SOAH DOCKET NO. 312-26-14427

TEXAS STATE SECURITIES BOARD, *Petitioner*, *v.* TEXITCOIN, MINETXC, BLOCKCHAIN MINT, and ROBERT J. GRAY, *Respondents*.	§ § § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE TO PARTIES: This motion requests the judge to decide some or all of the issues in this case. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. *See* SOAH's rules at 1 Texas Administrative Code § 155.505. These rules are available on SOAH's public website.[1]

RESPONDENTS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION

[1] This notice is provided pursuant to 1 Tex. Admin. Code § 155.505(c)(3).

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Respondents TEXITcoin, MineTXC, Blockchain Mint, and Robert J. Gray (collectively, "Respondents"), by and through undersigned counsel, respectfully move for summary disposition and request the issuance of a Proposal for Decision recommending that Cease and Desist Order 1893 (ENF-26-CDO-1893) (the "Order") issued by Petitioner Texas State Securities Board ("TSSB") be set aside because there is no genuine issue as to any material fact, and the Respondents are entitled to a decision in their favor as a matter of law. Respondents request an opportunity to be heard on this motion. *See* 1 Tex. Admin. Code § 155.505(f)(1).

PRELIMINARY STATEMENT

This entire case is a landgrab by the TSSB. The state *securities* regulator is overreaching to assert jurisdiction over a digital *commodity*. It is undisputed that the TEXITcoin token ("TXC") is a digital currency. The TSSB does not allege that TXC is a security, and guidance issued by the U.S. Securities and Exchange Commission ("SEC") confirms that TXC is a commodity. Yet the TSSB claims that the mining of TXC somehow involves the offer or sale of a security. That premise is wrong and should be rejected.

A "security" is a defined term under the Texas Securities Act ("TSA"), Tex. Gov't Code § 4001.001 *et seq*. Whether an instrument is a security is a question of law—not a label the TSSB may affix by say-so, with no prior notice or explanation. Yet the TSSB's Order makes no effort to articulate which of the sixteen enumerated types of securities might encompass the commodity mining activity at issue here. *See id.* § 4001.068(a). None fits. The Respondents' sale of "Mining Packages," as alleged in the Order, entitled purchasers only to a pro-rata allocation of TXC mined on a daily basis. Purchasers paid upfront to receive mined TXC in their digital wallets. What purchasers subsequently did with their TXC—and critically, whether they expected or received any profits from the purchase of Mining Packages—was not part of any contract with the Respondents. The Respondents did not guarantee any profits (in fact, they expressly disclaimed

them), and Mining Package purchasers received no interest or share in the Respondents' ventures or profits. The conduct at issue was, at bottom, a commercial contract to purchase a commodity (TXC). It has none of the hallmarks of a securities transaction, and the alleged registration violations in the Order thus fail.

The fraud allegations are nonstarters. The Order does not allege any theft or embezzlement (there was none) and, in fact, the evidence shows that every purchaser got exactly what they paid for (TXC tokens). The Order does not allege even a *single* affirmative false or misleading statement by any of the Respondents. The Order rests, instead, on a flawed theory of fraud by omission. The Order principally alleges that the Respondents failed to disclose the 2013 bankruptcy filing of Mulligan Mint Inc., a company previously owned by Mr. Gray that has nothing whatsoever to do with TEXITcoin, MineTXC, Blockchain Mint, or the digital mining activity at issue here. *See In re Mulligan Mint, Inc.*, No. 13–34728 (Bankr. N.D. Tex.). That allegation fails for two reasons. *First*, the Respondents had no legal duty to disclose the Mulligan Mint bankruptcy (or any other allegedly omitted fact), and the Order does not allege otherwise. *Second*, even without a duty to disclose, the undisputed evidence clearly establishes that the Respondents *did* repeatedly disclose the decade-old bankruptcy (and other allegedly omitted facts).

The restitutionary relief sought by the TSSB also is unavailable. While the TSSB's Notice of Hearing seeks the refund of all purchaser funds, that relief was not pled in the Order referred to the State Office of Administrative Hearings ("SOAH") for expedited review. As such, the TSSB cannot lawfully expand the question presented beyond the Order that was actually issued.

Finally, TEXITcoin, MineTXC, and Blockchain Mint are not even properly named respondents. They are digital platforms and utilities, not legal entities capable of being sued. And only MineTXC offered Mining Packages for sale; TEXITcoin and Blockchain Mint never offered

or sold Mining Packages at all. The Order should be set aside as to these Respondents on this additional basis.

The TSSB's stated mission is to protect securities investors in Texas. But this case does not involve securities or investors. Nor does it involve lies, stolen funds, or fraud victims, much less any apparent basis for "emergency" relief. Expedited review of the Order serves as an important check on the TSSB's claim of emergency authority, and the Respondents are confident that an objective assessment of the undisputed evidence will confirm that summary disposition is appropriate. Accordingly, the Respondents respectfully urge the presiding Administrative Law Judge ("ALJ") to grant this motion and issue a Proposal for Decision setting aside the Order.[2]

BACKGROUND

A. The Respondents And The Sale Of Mining Packages

TXC is the native digital token of the TEXITcoin blockchain, a Layer-1 proof-of-work ("PoW") blockchain modeled on the Litecoin blockchain. *See* Ex. 1 at Abstract. A blockchain is a decentralized, digital database that records transactions in a ledger of chronological "blocks" of information. *See* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13714, 13715 n.1, 13724 (Mar. 23, 2026) (the "SEC Crypto Asset Guidance"). Blockchain Mint manufactures cold storage cryptocurrency wallets forged in the shape of physical coins, and also performs ministerial functions for the TEXITcoin blockchain, including bookkeeping, advertising, and promotion. Gray Decl. ¶ 5; *see also* Ex. 1 § 5.1; Ex. 2 at MineTXC Mission Control Manual at 3, 10, 12. To grow the TXC community, MineTXC sold Mining Packages through its website, https://minetxc.com/.

[2] The Respondents respectfully submit that the ALJ would be well-served to hear argument on this motion given that the motion concerns an issue of first impression—*i.e.*, whether the TSA requires the registration of digital commodities mining activities.

Order ¶¶ 12, 17, 18. TEXITcoin, MineTXC and Blockchain Mint are brand names; they are not incorporated or otherwise registered anywhere as legal entities. *See id.* ¶ 7; Gray Decl. ¶ 3. Mr. Gray is the founder of TEXITcoin, MineTXC, and Blockchain Mint. Ex. 1 § 2.1; Gray Decl. ¶ 2; Order ¶ 7.

There are three ways to acquire TXC. *First*, TXC can be bought or traded from a holder of TXC in a private transaction. *Second*, TXC trades on secondary cryptocurrency exchanges and can be purchased from third parties on these exchanges. *See* Ex. 3 at 16, 28, 38, 52, 128; *see also* Expert Report of Andrew Sotak, CPA ("Sotak Report") ¶ 43 n.44. The Order does not allege that TXC itself is a security (it is not), or that purchases and sales of TXC in private transactions or on secondary markets involve securities transactions (they do not). *Third*, anyone could buy a Mining Package from MineTXC's website, which forms the crux of the Order's allegations. *See* Order ¶¶ 8, 12–21.

A Mining Package provides holders (or "miners") with a defined amount of "hash power" that is added to the TEXITcoin network. *See* Ex. 2 at MineTXC Mission Control Manual at 2, 14; *see also* Ex. 3 at 78; Order ¶ 16. Hash power is a measure of computing power of a miner or pool of miners. Sotak Report ¶ 19. It is typically measured in the amount of hash per second, and the greater the hash power, the greater the speed at which a computer or network solves complex cryptographic puzzles to process transactions and mine new blocks on a PoW blockchain. *See* SEC Crypto Asset Guidance, 91 Fed. Reg. at 13724; Ex. 3 at 38; Sotak Report ¶ 19.

In exchange for adding hash power to the network, Mining Package purchasers are rewarded with a daily pro-rata allocation of the total TXC mined by the network, calculated based on their proportional amount of hash power. Order ¶ 16; Ex. 3 at 78; Gray Decl. ¶ 11; Sotak Report

¶¶ 27, 31, 38.[3] Prior to the entry of the Order, MineTXC offered three levels of Mining Packages for sale. Order ¶ 17; *see* Sotak Report ¶ 35. The "Single" package was priced at $995 and entitled the purchaser to 100 megahash of mining capacity. Order ¶ 17. The "Triple Play" package was priced at $2,985 and entitled the purchaser to 300 megahash. *Id.* The "Builder Plan" was priced at $8,955 and entitled the purchaser to 900 megahash. *Id.* Purchase funds were used to buy new specialized digital mining hardware called Application-Specific Integrated Circuits ("ASICs"), fund promotional events, cover leases and administrative fees (*e.g.*, electrical and other utilities necessary to run mining operations), pay commissions for the recruitment of new purchasers, support back-office functions, and for other expenses. *See* Gray Decl. ¶¶ 8–9; Ex. 3 at 1, 13–14. Whatever was left, Mr. Gray kept as profits. *See* Gray Decl. ¶ 10; Ex. 3 at 1, 13–14. The use of funds, including these expenditures and Mr. Gray's profits, was disclosed prominently on MineTXC's website and in weekly community Zoom calls hosted by Mr. Gray. *See* Ex. 3 at 1, 13–14; *see also, e.g.*, Ex. 4 (2025-10-21 Zoom) at 8 ("In fact, our pockets are very deep right now. You know, we look at the chart on the website and we go, ah, look at Bobby sitting fat and happy over there. He's sitting on $33 million of income."). Notably, the Order does not allege that any purchasers were misled about the use of Mining Package proceeds or that any funds were misappropriated.

In addition to the ASICs that operated at four industrial mining sites in Texas (Victoria, Conroe, Mansfield, and McKinney), certain purchasers could opt to receive and install their own at-home ASICs if they purchased sufficient hash power or achieved "TEXIT Ranger" status by

[3] Mining is the process by which transactions on a proof-of-work blockchain are validated and recorded: participants known as "miners" contribute computational resources to validate transactions and add new blocks to the ledger, and in exchange can earn newly generated digital assets. *See* SEC Crypto Asset Guidance, 91 Fed. Reg. at 13724; *see also* Sotak Report ¶ 17. Here, the mined digital asset is TXC. Sotak Report ¶ 26.

meeting a recruitment threshold. *See* Ex. 2; Gray Decl. ¶¶ 7–8; Sotak Report ¶¶ 36, 64. To date, MineTXC has distributed more than 200 home mining units to qualifying purchasers. *See* Ex. 5; Gray Decl. ¶ 8; Sotak Report ¶¶ 70-71. In all cases, Mining Package purchasers were entitled to *only* a pro-rata allocation of the network's total daily TXC mining output. Order ¶ 16; Ex. 1 at 14; Ex. 3 at 78; Gray Decl. ¶ 11; Sotak Report ¶ 38. Nothing more.

The Respondents did not guarantee any profits, or offer purchasers any ownership share, stake, or other interest in the Respondents' ventures. Gray Decl. ¶ 12; *see also, e.g.*, Ex. 5 (2024-08-13 Zoom) at 6 ("[W]e can't predict the future value of TXC . . . only participate with funds that you can afford to lose."). And every purchaser received exactly their allocation of TXC, which was transferred on a daily basis into purchasers' digital wallets. Ex. 3 at 78; Gray Decl. ¶¶ 11, 13; Sotak Report ¶ 76. Again, the Order does not allege that the Respondents failed to supply any TXC to any purchaser. None of these facts is, or can be, disputed by the TSSB.

B. Commission And Referral Structure

As referenced above, to build the network and community, MineTXC used a commission-based incentive structure to recruit new purchasers. Ex. 2 at MineTXC Mission Control Manual at 21–22; Ex. 3 at 97–98. This structure was outlined in a welcome packet called the Mission Control Manual, which was provided to all new Mining Package purchasers. *See generally* Ex. 2. Although the Order references this structure, the TSSB does not allege that the structure or commission payments constituted the offer or sale of securities under the TSA, or that any relevant material information about the commissions or referral structure was omitted. Importantly, all commission payments owed were paid in full. Gray Decl. ¶ 14. The Order does not allege otherwise.

C. Procedural History

The TSSB issued the Order, on a purported "emergency" basis, on February 11, 2026. Even though there are no allegations of missing or stolen funds, the TSSB provided no advance notice

of its intent to initiate an enforcement action. Nor does the Order articulate what the "emergency" is, or any grounds for the TSSB to proceed in this expedited fashion. The Order does not seek any fine, other financial penalty, or restitution. The only relief sought in the Order is injunctive. Order at 7 ("ORDER" ¶¶ 1–4). In compliance with the Order, the Respondents stopped selling Mining Packages, causing significant harm to their ventures. Gray Decl. ¶ 15. The TSSB has not alleged that the Respondents have failed to comply with the Order, even while this challenge is pending.

The TSSB entered the Notice of Hearing on March 18, 2026. *See* Notice of Hearing ("Hearing Notice") at 2. Unlike the Order, the Notice of Hearing includes, for the first time, a request for an order that the Respondents "pay a refund to all investors" who purchased "securities" on or after September 1, 2019. (The reason for this date is unclear; TXC was first mined in early 2024.) On April 6, 2026, the Respondents answered, denying the allegations set forth in the Order. *See* Answer at 1–3. A hybrid hearing on the Order is scheduled for August 17 to 20, 2026.

LEGAL STANDARD FOR SUMMARY DISPOSITION

"Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion." 1 Tex. Admin. Code § 155.505(a). As set forth in detail below, there can be no genuine issue as to the key material facts at issue, including the following:

1. TXC is a digital commodity, not a security;

2. Purchasers of the Mining Packages were entitled only to a daily allocation of TXC mined by the network;

3. Purchasers actively contributed to the network through the addition of computational resources (*i.e.*, hash power) to the network;

4. The Respondents did not guarantee any profits, or offer Mining Package purchasers any ownership share, stake, or other interest in the Respondents' ventures;

5. Mining Package purchasers had no reasonable expectation of profits from the efforts of the Respondents, and whether purchasers expected or made any profits (*e.g.*, by selling their TXC on cryptocurrency exchanges) was not part of any contract with the Respondents;

6. The Respondents did not misappropriate any funds, and all allocated TXC was delivered to Mining Package purchasers;

7. There is no allegation or evidence that the Respondents lied to or misled any purchaser about a material fact;

8. There is no allegation or evidence that the Respondents had any legal duty to disclose any allegedly omitted fact;

9. No allegedly omitted fact would have been material to any Mining Package purchaser;

10. Despite having no duty of disclosure, the Respondents did disclose Mulligan Mint's prior bankruptcy filing (and other allegedly omitted facts);

11. TEXITcoin, MineTXC, and Blockchain Mint are not legal entities that are properly named as respondents in the Order; and

12. TEXITcoin and Blockchain Mint did not offer or sell Mining Packages to any purchaser.

ARGUMENT

I. THE TSSB'S CLAIMS FAIL BECAUSE THE MINING PACKAGES ARE NOT SECURITIES

The TSSB lacks jurisdiction over the conduct alleged in the Order, because the Mining Packages at issue are not securities. As a threshold matter, although the TSSB alleges in boilerplate

fashion that the "Mining Packages are securities as that term is defined in Section 4001.068 of the [TSA]," Order, Conclusion of Law ¶ 1, the TSSB unhelpfully fails to articulate *which* of the sixteen enumerated types of securities it contends encompasses the Respondents' digital commodities mining activity. Respondents are left to guess that the TSSB means to allege that the Mining Packages constitute an "investment contract." Tex. Gov't Code § 4001.068(a)(1)(O). But the TSSB makes no effort to explain *why*, and the Order's allegations fail the three-part test established by the U.S. Supreme Court in *Howey* for determining whether an asset is an investment contract. This test requires (1) an investment of money, (2) in a common enterprise, (3) with a reasonable expectation of profits derived from the managerial efforts of others. *SEC v. W.J. Howey Co*., 328 U.S. 293 (1946); *see also Searsy v. Com. Trading Corp.*, 560 S.W.2d 637, 640 (Tex. 1977) (adopting the *Howey* test to the TSA). These elements are not satisfied here.

A. It Is Undisputed That TXC Is A Digital Commodity, Not A Security

The Mining Packages are not securities because the mining and distribution of a commodity—whether a physical commodity like gold or oil, or a digital commodity like TXC—does not create a securities investment contract. The Order does not allege that the TXC token itself is a security. Nor could it. As the SEC recently clarified, digital currencies like TXC are commodities, not securities: "A digital commodity is a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional, as well as supply and demand dynamics . . . ." SEC Crypto Asset Guidance, 91 Fed. Reg. at 13718. That describes TXC to a tee. Sotak Report ¶¶ 41–54. Every unit of TXC enters circulation by being mined. Sotak Report ¶ 81 ("All TXC that has ever been minted has occurred as part of the normal PoW issuance schedule outlined in the TXC whitepaper."); *see also* Ex. 1 §§ 3, 3.3. TXC's value is therefore entirely a function of the network's ongoing proof-of-work operation and of supply and demand on secondary exchanges where it trades, rather than any managerial effort by the

Respondents. *See* Sotak Report ¶ 43 ("the price of a TXC token is determined by supply and demand"). And because no issuer, enterprise, or obligor stands behind TXC, the token generates no yield and conveys no claim on anyone's income, profits, or assets. *Id.* ¶ 48; *see also* Ex. 1 § 4.1. And in fact, the SEC Crypto Asset Guidance explicitly identifies Litecoin—the native token of the blockchain on which TEXITcoin is modeled, *see* Ex. 1 at Abstract—as an example of a digital commodity that falls outside the securities framework. *See* SEC Crypto Asset Guidance at 13718.

The TSSB's implicit concession that TXC is a digital commodity is important for two reasons. *First*, the production or distribution of commodities does not create investment contracts. The Order alleges, in conclusory terms and with no support, that "[t]he MineTXC Website allows investors to purchase Mining Packages to invest in Respondents' cryptocurrency mining operations," Order ¶ 15, but that claim is demonstrably false. There is no evidence that the Respondents *ever* represented that the purchase of a Mining Package conferred any ownership stake, profits, or other interest in TEXITcoin, MineTXC, or Blockchain Mint. Mining Package purchasers were entitled *only* to a daily allocation of mined TXC. *See id.* ¶ 16; *see also* Sotak Report at ¶ 83. The Respondents delivered the mined TXC to purchasers on a daily basis via deposits into the purchasers' digital wallets, but that is where the agreement between the Respondents and purchasers ended. *Second*, it is grounds to dismiss TEXITcoin as a respondent. Because the Order takes aim only at the Mining Packages sold by MineTXC, and not the TEXITcoin blockchain or the TXC token, TEXITcoin is not properly named as a respondent. Nor is Blockchain Mint.

Whether there was a resale market for the TXC, and relatedly whether Mining Package purchasers could reasonably expect any profit from their TXC, depended on supply and demand economics and prevailing prices on the secondary cryptocurrency exchanges where TXC was listed. Fundamentally, the conduct alleged in the Order is no different from any contract in which

a commodity producer (like a gold mine operator or a farmer) agrees in exchange for an upfront payment to supply a purchaser with a supply of the commodity. *See* Sotak Report ¶¶ 83–96. What the purchaser does with the commodity after taking delivery is not part of the bargain, and, in particular, whether the purchaser expects to resell the commodity in the open market at a profit does not convert the agreement into an investment contract—because any prospective profits from the resale of the commodity are a product of supply and demand and are not derived from the efforts of the producer.

The Mining Packages thus lack the key attributes of a security, and analogous case law confirms they are not securities. In *Audet v. Fraser*, the U.S. District Court for the District of Connecticut upheld a jury verdict that a digital mining product called "Hashlet" was not a security. *See* 605 F. Supp. 3d 372, 376 (D. Conn. 2022). Hashlet purchasers were entitled to a "stand-alone physical machine or part of a physical machine that was mining for cryptocurrency" and the rewards derived from mining. *Id.* at 376–77. They "would pay a fee to acquire the Hashlet," and the operator would charge a fee "to maintain and operate the equipment." *Id.* at 379. Affirming the verdict, the court held that the jury "could have found that Hashlets enabled their owners to outsource the 'messy, technical process' of operating physical mining equipment . . ., while retaining the control over the selection of mining pools that they would have exercised had they operated mining equipment in their own homes." *Id.* at 393. The facts in this case fall squarely within that reasoning. Here, for an upfront fee, a Mining Package purchaser acquired a fixed amount of hash power—a defined amount of real ASIC mining capacity—that conferred a proportionate percentage of daily mined TXC. A Mining Package purchaser is analogous to a Hashlet owner: the purchaser's capital brought online new mining capacity, pooled with the Respondents' equipment, utilities, and operation of the mining hardware. As in *Audet*, that

operational role was the Respondents' only contribution.[4] Just as a Hashlet owner who never operated a machine held no security, neither did a MineTXC Mining Package purchaser—whether the purchaser outsourced operation to the Respondents exactly as in *Audet* or ran the equipment at home.

B. The Digital Mining Activity At Issue Is Expressly Exempted Under The SEC Crypto Asset Guidance

The SEC Crypto Asset Guidance, which was issued a month after the Order, confirms that the digital mining activity at issue here does not involve securities transactions. The Mining Packages alleged in the Order are an entry point into a pooled PoW mining network.

> PoW is a consensus mechanism that incentivizes transaction validation by rewarding participants, called "miners," who operate nodes adding computational resources to the PoW Network. PoW involves validating transactions on a PoW Network and adding them in blocks to the distributed ledger. The "work" in PoW is the computational resources that miners contribute to validate transactions and add new blocks to the PoW Network. . . . .
>
> In exchange for providing validation services, miners earn rewards in the form of newly generated digital commodities that are delivered under the terms of the PoW Network's software protocol. . . . PoW is designed to secure the PoW Network by requiring miners to spend considerable time and computational resources to authenticate transactions. . . .
>
> In addition to self (or solo) mining, miners can join "mining pools," which allow miners to combine their computational resources to increase their chances of successfully validating transactions and mining new blocks on the PoW Network. There are several types of mining pools, each with differing methods of operation and reward distribution. A pool operator typically is responsible for coordinating the miners' computational resources, maintaining the pool's mining hardware and software, overseeing the pool's security measures to protect against theft and cyberattacks, and ensuring that the miners are paid their rewards. In return, the pool operator charges a fee that is deducted from the rewards earned by the mining pool.

[4] An at-home purchaser presents an even stronger case. The control *Audet* treated as hypothetical (the control an owner "would have exercised had they operated in their own homes") was actual for an at-home purchaser who took possession of the ASIC and operated it directly.

91 Fed. Reg. at 13724; *see also Statement on Certain Proof-of-Work Mining Activities*, SEC (March 20, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025 (the "SEC Statement on Mining").

This type of pooled mining project "do[es] not involve the offer and sale of a security" under *Howey*, because each new participant actively contributes to the development of the network. 91 Fed. Reg. at 13725; *see also* SEC Statement on Mining (where "a miner contributes its own computational resources, which secure the network and enable the miner to earn Rewards issued by the network in accordance with its software protocol," such activity does not involve the offer and sale of securities). That is because:

> [b]y adding its own computational resources to a mining pool, the miner merely is engaging in an administrative or ministerial activity to secure the PoW Network, validate transactions and add new blocks, and receive rewards. In addition, any expectation of profits that the miners have is not derived from the efforts of a third party, such as a pool operator. Even when participating in a mining pool, individual miners still perform the actual mining activity by contributing their computational power to solve the cryptographic puzzles for validation of new blocks. Moreover, whether a miner self (or solo) mines or mines as a member of a mining pool does not alter the nature of Protocol Mining for purposes of the *Howey* test.

91 Fed. Reg. at 13725. This guidance from the SEC is significant persuasive authority, as "[t]he Texas Legislature intended the TSA 'to be interpreted in harmony with federal securities law.'" *Davis v. MSR Holdings, LLC*, No. 01-22-00451-CV, 2024 WL 3237623, at *9 (Tex. App.—Houston [1st Dist.] June 28, 2024, pet. denied) (citing *Sterling Tr. Co. v. Adderley*, 168 S.W.3d 835, 840 (Tex. 2005)); *see Highland Cap. Mgmt., L.P. v. Ryder Scott Co.*, 402 S.W.3d 719, 741 (Tex. App.—Houston [1st Dist.] 2012, no pet.) ("Texas courts generally cite decisions of the federal courts to interpret the TSA.").

Viewed against this backdrop, the TSSB's allegations fall apart. The purchase of a Mining Package was a means of actively participating in, and contributing resources to, a mining pool. Sotak Report ¶ 57 ("Mining Package purchasers combined their computational resources (their

acquired hash power) to mine new blocks on the TEXITcoin blockchain"), *see also id.* ¶ 34 ("a participant could take part in the network's mining by acquiring a defined amount of hash power from MineTXC"). Each new purchase added a defined amount of hash power (100, 300, or 900 megahash), which increased the overall capacity of the mining pool to validate transactions on the blockchain and mine blocks of TXC. While the Respondents' industrial mining sites accounted for most of the computational power, purchasers who received ASICs for at-home use further added resources to the pool. The TSSB's allegation that "[i]nvestors never receive any mining hardware or control over any mining hardware," Order ¶ 16, is demonstrably false. There is extensive documentation that ASICs were delivered to purchasers for at-home use. *See, e.g.*, Ex. 2. And while the Respondents purchased mining equipment, paid utility costs, distributed the TXC mined each day, prevented against cyberattacks, and otherwise facilitated the orderly operation of the mining pool, that administrative work is expressly contemplated by the SEC Crypto Asset Guidance. *See* 91 Fed. Reg. at 13724 ("A pool operator typically is responsible for coordinating the miners' computational resources, maintaining the pool's mining hardware and software, overseeing the pool's security measures to protect against theft and cyberattacks, and ensuring that the miners are paid their rewards."); *see also* Sotak Report ¶¶ 62–68 (opining that "MineTXC performed the functions of a mining pool operator as described in the SEC's 2026 Crypto Guidance"). It does not alter the conclusion that each Mining Package purchaser actively contributed to the pool. *See* Sotak Report ¶¶ 55, 57–58 (noting "miners receive[d] rewards proportional to the amount of hash power they acquire and contribute to the pool to mine a block"). Accordingly, even assuming that the purchase of a Mining Package conferred *any* expectation of profit, it was based on the purchaser's own active participation, not on any purported managerial efforts of the Respondents:

> While some of the pool operator's activities may benefit the group of miners, any such efforts are not sufficient to constitute essential managerial efforts because miners are expecting the computational resources that they provide in conjunction with other members to the mining pool to earn profits. To this end, a miner does not join a mining pool based on the ability to earn profits passively from the activities of the pool operator.

91 Fed. Reg. at 13725; *see also United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975) ("The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."). As a result, the mining activity at issue here does not satisfy *Howey*.

C. Statements About Passive Income Did Not Create A Reasonable Expectation Of Profits

Howey further requires that any expectation of profits from the managerial efforts of others must be reasonable. Interpreting that requirement, the SEC has explained that "representations or promises that are vague or contain no semblance of an actionable business plan, such as those lacking milestones, funding, or other plans for needed resources, likely would not create reasonable expectations of profit." 91 Fed. Reg. at 13722. "Moreover, it is well established that generalized positive statements about a company are not a basis for liability." *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 419 (5th Cir. 2001) (holding that statements characterizing a product as a "fast-acting, improved formulation" were inactionable puffery).

Ignoring that requirement, the Order relies heavily on conclusory allegations that the Mining Packages were "passive investments," and that the Respondents represented that purchasers would have a "seat on the rocket ship, and now you can simply sit back and enjoy the ride." Order ¶ 8. But that kind of vague, aspirational language neither satisfies *Howey* nor comports with how the Mining Packages worked in practice. That is, the Order focuses on promotional hype but fails to square with "the economic realities underlying [the] transaction." *United Housing Found.*, 421 U.S. at 849–51. The statements in question are not detailed representations about a

business plan, financial projections, milestones, or a specific method by which the Respondents' ventures would generate profits, and thus they do not constitute the type of explicit statements that create investment contracts. *See Simulis, L.L.C. v. Gen. Elec. Cap. Corp.*, 439 S.W.3d 571, 577 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("[r]elying on vague, indefinite promise[s] of future business is unreasonable as a matter of law"). And in fact, the undisputed evidence shows that the Respondents explicitly disclaimed that Mining Package purchasers were guaranteed, or could reasonably expect, any profits. Ex. 6 (2024-08-13 Zoom) at 6 ("Again, what we can't predict [is] the future value of TXC. We know that it's traded on a public exchange where the market determines its price. [W]e encourage you to approach this opportunity with a clear understanding of the risks involved. Mining Texit coin is highly speculative, only participate with funds that you can afford to lose."); Ex. 7 (2025-11-11 Zoom) at 12 ("It's not a guarantee . . . It's not an investment, it's highly speculative."); Ex. 8 (2025-08-05 Zoom) at 34 ("[T]his is not an investment. This is more like a gamble."); Gray Decl. ¶ 9.

As such, it would not have been reasonable for any purchaser to expect profits—much less any profits derived from the purported managerial efforts of the Respondents.

II. THE FRAUD CLAIMS FAIL BECAUSE THERE WAS NO INTENTIONAL FAILURE TO DISCLOSE A MATERIAL FACT

Because the Mining Packages at issue were not investment contracts, and thus not securities under the TSA, the TSSB lacks jurisdiction and its claims fail across the board. But even if that were not true, the Order's fraud allegations miss the mark entirely.

The TSA defines "fraud," in relevant part, to include "(1) a misrepresentation of a relevant fact made in any manner; (2) a promise, representation, or predication as to the future not made honestly and in good faith; [or] (3) an intentional failure to disclose a material fact[.]" Tex. Gov't Code § 4001.058(a). None of these circumstances are present here. The Order does not allege any

affirmative misrepresentations, or promises or representations not made honestly and in good faith. This point is worth emphasizing: this is a purported "emergency" fraud case with no alleged lies. There is a vast public record of the Respondents' statements, including marketing materials, detailed descriptions of the Mining Packages and mining operations, and literally hundreds of hours of recorded weekly community Zoom calls hosted by Mr. Gray and publicly accessible on YouTube. Yet despite all that content, the TSSB has not identified even *one* false statement to allege in the Order.

Instead, the Order alleges fraud by omission. But the evidence establishes that the Respondents *did* disclose the very information the Order alleges was concealed. Even if they had not done so, the Order does not plausibly allege that the Respondents had any legal duty to disclose, that they acted with an intent to defraud, or that the allegedly omitted information was material. At a minimum, therefore, SOAH should reject the TSSB's fraud allegations. Even if SOAH concludes there is a need for a merits hearing on whether or not the Mining Packages constitute securities under the TSA, the TSSB's fraud claims are so weak, and so plainly rebutted by undisputed facts, that the Order's fraud allegations should be struck.

A. Respondents Disclosed The Allegedly Omitted Information

To establish fraud by nondisclosure, the TSSB must show that the purchaser "was ignorant of the facts and did not have an equal opportunity to discover the truth." *Bradford v. Vento*, 48 S.W.3d 749, 755 (Tex. 2001). A party who fails to exercise ordinary diligence is "charged with knowledge of all facts that would have been discovered by a reasonably prudent person similarly situated," *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 563 (Tex. 2019) (quoting *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 654 (Tex. 2018)), and a seller accordingly has no duty to disclose facts that a "reasonable investigation" would have uncovered, *see Morales v. Carlin*, No. 03-18-00376-CV, 2019 WL 1388524, at *3 (Tex. App.—

Austin Mar. 28, 2019, no pet.) (citing *Smith v. Nat'l Resort Cmtys., Inc.*, 585 S.W.2d 655, 658 (Tex. 1979)). This standard defeats a fraud-by-nondisclosure claim where the allegedly concealed information was either affirmatively disclosed or readily accessible through ordinary diligence.

Here, it is indisputable that the allegedly omitted information was, in fact, disclosed. *First*, the Order alleges that the Respondents "intentionally fail[ed] to disclose" the 2013 bankruptcy of Mulligan Mint. Order ¶ 28. But Mr. Gray disclosed the bankruptcy repeatedly, including on at least four separate community Zoom calls, some of which were available to the public on YouTube. For example, in November 2024, Mr. Gray said: "I left [Texas] because I was going through a very terrible sad bankruptcy at the time. And . . . this was all very well known, very well documented." Ex. 9 (2024-11-26 Zoom) at 2. In August 2025, Mr. Gray again discussed the Mulligan Mint bankruptcy at length. *See* Ex. 10 (2025-08-19 Zoom) at 5 ("We moved into our building on July 3, 2012, and by September 13th Friday, September 13th of 2013, we were bankrupt."). In September 2025, he again disclosed: "We've talked extensively about Mulligan Mint. . . . We went through a very terrible bankruptcy at the end of 2013," and he directed his audience to a dedicated chat channel where they could hear "the full version of that story" on demand. Ex. 11 (2025-09-02 Zoom) at 30.

In addition to these direct disclosures, the Mulligan Mint bankruptcy was a matter of public record. Court documents describe Mr. Gray's involvement in Mulligan Mint. *See generally In re Mulligan Mint, Inc.*, No. 13–34728 (Bankr. N.D. Tex.). Even the *Wall Street Journal* reported on the bankruptcy, mentioning Mr. Gray by name. *See* Ex. 12 (Katy Stech, Wall St. J., *Fed Critic Mulligan Mint Files for Bankruptcy*, (Sept. 20, 2013) *available at* https://www.wsj.com/articles/BL-BANKB-19031). Accordingly, prospective Mining Package purchasers who conducted even a cursory search of Mr. Gray would have encountered this information.

Second, the Order alleges that the Respondents failed to disclose MineTXC's assets, liabilities, and capitalization. Order ¶ 29. In reality, the Respondents published their use of funds in near-real time on a public dashboard, showing MineTXC's total capitalization and its expenditures across six categories: commissions, income, promotion, operations, liquidity, and overhead. Ex. 3 at 1. Mr. Gray also routinely gave financial updates during weekly community Zoom calls that were published on YouTube. Mr. Gray also disclosed gross capitalization information during an October 2025 presentation at the TOKEN 2049 conference. *See* Ex. 13 (Bobby Gray – TEXITcoin: the future of Money in Texas, https://www.youtube.com/watch?v=1cl6xcDVS9M&t (Oct. 7, 2025)).

Third, the TSSB alleges that the Respondents failed to disclose operational details about mining activities, such as the identity and qualifications of personnel, procedures for overcoming hardware failures, and the security of the facilities. Order ¶ 31. But, again, Mr. Gray extensively discussed building and operating the mines, as well as who performed various key activities and personnel changes, on weekly community calls—the very facts that TSSB alleges were omitted. For example:

- Mr. Gray identified personnel affiliated with TEXITcoin and their roles. Ex. 1 §§ 2.1, 2.2.
- Mr. Gray announced the intent to open the Victoria mine and its address. Ex. 14 (2024-11-19 Zoom) at 2 ("And so we're going to set that up in Victoria for a mining site number two. . . . [T]he address . . . is 1641 FM 446 in Victoria. Go[t] us 10 acres down there.").
- Mr. Gray disclosed the acquisition of the Mansfield mine site. Ex. 15 (2025-08-12 Zoom) at 11 (disclosing the Mansfield acquisition: "We just acquired another site [in] Mansfield, [the lease] is signed, rents paid, deposits paid. We're ready to move

in and get the next probably the B48 installed maybe the B24 while we wait for two containers to go in there because it's got two plus megawatts of power.").

- Mr. Gray disclosed technical challenges with hardware and remediation plans. Ex. 10 (2025-08-19 Zoom) at 19–20 ("Hey, Bobby, what is the hardware replacement plan? Hardware dies and processor speeds double every 18 to 24 months, disaster has happened. What is the plan? Once the mine is built and the seats are filled and there's no more cash flow coming from new mining seats, we'll switch over to a revenue model[,] [i]f we have to, that takes a percentage of the mine output and uses that for things like maintenance and upkeep and oil changes.").
- Mr. Gray disclosed the status of operations and building at the mining sites. Ex. 16 (2025-11-18 Zoom) at 7–8 ("Take a look at what's been happening over in beautiful nearby Conroe, Texas. . . . Yesterday, trucks arrived, cranes were put into motion. . . . Let's talk real quick about what's going on in Victoria because Victoria is there, it's plugged in, now we're just going through the process of turning things on and debugging. We've got an overvoltage issue that we're working with the power company to resolve. We've got a pump issue, we had a leaking tank issue, so we're going through all that stuff, but as soon as those machines start to come online, you'll be some of the first to know with pictures, video, and remember, you'll also be able to go to the hash power chart on the website to see the increase in power once that comes online.").
- Mr. Gray invited miners to tour the mine sites. *Id.* at 11 ("We'll go visit the mine" on January 14, 2026).

- Mr. Gray disclosed the security operations and the location of its new headquarters. Ex. 11 (2025-09-02 Zoom) at 14 ("[W]e will have a full time, 24 hour around the clock security, staffing our main HQ address. So we just moved into our new headquarters in McKinney. It's 1801, West Louisiana Street.").
- In October 2025, Mr. Gray disclosed that he terminated certain contractors responsible for installation failures at the mines in Mansfield and Victoria. Ex. 17 (2025-10-07 Zoom) at 9 ("I asked the Rangers to jump on a call last Thursday or Friday morning. . . . I've shared with them some news and the news was I have fired . . . both the people that are charged with getting our mine installed.").
- In January 2026, Mr. Gray disclosed that he had terminated the IT team and solicited recommendations for replacements. Ex. 20 (2026-01-13 Zoom) at 22 ("And we had a power outage in Conroe . . . We're still looking through what went wrong and why it didn't come back on automatically. So, we fired our IT team. We're working on that. Anybody know some good IT people? Send an email to rob@blockchainmint.com").
- Mr. Gray regularly reported operational challenges including, for example, hardware failures and power outages, voltage problems at mine sites, and remediation plans. *See, e.g.*, *id.;* Ex. 21 (2025-06-10 Zoom) at 4 ("Now, we have a problem here because four of the five L7s are half line right now, and I'm going to go to the mine tonight and figure out why."); Ex. 11 (2025-09-02 Zoom) at 12 ("So we've got enough ASICs to cover than what we've purchased, or sorry, more than what we've sold, but we have to find the solution and correctly prep the unit so that the hash power gets to where it's supposed to be and stays there. And . . . if we go with the firmware, it's going to be a lot faster, a lot different. But the firmware is

> going to charge us overhead . . . . I want to talk about this real quick just a little bit more because, you know, look, we've told you guys a lot of times that we're learning together.").

Finally, the Order alleges that Respondents failed to disclose that TEXITcoin, MineTXC, Blockchain Mint, and a non-respondent entity called Danager Resources were not registered with the Texas Secretary of State or authorized to transact business in Texas. *See* Order ¶ 32. But TEXITcoin, MineTXC, and Blockchain Mint are not entities at all, and their registration status (as well as that of Danager Resources) was publicly verifiable at any time through the Secretary of State's SOSDirect database, which is freely accessible online. Any prospective purchaser could have confirmed the registration status in seconds.

The Order's allegation of "intentional" nondisclosure thus fails because the allegedly concealed information *was* disclosed on recorded calls, published on a public dashboard, reported by third-party outlets, and verifiable through government databases.

B. Respondents Had No Duty To Disclose The Allegedly Omitted Information

An omission-based fraud theory requires, in the first instance, a duty to speak. There can be no fraud by nondisclosure absent an antecedent duty to disclose. *See Mercedes-Benz*, 583 S.W.3d at 562 ("As a general rule, a failure to disclose information does not constitute fraud unless there is a duty to disclose the information.") (quoting *Bradford*, 48 S.W.3d at 755). Federal law is in accord: "When an allegation of fraud is based upon nondisclosure, there can be no fraud absent a duty to speak." *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 174 (1994) (citation omitted). The Texas Legislature intended the TSA "to be interpreted in harmony with federal securities law," *Sterling Tr.*, 168 S.W.3d at 840, and Texas courts "generally cite decisions of the federal courts to interpret the TSA," *Highland*, 402 S.W.3d at 741. It follows

that the TSA's parallel "intentional failure" anti-fraud provision likewise requires an antecedent duty either grounded in statute or the common law.

Such a duty arises, if at all, in one of two ways. *First*, it may arise from a confidential or fiduciary relationship: "Generally, no duty of disclosure arises without evidence of a confidential or fiduciary relationship." *Mercedes-Benz*, 583 S.W.3d at 562 (quoting *Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998)). This route is a narrow one—a fiduciary relationship "will not be lightly created," because it "imposes extraordinary duties," demanding that the fiduciary "put the interests of the beneficiary ahead of its own." *Floors Unlimited, Inc. v. Fieldcrest Cannon, Inc.*, 55 F.3d 181, 188 (5th Cir. 1995) (applying Texas law). *Second*, a duty may arise where a party speaks but tells only half the story—where a specific "partial disclosure . . . triggered a duty to say more." *Mercedes-Benz*, 583 S.W.3d at 561. The doctrine reaches no further: it imposes no blanket obligation to disclose every fact about one's business, much less the proprietor's history, merely because a party has communicated publicly about some aspect of its operations. *See SEC v. Bowen*, 2024 WL 3462359, at *6 (N.D. Tex. July 17, 2024) (rejecting the argument that a "decision to speak about [a partner's] oil and gas experience gives rise to a duty to speak on his unrelated criminal history"). Unless the alleged omission renders another affirmative statement misleading, no duty arises. *See, e.g.*, *Sharpe v. Lyft, Inc.*, 2024 WL 278913, at *3 (S.D. Tex. Jan. 10, 2024) (dismissing fraud claim with prejudice because, even "[a]ssuming a misleading, partial disclosure of incomplete information creates a duty to disclose more information in the context of an arms-length transaction, Plaintiff cannot show that Defendants made such a partial disclosure").

Neither route is available here. The TSSB has identified no statutory or common-law duty obligating the Respondents to speak on any relevant issue. Nor could it. There was no fiduciary relationship between the Respondents and any Mining Package purchasers. To the contrary, the

Respondents sold a commercial product at publicly posted prices, and purchasers paid a one-time fee to receive a corresponding pro-rata allocation of daily TXC mining output. That is the archetype of an "arm's-length" commercial transaction, which creates no duty of disclosure. Nor did the Respondents make any partial disclosure that the omitted facts rendered misleading—the only other route by which a duty could possibly attach.

The Order's fraud allegations thus rest on omissions, and only omissions, untethered to any duty to disclose, directed at parties in an arm's-length commercial relationship with no attendant fiduciary obligation, and unsupported by any affirmative representation or partial disclosure that could trigger a duty to speak. That is not fraud, and these allegations should be set aside.

C. There Was No Intentional Failure To Disclose The Information

Even if the relevant information had not been disclosed (it was), and even if there were some legal duty to disclose the purportedly omitted information (there was not), the TSSB's fraud claims fail because they contain no allegations whatsoever relating to intent.

"[T]he definition of fraud . . . requires that not only must Respondents fail to disclose a material fact, they must also have *intentionally* failed to make the necessary disclosures. Therefore, the lack of disclosure of a material fact alone is not sufficient; Staff must also prove that Respondents intended not to disclose the material facts." *In the Matter of Balanced Energy, LLC*, 2016 WL 2941389, at *8 (SOAH May 10, 2016) (original emphasis). "[I]n securities cases, intent is commonly understood to mean 'a mental state embracing intent to deceive, manipulate, or defraud.'" *In the Matter of the Inv. Adviser Registration of Mowery Capital Mgmt., LLC*, 2015 WL 4868701, at *18 (SOAH July 31, 2015) (quoting *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980)).

Similarly, federal courts applying analogous antifraud provisions have held that scienter is an indispensable element of any securities fraud claim. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976) (defining scienter as "intent to deceive, manipulate, or defraud."); *see also Aaron*

v. SEC, 446 U.S. 680, 701–02 (1980) (holding that the SEC "is required to establish scienter as an element of a civil enforcement action"). Texas common law fraud-by-nondisclosure claims require proving the defendant: (1) "deliberately failed to disclose material facts" and (2) "intended the plaintiff to act or refrain from acting based on the nondisclosure." *Matter of Clem*, 124 F.4th 341, 349 (5th Cir. 2024) (reversing lower court's finding of fraudulent nondisclosure).

Here, the TSSB has made no allegation as to the intent of *any* of the Respondents—much less that they intentionally failed to disclose a material fact, as required by Section 4001.058(a). As in *Balanced Energy*, in which the court held the TSSB failed to carry its burden when it failed to make allegations regarding the respondents' intent and instead asked the court to *infer* intentional concealment from the omissions, the TSSB's conclusory statements here are insufficient. *See* 2016 WL 2941389, at *8–9. Indeed, it is impossible to reconcile any purported intent to defraud with the Respondents' fulsome record of transparency throughout hundreds of hours of wide-ranging question-and-answer weekly Zoom calls and a real time public dashboard featuring more than a dozen key metrics undertaken by the Respondents. *See, e.g.*, *In re ACM-Tex., Inc.*, 430 B.R. 371, 419–20 (Bankr. W.D. Tex. 2010) (finding no fraudulent nondisclosure where defendant engaged in prolonged, open communications with the counterparty through the relevant period).

D. The Purportedly Omitted Information Was Not Material

Finally, the Order is deficient because it fails to allege that any of the purported omissions would have been material to a reasonable purchaser. The TSA establishes liability for fraud in connection with the offer or sale of securities only where there is an intentional failure to disclose a *material* fact. "[A]ll of the generally accepted formulations [of the materiality standard] concentrate on the importance of the misrepresentation or nondisclosure as they relate to the reasonable investor's decision whether to invest or act." *Bridwell v. State*, 804 S.W.2d 900, 903

(Tex. Crim. App. 1991). An omitted fact is material if there is a substantial likelihood that it would have assumed actual significance in the deliberations of a reasonable investor, in that it would have been viewed by the reasonable investor as "significantly altering the total mix of available information used in deciding whether to invest." *Id.* at 904.

The TSSB makes no allegation whatsoever that the allegedly omitted information was material. The purported omissions are in two categories. *First*, as to the Mulligan Mint bankruptcy—which, as described above, *was* disclosed—there is no allegation, nor any reason to believe, that the fact of a decade-old bankruptcy filing of a separate company controlled by Mr. Gray would have meaningfully affected the decision of a prospective Mining Package purchaser. The TSSB's failure to make even the barest allegation that this information was material to any purchaser plainly demonstrates the failure of pleading, and the absence of any evidence, as to materiality regarding the bankruptcy.

The second category of purported omissions relates to information about certain internal operations of the Respondents and Danager Resources. Again, there is no allegation that any reasonable Mining Package purchaser would have considered information about, for example, the custodial safeguards of Danager Resources, or the qualifications of the people responsible for managing the mining sites, to be material. But even so, much of the purportedly omitted information was, in fact, posted publicly or described in detail in community calls that were available to prospective purchasers. And because the Respondents *disclaimed* that a Mining Package purchase was expected to lead to profits, no reasonable purchaser would have regarded the allegedly omitted information as significantly altering the total mix of information available in deciding whether to proceed with a purchase.

III. THE TSSB FAILS TO SUBSTANTIATE IMMEDIATE OR IRREPARABLE HARM

The TSA provides that an emergency cease and desist order may only be issued where alleged conduct "threatens immediate and irreparable public harm[.]" Tex. Gov't Code § 4007.104(a). There is no allegation in the Order regarding the loss or misappropriation of a single dollar. No "victims" are alleged (even pseudonymously) in the Order. Nor does the Order include any representation concerning the purported immediacy of any harm. In fact, the only harm alleged in the Order is monetary and hence, even taking as true the Order's (flawed) allegations, "there is no irreparable injury because money damages would suffice and the amount can be measured." *See Edison Cement Corp. v. N.C. Furniture Direct 1, Ltd.*, No. 03-15-00772-CV, 2017 WL 3222565, at *2 (Tex. App.—Austin July 26, 2017). Accordingly, the TSSB has failed to establish that the Respondents were causing immediate or irreparable public harm sufficient to justify proceeding on an emergency basis—and requiring the complete cessation of the Respondents' sale of Mining Packages during the entire time this challenge has been pending, not to mention the extreme reputational harm caused by the Order's baseless fraud allegations.

IV. THE TSSB'S REQUESTED REFUND REMEDY IS UNAVAILABLE

In the Notice of Hearing, the TSSB requests the issuance of a proposal for decision that requires the Respondents to refund everyone who ever purchased a Mining Package. *See* Notice of Hearing at 2. But the TSSB cannot shoehorn a new restitutionary remedy into expedited review of an injunctive emergency cease-and-desist order. The TSSB's request should be denied.

The referral underlying this case pertains only to the actual Order issued by the TSSB. This much is clear from the expedited review framework, which is statutorily defined: first allowing "a person against whom the emergency order is directed" to timely request a contested-case hearing "after . . . the order is served," Tex. Gov't Code § 4007.104(c); then obligating the TSSB to

"present evidence in support of the emergency order" at a contested-case hearing, *id.* § 4007.104(d); and finally directing that, "[a]fter the hearing, the commissioner shall affirm, modify, or set aside[] . . . the emergency order," *id.* § 4007.104(e). The statute says nothing of refunds, restitution, disgorgement, or any other affirmative monetary remedy outside the *ex parte* order itself. *See id.* § 4007.104. Nor is there any refund obligation to "support" or "affirm" where, as here, the Order itself included no such directive. Order at 7. At bottom, "determining whether to affirm the Emergency Order d[oes] not require resolution of this issue" and it "was not referred to SOAH." *Cf., e.g.*, *In the Matter of Balanced Energy, LLC*, 2016 WL 4719125, at *8 (TSSB July 14, 2016) (deleting findings of fact related to future bad-actor disqualification).

Likewise, adding a substantively new type of relief cannot be reconciled with an allowance to "modify" the Order. That is because the Order prohibits conduct, whereas a refund requires affirmative performance. This kind of change in the fundamental *type* of relief sought is impermissible and goes far beyond mere modification. The distinction is not semantic. Texas law treats prohibitory and mandatory relief as categorically different: a prohibitory order preserves the status quo by directing a respondent to cease ongoing conduct, while a mandatory order compelling affirmative conduct is an extraordinary remedy subject to a heightened evidentiary showing. *RP&R, Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.). That different treatment has a structural rationale: compelling affirmative conduct imposes greater burdens on the respondent and creates greater risk of erroneous deprivation than merely halting ongoing conduct. This reality not only underlies the expedited referral to SOAH but also the Legislature's decision to "entirely relieve[] parties of the obligation of filing a motion for rehearing when contesting an emergency order by the Commissioner." *AGAP Life Offerings, LLC v. Texas State Securities Bd.*, No. 03-11-00535-CV, 2013 WL 6464537, at *5 (Tex. App.—Austin Nov. 26, 2013); *see also, e.g.*, *Hewitt v. Biscaro*, 353 S.W.3d 304, 310 n.4 (Tex. App.—Austin 2011, no

pet.) (describing temporary cease-and-desist orders issued by the SEC and TSSB as protective measures pending fuller adjudication). Converting the Order into a compulsory refund mechanism is therefore not modification but rather replacement with a new and different order—which the law forbids. *Pub. Util. Comm'n of Tex. v. GTE-Sw., Inc.*, 901 S.W.2d 401, 407 (Tex. 1995) (agency "may not . . . on a theory of necessary implication from a specific power, function, or duty expressly delegated, erect and exercise what really amounts to a new and additional power or one that contradicts the statute"). A court that enjoined a defendant from making misrepresentations could not, on a motion to "modify" the injunction, order a defendant to disgorge past profits. *Id.* An entirely different process is required by statute for relief such as a refund. *See id.* (holding agency did "not have the authority to make [] new rates effective on a date prior to the issuance of the final rate order").

Prohibitory and mandatory remedies are different deprivations under Texas law for good reason. "While a prohibitive injunction forbids conduct, a mandatory injunction requires it." *Bulliner v. Garcia*, No. 13-21-00118-CV, 2023 WL 2807212, at *3 (Tex. App.—Corpus Christi Apr. 6, 2023). Accordingly, mandatory relief is "an extraordinary remedy" subject to a heightened evidentiary showing. *See id.* at *3–4 (available "only in cases of extreme hardship"); *RP&R, Inc.*, 32 S.W.3d at 400 (same). This difference exists because forcing affirmative conduct imposes greater burdens and creates greater risk of hardship. Section 4007.104 provides abbreviated process for temporary prohibitory conduct. Section 4007.106, by contrast, requires independent notice, an independent hearing, proof of a violation within enumerated statutory categories, and a five-year limitations period—that is, heightened process for a heightened deprivation.

Nor can TSSB rectify its demand by an attempt to join prohibition and monetary relief through the Notice of Hearing. There is no statutory basis to do so, and the lack of remedy joinder language in Section 4007.104 forecloses refunds in an emergency posture. Moreover, the remedy

sought is permanent, affirmative, and monetary while the process afforded to those subject to *ex parte* emergency orders only permits temporary, injunctive and equitable relief. That is because a standard cease and desist order *follows* notice and a hearing; and an emergency order issues *ex parte* on a reasonable-belief standard because these limitations justify a truncated process. *See* Tex. Gov't Code § 4007.104; *Hewitt*, 353 S.W.3d at 310 n.4. Here, however, the TSSB seeks affirmative, severe monetary deprivation—a mandatory refund reaching every purchaser since September 1, 2019—through an expedited procedural review process that is reserved for prohibitory emergency orders. This is not permitted.

This is not a full enforcement action under Sections 4007.106-.108, with an investor-level evidentiary record and full hearing on potential refund issues; rather, it is simply an effort by the TSSB to require Respondents to *stop* doing something, and it cannot be converted willy-nilly into a proceeding that requires them to *affirmatively do* something else—especially when that something else is a permanent monetary remedy that has no place in the Order referred to SOAH.

V. THE TSSB DID NOT GIVE THE RESPONDENTS FAIR NOTICE

Finally, the Order is subject to summary disposition due to the fundamental lack of fair notice to the Respondents that the TSSB might consider the Mining Packages to be securities. Put plainly, until very recently the digital asset regulatory landscape was a morass. There was *no* meaningful guidance from the TSSB or the SEC as to when digital mining activities—which are widespread in the cryptocurrency industry—might implicate securities laws. The Respondents acted in good faith, consistent with reasonable understandings of the law, and they should not be held liable for what is, at best, an extremely novel theory advanced by the TSSB in the context of fast-changing government approaches to digital asset regulation.

Until March 2026, there was a confounding lack of clarity around the regulation of digital assets and their classification as securities or commodities. Neither the SEC nor the TSSB engaged

in rulemaking or otherwise provided any usable guidance on digital mining activities, instead dropping breadcrumbs through a widely-criticized campaign of "regulation by enforcement." *See, e.g.*, Alexandros G. Kazimirov, *Regulation by Enforcement: A Retrospective of the SEC's Vision for Digital Assets and an Alternative European Model*, Stan. J. Blockchain L. & Pol'y (June 30, 2025). The SEC Crypto Asset Guidance acknowledged that the overall crypto regulatory landscape was unclear. *See, e.g.*, 91 Fed. Reg. at 13715 ("These unique attributes of crypto assets have prompted divergent views among market participants, financial regulators, and the courts over the application of the *Howey* test to crypto assets and transactions involving crypto assets.").

Against that backdrop, due process requires fair notice before imposing liability based on purported securities violations. That notice did not exist at the time of the alleged conduct. *See, e.g.*, *Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996) (vacating SEC order "[b]ecause there was substantial uncertainty in the Commission's interpretation of" applicable rule); *Gen. Elec. Co. v. U.S. EPA*, 53 F.3d 1324, 1330 (D.C. Cir. 1995) (vacating administrative fine where regulated party lacked fair warning of violation). Although the SEC's recent guidance is not binding, its characterization of the pre-March 2026 landscape is illustrative of the problem: the Respondents could not have known that the Mining Packages would be treated as securities when neither the SEC nor the TSSB had articulated a clear framework.

The Respondents are not sophisticated securities-law professionals who had special insight into how a state enforcement agency might evaluate a groundbreaking digital mining project. *See SEC v. Payward, Inc. (Kraken)*, 763 F. Supp. 3d 901, 911 (N.D. Cal. 2025) (holding the SEC had not shown that an ordinary entity in Kraken's position "would understand that the *Howey* test, as applied to the secondary market transactions on Kraken's platform, establishes that those transactions are investment contracts"). They did the best they could to comply with the law at a time when *no* regulator was willing to provide clarity. They are not alleged to have (and did not)

steal money, lie about the existence of mining operations, fail to deliver TXC or pay commissions, falsely guarantee profits or returns, or otherwise act in a way that would have been clearly violative of the law. What they did—at absolute *most*—is fail to register an asset that the TSSB now claims is a security, but which ordinary people would regard as a commodity mining contract. Fundamentally, they lacked fair notice that this conduct could give rise to a securities violation, much less that they would be accused of fraud despite the absence of *any* false statement.

CONCLUSION

For these reasons, Respondents respectfully request that the ALJ grant their motion for summary disposition and issue a Proposal for Decision recommending that the Order be set aside in its entirety. Additionally, Respondents request an opportunity to be heard on this motion. *See* 1 Tex. Admin. Code § 155.505(f)(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 8, 2026, a true and correct copy of the foregoing was served on the following parties via e-filing:

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