commission
Andrew McCoomb	For CNSX Markets Inc.
Sandy Lockhart	For CNSX Markets Inc.
Jack Marks	On his own behalf

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--- Upon commencing on Tuesday, May 19, 2026 at 12:30 p.m.

HEARING COMMENCES:

CHAIR: Please be seated, everyone.

Okay. Good morning, everyone.

MR. MARKS: Good morning.

CHAIR: We are back here in the matter of Jack Marks v. CNSX Markets Inc. and the Ontario Securities Commission. This is the continuation of the merits hearing in this matter. It's an application for a hearing in review of a decision of the panel of the board of directors of CNSX.

I'm Adjudicator Burke. I'm chairing this panel. To my left is Adjudicator Ponder, and to my right is Adjudicator Waechter.

Just looking around the room.

And on the video, good morning -- well, I guess it's good morning your time Mr. Marks; good afternoon our time.

MR. MARKS: Good morning and good afternoon.

CHAIR: Thanks.

And then I see Mr. McCoomb here and Mr. Lockhart for CNSX.

MR. McCOOMB: Good afternoon.

CHAIR: Good afternoon.

And Mr. Pettypiece here for the Ontario Securities Commission. And if you wouldn't mind introducing your colleagues as well for the record.

MR. PETTYPIECE: Yeah, good afternoon. My colleagues are just observing today.

CHAIR: Okay.

So my plan is just to walk through quickly how, from a timing perspective, I see this afternoon going and also to ask are there any issues that any of the parties want to raise before we resume with Mr. McCoomb's submissions. So we have until 4:30 today. When we broke last day, I said everybody should eat their lunch, be prepared to go right through with just the 15-minute breaks that we would normally do on an hour and a half or so. So at this point, I think we're looking at going until about 1:45, taking a 15-minute break until 2:00, then coming back and taking a second 15-minute break around the 3:30 mark, and we'll see where we get to.

We may not need the whole day. But Mr. McCoomb is making submissions, then we'll hear from Mr. Pettypiece. We'll hear whether Mr. McCoomb has anything he wants to respond to from the OSC's submissions.

And then, Mr. Marks, yule have an opportunity to reply to anything new that has come up in the CNSX submissions or the Ontario Securities Commission submissions. Is that clear?

MR. MARKS: Yeah, it's fine. But I just have a question. I submitted two supplemental submissions for the Panel on Friday. I was answering questions you had about the recognition order -- I think it was Rule 4 -- and also the Panel's question about the definition of "overpromotion".

CHAIR: Yes.

MR. MARKS: So I just want to...

CHAIR: So, Mr. Marks, the Panel has those materials. What I'm going to say is that it's unusual to be filing written submissions in a matter where you haven't been asked to do that by the Panel or sought permission to do that from the Panel and where you've completed your submissions on the merits orally while the other parties are now mid-submission. So it's an unusual circumstance, and it's not a matter of course that the Panel will allow those submissions in.

Can I hear from CNSX and from the Ontario Securities Commission about whether the Panel should be taking those submissions? I'm going to note one thing, which is that certainly the first submission having to do with the recognition order -- and I think your statement is if the policies of the CSE haven't been appropriately approved, this could raise some issues. I mean, I see that as a completely new issue that is not raised in your Notice of Application as a ground for this application. So I think the Panel has some hesitancy, certainly about that, notwithstanding that we did ask a question about it because it came up in your materials.

MR. McCOOMB: That would've been the first comment that I would make, is that it's a new ground, if you can put it that way, supporting Mr. Marks' application. It wasn't raised in the Notice. I'm prepared to address the substance of that question if the Panel wants to know our answer when we get there in my submissions. But leaving aside the procedural question of Mr. Marks delivering submissions midstream like this, that issue isn't properly before this panel when it comes to Mr. Marks' submissions on the recognition order, approval of policy question.

CHAIR: Okay. And do you have any submissions on the second set of submissions that we received last Friday from

Mr. Marks, going to the issue of standards and what is overpromotion and promotion?

MR. McCOOMB: I'm going to address that question in my own submissions. The promotion question was problematic.

So, yeah, I take issue with the delivery of written submissions mid-hearing. But, candidly, I'm less troubled by it because we are going to address it directly. So, sure, we formally object to them coming in, but in the interest of getting this done, I'd rather address the matter on substance, if that makes sense.

CHAIR: Okay. Thank you, Mr. McCoomb.

Mr. Pettypiece.

MR. PETTYPIECE: Thank you.

I don't think we'd object to considering written submissions. I think we would echo the Panel's comments that it's, you know, procedurally difficult to deal with in submissions midstream. But at least the OSC's prepared to address maybe in one or two minutes the recognition order point in any event. So, yeah, no objection on our end.

CHAIR: Okay. Mr. Marks, given the positions as stated by the CSE and the OSC, the Panel will accept your written submissions, and we'll give them the appropriate weight that they deserve. It's not acknowledging in any way that the issue around the recognition order is a ground that was raised in your Notice of Application, which would define the scope of your hearing and review and the grounds for your hearing and review. So we're not expanding those grounds, but we'll take them and consider them as appropriate. Okay?

MR. MARKS: I appreciate that. Thank you.

CHAIR: Mr. McCoomb.

MR. McCOOMB: Thank you.

And just for my own housekeeping and timekeeping purposes, by my notes, I used about 20 minutes of the estimated time last time. I think I should be able to finish by 1:45, which would keep me around that time estimate that I had given previously, give or take how much engagement that we have between us over the next little while.

SUBMISSIONS BY MR. McCOOMB:

MR. McCOOMB: But on that subject, my note is that I largely told you what I wanted to tell you about January 8th. But I know that the Panel had entrusted me with, sort of, preparation for a question around the October 2nd and 3rd correspondence delivering the basis for the decision on Mr. Marks' unsuitability. This is, of course, in the New World case. And so this is me saying I'm prepared to grapple with that question right now at the outset of the submission from here, though I appreciate it's customary for people to kind of get their feet under them before they beckon a question from their panel.

CHAIR: I've got lots of questions.

MR. McCOOMB: Great. Well, I anticipate --

CHAIR: But I'm at January 8th still.

MR. McCOOMB: Pardon me?

CHAIR: I'm at January 8th still.

MR. McCOOMB: Okay.

CHAIR: From the --

MR. McCOOMB: Well, then I think now would be a perfectly practical time to engage it, then, unless there's something obvious that I hadn't touched on.

CHAIR: Sure. So with that implication, Mr. McCoomb, my understanding of the facts based upon the materials in the record is that AI/ML announced that it had terminated its agreement with, I think, the Octagon company that Mr. Marks is affiliated with, or was affiliated with at the time, and announced that on December 8, 2023. And so it's not apparent to me why the Listing Committee goes on to make a decision in either late December or early January, as you described it, January 2024, given that by the CSE's own submissions, that became moot.

MR. McCOOMB: Right. So the reason, as I understand it, that a process continued and a determination was made about Mr. Marks' suitability was based on the fact that his correspondence -- so you have the timing right, December 8th that's announced. Shortly after that, you see the correspondence with Mr. Marks engaging with Mr. Faulkner asking for an investigation of AI/ML executives based on fraud. You see them go back and forth, and you see the record in the memorandum of the January 8th determination of social media posts to the same effect from around that same time, right, December 13th, December 14th.

So the situation you have is, from the CSE's perspective, they have this engagement with an individual, Mr. Marks, who's a known stock promoter, and they make a determination within the Listing Committee that this is someone who needs to have a 5 out of 5 risk rating, a 5 out of 5 suitability rating, because there's a possibility that he may come back around in the future. And they want to have that on file connected to his PIF so that there's a red flag there so that if there is a problem with an issuer or there's a proposed transaction with an issuer -- of course, as they did in October of 2024 -- they assess it fresh. But that determination is there in their records for archival purposes so that they know. They know what they thought of him at the time.

It doesn't make sense to throw away that learning, especially -- just take, for example, the situation which Mr. Faulkner leaves his role, and someone replaces him. They need to know through sort of institutional memory what's happened with engagements with individuals, what determinations or conclusions had been drawn. And so you don't throw that determination away; you put it in the file for when this person comes back around.

CHAIR: So would the CSE acknowledge, then, that that decision in January of 2024 is a decision that impacted Mr. Marks?

MR. McCOOMB: I think we'd acknowledge that it had the potential to impact Mr. Marks. In that moment, it didn't have any impact on Mr. Marks because he had no affiliation with a CSE-listed issuer.

And as I'll get into, and this is the most important part of this case, in September -- well, really, August and September of 2024, as I think the Panel already appreciates in the questions it put to Mr. Marks, if Boughton Law had properly described this transaction, the New World transaction, and properly described the role that Mr. Marks was anticipated to have in that company, the suitability process would've flagged this issue then and there. And all of Mr. Marks' concerns and complaints about being led down a path to believe that he had no problem would've been resolved with him being told while there was a prior determination of suitability, it creates an issue for your involvement with this company.

And, again, it would've been assessed afresh, just like it was in October, and he would've been told that. He would've been told that in advance of closing a transaction. But because that transaction's true nature was obscured, that determination didn't happen. One of, I would say, three very unique features of this case that make it quite bizarre: The first one being that the original transaction under which the suitability determination was made was pulled as an amount. The second bizarre feature is this fact that Boughton Law described one transaction, and then we found out by a press release the transaction was quite different. That's New World. And then the third feature that makes it a very unique case is the fact that the individual appealing the decision went on the campaign of defamation that Mr. Marks did while his appeal was pending. Three very unique --

MR. MARKS: Objection. I have a clarification.

CHAIR: No.

MR. MARKS: Okay.

CHAIR: You want a clarification of the submission? Or are you trying to get, like, prior facts --

MR. MARKS: I --

CHAIR: You'll have the opportunity to do so in reply.

MR. MARKS: Okay. It was the timeline. I guess there was no timeline. I think my learned colleague skipped something in that timeline. You --

CHAIR: You can make that submission in reply.

MR. MARKS: Okay.

CHAIR: Okay?

MR. MARKS: Sure.

CHAIR: Okay.

MR. MARKS: Yeah.

MR. McCOOMB: I appreciate, Adjudicator Burke, I've taken you on a bit of a tangent there in closing an answer to that question. But I don't presume that the list of questions is closed.

CHAIR: Well, Mr. Marks made the submission that because he wasn't informed of the January 8, 2024 decision until late September, early October time frame of 2024, that he was effectively denied an opportunity to appeal from that decision. What does the CSE say to that, and does it depend on the submission that the decision was actually moot and didn't have an impact?

MR. McCOOMB: So, sorry, I was with you, and then I lost you at the last --

CHAIR: Sorry. So Mr. Marks that made the submission that he was effectively deprived of the ability to appeal from the January 8, 2024 decision because he wasn't notified of it. What does the CSE say in response? And I guess I'm just anticipating, does that response depend upon the Panel agreeing that the January 8, 2024 decision was either moot or not relevant or not effective?

MR. McCOOMB: The January 8th decision was effectively the CSE archiving a conclusion it had reached about Mr. Marks based on its interactions with him and his social media activity in the promotion space. I think you can take it as given the fact that Mr. Marks was not notified of the termination at the time and that if he had the ability to appeal, he was denied that ability in January. I can't but accept that because it's a fact, an accepted fact, that he didn't have notice at the time.

Because the transaction -- whether you want to call it moot or irrelevant, there was no severance issue for the CSE to act upon at the time and so no reason to communicate anything to the issuer. To be clear, the CSE communicates with issuers in its role as the listing exchange. And so there was nothing to communicate back to AI/ML because AI/ML had terminated the relationship. Imagine, just for sake of argument, how odd it would be for the CSE to follow along and tell AI/ML by the way, we know you terminated this relationship, but in the circumstances, we wouldn't allow you to have that relationship because we find this individual to be unsuitable.

CHAIR: Did communication of the October 23, 2024 decision go directly to Mr. Marks?

MR. McCOOMB: It did. It did in the context of him having asked about it. But he was in discussion with the CSE about that after notice of it was brought to Boughton Law's attention on September 27th.

So your question is did that approach effectively deny him the ability to appeal. I think necessarily if that was an appealable determination, it did. I'm not sure it was an appealable determination in the circumstances because what it really was was the CSE making a note in its files that this person was problematic, and we wouldn't want them associated with a CSE-listed issuer based on the information that we have available to us right now.

None of this denies Mr. Marks any procedural fairness is the important part of the analysis, though, for two reasons: One, because the process commencing on October 3rd gave him the procedural rights he needed to address the issue via an appeal. But more importantly -- and I'll walk through the timeline just to make sure everyone's clear on it. It sounds like Mr. Marks has a question about this for his own reply -- had Boughton properly described the transaction, we have every reason to believe that Mr. Marks and New World would've been given notice of the unsuitability determination, assuming it was made.

And then Mr. Marks would've had the ability to address that issue in advance of closing a transaction. He would've had the ability to raise whatever information he wanted to raise with the Listing Committee about his profile to disabuse the Listing Committee about any concern it has about his market activity. And if that didn't work, he could've appealed from there.

CHAIR: From a factual point of view, was it only the information about tipping over the 20% in terms of a control person that triggered an unsuitability review? Or was it something else? Because he was disclosed to have been a shareholder --

MR. McCOOMB: Only.

CHAIR: -- previously.

MR. McCOOMB: Only, yes.

CHAIR: But was he also disclosed to be the chairman previously?

MR. McCOOMB: Not even a board member. I don't see that in the disclosure between Ms. Cosgrove and the associate at Boughton Law. And I can walk you through that.

But the disclosure in the case -- you see this in one of those classic, you know, my response is highlighted in blue below to your questions kind of e-mails. But you see the back and forth where it disclosed that Mr. Marks is to be a significant shareholder in the range of 18%, 19%. But there is no reference to him being a board member. And, of course, there's no reference to exceeding 20%.

We only heard in Mr. Marks' submissions the other day the first bit of an explanation as to why this happened. He blamed it on Boughton, and he suggested something happened with another investor sort of falling through. So accepting what he said as true, as evidence, what should've happened in that moment when a shareholder fell away and the new structure of the transaction involved Mr. Marks being a 20% or greater shareholder, i.e., a control person under all the relevant definitions, is Boughton Law should've been on the horn to the CSE to advise them of a change to the transaction. This specific question was raised: Is this transaction creating a control person? And the answer was no.

So at that point in time, had that disclosure been accurate or been corrected in advance of a press release announcing a closed deal, these issues would've been raised. Because they were raised immediately when it was properly disclosed to the CSE that Mr. Marks was going to become a control person.

CHAIR: Is it fair to say that the January 8, 2024 decision had broader application than just to Mr. Marks' relationship with AI/ML? Because you've indicated it was important to document it, put it in, code him as 5 out of 5 as a concern. And I understand it was recording it as a concern with respect to any relationship with any issuer.

MR. McCOOMB: And to take it a step further, Adjudicator Burke, I don't think there's anything in the nature of that determination that is particularly specific to AI/ML, which is to say it's not as though the concern was about something in the nature of that relationship in a vacuum. It was more a concern about Mr. Marks' conduct at large. And so, yes, I think that's a fair proposition to state, that the nature of the determination as at January 2024 was about Mr. Marks' engagement, likely with any market participant on the CSE.

CHAIR: Okay, and my last question, because I am taking over the airwaves here --

MR. McCOOMB: By invitation.

CHAIR: -- at last session of January 8th --

MR. McCOOMB: By invitation.

CHAIR: -- at this point, is where do I find the materials that were before the Listing Committee when that decision was made? Are they only the materials that are referred to in the January 8, 2024 memo, according to Reasons for the Decision?

MR. McCOOMB: Candidly, I don't know. But that decision's not before you; so you don't have the record of the original proceeding of that determination. And I couldn't tell you. I wouldn't be in a position to tell this panel that you have every document or reference was that before the Listing Committee when that determination was made. And I can't lead you astray on that; I don't know. The original record of proceeding to allow you to understand the relevant materials before the Listing Committee is the one that's been prepared as of October 3rd.

CHAIR: So then when we get to October 3rd, and we're told on October 3rd the Listing Committee considered the materials that were before the Listing Committee on January 8, 2024, nobody can tell me what those were?

MR. McCOOMB: I can't tell you, other than to say that whatever they were have to be subsumed within the October materials. Right? So I couldn't point you to a specific subset and say this item was, and this item wasn't. I don't have that data to show you.

CHAIR: Okay.

MR. McCOOMB: I wouldn't dare presume you're the only person with questions about January 8th.

CHAIR: I'm looking to my right and my left.

MR. McCOOMB: Okay. Well, with that -- and, again, revisit as you like, but I would propose to take you through some of those key pieces of correspondence on the Boughton issue to explain why, as I've already indicated, so much of the issue in this case comes from. Maybe before I do, I'll just observe what I told you at the top of my submissions is I wanted to vector everything through Canada Malting. And I don't propose as sort of a road exercise to go through the five-point list in Canada Malting and say you don't have this; you don't have that. But you don't.

On the basis of a January 8th determination, an archival determination as to whether Mr. Marks was suitable, a record that the CSE kept for future posterity, you don't have any issue engaging those five factors. There's no proceeding on an incorrect principle. There's no error of law. There's no issue or allegation that the committee overlooked material evidence, nor is there any such evidence here that would undermine the determination.

CHAIR: Which determination?

MR. McCOOMB: That Mr. Marks, as at that time, was unsuitable. I recognize --

CHAIR: January 8th. Okay.

MR. McCOOMB: As at that time, yes.

CHAIR: Okay.

MR. McCOOMB: And a submission I'll make over and over but not beat a dead horse about, there is no daylight between the CSE's perception of the public interest and what I would submit the panel's perception of the public interest ought to be or the Commission's perception of the public interest ought to be. The motivating factors behind determinations about Mr. Marks' suitability in every case, in every discussion that's brought about here have to do with the things he's saying publicly, the extremity of his commentary, the language that he approaches his commentary with. Mr. Marks will tell you that everything he does is part and parcel of fair comment and criticism. He's a market participant with an important voice and issues he wants to raise.

And that's never been the problem. The problem has never been that Mr. Marks is prepared to raise his concerns or voice his opinion. It's the manner in which he goes about doing that. And we've seen that morph from commentary about issuers in which he's involved to commentary about the Exchange itself.

So October 3rd. There's something I want to talk about some of the background. I'm moving through my notes to be as expedient as possible. I'm going to start -- and, Sandy, if you can help me with this, please, looking at page 220 on the Bates numbering of the record of original proceeding. This is that chain of correspondence that I mentioned already, beginning August 9, 2024.

So, Sandy, if I don't mind just scrolling just above the page line so we can see the e-mail time.

So you'll see Friday, August 9, 2024. The subject line is "Proposed transaction: New World Solutions Inc.," the company. It's an exchange between Alexandra Cosgrove from the CSE and Angela So, who's an associate at Boughton Law, copying the price protection line from the CSE. So the folks you'd reach out to to get a fixed price for a transaction and someone from Boughton. And like I said, this is one of those classic black and blue exchange e-mails where you get answers in lines of questions.

And so if we scroll down and -- thank you. Sandy's helpfully highlighted the answer here. So:

"With respect to confidential price protection, the Company may request it by answering the following:

(a) the level of intended or anticipated insider participation, including under the proposed issuer. Issuance will result in a new insider or Control Person or Materially Affect Control," et cetera, et cetera.

The answer -- the blue text is from Boughton Law:

"No insider participation. The proposed issuance will result in a new insider, being Jacob Marks, but no new control person, nor will it materially affect control, which was determined on the basis that Mr. Marks will hold 18.21% of the issuer's shares post-issuance on a non-diluted basis, 19.95% on a partially-diluted basis."

This is the answer. Is it as clear as it could've been, given obviously subsequent to this, we learned that the transaction has a different character? We learned it from a press release. But this is the answer that was given.

And the most important part of this e-mail is the date on it. We're talking about an exchange from August 9th. And so if a correct answer is given or more disclosure is given at that time, suitability review can happen then, the PIF is checked, Mr. Marks' name is flagged in the database, current information about the company is reviewed, and a suitability determination is made and communicated then and there. And if Mr. Marks wants to address the Listing Committee about that -- and I say that, importantly, because in theory, there's nothing stopping him from reaching out to the Listing Committee and saying here's information that you should consider to balance out your analysis that maybe you didn't have before you. But, otherwise, if he doesn't do that, then there's an appeals process. He has access to that as of August 9th, almost two months before this issue becomes something of a very different character.

And so then if we scroll up the chain -- and the nice thing about it, this is a rare case where you get almost everything in one document. So if we scroll up the chain to September 13th -- so this would be on page 213 of the record -- so here's the follow-up. And this is close to the press release:

"Hi Angela.

"Did this transaction create a new control person?

"Jacob Marks."

So as of the 13th, you've got the CSE asking questions about the variation of the nature of the transaction. If we keep scrolling up, you get an answer on September 16th. I didn't check the dates. My guess is this is probably a Friday to a Monday, but could be wrong about that. You get the answer from Boughton, "The Company confirms that Jacob Marks is a new Control Person, as he owns more than 20% of his voting rights."

CHAIR: What's the Bates number there?

MR. McCOOMB: 212. Thank you.

And if you keep scrolling up the chain, you see the rest of this exchange. And it's important because you see on the same day notification from the CSE going to Ms. So saying, "Pursuant to our e-mail exchange as of August 9th, you represented that there was not going to be a control person."

And she observes that because this transaction is going to create a control person, then it is subject to security holder approval, which hadn't in obtained. It's a whole other kettle of fish there, but that ends up being something that is piquing the Exchange's interest, and there's a reference to Policy 4.6(2)(a)(iv). I think there's actually a missing digit in there. But that's the CSE policy requiring security holder approval over a transaction and creating a control person.

CHAIR: So the creation of a new insider itself doesn't require the filing of a PIF?

MR. McCOOMB: Not as I understand it. But what you also get from this, the reality of this, as far as I can tell, if this transaction had proceeded on the basis disclosed by Boughton Law, i.e., Mr. Marks just becoming an 18% or 19% shareholder, there wouldn't have been an issue. I don't see a basis in the record for the CSE raising a suitability concern based on the transaction had it proceeded as disclosed.

So then what you get further up the chain, there's a back and forth; there are some attempts to schedule phone calls. And eventually where that takes you to is page 2 of 7. And I won't take you to it -- just for your notes if you need it. The press release announcing the transaction with Mr. Marks as potential control person is at page 166-167 of the original record of proceeding and by Bates numbers.

And so as of the 27th, you see Ms. Cosgrove recommending that if a party's seeking to become a control person, they should send in their PIF. Of course, we've already covered the PIF isn't a decision document; it's just a current record of an individual's details on file. But I think it's apparent that had Boughton indicated to the CSE, "Hey, we've got an individual who is proposing to become a control person under this transaction; here is his PIF," would've been the same PIF that Mr. Marks has pointed to in the record that's on file with the CSE. Two and two would be put together, and a prior unsuitability rating of 5 out of 5 would've brought to the Listing Committee's attention, and he would've been notified then and there. But in actual fact, he learns on September 27th as a result of these backs and forth that an unsuitability determination had been made. And then this is crystallized on October 2nd and 3rd, when he's given the decision document, which states on October 3rd the basis for that finding, which sets off appeal rights.

Sorry, Adjudicator Burke. Just as I was speaking, you -- I thought you were going to ask me a question.

CHAIR: Well, I think that where he would be advised on September 27th is just down the chain on this page; isn't it?

MR. McCOOMB: Yes.

CHAIR: It's the e-mail before the one we had --

MR. McCOOMB: I think that's right.

CHAIR: No, maybe lower.

MR. McCOOMB: It's one more down if you carry on.

CHAIR: I think --

MR. McCOOMB: This one. From the 26th.

CHAIR: Oh, sorry. Yeah.

MR. McCOOMB: So I don't intend to spend much time on the October 3rd document itself, the decision document. But briefly, what it does is it confirms the unsuitability determination based on the various information available to it. And I want to take you to some examples of the information. I actually want to go back to one thing in the e-mail chain with Boughton because it's an important data point.

So, Sandy, if I don't mind going back to that same exchange from August 9th.

And just bear with me for a moment. My apologies; just bear with me for a moment. Here, 228.

Sandy, if you don't mind, 228. So if we can just scroll up so I can catch the top of the e-mail to orient it in time.

So this is from July 25, 2024, from Boughton Law to Ms. Cosgrove, again, talking about this proposed transaction.

If we just scroll down to page 228.

So this is just Q&A and description of what is going on with this deal. And if you look three lines down, you'll see, "Numco" -- so this is a reference to the performer company. "Numco is not expected to earn revenue in the first 12 months following the closing of the Transaction. " So this is what the law firm was representing to the Exchange about the proposed transaction.

I apologize for the pause here. I'm just making -- truncating of my notes, which helps get through some stuff.

So where I'm going to take you is you recall we had the discussion about the January 8, 2025 letter that went to Mr. Marks' counsel disclosing social media activity at issue. And the reason I want to go to it is because it provides a useful summary of a bunch of Twitter activity in a short period of time from the beginning of September of 2024.

CHAIR: I think that was marked as Exhibit 10.

MR. McCOOMB: I think that's right. In the interest of using your time better than I am now, I'm going to come back to this point, just to make sure we don't waste any time.

So I think I've taken you through the relevant data points in that chronology. What I'm going to show you, as soon as we have it available, is a list of tweets, in particular where Mr. Marks is commenting on projected revenues for New World with rocket ship emojis and commentary on expecting the company to reach potentially $5 million to $10 million in revenue. And when we talk about problematic promotion, I would suggest that where the law firm representing the transacting company is representing to the CSE that the company's not going to earn any revenue in the first 12 months, and yet its stock promoter CEO and chairman is online commenting about breakout revenue raise, you have a promotions problem.

So what we've got on the screen, it's Bates number 379 from the record of original proceeding. This is one of the pieces of correspondence that went over to Mr. Narwal describing in summary fashion with links tweets that Mr. Marks was putting on X as of the beginning of September 2024.

CHAIR: These were attached to the January 8, 2025 letter --

MR. McCOOMB: They were.

CHAIR: -- that has subsequently been marked with the attachments as part of Exhibit 10. But the letter isn't an exhibit.

MR. McCOOMB: That letter isn't, but this piece of correspondence is part of the original record. If you scroll up, you'll see what it is. What we're looking at right now is part of the original record of proceeding. So this is material that we re-sent to Mr. Narwal but that had been communicated to him as early as January 8th.

So we go back to 379, please.

But the summary is helpful because you can see this kind of content in sequence in rapid fire.

CHAIR: But we can't actually review any of this content.

MR. McCOOMB: You can't review the contents from the links because the links aren't attached. All of these tweets, to my knowledge, are still on Twitter, as are there TikTok videos. I don't think any of this has been removed. But you can see the content that's been captured here in this letter. And I haven't seen anyone say that these have been inaccurately captured, these quotes.

So the references on this page are talking about, "1000% increase," rocket emoji; "Could this be our biggest winner ever?" And I'm not focused here on disclaimers. It's accurate to state that in some cases, Mr. Marks does provide disclaimers as to his interest in New World, particularly in his TikTok videos, which are quite long. It's not uncommon for him to do so. He didn't do so in a hundred percent of the cases, and we pointed out instances where he didn't provide any disclosure. But that's not my focus.

Keep going, Sandy.

MR. McCOOMB: So what you see here, so the handful of references. In (t), for example, as Sandy highlighted, "They all laughed at me! But a 5-cent stock [moon rocket emoji] to 250 in four months," which is not a reference to New World. And then the next two increased to 1,000. So what he's suggesting is potentially tying the New World projection to what happened in another case.

Look at number (y), "Could it double in the next 10 days?" This is the prospective chairman of a company with 20%-plus interest in the company on Twitter to his followers and his stock-promoter community, again, tied to the Penny Stock Billionaire Gang handle as well asking the question whether the stock price can double in the next 10 days. "Can this 2-cent stock make you rich? Get your share of $31 billion luxury watch market. 3-cent stock ready to double again." And this is from a TikTok video. We include the commentary, the capture of Mr. Marks introducing his comments to his followers by saying, "I've got some insider information for you" and disclosing where it's from, right, that he's the chairman of this company, that he's a major shareholder talking about insider information, which I would suggest is all part and parcel of him trying to lend credibility to what he's putting out into the market to create demand and interest in acquiring these stocks, very much acting as a stock promoter while he's also wearing his chairman's hat.

Anyway, I'm going to circle back on the revenue point. I'm going to take a short break later, and I'll just make sure

I've got the right details. But the point I want to emphasize, as I said, has to do with Mr. Marks what I would say is hyping the revenue projections of New World that he's putting on Twitter in a manner that's different from what's being disclosed to the Exchange. So --

CHAIR: And you equate revenue projections with projections about what happens to the stock?

MR. McCOOMB: No, I'm referring specifically to revenue projections. And I'll give you the commentary. He's talking about a $5 million to $10 million anticipated revenue for New World in circumstances where the disclosure about the revenue to the Exchange is different. I apologize if my notes are failing me, but I'll find those for you and give you those points before we finish.

So what you have in the October 3rd decision is a decision that, of course, reviews a determination that had been made in January. It explicitly references it. It looks at subsequent information. So that subsequent information is what I'm showing you on the screen; in part, tweets and TikToks and YouTube videos in the subsequent time between January 8th and September and into October of 2024. And it concludes, based on all that information, that Mr. Marks is unsuitable to be affiliated with the CSE-listed issuer, communicates that to him. And this appeal process, this feature of the eventual appeal process, is kicked off.

So I feel like you've got a question on the tip of your tongue. I --

CHAIR: But if you need to finish your sentence, and then I'll jump in. I don't want to --

MR. McCOOMB: Well, all I was going to say is from a procedural fairness standpoint, he's given the determination, he's given the basis for that determination, and he's allowed to exhaust his procedural rights, again, as this is all part and parcel of doing.

CHAIR: So can you just take me to the October 3rd decision?

MR. McCOOMB: Yes.

CHAIR: And show me where the October 3rd Reasons say that it involved a review of the January 8th Reasons and a review of additional materials from January 8th to the time of that decision? Because I don't see that there.

MR. McCOOMB: I don't think it says anything quite so explicit.

CHAIR: I mean, what I see instead is -- let me go to the right page. Page 177 Bates number, for the record. Sorry, I'm looking at a different version; that's fine. Or a different copy of it in the record. 177?

MR. McCOOMB: Yes.

So what you have on 177 is a notation that a determination had been made in January. It wasn't communicated to Mr. Marks. The CSE says at the bottom of the communication decision paragraph that it confirms that decision as of the date of this letter.

And then the following section provides the rationale. There's a reference to the 1998 SEC settlement. There's a comment that that on its own likely wouldn't be enough to ground an unsuitable determination. And then just turning over to 178, at the top of the page where it says, "The nature of the conduct alleged by the SEC does not raise investor protection concerns," et cetera, However, if there's no aggravating factors over a significant period of time, the CSE would not object solely on the basis of that settlement. So that's putting the 1998 SEC piece to one side.

"It's the position of the Exchange, however, that there are significant aggravating factors: the promotional materials published by you and your promotional activity on wallstreetreporter.com, social media platforms such as TikTok and X, and investor forums such as CEO.ca give rise to investor protection concerns."

So, no, it doesn't say, you know, including in the period between January 8th and October 3rd, nor would I suggest that it matters that it doesn't.

CHAIR: But, okay, so just a few things. If you go to the communications decision section --

MR. McCOOMB: Yes.

CHAIR: -- on its face, the first sentence of that, or reading that paragraph altogether, it's referring to, "a decision made in January of 2024 that is now being communicated to you," not a new decision that is based upon a review of the January 2024 decision and additional materials. I don't know; aren't those two different things?

MR. McCOOMB: I think they are. I think what the paragraph is saying, or at least -- I don't want to give you evidence as to what someone intended.

CHAIR: No, I understand. I mean, all I can do is read it.

MR. McCOOMB: Exactly. And it says what it says to some extent. What it's telling the reader where it says, "The Exchange confirms its decision," it's saying the determination that you are unsuitable, we confirm that.

And then subsequently in the letter on page 178, it refers to the various materials, not chapter and verse, but it refers to the categories of materials on which that determination is based. So as I read it, it's saying as of January 8th, we determine that you were unsuitable. This matter is now before us again. We've looked at all these materials; we've determined that you're unsuitable. We confirm that determination, is what it's saying. And to parse it into treating the January 8th decision like a formal confirmed decision based on this writing, I think this writing leaves much to be desired, much --

CHAIR: Not being a different decision, being the same decision.

MR. McCOOMB: Well, this is actually saying as of October 3rd that that decision is confirmed. It's not the same decision; it's a determination that is confirmed and formally communicated to the individual. That determination that Mr. Marks was unsuitable in January was made and archived so that you have it on file if it ever became relevant again. And the Committee went and looked at the materials it had available to it , including a wealth of additional social media activity, all of which pointed in the same direction, that this individual was a problematic person not associated with the Exchange. And so that determination was confirmed.

And I told you when I started these submissions that this is an evergreen obligation, that these determinations are not static. And you see that in the very example of the SEC settlement, that that once upon a time might've been a basis on its own for a finding that he shouldn't be affiliated with anybody on the Exchange. But you see in this correspondence the Exchange saying given the passage of time, that on its own is not enough, that there are aggravating factors here.

CHAIR: If it's a new decision in October, why bother to say that because we didn't notify you in January of the decision that the time for the appeal didn't run from then as in Mr. Faulkner's cover e-mail in the record delivering this decision?

MR. McCOOMB: To be very careful about what it actually says in that cover e-mail, it refers both to January and to September 27th -- or 26th, which is why Ms. Cosgrove put Boughton Law on notice that there was an unsuitability issue here. So to the extent anyone was wondering when does my appeal run from, what the CSE is communicating is notwithstanding that there is some procedural history here, the appeal starts -- the timing starts from right then.

And you're saying why tie it together. Probably shouldn't have been tied together. This whole situation would be tidier if there was no reference to January at all, and the Listing Committee simply said we've got a new matter before us with fresh eyes. There's a note in our file that this person is a 5 out of 5 risk rating, but let's not call that a determination or a decision; let's make this happen afresh. We would be in a much tidier situation right now.

What I've said to you before, I think, stands. This is a case where messiness is created by three bizarre circumstances colliding at once in a perfect storm. And I told you what those circumstances are. That's why we find ourselves here.

CHAIR: So what are the materials that are before the Listing Committee in making the October 3, 2024 decision? How do I figure that out? Because I don't see them referred to in the Reasons. And you've just told me that it was the materials that were before the Listing Committee for the January 8th decision -- but we don't know exactly what those were -- and also supplemented by social media activity from January 8th up until October 3rd.

Although when I read the Faulkner affidavit, I think the Faulkner affidavit says that they considered new postings from the point in time where Mr. Marks was appointed chairman of New World. And there's not a reference to additional social media from January 8th onwards. So I don't know where to go.

MR. McCOOMB: To put together the record of what was before the Listing Committee as of October 3rd?

CHAIR: Yeah.

MR. McCOOMB: My understanding is that the place where that is captured is in combination with that January 8th disclosure to Mr. Narwal, which was repeated in part in May. And some of that material goes past the date of that decision, some of the material disclosed in May. But my understanding is it's cap tured as of what was disclosed to Mr. Narwal, who asked the question what social media are you relying on. And he was given references to the social media that the CSE had records of having looked at, which were, effectively, Mr. Marks' tweets in that period.

CHAIR: So I would have to go back to the record in -- if I wanted to figure out what was actually before the Listing Committee for the October 3rd decision taking into account -- I'd have to go back to the record, and I'd have to identify simply what things predate and postdate October 3rd?

MR. McCOOMB: Yeah, I wouldn't put that on you. I think what I'm saying is if we look at that letter from January 8th, or we look at page 379 --

CHAIR: January 8, 2025?

MR. McCOOMB: Yes.

CHAIR: Right? Okay.

MR. McCOOMB: If we look at page 379 where we were previously in the record in the correspondence going over with Mr. Narwal, you will see pieces of social media with date stamps on them to identify where they're from. So, yes, there will be pieces in that disclosure that postdate because it was made clear to everybody as the appeal process evolved -- and, of course, it's the appeal record that matters for purposes of this proceeding. But the appeal materials eventually came to include subsequent conduct from Mr. Marks that affected the CSE board's decision, in my submission, at the time. But these items are date-stamped marked September 3rd, September 9th. They are in order to know what came before and what came after. And so I would put to this panel that materials dated before October 3rd would've been before the Listing Committee.

CHAIR: But maybe they weren't gathered by the Listing Committee as of October 3rd. I mean, they were gathered subsequently, and then they would predate October 3rd.

MR. McCOOMB: And I don't have that evidence. I don't have that evidence either way. I'm not going to represent that I do.

CHAIR: Okay.

MR. McCOOMB: So I think that I've already conceded that the language of some of these pieces leave something to be desired in terms of the link back to October 8th and the determination of unsuitability then. But none of the issues around process and fairness, in my submission, again, engage any of the Canada Malting factors. Remembering, of course, that the decision under review in this proceeding is the decision of the board.

CHAIR: Except, I mean, you'll agree with me that -- I think I'm paraphrasing, but the decision of the board in May actually says that it agrees that the October 3rd decision was justified on the basis of what was before the Listing Committee. I believe that...

MR. McCOOMB: And representations to that effect were made to the board as part of the submissions. But your question is, well, what exactly was there. Right? That's what you're getting at?

CHAIR: Well, no, it's sort of a reaction to your statement that all we need to do is look at the decision of the board. If the board is leveraging off the decision on

October 3rd and saying we agree with it, there's an argument perhaps that it's deferring to the Listing Committee's decision of October 3rd to some extent.

MR. McCOOMB: I don't know if I would use the words "leveraging" or "deferring" because of the process that the CSE board has for an appeal.

And that is a pretty good segue to talk about Chapter 3 of this set of issues, which is to talk about the appeal itself. And as you know from our factum, what we've said and what is correct, in our submission, is that this application for hearing review concerns the appeal decision and not the October 3rd decision and determination from January 2024. But what we've also explained is that the process for that appeal allowed the parties to introduce new evidence should they so choose. And so there was an opportunity for the parties to present their case to the board, to present new information -- new evidence if they so chose -- and to argue the issues at that level.

Now, the approach that Mr. Marks took through his counsel was very much a criminal law disclosure approach, to demand disclosure and then complain that it was insufficient, as opposed to making the positive case for suitability. Now, I surmise that happened because that ship on suitability had sailed as of May 2025. And the reason I say that is because Mr. Marks, by that point in time, had spent eight months calling the CSE pedophiles and rapists and robbers and thugs. Pardon me; he didn 't call them thugs.

So that was the approach that was adopted by counsel, was to take a critical view of the CSE's processes, to challenge the procedural fairness and the disclosure, rather than to make out a positive case. And what we've shown in our factum is that where, in an appeal process, a party is given those effective de novo rights to state a positive case or to contradict evidence against, that that washes away potential procedural irregularity with steps leading up to that appeal.

CHAIR: One just minor point, Mr. McCoomb. I know that this statement is also set in your written submissions. I think it's at paragraph 52 of your factum.

MR. McCOOMB: Yes.

CHAIR: There's no authority cited for that. Is that just obvious based on the language of the appeal policy?

MR. McCOOMB: Let me just pull up the submission itself.

So your question is about when we say that the CSE's process allows for, effectively, a hearing de novo, where does that come from?

CHAIR: Yeah.

MR. McCOOMB: Sorry, I misunderstood your question. It flows from the description that Ms. Stern, in her correspondence, provided to Mr. Marks about how the appeal was to work. And it's otherwise described in our factum, cited to the evidence. So, for example, the paragraphs that follow, I believe, 57. And there's also 53. Yeah, sorry, I apologize, Adjudicator Burke. The itemized list in paragraph 53 --

CHAIR: Okay.

MR. McCOOMB: -- sets out the features of the appeal policy that give it effective de novo rights, including the ability to introduce evidence, to make written submissions, to argue your case in front of the panel, et cetera, et cetera.

CHAIR: But it's not a source from the policy itself. It's from the description that was conveyed to Mr. Narwal?

MR. McCOOMB: That's right.

CHAIR: Okay.

MR. McCOOMB: That's right.

CHAIR: Thank you.

MR. McCOOMB: And Mr. Lockhart points out to me that it's all also baked into the October 3rd decision letter. So set out from that point in time as to what the process is going to be.

CHAIR: If you going to move away from the October 3rd letter, can I ask a question, please?

MR. McCOOMB: By all means.

CHAIR: So the first paragraph of the letter describes the decision as a determination that the CSE will object to any association between Mr. Marks and New World that would require the filing of a PIF, specifically, "You must not be an officer, director, promoter, or a shareholder with holdings greater than 10%." That seems to me to be inconsistent with what I think you were telling me earlier, Mr. McCoomb, when I asked you whether the creation of a new insider itself requires the filing of a PIF, and you said no.

MR. McCOOMB: Right.

CHAIR: This suggests that it's fraught with -- so it's not just the issue of Mr. Marks tipping into being a controlling shareholder that was an issue from the CSE's perspective, based on this decision.

MR. McCOOMB: And what I'll ask -- and I'm just mindful of the time -- I'll take this question away to get you a specific answer over the break.

CHAIR: Okay.

MR. McCOOMB: Regardless, I think for purposes of -- well, I don't want to answer a question that you didn't ask. So I'll take that question away, if you don't mind, and come back with something specific.

CHAIR: Okay.

MR. McCOOMB: Which may except the inconsistency or explain it.

CHAIR: Okay.

MR. McCOOMB: If you don't mind.

But just in the interest of trying to use the next six minutes helpfully, and I am getting towards the end of the submission, recognize that most of what I've said about October 3rd -- pardon me; about the appeal decision -- is heavily reliant on our factum. Because, of course, we've dealt with that head-on. And what I've wanted to do with these submissions orally is focus as much as I can on what Mr. Marks has put before the panel as his concern. Because he's done very little in the response to the board decision itself. That does not seem to be his focus.

And so it does follow that if panel accepts what we've said, which is, first of all, that the decision under review is the board decision and the board decision only; and second of all, that if the rights attached to the board decision create a hearing at that level that is such that it washes away any procedural irregularity of the pieces before it, then most of what Mr. Marks is raising as concerns don't really go anywhere. They don't affect that board decision, which should, in my submission, clear away those prior problems. Because I won't pretend as though there aren't elements of messiness in the way this was developed in the correspondence, as we've covered in the questions and back and forth.

So the reference I wanted to give you, just so you'll have it -- and I'll use the easiest one possible because I know you already have it in front of you. So paragraph 73 of our written submission, on page 24 of the written submission, embeds a quote from one of the relevant tweets from Mr. Marks about revenue run rate, talking about asking the question of whether New World Solutions could hit $5 million to $10 million in revenue in 2025. I didn't want to leave that unaddressed. That's the sort of thing, on this question of promotion, that causes, I think, great concern when you contrast it against what Boughton Law was saying to the CSE about the projections for this company, which raises this question of promotion and what is overpromotion.

And I would cast it a little bit differently and submit that the issue is problematic promotion. And there are, of course, as Mr. Marks has pointed out in written submissions from Friday, resources and policy that address the question of stock promoter activity. It's partly 43-101. And there are at least three categories. I think it's a closed list, but I think there's at least three categories of promotional activity that could be problematic, which is to say could give rise to a finding of unsuitability if it came to the attention of the Exchange.

So one category is undisclosed conflicts of interest. A second category would be overly aggressive or optimistic or assertive promises of stock price growth or share price growth. And a third category -- and obviously this is more than just a stock promotion problem, but just misrepresentation. And I think what you see across the various pieces of social media activity that animate the board's decision and have put us here is a combination of some or all of those categories, depending on the piece of commentary.

So we had drawn the panel's attention, for example, the board's attention, to pieces of commentary where there was no disclosure, no disclosure of Mr. Marks' role or interests. That's one category. Paragraph 73, in its reference to $5 million to $10 million in revenue, is an example of commentary that, at least based on what Boughton Law was willing to tell the CSE, looks like it could be misrepresentative.

And that third category of overly assertive suggestions of growth -- and I appreciate Mr. Marks, his principal occupation is as a stock promoter. He's paid by issuers to try to create demand for their equities. He makes no bones about that role. If you read his book, if you look at his website, he discloses that. And in some cases, talking about potential growth for an entity is part and parcel of the job. Of course, promising anything, making people believe that something is guaranteed is always going to be a problem. But when you're in his role, in his shoes as the chairman and controlling shareholder of a company, talking about the stock price doubling or going a 1000%, putting timelines in it, this becomes very problematic for people who want to believe that his role with the company creates legitimacy and goes beyond mere stock hyping.

At the very outset of my submissions, I told this panel that there is no bright line on these activities, on what would make somebody unsuitable. In these circumstances, I don't think it takes much to look at the particular activities that Mr. Marks engaged in starting back when, starting with AI/ML or earlier and all the way through to October, saying nothing about the campaign of defamation, to see that the individual's conflict of interest, disclosed or not, in Mr. Marks' interest and role with New World is highly problematic.

I think the notion of unsuitability, as it's grounded in Policy 2.18, is heavily based on the notion of fiduciary duty. Not every person in those roles, in the various roles that the CSE could object to having an association, is going to be a fiduciary. But in many cases, they will be. And what Mr. Marks' commentary makes clear is that he doesn't appear to be prepared to put the company's interests ahead of his own, to put shareholders' interests or stakeholders' interests ahead of his own as a fiduciary. What he appears to be doing is trying to hype the stock price, trying to drive it in a way that is not common and, I would submit, not appropriate for someone who is, in fact, a driver of the business from the inside.

Posting videos to TikTok talking about how he's sharing with his followers insider information, which if true -- I mean, if it really is insider information that he's sharing, he's sharing it in completely the wrong forum. Right? That shouldn't be happening. But he's doing this to lend legitimacy and credibility to the claims he makes about the company to get people interested buying shares that will affect the value of his own investment.

And from the perspective of the policies, the animating words in Policy 2.18 about the Exchange itself, bringing the Exchange into disrepute, protecting investors on the Exchange, you can see why his conduct would raise concerns that could lead to an unsuitability finding. It's not, on the basis of the disclosure in the record before the board, a hard conclusion to reach.

Mr. Lockhart, last week or the week prior, did most of the heavy lifting to underline why the campaign of defamation is significant in your overall fact pattern. And I'm not going to double down on that. You, again, have that information before you as to why -- say you were to allow in the subsequent evidence even post the appeal decision. But regardless, we have the defamatory material between October 3 and May 13, 2025. It's not difficult to understand how that kind of conduct triggers the element of Policy 2.18 to bring the Exchange into disrepute.

CHAIR: Is there one place you can point me to where the defamatory content is identified in that time frame?

MR. McCOOMB: Sorry, identified from what time frame?

CHAIR: For that time frame, from October 3rd through to May 13th. One place where there's defamatory content.

MR. McCOOMB: There's two places. So some of it, I believe, is included in the January 8, 2025 memo to Mr. Narwal. And it's further included if you go to page 379 of the record, that correspondence from me to Mr. Narwal putting all that before him. It's also included, I believe, in no small detail, in our submissions from -- I believe it's March 25, 2025, the factum submission document. We embedded instances of the defamatory content right in that submission. So Mr. Marks and Mr. Narwal both had notice of those pieces of the puzzle, and they were included in the record in that regard.

CHAIR: Thank you.

MR. McCOOMB: I'm mindful of the time, and this is what we'd identified for a break. I don't have too much more to say. I would like to take away your question on policy and of course answer any further questions. But I think for the balance of my submissions, subject to questions you may have, we'll probably rely mostly on our factum.

CHAIR: Okay. I do have a question -- and I don't think it's been answered; so you take that away for break as well -- is walk me through in the record of the original proceeding what was before the board.

MR. McCOOMB: Okay.

CHAIR: Thank you. So we'll come back at 2:05.

--- Recess taken at 1:49 p.m.

--- On resuming at 2:05 p.m.

CHAIR: Everyone please be seated. Just a moment while we get logged back in.

Whenever you're ready, Mr. McCoomb.

MR. McCOOMB: Thank you.

So let's start with the related persons question. And it will take me walking back a little bit with what I said before, to be clear.

Thank you, Sandy.

So CSE's Policy 2.9 would require the filing of a PIF for individuals proposing to become a related person. So it's not just for control persons, but it includes as low as the 10% threshold for related persons, which marries up with the first paragraph of the October 3rd letter. Of course, the natural next question is would that not have triggered a requirement to deliver a PIF with Mr. Marks becoming a 19% shareholder. And it looks like on the face of the policy, it would have.

It doesn't appear that one was delivered. In fairness, it doesn't appear that one was requested. Whether it's requested or not I don't think is necessarily here nor there. But I'll acknowledge it doesn't look like it was requested, and there was information in that correspondence sufficient to identify that it could've been appropriate to request one so as to line up the individuals and understand who you were looking at.

My understanding -- and I don't want to give evidence in this, but it's a resourcing question. I don't believe the CSE in every case with a related person asks for a PIF and does a suitability review. So that obviously is a revision to information I gave you earlier. I apologize for that. I do not mean to mislead the Panel.

CHAIR: No.

MR. McCOOMB: I hope this is clearer than we were before.

CHAIR: Thank you.

MR. McCOOMB: Your other question -- again, not presuming that I'm at the end of the list of those that you may have for me, but was to walk you through the record of what was before the board. And I'll be very transparent and say on the record we have before us, it is not perfectly clear. And I'll explain what I mean by that. But by reference to the original record of proceeding --

CHAIR: I'm going to pull it up.

MR. McCOOMB: And, really, just working off the Table of Contents is the easiest way for us to do this. What I can tell you is the formal record, as in the appeal book, that was prepared by the CSE and delivered to the parties is the record that runs from page 10 to page 176 -- or I guess 181.

CHAIR: Not the Notice of Intent to Appeal?

MR. McCOOMB: Sorry, I think we started with that. Let me double-check.

CHAIR: Page 10 starts -- is Tab 3, for the record.

MR. McCOOMB: It's referenced in -- the same document, I think, is Tab A in Mr. Narwal's correspondence. They're both letters dated November 1st.

CHAIR: Oh, I see. Yeah.

MR. McCOOMB: So it's been added again just so it heads the document, but then it forms part of the appeal binder.

CHAIR: So the formal appeal record is the contents of Tab 3 of what we marked as Exhibit 9?

MR. McCOOMB: That's my understanding. That would've been the appeal book that was circulated to the parties, which --

CHAIR: And to, well, prepare what was before the panel, right?

MR. McCOOMB: Right. So that's my first part of the answer. Because in addition to that -- so what you have following Tab 3 is the materials that were exchanged and disclosed between the parties. A lot of that is what was sent over to Mr. Narwal related to social media activity, which wasn't formally built into the appeal book, but reference was made to aspects of it during that appeal.

And I'm making this representation to the panel. I mean, at one point in time during the appeal, we played one of Mr. Marks' TikTok videos live. So that's not captured in the record, but it was something that was shown. Now, I can't tell you which one it was. And, unfortunately -- this is why I say it's a little bit unclear -- I can't give you a much more precise answer than that.

So these materials were made available to the parties. They didn't get into a document crystallized as the record of that particular appeal. And so I can't tell you that the appeal panel laid eyes on any particular document or documents in Tab 4. The ones that we know they would've had access to and recourse to were the ones that were captured or attached or captioned in our submissions, which are included in Tab 3.

CHAIR: We've marked this as the record of original proceeding. What do we do with this? I mean, in one scenario, the materials that were not before the panel could arguably be characterized as new evidence.

MR. McCOOMB: Yes. Yes, if they were not before the panel.

CHAIR: About which we don't have a motion because it's at least my understanding that in the process before this tribunal, the parties agreed to what was a part of the original proceeding is including all of these materials.

MR. McCOOMB: Right. It wouldn't necessarily answer the question for the Panel about whether it was admissible.

CHAIR: No, although, I mean, as the case management adjudicator, I expected that something called the Record of Original Proceeding was what was before the panel below.

MR. McCOOMB: I take your point. And I don't have an immediate answer for you. I'm hesitant to ask for a break, having just had one. Perhaps if we do -- we're going to hear our friend's submission. Perhaps I can do a bit more diligence on this particular question for you.

Because to be practically candid with you, I think these materials were put together as having been exchanged between the parties as sort of the disclosure between the parties. What I'm not certain of -- so let me put it this way. What I'm not certain of is to the formality in which any of these materials made it into the panel's hands. So, for example, there was disclosure in Mr. Faulkner's January 8, 2025 letter to Mr. Narwal of posts and materials. I'm not sure, standing here today, that that landed in the Panel's hands in a formal capacity, though some of those materials were referred to during the hearing. If I can take some time to run that down, I'll try to get you some better definition on that.

In the absence of getting you a link to explain that

that material does properly form part of the record outside of the appeal book, then I think you would have to approach it -- I mean, the parties have treated it as if it's the record. It is instructive to this Panel's decision-making to have all that in front of you. There's no issue of disclosure as between the parties. And submissions were made on the basis of this material that everybody had access to, both parties. And so there's no fairness issue that's created, but I do appreciate the concern that from a formalistic standpoint and from a how have we been looking at this standpoint that there could be a concern about that. We have to own that. Yeah.

CHAIR: Okay.

MR. McCOOMB: I don't have much more I'd like to say to you in terms of submissions because I think our factum walks through the Canada Malting factors and addresses the concerns procedurally and substantively that Mr. Marks has raised with respect to the approach here. And I said it before the break: When you take the sum total of the things that he's said and done, I don't think it's hard to arrive at a determination that he's unsuitable to be participating in the Exchange. And while there are elements of this approach that have been untidy, the conclusions are all grounded in what's gone on and are fully supportable on the Canada Malting standard.

Of course, you're going hear from the OSC, and I understand my friend's submission, which is you should take a step back -- as I understand it, if I'm recapitulating before he says it -- take a step back and looking at all of the evidence that you have, approach this from the perspective of a hearing de novo and make your own determination, consistent with the CSE's determination but not the CSE's determination, which is to say find on your own accord that Mr. Marks is unsuitable to participate in the market. Of course, we're happy with that conclusion, though notwithstanding the questions and the answers that we've given with our submission that the appeal process should not be interfered with and should stand on its own with this just simply being denied. But, of course, if you accept the OSC's submission on getting to that hearing de novo, then of course we support the same conclusion, as we set out in our correspondence.

CHAIR: I think I have one further question. So it'll be maybe a bit of a random question, given where we are in your submissions, Mr. McCoomb. But just to make sure I covered off, I wanted to ask you -- can we go to paragraph 54 of your written submissions?

MR. McCOOMB: Yes.

CHAIR: Let me just pull that up. Just a second.

MR. McCOOMB: Due process, yes.

CHAIR: Due process.

MR. McCOOMB: And to some extent -- and I don't mean to presuppose this -- if you do want to ask the question about Mr. Marks' submissions on approval of CSE, we can also pick that up here. But I'll take your question first, of course.

CHAIR: So we've got the extract, provision 6.1, due process:

"For any decision made by the Exchange that affects a participant or issuer," and it goes on, "or an applicant to be a participant or issuer, the Exchange ensures that:

"(a) parties are given an opportunity to be heard or make representations, and it keeps a record of, gives Reasons for, and provides for appeals or reviews of its decisions."

So I'd be interested in hearing from you as to how, if at all, the opportunity to be heard and make representations applies at the stage of the Listing Committee. Because when I track it through, I think an argument could be made that the Exchange is making a decision at the Listing Committee stage.

MR. McCOOMB: That the Exchange is making a decision at the Listing Committee stage. And your question is ought not the CSE Listing Committee give the person these participatory rights.

CHAIR: Yeah.

MR. McCOOMB: That --

CHAIR: And I'm going to tie it to the written submissions from the OSC, and, in particular, the reference to the McLeod decision of the Alberta Court of Appeal, where as I read it -- I mean, there's a finding that there should be the ability to at least make submissions in writing on a suitability decision. And I recognize that there's maybe a factual difference in that case because there, it looked like there were not two levels of decision within the relevant exchange. It was an Exchange decision, and then it was appealed to the Alberta Securities Commission, whereas at the CSE, we've got the two layers. We've got the Listing Committee, and then we've got an appeal to the board. But I'm not sure that that distinction makes a difference. So...

MR. McCOOMB: Help me just with that last comment about you're not sure the distinction makes a difference?

CHAIR: Well, just from the facts in the McLeod decision, it looked like there was only one decision that was made at the Exchange level. Like, it was one decision, and that went right to the Securities Commission on a hearing review, as opposed to what we have here, which was we have a decision first, the Listing Committee, and then there's an internal appeal for a hearing and review to the panel of the board. But to me, definitionally, a decision of the Exchange, I think, could be broad enough to encompass a decision of the Listing Committee itself.

MR. McCOOMB: Well, I think you're right. And I think what we've told you, that the process that we are expected to address, to meet in this case flows from the recognition order. So we are setting this out as the process that is relevant.

I hear you on the question of -- we've also characterized October 3rd as a decision --

CHAIR: Of the Exchange.

MR. McCOOMB: And it's been communicated in that respect.

So the first thing I would tell you is what we've said before about the law around hearings de novo clearing up any procedural irregularity is part the answer. And your question is should Mr. Marks have been given the opportunity to be heard or make representations. I don't know; I'd have to take another look at Mr. Faulkner's correspondence with him around October 2nd. I don't recall any invitation in that correspondence to provide any information that Mr. Marks would say would be, you know, mitigating, for example. And, in fairness, at that point in time, he hadn't been given the basis document for the suitability finding.

So there's an exchange obviously around that time. He's told about the determination. The formal decision document comes out. I think I would be in position to have to concede that if you accept that that determination is a decision, that pursuant to the procedural requirement here, that that's something that would've been expected.

What the recognition order is setting out is the delegation to the CSE of its authority, rather than dictating what the policy ought to be. Right? So this is saying CSE, we are going to give you the ability to make your own process here. Go ahead and make your process, and it should conform to these standards. And if it doesn't, then that's a basis on which potentially the approach wasn't consistent with the recognition order. Though, again, I would say that that defect is cured by what happened subsequently with an appeal that fits within the requirements of due process as set out by the OSC in the recognition order.

I think practically speaking, Mr. Marks clearly did have the opportunity to be heard. If you look when the decision was made -- now, in fairness, it was communicated to him as a decision, and it wasn't communicated to him as something that was pending or something that was live or an issue that was open, and we'd like to hear from you. But he certainly did make his position known to the Exchange in his correspondence at the time.

CHAIR: But after the decision was made.

MR. McCOOMB: After the decision was made.

CHAIR: And after he was told if he had a problem, he could appeal it.

MR. McCOOMB: Adjudicator Burke, I throat-cleared with that to start, right?

CHAIR: Okay.

MR. McCOOMB: It happened not as a live issue. But I don't think it would be fair to say that he didn't have the opportunity to speak to the issue. And as I've said before, these decisions aren't static, right? And if there was a mitigating circumstance that he could've raised in his response, he had the ability to go and do that and for those things to be considered afresh and changed. It's not impossible for these determinations to be changed if new information gets before the Listing Committee. In either direction, right? Up or down. And so in large measure, I'm accepting the proposition that I think you're putting to me, which is this is a potential problem. But I think that it's one that under the procedural fairness of the circumstances, it...

CHAIR: Thank you.

MR. McCOOMB: Okay.

CHAIR: Thank you, Mr. McCoomb.

MR. McCOOMB: Thank you.

CHAIR: Mr. Pettypiece.

MR. PETTYPIECE: Thank you.

Andrew?

CHAIR: We're happy for you to move up, because right now I can't see your face.

MR. PETTYPIECE: Sorry about it. If we lower that, I think we're okay. And then I understand that he's got to make reply submissions potentially after. So I'm happy for him to sit there if the Panel is.

MR. McCOOMB: It's rare that I'm blocking somebody's view.

MR. PETTYPIECE: So thank you, Adjudicators. I'll try and keep my submissions as brief as possible, that I've timed around 40 minutes. So with questions, we might be butting up against the second break today.

SUBMISSIONS BY MR. PETTYPIECE:

MR. PETTYPIECE: And I'll start just with a road map. I only intend to cover what is really a subset of the issues addressed in our written submissions on April 23rd and, specifically, four topics.

The first topic is whether the Canada Malting assessment should result in a fresh consideration of the Applicant's suitability under Exchange policies. We say it should, for reasons that are obvious having read our submissions. The new evidence submitted by the CSE triggers the corresponding element of general framework supporting setting aside the CSE decision and considering the matter fresh. So that's issue one.

Issue two, if that's the approach this panel takes, we submit why it would be appropriate in the circumstances for this tribunal to conduct that suitability assessment rather than do anything else, being remitting the matter back to the CSE for determination or doing nothing and just simply setting the decision aside. And my submissions in that second issue will really cover any eventuality that triggers Canada Malting, whether it's a process issue that triggers a fresh assessment or the tendering of new evidence.

The third part of my submissions is really to get to the meat of the suitability point, which is when conducting an assessment under Policy 2.18 of the CSE's policies, the Tribunal should find that the evidence demonstrated the Applicant's association with New World is unacceptable. And there again, we are focusing on the post-decision conduct, the abusive and harassing comments made towards the CSE and its personnel.

And then the fourth issue -- I guess it's time permitting -- is to address the question of remedy if this Panel decides to consider the matter de novo and makes a suitability finding, answering the question what's next. And to a large extent, we addressed that in our written submissions delivered a week ago on May 12th. But I'll highlight a few aspects of those submissions.

So that's the plan for me today. I'll just touch on what I don't intend to cover in case the Panel has questions on those issues, and I can just deal with them right up front. So I don't need intend to discuss the regulatory framework around recognizing exchanges or the suitability policies themselves. The CSE reviewed that in detail as well, and its in our written submissions.

I don't intend to address the standard of review, the fact that the Canada Malting framework applies in the circumstances. I don't think there's any serious debate on that question. I also don't intend to get into issues of due process and procedural fairness that have featured prominently, I would say, today so far.

I think what we've done in our written submissions is to try and provide the panel a framework and some substance, first explaining the requirements in the recognition order and then adding meat to that requirement by explaining what does "opportunity to be heard" mean in the circumstances, what decisions have been made, and what Reasons require in the circumstances. And then what we also do in our written submissions is try and situate those questions of procedural fairness within the Canada Malting framework. We try and explain, you know, how the Panel is to make that decision at the Canada Malting step. But we don't go further, take it a step further and provide our own position on how potential process or fairness issues in this case trigger the Canada Malting framework.

I'll just pause there and maybe first deal with the Panel's question on the level at which procedural fairness is required under the recognition order. And for that, I would just point to the CSE Listing Policy 1.5(2).

CHAIR: Sorry, can you repeat the number.

MR. PETTYPIECE: Sorry. 1.5(2).

CHAIR: Thanks.

MR. PETTYPIECE: It says:

"At the request of either the Appellant or Exchange management, the matter may first be considered by the Listing Committee for an advisory opinion. But the Listing Committee shall not have the power to make a final determination of the matter. "

Now, I think this may be an open question as to whether that request was made in this case. But I think the point of that provision is the Listing Committee isn't making the final determination; the CSE board is making the final determination. And I think the substance of the requirement in the recognition order is that before that final determination is made, there's an opportunity to be heard, and there are Reasons provided. And I think most naturally that determination occurs at the final stage before the board. There are potentially issues of efficiency, expediency in providing a full hearing process at every stage. You know, when you're dealing with an exchange that's making important decisions every day on a number of issues, the process is really provided before the board, in our view.

I also wanted -- and I mentioned this at the outset of the hearing -- to quickly address for one or two minutes the point Mr. Marks makes about the recognition order and the approval of appeal procedures. The short answer is the procedures themselves, the appeal procedures, which I have identified at Tab 3B of the record of original proceedings attached to an April 11, 2025 order -- the short answer is the procedures themselves are not rules that are required to be filed with the OSC under the recognition order. And Mr. Marks fairly points out -- he points to the Cboe example of appeal procedures that are similar in nature, having been approved by the OSC in the past. And what I can note is the recognition order that applied to the predecessor of the Cboe Exchange had an explicit requirement to approve those appeal procedures. That requirement's no longer there in that order, and the requirement does not appear in the CSE recognition order.

So that sort of explains, you know, what might on its face look like a discrepancy. But the view is the procedures aren't rules that are required to be filed or approved by the OSC. I'm not sure where the issue goes in any event, but I just wanted to provide that clarification.

CHAIR: Mr. Pettypiece, before you go on with your submissions, I just want to clarify one thing, that when the Commission's materials refer to and advocate for a hearing de novo in this case, I'm understanding that as code for a fresh hearing based upon admission of the CNSX levels.

MR. PETTYPIECE: Yes. I don't know that it's code.

CHAIR: Well --

MR. PETTYPIECE: It's a fresh consideration of his suitability, in consideration of all the evidence that's before the Panel.

CHAIR: Right. But there could also be a hearing de novo with this Panel reconsidering the issue, a fresh consideration of the issue based upon the evidence that was before the panel, for example.

MR. PETTYPIECE: The evidence before the CSE director's panel?

CHAIR: Yes.

MR. PETTYPIECE: Yes. Yeah. So there are a number of different roads that this Panel, the Tribunal, can go down to consider this fresh. It could set aside part of the decision; it could set aside the whole decision. There's a lot of different permutations that -- we haven't addressed every single permutation in our written submissions, nor do I intend to today.

But I think how you can interpret our submissions is that if you admit the new evidence and you agree with our position that the subsequent conduct of the Applicant is of an overriding concern that needs to be addressed in the public interest, you can set aside the entire CSE director's decision, consider the matter fresh. And we, of course, only make submissions on that aspect of the evidence. That doesn't mean this Panel can't also address other aspects of the evidence that was put before the CSE board with --

CHAIR: But we'd only get to that if we find that some element of Canada Malting warrants it, right?

MR. PETTYPIECE: Absolutely. Yeah.

CHAIR: So, I mean, your submissions skirt over all of the issues -- refer to potential problems, nuances that may need to be taken into account and maybe weren't implicitly -- like, I'm paraphrasing, but you don't get into that in your submissions. You just go right to let in the new evidence and conduct a hearing de novo based on the new evidence.

MR. PETTYPIECE: That's right. There's a lot of ways Canada Malting can be engaged. And in any of those different circumstances, whether you're engaging with the procedural complaints that Mr. Marks is making, whether you find issues with the Reasons themselves, all the roads lead to the same destination, which is a fresh consideration of his suitability. And, you know, we'll get into our submission that if you're going to conduct a fresh consideration of suitability, you should be considering the most current information available to the Panel, in accordance with the Exchange's gatekeeping obligations and the regulatory framework.

So that's how we get there. We have one option that's presented in our factum for crossing the Canada Malting threshold, which is you recognize this new and compelling evidence, and you get to a new hearing. There are different ways to get to a new hearing; we acknowledge that. We're just not providing submissions on those other alternatives. We're focusing on what we feel is the overriding concern in this case.

CHAIR: Okay. So in addition to the issues that you say you want to address today, is the Commission prepared to address the question of how this Panel, were it to reassess the evidence that was before the panel and apply its own suitability or suitability decision, what standards, what should be taken into account, where we should go with that? You described it as a nuanced process to consider overpromotion. But we don't have any submissions from the Commission on that.

MR. PETTYPIECE: No, and we won't be making submissions on the promotional side of this case. Our focus is entirely on the subsequent conduct, which we, again, view as an overriding concern. That's not to say that the Panel can't engage in that analysis on a fresh consideration of the evidence. You have submissions from the CSE. You have submissions from Mr. Marks. You have some authorities. You can engage in that. You just won't have the Commission's assistance in that endeavour.

So I'll just provide, I guess, by way of overview -- and I think I've touched on some of these themes. But, really, my intention here today is to focus attention on what we view as the core of the case. And we think the parties are, really, fundamentally at odds about what's at the heart of this proceeding.

I take the Applicant's submissions as, really, an opportunity to put Exchange processes on trial and have this Tribunal essentially vindicate his conduct by confirming his view surrounding the procedural unfairness that he allegedly suffered. Of course, that's, as we discussed, a route that this panel can take. But what I'm hearing from him is he views this unfairness, these concerns that he has with process, as justification or excuse for all of the conduct that followed.

And in a way, he's saying you don't need to, Tribunal, focus on everything that happened afterwards. All you need to look at is what unfairness I suffered before the CSE. And you can end the analysis there. In our view, that's a fundamentally misguided way of approaching this proceeding.

What's at issue is the Applicant's suitability. And, plainly, his post-decision conduct is not justified, period. There's nothing that justifies that conduct. However unfair any process might have been, it doesn't justify or excuse the nature and scope of the abusive and harassing comments that were directed to the Exchange and its people. And most importantly, the Applicant's conduct amounts to independent and sufficient grounds under the applicable Exchange policies to find him unsuitable.

And we really focus on two main reasons for why it provides sufficient grounds under Exchange policies. The first is that the conduct itself represented a direct attack on the reputation of the Exchange, which very clearly engages a reputational component of Policy 2.18. So it both harms the reputation of the Exchange, but in doing so, also undermines confidence in the markets.

The second main reason we want to focus on is what he did was engage in a lengthy campaign of harassment, intimidation, and threats that were directed towards regulatory decision-makers because he faced an unfavourable outcome before the CSE that he viewed as unfair. We say this type of retaliatory conduct independently engages the public interest under Policy 2.18. It demonstrates a disregard for regulatory authority, and in a way that independently undermines regulatory process and confidence in the capital markets. And what follows from that position is that allowing individuals who engage in this type of objectionable behaviour towards regulatory decision-makers to continue to occupy positions of control and influence in public issuers, in our view, sends a deeply concerning message about what standards of conduct are appropriate for regulators, decision-makers, and in Canada's capital markets generally. So that, in our view, is the fundamental focus of this case. And that's why we are singularly focused on that issue. We see an overriding public interest concern with this conduct.

So I'll transition just to briefly touch on the first of the four issues that I present at the beginning, which is how Canada Malting is engaged. I'll be extremely brief because I think I'm really overlapping with the submissions I made on the 8th of why the new evidence should go in. And that's simply because the new evidence presented by the CSE meets the new and compelling standard. It meets that standard for the admission of the new evidence, and it meets the same standard under Canada Malting. Elaborating on that in a little bit.

Exchange policies in the public interest require a reassessment of suitability where new material information comes to light. We've been talking about the evergreen nature of the suitability assessment. The Court has made findings in response to escalating misconduct towards the Exchange and its people. And in our view, the CSE is really forced to grapple with that finding. It has to determine what it means to have a public court decision saying someone has irreparably harmed the Exchange, and what that means under an Exchange policy that requires consideration of reputational harm. So in our view, it would be artificial to ignore the present state of affairs and the record of Mr. Marks' conduct to date.

And, you know, the final issue being the Exchange wants this finally resolved as well. And this sort of dovetails into my next submission, but to sort of ignore that issue and proceed on the original issues before the CSE directors focusing on promotional activity likely would result in a repetition of this whole process. But I'll get to that in my second submission, which is, you know, why it's this tribunal that should perform the assessment, a fresh consideration of suitability, rather than remitting the matter back to the CSE or not doing anything.

So we've sort of covered this in response to your questions, but however Canada Malting is engaged, if it's engaged, the Tribunal has a choice. It can either determine to set aside the decision and take no further steps -- or an aspect of the decision. It can set aside the decision and remit the matter back to the CSE for redetermination. And the third option is it can set it aside and conduct its own fresh assessment or de novo assessment of that issue or the entire suitability assessment.

So there's three options. On Wednesday, I heard the Panel ask the Applicant, well, what's his plan. You know, if he's right about these procedural concerns and we want to set aside the decision, what's next? What are we supposed to do? What I took from that discussion was, you know, Mr. Marks is looking to return to the status quo before he was found to be unsuitable but do so without considering any of his new conduct. So I think what that really amounts to is the first option, set aside the decision and do nothing. It's to make, you know, findings that support Mr. Marks' comments about procedural unfairness, set the decision aside, and then take no further steps. So I think that we're really engaged with this option here.

There are some likely and perhaps necessary consequences that would flow from a do-nothing approach. The first is that the CSE is likely obligated under its recognition framework to conduct its own assessment immediately, and that if this Tribunal's not going to engage with the new evidence and all his conduct and the decision of the Superior Court, the Exchange is going to be essentially compelled to conduct that assessment itself and reach a new decision. If it does reach a new decision, we've heard Mr. Marks: He doesn't agree that that's an appropriate basis to find him unsuitable. He's explained all of these statements I made, they were just a reaction to the unfairness I suffered. You know, they should be looked at in that context.

So if that's the CSE's subsequent decision, I think we can expect another application back to this tribunal considering the same conduct, and we'll be here in a few months or a year arguing about the same record and the same conduct, which, you know, in the OSC's view, doesn't support the overarching goal of conducting just, expeditious, and cost-effective hearings. The parties will be put to significant expense to run through an entirely new hearing process covering all the same material that's currently before this tribunal today and ultimately just prolong a final determination of this matter. So that's our view on the appropriate -- you know, if there is to be a de novo assessment, or if there's -- I should back up -- if Canada Malting is engaged in some way, we think the appropriate way of dealing with that is a fresh consideration by this tribunal. And you have all the evidence, and you have all the submissions before you to conduct that assessment today.

Subject to any questions from the panel, I'll move on to I think what's really the meat of my submission, which is focusing on Policy 2.18 and why we say the Tribunal should find Mr. Marks as unsuitable under that policy if it conducts a de novo assessment. So I'll just start by saying and, I guess, repeating something I said earlier, which is our focus is purely on Policy 2.18 because we view his more recent conduct as overriding in public importance. And because our focus is on that conduct, 2.18 is the only policy that's engaged by that conduct. It's the policy that focuses on the reputation and public interest.

I want to reiterate too with respect to Policy 2.18, it doesn't require a finding of regulatory misconduct. It doesn't require a breach of securities laws. What it does require is conduct that gives rise to investor protection concerns, conduct that could bring the Exchange into disrepute, or conduct that's otherwise contrary to the public interest. Just summarizing 2.18.

To get to your point about standard, I think, you know, you've asked the Applicant that question, certainly, how he interprets suitability and, you know, what's the standard. What standard are we applying? And as I mentioned, I can at least speak to the reputational component and the public interest argument that we're making. And what we would say is that in this context, the standard you're applying is looking whether conduct negatively impacts, harms, or undermines the Exchange's reputation or confidence in the capital markets. That's what we say the standard is: negative impact, harm, or undermining of those elements.

We cite some cases in our factum in support of this view. I think we acknowledge that there's no decision directly on point of what it means to bring an exchange into disrepute, but it's obviously an implication on the exchange's reputation. And we focus on some cases that talk about what it means to bring capital markets into disrepute more generally. And those tend to focus on undermining confidence in the capital markets.

So that's what we say is the standard in this case. That's not to say that different elements of the public interest may not be engaged in other instances where Policy 2.18's applied, but that's just how we read it in this context. And before launching into, you know, the conduct specifically, I just want to take a step back and explain a little bit about why fundamentally it's important to consider issues of reputation and public interest when you're assessing suitability. Like, where's the connection between those concepts, and why are we focused on those when looking at suitability.

And I think I'll start with what's probably an obvious statement, but confidence in the market and regulatory authority is foundational in securities regulation. Fostering confidence in the capital markets is a core purpose of the Securities Act, section 1.1. The BCSC in the Nichols case, which we cite in our factum, has gone so far as to say the very existence of an exchange depends on public confidence. That's at paragraph 47 of that case.

And focusing in on reputation, confidence obviously relies on trust and the integrity, professionalism, and good faith not only of the regulators, but in other institutions operating and overseeing market prices. We submit that a loss of trust can have a detrimental effect on the exchange itself, but also on capital markets more broadly. It could impact a wide spectrum of market participants, the issuers, investors, anyone involved in the exchange.

And I want to take a moment to focus on these positions, the ones that require suitability determinations, so persons who hold these governance and leadership roles in public companies or exert influence over those that do occupy positions of heightened expectation and responsibility. The Applicant seems to agree with this submission. I noted in his May 12th written submissions that he accepted that individuals participating in the capital markets should be held to high standards of integrity, professionalism, and conduct.

This, in our view, is the basis for requiring suitability determinations and Personal Information Forms when you have the related persons under Exchange policies. These are positions that have public-facing roles. They interact directly with regulators. They interact directly with investors. And they themselves are subject to a suite of securities law requirements.

There's duties on directors and officers. There's disclosure requirements. You're in a special relationship if you're his insider. So there's tipping and trading requirements. In essence, these are people who occupy a special category of market participants, carry different obligations, and who have the ability to set and affect standards and norms across the market. And it's for this reason the Exchange exercises its gatekeeping function to assess their suitability.

So with that sort of, you know, background, I suppose, on the policy and why it's important, I'll switch to focusing in on those two aspects of our suitability submissions, the first being the fact that the conduct is a direct attack on reputation, and that's part of the assessment in Policy 2.18. And the second is the retaliatory aspect of the conduct. It's a response to unfavourable regulatory outcomes and an attack on decision-makers that's independently contrary to the public interest.

So starting with the first, getting to reputational impact. I'm not going to repeat the statements that are in the record from Mr. Marks. I frankly think it's kind of embarrassing to repeat them. I think Mr. Lockhart's done a great job of canvassing some of the more egregious statements last day.

What I'll say is that I think it's difficult to imagine a more clear case of conduct that negatively impacts the reputation of an exchange where conduct is arguably directed at harming the reputation of an exchange. You have Mr. Marks calling the Exchange a scam on many occasions, a Third-World shithole exchange, the worst failing stock exchange on the planet, corrupt, brazenly fraudulent. I see him smiling to all these statements. He's heard them all before. The conduct was severe enough to warrant an interim injunction for defamation, which is an extremely high standard. To find that, the Court has to find that the words are clearly defamatory and impossible to justify, such that the case at trial is close to iron-clad.

Now, Adjudicator Waechter asked me, I think on May 8th, you know, what are we to make of the Court's engagement with this matter. And I would still say the Court's making a decision under a different framework. Its findings are obviously not binding on this tribunal, whichever way they go. But they are persuasive in that they're considering the impact of the exact same statements on the reputation of the Exchange. And I think for that reason, they warrant careful consideration by this panel.

And I think this Panel will have to grapple with the fact that the Court has made a finding on an extremely high standard. We're not advocating for that high of a standard to make a finding under Policy 2.1. Certainly not. We're talking purely about conduct that undermines or harms the reputation of an exchange, not clearly defamatory, impossible to justify conduct. I think that's a much higher standard.

I want to make a few submissions on Mr. Marks' comments about the lack of evidence in this case, and specifically evidence of harm to the reputation of the Exchange and evidence that the capital markets have somehow been harmed by what he's done. The reality is these are not the types of harm that lend themselves to quantification. This is something courts in defamation cases have long acknowledged. And I'm going to give you a citation from an Ontario Court of Appeal case that digs into this issue a little bit further.

It's called Rutman v. Rabinowitz. The cite is 2018 ONCA 80. Without delving into the meat of that case, what you essentially have is an appellant defendant saying trial judge made an error because the plaintiff acknowledged during the trial that he didn't suffer any pecuniary loss, and he didn't suffer any reputational harm as a result of what they described as an Internet defamation campaign. The Court of Appeal responded saying this is problematic for several reasons.

And I'm going to read a few parts from paragraphs 62 and 65 of that decision, just so you have the references. First, the Court of Appeal said:

"...it is trite law that general damages and libel cases are presumed from the very publication of the false statement. The injured plaintiff bears no obligation to prove actual loss or injury. The appellants' focus on the alleged lack of pecuniary or reputational damage to Rutman discounts this foundational principle."

And paragraph 65, they say:

"The inability to point to specific reputational harm is not an admission that such harm did not occur. To the contrary, the courts have accepted that, 'the consequences which flow from the publication of an injurious false statement are invidious.'"

And they get even more colourful than that. They go on to say:

"A defamatory statement can seep into the crevasses of the subconscious and lurk there, ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime."

So there, the Court of Appeal's quoting from a Supreme Court of Canada decision on defamation. I don't go through that to say the law of defamation applies 1:1 with what you're hearing today. But the Court has grappled with this issue of how does one prove loss to reputation. And the simple point is the absence of specific evidence of reputational harm is not an obstacle to making a finding.

CHAIR: Mr. Pettypiece, have you shared that case with Mr. Marks and also Mr. McCoomb?

MR. PETTYPIECE: I have not. But I can send them the cite.

CHAIR: I think just because Mr. McCoomb is self-represented, it might easier to just actually send him the case.

MR. PETTYPIECE: Yeah, absolutely.

CHAIR: And I'm hoping that he would have that before he has to make any reply.

MR. PETTYPIECE: Yeah. Will do.

One other point I would add is you're not just focused on past time. This isn't a civil case where you're focused on damages for past actions. You're focused on future conduct. You're focused on setting a standard and the question of, really, what standards and norms will be set by either condoning or condemning Mr. Marks' conduct and how this tribunal's decision will reflect on our exchanges and our markets more broadly. So it's not just a question of past action that can be proven; it's a question of preventing future harm and setting standards.

So that's the first part of my submission focusing on reputation. The second aspect was the retaliatory aspect. And I'll get to that very quickly. We say retaliating against an adverse regulatory outcome by personally attacking and threatening regulatory decision-makers is independently contrary to the public interest under Policy 2.18, shows a lack of respect for the process and authority of the Exchange, and it independently undermines the integrity of the regulatory process and confidence in the markets. We say that allowing such conduct to persist without consequence risks normalizing intimidation as a response to these unwanted regulatory outcomes.

And I want to turn for a second to the Applicant's submissions. First of all, he admits or he doesn't dispute making any of these statements. That's not an issue. And he even goes so far as to admit that his comments were -- and these are based on my notes of his submissions, but they were extreme, they were unquestionably aggressive, very inflammatory, and they're juvenile. I would agree with all of those.

What he does go further to do, though, is he attempts to justify his statements. In his written submissions from May 12th, he characterizes them as criticism in response to the CSE's conduct. So if I'm understanding him correctly, he's saying if not for not those wrongs that I faced before the Listing Committee, before the CSE directors, he would not have launched his abusive campaign at the CSE and as a result, this Tribunal shouldn't be focused on that conduct. You should be focused on all these procedural issues that he raised.

At one point in his submissions, he likened this case to being pulled over for speeding without a posted speed limit. The point being, I think, is to highlight the unfairness. There's no standard by which he's being measured. And he's saying, you know, it's like being pulled over without there being a speed limit.

I think it might be helpful to carry that analogy forward and, you know, consider after being stopped by a police officer for speeding, you might have any number of fairness complaints. You might say I didn't see the road signs; there were a number of other speeders; this person was going faster than me. You might be treated poorly by the officer. You might have certain fairness -- or issues with how you're dealt with.

There are obviously appropriate and lawful ways to deal with concerns about fairness. I think my friends from the CSE highlighted that. Mr. Marks' counsel was taking those steps. But Mr. Marks took a different approach in parallel. And in the same way at a roadside stop there are unlawful and fundamentally unwise ways of dealing with unfairness at a roadside stop, by responding with threats, intimidation, aggression, you can essentially engage an independently actual wrong which very quickly becomes the focus of the interaction and any consequences that flow from that.

Coming back to the facts of this case, you know, even if the Applicant has a genuine belief that he was treated unfairly and even if this Tribunal makes findings in support of that belief, holding that belief or those findings can't justify the nature of the conduct that he engaged in. And what I think is worse about the conduct, which distinguishes it from, you know, a heat-of-the-moment reaction at a roadside stop, is he knows its wrong. He's admitted as much. And yet he engaged in a prolonged campaign against these people spanning months, hundreds of messages. And it took a court-ordered injunction to get him to stop.

And it's no answer to point to the unfairness in terms -- I've made this point, but he's characterized it as speech that just criticizes regulators. He's sort of trying to describe it as some sort of legitimate or intelligent critique of the Exchange's process. I think that just a cursory review of his comments, you know, would dispel any notion that what he's doing is some form of intelligent criticism or critique. You know, making public assertions calling CSE personnel rapists, pedophiles, pig fuckers. You know, not to mention I think -- and most importantly, threatening that CSE decision-makers are going to be hanging from a rope. And he repeatedly suggests, in those words and other words, that they should commit suicide. There's no rationale or justifiable link between comments like that and having concerns about process. There's just no connection there. And it was no wonder the Superior Court was compelled to find these statements impossible to justify.

So I have one final comment on these submissions on the merits, and that's to deal with a theme of the Applicant's submissions where he suggested essentially what the Tribunal is doing is engaging in some sort of balancing exercise. You're looking at, on one end, the public interest harm caused by his commentary towards the Exchange. But on the other end, you should be considering, well, what's the harm to the New World shareholders. He's made repeated references to millions of dollars worth of loss and harm to the shareholders. So he's saying you've got to balance these two things, saying on one hand, you have got no evidence of harm to the Exchange; on the other hand, you've got real harm to shareholders.

So I just want to make this crystal clear. I think this is fundamentally misunderstanding the nature of this proceeding. The CSE's decision to suspend trading is a decision under a separate policy. It's Policy 2.10.

That's a separate decision from the suitability decision. It involves a separate public interest assessment. No application was brought by the issuer or anyone else to challenge the suspension decision. It was not made part of the appeal before the CSE directors. It's not part of this application for review. So the question of what harm, if any harm, resulted from the suspension is not part of the assessment of suitability. That assessment's focused solely on Mr. Marks' conduct and doesn't account for some weighting of other potential consequences that might flow from that.

So just a final word on procedural fairness because it's featured so much in the discussion today. I want to make it clear that our lack of focus on procedural fairness isn't an intention to downplay the importance those issues. Certainly, processes of fairness before the Exchange are critically important. They are enshrined in the recognition order.

We discuss at length in our submissions the standards that apply. And the Tribunal can make the determination it finds necessary. But, again, findings by this tribunal that there was an inadequate process don't immunize or excuse the Applicant's subsequent abusive conduct towards the Exchange and others, which, again, we say independently and squarely engages Policy 2.18. So those are my submissions on the third bucket, the third topic, which is why the Applicant should be found unsuitable under Policy 2.18.

I have a couple points to make on remedy, but I'll pause to see if the Panel has questions.

CHAIR: So I have a question, a clarification, just going to paragraph 87 of the Commission's written submissions.

MR. PETTYPIECE: Sorry, you said 87?

CHAIR: 87, yeah.

MR. PETTYPIECE: Yes.

CHAIR: So the Commission talks here about let's call it the "new evidence" as eclipsing all of the other issues in terms of the probity of the evidence.

MR. PETTYPIECE: Yeah.

CHAIR: I'm summarizing, again. It obviously speaks for itself.

MR. PETTYPIECE: Mm-hmm.

CHAIR: It also refers to a more nuanced analysis of how the Applicant's promotional indications intersected with suitability requirements having to be done in the event that we're not looking at the evidence but supposedly eclipses that. So there's an acknowledgement there at least, I think, by the Commission that the overpromotion piece of an unsuitability -- or suitability characterization, I should say, is more complex or nuanced. Do you have anything to say to that, other than to acknowledge that there -- I mean, is it an acknowledgment that the necessary nuance wasn't present in the May 2025 decision, for example? Or are you not going that far?

MR. PETTYPIECE: No, definitely not going that far. I think maybe "nuance" isn't the best word to use in that context. I think we're not saying this is a weaker, you know, reason to find him unsuitable. We're not making a comment about the strength of that, nor are we making a comment about how the board dealt with that issue.

I think the Commission just sees the subsequent campaign of abuse and harassment as a black-and-white issue, couldn't be more clear under the CSE policy. Easy to find your way to a decision of unsuitability. The assessment of promotional activity or overpromotional activity involves a little bit more engagement with the law and policy around promotional activity, which you've heard from my friends, and you've heard from Mr. Marks. That's all it's intended to say. And I'm sorry, but I can't provide anything more than that.

Unless there's any questions, I can just touch on remedy very briefly. So as I mentioned, last Tuesday we delivered supplemental written submissions on the issue of remedy if the Tribunal decided to conduct a de novo assessment. And this is, really, in response to submissions delivered by the other parties on May 6th. I won't repeat those, but I just want to highlight one point, which is that, you know, our position is that all that's ultimately required if you choose to engage in a de novo assessment of suitability is a finding under the policy. There's no further order or direction that needs to be made beyond making a finding under the policy.

It may have been lost a little bit in my submissions in a footnote, but I referenced a decision of Chief Adjudicator Moseley in Ziaian, Z-i-a-i-a-n, a 2021 decision which I think you know, although in a very different context, provides a similar roadmap for coming to a finding. That was a review of an IIROC decision. The IIROC Panel in the context, I believe, of an enforcement proceeding, overruled a respondent's objection to hold a virtual hearing. And the respondent sought a review of that response to his objection.

And the Tribunal conducted a Canada Malting assessment, and it found it was appropriate to engage its original jurisdiction and engage in a fresh assessment of that ruling, whether it was appropriate to overrule an objection to hold an in-person hearing. And what ultimately happened is the Tribunal arrived at the exact same result as the IIROC panel. It found it was entirely appropriate to hold a virtual hearing, but for different reasons. And so the panel was not in a position to dismiss the application. It made a finding; so it couldn't dismiss the application. But instead, what it did was it simply concluded the hearing on the merits of the allegations against Mr. Ziaian may proceed as the Hearing Panel directs, including by videoconference if that's its choice.

So it made the finding. It said over to you, IIROC; it's in your court now. No order, no further direction. And in our view, the same process should be followed in this case. The CSE has tools to deal with any findings this Tribunal makes. And, of course, that's the situation we're in right now. They have made that finding, and it would just be returned to that same situation.

So subject to any further questions from the Panel, those are the OSC's submissions.

CHAIR: Thank you, Mr. Pettypiece.

Mr. McCoomb.

REPLY SUBMISSIONS BY MR. McCOOMB:

MR. McCOOMB: Very briefly. I just have a couple of observations, and they aren't so much in the form of reply. Mr. Lockhart and I have confirmed that the information contained in Tab 4 of that original record of proceeding that we delivered was shared with the panel of the CSE board -- which is to say, to put a finer point on it, in the 394-page PDF, just going from the Table of Contents in that document, everything from page 10 to page 383, in essence, was before the board.

CHAIR: And then the remainder, is the remainder just the decision form?

MR. McCOOMB: The remainder is the decision and the preamble materials before Tab 10 -- or right before page 10. It's just the decision that's left at page 384. Piece number one.

Number two, and it's the only comment I have, really, in reply, other than to say that moments after Mr. Pettypiece referred to it, Mr. Lockhart sent a copy of that defamation damages decision to Mr. Marks. So he has reference to it, though I'll just represent that, as you can imagine, many of the similar concepts to what Mr. Pettypiece raised in his quite eloquent comments on defamation have been canvassed with Mr. Marks in the ongoing civil defamation proceeding.

But the only comment I have in reply to what Mr. Pettypiece has said, by and large, the substance of everything that he's said, we would agree with, other than what I told you in preamble to what he was going to say, which is that we don't think that there's a Canada Malting basis to interfere with any of the decision below. And so you don't have to adopt his approach. But of course if you do, his conclusion is right.

The only thing I'll say about the specifics of what he said about Mr. Marks' online content, he used the word "retaliation". And he used it quite a few times. And I agree there's a retaliatory character to what Mr. Marks has done online in response to the October 3rd decision being communicated to him, but I would put it a slightly different way instead of retaliation. Because in my submission, what Mr. Marks has done has been extraordinarily tactical. And Mr. Pettypiece also used the word "juvenile". Retaliation can come with a connotation of an emotional, reactionary response, doing something tit for tat. And in my submission, that's not at all what Mr. Marks has been doing.

Mr. Marks' campaign of defamation has been a calculated attack with a view to causing the CSE to reverse its policy decision, to reverse its determination that he's unsuitable to trade, because being excluded from an entrepreneurial stock exchange is a problem for a stock promoter who owns the handle "Penny Stock Billionaire Gang". His entire approach -- and you see this in the new evidence that we filed, specifically, for example, communications with our firm from Mr. Marks on the Peter Nygård question. He is specifically threatening disclosure of these materials with a view to getting a result, to forcing the CSE to capitulate. And so I think that just is a slightly spin from the notion of retaliation, a slightly different characterization. Otherwise, I have no notes on what Mr. Pettypiece shared.

CHAIR: Thank you.

So we're at about 3:12 right now, Mr. Marks. We can go right into your reply. But I'd also, if you need some time to collect your thoughts or review that additional case that you were just sent, be content to take the 15-minute break now if that would be of assistance.

MR. MARKS: How much time will I have to reply?
CHAIR: So we have until the end of the day today, 4:30.
MR. MARKS: Okay.
CHAIR: That doesn't mean you need to take it all. I mean, reply should be, as I've said, focused on what you've heard from the other side, as opposed to rearguing points that we've already heard you argue.
MR. MARKS: Right.
CHAIR: So if I do hear you going -- you know, it's my job to control the process and make sure that we're efficient.
MR. MARKS: I appreciate it.
CHAIR: If I see that you're treading over familiar territory, I will caution you. That being said, if you have appropriate reply, we can go right to 4:30. So it's really a matter of do we take a break now, or do you want start now and take a break in 15 minutes or so.
MR. MARKS: Let's take a break now. But I just want to be clear. So my reply is not going to retread over, you know, the original -- you know, you don't want me to retread what I discussed in the original presentation, i.e., if the document backed it, you know, all that stuff. That's not going to be discussed.
CHAIR: No. No.
MR. MARKS: We're only talking about --
CHAIR: It's not a chance -- and saying something twice doesn't make it anymore powerful. So we've noted your submissions. We have your written submissions.

MR. MARKS: Yes.

CHAIR: We have your oral submissions.

MR. MARKS: Okay.

CHAIR: It's really --

MR. MARKS: I brought fresh material.

CHAIR: -- to answer to certain things that you think gives it a different perspective. Right?

MR. MARKS: I do. Yeah, I have a response. It's all fresh material, I think. You're not going to be bored.

CHAIR: Okay. I'll take that as a promise.

MR. MARKS: Thank you.

CHAIR: And obviously we're both smiling right now. I don't want it to sound like I'm not being fair to you, Mr. Marks. We're both smiling.

So do you want to take a break, then, until 3:30?

MR. MARKS: Yeah.

CHAIR: And we'll come back at 3:30?

MR. MARKS: Yeah. That's fine.

CHAIR: And we can go up until 4:30, but you don't need to. And certainly if you don't need to take the full hour, everybody's happy to finish earlier. So...

MR. MARKS: Okay. I'll try to a be as brief as possible. Thank you.

CHAIR: Okay. Great. So we'll take a recess now until 3:30.

--- Recess taken at 3:16 p.m.

--- On resuming at 3:30 p.m.

CHAIR: Thank you, everyone. Please be seated.

Just before we turn to Mr. Marks, just an administrative matter.

Mr. Pettypiece, can you also arrange to have the Ontario Court of Appeal decision e-mailed to the registrar so the Panel has it.

MR. PETTYPIECE: Yes.

CHAIR: Thank you.

Mr. Marks, over to you.

SUBMISSIONS BY MR. MARKS:

MR. MARKS: Okay. I have some prepared remarks. I just want to address a couple things. I raised some objections that came up earlier with my learned friend's presentation.

Again, it included a lot of new -- you know, there's been a consistent theme, which is constantly introducing new theories. You know, again, it's the Stalinist approach. The CSE has decided -- they made a decision. They're going to ban me from the Exchange for whatever reason, and they're going to use whatever feeling, whatever rationale to do so. And I think the OSC, for whatever reason, is going along with it, which I find very interesting because, again, it totally contradicts the public interest, and damage is costly to address.

So, again, the CSE statement didn't go into, you know, show me the man; I'll show you the crime. You know, I had a bunch of notes about a lot of the contradictions that came up, which, again, everything that my colleague at the CSE said really contradicts totally everything that Mark Faulkner said in his affidavit and, of course, examination. There's a lot of new theories.

But before I get to my prepared remarks, I just want to address one last thing, which is Mr. Pettypiece from the OSC, I think he used a metaphor. I talk about the roadside stop. I think he was talking about the roadside stop. And, now, so what I said in my remarks last week was that essentially the rules about overpromotion is kind of like it's a road with no speed limits, and you're pulled over.

Now, I think what Mr. Pettypiece from the OSC was saying is that I'm speeding on this road. There's no speed limits. I get pulled over, and then I start arguing with the officer, and that is wrong. That's kind of where he left off.

Really, what happens, it's not only pulled over for speeding on a road with no limits. It's that there is no ticket. I didn't get a ticket. Instead, I was executed, okay?

And that's exactly what happened here. The OSC deemed me to be unsuitable, allegedly, essentially banned me from the Exchange with no evidence, no nothing, after I got involved with a public company weeks and weeks later. Again, I'm not going to relitigate everything we discussed. So let's say -- I'm going to move on to my prepared remarks, which directly address everything today.

Members of the panel, at the end of the day, this case should rise or fall based on the original January determination and the CSE hearing panel decision that followed. That is the decision the Tribunal is being asked to examine, not shifting theories developed later; not involving rationales, again, which we've heard today; not distractions, you know, about the abstract evergreen gatekeeping patterns. There's been a lot of distractions. I think, you know, my learned friend at the CSE, he's tried every distraction except pointing and saying, Oh, look there's a puppy. Okay? I mean, every time a distraction.

The essential question is simple: Was the original decision fair, evidence-based? Was it evidence-based? We have not seen any evidence about overpromotion, any examination or analysis of overpromotion. I think they tried to do -- today, I think Mr. McCoomb tried, but it quite didn't work.

Within proportion. Okay, within proportion. I'm not aware of anybody who has made allegedly overpromotional statements that was summarily executed. I'm not aware of anybody summarily executed for making allegedly overpromotional statements, okay?

We have people on the CSE board of directors who have been fined millions of dollars for ripping off their own investors in a mutual fund. I'm talking about the Caldwell family. Okay? So they're major shareholders of the CSE, already have been fined over $2 million. That's not a small fine. By the OSC. By, you know, Charles Pettypiece's boss.

If it was the CSE was consistent with procedural fairness -- I respectfully submit the evidence showed that it was not. There was no evidence. There was no warning, no notice, no opportunity to respond. No contemporaneous evidence established so-called overpromotional activity. Nothing. And there was no expert analysis.

And most importantly, there was zero investor harm caused by my conduct, zero. And despite the severity of effectively banning somebody from participation in the capital markets, the CSE imposed one of the harshest sanctions imaginable for conduct that historically would've at most resulted in notice, guidance, or other regulatory engagement, not a career-ending unsuitability finding, which also -- beyond my own issues, this directly affected 4,000 shareholders of New World Solutions and $5 million in lost investor savings as a direct result of the CSE's actions.

And I meant to also add to -- Mr. Pettypiece brought up the OSC. I'm actually shocked the OSC has made almost no mention of the investor harm caused by the CSE's actions. Because apparently they don't care. It has not come up.

I think he's tried to do say that the reason the stock was halted was something else. No, the stock was halted because the CSE wanted me to step down. And then after I stepped down, then they said if I remained a shareholder, then the stock would remain halted. Okay? So and they want to unwind the transaction, which would make the stock go to zero.

So, again, the mental gymnastics is world-class, Olympic-level contortionist, which we had last Friday's evidence hearing, when he came up with all sorts of very creative reasons why the CSE should not have to show us this alleged evidence, the e-mail, you know, the Listing Committee. Apparently the Listing Committee made this decision to do that sort of by e-mail. That's what they said, according to Mr. Faulkner. I asked for this evidence, and, you know, Mr. Pettypiece came up with a very prudent reason why we should not -- this should not be made public, these e-mails. I don't know what they're trying to hide.

But anyway, what makes this even more troubling is the

CSE hearing panel that compounded those failures by upholding the decision based on a rule that did not even exist. Again, so you have major problems. But, again, the CSE's panel which was chaired by a lawyer by appointing Michael Bluestein. He's the director. He upheld the decision with a non-existent rule claiming that I did not identify myself as a control person when making promotional statements.

Again, we've shown this before: There is no such rule. In other words, the decision was ultimately upheld through a retroactive rule creation. That is not due process. That is not regulatory certainty. And that is not what the public interest demands.

Most importantly, the consequences extended far beyond the personal. The CSE's actions effectively destroyed New World Solutions, disrupted the market, caused substantial investor harm, affected thousands of investors. Approximately $5 million in shareholder value was wiped out not because of fraud, theft, operational collapse, business problems. No, it was because of a procedurally unfair, fundamentally ineffective regulatory process.

And that's why this case matters. And respectfully, this is why this tribunal should not merely overturn the decision, but seriously consider whether stronger remedies are required to protect confidence in the integrity of Canadian capital markets. Because when a recognized Exchange can secretly impose career-ending sanctions without notice and rely on shifting explanations and ultimately uphold those sanctions through non-existent rules and have thousands of investors suffer millions of dollars in damages, the issue ceases to be an isolated error -- or I think as my learned colleagues called it, bizarre circumstances and extraordinary circumstances. It becomes a serious public interest concern requiring meaningful intervention by the tribunal.

So the CSE asks this Tribunal to accept an extraordinary proposition, that because it performs a gatekeeping role, it possesses effectively evergreen and near unlimited discretion to deem someone unsuitable at any time without proper notice, without timely disclosure, without approved procedures, without proportionality, and without meaningful scrutiny. And for sure, they don't want any scrutiny. They don't want any criticism. And I think the OSC has been very clear they do not like criticism.

And even though an Exchange such as the CSE -- it's a matter of the public record that the Exchange is the worst-performing exchange on the planet. It is down over 80% in the last five years. And if they don't want any criticism, why is the CEO posting a picture with someone, the convicted pedophile rapist Peter Nygård on an Instagram page for eight years? If they're worried about reputation, why do they have that picture up there now for eight years? I find that shocking.

Look, this case, again, it's no longer about an individual or one suitability determination. It's about the limits of Exchange power, the rule of law in Canadian capital markets, and whether public interest authority can be exercised without procedural errors, accountability, proportionality. I think proportionality is absolutely critical, low proportionality or meaningful oversight.

The authorities do not support that position. The jurisprudence, including Canada Malting, Re Imex Systems, and mostly, Re Eco Oro Minerals Corp., establishes the exact opposite. The jurisprudence establishes that exchange gatekeeper authority is conditional, not absolute. In Canada Malting, the Supreme Court recognized deference to Exchange because of their specializing regulatory role. However, Re Imex Systems Inc., the British Columbia Securities Commission held that such deference is inappropriate where Exchange acts without proper diligence or sufficient factual foundation. Most importantly, in Eco Oro Minerals Corp v. Ontario Securities Commission, the OSC overturned the TSX decision entirely because the Exchange overlooked material evidence, proceeded on incorrect principles, improperly applied its governing framework -- again, sounds familiar -- and misconceived the public interest. Again, it's, you know, déjà vu.

These cases confirm the Exchange authority is conditional, not absolute. Deference is earned through procedural integrity, fairness, consistency, lawful exercise of delegated power, and rational connection to the public interest. It is not automatic. It is not limitless, and it is not immune from review. In Eco Oro, the Ontario Securities Commission made this principal unmistakably clear. The OSC intervened directly and overturned a TSX-approved transaction because the Exchange had overlooked material evidence, misconceived public interest, and it failed to properly exercise discretion. The Commission did not do so blindly simply because the TSX was a recognized

Exchange performing a gatekeeping role. The OSC recognized that the Exchange conduct itself can undermine confidence in the market and therefore were made fully reviewable in the public interest. And that principle is directly applicable here. The CSE cannot invoke Canada Malting while simultaneously relying on a process marked by shifting rationales, procedural unfairness, lack of morals, one-track justification, invented standards -- my favourite -- and what appears to be reliance on policies and procedures that may have never been approved under its own recognition order framework.

I think that the jury is still out on whether the OSC is in compliance or not in compliance with their appeals policy and procedure. From what we understand, it was not approved by the OSC under section 4 of the recognition order. And the facts here go even further. Not only was I deemed unsuitable through a fundamentally unfair process, but the CSE's own appeal panel upheld the decision based on a rule that did not even exist. And I think that point is extraordinary. And the Panel should, you know, I think, pay a lot of attention to that.

The CSE Appeal Panel held a career-ending suitability determination on the basis that I allegedly failed to disclose I was a control person. Again, no such disclosure rule formally exits within their governing policies or rules. The CSE, again, upheld a decision based on a non-existent rule. So this is not merely an interpretive disagreement. It strikes at the legality and the legitimacy of the entire process, which, again, brings back to the point I was making earlier about the previous cases that set the precedent.

A self-regulatory organization exercising quasi-government authority cannot invent standards after the fact and then impose devastating sanctions based on requirements that do not exist within its own rule book. If an exchange can create overwhelming obligations retroactively and use them to justify suitability bans, then no market participant has meaningful notice of the standards governing their conduct. That is the opposite of procedural fairness. And reviewed together with the shifting rationales, the lack of notice, the alleged backdating issues -- well, actually, they're not alleged. The Exchange admitted that they backdated documents -- the retroactive justifications, again, disproportionate sanctions, and their apparent deficiencies in the CSE's approval framework, the pattern becomes deeply concerning.

This Tribunal must also consider the extraordinary disproportionality of the sanction itself, to deem me unsuitable, basically to ban from my exchange, something that has never happened. As far as I know, there's never been anybody banned from the CSE or any of the exchanges in Canada without, you know, notice, without warnings, without anything. They just decided to ban me, you know, months in, weeks after I was already involved with a public company.

So the CSE did not merely criticize my conduct or request additional disclosure. It deemed me unsuitable, effectively banning me from participation in the Exchange, and this was allegedly based on concerns regarding, quote/unquote, "overpromotional behaviour". In my respectful submission, the evidence showed no investment losses caused by my conduct. No fraud allegations, no misappropriation, no market manipulation finding, and no demonstrated investor harm arising from my actions.

And there's never been any evidence or analysis. There's never been any analysis of which statements were, you know, overpromotion. There was never any independent analysis. There was never any deep analysis. I think Mr. McCoomb tried to go there today, but I can argue with the points that he brought up, which were completely wrong.

Yet the CSE -- again, they imposed the most extreme sanction available. The disproportionality is impossible to ignore. Again, Canadian regulators -- I sent a memo to Canadian regulators -- historically addressed disclosure or promotional concerns through ordinary and regulatory engagement. They would send you a notice, some sort of warning, a letter. I received none of that from the CSE. Instead, I was banned weeks after, you know, I became involved with a public company. And, yes, they did know I was getting involved. They knew about that I was a major shareholder.

And I can address these issues about a control person, not a control person. That would not have mattered for them. This unsuitability finding came weeks, weeks, weeks after the control person issue. That was weeks afterwards.

Even more troubling is the evidence that is a sort of glaring inconsistency and double standards within the CSE itself. Evidence before the Tribunal showed that many people associated with the Exchange, including senior insiders, had major orders connected to significantly more serious regulatory findings and substantial monetary sanctions, i.e., $2 million fines by the OSC.

CHAIR: Mr. Marks.

MR. MARKS: Yes.

CHAIR: The point about these other people, you made them in your original submissions.

MR. MARKS: Oh, I'm sorry. Sorry.

CHAIR: I don't think any of the other parties addressed them. So it's not really reply; it's repeating.

MR. MARKS: Okay. Yeah, I'm sorry. Yes, I didn't realize. Yes. You know, I'm sorry. This statement was made before you told me I couldn't repeat myself; so I didn't have a chance to check the script. I apologize. The rest of the material is all fresh.

So if the CSE can selectively impose the most severe sanction available against one participant for alleged promotional conduct causing no proven investor harm while others associated with far more serious fines remain fully acceptable to the Exchange, the process ceases to resemble principled regulation and begins to resemble arbitrary and inconsistent enforcement. This is precisely why tribunals such this panel exist. And that is precisely why Eco Oro matters. I believe the Eco Oro case was actually -- Grant Vingoe was the Chair of that panel, and he's, I believe, the Chair of the OSC today. So this is an interesting case.

The implied rationale for deference under Canada Malting depends on the assumption that the Exchange is operating lawfully, fairly, proportionally and within an approved regulatory structure. The procedures themselves were never properly approved. And that jury, again, still out on that. That hasn't been analyzed fully. If the Exchange is relying on non-existent rules -- and that has been proven. The rules were non-existent about control person disclosure -- and the sanctions imposed are wildly disproportionate and inconsistently applied, then the foundation for deference completely collapses. An exchange cannot claim extraordinary gatekeeper authority while simultaneously disregarding the safeguards that legitimize that authority.

And the facts here demonstrate precisely why those safeguards matter. Again, thousands of investors were damaged, millions of dollars of savings were lost because of the CSE's failed processes. The CSE allegedly deemed me unsuitable, yet failed to notify me, failed to warn me, failed to provide opportunity to respond before irreversible reputational and professional harm occurred. This said, the CSE allowed me to proceed openly into a public company transaction, become chairman and public issuer and allow investors to participate. Millions and millions of shares traded. The stock went up 300%. The market voted in favour of the transaction, apparently, based on the market reaction following the news. The CSE later advanced shifting and retroactive explanations for its conduct.

So that's not only doing a gatekeeper function. A true gatekeeper acts proportionately to protect the market. It does not remain silent while a transaction proceeds. Again, the CSE knew I was involved for two months. Actually more; three months, because if you count three weeks after the transaction closed.

And my PIF raised no concerns. You're talking about three months. So it was only later that these concerns arose.

So the CSE now attempts to characterize this as evergreen authority, as though it may retroactively and indefinitely deem me unsuitable over concerns whenever convenient. But Eco Oro and Imex Systems confirm public interest discretion is not a blank cheque. Public interest authority must remain connected to fairness, evidence, investor protection, proportionality, and lawful process.

And importantly, this case is not merely theoretical. The consequences here were devastating. Again, thousands of investors were harmed. $5 million of savings was destroyed as a result of the CSE's actions.

In my respectful submission, that was not investor protection. That was investor harm by the CSE. Public confidence in the market is not strengthened when regulatory powers are exercised through inconsistent standards, procedural unfairness, invented rules, disproportionate sanctions, and potentially unapproved process. It's damaged. And I'm surprised that the OSC does not see that.

I think that it's very ironic that they don't see the damage to the confidence and to the integrity of the Canadian capital markets caused by the CSE's actions here. The CSE increasingly relies not on evidence of market harm, but on my criticism of the Exchange after these events unfolded. But criticism of a regulator, even harsh criticism, is not evidence of danger to investors or capital markets. Otherwise, any person subject to unfair treatment could be punished twice. First, by the flawed decision itself, and, second, for objecting to it. And that is a profoundly dangerous principle. Profoundly dangerous.

Again, the core of this case, as far as the CSE is concerned, is I'm guilty because I complained about an unfair process, which they haven't defended their process. They literally haven't brought any legitimate defence to their process. Everything about this case has been a distraction to focus on my criticism of the Exchange -- to my criticism of their process. So, I mean, it's mind-boggling. It's been a circular argument presented by the CSE, and then the OSC has apparently, you know, rubber-stamped that.

And speaking of rubber stamps, I believe that this Tribunal's role is not to rubber stamp Exchange conduct simply because an Exchange invokes the words "public interest" or "gatekeeper". The Tribunal's duty is to determine whether those powers were exercised fairly, lawfully, proportionally and consistently with the principles of procedural fairness and market integrity that underpin the securities regulatory system itself. Eco Oro confirms that this Tribunal not only has the authority to intervene where Exchange discretion is improperly exercised, it has an obligation to do where public confidence and fairness are at stake. The OSC in Eco Oro took the extraordinary step of overturning a completed Exchange-approved transaction because the public interest required. That precedent has already been set.

And in this case, the public interest, the 4,000 shareholders of New World Solutions and shareholders of other companies that are going to be affected in the future, that public interest requires that intervention again. Because if the CSC's theory is accepted that an Exchange could silently -- again, the CSC's theory, which is absolutely crazy, is that an Exchange can silently deem somebody unsuitable, provide no evidence, no warning, no opportunity to respond, permit a transaction and investments by the public to proceed, and then later -- weeks later, almost a month later -- retroactively invoke an undefined "evergreen authority", quote/unquote, or even non-existent rules, which the panel used -- again, used non-existent rules -- to justify, you know, a career-ending sanction. So that is not procedural fairness.

And as my learned friend likes to -- he refers to the CSE as the "entrepreneurial exchange". The CSE, their conduct has shown that it is anything but entrepreneurial. And I would say that there are no entrepreneurials involved. There's no founders involved. You basically have a caretaker management that is sclerotic and that is set in to basically act in manners that are not in the public interest. They are basically there to protect themselves, their pensions, et cetera.

So that is not procedural fairness. That is not accountable regulation. It is not what Canada Malting, Imex, or Eco Oro authorized. Members of the panel, I respectfully submit the evidence has demonstrated that the CSE acted improperly, unfairly, inconsistently with its own governing framework, in disproportion -- in a manner fundamentally incompatible with the rule of law, principles that govern delegated, regulatory power or even natural law.

At some point, this ceases to be mere error. It becomes a serious public interest concern about institutional conduct itself. The public interest is not served by insulating such conduct from the scrutiny, which is what -- I'm shocked that the OSC has apparently turned a blind eye to, you know, many serious questions that were raised. But apparently the OSC, the Ontario Securities Commission, doesn't want to have scrutiny. The public interest is served by restoring accountability, restoring proportionality and restoring procedural fairness, restoring confidence in the integrity of the markets, and affirming that even exchanges exercising gatekeeper functions remains subject to the rule of law.

So I therefore respectfully ask this Tribunal to overturn this lawless and procedurally defective decision, to reject the CSE's claim of effectively owning an evergreen authority, and to reaffirm the principle established in Eco Oro and Imex Systems that exchange power not absolute, that deference is earned through fairness and lawful conduct, and that where those principles fail, this Tribunal must intervene in the public interest.

CHAIR: Thank you, Mr. Marks.

MR. MARKS: I have no --

CHAIR: Oh, sorry.

MR. MARKS: I --

CHAIR: You were saying you have no further submissions?

MR. MARKS: I'm done, yes.

CHAIR: Thank you.

MR. MARKS: For today.

CHAIR: I'm just looking to my colleagues to see if anybody has any follow-up questions.

Thank you very much for your submissions.

So with that, I think our hearing is concluded.

Is there anything that anybody wants to raise? We will be reserving our decision. And I'm seeing nobody has anything to raise.

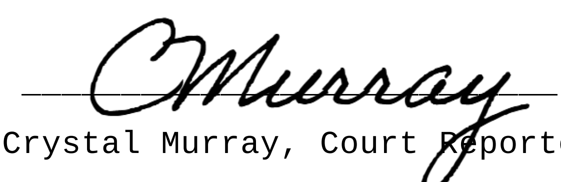
MR. MARKS: No.

CHAIR: So I just want to thank everyone on behalf of the panel for your helpful submissions today.

And with that, we are adjourned. Thank you.

--- Whereupon proceedings adjourned at 4:02 p.m.

I HEREBY CERTIFY THE FOREGOING to be a true and accurate transcription of my shorthand notes to the best of my skill and ability.



Crystal Murray, Court Reporter

Computer-Aided Transcription

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