

SOAH DOCKET NO. 312-26-14427

TEXAS STATE SECURITIES BOARD,

Petitioner,

v.

TEXTICOIN, MINETXC, BLOCKCHAIN
MINT, and ROBERT J. GRAY,

Respondents.

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

RESPONDENTS' POST-HEARING REPLY BRIEF

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PRELIMINARY STATEMENT¹

The Texas State Securities Board (“TSSB”) has radically retreated from its original allegations against Respondents, effectively conceding that Emergency Cease and Desist Order, No. ENF-26-CDO-1893 (the “Order”), was baseless and deficient. The TSSB admits that TEXTcoin, MineTXC, and Blockchain Mint are not legal entities separate from Mr. Gray. *See* TSSB Br. at 15–17. The Order must therefore be set aside as to those names. *See* Resp. Br. at 73–75. It admits the falsity of its allegation that “[i]nvestors never receive any mining hardware or control over mining hardware.” TSSB Br. at 10, 63, 96; *see also* Order ¶ 16; Tr. Vol. 2 at 137:6–8. It admits that Mr. Gray disclosed the information he was alleged to have intentionally concealed. TSSB Br. at 71, 85–90, 98. And it tacitly concedes many of the arguments in Respondents’ opening post-hearing brief; indeed, the words “duty,” “scienter,” “due process,” or “fair notice” do not even appear in the TSSB’s brief.

Nevertheless, the TSSB asks the Court to “modify” its way to an entirely different order. At the hearing, Mr. Heintz asserted that the TSSB “[can ask] the Judge to recommend to modify the order, so it doesn’t matter what was alleged in the order once we get to briefing.” Tr. Vol. 3 at 224:16–19. The TSSB seeks to “modify” who the Respondents are; asserts novel fraud theories entirely different from what was alleged and then litigated at the hearing; and advances a new core theory about why the mining packages are a security. Moreover, the TSSB seeks a refund remedy the Order never contained and different from what was sought in the Notice of Hearing. *See* TSSB Br. at 35–36, 105–12. The TSSB’s positions are wrong on the facts and the law and should be rejected.

¹ Undefined terms take the meaning assigned in Respondents’ Post-Hearing Brief (“Resp. Br.”).

An emergency order must “state the specific charges.” TEX. GOV’T CODE § 4007.104(b)(2). A hearing notice must include a “plain statement of the factual matters asserted,” and it is the TSSB’s burden to prove those allegations at the hearing. *Id.* §§ 2001.052(a)(4), 4007.104(d); *see* Resp. Br. at 70. After litigating its pleaded allegations at a full emergency hearing, the TSSB cannot advance new theories, nor can or should it persist in theories it knows, and has known, are false.

For these reasons and those in Respondents’ opening brief, the Court should set aside the Order in full.

ARGUMENT

I. THE TSSB’S FRAUD ALLEGATIONS FAIL UNDER ANY THEORY

The Order accused Respondents of *intentionally* concealing ten categories of information. Order ¶¶ 28–32. The TSSB did not prove *any* of them at the hearing. As Respondents showed, the TSSB “failed to prove that Respondents had a duty to disclose, while conceding that Respondents never lied or affirmatively misrepresented anything.” Resp. Br. at 29. Worse, the TSSB knew before issuing the Order that much of what it alleged was not true. Resp. Br. at 1, 29, 38, 81–82; Tr. Vol. 2 at 150:17–151:3, 153:6–154:11.

The TSSB identifies no duty, makes no argument on intent, and concedes disclosure. The TSSB now attempts to rewrite the fraud allegations wholesale. The Court should not permit the TSSB to recast entirely the fraud theories underlying the Order. And even under the original allegations, Respondents lacked any duty or intent, and the TSSB has repeatedly conceded disclosure.

A. The TSSB Has Not Established The Elements Of Fraud By Omission

To establish an “intentional failure to disclose a material fact” under Section 4001.058(a)(3), the TSSB must prove that: “(1) the defendant deliberately failed to disclose

material facts; (2) the defendant had a duty to disclose such facts to the plaintiff; (3) the plaintiff was ignorant of the facts and did not have an equal opportunity to discover them; (4) the defendant intended the plaintiff to act or refrain from acting based on the nondisclosure; and (5) the plaintiff relied on the non-disclosure, which resulted in injury.” Resp. Br. at 28 (quoting *Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 219–20 (Tex. 2019)). The TSSB’s brief and the evidence fail entirely to establish these elements. On duty and intent, the TSSB offers no argument at all.

1. Duty to Disclose

The TSSB identifies no statutory, contractual, or fiduciary source of a duty to disclose. *See generally* TSSB Br. Respondents showed that none exists. Resp. Br. at 30–32. The Texas Securities Act (“TSA”) imposes no general disclosure duty on sellers. *Id.* at 30–31. There was no fiduciary or confidential relationship. *Id.* at 31–32. The TSSB’s own investigator agreed that Respondents did not “assume[] any fiduciary-like relationship with purchasers” or “a contractual duty of disclosure.” Resp. Br. at 32 (quoting Tr. Vol. 2 at 123:11–124:6).

The TSSB does not address these straightforward points. Nor does it identify any evidence of intent to conceal.² The TSSB bore the burden of supporting the Order. TEX. GOV’T CODE § 4007.104(d). It failed to offer evidence or argument on either element. Those arguments are waived. Aug. 21, 2026 Order; *see also Application of Port of Corpus Christi Authority*, No. 582-23-01502, Proposal for Decision, at 75 (Jan. 22, 2024) (holding an issue waived because the party did not argue it in briefing); *Application of Vulcan Construction Materials, LLC*, No. 582-19-1955,

² Simply repeating the word “intentionally,” *see* TSSB Br. at 13, 68, 71, 74, does not prove intent. That is especially true given the affirmative disclosures and contrary testimony detailed in Respondents’ opening brief. Resp. Br. at 41–44. As Respondents put it, the TSSB’s “case on intent is simply the bare, conclusory use of the word ‘intentionally’ itself.” *Id.* at 43.

Proposal for Decision, at 7 (Sept. 3, 2019) (“Several issues were not briefed and are, accordingly, waived.”).

The TSSB’s new argument in Section IX of its brief is at most a half-truth theory. It argues Mr. Gray could not “affirmatively present Gray’s selected successes, experience, and qualifications as reasons for confidence in the current offering while omitting a materially adverse outcome.” TSSB Br. at 71. But a half-truth theory requires identifying a statement rendered misleading by the alleged omission. Resp. Br. at 32 n.3. Here, the TSSB identifies none. Its investigator conceded there is “no allegation” that Mr. Gray “affirmatively lied or made a false statement.” Tr. Vol. 2 at 122:25–123:4. Every fact the TSSB says Mr. Gray “touted” is true, *see* TSSB Br. at 68–69, and Mr. Gray did not hide the bankruptcy from his personal and professional history. Tr. Vol. 2 at 9:17–19.

The TSSB’s new claim is that Respondents did not adopt a “standardized, sufficient pre-purchase disclosure process” with required review and acknowledgment. TSSB Br. at 72, 87–90. That is a registration-style disclosure regime, but the TSSB cites no statute, rule, or decision that imposes it on a seller as a matter of fraud law. Imposing it for the first time *after* the hearing raises the fair-notice problem addressed in Respondents’ opening brief. *See* Resp. Br. at 66–70.

In any event, the replacement theory also fails on its own terms. The TSSB faults Respondents for failing to establish complete, standardized disclosures that purchasers were required to review before buying, TSSB Br. at 72, 87–90, without identifying *any* statute or decision requiring such a process. *See id.* That formulation reverses the burden. The Commissioner had to “present evidence in support of the emergency order.” TEX. GOV’T CODE § 4007.104(d). Respondents did not have to prove compliance with a non-existent procedure. Newly invented requirements do not discharge that burden.

The TSSB’s own witness undermined its “required review” theory. Asked whether any prospective investor is required to review a 10-K, a 10-Q, or an S-1, Mr. Fuselier answered: “No.” Tr. Vol. 2 at 156:22–24. And yet, no one could seriously dispute that a disclosure in one of these filings would be sufficient to avoid a fraud charge for intentional concealment. Likewise, Respondents’ repeated public disclosures negate intentional concealment even though purchasers were not required to review them.

Nor does the TSSB identify authority requiring a seller who discloses a fact to repeat it *every time* he discusses a related subject, on pain of being charged with fraud. *See* Resp. Br. at 32 & n.3. A half-truth theory asks whether favorable statements were misleading in light of the information already disclosed. It does not impose a rule of mandatory repetition. *See Schneider v. Natera, Inc.*, 2023 WL 9958265, at *6 n.4 (W.D. Tex. Sept. 11, 2023) (“total mix” of information includes information already in the public domain); *cf. Carlton v. Cannon*, 184 F. Supp. 3d 428, 457 (S.D. Tex. 2016) (“[I]t bears emphasis that § 10(b) and Rule 10b–5(b) do not create an affirmative duty to disclose any and all material information.”). Courts reject attempts to revive omission claims merely because adequately disclosed information was not repeated in each public statement. *See In re Curaleaf Holdings, Inc. Sec. Litig.*, 519 F. Supp. 3d 99, 108 (E.D.N.Y. 2021) (“[T]he Company’s on-point public disclosures are fatal to plaintiffs’ claims, and those claims cannot be revived merely because the disclosures were not repeated in every press release issued”).

2. Intent to Conceal

The TSA reaches only “an *intentional* failure to disclose a material fact.” TEX. GOV’T CODE § 4001.058(a)(3) (emphasis added); *see* Resp. Br. at 41–44. Respondents showed that the TSSB “adduced no evidence whatsoever of intent.” Resp. Br. at 41.

Mr. Gray denied each allegation in turn. Did he intentionally fail to disclose information about the mine personnel? “No, never.” Tr. Vol. 2 at 26:14–17. His connection to Danager? “No,

not at all.” *Id.* at 27:21–24. Did he talk about Mulligan Mint in a dedicated Telegram channel because he was trying to conceal the bankruptcy? “No. In fact, it was the exact opposite.” *Id.* at 9:13–19. Mr. Walsh described Mr. Gray as a “very, very transparent person.” Resp. Br. at 42 (quoting Tr. Vol. 3 at 258:19–259:9). And Mr. Gray capped purchases at \$8,955 because he “didn’t want anyone to put any more money at risk than [he] was really comfortable with.” Tr. Vol. 1 at 175:18–21. A person intent on deceiving purchasers does not publish a real-time dashboard, hold hundreds of hours of open question-and-answer calls, and cap what purchasers can spend. Resp. Br. at 42–43.

The TSSB’s own investigator undermined the TSSB’s new theory of intent. Asked whether, for Respondents to have disclosed they were selling unregistered securities, “they would have had to know and understand that they were selling unregistered securities,” Mr. Fuselier answered: “Presumably.” Tr. Vol. 2 at 157:20–23. Mr. Gray did not believe the mining packages were securities so as to bring his conduct within the scope of the TSSB’s jurisdiction, Tr. Vol. 2 at 30:19–31:5, and thus he could not have *intentionally* failed to make that disclosure. The TSSB itself calls Mr. Gray’s testimony that he did not even know the TSSB existed “candid.” TSSB Br. at 94 (citing Tr. Vol. 1 at 118:25–119:7).

3. Materiality

On materiality, the TSSB merely recites the standard. *See id.* at 67, 69. But that substitutes the bare language of the standard for evidence that would actually satisfy it. It invokes the objective nature of the standard to dismiss gaps in its proof. It sidesteps the absence of testimony from any purchaser who paid by check, or who cared about Danager, by claiming the question is “whether the omitted information would assume significance to a reasonable purchaser,” not any purchaser witness. *Id.* at 81.

But an objective standard does not relieve the TSSB of its burden. *See* Resp. Br. at 46–47; *Wilemon v. Brownlie*, 2025 WL 3039140, at *8–9 (Tex. App.—Fort Worth Oct. 30, 2025) (rejecting fraudulent nondisclosure claim where the plaintiff “offered no evidence that [the] facts were material”). Its purchaser witnesses supplied its *only* evidence of what a reasonable purchaser would find important. Resp. Br. at 45–47. Yet no check-paying purchaser testified. The TSSB’s investigator interviewed no one who paid by check, and no one told him the Danager information “would have been material to them.” Tr. Vol. 2 at 139:13–21. Witnesses disclaimed concerns about the payee’s name, operational details, and registration status. Resp. Br. at 45–47; Tr. Vol. 2 at 230:15–18, 231:5–10. No purchaser testified that undisclosed information about MineTXC’s assets, liabilities, or capitalization would have mattered. Resp. Br. at 47.

The fact of a decade-old corporate bankruptcy is no different. The TSSB now relies only on Messrs. Hesse and Hinson for that allegation. TSSB Br. at 75–76. It does not confront the contrary testimony of Mr. Gamero, who admitted that Mr. Gray’s background did not matter when he bought: “It would have, but no, not at the time I purchased.” Tr. Vol. 2 at 228:5–9. Nor does the TSSB contend with the fact that two of its own witnesses (Mr. Gamero and Mr. Block) had prior bankruptcies that they did not disclose in commercial contexts, Resp. Br. at 46, which cuts strongly against the materiality of the Mulligan Mint bankruptcy. Against that, the TSSB offers Mr. Hesse’s hedged statement that the bankruptcy “might have definitely influenced my decision-making, and maybe I wouldn’t have purchased as much,” and “would have changed my decision a little bit.” Resp. Br. at 46 (quoting Tr. Vol. 2 at 171:8–13). It also offers Mr. Hinson’s one-word “Yes” to a leading question. Tr. Vol. 2 at 243:5–7. But those answers do not establish a substantial likelihood that a reasonable purchaser would have viewed a company’s bankruptcy more than a decade earlier as significantly altering the total mix of information. *See* Resp. Br. at 44–46.

The TSSB has not established a duty to disclose, provided evidence of intentional concealment, or carried its burden on materiality. Each failure independently defeats its fraud claims.

B. Each Fraud Allegation Fails On Its Own Terms, As Pleaded And As Recast

On disclosure, the TSSB likewise retreats. The Order alleged Respondents “intentionally fail[ed] to disclose” each category of information. Order ¶¶ 28–32. The TSSB now concedes that, in nearly every category, the information was disclosed.

On Mulligan Mint, the TSSB changes its tune to concede that Mr. Gray “did not literally remain silent about Mulligan Mint or the bankruptcy throughout the life of the offering.” TSSB Br. at 71. It acknowledges the recorded calls, RX 26; RX 55A; TSSB Ex. 131, and the Telegram “Philosophy and Character” topic. TSSB Br. at 71. On MineTXC, the TSSB concedes that “some financial metrics appeared on [its] website; some personnel information was publicly available; hardware failures, power issues, and network disruptions were discussed on calls; and the mining facilities employed physical security measures, including cameras, fencing, locks, alarms, and controlled access.” *Id.* at 98. On Danager, it agrees the final order “should not describe Danagger Resources as an independent entity with separate undisclosed capitalization.” *Id.* at 81. On registration, it trades the theory alleged in the Order for a new one—that purchasers were not told the names were “just alter egos of Gray.” *Id.* at 84. And the TSSB summarizes: “Respondent also disclosed limited financial and operational information on websites, videos, calls, and other communications.” *Id.* at 101.

1. Mulligan Mint Bankruptcy (Finding 28)

Finding 28 alleged intentional concealment. The TSSB now concedes that theory fails, *see* TSSB Br. at 71, and asks the Court to find fraud because the disclosures were “haphazard” and not

“required” reading. *Id.* at 71–73. It argues only timing and sufficiency. *Id.* at 71–76. Both arguments fail.

Timing. The TSSB says the disclosures came too late and were too scattered. *Id.* at 72–76. The record shows otherwise. Mr. Gray discussed the bankruptcy on a November 26, 2024 call: “I left the U.S. because I was going through a very terrible sad bankruptcy at the time, and this was all very well-known, very well-documented. We went through the bankruptcy court, et cetera.” Tr. Vol. 1 at 236:1–7; RX 26.³ To be clear, Mr. Gray repeatedly talked about the Mulligan Mint bankruptcy. The November 26, 2024 call was Respondents’ earliest recorded example, not necessarily Mr. Gray’s first disclosure. It is the TSSB’s burden to prove intentional concealment, not Respondents’ burden to introduce evidence of each and every instance of disclosure.

The TSSB’s relevant purchaser witnesses bought *after* the November 26, 2024 disclosure. Mr. Hinson first bought “around August 15th to August 25th” of 2025. Tr. Vol. 2 at 238:8–11. Mr. Block first bought “on or about September 13th, 2025.” *Id.* at 267:1–8. Mr. Hesse first bought on “Thanksgiving day of last year, 2025.” *Id.* at 166:2–5. Each purchase followed the November 2024 call and the Telegram thread. Mr. Block’s and Mr. Hesse’s purchases also followed the August and September 2025 calls.⁴ Accordingly, no record evidence exists that a purchaser bought a mining package before the disclosure and that the bankruptcy was material to him or her.

Mr. Gray yet again disclosed the bankruptcy in August and September 2025. RX 55A; TSSB Ex. 131; Resp. Br. at 33. He told the community: “We have talked extensively about

³ The TSSB notes that this excerpt did not name Mulligan Mint. TSSB Br. at 71; *see* Tr. Vol. 1 at 236:8–13. But the same subject was covered in the Telegram thread that, as Mr. Walsh testified, “existed way before [he] got there” in November 2024, where Mr. Gray posted “[t]he court documents from the Mulligan Mint bankruptcy.” Resp. Br. at 33 (quoting Tr. Vol. 3 at 258:6–18).

⁴ Mr. Gamero testified that he first purchased “[o]n July 19th.” Tr. Vol. 2 at 205:17–18. The year is not stated in that testimony.

Mulligan Mint.” *Id.* (quoting Tr. Vol. 2 at 7:21–8:3). He pointed anyone interested to the Telegram “philosophy and character section,” where he posted “links,” “videos,” and “references to bankruptcy court documents.” *Id.* (quoting Tr. Vol. 2 at 8:23–9:3).

Availability. The TSSB concedes that prospective “purchasers could view at least one Telegram chat.” TSSB Br. at 72. Its investigator agreed; he “personally viewed a chat group that potential investors could view.” Tr. Vol. 2 at 151:13–14. The bankruptcy was also on PACER and in the *Wall Street Journal*, which named “Mulligan Mint president, Rob Gray.” Resp. Br. at 40–41; RX 29; TSSB Ex. 40. Anyone who “even Googled [Mr. Gray’s] name” would have found it. Resp. Br. at 41 (quoting Tr. Vol. 2 at 11:15–21). Indeed, Mr. Block’s own referrals did exactly that. They “did some research online” and found “information about his bankruptcy.” Tr. Vol. 3 at 34:11–35:1. Purchasers had an equal opportunity to learn the fact. Resp. Br. at 40–41. The TSSB does not address that argument.

Sufficiency. The TSSB calls the disclosures “haphazard,” TSSB Br. at 72–73, but it identifies no standard that makes repeated, public disclosures “insufficient.” The only standard it proposes—a required, acknowledged, pre-purchase disclosure—appears nowhere in the TSA, the Order, or any authority the TSSB cites. *See supra* Part I.A.1. Finding 28 should be deleted.

2. Financial and Operational Disclosures (Findings 29 and 31)⁵

The TSSB concedes that information concerning assets, liabilities, and capitalization was properly disclosed (to the extent those things could exist for non-entities). It asks the Court to “avoid the imprecise proposition that MineTXC failed to disclose a corporate balance sheet it did not have,” TSSB Br. at 87, and to “eliminate or narrow any absolute statement those matters were

⁵ The Court should also deem these arguments waived for lack of supporting legal citations. *See* TSSB Br. at 82–97; *see* Aug. 21, 2026 Order (“The ALJs may also consider waived any argument that lacks accurate citations to the evidence or law.”).

never disclosed,” *id.* at 90. The Court should reject the “narrower finding” that Respondents “did not establish a standardized, sufficient pre-purchase disclosure process.” *Id.* at 88, 90.

This new allegation appeared nowhere in the Order, and a “narrower finding” is a newly invented legal standard, not a finding of fact. The TSSB cites no source for it. Findings 29 and 31 should be deleted. Resp. Br. at 34–38, 47–48. The record shows why.

1. **The relevant financial information was on the public website, above the enrollment form.** Mr. Gray testified: “if they went on the website, they had access to all of those reports.” Tr. Vol. 1 at 103:19–21. The website charted funds raised beside a use-of-funds breakdown. Resp. Br. at 35. Mr. Walsh testified that the website “talks about . . . all the money we’ve brought in, how it’s spent, even—literally, even copies of some of the bills and—and receipts.” Resp. Br. at 35 (quoting Tr. Vol. 3 at 259:3–9). The TSSB’s investigator agreed that “to the extent that they actually had assets, liabilities, and capitalization, that information was disclosed on their website.” Resp. Br. at 34 (quoting Tr. Vol. 2 at 152:1–153:5).
2. **Operational problems were disclosed contemporaneously.** Mr. Gray reported offline machines (June 10, 2025), the hardware-replacement plan (August 19, 2025), a firmware-versus-voltage problem “hashing out . . . in public” (September 2, 2025), an overvoltage issue and leaking tank (November 18, 2025), and personnel changes (January 13, 2026). RX 15, 55B, 21A, 17, 16; Resp. Br. at 36–37. He “talked about it almost every week.” Resp. Br. at 37 (quoting Tr. Vol. 2 at 22:16–21). The public dashboard showed failures “in real-time.” Resp. Br. at 36 (quoting Tr. Vol. 2 at 15:16–22). Mr. Block’s own demand letter cited Mr. Gray’s “public disclosures.” Resp. Br. at 38 (quoting Tr. Vol. 3 at 41:3–14).

3. **Security and locations were disclosed.** The sites had “fences and gates and 24-hour monitoring of the cameras,” and an alarm system. Tr. Vol. 2 at 24:4–10. Mr. Walsh described cameras, fencing, locks, and controlled entry. Tr. Vol. 4 at 10:18–12:3. Tours were held, and people “stopped by unannounced and unscheduled . . . to check out the mines.” Resp. Br. at 37 (quoting Tr. Vol. 2 at 12:20–13:5).
4. **Personnel were disclosed.** The people who ran the mines were disclosed “very frequently. In fact, they were regular guests on our calls.” Tr. Vol. 2 at 26:5–9. Terminations were disclosed too. *Id.* at 26:10–13. The investigator agreed. Resp. Br. at 38 (citing Tr. Vol. 2 at 155:15–156:2).

The TSSB knew of these disclosures before it filed the Order. Tr. Vol. 2 at 153:6–154:11; Resp. Br. at 38. Findings 29 and 31 should be deleted.

3. Danager Resources (Findings 19 and 30)

Finding 30 alleged concealment of Danager’s “assets, liabilities, and capitalization,” the “identity, business repute and experience of [its] owners or principals,” its “relationship to Respondents,” and its “control of investor funds.” Order ¶ 30. The TSSB now concedes that Danager was “Gray’s assumed name” and should not be described “as an independent entity with separate undisclosed capitalization.” TSSB Br. at 18, 81. Mr. Gray testified Danager had no “actual assets, liabilities, and capitalization that [he] could have disclosed.” Tr. Vol. 2 at 27:15–20. There was nothing to conceal, and the allegation should be deleted. Resp. Br. at 35–36.

The TSSB now advances a new theory: that the check instructions “did not identify Gray as the owner or principal behind Danagger.” TSSB Br. at 77–82. That theory fails too.

1. **The relationship was disclosed.** Mr. Gray “made it very clear on all of our calls and in all of our documentation that I was going to go, you know, exercise control of your

money and use it for three very specific things.” Tr. Vol. 1 at 137:6–9. The use-of-funds chart described those uses. Resp. Br. at 36.

2. **The address was the publicly identified headquarters.** Checks went to 1801 West Louisiana Street in McKinney, Texas, Order ¶ 19, which Mr. Gray identified on a public call as their “headquarters.” Tr. Vol. 2 at 23:17–19; RX 21B; Resp. Br. at 37.
3. **No one who paid by check testified.** The TSSB’s investigator interviewed no one who paid by check. Tr. Vol. 2 at 139:13–17. No one told him the Danager information “would have been material to them.” *Id.* at 139:18–21. The purchaser witnesses either paid otherwise or did not care about the payee. *Id.* at 166:7–13 (Hesse), 230:15–18 (Gamero), 246:6–9 (Hinson); Resp. Br. at 46.
4. **The “\$3 to \$10 million” figure is an off-the-cuff estimate.** The TSSB builds its proposed finding on Mr. Gray’s answer to a question asking for a “percentage.” TSSB Br. at 79, 81; Tr. Vol. 2 at 28:11–14 (“Maybe somewhere between \$3- and \$10 million.”). But the TSSB introduced no accounting of payments received by check.
5. **There was no intent.** Asked whether he ever *intentionally* failed to disclose his Danager connection, Mr. Gray answered: “No, not at all.” Tr. Vol. 2 at 27:21–24.

Findings 19 and 30 should be deleted.

4. Registration and Organizational Structure (Finding 32)

The TSSB does not defend Finding 32 as pleaded, instead recasting it as an “organizational structure” omission. TSSB Br. at 82–85. The TSSB argues that purchasers were not told the names “were all just alter egos of Gray,” and that this mattered to “identifying who was receiving and controlling purchasers’ money.” *Id.* at 84. That argument is unsupported by any record evidence and must fail.

First, it is a new and unpleaded theory. Finding 32 alleged a failure to disclose that the names “are not registered with the Texas Secretary of State or authorized to transact business in the state of Texas.” Order ¶ 32. It said nothing about “alter egos.”

Second, the Order itself proves the relationship was public. Without ever speaking to Mr. Gray, the TSSB alleged that he “is the founder of” each of the names. Order ¶ 4. It alleged that “[a]ll three Respondents are purportedly owned and operated by Respondent Gray.” *Id.* ¶ 7. The TSSB could only have drawn those allegations from public materials. Mr. Gray was identified throughout those materials as “Founder & Fearless Leader.” TSSB Ex. 22 at TSSB 366; TSSB Ex. 23 at TSSB 431, 435–36. Blockchain Mint’s assumed-name certificate, with the “individual” box checked, is a public filing. RX 68; Resp. Br. at 39, 74. Secretary of State records are also public. TSSB Exs. 41–47; Resp. Br. at 41.

Third, Respondents never represented that the names were registered entities, and no evidence shows anyone asked. *See* Tr. Vol. 1 at 165:6–9 (“Q. Do you recall whether anyone ever asked you whether these were registered entities? A. No, I don’t recall and I don’t think anyone ever did.”). Mr. Gray explained why he chose not to incorporate: “if you hide behind a corporate wall, like maybe there’s an assumption you’ve got something to hide.” *Id.* at 164:21–165:5; Resp. Br. at 38–39. Again, this is not evidence of intentional concealment. It is the opposite.

Fourth, the TSSB’s claimed factual support does not hold up. Its citation for the claim that Mr. Gray “did not identify a disclosure telling prospective purchasers MineTXC was an alias” is to testimony about Secretary of State registration. *Compare* TSSB Br. at 83–84 & n.314, *with* Tr. Vol. 1 at 139:9–13. And its other cited testimony rests on a question the examiner withdrew. *See* Tr. Vol. 2 at 217:2–7. Finding 32 should be deleted.

5. Affiliates and “Regulatory Consequences” (Finding 33)

Finding 33 alleged that statements about bonuses and commissions were misleading. Order ¶ 33. The TSSB now recasts it as a failure to tell affiliates about “regulatory consequences.” TSSB Br. at 90–95. The new theory fails for four reasons.

1. **It is circular.** It presupposes that the mining packages are securities. If they are not, there was nothing to disclose. Resp. Br. at 39.
2. **It collapses registration into fraud.** As Respondents have explained, “if a viable fraud theory could be premised on a failure to disclose that assets are unregistered securities, then every securities registration case would be, by definition, a fraud case. That is not the law.” Resp. Br. at 39.
3. **There was no intent.** Mr. Gray “didn’t believe it then and [doesn’t] believe it now.” Tr. Vol. 2 at 30:19–24. The investigator agreed that disclosure would “[p]resumably” have required knowledge the packages were unregistered securities. *Id.* at 157:20–23.
4. **The program’s terms were disclosed and are not alleged to be false.** The referral program’s terms were published on the MineTXC website. Resp. Br. at 39 n.4. No one alleges they were inaccurate.

Finding 33 should be deleted.

The TSSB has not sustained its fraud allegations—not even close. Its new theory supplies neither the missing legal duty nor the missing proof. Findings of Fact 28–33 should be set aside.

II. THE MINING PACKAGES ARE NOT SECURITIES

The narrow question the TSSB poses is whether the mining packages, “as actually structured,” are investment contracts. TSSB Br. at 21. What purchasers actually received answers that question: every purchaser “paid a one-time fee and received a daily, pro-rata distribution of . . . TXC—nothing more.” Resp. Br. at 2 (citing Tr. Vol. 1 at 172:24–173:7; Tr. Vol. 2 at 143:25–

144:21). Mr. Gray testified that purchasers “never” obtained “any other property right, ownership stake, share, or interest.” Resp. Br. at 51 (quoting Tr. Vol. 1 at 173:3–7). The TSSB’s investigator agreed that “if someone bought a mining package, what they ended up with was TXC.” Resp. Br. at 51 (quoting Tr. Vol. 2 at 143:25–144:2). So did the purchasers. Resp. Br. at 51–52 (Hesse, Hinson, Walsh, Gamero, Nickel). The TSSB does not allege TXC is a security. *See* TSSB Br. at 21; Resp. Br. at 49–50.

The only conceivable profit came from selling TXC on the market. Mr. Gray agreed that the value of TXC “is dependent on the supply and demand in the third party open market.” Tr. Vol. 1 at 229:11–14. The TSSB’s own witness, Mr. Gamero, explained it best: his coins “would grow or lose value depending on what the open market was doing.” Tr. Vol. 2 at 213:2–7. Mining was “separate from . . . there being a market like a Coinbase.” *Id.* at 213:10–18. “[T]he greater adoption, the greater the demand; the greater demand, the higher the price.” *Id.* at 214:9–12. And “the only way to make a profit was to sell or trade your TXC.” *Id.* at 222:3–5. Hope of commodity appreciation is not an expectation of profits under *Howey*. Resp. Br. at 53–56 (collecting authorities).

The Order’s securities theory also relies on a factual premise the TSSB now concedes is false: that purchasers never received mining hardware. Order ¶ 16; TSSB Br. at 10. The TSSB wrongly treats that concession as immaterial, unable to explain why purchasers who outsourced the operation of their equipment bought securities while those who operated it at home did not. Its remaining arguments do not fill that gap. The TSSB equates purchasers’ shared exposure to TXC’s market price with a common investment enterprise. It also equates the maintenance of mining equipment with the managerial effort that produces profits. Neither follows from the record: Purchasers acquired computational resources that produced a commodity, and their hoped-for

gains depended on the value of that commodity. Resp. Br. at 49–55, 58–66. Here, too, the TSSB fails to meet its burden.

A. SEC Crypto Asset Guidance Confirms Mining Packages Are Not Securities

The SEC guidance merits substantial weight because the TSA is to be “interpreted in harmony with federal securities law.” Resp. Br. at 60 (quoting *Davis v. MSR Holdings, LLC*, 2024 WL 3237623, at *9 (Tex. App.—Houston [1st Dist.] June 28, 2024, pet. denied)). Like *Howey*, *Life Partners* asks whether the purchaser’s expectation of profit depends on “the entrepreneurial or managerial, rather than merely ministerial or clerical, efforts of others.” Resp. Br. at 59 (quoting *Life Partners, Inc. v. Arnold*, 464 S.W.3d 660, 681 (Tex. 2015)). The guidance thus informs how *Life Partners* and its progeny apply to mining. The SEC has now clarified which side of that line proof-of-work mining activities fall on. The “work” in mining is “the computational resources that miners contribute.” See Resp. Br. at 59–61 (quoting 91 Fed. Reg. at 13724–25). A pool operator’s activities, including “maintaining the pool’s mining hardware and software” and “overseeing the pool’s security measures,” are “administrative or ministerial in nature.” 91 Fed. Reg. at 13724–25. The TSSB offers no reason to treat those same functions as managerial under Texas law.

Applied here, the guidance covers purchasers who did not personally own and operate a machine. Those purchasers bought hash power, and that hash power was added to MineTXC’s pool. Mr. Gray testified that purchasers “contributed their hash power,” which “is what caused the pool to grow.” Tr. Vol. 1 at 170:6–11. Mr. Sotak’s testimony was unrebutted. Purchasers contributed hash power “through their mining seat,” and MineTXC, “on behalf of . . . those users, bought the computational power and plugged it in.” Tr. Vol. 3 at 211:8–11. What MineTXC did was the pool operator’s work: “putting a supercomputer into a tub of oil and plugging it in and making sure the security was set up properly and making sure that the electric bill was paid.” Tr. Vol. 1 at 169:22–170:5. Mr. Sotak explained that these duties are distinctly ministerial “because

the profit is derived from the computational power itself, not from plugging things in.” Tr. Vol. 3 at 230:5–13. Both qualifications are met here. Purchasers received a pro-rata share by contributed hash power. Resp. Br. at 64 n.7 (quoting 91 Fed. Reg. at 13725 n.105); Tr. Vol. 3 at 229:16–25. And purchasers did not “passively rely” on MineTXC to provide the computational resources. Resp. Br. at 64 n.7 (quoting 91 Fed. Reg. at 13725 n.106). Their hash power did the mining. *Id.*; Tr. Vol. 3 at 229:22–230:21. Any hoped-for gains turned on TXC’s price in the open market, not on who physically housed the machines.

B. The TSSB Has A Line-Drawing Problem Between Home And Hosted Mining

The Order alleged categorically that “[i]nvestors never receive any mining hardware or control over mining hardware.” Order ¶ 16. The TSSB now acknowledges the falsity of that allegation and asks the Court to modify the finding. TSSB Br. at 10. It does not contend that purchasers who took equipment home engaged in securities transactions. *See* Resp. Br. at 65; Tr. Vol. 4 at 47:2–4. Instead, it calls them “a small minority” and insists their existence “does not alter the economic reality of the offering as a whole.” TSSB Br. at 10, 63. But that concession exposes the arbitrary distinction on which the TSSB’s security theory depends, which goes to the incoherence of the TSSB’s allegations and the lack of notice provided to Respondents.

That most purchasers chose hosted mining equipment does not explain why that choice made their purchases securities transactions. The home miners matter because they highlight the meaningless distinction on which the TSSB’s theory depends. Home and hosted miners paid the same price. They received coins under the same formula. They relied on equipment performing the same computational work. Resp. Br. at 65. Mr. Gray testified:

Q. And is their daily distribution of TEXTcoin any different?

A. No. They get their calculated exact amount whether they have it at home or they mine it through one of our data centers.

Q. Okay. And so is the only difference literally who is handling the infrastructural and logistical issues?

A. That's it.

Tr. Vol. 1 at 187:1–9. Respondents' expert agreed home and hosted machines do not differ "[i]n terms of the underlying functions that are being performed." Resp. Br. at 65 (quoting Tr. Vol. 3 at 161:1–5). That testimony was un rebutted. Home miners simply "performed those overhead functions that the pool operator otherwise would have." *Id.* (quoting Tr. Vol. 3 at 188:19–22). The entitlement to TXC was "independent of whether a miner elected to operate their own mining rig." RX 38 ¶ 27.

The TSSB's only attempt to make a distinction is to argue that hosted purchasers relied on MineTXC to house, power, and maintain the equipment. TSSB Br. at 22–23, 37–39. The TSSB itself concedes that a purchaser "who independently contributes computational resources to a proof-of-work network presents a different economic arrangement." *Id.* at 23. So the TSSB's theory turns on who plugs in the machine. That is "an incoherent, arbitrary theory that has no precedent and defies common sense." Resp. Br. at 3. Reliance on MineTXC for those tasks supports the TSSB's theory only if those tasks are essential managerial efforts. Mr. Sotak's un rebutted testimony and other evidence in the record establish that they are not.

A preference to outsource logistics does not convert a commodity purchase into a security. A jury "could have found that Hashlets enabled their owners to outsource the 'messy, technical process' of operating physical mining equipment." Resp. Br. at 66 (quoting *Audet v. Fraser*, 605 F. Supp. 3d 372, 393 (D. Conn. 2022)).

The TSSB's "economic reality" argument also proves too much. Its logic would make every hosted mining arrangement and mining pool a "common enterprise." The TSSB does not say where its theory stops, and it offers no limiting principle. That is not, and cannot be, the law.

C. The TSSB Erroneously Treats The Operation Of Mining Equipment As Essential Managerial Effort

Under *Life Partners*, a purchaser’s “realization of the expected profits[] [must be] at least predominantly due to the entrepreneurial or managerial, rather than merely ministerial or clerical, efforts of others.” Resp. Br. at 59 (quoting *Life Partners*, 464 S.W.3d at 681). The TSSB recites that standard. TSSB Br. at 21, 37. It then catalogs Respondents’ acquisition of equipment, electrical arrangements, installation, cooling, repairs, and distributions. *Id.* at 36–43. But the **amount** of work cannot substitute for an explanation of its legal character. It is the **kind** of work that matters.

The SEC’s mining guidance classifies the very functions on which the TSSB relies.⁶ The guidance explains that “[t]he ‘work’ in PoW is the computational resources that miners contribute.” Resp. Br. at 59 (quoting 91 Fed. Reg. at 13724–25). It describes the pool operator’s role as “coordinating the miners’ computational resources, maintaining the pool’s mining hardware and software, overseeing the pool’s security measures . . . , and ensuring that the miners are paid their rewards.” *Id.* (quoting 91 Fed. Reg. at 13724–25). And it concludes that “a pool operator’s activities in operating the mining pool using the combined computational resources of participating miners are **administrative or ministerial in nature**.” Resp. Br. at 59–60 (quoting 91 Fed. Reg. at 13725) (emphasis added). Respondents explained why the guidance applies here: purchasers acquired the computational resources that performed the mining, and MineTXC supplied the supporting services. Resp. Br. at 60–64 & n.7.

⁶ Respondents request that the Court take official notice of the SEC Crypto Asset Guidance, 91 Fed. Reg. 13714 (Mar. 23, 2026). *See* TEX. GOV’T CODE § 2001.141(c); Resp. Br. at 27. The TSSB does not dispute its authenticity. Its counsel described it on the record: “That’s the SEC guidance. It’s in the Register.” Tr. Vol. 3 at 225:19–23. Both parties examined Mr. Sotak about it. *See, e.g.*, Tr. Vol. 3 at 207:8–14, 229:16–230:21.

Significantly, the SEC recently went even further, explaining that “services to secure, maintain, improve, or enhance such a system or its functionality, or to facilitate network effects, whether through sponsoring or funding development projects or other similar activities, would not involve essential managerial efforts.” Secs. & Exch. Comm’n, *Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets* (Sept. 28, 2026), available at <https://www.sec.gov/about/divisions-offices/division-corporation-finance/faqs-crypto-assets>. The TSSB addresses neither the guidance nor that application. Its irrelevant recitations of equipment failures and repairs simply elaborate on ministerial maintenance work the guidance already addresses. TSSB Br. at 41–42.

The cases likewise distinguish reliance on production and hosting services from reliance on investment management. In *SEC v. Belmont Reid & Co.*, purchasers depended on the seller to mine and refine gold before delivering the coins they had prepaid to receive, but that dependence remained the reliance of an ordinary buyer on an ordinary seller. 794 F.2d 1388, 1389–91 (9th Cir. 1986); *see also Audet*, 605 F. Supp. 3d at 393 (sustaining the verdict that Hashlets were not investment contracts where purchasers outsourced the technical operation of mining equipment). The TSSB does not distinguish or even address these cases. Rather, it treats purchaser reliance on Respondents to operate equipment as satisfying the efforts-of-others requirement, but without showing the work was managerial. That error is compounded by the TSSB’s failure to separate the production of TXC from the potential market appreciation through which purchasers hoped to profit.

As Respondents explained: “[e]very sale of a commodity requires the seller to work. A farmer who sells next season’s wheat must plant it, tend it, and harvest it; the buyer waits and takes

delivery.” Resp. Br. at 62. “The buyer of wheat depends on the farmer for delivery. He depends on the wheat market for gain.” *Id.*

1. The “Work” the TSSB Describes Is Ministerial Logistics

Respondents’ witnesses described the operating work as ministerial. Mr. Gray called it “putting a supercomputer into a tub of oil and plugging it in and making sure the security was set up properly and making sure that the electric bill was paid”—“ministerial functions.” Resp. Br. at 62 (quoting Tr. Vol. 1 at 169:22–170:5). He testified that “as far as actual mining itself, once you program a rig and drop it into oil, plug it into the network, and make sure that it comes online, that’s about it.” Tr. Vol. 2 at 50:5–8.

Mr. Walsh said the same: “[o]n a day-to-day basis we don’t need our hands in the fluid at all.” Tr. Vol. 4 at 26:1–4. The TSSB relies on his testimony that a centralized facility is “[a] lot more work” than a home rig. TSSB Br. at 41; Tr. Vol. 4 at 22:18–24. But the difference is in scale, not in kind. A home miner must “download the pool information, connect via their network cable[,] . . . plug in the basics, . . . connect the wallet . . . and then just monitor it at home.” Tr. Vol. 4 at 22:12–17. Doing that for hundreds of machines is *more* work, not *different* work.

Hosted mining is also an ordinary, commercially available service. Mr. Sotak described Blockware’s RentHash and mining-as-a-service products, in which machines are “hosted and monitored and maintained by Blockware.” Resp. Br. at 63 (citing Tr. Vol. 3 at 171:25–173:22, 203:24–204:9). “No one has alleged that Blockware is selling securities.” *Id.*

2. Purchasers Supplied the Computational Resources and the Activities on Which Value Depends

Purchasers “contributed their hash power. They bought a package that contained a certain amount of megahash, and that is what caused the pool to grow in size and power.” Resp. Br. at 61

(quoting Tr. Vol. 1 at 170:6–11). Mr. Sotak explained “profit is derived from the computational power itself, not from plugging things in.” Resp. Br. at 64 (quoting Tr. Vol. 3 at 230:5–13).

And TXC’s value depended on the community, not on Mr. Gray. Mr. Gray testified: “it’s not just me that determines the outcome of this project. . . . I can plug the mining hardware in, but I can’t force people to trade it and accept it and spend it and circulate it.” Tr. Vol. 1 at 213:13–20. The TSSB’s exhibits agree. The MineTXC website told purchasers: “This isn’t a passive endeavor. TXC thrives on your participation.” TSSB Ex. 1 at 94 (as read at Tr. Vol. 1 at 231:17–22). The brochure mailed to every new miner stated: “every miner plays a vital role in our success. . . . [T]here’s more we need from you to reach our full potential.” TSSB Ex. 61 (as read at Tr. Vol. 1 at 232:23–233:5). And: “[a] thriving marketplace is essential for TXC to hold real value. To achieve this, we need active participation in buying, selling, and trading.” *Id.* (as read at Tr. Vol. 1 at 233:13–17).

Purchasers also did real work. They sometimes made operational decisions. Tr. Vol. 2 at 51:1–3 (“Q. And the mining package purchasers don’t make those decisions, do they? A. Sometimes they do.”). They helped install and maintain equipment. Tr. Vol. 1 at 34:12–35:6; Tr. Vol. 3 at 211:25–212:1. They paid directly for airport advertisements, billboards, and wrapped cars. Tr. Vol. 2 at 48:9–20. Many paid for their own events to build their teams. Tr. Vol. 4 at 30:13–18 (“[A] lot of people do them on their own.”).

D. The TSSB Has No Answer to the Many Disclaimers of Profit

The TSSB treats Respondents’ disclaimers as a footnote. They are not. Read in context, they defeat any reasonable expectation of profit. Resp. Br. at 56–58.

1. **The first page of the TEXITcoin website:** “Purchasing TEXITcoin is not an investment. TXC is highly speculative, and no one should purchase any more than they are prepared to completely lose. Think of TXC more like gambling or buying a lottery ticket.” Resp.

Br. at 56 (quoting TSSB Ex. 23 at 1). The TSSB concedes this disclaimer appears on the same page as the “growth & appreciation” language it quotes. TSSB Br. at 33. That language refers to becoming “a participating trader.” TSSB Ex. 23 at TSSB 426.

2. **The MineTXC website:** “[T]his is risky. Yes, there are no guarantees, and no, we will not sugar coat that,” and “We don’t promise you riches. We promise a shot.” Resp. Br. at 56 (quoting TSSB Ex. 1 at 104–05).
3. **Another MineTXC page:** “TXC is not a get-rich-quick scheme.” Resp. Br. at 57 (quoting TSSB Ex. 1 at 145).
4. **The Blockchain Mint site:** “DON’T . . . [b]uy more than you can afford to lose.” Resp. Br. at 57 (quoting TSSB Ex. 18 at 19).
5. **These were “just examples.”** Mr. Gray testified, “we probably did a hundred times as much as what we’ve seen.” Resp. Br. at 57 (quoting Tr. Vol. 1 at 227:14–18).

The TSSB’s investigator conceded there is “no allegation that [Mr. Gray] guaranteed profits.” Tr. Vol. 2 at 124:18–20. He saw evidence before the Order issued that Mr. Gray “specifically disclaimed any promises or guarantees of profits.” Resp. Br. at 57 (quoting Tr. Vol. 2 at 147:8–148:17). The Order omits every one of these warnings. *Id.*

Purchasers understood those warnings. Mr. Hesse agreed he was “taking a shot.” Resp. Br. at 57 (quoting Tr. Vol. 2 at 199:2–4). Mr. Gamero agreed that price goals “were hopes,” not “promises or guarantees.” Tr. Vol. 2 at 226:14–18. Mr. Hinson understood he was “basically taking a flyer.” Resp. Br. at 57 (quoting Tr. Vol. 2 at 249:7–15). Purchasers thus had no reasonable expectation of profit from Respondents’ activities.

E. The TSSB Confuses A Shared Interest In A Commodity's Value With Profits From A Common Enterprise

The TSSB's common-enterprise argument rests on purchasers' proportional receipt of mining output and their shared interest in TXC's appreciation. TSSB Br. at 25–31. That argument misunderstands both the transaction and the law.

First, the proportional allocation the TSSB invokes is an express condition of the SEC's conclusion that covered pool-mining activities do *not* involve an investment contract. The guidance assumes that “miners receive a pro rata share of the rewards from the pool based on their contribution of computational power, rather than where non-miners can purchase interests in the pool, or miners can pay to receive greater than a pro rata share.” Resp. Br. at 64 n.7 (quoting 91 Fed. Reg. at 13725 n.105). Here, purchasers received a pro-rata allocation; no non-miner bought an interest; and the published formula allowed no one more than a pro-rata share. *Id.* (citing Tr. Vol. 3 at 229:16–25; TSSB Ex. 22 at 31).

Second, a shared interest in a *commodity's appreciation* does not create an investment-contract enterprise. Every holder of gold benefits when the market price rises; that does not make gold holders participants in a business managed for their collective benefit. *See, e.g., Belmont Reid*, 794 F.2d at 1391. Here, purchasers' shared hope that TXC would appreciate shows common exposure to its market price, *not* the required common investment enterprise. Resp. Br. at 53–55.

The TSSB's promotional evidence repeats the same conflation. It collects Mr. Gray's references to ROI, wealth, and escalating price targets, along with plans to promote TXC and grow its ecosystem. TSSB Br. at 31–35. Respondents do not dispute that Mr. Gray hoped TXC would appreciate. He described targets reflecting that hope as “representations based on what could happen if the project went well.” Resp. Br. at 58 (quoting Tr. Vol. 1 at 112:19–22). But whether

purchasers would realize gains still depended on the market for TXC. As Mr. Gamero put it, coins “would grow or lose value depending on what the open market was doing.” Tr. Vol. 2 at 213:2–7.

That dependence on the market is why risk warnings accompanied the aspirational language. Respondents warned that TXC was “highly speculative,” that no one should buy more than they were “prepared to completely lose,” and that “riches” could not be promised. Resp. Br. at 56–57. Purchasers understood they were buying coins that might appreciate, with the risk that market demand might disappoint. *Id.* at 57–58.

The TSSB cannot turn speculation about TXC’s potential market adoption into reliance on investment management by pointing to Mr. Gray’s optimism and promotion. It must show that purchasers reasonably expected those efforts—and not the market—to be the predominant source of their gains. It has not. Accordingly, Conclusion of Law No. 1 and the registration conclusions that depend on it should be rejected.

F. The TSSB’s Remaining Securities Arguments Fail

1. “Investment” and “ROI” Were Used Colloquially

The TSSB makes too much of Mr. Gray’s sporadic use of “investment” and “ROI,” TSSB Br. at 33–35, but neither word creates a security. Mr. Gray explained: “I don’t really think the TSSB owns that word. I mean, you can invest time in relationships. You can invest in a rental property. I mean, just because you invest in something doesn’t necessarily make it a security.” Tr. Vol. 1 at 220:12–16. He used the terms “[j]ust in the everyday sense, that’s all.” *Id.* at 221:16–21. The TSSB’s investigator agreed that people use “investment” to describe “gold or Bitcoin,” which “[are] not securities.” Tr. Vol. 2 at 146:13–21.

As for ROI, the TSSB says it is “universally understood” to mean profitability. TSSB Br. at 33. It cites nothing. Mr. Gray used ROI to mean “the time required to recover the money someone puts into that opportunity.” Tr. Vol. 1 at 86:18–22. And he told purchasers they were

“not buying shares.” *Id.* at 222:15–18; TSSB Ex. 120B; *see* Tr. Vol. 1 at 222:22–223:1 (“I wanted them to understand that they . . . weren’t buying shares in a company.”).

2. The Resale Theory Is Unpleaded and Unsupported

The TSSB now argues that purchasers could sell their positions at a profit. TSSB Br. at 35–36. That theory is not in the Order. The TSSB’s investigator confirmed that “[t]he Order does not talk about the transfer and sale of the package itself.” Resp. Br. at 54 n.6 (quoting Tr. Vol. 2 at 145:20–146:2). Respondents objected each time the TSSB raised it. Tr. Vol. 2 at 52:14–53:13; Tr. Vol. 3 at 220:20–225:18; Resp. Br. at 69–70.

The theory also fails on the facts. The TSSB “adduced no evidence that anyone bought their mining package expecting to profit by reselling it.” Resp. Br. at 54 n.6. The “sell their position at a profit” language the TSSB quotes appears in a refund policy last updated January 7, 2026, a month before the Order. TSSB Ex. 1 (Refund Policy). Mr. Gray acknowledged that a few early “Founders Club” seats might have been resold for “a little bit of money.” Tr. Vol. 1 at 229:3–8. But he testified that “the real money was to be made in the monetizing or the trading of the TXC that they’d get off the mine.” *Id.* at 229:8–10. The TSSB could have asked any purchaser witness whether they expected to profit from reselling the mining package. The TSSB chose not to do so—presumably because it knew the answer would be no. Now, the record is closed, and there is no evidence any purchaser had an expectation of profit from the resale of their package. Without notice of this theory, Respondents could not prepare to defend against it, including by calling witnesses with relevant knowledge and developing a factual record addressing whether package resales were commonplace, formed part of Respondents’ offering rather than transactions negotiated individually between purchasers, or supported an expectation of profits from Respondents’ activities.

III. THE TSSB FAILED TO SHOW IMMEDIATE AND IRREPARABLE HARM

An emergency order requires conduct that “threatens immediate and irreparable public harm.” Resp. Br. at 71 (quoting TEX. GOV’T CODE § 4007.104(a)). The TSSB concedes that “Texas courts have not evaluated what constitutes ‘immediate and irreparable public harm.’” TSSB Br. at 103. Its position is effectively a per se rule. It argues that registration violations “on their own establish a threat of immediate and irreparable public harm in that each registration violation is designated as a criminal offense.” *Id.* at 67. That reading “improperly strips the words ‘immediate’ and ‘irreparable’ out of Section 4007.104.” Resp. Br. at 71. If every alleged violation were an emergency, those words would be surplusage. *Id.*

Section 4007.104(a) makes a threat of immediate and irreparable harm the precondition to emergency relief.⁷ It does not let the Commissioner define away that requirement. The TSSB’s out-of-state federal authority does not counsel otherwise. TSSB Br. at 103 n.381. The TSSB concedes it addresses “analogous violations of federal securities laws,” not the TSA. *Id.* at 103.

The record shows no emergency:

1. **No harm.** There is “no allegation he embezzled any funds” and “no allegation that purchasers didn’t, in fact, receive their TEXITcoin.” Tr. Vol. 2 at 122:2–6. Purchasers “received their TXC distributions daily.” *Id.* at 136:17–19.
2. **Nothing immediate.** The TSSB investigated “beginning in March 2025 until the cease and desist order was filed in February ’26.” *Id.* at 121:8–11. It never contacted Mr. Gray or sought to freeze any funds or other assets. Resp. Br. at 1.

⁷ Respondents respectfully submit that no immediate harm, nor irreparable harm, to the public existed at either the time the Order was issued or the date of the hearing.

3. **No flight risk.** The investigator’s reason for not contacting Mr. Gray was that “he might abscond with assets and leave the country.” Tr. Vol. 2 at 127:5–8. He then conceded that he was “not . . . saying that [Mr. Gray] stole money and absconded in the Mulligan Mint case.” *Id.* at 127:16–19.
4. **Nothing irreparable.** The only purported harm alleged would be monetary and measurable. Resp. Br. at 72.

The TSSB’s other authority confirms the point. *In re Stamford Group, Inc.*, 2010 WL 3342748, at *12 (SOAH Aug. 16, 2010), found a “risk” of irreparable harm due to a “precarious financial situation.” There is no such evidence here. Shuttering a business on an “emergency” basis is a big deal; the TSSB’s decision to do so here lacked any justification. Conclusions of Law Nos. 6 and 7 should be set aside.

IV. FAIR NOTICE REQUIRES DISMISSAL OF THE ENTIRE ORDER

The TSSB’s requested changes are not “limited,” TSSB Br. at 8, nor do they fall within the allegations of the Order or the Notice of Hearing. Rather, they are premised on entirely new theories and allegations, which are as expansive as they are meritless. *See* Oct. 19, 2026 Order at 3. The requested changes reach the identity of the parties (Findings 1–4, 7–8); who received home miners (Finding 16); the findings concerning Danager Resources (Findings 19 and 30); and nearly every finding on Respondents’ disclosures (Findings 29 and 31–33). *See* TSSB Br. at 8–10, 95–99. What remains is a contested legal question on a novel theory that was not fully litigated at the hearing. Permitting modifications without notice or supporting hearing evidence would cause extreme prejudice to Respondents.

The law does not permit such wholesale changes in allegations. The Order must “state the specific charges.” TEX. GOV’T CODE § 4007.104(b)(2). The notice of hearing must include “a short, plain statement of the factual matters asserted.” *Id.* § 2001.052(a)(4). Amendments that

change “requests for relief” or “the scope of the hearing,” or that “unfairly surprise other parties,” must be filed *at least seven days before* the hearing, absent agreement of all parties or leave. Resp. Br. at 70 (quoting 1 Tex. Admin. Code § 155.301(b)(2)). The TSSB did not seek to amend the Order, and Respondents objected when the TSSB tried to change theories at the hearing. *See* Tr. Vol. 2 at 52:14–53:13; Tr. Vol. 3 at 220:20–225:18. And, modification cannot add new relief of a different kind. As Respondents explained, a refund “requires affirmative performance” whereas the Order “prohibits conduct.” Resp. Br. at 77. “That is a difference in kind, not degree.” *Id.*

A. The TSSB’s Modified Theories Prejudice Respondents

The TSSB’s brief does not support or defend the case it actually pleaded. Rather, it asks the Court to decide a different one. The TSSB seeks to (a) add a new name—“Danagger Resources”—that was never a named respondent; (b) substitute new fraud theories (payee identity, “organizational structure,” “regulatory consequences,” and a “standardized, sufficient pre-purchase disclosure process”); (c) add a resale-for-profit securities theory; and (d) add a mandatory monetary remedy. TSSB Br. at 18–19, 35–36, 77–95, 105–12. Each of these demands and theories is absent from the Order.

The fraud allegations show the problem most clearly. The Order charged Respondents with intentionally concealing ten categories of information. Order ¶¶ 28–32. But the TSSB no longer defends that charge. Instead, it faults Respondents for *how* they disclosed that very information. *See, e.g.,* TSSB Br. at 71–72. The TSSB’s new theory is that repeated public disclosures on recorded calls, videos, Telegram, and websites did not count because a prospective purchaser was not “required” to review them. TSSB Br. at 72; *see id.* at 86, 89–90. It recasts Finding 30 as a complaint about the name on a check. *Id.* at 77–82. It recasts Finding 32 as an “organizational structure” omission. *Id.* at 82–85. And it recasts Finding 33 as a failure to disclose “regulatory consequences” to affiliates. *Id.* at 90–95. The same is true of the TSSB’s mining-package-resale

theory. The TSSB’s investigator confirmed that “[t]he Order does not talk about the transfer and sale of the package itself.” Resp. Br. at 54 n.6 (quoting Tr. Vol. 2 at 145:20–146:2); *see supra* Part II.F.2.

These allegations and theories are post hoc justifications for allegations the TSSB knows were faulty—as its own witnesses conceded. Those concessions go to the foundation of the fraud allegations. They are not incidental details. Yet the TSSB treats the as-pleaded and as-recast fraud allegations as interchangeable. Where the hearing evidence defeated allegations of concealment, the TSSB substitutes a complaint about the nature of the presentation of information and asks this Court to rubber-stamp the same conclusion. The TSSB invokes the power to modify the Order. But modification does not dispense with fair notice and an opportunity to defend. *Cf. Yellow Freight Sys., Inc. v. Martin*, 954 F.2d 353, 357 (6th Cir. 1992) (refusing to enforce an agency decision because “an agency may not change theories in midstream without giving respondents reasonable notice of the change” (quoting *Rodale Press, Inc. v. FTC*, 407 F.2d 1252, 1256 (D.C. Cir. 1968))).

Accepting those “modified” fraud allegations would prejudice Respondents immensely. Respondents prepared their defense to the Order as written, with no notice of, and no opportunity to rebut, theories that did not yet exist. And indeed, far beyond merely exposing gaps in the deficient allegations, Respondents demonstrated that the allegations were false. The Court should not consider them. And because the TSSB now depends on those theories to sustain essentially every challenged finding, the Order should be set aside in its entirety—even without the Court finding, as it must, that the new fraud theories also fail on their own terms.

B. The TSSB Cannot “Modify” The Order To Change The Respondents

The TSSB concedes that TEXITcoin, MineTXC, and Blockchain Mint are not entities. TSSB Br. at 15–17. It asks the Court to keep them in the caption anyway, as “Robert J. Gray d/b/a

TEXTcoin, MineTXC, Blockchain Mint, and Danagger Resources.” *Id.* at 19. The Court should decline that lawless invitation.

First, the Court must dismiss, not relabel. The TSSB’s emergency authority runs against “a person.” Resp. Br. at 73 (quoting TEX. GOV’T CODE § 4007.104(a)(1)–(3)). None of these names is a person. None “is capable of ceasing or desisting from anything.” Resp. Br. at 74 (citing Tr. Vol. 1 at 164:17–20). The Order should be set aside as to each of them. *Id.* at 75.

Second, the d/b/a relabel repeats the pre-Order error. Mr. Fuselier knew before the Order issued that the three names were not legal entities. Tr. Vol. 2 at 129:6–11. He knew that “a blockchain is not an entity that’s capable of being sued.” *Id.* at 129:18–20. He knew that “Blockchain Mint and MineTXC, likewise, are not entities that can be sued.” *Id.* at 130:4–7. His explanation for naming them anyway was weak: “an order was issued against something that the public knows by that name.” *Id.* at 129:22–25. The d/b/a request is the same rationale in new form. The TSSB has not withdrawn the Order as to names it knew could not be sued. It asks instead to preserve them. That is not a correction; it is a refusal to correct. *See* Resp. Br. at 81–82.

Third, the TSSB misportrays its sole authority for relabeling. TSSB Br. at 19 & n.49. The TSSB describes *Chilkewitz v. Hyson*, 22 S.W.3d 825, 828 (Tex. 1999), as holding that “[a] party may be sued in its assumed name under Texas Rule of Civil Procedure 28 if there is evidence that the party conducted business under that assumed name.” TSSB Br. at 19 n.49. But *Chilkewitz* concerns whether Rule 28 is a tolling provision. And Rule 28 itself does not do what the TSSB asks. It instead provides: “[a]ny partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court’s own motion the true name may be substituted.” Tex. R. Civ. P. 28. The rule permits suit in an assumed name “for the purpose of enforcing” a “substantive right.” *Id.*

The TSSB does not identify that right. And the rule contemplates a “motion” to substitute the “true name.” *Id.* The TSSB has made none.

Fourth, “Danagger Resources” was never a named respondent. Order at 1. Adding it after the hearing is a new party designation without notice. Resp. Br. at 69–70. No authority permits it.

Finally, the TSSB is wrong on the facts. TEXTcoin is not a trade name. It is a public blockchain. Tr. Vol. 1 at 153:17–155:20; Tr. Vol. 3 at 142:2–21; Resp. Br. at 5. The Order itself calls it a “cryptocurrency.” Order ¶ 5. The TSSB’s own brief uses “TEXTcoin” to refer to “the whole project.” TSSB Br. at 6 n.2. A “d/b/a” label would purport to attach an emergency order to a public ledger used by third parties. And TEXTcoin and Blockchain Mint “did not, in fact, offer these mining packages for sale.” Resp. Br. at 74 (quoting Tr. Vol. 2 at 131:24–132:4).

C. The Proposed “Modifications” Are Improper and Unsupported

The TSSB’s case for broad modification rests on two cases. Neither permits rewriting the Order as a “modification.” First, the TSSB cites *In the Matter of Advanced Wellness Services, LLC*, 2020 WL 4458114 (SOAH July 23, 2020). *See* TSSB Br. at 12 n.23. But that case only deleted small elements of the claims that were not proven and reflected abandoned claims. *See id.* at *7–9. It does not explain how that order permits adding new parties, new theories, or new remedies. *See id.* The Court should reject the TSSB’s attempt to rewrite the Order. Second, it relies on a Commissioner’s order. *See* TSSB Br. at 99 n.368. That decision, *In the Matter of KP Financial, LLC*, 2022 WL 16825808 (SOAH Oct. 27, 2022), involved striking a respondent’s name from three factual findings to correct an apparent scrivener’s error, not wholesale rewriting of the order. *See id.* It does not support what the TSSB seeks here.

V. THE TSSB’S REFUND REQUEST SHOULD BE DENIED

The Order contains no refund directive. Order at 6–7. The Court cannot order refunds by “affirming” an Order that never contained them. Resp. Br. at 75–79. And ordering refunds on a

claimed \$147 million in sales through a “modification” is indefensible. As explained, “[t]he TSSB chose the emergency vehicle, and that vehicle does not carry a refund remedy.” Resp. Br. at 78.

A. The TSSB Lacks Refund Authority Or Evidence

At the threshold, an order affirming or modifying an emergency order under Section 4007.104(e) is not an “enforcement order” within the meaning of Section 4007.108(a). *See* Resp. Br. at 77–79. To hold otherwise would be to invert due process and would allow for an affirmative injunction where the statute only permits a prohibitory “emergency” injunction. *See id.*

Moreover, even if Section 4007.104 were the proper mechanism for refunds, the record lacks adequate evidence to calculate and administer refunds.⁸ It did not mention refunds in closing. Resp. Br. at 80. There is no evidence of how to account for commissions, for TXC delivered to purchasers, or for TXC that purchasers later sold. Resp. Br. at 79–81. The TSSB does not propose how refunds would account for hash power that was granted in exchange for commissions and/or bonuses. *See* RX 01. Nor does the TSSB explain how its proposed refunds would account for peer-to-peer transactions in which purchasers paid other miners rather than Respondents. Resp. Br. at 80 (citing Tr. Vol. 2 at 136:17–19; Tr. Vol. 3 at 65:5–8). Rather, it proposes to fill that gap by ordering Mr. Gray to calculate the refunds himself. TSSB Br. at 111–12. This Court should reject that impermissible and inappropriate post-hearing burden-shifting.

B. The TSSB’s Refund Measure and Scope Are Contrary to Law

The TSSB’s brief also seeks a different refund measure from the one requested in its Notice of Hearing. The Notice asked for a refund calculated “as the amount of each investor’s principal investment less any returns or profits paid by Respondents to said investor.” Resp. Br. at 80

⁸ The Court’s Oct. 19, 2026 Order also asked the parties to “address the period any refund would cover.” Because the first blocks were not mined until January 2024, Tr. Vol. 1 at 153:11–12, no refunds can be issued for transactions prior to that date.

(quoting Notice of Hr'g at 3). Now, for the first time, the TSSB seeks “the purchase price actually paid,” for every purchaser, regardless of residence, with no credit for TXC received. TSSB Br. at 107–11. Even if refunds were warranted, which they are not, that would not restore the status quo. Rather, it “would leave all unjustly enriched.” Resp. Br. at 80.

The TSSB’s proposed measure is also wrong on its own terms. The TSSB says a refund may not exceed “the amount the client or purchaser paid to the dealer.” TSSB Br. at 106. It proposes to use “[t]he amount paid column on Resp’t Ex. 51.” *Id.* at 108 n.395. The TSSB acknowledges that packages received “as a bonus or commission” must be excluded. *Id.* at 108. But it ignores peer-to-peer purchases. Respondents’ sales ledger reflects roughly \$46.1 million in purchases paid peer-to-peer—to other purchasers, not to Mr. Gray. RX 01. Those amounts were not “paid to the dealer.” And MineTXC’s refund policy says so: “TEXTcoin cannot process refunds for peer-to-peer transactions.” TSSB Ex. 1 (Refund Policy). The refund request should be denied. Limiting refunds to Texas purchasers (TSSB Br. at 110–11) presents the same defect. There is no evidence identifying Texas purchasers or what each paid.

The TSSB’s refund demand is unfounded and logistically impossible. It should be set aside.

CONCLUSION

Respondents respectfully request that the Court recommend that Emergency Cease and Desist Order No. ENF-26-CDO-1893 be set aside in its entirety; that Findings of Fact Nos. 1–33 and Conclusions of Law Nos. 1–7 be deleted; and that Respondents be granted all other relief to which they are entitled. Respondents further reserve the right to seek sanctions under Section 2003.0421 and Rule 155.157, based on the frivolous fraud allegations and the TSSB’s continued sponsorship of false allegations and testimony against Respondents.

DATED: October 23, 2026

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CERTIFICATE OF SERVICE

I certify that on October 23, 2026, a true and correct copy of the foregoing was served on the following parties via e-filing:

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