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

RESPONDENTS' POST-HEARING BRIEF

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PRELIMINARY STATEMENT

As Respondents previewed at the outset of the hearing, this case has an easy part (the fraud allegations) and a harder part (the securities registration allegations). Tr. Vol. 1 at 8:25–9:2. It is now plain that both parts of the case must be resolved in favor of Respondents. The hearing showed that the Texas State Securities Board ("TSSB") vastly overreached in issuing Emergency Cease and Desist Order No. ENF-26-CDO-1893 (the "Order"). The TSSB has not come close to meeting its burden of proof, and thus the Order must be set aside.

The TSSB's entire approach to this case has been flawed. The investigation was perfunctory. The TSSB investigated for eleven months without ever speaking to Mr. Gray, seeking a single record from him, or visiting a mining facility. Tr. Vol. 2 at 121:8–11, 126:13–15, 135:5–14, 155:6–14. It issued the Order on an "emergency" *ex parte* basis with no justification, both in terms of the factual allegations—many of which the TSSB apparently knew to be false before issuing the Order, *id.* at 129:2–130:7, 136:23–137:11—and the threshold obligation to articulate an immediate and irreparable threat of public harm. It named as respondents a blockchain and two other non-entities that the TSSB's own investigator admitted were not capable of being sued. *Id.* at 129:18–130:7. It relied on a witness who perjured himself and others who lacked credibility. And, even worse, the TSSB advanced legal arguments that are without precedent and rest on facts that were not established at the hearing.

The fraud allegations are frivolous. It is outrageous and sanctionable that the TSSB continues to ask this Court to confirm allegations that the TSSB *knows to be false.* The TSSB's own investigator conceded that no money is missing, that purchasers received their coins every day, and that there is "no allegation" that Mr. Gray "affirmatively lied or made a false statement." *Id.* at 122:2–123:4, 127:9–12, 136:17–19. What remains is a theory of omission that fails every legal requirement. Respondents owed no duty of disclosure: there was no contract, no fiduciary

relationship, and no half-truth. *Id.* at 122:25–124:6. And even if there had been any duty, which there was not, Mr. Gray repeatedly disclosed the facts the Order alleges he concealed—the Mulligan Mint bankruptcy, the use of funds, and the mines' locations, setbacks, and personnel—on public calls, a real-time website dashboard, and the MineTXC website, many of which the TSSB's investigator conceded he knew about *before* the Order issued. *Id.* at 147:8–148:4, 150:17–154:11. Much of the rest was public record and readily accessible to anyone who cared to know. *Id.* at 118:6–16, 128:20–129:8. The TSSB offered *no evidence whatsoever* of intent, materiality, reliance, or injury—and in oral closing arguments, it did not defend its fraud allegations at all, deferring "disclosure issues" to briefing. Tr. Vol. 4 at 48:23–49:1.

The fraud allegations also reveal a lack of meaningful investigation and consideration. As Respondents explained during opening statements, the TSSB "saw a $150 million Texas-based crypto project with a commission referral program, and they thought, ah, got to be a classic crypto MLM scam." Tr. Vol. 1 at 18:4–12. The TSSB appears to have assumed first, and worked backward to reverse-engineer a fraud theory. But the facts and testimony presented at the hearing dismantled the TSSB's purported allegations, and the coordinate Order cannot survive review.

The same failure to investigate infects the securities theory: the TSSB never seriously evaluated whether the mining packages at issue fit within the Texas Securities Act ("TSA"). They do not. The securities question is harder only because it is novel; the TSSB has cited no decision treating a transaction like this one as a security. *See id.* at 12:16–13:5; Tr. Vol. 4 at 49:15–50:1. But the answer is clear once the Court looks, as both sides agree it must, to the economic reality. Tr. Vol. 1 at 4:5–6, 13:6–10.

There can be no dispute that every mining package purchaser paid a one-time fee and received a daily, pro-rata distribution of TEXITcoin's native token, TXC—nothing more. *Id.* at 172:24–173:7; Tr. Vol. 2 at 143:25–144:21. TXC is a commodity, and the TSSB does not contend

otherwise. Tr. Vol. 3 at 150:24–151:14. Its price is set by supply and demand on public exchanges that Mr. Gray neither owns nor controls. Tr. Vol. 1 at 167:20–168:9. As one TSSB witness put it, his coins "would grow or lose value depending on what the open market was doing." Tr. Vol. 2 at 213:2–7. Neither is there any serious dispute that TXC can be, and is, used as real-world currency: Mr. Gray's own operation pays its printer and tree trimmer in TXC, and precious metals dealers have used TXC to settle invoices. Tr. Vol. 1 at 159:3–160:2.

Nor could—or did—any purchaser reasonably expect profits from the efforts of Respondents. Respondents guaranteed nothing and repeatedly disclaimed profits: "Purchasing TEXITcoin is not an investment. . . . Think of TXC more like gambling or buying a lottery ticket." TSSB Ex. 23 at 1; *see* Tr. Vol. 2 at 147:3–148:13. Talk of a "seat on the rocket ship" was industry idiom, not a promise of specific profits or returns. Tr. Vol. 1 at 219:2–20. And the only "work" that produced TXC was the computational power purchasers bought and contributed to the mining pool. Under the U.S. Securities and Exchange Commission's ("SEC") guidance, a pool operator's functions—including the functions repeatedly referenced by the TSSB during the hearing, as described more fully below—are "administrative or ministerial in nature." Secs. & Exch. Comm'n, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, 91 Fed. Reg. 13714, 13724–25 (Mar. 23, 2026) (the "SEC Crypto Asset Guidance"). MineTXC was such a pool operator. Tr. Vol. 3 at 158:11–22, 230:5–21. Under the TSSB's theory, a $995 mining package is a security if *Mr. Gray* plugged in the mining rig, but somehow *not* a security if the buyer plugged in that same device at home. *See* Tr. Vol. 4 at 53:11–54:4. That is an incoherent, arbitrary theory that has no precedent and defies common sense. The Court should reject it.

Moreover, any gains from the purchase of a mining package resulted from the market for the *coin*—not from any expected or actual appreciation of the value of the mining package itself.

TXC trades on public exchanges at prices set by the market. That is, unfortunately, why the purchasers who testified lost money—not because they did not get the coins they were entitled to from the mining packages or because anyone lied to them, but because of the fluctuations of the open-market price of *the coin*. The largest loss in the hearing record, more than $200,000, was incurred based on massive purchases of the *coin* by the witness, Nike Nickel, on the open market. He still receives his daily TXC from the mining seats he bought from Mr. Gray, and he appeared to attribute the entirety of his losses to open-market trading of the coin itself, rather than anything to do with the single mining package he purchased. So, too, for all of the TSSB's other witnesses. Unable to assert that TXC is a security—because it is not—the TSSB has resorted to a factually tortured and legally baseless argument that mining packages themselves are securities. But no witness provided testimony to support that theory, and it is entirely inconsistent with the economic reality of purchasers' transactions.

Even were this Court to accept the TSSB's unsupported theory, Respondents could not possibly have had fair notice of it. When Mr. Gray mined the first block of TXC in January 2024, Tr. Vol. 1 at 153:11–12, no Texas rule or published guidance addressed whether joining or operating a mining pool could be a securities transaction. The only federal statement on proof-of-work mining that predated the Order said otherwise, as did the SEC Crypto Asset Guidance issued six weeks after the Order. *See* Tr. Vol. 4 at 54:5–18.

The Order also fails because the TSSB offered no evidence of immediate and irreparable harm, *see* Tr. Vol. 2 at 121:8–11, and as to TEXITcoin, MineTXC, and Blockchain Mint because they are not entities capable of ceasing or desisting from anything, Tr. Vol. 1 at 164:17–20.

Finally, the refunds the TSSB has requested are unavailable: an emergency order may prohibit conduct but it cannot be converted into a mandatory monetary remedy and, in any event, the TSSB offered no evidence whatsoever to support a restitutionary remedy.

In sum, the Order's factual allegations are knowingly false, its legal theory is infirm and has no precedent, and the TSSB's persistence in seeking the affirmation of allegations its own investigator could not defend is beneath the dignity of a government office and sanctionable. The Order should be set aside in its entirety.

BACKGROUND

A. Respondents Operated The TEXITcoin Network

Robert "Bobby" Gray is a self-made entrepreneur who has faith in people and community. He expresses his thoughts plainly. His skepticism of government-controlled financial systems led him to a lifelong passion for alternative currencies. He helped found the American Open Currency Standard, which certified privately minted silver rounds. In 2012, he testified before a subcommittee of the House Financial Services Committee on alternative currencies and the road to monetary freedom. And he embraced the digital currency revolution, including by founding TEXITcoin.

TEXITcoin is a public blockchain. A blockchain is a shared ledger that publicly records a sequential "chain" of transactions in "blocks," which allow anyone to verify the accuracy of the ledger. Tr. Vol. 1 at 153:17–154:8. Mr. Gray launched the TEXITcoin blockchain, modeled on the popular Litecoin blockchain, in January 2024. Tr. Vol. 1 at 154:18–21. Like Bitcoin or Litecoin, the network runs on supercomputers "competing" to record the next block in the chain by solving complex math equations. *Id.* at 155:21–156:20. The first supercomputer to correctly solve the equation records the block and receives newly issued coin as a reward. *Id.* at 156:13–20. TEXITcoin produces a block roughly every three minutes, meaning new coins are "minted" at approximately three-minute intervals. *Id.* at 155:11–17.

TXC is the native token of the TEXITcoin blockchain, meaning it is the coin produced as a reward for recording a block. Tr. Vol. 1 at 155:8–17; *see also id*. at 156:21–25 ("The only output

is TXC. Just like Bitcoin, the Bitcoin mining network makes BTC. The TEXITcoin mining network makes TXC."). All the TXC in circulation was mined through this process—there was no "pre-mine" or allocation reserved for insiders. Tr. Vol. 3 at 168:7–19.

The TSSB does not dispute that TXC is a commodity, rather than a security, or that buying or selling TXC is a commodities transaction, not a securities transaction. *Id.* at 150:20–151:14; Tr. Vol. 1 at 4:17–20; Pet. Resp. to Mot. Summ. Disp. at 6 ("Respondents correctly acknowledged that the Order does not allege the sale of TEXITcoin ('TXC'), the digital currency itself, constitutes the offer or sale of a security. The Order makes no such allegation.").

A person can obtain TXC in three ways. First, it can be purchased on a third-party cryptocurrency exchange. *See* Tr. Vol. 1 at 167:20–168:9 (noting TXC trades on "ten or so" public exchanges that Mr. Gray does not "control" or "run"). Second, it can be obtained directly from a holder of TXC, such as through an exchange of goods or services. *Id.* at 167:12–19, 159:3–160:1 (noting examples of businesses accepting TXC as payment). Third, it can be mined, through the purchase of a mining package. *Id.* at 167:12–19. In all three ways, the purchaser got the exact same thing—only TXC. Tr. Vol. 2 at 143:25–144:2; *see also id.* at 144:3–21. Nothing more and nothing less.

MineTXC is the exclusive mining partner of TEXITcoin. Order ¶ 5 ("Respondent MineTXC is the Texas-based mining partner of Respondent TEXITcoin."). Anyone could mine TXC by buying a mining package from MineTXC. Tr. Vol. 1 at 163:5–8. A mining package was a one-time purchase that entitled users to a daily pro-rata distribution of TXC. Tr. Vol. 3 at 149:7–12 (Mr. Sotak: A purchaser had "an allocated amount of potential hash rate within the MineTXC mine, [and] they got a proportional pro rata payout of TXC from the mine.").

A purchaser of a mining package was not entitled to anything beyond their distributions of TXC. Tr. Vol. 1 at 193:12–15 ("[T]here was a one-time fee, and there was no other time that we

were going to ask you to put in more money[,] or tell you you had to[,] to continue receiving your daily TXC reward."). Buyers could purchase mining packages at three levels, referred to by the number of "seats" held. *See id.* at 32:7–21; *id.* at 174:16–22. A one-time purchase of one hundred megahash of computing power was priced at $995; a "Triple Play" of 300 megahash for $2,985; or a nine-seat 900-megahash "Builder Plan" for $8,955. *Id.* at 32:7–21. Mr. Gray was cautious about ensuring that no one would spend more money than they could afford to lose—consistent with his repeated warnings about the risks of purchasing a mining package to obtain TXC, due to the significant volatility of cryptocurrencies—so he capped individuals' purchases at nine "seats." *Id.* at 175:1–17.

To buy a mining package, a purchaser went to the MineTXC website, completed a form, and paid; there was no contract, terms of service, terms of use, or anything similar. *Id.* at 168:17–169:3 ("Q. If someone wanted to buy a mining package from the MineTXC website, did they have to sign a contract? A. No, we didn't have any contracts."); Tr. Vol. 2 at 123:17–124:1 (Mr. Fuselier: "There was no contract—none of these people had a contract."). The buyer's only obligation was to link a wallet to their account, so MineTXC could send the daily distributions of TXC. *See* Tr. Vol. 1 at 173:16–24; Tr. Vol. 2 at 57:17–21.

When a mining package was purchased, Mr. Gray arranged to bring an equivalent amount of hash power online for the overall network. Tr. Vol. 1 at 170:6–11, 182:9–21. When needed, Mr. Gray added new supercomputers, called "ASICs," to the mine. *Id.*; *see also id.* at 170:6–11 ("They 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 and become more respected and reliable."). Because mining equipment took weeks to arrive and longer to install, Mr. Gray would often order more than he had sold, so that capacity was on hand before it was allocated. *Id.*; Tr. Vol. 3 at 196:22–197:2, 212:14–213:2. Over the life of the program, Mr. Gray purchased 29.9

terahash of capacity against 23.3 terahash sold. Tr. Vol. 3 at 196:22–197:2. The MineTXC website charted both figures publicly. TSSB Ex. 1 at 1; Tr. Vol. 1 at 201:1–19.

Mr. Gray operated four physical mining sites, plus "hundreds of miners at home, across Texas and elsewhere." Tr. Vol. 1 at 157:13–25. Mines are located in McKinney, Mansfield, Victoria, and Conroe, Texas. *Id.* at 157:1–5, 157:16–25, 180:17–19. A purchaser who accumulated seven hundred megahash could elect to receive a machine at home. Tr. Vol. 3 at 159:21–160:12. Hundreds of purchasers took physical delivery of mining hardware, and still received the exact same product. Tr. Vol. 1 at 183:6–9; Tr. Vol. 2 at 51:6–11. Mr. Gray performs the essential "ministerial functions for just keeping . . . the network online." Tr. Vol. 1 at 169:22–170:5. That includes acquiring ASICs, installing them, connecting them to the network, cooling them by immersion in oil, securing the premises, paying for the electricity, and repairing failures. *Id.*

Irrespective of who had physical possession of the mining hardware, the economic reality was the same and every purchaser received the exact same product: a pro-rata distribution of TXC. Tr. Vol. 1 at 187:1–9 (noting the only difference is "who is handling the infrastructural and logistical issues"); Tr. Vol. 3 at 160:25–161:5 (Mr. Sotak testifying that a home machine and a hosted one differ in no respect "[i]n terms of the underlying functions that are being performed"); 188:19–22 (Mr. Sotak testifying that home miners "performed those overhead functions that the pool operator otherwise would have"). The mining equipment, containers, and electrical infrastructure are owned by Mr. Gray personally. Tr. Vol. 2 at 39:5–12.

Blockchain Mint performed back-office work on behalf of MineTXC and manufactured physical coins that functioned as cold-storage digital wallets.[1] Tr. Vol. 1 at 88:12–89:2; *see id.* at

[1] While mining packages were generally sold through the MineTXC website, Tr. Vol. 1 at 168:17–19, for a brief period in 2024 they could also be purchased through the Blockchain Mint website by credit card, Tr. Vol. 2 at 4:3–19.

189:18–190:13. It is a doing-business-as name for Mr. Gray, registered with Collin County. *See* RX 68 (certificate bearing a checked box marked "individual"); Tr. Vol. 1 at 163:15–164:10. Like TEXITcoin and MineTXC, Blockchain Mint has no employees. Tr. Vol. 1 at 189:18–190:13.

TEXITcoin, MineTXC, Blockchain Mint, and Danager Resources are not legal entities. Tr. Vol. 1 at 138:6–15 (Mr. Gray confirming that none is a legal entity); Tr. Vol. 2 at 129:18–130:7 (Mr. Fuselier agreeing that TEXITcoin, Blockchain Mint, and MineTXC "are not entities that can be sued"). None is registered with the Texas Secretary of State. Tr. Vol. 1 at 138:16–23; TSSB Exs. 41–47. Because they are not legal entities, they possess no assets, liabilities, or capitalization. Tr. Vol. 1 at 163:9–14; Tr. Vol. 2 at 26:18–23 ("Q. As a nonentity, does [MineTXC] have assets, liabilities, and capitalization? A. No, it did not.").

B. The Mining Packages And Information Publicly Disclosed To Purchasers

Mining packages were enormously popular, with sales totaling nearly $150 million from more than 50,000 purchasers over approximately two years. TSSB Ex. 1 at 2; Tr. Vol. 1 at 202:14–17; Tr. Vol. 2 at 51:12–15; *see also* Order ¶ 14. Mr. Gray applied the proceeds to a few broad purposes: paying commissions, building the mines, advertising and promoting the coin, developers and security, administrative overhead, and cash reserves for liquidity. Tr. Vol. 1 at 188:19–189:3. The remaining money was retained by Mr. Gray as profit. *Id.*

All this information was disclosed. Before a purchaser paid anything, a great deal of information about the mining packages was publicly available. There are separate websites for TEXITcoin, MineTXC, Blockchain Mint, and a help page (collectively, "TXC Websites"). *See* TSSB Exs. 1 (MineTXC), 18 (Blockchain Mint), 22 (help center), 23 (TEXITcoin). MineTXC.com included a dashboard, updated regularly, that reported: the total hash power purchased and sold, total miners, average daily reward per miner, revenue, commissions, and a detailed use of funds. TSSB Ex. 1 at 1–2, 20–23; *see* Tr. Vol. 1 at 202:3–13. Those charts sat at

the top of the site, above the enrollment form, such that a prospective purchaser "had access" to all that information before registration. Tr. Vol. 1 at 103:19–21, 129:24–130:8. And because the dashboard reported performance as it happened, any technical issues at a mine were visible to the public in near-real time. Tr. Vol. 2 at 15:10–22 ("Q. [T]he reason [miners] could see [the failures] in real-time is because you chose to put information on the publicly available dashboard . . . ? A. That's right. That was my decision.").

The TXC Websites carried dozens of risk disclosures. Tr. Vol. 1 at 227:14–18 (Mr. Gray testified to several disclosures and stated "we probably did a hundred times as much as what we've just seen"). For example, the front page of the TEXITcoin.org site displayed the question "Is TXC a good investment?" and warned that: "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. There's a chance you can win big, but it's only a chance." TSSB Ex. 23 at 1. Similarly, an article on the MineTXC website advised that "there are no guarantees, and no, we will not sugar coat that . . . . We don't promise you riches. We promise a shot." TSSB Ex. 1 at 104 ("The Audacity of TEXITcoin"). Other articles likewise made clear that "TXC is not a get-rich-quick scheme," TSSB Ex. 1 at 145, and asked readers to "look closely. Ask questions. Scrutinize everything." TSSB Ex. 22 at 28 ("Green Flags, Red Flags, Risks and Rewards"). Even the Blockchain Mint site warned, "[d]on't buy more than you can afford to lose." TSSB Ex. 18 at 19.

Mr. Gray also held community calls on Zoom each week—Tuesdays for existing miners, Thursdays open to anyone. Tr. Vol. 1 at 196:9–15, 199:20–200:15. Both the Tuesday and Thursday Zoom calls were recorded and posted publicly on YouTube. *Id.* The calls frequently ran an hour or more, and consisted largely of unscripted discussion and questions from participants, which

Mr. Gray answered. Tr. Vol. 3 at 22:9–18; Tr. Vol. 1 at 197:21–198:8; *see also* Tr. Vol. 2 at 227:17–228:4 (Mr. Gamero agreeing that Mr. Gray answered "a lot of questions" on the calls).

Nor were the websites the only public source of information about Mr. Gray or the operation. The 2013 bankruptcy of his prior company, Mulligan Mint, was a proceeding in the Northern District of Texas whose certified docket is available on PACER, "which has federal records that are filed in courts." Tr. Vol. 2 at 118:6–16; TSSB Ex. 40. It was also "widely reported in the local news back in 2013"; the *Wall Street Journal* covered it under the headline "Fed Critic Mulligan Mint Files for Bankruptcy," naming "Mulligan Mint president, Rob Gray." RX 29; Tr. Vol. 2 at 10:21–11:8. Asked whether someone who "had even Googled [his] name" could have found it, Mr. Gray answered: "Yes. It was pretty easy to find." *Id.* at 11:15–21. And the registration status of the three other Respondents and Danager Resources was verifiable at any time through the Secretary of State's business-entity records. TSSB Exs. 41–47; Tr. Vol. 1 at 140:14–141:3.

On Mr. Gray's weekly calls, the individuals who ran the mines were identified "very frequently. In fact, they were regular guests on our calls"—and Mr. Gray disclosed when he terminated their employment. Tr. Vol. 2 at 26:5–13. He gave out the street address of the operation's headquarters and described the round-the-clock security there. RX 21B; Tr. Vol. 2 at 23:11–24:3. He publicized the locations of the mines. Tr. Vol. 2 at 13:6–17. He also disclosed issues with the mines as they arose. For example, on June 10, 2025, he told the community that four of the five L7 mining rigs at a site were offline. RX 15; Tr. Vol. 2 at 14:24–15:16. On August 19, 2025, he read aloud a member's question about the hardware replacement plan and answered it. RX 55B; Tr. Vol. 2 at 16:20–17:5. On September 2, 2025, he and a community member disagreed on air over whether a problem at the McKinney site was a firmware fault or a voltage fault, and resolved to test both. RX 21A; Tr. Vol. 2 at 19:6–20:8 ("[W]e were hashing out, so to speak, what was going wrong with the mine in public."). On November 18, 2025, he described an

overvoltage issue he was working through with the power company, along with a leaking immersion tank. RX 17; Tr. Vol. 2 at 20:20–21:1. And on January 13, 2026, four weeks before the Order issued, he reported that there was still no update at the Victoria site and that he had made personnel changes. RX 16; Tr. Vol. 2 at 21:12–25. Those were not the only such disclosures, but rather a representative sample of a pattern and practice of repeated, transparent disclosures about TEXITcoin's operations and personnel. Tr. Vol. 2 at 22:16–21 (Mr. Gray testifying that the examples were not "the full, complete, comprehensive set" because "[w]e would have talked about it almost every week").

Mr. Gray also disclosed the Mulligan Mint bankruptcy during calls, beginning no later than November 2024. Tr. Vol. 3 at 257:16–258:6 (Mr. Walsh, who joined in November 2024, learned of it on "a very early call" that month or the next, on which Mr. Gray "talked about it openly"); RX 26; Tr. Vol. 1 at 126:4–127:5. He discussed it on numerous occasions, including August 19, 2025. RX 55A; Tr. Vol. 2 at 4:24–6:10. On September 2, 2025, he told the community, "We have talked extensively about Mulligan Mint," directing anyone interested to a thread on the subject in the community's messaging group. TSSB Ex. 131; Tr. Vol. 2 at 7:21–8:3. Mr. Block, a purchaser and TSSB witness, learned of the bankruptcy from the calls, *id.* at 274:21–275:2, and agreed that Mr. Gray "didn't conceal that information," Tr. Vol. 3 at 22:3–8.

If, after having had the opportunity to review the websites and disclosures and to listen to the calls, a purchaser decided to buy a mining package, he was mailed an instruction manual and a cold storage wallet. TSSB Ex. 61; Tr. Vol. 1 at 88:12–89:2, 198:9–199:14. Thereafter, in that wallet, a purchaser received newly mined TXC each day, in an amount fixed by published formula: his allocated hash power, divided by the total megahash sold, multiplied by the total number of coins the mine produced that day. TSSB Ex. 22 at 31; Tr. Vol. 3 at 150:14–19. It was "paid out programmatically every day from the mine." Tr. Vol. 1 at 172:14–16. Once credited, the coin was

the purchaser's, beyond Mr. Gray's power to recall or modify. Tr. Vol. 1 at 188:11–15 ("The miner controls it. There's no way for us to take it back or—or modify it in any way. It's permanent.").

The flow of information did not stop at the sale. Purchasers could join a Telegram group of six or seven thousand active participants, organized into topic threads, where members discussed the project among themselves and with Mr. Gray. Tr. Vol. 2 at 8:4–22. The thread to which Mr. Gray pointed the community on the September 2 call, "Philosophy and Character," was created because questions about the bankruptcy recurred, and rather than "answering the question again and again and again," he directed people there. *Id.* He posted "links," "videos," and "references to bankruptcy court documents and other things that I thought would be helpful for people to go and evaluate [draw] their own conclusions about what really happened in that bankruptcy." *Id.* at 8:23–9:3; *accord* Tr. Vol. 3 at 258:7–18 (Mr. Walsh confirming that Mr. Gray "had actually at one point posted the—the actual documents so that everybody could read them for themselves if they wanted to"). Purchasers could also see the mines for themselves. Tours were held regularly, and visitors "stopped by unannounced and unscheduled . . . to check out the mines." Tr. Vol. 2 at 12:20–13:5; *see also* Tr. Vol. 3 at 67:10–15 (Mr. Nickel confirming that purchasers could tour the facility). Videos of the sites went to the community and to the operation's social media channels. Tr. Vol. 2 at 25:7–19.

Significantly, Mr. Walsh summarized what nearly two years of attending the calls had shown him: Mr. Gray "prided himself on being a very, very transparent person," and "openly talks about the good and the bad that happens from a weekly basis on those calls." Tr. Vol. 3 at 258:19–259:3.

Mr. Gray also plainly disclosed that purchasers were not entitled to receive anything beyond their daily distribution of TXC. They did not receive an ownership stake, share of earnings, or claim on any revenue. Tr. Vol. 1 at 173:3–7 ("Q. Did they have any other property right,

ownership stake, share, or interest in TEXITcoin, MineTXC, or Blockchain Mint? A. No never."). This was both disclosed on the MineTXC website and commonly understood by purchasers. *See, e.g.*, TSSB Ex. 1 at 4 (identifying only TXC under heading "What's in it for you"); Tr. Vol. 2 at 188:13–22 (Mr. Hesse agreeing that "the thing that [he] got from the mining package was TXC," that he had no "ownership stake in some entity," and that "all [he] expected to get from [his] mining package was [his] daily supply of TXC"); *id.* at 258:21–25 (Mr. Hinson agreeing he never believed himself "entitled to any profits of MineTXC" and expected only "the daily that was deposited in [his] wallet"). The TSSB's own investigator, Mr. Fuselier, agreed. Tr. Vol. 2 at 143:25–144:21 (acknowledging that a purchaser only "ended up with . . . TXC," held no "ownership stake or share or right to stream of profits or anything like that," and that the mining packages "didn't confer any rights to any profits of a company or entity.").

Mr. Gray occasionally expressed optimism, including aspirational goals of price targets, for the future value of the TXC *coin*—which were unrelated to any separate value of the mining packages. *See* TSSB Ex. 1 at 26 ("The Path to $16 by February 2026"), 63 ("The Path to $80 by February 2026"), and 72 ("Your Path to TXC Millionaire"). Mr. Gray also used phrases common in the crypto industry, such as getting a "seat on the rocket ship" and "[t]hat this might go to the Moon," Tr. Vol. 1 at 219:2–5; *id.* at 219:6–20 ("TEXITcoin is our vehicle. It's our rocket. It could take us to the Moon. It could take us into the stars or we could crash and burn on it. We don't really know."). These were "representations based on what could happen if the project went well"—a hope that the market would come to value the coin as he did. Tr. Vol. 1 at 112:19–22. But Mr. Gray never guaranteed a profit. *Id.* at 206:25–207:3.

C. The Purported Bases For The TSSB's Allegations

On February 11, 2026, the TSSB entered Emergency Cease and Desist Order No. ENF-26-CDO-1893 against TEXITcoin, MineTXC, Blockchain Mint, and Mr. Gray. Given the purported

"emergency" posture of the Order, it issued without any prior notice or a hearing. *See* Tr. Vol. 2 at 10:13–17, 32:6–15.

The Order alleges that all Respondents sold mining packages in violation of the TSA. Specifically, the TSSB alleges that mining packages are "securities as that term is defined in Section 4001.068 of the Securities Act"; that Respondents violated Section 4003.001 by offering unregistered securities; and that they violated Section 4004.051 by acting as unregistered dealers or agents.

The Order separately alleges that Respondents engaged in "fraud in connection with the offer for the sale of securities," Conclusion of Law ¶ 4, by intentionally failing to disclose certain information. *See id.* ¶¶ 1–3, 5–6; *see also* Order, Findings of Fact ¶¶ 28–33. The Order identifies no affirmative false statement. Its single allegation of a misleading statement is that Respondents represented they were paying bonuses and commissions to sales agents, which the Order deems misleading because unregistered persons offering securities violate Section 4004.051 and unregistered securities violate Section 4003.001. *Id.* ¶ 33. Rather, the Order rests its fraud allegations on omissions, without identifying any corresponding duty of disclosure.

The Order alleges that Respondents intentionally failed to disclose that an unrelated company formerly operated by Mr. Gray, Mulligan Mint, filed for Chapter 11 bankruptcy in 2013. Order ¶ 28. It alleges that Respondents intentionally failed to disclose information concerning MineTXC's "assets, liabilities, and capitalization." *Id.* ¶ 29. It alleges that Respondents intentionally failed to disclose information concerning Danager Resources, such as its assets and liabilities, despite the fact that it was only an assumed name for Mr. Gray. *Id.* ¶ 30. It alleges that Respondents intentionally failed to disclose the identity and qualifications of the persons managing the mining facilities, the "strategy or procedures for overcoming hardware failures, power outages or network disconnections," and information about premises security. *Id.* ¶ 31. And it alleges that

Respondents failed to disclose that TEXITcoin, MineTXC, Blockchain Mint and Danager Resources were "not registered with the Texas Secretary of State or authorized to transact business in the state of Texas" notwithstanding the fact that they were not entities, there was no representation they *were* registered with the Texas Secretary of State, and there was no requirement for them to be registered with the Texas Secretary of State. *See* Order ¶¶ 28–32.

D. Relevant Procedural History

On February 20, 2026, Respondents requested a hearing pursuant to Section 4007.104(c) and waived the requirement that the hearing be held within ten days. Notice of Hearing ¶¶ 4–6. The Enforcement Division issued its Notice of Hearing on March 18, 2026, and the matter was referred to the State Office of Administrative Hearings as Docket No. 312-26-14427. In the Notice of Hearing, the TSSB requested—for the first time—that Respondents be ordered to refund all purchasers who bought on or after September 1, 2019. *Id.* at 2. The Order itself sought no such refund. *See generally* Order.

On July 8, 2026, Respondents moved for summary disposition. The ALJ denied the motion on July 27, 2026, concluding that the record then before her presented "disputed facts and competing inferences concerning the nature of the transactions, purchasers' expectations, the role of Respondents in the enterprise, the representations made to investors, and the materiality of the alleged omissions or misrepresentations." Order Denying Mot. Summ. Disp. at 1–2.

The hearing on the merits was held August 17 through August 20, 2026. During the four-day hearing, the TSSB called seven witnesses: Mr. Gray (who was not compelled to testify but did so voluntarily); its investigator, Mr. Fuselier; and five purchasers of mining packages. Respondents called a records custodian, Marianne Escalante; their expert, Andrew Sotak; and Stephen Walsh, a member of the TEXITcoin community.

E. Summary Of Hearing Testimony

1. Robert J. Gray

Mr. Gray was the TSSB's first witness. He was not subpoenaed but appeared voluntarily. He described launching TEXITcoin in January 2024 and mining the first block that month from his home in McKinney. Tr. Vol. 1 at 153:11–12, 154:18–21. He explained how the network works, what hash power is, and how miners combine their hash power in a pool. *Id.* at 156:13–20, 169:4–171:2. He described the mining packages—a one-time payment, three price levels, and a nine-seat cap he imposed because he "didn't want anyone to put any more money at risk than [he] was really comfortable with," and no contract of any kind. *Id.* at 32:7–21, 168:17–169:3, 175:1–176:3. He testified that a purchaser received a daily allocation of TXC calculated by a published formula and nothing else—no ownership stake, share of earnings, or claim on any revenue. *Id.* at 172:14–173:7, 176:21–178:14.

Mr. Gray described extensive disclosures: weekly community calls posted publicly to YouTube, a Telegram group with a thread devoted to integrity issues including his prior bankruptcy, a real-time dashboard reporting the mine's performance and the operation's finances, and risk language across four websites. *Id.* at 199:1–200:15, 201:1–206:16; Tr. Vol. 2 at 8:4–9:3.

Mr. Gray testified that TEXITcoin, MineTXC, and Blockchain Mint are names rather than entities, that none has assets or liabilities, and that the equipment is his personally. Tr. Vol. 1 at 162:21–164:16, 166:18–21. He testified that he did not believe he was selling securities, "[n]o, and I still don't today," and that he had registered nothing because "Bitcoin wasn't registered" and that "seemed to have worked fine for that project." *Id.* at 143:20–23, 164:21–165:5.

2. Phillip Fuselier

Mr. Fuselier is a financial examiner in the TSSB's Enforcement Division. Tr. Vol. 2 at 66:3–10, 125:14–21. He opened the investigation in or about March 2025 after hearing a radio

advertisement for TEXITcoin, and he collected substantially all the evidence himself. *Id.* at 66:1–70:12, 71:1–14. He preserved captures of the websites, roughly ninety recordings of community calls, and social media profiles and posts across several platforms, and he certified bankruptcy records from PACER. *Id.* at 69:1–72:9, 118:6–16. He communicated undercover with people promoting mining packages and he interviewed purchasers. *Id.* at 72:4–9, 139:13–20. He had input into the drafting of the Order and reviewed drafts of it. *Id.* at 126:1–9.

Mr. Fuselier testified that he never contacted Mr. Gray—that he didn't issue any subpoena or seek an interview. *Id.* at 125:22–25, 126:13–16. Nor, in his eleven-month investigation, did he subpoena or otherwise try to obtain records from any Respondent, before or after the Order issued, although he could have. *Id.* at 135:5–14. Asked why, he said the TSSB feared Mr. Gray "might abscond with assets and leave the country and not come back, based on his prior actions"—then acknowledged that Mr. Gray had stolen no money in this case, that no money was missing, and that he was not suggesting Mr. Gray had stolen money or absconded in connection with the Mulligan Mint bankruptcy. *Id.* at 127:2–23. Mr. Fuselier also never visited a mining site, although he could have. *Id.* at 155:6–14.

On cross-examination, Mr. Fuselier acknowledged that the Order's allegation that investors never receive mining hardware is *false*; that there was no contract and no fiduciary relationship between Mr. Gray and any purchaser; that the Order alleges no false statement by anyone; that TEXITcoin, MineTXC, and Blockchain Mint are not entities capable of being sued; that there is no allegation that Mr. Gray guaranteed profits; and that neither TEXITcoin nor Blockchain Mint offered mining packages for sale. *Id.* at 122:25–124:6, 124:18–20, 129:18–132:4, 136:23–137:11. He also acknowledged that the information the Order alleges was concealed had, in fact, been disclosed, and that he knew of these disclosures before the Order issued. *Id.* at 147:8–156:2. His testimony on the alleged omissions is summarized below:

Allegation In Cease & Desist Order	Contradictory Testimony From Mr. Fuselier
"Investors never receive any mining hardware or control over mining hardware." Order ¶ 16.	"Q. The cease and desist order says in the final sentence of paragraph 16, Investors never receive any mining hardware or control over mining hardware. Do you see that? A. Yes. Q. That one is false, right? A. We now know that there were exceptions to that. Q. Let me try to say that again. You now know that allegation is false? A. Correct. Q. Because some purchasers did get at-home mining equipment? A. Yes." Tr. Vol. 2 at 136:23–137:11.
"In addition to other payment methods, Respondents are offering investors the opportunity to make their initial investment in the Mining Packages by paper check. Investors who select this method are directed to make their check payable to 'Danager Resources.'" Order ¶ 19. "In connection with the offer and sale of the Mining Packages, Respondents are directing investors that choose to pay via paper check to mail payments to Danager Resources while intentionally failing to disclose . . . [i]nformation about Danager Resources." Order ¶ 30.	"Q. And then I want to ask you about paragraph 19 because you've got a part in here about checks payable to Danager Resources. Did you interview anyone who actually paid by check? A. No. Q. So there's no one that told you that would have been material to them, this information about Danager Resources? A. No." Tr. Vol. 2 at 139:13–21.

Allegation In Cease & Desist Order	Contradictory Testimony From Mr. Fuselier
"In connection with the offer and sale of the Mining Packages, Respondents are touting Respondent Gray's experience but are intentionally failing to disclose that on or about September 13, 2013, Respondent Gray's company, Mulligan Mint Inc., filed for Chapter 11 bankruptcy in United States Bankruptcy Court." Order ¶ 28.	"Q. One of the pieces of information that is alleged to have been omitted is a Mulligan Mint bankruptcy, correct? A. Correct. Q. Okay. We're not going to go over all of it. You have seen evidence as you sat here over the past two days of statements that Mr. Gray made about the Mulligan Mint bankruptcy, right? A. Right. Q. Okay. Were you aware of those statements before filing the cease and desist? A. Yes. Q. Okay. And notwithstanding those statements, the cease and desist included the allegation that Mr. Gray intentionally concealed the Mulligan Mint bankruptcy? A. Yes." Tr. Vol. 2 at 150:17–151:8.
"In connection with the offer and sale of the Mining Packages, Respondents are intentionally failing to disclose information about Respondent MineTXC's assets, liabilities, and capitalization." Order ¶ 29.	"Q. The order alleges that respondents didn't disclose information about MineTXC's assets, liabilities, and capitalization, right? A. Yes Q. So, to the extent that they actually had assets, liabilities, and capitalization, that information was disclosed on their website? A. Yes." Tr. Vol. 2 at 151:23–152:1; 153:2–5.

Allegation In Cease & Desist Order	Contradictory Testimony From Mr. Fuselier
"In connection with the offer and sale of Mining Packages, Respondents are intentionally failing to disclose . . . [t]heir strategy or procedures for overcoming hardware failures, power outages or network disconnections." Order ¶ 31B.	"Q. Great. Okay. The order alleges that there was a failure – an intentional failure to disclose information about strategies and procedures for overcoming hardware failures, power outages and network disconnections. Are you familiar with that? A. Yes. Q. In fact, you're aware of evidence that Mr. Gray did disclose those very same things, correct? A. On the Zoom calls? Q. Yes, sir. A. Yes. Q. Okay. So you are aware of evidence that those were disclosed? A. Yes. Q. But it's still included in the cease and desist order? A. Yes. Q. Were you aware of that evidence before the cease and desist order was filed? A. Yes." Tr. Vol. 2 at 153:6–25.

Allegation In Cease & Desist Order	Contradictory Testimony From Mr. Fuselier
"In connection with the offer and sale of Mining Packages, Respondents are intentionally failing to disclose . . . [i]nformation about the security of the premises of its cryptocurrency mining farms, its data centers, and any other facility that maintains custody of hardware involved in cryptocurrency mining." Order ¶ 31C.	"Q. The order alleges that respondents failed to disclose information about the location and security of the mining premises. Are you familiar with that? A. Yes. Q. But you are aware of evidence that Mr. Gray disclosed exactly that information, right? A. Yes. Q. So that's information that was disclosed, and did you know about that before the cease and desist was filed? A. Yes." Tr. Vol. 2 at 154:1–11.

The TSSB did not redirect Mr. Fuselier on any of these admissions.

3. Marcus Hesse

Mr. Hesse lives in North Carolina and works as an IT professional and systems engineer. Tr. Vol. 2 at 163:4–9. He has experience with cryptocurrency—"buying, selling, trading, staking and consumer-level types of interaction"—and does not mine at home because his thousand-square-foot townhome lacks the space and power for it. *Id.* at 164:8–15.

He testified that he first saw TEXITcoin on the daily price charts on CryptoMarketCap.com, and first heard about it by word of mouth. *Id.* at 164:18–165:7. He bought two packages on Thanksgiving Day 2025 for roughly $1,990, paying in cryptocurrency through Robinhood after declining an offer to pay by paper check through his aunt. *Id.* at 166:2–25.

Before buying, he spoke with his aunt, looked at the website, and read a Reddit thread discussing whether the project was "real or a scam." *Id.* at 184:5–13. He testified that all he expected to receive was his daily supply of TXC, that he held no ownership stake in any entity,

and that he had never thought of buying cryptocurrency as a securities transaction. *Id.* at 188:3–22, 199:8–14.

4. Charles Gamero

Mr. Gamero lives in Liberty Hill, Texas, and serves with the Texas Army National Guard on state active duty. Tr. Vol. 2 at 202:24–203:4. He testified by videoconference on the second day. *Id.* at 202:13–15.

Mr. Gamero testified that he had no background in cryptocurrency, though he had previously bought Bitcoin, XRP, and Cardano. *Id.* at 203:5–13. He heard about TEXITcoin through military friends, and passed it along "as a good opportunity." *Id.* at 203:14–17. He testified that he was unable to work out how to buy a package himself, so he sent money to two other purchasers and then to TEXIT Rangers, who "would purchase the mine on [his] behalf." *Id.* at 206:4–12, 219:14–22. In total, he bought seven packages for himself. *Id.* at 205:15–206:3.

Mr. Gamero agreed that he could have bought TXC on an exchange instead of buying a package, and that either way he "ended up with a coin," nothing more. *Id.* at 223:5–19. He understood that the price figures discussed on the community calls "were hopes" rather than promises or guarantees, *id.* at 226:14–18, and that the only way to profit was to sell or trade his TXC, *id.* at 223:5–8. He testified that he was upset because the market price had fallen and because there would be no further adoption "because of the cease and desist order." *See id.* at 234:1–6.

Mr. Gamero testified that he had previously filed for personal bankruptcy, and that he does not disclose this information to his consulting clients, an omission he does not regard as fraudulent. *Id.* at 228:25–230:10.

5. Bret Hinson

Mr. Hinson first purchased a mining package in mid-to-late August 2025. Tr. Vol. 2 at 238:8–11. He paid by Venmo and had never heard of Danager Resources. *Id.* at 246:1–9. He

understood that cryptocurrency is volatile and agreed that buying it was "basically taking a flyer." *Id.* at 249:7–15. He had seen the website's use-of-funds chart. *Id.* at 250:2–253:19. And he understood that he was entitled only to the daily TXC deposited in his wallet, not to any profits of MineTXC. *Id.* at 258:21–25.

6. Greg Block

Mr. Block first purchased three mining seats on September 13, 2025. Tr. Vol. 2 at 267:7–8. He knew of the Mulligan Mint bankruptcy from the community calls, and he agreed that Mr. Gray "didn't conceal" it and answered "a lot of questions" on the calls. *Id.* at 274:21–275:2; Tr. Vol. 3 at 22:3–14. His own demand letter to Respondents relied on Mr. Gray's "public disclosures" about management and liquidity issues. Tr. Vol. 3 at 41:3–14. Confronted with his own personal bankruptcy filing in 1997, including via a Chapter 7 petition bearing his name and Social Security number, he claimed not to recall whether he had ever declared bankruptcy, or whether or not he had ever disclosed such a bankruptcy to a commercial counterparty. *Id.* at 42:5–10, 43:14–46:21. Before his testimony concluded, Respondents offered the TSSB the opportunity to withdraw Mr. Block's testimony rather than sponsor perjury, but the TSSB declined. *Id.* at 53:11–16, 55:13–56:3.

7. Nike Nickel

Mr. Nickel purchased his first mining seat in approximately June 2025, and he separately bought TXC on a public exchange. Tr. Vol. 3 at 61:11–18, 90:19–25. He testified that he lost about $205,000 when he sold, for 70 to 80 cents per coin, TXC he had acquired at an average cost of about $4. *Id.* at 64:12–19. He still receives TXC daily. *Id.* at 65:5–8. He was told he could schedule a tour of a mining facility, but he never did. *Id.* at 67:10–15. He agreed that what he ended up with from both his exchange purchases and his mining package "was just coins." *Id.* at 90:19–25. After

Mr. Nickel repeatedly failed to answer questions posed by Respondents' counsel, the Court admonished him to answer the questions asked. *Id.* at 81:14–24.

8. Marianne Escalante

Ms. Escalante, a member of Mr. Gray's administrative team, authenticated Respondents' business records, including mining package sales records (RX 1), the list of unique miners (RX 3), the commission records (RX 4), and the home-miner shipment log and related records (RX 49–51). Tr. Vol. 3 at 102:22–116:6, 120:7–14.

9. Andrew Sotak

Mr. Sotak is a forensic accountant and a Senior Managing Director at Ankura Consulting who specializes in crypto-asset investigations. Tr. Vol. 3 at 132:11–15. He opined that TXC has the characteristics of a digital commodity, like the Bitcoin, Dogecoin, and Litecoin examples in the SEC's guidance, and he was not aware of the TSSB disputing that point. *Id.* at 150:20–151:14. He opined that mining package purchasers joined a mining pool, that MineTXC acted as the pool operator, and that the pool operator's functions were ministerial because "the profit is derived from the computational power itself, not from plugging things in." *Id.* at 151:15–18, 158:11–22, 230:5–21. Applying ASC 606 under U.S. GAAP, Mr. Sotak opined that a mining package is a contract for services rather than an equity interest, because the purchaser receives no "share or . . . some promise or right to future profits in any organization or entity," only MineTXC's "satisfied performance obligation" to deliver "their daily output pro rata from the mine." *Id.* at 174:2–176:23.

Finally, he independently verified that the network's hash power grew over time, found no pre-mine, and confirmed that MineTXC ordered more hash power (29.9 terahash) than purchasers acquired (23.3 terahash). *Id.* at 156:8–157:13, 168:7–19, 196:22–197:2.

10. Steve Walsh

Mr. Walsh joined the TEXITcoin community in November 2024. Tr. Vol. 3 at 257:20–258:6. He did not think he was buying an ownership share of any company; what he bought was hash power that translated into TXC. *Id.* at 240:12–23. He learned of the Mulligan Mint bankruptcy on a late-2024 call on which Mr. Gray "talked about it openly," and he testified that a Telegram sub-chat where Mr. Gray posted the bankruptcy court documents "existed way before [he] got there." *Id.* at 257:16–258:18. He described the project's transparency as unmatched by "another business in the world," and he testified that he does not believe Mr. Gray lied to or deceived him or anyone else in the community. *Id.* at 258:19–259:9; Tr. Vol. 4 at 19:8–16.

LEGAL STANDARD

The TSA permits the TSSB to issue an emergency cease and desist order only if two prerequisites are met. First, the TSSB must "reasonably believe[]" that the person is engaging in or about to engage in "fraud or a fraudulent practice" in connection with the offer or sale of a security, "has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public," or "is engaging or is about to engage in an act or practice that violates this title or a board rule." TEX. GOV'T CODE § 4007.104(a)(1)–(3). Second, the TSSB must determine that "the conduct, act, or practice threatens immediate and irreparable harm." *Id.* § 4007.104(a).

At the hearing, the TSSB "has the burden of proof and must present evidence in support of the emergency order," *id.* § 4007.104(d). "There is no presumption in favor of the Commissioner's findings and the test is not whether the Commissioner's findings are supported by substantial evidence." *Clayton Brokerage Co. of St. Louis v. Mouer*, 520 S.W.2d 802, 804 (Tex. Civ. App.—Austin), *writ ref'd n.r.e.* (July 7, 1975), *cause dismissed*, 531 S.W.2d 805 (Tex. 1975). Accordingly, a respondent prevails if the agency has not carried its burden. *See Coal. of Cities for*

Affordable Util. Rates v. Pub. Util. Comm'n of Tex., 798 S.W.2d 560, 563–64 (Tex. 1990) ("A party who fails to meet its burden of proof loses."); *see also Bank of Am., N.A. v. Groff*, 2021 WL 98559, at *5 (Tex. App.—Houston [14th Dist.] Jan. 12, 2021, no pet.) (party opposing an emergency order "can prevail simply by persuading the factfinder that [the opposing party] has not met [its] burden.").

Following the hearing, the ALJ issues a proposal for decision containing findings of fact and conclusions of law. TEX. GOV'T CODE § 2001.141. Those findings may rest only on the evidence admitted at the hearing and on matters officially noticed. *See id.* § 2001.141(c). Thereafter, the Securities Commissioner "shall affirm, modify, or set aside, wholly or partly, the emergency order." *Id.* § 4007.104(e).

ARGUMENT

I. RESPONDENTS DID NOT COMMIT FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF THE MINING PACKAGES

The TSSB utterly failed to meet its burden of proving its fraud allegations. *Id.* § 4007.104(d). It adduced no evidence whatsoever to support any element of those claims. *See Coal. of Cities for Affordable Util. Rates*, 798 S.W.2d at 563–64 ("A party who fails to meet its burden of proof loses."). The TSA defines "fraud" 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) (emphasis added). Texas courts "extend the definition of common law fraud to the practices enumerated" in Section 4001.058 of the TSA. *Rio Grande Oil Co. v. State*, 539 S.W.2d 917, 921 (Tex. Civ. App.—Austin 1976), *writ ref'd n.r.e.* (Dec. 1, 1976).[2]

[2] Even if this clear law were not binding on the Court, the TSA's fraud definition states that "[n]othing in this section limits the full meaning of 'fraud,' 'fraudulent,' or 'fraudulent practice'

The Order does not allege any misrepresentations or false promises. Thus, to establish fraud by nondisclosure, the TSSB is required to prove each of the following elements: "(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." *Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 219–20 (Tex. 2019).

The TSSB has come nowhere close to meeting its burden. Across four hearing days, the TSSB drew from literally hundreds of hours of Mr. Gray's recorded Zoom calls and thousands of pages of written materials. Yet, the TSSB was unable to identify a ***single*** false statement. Its own investigator, Mr. Fuselier, confirmed there is "no allegation" that Mr. Gray "affirmatively lied or made a false statement." Tr. Vol. 2 at 122:25–123:4. Nonetheless, the Order alleges the following information the TSSB claims Respondents intentionally failed to disclose:

1. That "on or about September 13, 2013, Respondent Gray's company, Mulligan Mint Inc., filed for Chapter 11 bankruptcy," which "was ultimately converted to a Chapter 7 liquidation bankruptcy and closed on or about March 1, 2021," while "touting Respondent Gray's experience";

2. "[I]nformation about Respondent MineTXC's assets, liabilities, and capitalization";

3. "[I]nformation about Danager Resources' assets, liabilities, and capitalization"; "[t]he identity, business repute and experience of the owners or principals of Danager Resources"; "[i]nformation about Danager Resources' relationship to Respondents"; and "[i]nformation about Danager

as applied or accepted in courts." TEX. GOV'T CODE § 4001.058(b). Accordingly, the anti-fraud provisions of the TSA are meant to be interpreted in harmony with state and federal definitions. *See In re Westcap Enters.*, 230 F.3d 717, 726 (5th Cir. 2000) ("[B]ecause the Texas Securities Act is so similar to the federal Securities Exchange Act, Texas courts look to decisions of the federal courts to aid in the interpretation of the Texas Act." (cleaned up)); *Sterling Trust Co. v. Adderley*, 168 S.W.3d 835, 840 (Tex. 2005)—despite the TSSB's apparent belief otherwise.

Resources control of investor funds, where those funds will be held and what custodial safeguards have been implemented";

4. "[T]he identity, business repute, or qualifications of the persons responsible for managing the operations of each of Respondent MineTXC's cryptocurrency mining farms and data centers"; "[t]heir strategy or procedures for overcoming hardware failures, power outages or network disconnections"; and "[i]nformation about the security of the premises of its cryptocurrency mining farms, its data centers, and any other facility that maintains custody of hardware involved in cryptocurrency mining"; and

5. That TEXITcoin, MineTXC, Blockchain Mint, and Danager Resources "are not registered with the Texas Secretary of State or authorized to transact business in" Texas.

Order ¶¶ 28–32.

The evidence and testimony adduced at the hearing show that the TSSB's fraud allegations are frivolous. But rather than withdraw allegations that the TSSB knows to be false—and which its own investigator testified that he knew to be false before the Order was issued—the TSSB has persisted in pursuing claims with no basis in law or fact. As Respondents urged at the conclusion of the hearing, the Court should dismiss these allegations immediately. Tr. Vol. 4 at 57:3–10.

The fraud allegations fail at the outset because the mining packages are not securities and, accordingly, are not subject to the anti-fraud provisions of the TSA. *See infra* § II. But even were the Court to determine otherwise, it is obvious that Respondents did not commit fraud and the TSSB's allegations fail on their own terms. The TSSB failed to prove that Respondents had a duty to disclose, while conceding that Respondents never lied or affirmatively misrepresented anything. Indeed, the overwhelming evidence proved that Respondents repeatedly disclosed the very information they are accused of intentionally concealing. The TSSB introduced no evidence of any intent to conceal, and failed to establish that any alleged omission was material to a reasonable purchaser. And if that were not enough, the TSSB failed to show any evidence that any purchaser lacked an equal opportunity to discover the allegedly omitted facts with ordinary diligence.

Simply put, the fraud allegations cannot stand. The Court should find that the fraud allegations are both frivolous and unsubstantiated, and reject Findings of Fact Nos. 28–33 in addition to Conclusions of Law Nos. 4–7.

A. Respondents Had No Duty To Disclose

Respondents had no affirmative obligation to disclose any specific information to purchasers of the mining packages, and the TSSB did not prove otherwise. A duty of disclosure could arise from only three possible places: (1) the TSA; (2) the common-law duty of a confidential or fiduciary relationship; or (3) a duty to disclose arising out of a half-truth. None applies here.

The plain meaning of the TSA required the TSSB to allege and prove a duty to disclose. That is, to intentionally fail to disclose a fact, one must have an antecedent duty of disclosure. *See* TEX. GOV'T CODE § 4001.058(a)(3). The Texas Supreme Court has made clear that "a duty to disclose" is an element of a fraud claim. *Bombardier Aerospace*, 572 S.W.3d at 219–20; *see also Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 562 (Tex. 2019) ("As a general rule, a failure to disclose information does not constitute fraud unless there is a duty to disclose the information."); *Fleming v. Tex. Coastal Bank*, 67 S.W.3d 459, 461–62 & n.2 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (non-disclosure is "neither fraudulent nor negligent unless there is a duty to disclose"). Federal securities anti-fraud law is in accord. *See Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 174 (1994) ("When an allegation of fraud is based upon nondisclosure, there can be no fraud absent a duty to speak.").

The TSA did not impose a duty of disclosure on Respondents. Section 4001.058 defines fraud to include, in relevant part, "an intentional failure to disclose a material fact," TEX. GOV'T CODE § 4001.058(a)(3). Here, the statute itself does not provide any explicit duty to disclose. Furthermore, where the TSA affirmatively requires disclosure, it says so expressly. *See, e.g.*, *id.*

§ 4003.002 (issuer seeking a permit must file specified materials with the Commissioner). Nowhere does it oblige a seller to volunteer specific identifiable facts to purchasers, and the Order does not allege Respondents concealed anything by failing to register.

Texas's common law similarly did not impose a duty to disclose on Respondents. Texas courts look to common-law fraud when interpreting the TSA. *Rio Grande Oil*, 539 S.W.2d at 921 (using common-law fraud to analyze TSA's anti-fraud provision); *cf.* TEX. GOV'T CODE § 311.023(4) (in construing a statute—"whether or not the statute is considered ambiguous on its face"—the court may consider "common law . . . including laws on the same or similar subjects"). The Texas Supreme Court recognizes that only confidential or fiduciary relationships can give rise to a duty of disclosure. *See Bombardier Aerospace*, 572 S.W.3d at 220 ("In general, there is no duty to disclose without evidence of a confidential or fiduciary relationship."). Each is a demanding standard: "a fiduciary owes a duty of full disclosure of matters concerning the parties' interests and a strict duty of candor and good faith," *id.* at 231, while a confidential relationship is a "special relationship of trust and confidence" in which "parties have dealt with each other in such a manner for a long period of time that one party is justified in expecting the other to act in its best interest," *id.* at 220; *see also Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998) ("[N]o duty of disclosure arises without evidence of a confidential or fiduciary relationship."); *Fleming*, 67 S.W.3d at 461–62 n.2 (finding defendant did not owe duty to disclose because no fiduciary relationship existed between the parties). Absent such a relationship, "mere silence does not amount to fraud or misrepresentation." *Imperial Premium Fin., Inc. v. Khoury*, 129 F.3d 347, 352 (5th Cir. 1997) (reversing jury verdict imposing nondisclosure liability where no "fiduciary or confidential relationship exist[ed]").

Here, Respondents did not maintain a confidential or fiduciary relationship with purchasers of the mining packages—nor did the TSSB allege such a relationship. *See* Order ¶¶ 28–33. The

TSSB did not introduce any evidence of a confidential or fiduciary relationship, and no witness testified to any belief of a confidential or fiduciary relationship with Respondents. In fact, Mr. Fuselier *agreed* that Respondents did not "assume[] any fiduciary-like relationship with purchasers," Tr. Vol. 2 at 123:11–16, nor "assume[] a contractual duty of disclosure," *id.* at 123:17–124:6. Consistent with Mr. Fuselier's testimony, the record reflects an arm's-length business relationship: a potential purchaser went to a website, filled out a form, and paid. Tr. Vol. 1 at 168:17–169:3. They signed no contract. Tr. Vol. 2 at 235:13–16. And once a miner received their allocation of TXC, Respondents had no control over it. Tr. Vol. 1 at 188:11–15. Accordingly, the lack of a confidential or fiduciary relationship that could form the basis of a duty to disclose *alone* requires that the fraud allegations be found unsubstantiated and set aside. *See Wilemon v. Brownlie*, 2025 WL 3039140, at *7–9 (Tex. App.—Fort Worth Oct. 30, 2025, no pet.) (affirming no-evidence summary judgment on fraud claims).[3]

B. Respondents Affirmatively Disclosed Every Alleged Omission

Even were there a duty to disclose, which there was not, there is no evidence that Respondents "deliberately failed to disclose material facts." *Bombardier*, 572 S.W.3d at 219. In fact, Respondents *disclosed every item of information* the TSSB alleges they intentionally concealed. Worse, the TSSB knew of these disclosures before issuing the Order, yet still forged ahead with its concededly false theory. This independently warrants dismissal of the fraud allegations.

[3] Although some courts have recognized a duty may arise where a "partial disclosure . . . triggered a duty to say more," *see Mercedes-Benz*, 583 S.W.3d at 561, the omission must render an affirmative statement misleading. *See, e.g.*, *Sharpe v. Lyft, Inc.*, 2024 WL 278913, at *3 (S.D. Tex. Jan. 10, 2024). The TSSB conceded that Respondents made no affirmative misstatement, rendering a "half-truth" theory unworkable. *See* Tr. Vol. 2 at 122:25–123:10.

1. The Mulligan Mint Bankruptcy

The Order alleges that Respondents intentionally failed to disclose the 2013 bankruptcy of Mr. Gray's prior company, Mulligan Mint. *See* Order ¶ 28. But Mr. Gray disclosed the Mulligan Mint bankruptcy repeatedly and candidly, including on recorded Zoom calls that were made publicly available on YouTube. Tr. Vol. 1 at 199:20–200:15; Tr. Vol. 2 at 6:1–6, 10:1–6. For example, Respondents introduced evidence that disclosures of the bankruptcy were made in November 2024. *See* RX 26; Tr. Vol. 1 at 126:4–127:3. Mr. Gray again discussed the bankruptcy in August and September 2025. *See* RX 55A; Tr. Vol. 2 at 4:24–6:10; TSSB Ex. 131; Tr. Vol. 2 at 7:21–8:3. And Mr. Fuselier admitted that the TSSB was "aware of [Mr. Gray's disclosures] before filing the cease and desist." *Id.* at 150:17–151:3.

Mr. Gray also directed those who were interested in learning more to a Telegram chat where he provided even more detail about the bankruptcy. *See* TSSB Ex. 131; Tr. Vol. 2 at 7:21–8:3 (Mr. Gray stating publicly, "We have talked extensively about Mulligan Mint," and directing anyone interested to "the philosophy and character section of the [Telegram] chat."). Mr. Gray included "links," "videos," and "references to bankruptcy court documents and other things that [he] thought would be helpful for people to go and evaluate and [draw] their own conclusion about what really happened in that bankruptcy." *Id.* at 8:23–9:3. As Mr. Walsh confirmed, Mr. Gray posted "[t]he court documents from the Mulligan Mint bankruptcy" "so that everybody could read them for themselves if they wanted to." Tr. Vol. 3 at 258:7–18. That thread, moreover, "existed way before [Mr. Walsh] got there" in November 2024. *Id.* at 258:6–13. Mr. Fuselier likewise testified that he knew about the Telegram group, having "personally viewed a chat group that potential investors could view," and understood there was a second group for miners "where that information was made available." Tr. Vol. 2 at 151:11–22.

Other TSSB witnesses similarly testified they were aware of the Mulligan Mint bankruptcy. Mr. Block acknowledged that he knew of the bankruptcy because it was brought up in "the Zoom calls." Tr. Vol. 2 at 274:21–24. Asked whether Mr. Gray concealed that information, he answered, "He didn't." Tr. Vol. 3 at 22:3–8. Mr. Walsh similarly testified that he learned of the bankruptcy on a late-2024 call on which Mr. Gray "talked about it openly." Tr. Vol. 3 at 257:16–258:6.

In sum, not only did Respondents repeatedly disclose the information that the TSSB alleges was intentionally concealed, but the TSSB knew that myriad disclosures had been made prior to issuing the Order. Accordingly, the Mulligan Mint fraud allegation must be found unsubstantiated and set aside.

2. MineTXC's Assets, Liabilities, And Capitalization

The Order alleges concealment of information concerning MineTXC's "assets, liabilities, and capitalization." Order ¶ 29. At the threshold, MineTXC did not *have* assets, liabilities or, capitalization to disclose because it was not a separate entity. Tr. Vol. 2 at 26:18–23 (Mr. Gray testifying MineTXC "[a]s a nonentity" did not have "assets, liabilities, and capitalization"). Accordingly, Respondents could not have intentionally failed to disclose information they did not possess—and that did not exist. These fraud allegations should be found unsubstantiated and set aside for this reason alone.

Although Respondents did not possess the allegedly concealed information, they nevertheless published significant information concerning the money Respondents received from the sales of mining packages and where the money was allocated. Mr. Fuselier testified he had reviewed the MineTXC "website where they show what they're sending—all their income and profits and things like that," and agreed that "to the extent that they actually had assets, liabilities, and capitalization, that information was disclosed on their website." *Id.* at 152:1–153:5.

In fact, Mr. Gray went above and beyond in the name of transparency. He published "anything and everything that [he] could get access to there for people to go and evaluate." *Id.* at 26:24–27:5. This information was readily available to anyone. Mr. Gray testified he put this information "at the top of th[e]" MineTXC website, above the enrollment form, so that a prospective purchaser "had access to all of those reports" before signing up. Tr. Vol. 1 at 103:12–104:9, 128:5–129:3. The website's disclosures charted total funds raised beside a use-of-funds breakdown a visitor could review for additional detail. TSSB Ex. 1 at 1–2; Tr. Vol. 1 at 202:14–203:20. Indeed, the Order itself recites that the MineTXC website "claims Respondents have raised over $147 million and paid out approximately $65 million in commissions," Order ¶ 14, which Mr. Fuselier conceded he had no reason to doubt, Tr. Vol. 2 at 134:17–135:4.

Mr. Walsh, describing those same disclosures, testified that he could not think of "another business in the world that posts that kind of stuff" and highlighted 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." Tr. Vol. 3 at 259:3–9. Even the TSSB's own witnesses, like Mr. Hinson, acknowledged having seen the use-of-funds chart "many times," and confirmed not only that it was publicly available, but also that it disclosed specific allocations. Tr. Vol. 2 at 250:2–253:19.

3. Danager Resources

The Order alleges that Respondents failed to disclose key information about Danager Resources, such as its assets and capitalization, the identity and business repute of its owners or principals, its relationship to Respondents, and its control of purchaser funds. Order ¶ 30.

But Danager Resources is merely a legally assumed name for Mr. Gray. *See* Tr. Vol. 1 at 134:11–25 ("Danager Resources was an assumed name certificate for me . . . I know who owns and controls me. That's me."); *see also* Pet. Resp. to Mot. Summ. Disp. at 40 (acknowledging that Mr. Gray filed assumed name certificates for Blockchain Mint and "Danager Resources"). Similar

to the MineTXC allegations, the Order alleges that Respondents intentionally concealed information that did not exist. Danager had no "actual assets, liabilities, and capitalization that [Mr. Gray] could have disclosed." Tr. Vol. 2 at 27:18–20. Its sole principal was Mr. Gray, whose identity and history—including the Mulligan Mint bankruptcy—were disclosed as set out above. *See supra* § I.B.1. Nor was Danager's relationship to Respondents concealed; the website instructed purchasers paying by check to make checks payable to that name. Order ¶ 19; Tr. Vol. 2 at 27:25–28:5. No purchaser ever asked about it. *Id.* at 28:18–21.

As to what control Danager—again, Mr. Gray—exercised over purchaser funds, he disclosed it: "[W]e made it very clear on all our calls and in all our documentation that I was going to . . . exercise control of your money." Tr. Vol. 1 at 137:6–9. The use-of-funds chart described those uses in detail, including Mr. Gray's own profit. *Id.* at 202:3–13; TSSB Ex. 1 at 2. Checks to Danager were handled no differently from any other payment. Tr. Vol. 2 at 28:22–29:1.

The Danager Resources allegations should be found unsubstantiated and stricken because the allegedly concealed information was disclosed.

4. Mine Operations, Outages, And Premises Security

The Order alleges concealment of the identity and qualifications of the persons managing mining facilities, of any "strategy or procedures for overcoming hardware failures, power outages or network disconnections," and of information about the security of the premises. Order ¶ 31.

Mr. Gray published the mine's operating statistics on a public dashboard that was updated in real time, so that a failure was visible to anyone as it happened. Tr. Vol. 2 at 15:16–22 (Mr. Gray testifying "the reason [miners] could see [failures] in real-time is because [he] chose to put information on the publicly available dashboard that tracked operational statistics in real-time").

Mr. Gray also routinely disclosed setbacks at the mine on weekly Zoom calls and frequently and candidly answered community questions about the project and progress. For

example, on June 10, 2025, he told the community that four of the five L7s at a site were offline. RX 15; Tr. Vol. 2 at 14:24–15:17. On August 19, 2025, he read aloud a member's question during a call's question-and-answer portion—"what is the hardware replacement plan?"—and described the plan. RX 55B; Tr. Vol. 2 at 16:20–17:5. On September 2, 2025, he and a community member disagreed on air over whether a problem at the McKinney site was a firmware fault or a voltage fault and resolved to test both—"we were hashing out, so to speak, what was going wrong with the mine in public." RX 21A; Tr. Vol. 2 at 19:6–20:8. On November 18, 2025, he described an overvoltage issue he was working through with the power company, along with a leaking immersion tank. RX 17; Tr. Vol. 2 at 20:20–21:1. On January 13, 2026, Mr. Gray reported that there was still no update at the Victoria site and that he had made personnel changes. RX 16; *id.* at 21:12–25. Nor are these examples the entirety of Mr. Gray's many disclosures—asked whether these examples were "the full, complete, comprehensive set of disclosures," Mr. Gray testified that they were not and estimated having "talked about it almost every week." *Id.* at 22:16–21.

The allegations concerning the premises fare no better. Mr. Gray disclosed the street address of the operation's headquarters and described the round-the-clock security in place. RX 21B; Tr. Vol. 2 at 23:11–24:3. He also publicized the locations of the mines. *Id.* at 13:6–8. Tours were held regularly, and people "stopped by unannounced and unscheduled . . . to check out the mines." *Id.* at 12:20–13:5. Videos touring the sites went to the Telegram community and to the operation's social media channels. *Id.* at 25:7–19. Even Mr. Nickel, who was hostile and unwilling to answer basic questions, understood purchasers "could go there if we wanted and schedule—ahead of time, we could schedule a tour of the facility." Tr. Vol. 3 at 67:10–15. The people who ran the mines were likewise disclosed "very frequently. In fact, they were regular guests on our calls"—and Mr. Gray also disclosed personnel changes. Tr. Vol. 2 at 26:5–13; *see also id.* at 21:15–17; RX 16.

Mr. Walsh testified that Mr. Gray "openly talk[ed] about the good and the bad that happens from a weekly basis." Tr. Vol. 3 at 258:24–259:3. Indeed, Mr. Block's own demand letter to Respondents cited Mr. Gray's public, candid statements about "management issues, liquidity issues, and failures to meet certain outcomes." RX 57.1. Mr. Block agreed those were "public disclosures about those issues made by Mr. Gray," and that in the demand letter he was "citing Mr. Gray's own public disclosures and his transparency as evidence that there were sometimes problems with the TEXITcoin program." Tr. Vol. 3 at 41:3–14. Asked whether Mr. Gray "wasn't shy in talking about those problems," he agreed: "quite—quite a bit that he—he was talking about." *Id.* at 41:15–19.

Here, too, Mr. Fuselier acknowledged Mr. Gray's disclosures. He was "aware of evidence that Mr. Gray did disclose those very same things" on the community calls, and he knew of that evidence before the Order was filed. Tr. Vol. 2 at 153:6–25. He was likewise "aware of evidence that Mr. Gray disclosed exactly that information" about the location and security of the premises, and knew that before the Order was filed as well. *Id.* at 154:1–11. And he agreed that the identity and qualifications of the personnel running the operation had been disclosed. *Id.* at 155:15–156:2. It is genuinely shocking that, in light of Mr. Fuselier's testimony, the TSSB is proceeding on its baseless fraud-by-omission theory.

5. Registration Status

The Order alleges that Respondents intentionally failed to disclose that TEXITcoin, MineTXC, Blockchain Mint and Danager Resources "are not registered with the Texas Secretary of State or authorized to transact business in the state of Texas." Order ¶ 32. While it is true that they were not so registered, the TSSB adduced no evidence that Respondents ever suggested otherwise. Nor were Respondents required to register these non-entities with the Secretary of State. Mr. Gray testified that he considered incorporating and decided against it, reasoning that Bitcoin

had operated without a corporate form and that "if you hide behind a corporate wall, like maybe there's an assumption you've got something to hide." Tr. Vol. 1 at 164:21–165:5. Rather, he properly filed an assumed name certificate for Blockchain Mint. RX 68; Tr. Vol. 1 at 163:14–164:8.

6. Disclosure Of Registration Status

The Order alleges that Respondents made offers "containing statements that are materially misleading or otherwise likely to deceive the public" because they failed to disclose that the mining packages were unregistered securities. Conclusions of Law ¶ 5. Specifically, the Order alleges that Respondents represented they were paying bonuses and commissions to sales agents, and that the representation was misleading because unregistered persons offering securities violate Section 4004.051 and unregistered securities violate Section 4003.001, Order, Findings of Fact ¶ 33. Although framed as a "misleading" statement rather than an omission, this allegation resolves the same way. Respondents could not have concealed a legal status the mining packages did not have: for the reasons set out in Section II, *infra*, the mining packages are not securities. There was thus nothing on that subject to disclose.[4] *Cf.* TSSB Ex. 18 at 19 (Blockchain Mint website disclosing that its "owners, operators, principles [sic], employees, agents and other affiliated parties, are not registered brokers, analysts, investment advisors"). Moreover, 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.

[4] The terms of the referral program itself were clear and published on the MineTXC website, TSSB Ex. 1 at 181–85, and there is no allegation the terms of the program were in any way fraudulent or improper.

C. Purchasers Had Equal Opportunity To Discover Each Allegedly Omitted Fact

To prove 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, 756 (Tex. 2001) (emphasis added). 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*, 583 S.W.3d at 563 (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 thus has no duty to disclose facts a reasonable investigation would have uncovered, *Morales v. Carlin*, 2019 WL 1388524, at *3 (Tex. App.—Austin Mar. 28, 2019, no pet.)*; see also Smith v. Nat'l Resort Cmtys., Inc.*, 585 S.W.2d 655, 658 (Tex. 1979) (explaining a seller's duty extends only to material facts that the purchaser would not discover "by the exercise of ordinary care and diligence" or that a "reasonable investigation and inquiry would not uncover").

It is paradigmatic that a purchaser has equal opportunity to discover the truth of facts in the public record. *See Morales*, 2019 WL 1388524, at *3 (dismissing omission-based fraud claim where a public records search or "reasonable investigation by [plaintiff] would have uncovered" allegedly concealed fact); *Matter of Monge*, 826 F.3d 250, 258 (5th Cir. 2016) (highlighting that "non-disclosed information was in fact discoverable through the exercise of reasonable diligence" including by public-records search).

Beyond the affirmative disclosures, a reasonable investigation would have turned up the bankruptcy and registration facts upon which the Order principally relies. The Mulligan Mint bankruptcy was a proceeding in the Northern District of Texas for which the certified docket is available on PACER. *See* Tr. Vol. 2 at 118:6–16 (Mr. Fuselier testifying that he obtained the public bankruptcy records through PACER); TSSB Ex. 40 (the certified docket). Moreover, it was "somewhat widely reported" both "in the local news back in 2013" and nationally, including in

the *Wall Street Journal*. Tr. Vol. 2 at 10:21–11:8; RX 29. The *Wall Street Journal*'s coverage even named Mr. Gray as Mulligan Mint's president. *See* RX 29. Simply put, anyone who "even Googled [Mr. Gray's] name" would have "pretty eas[ily]" found it. Tr. Vol. 2 at 11:15–21.

The registration status—or lack thereof—could have been verified through a public records search on the Texas Secretary of State's website. TSSB Exs. 41–47; Tr. Vol. 1 at 140:14–141:3.

D. The TSSB Failed To Prove Any Intent To Conceal, Because None Existed

The TSSB's fraud claims fail for the additional independent reason that the TSSB adduced no evidence whatsoever of intent because, in fact, Respondents did not intentionally conceal any material fact and had no intention to do so. The TSA requires that the TSSB prove Respondents *intentionally* failed to disclose a material fact. TEX. GOV'T CODE § 4001.058(a)(3); *Villarreal v. State*, 504 S.W.3d 494, 509–10 (Tex. App.—Corpus Christi-Edinburg 2016) (holding the TSA "ha[s] a mental state requirement" and noting courts are "bound by precedent on this subject"); *see also In the Matter of Balanced Energy, LLC*, 2016 WL 2941389, at *8–9 (SOAH May 10, 2016) (dismissing fraud claim where TSSB did not adduce evidence of intent). That is, the TSSB had to prove that Respondents knew each fact, knew purchasers did not know the fact, and intentionally chose to keep that information from the purchasers. *See Siragusa v. Arnold*, 2013 WL 5462286, at *10 (N.D. Tex. Sept. 16, 2013) ("Under Texas law, simple allegations of fraudulent intent will not suffice, and plaintiffs must set forth *specific facts* supporting an inference of fraud." (emphasis in original)).

"[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 Cap. Mgmt., LLC,* 2015 WL 4868701, at *18 (SOAH July 31, 2015) (quoting *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980)). Texas common law fraud-by-nondisclosure claims similarly require proving that the defendant*, inter alia*, "deliberately failed to disclose material facts" and

"intended the plaintiff to act or refrain from acting based on the nondisclosure." *Matter of Clem*, 124 F.4th 341, 349, 354 (5th Cir. 2024) (reversing lower court's finding of fraudulent nondisclosure). And 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").

The TSSB presented no evidence that Respondents intended to conceal *anything*. While the Order correctly recites the word "intentionally" in every one of its omission allegations, the TSSB adduced no evidence at the hearing to support those allegations as a matter of law. Here, as in *Balanced Energy*, the TSSB "presented no evidence regarding Respondents' intent." 2016 WL 2941389, at *8–9. The Court should reject the fraud allegations for this reason alone.

The undisputed evidence is that Mr. Gray was incredibly transparent and *did* disclose each fact that he is accused of intentionally concealing. *See* Tr. Vol. 4 at 19:8–16 (Mr. Walsh testifying Mr. Gray never "lied to [him] or misled [him] about anything," and that he does not believe Mr. Gray "lied to or deceived any of the other people in the community."). Mr. Gray's repeated, candid disclosures are prima facie evidence that he did not *intend* to fraudulently conceal these facts. *See Davis v. Kroger Co.*, 2010 WL 1267223, at *11 (N.D. Tex. Mar. 31, 2010), *aff'd sub nom. Davis v. Kroger Texas LP,* 429 F. App'x 376 (5th Cir. 2011) (record was facially "deficient with respect to a showing of fraudulent intent" where defendant made disclosures alleged to have been withheld). An intent to deceive cannot be reconciled with an open invitation to visit the mines, a public dashboard reporting more than a dozen metrics in real time, and hundreds of hours of freely available question-and-answer calls. *See, e.g.*, *In re ACM-Tex., Inc.,* 430 B.R. 371, 419–20 (Bankr. W.D. Tex. 2010) (no fraudulent nondisclosure where the defendant engaged in prolonged, open communications with the counterparty); *see also* Tr. Vol. 3 at 258:19–259:9 (Mr. Walsh describing Mr. Gray as a "very, very transparent person," who "openly talks about the good and the bad that

happens" on his weekly calls); Tr. Vol. 2 at 227:17–228:4 (Mr. Gamero testifying that Mr. Gray would answer "a lot of questions" on the calls).

Respondents' conduct is also fundamentally inconsistent with an intent to defraud. Someone who is intent on concealing material facts would not hold hundreds of hours of no-holds-barred question-and-answer sessions nor cap the amount any individual purchaser could spend on mining packages. Respondents limited the amount any purchaser could spend on mining packages to $8,955 because Mr. Gray "didn't want anyone to put any more money at risk than [he] was comfortable with." Tr. Vol. 1 at 175:1–176:3.

Finally, Mr. Gray was asked about each allegation in turn, and whether he had deliberately omitted the information, and he testified credibly that he had not. Did he intentionally fail to disclose information about the people responsible for the mining operations? "No, never." Tr. Vol. 2 at 26:14–17. His connection to Danager Resources? "No, not at all." *Id.* at 27:21–24. Did he understand that he had any obligation to disclose the registration status of the names? "No, I didn't think I had any obligation." *Id.* at 29:18–25. Did he actively conceal it? "No, never." *Id.* at 30:1–11. Likewise, the Order's allegation that Respondents intentionally failed to disclose that the mining packages were securities, Order ¶ 33, fails because Mr. Gray did not believe he was selling a security, *see* Tr. Vol. 1 at 143:20–23; Tr. Vol. 2 at 30:19–31:5. Against all this, the TSSB offered no indicia of intent, much less evidence of it. Its case on intent is simply the bare, conclusory use of the word "intentionally" itself.

In its opposition to summary disposition, the TSSB argued that it need only prove that Respondents "knew the alleged material facts and failed to disclose them," and that Respondents "did not have to intend to deceive, defraud, or manipulate anyone." Pet. Resp. to Mot. Summ. Disp. at 32. That position is not simply wrong, but also deeply troubling. The Court should reject the TSSB's interpretation because it is contrary to the language of the TSA and binding precedent.

To prove fraud, the statute requires "an *intentional* failure to disclose a material fact." TEX. GOV'T CODE § 4001.058(a)(3) (emphasis added). Texas courts consider this a scienter requirement, describing the TSA as imposing liability where an "individual commits fraud when he *intentionally* fails to disclose a material fact." *Villarreal*, 504 S.W.3d at 509 (emphasis in original). Indeed, the *Balanced Energy* court rejected the TSSB's exact argument, dismissing fraud counts where the TSSB failed to make allegations regarding the respondents' intent and instead asked the court to infer intentional concealment from the omissions. *See* 2016 WL 2941389, at *8–9 (fraud "requires that not only must Respondents fail to disclose a material fact, they must also have *intentionally* failed to make the necessary disclosures"); *cf. EHO360, LLC v. Opalich*, 2022 WL 1190352, at *7 (N.D. Tex. Apr. 21, 2022) (declining to "infer fraudulent intent . . . from the circumstances . . . pled"). Moreover, adopting the TSSB's interpretation of the TSA would present serious constitutional issues. In *Villarreal*, a Texas Court of Appeals held that the fraud provision of the TSA was not unconstitutional under *Elonis v. United States*, 575 U.S. 723 (2015), specifically *because* it contained "requisite scienter required under the Fifth and Sixth Amendments" supplied by the word intentional in the statute. 504 S.W.3d at 509–10.

E. The Alleged Omissions Were Not Material

The fraud allegations fail for the additional reason that the alleged omissions were not material to any purchaser. The TSA reaches an intentional failure to disclose only where the undisclosed fact is material. *See* TEX. GOV'T CODE § 4001.058(a)(3). "[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) (en banc). An omitted fact is thus material only if there is a substantial likelihood that it would have assumed actual significance in the investor's deliberations, in that he would have viewed it as "significantly

altering the total mix of available information used in deciding whether to invest." *Id.* at 904. The investor against whom the standard is measured is presumed to have "read the information as a whole" and to have been "reasonably diligent in reviewing" what was available to him. *In re Perry*, 404 B.R. 196, 213–14 (Bankr. S.D. Tex. 2009) (quotation marks omitted).

The TSSB did not offer evidence of materiality as to each alleged omission, because they were not, in fact, material. Anyone who would have cared about the alleged omissions would have tried to look up the answers, yet the TSSB's witnesses uniformly took no such steps—as to TXC or any other similar asset. Mr. Block never checked where the three or four other cryptocurrencies the same friend (Brad Varnell) had recommended to him were registered. Tr. Vol. 3 at 9:3–10:1. Obviously, registration was not material to Mr. Block. Mr. Hesse's entire pre-purchase "investigation" consisted of a conversation with his aunt, a look at the website, and a Reddit thread "basically discussing if this was a real or a scam or not." Tr. Vol. 2 at 184:5–13. Mr. Gamero never asked Mr. Gray about the qualifications of the people running the mine, although he agreed he could have. *Id.* at 230:19–231:4. And Mr. Gamero admitted that the registration status of the program made no difference to him at all. Tr. Vol. 2 at 231:8–10. Mr. Nickel never asked for the facility tour that he knew he could schedule. Tr. Vol. 3 at 67:10–15. And no purchaser ever asked Mr. Gray whether the three names were registered entities. Tr. Vol. 1 at 165:6–9, 166:5–6. That is because the only thing that mattered to purchasers about the mining package was that they received their distributions of TXC, which they did. *See* Tr. Vol. 2 at 230:11–14 (Mr. Gamero agreeing what he "cared about [was] getting the TXC" and that he "hoped it would go up in value").

The Mulligan Mint bankruptcy was similar. Although courts have found comparable facts about a principal's personal history immaterial as a matter of law, *see Greenhouse v. MCG Cap. Corp.*, 392 F.3d 650, 656–60 (4th Cir. 2004) (chief executive's misstatement that he had earned a college degree was immaterial as a matter of law), the TSSB's evidence does not reflect materiality

as a factual matter. For example, Mr. Gamero testified on direct that it would have changed his decision. Tr. Vol. 2 at 216:17–23. But on cross he testified that Mr. Gray's background "did not matter" to him at the time of purchase. *Id.* at 228:5–12. And Mr. Gamero testified that *he himself* had filed for personal bankruptcy and does not disclose it to his own professional clientele. *Id.* at 228:13–230:10. Mr. Gamero further testified he would not consider it fraud if he had "referred someone to [TEXITcoin] without telling them" of his own bankruptcy. *Id.* at 228:13–230:10.

Mr. Block testified that he learned of the Mulligan Mint bankruptcy after signing up, but kept his seats and attempted to refer others after he became aware of it—without disclosing the bankruptcy. *Id.* at 274:25–275:2. Mr. Block, for his part, was confronted with a 1997 Chapter 7 petition bearing his name and Social Security number and, despite a career in sales, claimed he could not recall ever disclosing a bankruptcy to a commercial counterparty. Tr. Vol. 3 at 42:5–10, 43:14–46:21. And Mr. Hesse's testimony was hedged past the point of usefulness or clarity. Tr. Vol. 2 at 171:8–13 (it "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.").

On the other allegations, the TSSB did not and could not adduce evidence of materiality. No purchaser who paid by check testified at the hearing, which was the only circumstance for which Danager Resources would matter. *See* Order ¶ 30; *cf.* Tr. Vol. 2 at 244:22–245:1, 246:6–9 (Mr. Hinson testifying he had never heard of the entity, paid by Venmo, and agreed the entity "had nothing to do with [his] purchase"); *id.* at 230:15–18 (Mr. Gamero testifying he did not care about the name on the bank account that received his payment). Mr. Fuselier confirmed that no purchaser he interviewed had paid by check, and no purchaser ever told him that information concerning Danager Resources would have mattered in their decision. Tr. Vol. 2 at 139:13–21. The minutiae of the mines' operations were also immaterial to purchasers. The only thing that mattered was that the mines kept running. *See* Tr. Vol. 2 at 231:5–7 (Mr. Gamero agreeing that he "didn't care how

the mines were kept running, just that they stayed running"); Tr. Vol. 3 at 67:10–15 (Mr. Nickel testifying he knew he could have scheduled a tour of the mining facility but did not). No witness testified that some undisclosed information regarding MineTXC's assets, liabilities, and capitalization—even assuming that information existed in the first place—would have affected their decision to purchase. Finally, no purchaser testified about caring whether the mining packages were registered as securities. Indeed, purchasers testified that they did not think of the mining packages as securities. *See, e.g.*, Tr. Vol. 2 at 188:3–9, 199:8–14 (Mr. Hesse testifying mining packages were "not like stocks or bonds or something like that").

The TSSB therefore failed to carry its burden on materiality, and Findings of Fact Nos. 28–33 should be set aside as unsubstantiated. *See, e.g.*, *Wilemon v. Brownlie*, 2025 WL 3039140, at *8–9 (Tex. App. Oct. 30, 2025) (rejecting fraudulent nondisclosure claim where the plaintiff "offered no evidence that [the] facts were material").

F. The TSSB Proved No Reliance or Injury From Any Nondisclosure

Finally, fraud by nondisclosure requires proof that "the plaintiff relied on the non-disclosure, which resulted in injury." *Bombardier*, 572 S.W.3d at 220 (collecting cases); *see also, e.g.*, *Alvarado v. Love & Hutson, G.P.*, 2021 WL 1428477, at *15 (S.D. Tex. Apr. 15, 2021) ("More importantly, to recover for fraud by nondisclosure, a plaintiff must prove not only that the non-disclosed information was material, but also that the plaintiff relied on the nondisclosure and that this reliance caused the plaintiff harm."). Yet reliance appears nowhere in the Order, and the TSSB offered no relevant evidence at the hearing. Not one purchaser testified that he relied on the absence of information rather than on what he was told—by a relative, a friend, or an undisclosed Ranger, none of whom represented or spoke for Mr. Gray. *See infra* § E.

And even had a purchaser relied on an alleged nondisclosure (none did, because there was none), no such reliance resulted in any injury. Purchasers received their TXC every day, as

Mr. Fuselier confirmed, Tr. Vol. 2 at 136:17–19, and even Mr. Nickel testified that he is still receiving TXC daily, Tr. Vol. 3 at 65:5–8. Mr. Fuselier also confirmed that there is no allegation that Mr. Gray embezzled any funds or that purchasers did not receive their TEXITcoin. Tr. Vol. 2 at 122:2–6; *see also id.* at 127:9–12. What the purchasers lost—their "injury"—occurred because the price of TXC fell on exchanges Mr. Gray neither owned nor operated. *See infra* § II.B.1.

Each of these failures is independently fatal. The TSSB had to prove a duty, deliberate concealment, a purchaser without an equal opportunity to learn the fact, materiality, and reliance causing injury—as to each of the alleged omissions. *Bombardier*, 572 S.W.3d at 219–20. It proved none, and its own investigator's testimony dooms its fraud theory. Accordingly, Findings of Fact Nos. 28–33 are unsubstantiated and Conclusions of Law Nos. 4–7 must be set aside.

II. THE MINING PACKAGES ARE NOT SECURITIES

The TSA reaches only securities. The TSSB spent four days attempting to prove that a one-time purchase of a *commodity*, delivered to a digital wallet, should be treated like a securities transaction. It failed to do so.

The Order alleges that the mining packages are securities within the meaning of Section 4001.068 of the TSA. Conclusions of Law ¶ 1. At the hearing, the TSSB argued only that the mining packages constituted an "investment contract." TEX. GOV'T CODE § 4001.068(a)(1)(O); *see* Tr. Vol. 1 at 6:14–16. An investment contract requires: (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits to be derived from the efforts of others. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99, 301 (1946). The Texas Supreme Court has adopted the *Howey* test as the measure of an investment contract under the TSA. *Searsy v. Com. Trading Corp.,* 560 S.W.2d 637, 640 (Tex. 1977); *see also Life Partners, Inc. v. Arnold*, 464 S.W.3d 660, 666–67 (Tex. 2015) ("[W]e look[] to federal cases and other authorities for guidance in construing the term.").

When evaluating whether a transaction is an investment contract, the Supreme Court requires, and the parties agree, that the "economic reality" of the transaction controls. *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 848 (1975) (quoting *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)); Tr. Vol. 1 at 4:5–6 (TSSB arguing "this is a case about economic reality over labels"); *id.* at 13:6–10 (Respondents agreeing that "the case law directs [the Court] . . . to focus on the economic realities of the transaction"); Tr. Vol. 4 at 46:13–15 (TSSB asking the Court to "look at what actually happened"). To prove that a transaction is an investment contract, the TSSB bears the burden of proving each element based on the economic reality of the transaction.

Here, looking at economic reality, there are four reasons that no securities transaction occurred. *First*, a purchaser paid a one-time fixed price in exchange for a pro-rata daily distribution of TXC, a commodity. That's it. No purchaser was entitled to, or received, anything else. *Second*, there was no reasonable expectation of profit from the mining packages. Any *potential* for profit was dependent on the market price of TXC. The TSSB adduced no evidence that there was a causal connection between the mining packages and the price of TXC, that Respondents had control over the price of TXC, or that any profit came from the value of the mining packages themselves. *Third*, Respondents repeatedly warned mining package purchasers that they should ***not*** expect to profit, telling purchasers over and over again that Respondents could guarantee nothing. The evidence shows that purchasers understood those disclaimers. *Fourth*, any potential profits were based on the work of the mining package purchasers, not Respondents: the core work was performed by the ASICs, and Respondents' role as a mining pool operator was purely ministerial. Each of these facts independently defeats the allegations in the Order.

A. The Purchase Of A Mining Package Was A Commodities Transaction

The TSSB does not dispute that TXC is a commodity. *See* Tr. Vol. 3 at 150:24–151:1; Tr. Vol. 1 at 13:12–16 ("Everybody agrees that TEXITcoin is not a security. . . . It is a digital

commodity, as Mr. Heintz said, like gold, like agriculture."); *id.* at 156:21–25 ("The only output is TXC. Just like Bitcoin, the Bitcoin mining network makes BTC. The TEXITcoin mining network makes TXC."). The evidence at the hearing showed that the only thing a mining package purchaser received was a pro-rata daily distribution of TXC. Tr. Vol. 1 at 172:24–173:7 ("Economically, they got TXC, their proportional amount," and "never" any "other . . . property right, ownership stake, share, or interest"); Tr. Vol. 2 at 143:25–144:21 (Mr. Fuselier agreeing "the only reward you got was in TXC"); Tr. Vol. 3 at 150:7–9 (Mr. Sotak: "the value that they received . . . was their allocation of TXC on a daily basis"); TSSB Ex. 22 at 31 (website formula dividing a purchaser's hash power by total megahash sold, times the day's output). Accordingly, and consistent with the economic reality of the transaction, the purchase of a mining package involved only the purchase of a commodity. And the purchase of a commodity, without more, is not a securities transaction, because whatever profit the buyer hopes for depends on the market rather than on the efforts of others. *See Moody v. Bache & Co.*, 570 F.2d 523, 525–26 (5th Cir. 1978) (explaining a "commodities futures contract is not in itself a security" because any expectation of profit arises from changes in the commodity's market price); *Noa v. Key Futures, Inc.*, 638 F.2d 77, 79 (9th Cir. 1980) (sale of silver bars not an investment contract because "the profits to the investor depended upon the fluctuations of the silver market"); *P & C Inv. Club v. Becker*, 520 F. Supp. 120, 122 (E.D. Pa. 1981) (holding commodity futures contract was not a security because "expectation of profit entails absolutely no reliance on specific third parties but rather is affected by such factors as inflation, money supply, political events, or acts of God").

Prior to the issuance of the Order, a person could obtain TXC in three ways. First, it could be bought on a third-party exchange; second, it could be acquired from someone who already held it; and third, it could be procured by buying a mining package. Tr. Vol. 3 at 142:22–143:6 (Mr. Sotak testifying that the three avenues were "to purchase on the open market through a digital asset

exchange," to "acquire from a current holder or someone who already held TEXITcoin or TXC," and "through the allocations of mining proceeds through the mining packages"); *accord* Tr. Vol. 1 at 167:12–19. The TSSB does not contend that buying TXC on a third-party cryptocurrency exchange or from someone who already held it is a securities transaction. *See* Tr. Vol. 1 at 4:17–20. It urges the Court instead to look at the economic reality of "the mining package arrangement respondents offered and sold." *Id.* at 4:19–20. But whether someone bought TXC on an exchange, from a private holder, or through a mining package, they ended up with the same thing. The differences in how a purchaser obtained TXC are too insignificant to support the TSSB's argument.

Like an open-market buyer on an exchange, a mining package purchaser ended up only with TXC and did not acquire any other right or interest in MineTXC or the mines themselves. Mr. Gray's undisputed testimony was that purchasers "never" obtained "any other property right, ownership stake, share, or interest" in the operations of MineTXC. *Id.* at 173:3–7; *see also* TSSB Ex. 1 at 4; Tr. Vol. 1 at 173:10–24 (MineTXC website stating purchaser only acquired "Unlimited TXC. Once your enrollment is complete, freshly minted TXC is paid out to your wallet 24/7/365."). Mr. Fuselier testified in agreement that "if someone bought a mining package, what they ended up with was TXC." Tr. Vol. 2 at 143:25–144:2; *see also id.* at 144:3–21 ("the only reward you got was in TXC"). Tellingly, Mr. Fuselier testified a purchaser held no "ownership stake or share or right to stream of profits or anything like that," *id.* at 144:6–11, and agreed that the mining packages "didn't confer any rights to any profits of a company or entity," *id.* at 144:3–21. He further testified that the essential aspects of the mining packages were that "investors will be paid their percentage of TEXITcoin daily," "people received their TXC distributions daily," and "the output of the mining operation was TEXITcoin." *Id.* at 136:10–22.

The TSSB's own purchaser-witnesses understood the transaction the same way. Mr. Hesse testified in agreement that "the thing that [he] got from the mining package was TXC." Tr. Vol. 2

at 188:13–22. He testified he did not have "any ownership stake in some entity or something like that." *Id.* And "all [he] expected to get from [his] mining package was [his] daily supply of TXC." *Id.* at 188:13–22. Mr. Hinson agreed that he never believed he was "entitled to any profits of MineTXC" and expected only "the daily that was deposited in [his] wallet." *Id.* at 258:21–25. Mr. Walsh, who purchased mining packages for himself, his children, and his grandchildren, testified that he did not think he was "buying an ownership share of any company" and did not understand his package to entitle him to "any ownership rights in any company." Tr. Vol. 3 at 240:12–17. Instead, what he bought "was the hash power that . . . translated to the TXC tokens that [he] got." *Id.* at 240:21–23. Mr. Sotak likewise testified that "the value they received from this arrangement between them and . . . the mining pool was their allocation of TXC on a daily basis." *Id.* at 150:7–9.

The TSSB's witnesses further confirmed that purchasing a mining package was the functional equivalent of purchasing TXC on an exchange. For example, Mr. Gamero agreed he could have purchased TXC on an exchange instead of buying a mining package. Tr. Vol. 2 at 223:5–19. Instead, he decided to purchase a package and agreed that "whether you bought a mining package and got TXC delivered to your wallet or bought it on an exchange, either way you ended up with a coin[.]" *Id*. Mr. Nickel purchased TXC on a public exchange and separately bought mining seats. Tr. Vol. 3 at 90:15–25. He also agreed that "what [he] ended up with between both of those purchases on the open market and the mining package was just coins." *Id.*[5]

[5] Mr. Nickel's testimony warrants little weight, if any. He attributes to Respondents a roughly $205,000 loss he sustained on coins he bought from strangers on a public exchange. Tr. Vol. 3 at 64:12–19, 68:18–19, 70:15–20. His answers on cross-examination bore the marks of that misplaced grievance. The Court had to instruct him four times to answer the questions put to him, called a recess to have the TSSB explain the process to him, and admonished him on the record that he "cannot . . . avoid answering by talking around the question." *Id.* at 81:18–24, 83:21–25, 84:17–18, 85:14–20, 86:1–17. Respondents moved to strike his testimony. *Id.* at 81:14–15. His

In sum, the evidence showed that the only thing a purchaser received, and likewise reasonably could expect to receive, from the purchase of a mining package was TXC. It is undisputed that TXC is a commodity. Accordingly, the economic reality of the transaction was that a buyer purchased a mining package to obtain a commodity and had no reasonable expectation of receiving anything else. This is not a securities transaction.

B. Purchasers Had No Reasonable Expectation of Profit

The mining packages did not involve a securities transaction within the meaning of *Howey* because purchasers had no reasonable expectation of profit. *Howey* conditions liability on an expectation of "profits," a term the Supreme Court has explained means "either capital appreciation resulting from the development of the initial investment . . . or a participation in earnings resulting from the use of investors' funds." *Forman*, 421 U.S. at 852. Texas law applies the same standard under the TSA. *See, e.g.*, *Campbell v. C.D. Payne & Geldermann Sec., Inc.*, 894 S.W.2d 411, 418 (Tex. App.—Amarillo 1995). Each description identifies a return the enterprise generates. Neither describes what the open market later pays for a commodity the purchaser already owns. Accordingly, it is well-settled that an expectation of appreciation in the market value of the commodity one purchased is not an expectation of profits. *Wilson v. Lee*, 601 S.W.2d 483, 485 (Tex. Civ. App.—Dallas 1980, no writ) ("[T]he mere holding of property in anticipation of appreciation in value is not within the definition of an investment contract contemplated by the

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substantive answers were no more reliable. He testified that he was "not warned at any point that purchasing a mining package or purchasing TXC involved a risk," *id.* at 88:22–25, *after* acknowledging that the website said "[t]his is risky" and "[d]on't put in more than you can afford to lose," *id.* at 88:12–17, and after hearing a recording of Mr. Gray saying the same thing on a community call, TSSB Ex. 127B, Tr. Vol. 3 at 84:20–24. He testified, incredibly, that he regarded TXC as carrying no more risk than a United States government bond. *Id.* at 89:14–19. The substance of his testimony on this point was that he believed that "TEXITcoin and U.S. Government-issued bonds were the only riskless investments." *Id.* at 89:14–19.

securities laws."); *Moody*, 570 F.2d at 526 (expectation of profits prong not met where expectation "arises solely from the speculative hope that the market price of an underlying commodity will vary in his favor, permitting purchase or sale at a profit.").

1. Potential Sales Of TXC Procured Through The Purchase Of A Mining Package Did Not Create A Reasonable Expectation Of Profit

The evidence at the hearing indicated that the only way that a person could profit from the purchase of a mining package was to later sell their TXC at a higher price.[6] The price of TXC was set on public exchanges that Mr. Gray neither owned nor operated. *See* Tr. Vol. 1 at 167:20–168:9 ("We don't control them. We don't run them."). Mr. Gamero confirmed what followed: "the only way to make a profit was to sell or trade your TXC." Tr. Vol. 2 at 222:3–5. He also understood that "the value of [his] coins . . . would grow or lose value depending on what the open market was doing." *Id.* at 213:2–7.

As explained above, a purchaser who takes delivery of a commodity, and whose hope of gain arises only from the possibility that the market price will increase, has not engaged in a securities transaction. *See Wilson*, 601 S.W.2d at 485; *Moody*, 570 F.2d at 526. Courts have applied this rule for decades. For example, in *McCurnin v. Kohlmeyer & Co.*, 340 F. Supp. 1338 (E.D. La. 1972), the plaintiff bought cotton futures through his broker. The plaintiff disclaimed any intention of ever receiving cotton; had he taken delivery, he would have received a warehouse receipt—he was, on his account, "speculating in bookkeeping entries." *Id.* at 1340–41. He argued on that basis that the transactions were securities. *Id*. The court disagreed: "[t]he expectation of profit arises

[6] The TSSB suggested at the hearing that a purchaser could obtain a profit from reselling his or her seat, Tr. Vol. 2 at 51:16–52:13, but adduced no evidence that anyone bought their mining package expecting to profit by reselling it. Even the TSSB's own investigator confirmed that "[t]he Order does not talk about the transfer and sale of the package itself" and did not allege any purported "transfer rights" made "the package . . . a security." Tr. Vol. 2 at 145:20–146:2.

solely from the speculative hope that the market price of the underlying commodity will vary in his favor, permitting purchase or sale at a profit." *Id.* at 1341; *see also Svets v. Osborne Precious Metals Co.*, 1992 WL 281413, at *2 (N.D. Cal. June 8, 1992) (no security under the Securities Acts where plaintiffs' "profits depended upon the fluctuations of the market, not the managerial efforts of defendants"); *Consolo v. Hornblower & Weeks-Hemphill, Noyes, Inc.*, 436 F. Supp. 447, 453–54 (N.D. Ohio 1976) (same).

The principle is the same for the sale of a commodity the seller has not yet produced. In *SEC v. Belmont Reid & Co.*, a Nevada company holding claims to gold-bearing land it could not afford to develop began selling gold coins it had not yet minted, from ore it had not yet dug. 794 F.2d 1388, 1390 (9th Cir. 1986). Buyers prepaid a fixed price and waited while the company mined the ore, refined it, and struck the coins. *Id.* The SEC alleged that the arrangement was an investment contract; the Ninth Circuit disagreed, holding that the purchasers "had as their primary purpose to profit from the anticipated increase in the world price of gold," and that their profits "depended upon the fluctuations of the gold market, not the managerial efforts of [the company]." *Id.* at 1390–91.

Here, any potential gain or loss came from the market, and nothing else. When the price of TXC fell, the TSSB's witnesses lost money for that reason alone—not because the coins were withheld, a promise was broken, or a dollar went missing. Each purchaser continued to receive the benefit of their bargain, *i.e.*, the full daily allocation of TXC, as Mr. Fuselier confirmed. Tr. Vol. 2 at 136:17–19; *see also id.* at 233:25–234:6 (Mr. Gamero testifying that he was upset because the "price had gone down," and there would be no more "adoption because of the cease and desist order").

The most the TSSB proved, then, is that purchasers hoped TXC would be worth more later. Under federal and Texas law, that hope is the hallmark of a commodity purchase rather than an investment contract, and the TSA does not reach that transaction.

2. Respondents Warned Against Any Expectation of Profit

The touchstone of *Howey* is whether there was "a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." *Forman*, 421 U.S. at 852. Here, whatever profit a purchaser may have hoped for did not come from Mr. Gray's efforts. Rather, it would have come from market appreciation of TXC, not the mining package. *See supra* § II.B.1. But even setting that aside, whether an expectation of profits is "reasonable" depends on what the seller represented. As the SEC Crypto Asset Guidance explains: "representations or promises that are vague or contain no semblance of an actionable business plan . . . likely would not create reasonable expectation of profits." 91 Fed. Reg. at 13722. And Texas law is to the same effect: "[r]elying on [a] vague, indefinite promise[] of future business is unreasonable as a matter of law." *Simulis, L.L.C. v. Gen. Elec. Cap. Corp.*, 439 S.W.3d 571, 577 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (citations omitted).

Because the price of TXC was set by the market, Mr. Gray was in no position to promise anyone a profit, and he said so repeatedly and candidly. The first page of the TEXITcoin website stated: "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*. There's a chance you can win big, but it's only a chance." TSSB Ex. 23 at 1 (emphasis added); *see also* Tr. Vol. 1 at 223:8–19 (Mr. Gray testifying that this language appeared on the first page of the site). The MineTXC website provided a similar disclosure: "[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." TSSB Ex. 1 at 104–05; Tr. Vol. 1 at 211:21–212:17. Another page

on the website stated that "TXC is not a get-rich-quick scheme." TSSB Ex. 1 at 145. And the Blockchain Mint site advised, "DON'T . . . [b]uy more than you can afford to lose." TSSB Ex. 18 at 19. These are just examples. Tr. Vol. 1 at 227:14–18 (Mr. Gray testifying that the examples put to him were "just examples," and that "we probably did a hundred times as much as what we've seen.").

Against that record, Mr. Fuselier conceded that there is "no allegation that [Mr. Gray] guaranteed profits." Tr. Vol. 2 at 124:18–20. Purchasers took the message as given. Mr. Hesse described his own conduct as gambling and agreed he was "taking a shot." *Id.* at 199:2–4. Mr. Gamero agreed that the price figures discussed on the Zoom calls "were hopes" rather than "promises or guarantees." *Id.* at 226:14–18. Mr. Hinson understood that he was "basically taking a flyer." *Id.* at 249:7–15. And Mr. Fuselier conceded he had seen evidence before issuance of the Order that Mr. Gray "specifically disclaimed any promises or guarantees of profits" and "advised people that this was risky and not an investment"—warnings the Order never mentions. Tr. Vol. 2 at 147:8–148:17.

The TSSB nevertheless argued Mr. Gray created an expectation of profit by publishing articles forecasting that TXC *could* reach certain price levels and by using crypto slang such as "go to the moon." See Order ¶ 8; Tr. Vol. 1 at 6:23–7:4; TSSB Ex. 1 at 5, 26–27; Tr. Vol. 1 at 219:2–5 (Mr. Gray acknowledging the "seat on the rocket ship" and "to the Moon" language). But statements of that kind are the "type of puffery" or "optimistic generalizations" that courts have "consistently held to be inactionable." *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 418–19 (5th Cir. 2001). The SEC Crypto Asset Guidance makes plain how far "to the Moon" falls from the kind of representation that might create a reasonable expectation of profits by requiring a "business plan containing detailed milestones, a timeline, information about personnel, sources of funding and

other resources needed to meet those milestones, and an explanation of how holders . . . will profit from those efforts." 91 Fed. Reg. at 13721.

Indeed, Mr. Gray testified that "to the moon" and a "seat on the rocket ship" are common industry idioms, and that he did not intend them to create an expectation of profits. Tr. Vol. 1 at 219:6–220:11. More importantly, and not surprisingly, purchasers read them the same way. Mr. Gamero agreed the figures discussed on the calls were "hopes" rather than "promises or guarantees." Tr. Vol. 2 at 226:14–18. Even Mr. Nickel understood Respondents' representations were aspirational puffery, discounting the aspirational price target goals. *See* Tr. Vol. 3 at 74:24–75:5 (noting he "didn't even consider the $80 figure").

In any event, as explained above, a hope that a commodity will appreciate in value is not the same as an expectation of profits to be derived from the efforts of others, as *Howey* requires. Here, the aspirational statements described no managerial performance. The hoped-for path required adoption—more people holding, spending, accepting, and circulating the coin—and reflected predictions about market demand rather than a promise about Mr. Gray's conduct. Mr. Gray thus accurately characterized the targets as "representations based on what could happen if the project went well." Tr. Vol. 1 at 112:19–22.

As such, Respondents expressly disclaimed any promise of profit, and it would not have been reasonable for any purchaser to expect profits that had been expressly disclaimed. No reasonable purchaser could expect gains the seller warned repeatedly might never come, much less any gains driven by Respondents' managerial efforts.

C. SEC Crypto Asset Guidance Provides That Any Profit From The Mining Packages Was Not Based On The Efforts Of Others

Howey's final element asks whether the purchaser reasonably expected profits "to be derived from the entrepreneurial or managerial efforts of others." *Forman*, 421 U.S. at 852. The

Texas Supreme Court has accordingly held that an "'investment contract' for purposes of the Texas Securities Act" requires that a purchaser's "realization of the expected profits[] is ***at least*** predominantly due to the entrepreneurial or managerial, rather than merely ministerial or clerical, efforts of others." *Life Partners*, 464 S.W.3d at 681 (emphasis added). The question, then, is not whether Respondents did *anything*, but whether what they did was the essential managerial effort on which a purchaser's expectation of profit depended.

The SEC Crypto Asset Guidance resolves this question for mining operations like that at issue here. In March 2026, the SEC issued an interpretation of how *Howey* applies to proof-of-work networks. *See* SEC Crypto Asset Guidance, 91 Fed. Reg. at 13724–25. The SEC first identifies what the "work" in such mining consists of: "[t]he 'work' in PoW is the computational resources that miners contribute to validate transactions and add new blocks to the PoW Network." *Id.* It then describes the operator of a mining pool, whose role is "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." *Id.* And it concludes:

> [W]hen a miner combines its computational resources with other miners to increase their chances of successfully mining new blocks on the PoW Network, the miner has no expectation of profit derived from the essential managerial efforts of others. By 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. . . .
>
> Further, a pool operator's activities in operating the mining pool using the combined computational resources of participating miners are administrative or

> ministerial in nature. 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.

Id. at 13725; *see also* Secs. & Exch. Comm'n, Statement on Certain Proof-of-Work Mining Activities (Mar. 20, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025 (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," the activity does not involve the offer or sale of securities).

Because the Texas Legislature intended the TSA "to be interpreted in harmony with federal securities law," the SEC's guidance carries substantial weight. *Davis v. MSR Holdings, LLC*, 2024 WL 3237623, at *9 (Tex. App.—Houston [1st Dist.] June 28, 2024, pet. denied) (quoting *Sterling Trust Co. v. Adderley*, 168 S.W.3d 835, 840 (Tex. 2005)); *see also Highland Cap. Mgmt., L.P. v. Ryder Scott*, 402 S.W.3d 719, 741 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

Three things follow. First, the SEC's guidance covers this arrangement. Second, Respondents' work was ministerial rather than managerial. And third, the guidance indisputably applies to the hundreds of purchasers who ran home machines—meaning the TSSB's theory would make the same mining package a security in one purchaser's hands and a commodity in another's, dependent on location alone.

1. Purchasers Did The Relevant Work

The SEC Crypto Asset Guidance defines the relevant work of mining as the computational resources miners contribute. It does not locate it in the ministerial tasks of setting up rigs, keeping them cool, and performing routine maintenance. *See* 91 Fed. Reg. at 13724. Yet those tasks are exactly what the TSSB wrongly treats as the relevant "work" here. Mining package purchasers

supplied computational resources by contributing their hash power. *See* Tr. Vol. 1 at 170:6–11 (Mr. Gray explaining that 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 and become more respected and reliable."); Tr. Vol. 3 at 211:8–11 (Mr. Sotak testifying that purchasers contributed "hash power through their mining seat, and then MineTXC went out and, on behalf of . . . those users, bought the computational power and plugged it in."). Indeed, in the program's initial months, each purchaser was assigned their own mining device, and the work Respondents performed was "the same basic thing" either way. Tr. Vol. 1 at 179:24–180:9, 181:5–14. It was purchasers' allocated hash power that did the mining. Tr. Vol. 3 at 230:11–21 (Mr. Sotak: "the . . . algorithm that's performing the hash functions, that is what is validating blocks.").

Mr. Sotak, a forensic accountant, certified public accountant, and Certified Fraud Examiner who leads the crypto asset practice at Ankura Consulting Group, thus opined that the SEC Crypto Asset Guidance is applicable here. Tr. Vol. 3 at 132:11–133:24, 207:8–14. He testified that purchasers of mining packages joined a mining pool, *id*. at 151:15–18, and that MineTXC was the pool operator, *id.* at 158:11–22. Nor did he simply take Respondents' word. He reviewed the TEXITcoin blockchain, confirmed that the purchasers' hash power was in fact added to the network over time, and performed "independent analysis to verify what those charts purported to show." *Id.* at 156:8–15, 157:7–13. This dispositive testimony went unrebutted.

2. Respondents' Activities Were Ministerial

The TSSB's theory is simple. Mr. Gray selected the mining sites, negotiated the electrical contracts, bought the machines, installed, cooled, and repaired them, paid the power bills, and distributed the rewards. Because purchasers outsourced those logistical tasks, the TSSB says, they necessarily relied on the efforts of others. But that premise misunderstands the work that produces TXC and, even if it were accurate, does not support the TSSB's conclusion.

Every 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. That the seller labors, and the buyer does not, has never been thought to convert the sale of a commodity into a securities transaction. *Howey* does not ask whether the seller worked. The question is whether the buyer's *profit* depends on the seller's efforts. The buyer of wheat depends on the farmer for delivery. He depends on the wheat *market* for gain. *Belmont Reid* applied that distinction to a seller who did considerably more than Mr. Gray did. The company had to locate gold-bearing ore, extract it, refine it, and strike it into coins, financing that work with its purchasers' prepayments. 794 F.2d at 1389–90. Regardless, the court affirmed judgment for the sellers, because reliance on a seller to produce and deliver what he has sold is the reliance of "an ordinary buyer, having advanced the purchase price," on "an ordinary seller." *Id.* at 1391; *see also, e.g.*, *Noa*, 638 F.2d at 79–80 (finding the same with silver bars, despite the seller guaranteeing purity and storing them for a year without charge).

Mr. Gray did far less than the seller in *Belmont Reid*. He bought machines, housed them, and kept the power on. *See* Tr. Vol. 1 at 169:22–170:5 (Mr. Gray describing his work as "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"—or "ministerial functions for just keeping . . . the network online"); *id.* at 181:5–14 (describing the work as "the same basic thing" whether a purchaser had his own rig or contributed hash power: "get the miner, take it out of the box, drop it in, plug it in, connect it to the network, . . . set the settings properly, and you're good to go").

Those are the functions the SEC's guidance ascribes to a pool operator, and it explicitly classifies these tasks as "administrative or ministerial in nature." 91 Fed. Reg. at 13725. Efforts of that kind "are not sufficient to constitute essential managerial efforts." *Id.* ("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."). Mr. Sotak reached the same conclusion here, explaining that as pool operator, Mr. Gray's "duties and responsibilities are ministerial" because "the profit is derived from the computational power" provided by purchasers, "not from plugging things in." Tr. Vol. 3 at 230:5–13. Ministerial, *not* managerial—and thus not a security under *Howey*.

The TSSB's closing reduced its securities case to a single question: Who did the "work"? But the TSSB consistently misconstrued the work that was relevant. The TSSB portrayed what *any* mining pool operator does as managerial. For example, the TSSB averred that purchasers paid before they received hash power and that Respondents acquired, installed, maintained, and powered the machines. *See* Tr. Vol. 4 at 46:16–47:13. But neither point is of any moment. Paying first is how every purchase of mining capacity works, and hosting is a service bought on the open market.

Mr. Sotak provided another real-world example from Texas in his testimony concerning Blockware Solutions. Blockware Solutions is a "mining as a service" company that also operates a mining pool in Texas, and offers a product (RentHash) through which people "who do not own mining equipment and do not wish to own" it rent machines "hosted and monitored and maintained by Blockware" and receive the output. Mr. Sotak described it as one of several similar crypto-mining models. Tr. Vol. 3 at 171:25–173:22. In Blockware's mining-as-a-service product, a user buys a rig that Blockware hosts, maintains, and operates in its pool. *Id*. at 203:24–204:9. No one has alleged that Blockware is selling securities.

Respondents' work in operating the mines was similarly ministerial. The work performed in operating the mines was "the same basic thing" whether or not a purchaser had his own machine: "get the miner, take it out of the box, drop it in, plug it in, connect it to the network, . . . set the

settings properly, and you're good to go." Tr. Vol. 1 at 181:11–14. And once a machine was running, TXC "was distributed programmatically every day, sent out by the system directly." Tr. Vol. 1 at 45:2–3. As Mr. Sotak explained, the pool operator's duties are ministerial "because the profit is derived from the computational power itself, not from plugging things in." Tr. Vol. 3 at 230:5–14. Plugging in and maintaining a machine is not the entrepreneurial or managerial effort on which a purchaser's return depended. Measured against *Searsy*, then, housing a machine is not an "undeniably significant" effort that "affect[s] the failure or success of the enterprise." 560 S.W.2d at 641 (quotation marks omitted).[7]

In sum, the work of a mining pool operator remains ministerial whoever performs it. The TSSB's theory rests on treating a hosting service as the management of an enterprise. The Court should reject this misguided argument because the SEC rejected it, the market sells hosting as an ordinary service that is not managerial, and the record shows that whatever purchasers stood to gain depended on the market and the computing power they bought—not on who plugged it in.

3. The Guidance Also Applies To The At-Home Miners

The purchasers who plugged in mining rigs at home put the matter beyond dispute. While the Order alleges categorically that "[i]nvestors never receive any mining hardware or control over mining hardware," Order ¶ 16, Mr. Fuselier admitted that allegation was false because "some

[7] The SEC Crypto Asset Guidance's conclusion is subject to two qualifications. Footnote 105 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." 91 Fed. Reg. at 13725 n.105. Purchasers here received a pro-rata allocation of TXC based on their contribution of computational resources, no non-miner bought an interest in the pool, and the published formula allowed no purchaser more than his pro-rata share. Tr. Vol. 3 at 229:16–25; *see* TSSB Ex. 22 at 31. Footnote 106 excepts arrangements by which "miners passively rely on the pool operator to provide the computational resources." 91 Fed. Reg. at 13725 n.106. Purchasers here provided the computing power, and it was their hash power—the computing power *they provided*—not any resource of MineTXC's, that performed the mining. Tr. Vol. 3 at 229:22–230:21.

purchasers did get at-home mining equipment." Tr. Vol. 2 at 136:23–137:11. A purchaser who "had been allocated a certain amount of hash power" was "given the option to receive a home mining rig," Tr. Vol. 3 at 159:3–7, 160:1–11, and once "a miner had acquired enough hash power to take physical delivery of a mining rig, it was tracked and shipped through the Blockchain Mint website," Tr. Vol. 1 at 183:13–16. Seven hundred megahash qualified a purchaser for an at-home machine. Tr. Vol. 3 at 160:7–11. Hundreds took delivery. Tr. Vol. 1 at 183:6–9; Tr. Vol. 2 at 51:6–11; TSSB Ex. 4 at 239; RX 49 (log of home miners and the equipment shipped to each).

The Order does not account for these purchasers, wrongly denying they exist, Order ¶ 16—and the TSSB has never contended that these purchasers engaged in securities transactions. *See* Tr. Vol. 4 at 47:2–4 (TSSB distinguishing "a piece of equipment that the purchaser took home and independently operated"). Yet there is no substantive difference between these purchasers and those who contributed computational power without taking an at-home mine: both paid the same price, received the same output of coins under the same formula, and relied on the same equipment performing the exact same work. Tr. Vol. 1 at 186:21–187:9 ("Q. So the only difference is literally who is handling the infrastructure and logistical issues? A. That's it."); Tr. Vol. 3 at 161:1-5 (Mr. Sotak testifying that a home machine and a hosted one differ in no respect "[i]n terms of the underlying functions that are being performed."); *id.* at 188:19–22 (Mr. Sotak explaining that home miners simply "performed those overhead functions that the pool operator otherwise would have").

The only distinction between the two is the location of their machines and the person who plugs them in. The SEC Crypto Asset Guidance sensibly treats that work—maintaining and securing the hardware—as "administrative or ministerial in nature." 91 Fed. Reg. at 13725. Clearly, a ministerial difference cannot divide a commodity purchase from a securities transaction, but the TSSB identifies no other distinction. On the TSSB's theory, the same $995 mining package purchase, yielding the same coin under the same formula, buys a security in one purchaser's hands

and a commodity in another's. Needless to say, that theory has no precedent, defies common sense, and must be rejected.

Unable to persist with the concededly false allegation that "[i]nvestors never receive any mining hardware or control over mining hardware," Order ¶ 16, the TSSB attempted to rescue its theory mid-hearing by simply discounting the hundreds of purchasers who received home miners as a minority. *See* Tr. Vol. 2 at 51:6–11 (Mr. Gray estimated Respondents sent between 200 and 500 home miners); Tr. Vol. 4 at 47:12–13 (TSSB arguing a majority of purchasers did not take possession of a home miner). But this is too little, too late. The TSSB has not pointed to any law that would permit courts to alter their securities analysis based on similarly situated purchasers. Unsurprisingly, a court considering a comparable arrangement agreed. Neither can the TSSB legitimately distinguish cases like *Audet v. Fraser*, which recognized comparable arrangements—like the digital mining product called a "Hashlet," which entitled purchasers to "a stand-alone physical machine or part of a physical machine that was mining for cryptocurrency" together with the rewards produced—were *not* securities. 605 F. Supp. 3d 372, 376–77, 379 (D. Conn. 2022) (noting that the operator charged a fee "to maintain and operate the equipment"). Sustaining 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." *Id.* at 393. The same is true of mining package purchasers here and, contrary to the TSSB's earlier briefing, the contested-case hearing served only to reinforce that reality as a matter of both fact and law. *Contra* Pet. Resp. to Mot. Summ. Disp. at 13 (suggesting *Audet* "reinforces why the disputed factual issues" required "a full . . . hearing").

III. RESPONDENTS LACKED FAIR NOTICE

The Order should also be set aside for the independent reason that Respondents lacked fair notice of the TSSB's fundamental case. At the time Mr. Gray developed the TEXITcoin

ecosystem, first offered mining packages for purchase, and built the mine, neither the SEC nor the TSSB had addressed how federal or state securities laws applied to digital mining. The SEC Crypto Asset Guidance was not issued until March 23, 2026, roughly six weeks after the Order issued—and even then, it *supported* Respondents' position here, as described above. Respondents thus lacked fair notice that their actions could be considered part of a securities transaction.

Additionally, the TSSB appeared to press a different theory of the case mid-hearing that was not alleged in the Order. Rather than what was actually alleged—that the initial sale of mining packages was a securities transaction—the TSSB attempted to pivot to pursue a separate theory that the ability of a purchaser to *resell* their mining seats rendered the initial transaction a security. But that theory appears nowhere in the Order, Respondents had no notice of that theory, and it should play no part in the decision.

A. Respondents Lacked Fair Notice That They Violated Securities Laws

Mr. Gray launched TEXITcoin and began offering mining packages in 2024, *see supra* § I.A, and purchasers bought them into early 2026. The TSSB issued the Order on February 11, 2026. *See* Order. The SEC published its interpretive release on the application of the federal securities laws to crypto assets on March 23, 2026, more than two years after Mr. Gray mined TEXITcoin's first block. *See* 91 Fed. Reg. at 13714. That release is the source of the protocol mining and mining pool analysis on which both sides spent the better part of this proceeding. *See supra* § II.C. Yet no such guidance existed when Mr. Gray designed the TEXITcoin ecosystem, when purchasers bought, or when the Deputy Commissioner signed the Order, presently under review.

Until the release of the SEC Crypto Asset Guidance in March 2026, neither the SEC nor the TSSB had promulgated a regulation or issued clear guidance applicable to the mining activity at issue here, notwithstanding that digital asset mining is widespread in the industry. The SEC had

instead relied on "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*, 8 STAN. J. BLOCKCHAIN L. & POL'Y 237 (2025). And when the SEC finally spoke, it conceded that the "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." 91 Fed. Reg. at 13724. That was the state of the law when Mr. Gray built the mine, and it was still the state of the law when the Order issued. To this day, the TSSB has no rules, regulations, or published guidance addressing when the purchase of hash power or participation in a mining pool becomes a securities transaction.

Due process requires fair warning before liability is imposed for a purported securities violation. *See Emp. Sols. Staffing Grp., II L.L.C. v. Off. of Chief Admin. Hr'g Officer*, 833 F.3d 480, 487 (5th Cir. 2016) ("Statutes and regulations which allow monetary penalties against those who violate them . . . must give a regulated party fair warning of the conduct they prohibit or require.") (cleaned up). A person must be able to tell, from something, that what he is about to do will be treated as unlawful. Courts set aside agency sanctions imposed where he could not. *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). In most of those cases—including *Upton* and *General Electric*—an existing regulation was ambiguous. Here, there was no regulation *at all*.

Mr. Gray is not a high-school graduate, let alone a securities lawyer, and he was in no position to predict how the TSSB would classify his 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"). If anything, Mr. Gray reasonably could have expected Texas to treat TEXITcoin in the same way it treated other similar entities, like Blockware, that provide computational resources for mining—that is, without any interference. He "didn't particularly think that [he] was required to do any type of registration" and he wanted his own name on the project rather than to "hide behind a corporate wall." Tr. Vol. 1 at 164:24–165:5. In the absence of regulations he could consult, he did the best he could with what he had.

This is not a case where the rule was available and Mr. Gray misunderstood it or did not follow it. When the first authoritative treatment on the subject arrived, it described mining and mining-pool participation as administrative or ministerial activity rather than the essential managerial efforts of others. *See* 91 Fed. Reg. at 13724–25; *see supra* § II.C. At bottom, this case does not involve any allegation that Mr. Gray stole money, lied about the existence of the mining operations, failed to deliver the TXC he promised, failed to pay commissions, or guaranteed returns. What he did, at worst, was fail to register an instrument that the TSSB *now*—incorrectly at that—calls a security, the SEC says falls outside *Howey*, and which ordinary people would regard as a commodity mining contract. Conclusions of Law Nos. 1 through 3 should accordingly be set aside on this independent basis.

B. The TSSB Appeared To Argue A New Theory In The Midst Of The Hearing

On the second day of the hearing, midway through its examination of Mr. Gray, the TSSB appeared to begin testing a new theory of why a mining package was a security that it had not alleged in the Order. Mr. Heintz asked Mr. Gray to confirm that a "mining package purchaser could sell his mining seat to someone else," and asked whether the "mining seat itself or the mining package . . . could be transferred to another person." Tr. Vol. 2 at 51:6–52:24. He also asked

Respondents' expert whether he had seen "anything where . . . mining seats could be sold" and whether that was a "transferable interest." Tr. Vol. 3 at 220:20–24, 227:19–228:2.

None of that appears in the Order. The Order alleges a transaction between Respondents and a purchaser: Respondents offered and sold the mining packages, and purchasers bought them. It says nothing about a resale *between* two purchasers, about the transferability of the seat, or about a resale market at all. *See generally* Order. Mr. Fuselier confirmed that the Order "doesn't allege the package itself and the ownership or transfer rights with the package itself to be a security," and that it "does not talk about the transfer and sale of the package itself." Tr. Vol. 2 at 145:20–146:2.

The TSA requires that the Order "state the specific charges" against Respondents. TEX. GOV'T CODE § 4007.104(b)(2). The Texas Administrative Procedure Act likewise requires that notice of a contested-case hearing include "a short, plain statement of the factual matters asserted." *Id.* § 2001.052(a)(4). Neither the Order nor the Notice of Hearing told Respondents that the TSSB might treat a resale between two purchasers as the securities transaction at issue. Respondents answered the Order, designated their expert, and prepared a defense to the transaction the Order describes. They prepared no evidence and sought no expert opinion on a resale theory, because there was none to answer. Unsurprisingly, this is why "an amendment or supplementation that includes information material to the substance of the hearing, requests for relief, changes to the scope of the hearing, or other matters that unfairly surprise other parties . . . not be filed later than seven days *before* the date of the hearing, except by *agreement of all parties* or by permission of the judge." 1 TEX. ADMIN. CODE § 155.301(b)(2); *accord* TEX. GOV'T CODE § 2001.052(b) (requiring seven-day notice and continuance under the APA for amendments urged during a hearing). But the resale of mining seats formed no part of the Order or Respondents' notice, and the belated tangent should form no part of this Court's findings or conclusions.

IV. THE TSSB FAILED TO SHOW IMMEDIATE AND IRREPARABLE PUBLIC HARM

The TSA permits an emergency cease and desist order only where the alleged conduct "threatens immediate and irreparable public harm[.]" TEX. GOV'T CODE § 4007.104(a). The TSSB bore the burden of proving that Respondents' conduct did so. *Id.* § 4007.104(d) ("At the hearing, the Commissioner has the burden of proof and must present evidence in support of the emergency order."). It offered no relevant evidence.

The TSSB apparently maintains that any violation of securities law is *per se* immediate and irreparable public harm. *See* Pet. Resp. to Mot. Summ. Disp. at 35–36. That reading improperly strips the words "immediate" and "irreparable" out of Section 4007.104. If every possible violation of the TSA creates immediate and irreparable harm, this statutory language would be superfluous. *See PlainsCapital Bank v. Martin*, 459 S.W.3d 550, 556 (Tex. 2015) ("[W]e presume the words in a statute are selected with care and we interpret them in a manner that gives meaning to all of them without disregarding some as surplusage."). The statute supplies no support for the TSSB's position, and the TSSB has acknowledged that "Texas courts have not evaluated what constitutes 'immediate and irreparable public harm' as it relates to the issuance of Emergency Cease and Desist Orders." Pet. Resp. to Mot. Summ. Disp. at 35. But no shortage of precedent on this statutory prerequisite could justify reading it out of the statute altogether.

Here, given the TSSB's shoddy investigation and its inclusion of knowingly false facts in the Order, the Court should reject the TSSB's attempt to circumvent due process protections by unilaterally declaring a non-existent emergency and then suggesting that order can be substantiated as if it were an ordinary cease-and-desist case—inverting due process and unlawfully expanding the TSSB's intentionally narrow source of emergency authority. Respondents' business has been shut down for eight months since the Order was issued. The damage to Respondents' business has

been devastating. The TSSB should not be permitted to command a party to cease and desist on a nonexistent showing of immediate and irreparable harm only to later try its case without addressing the alleged emergency circumstances that supposedly justified the ex parte order to begin with.

First, there was no harm at all here. The Order does not allege—nor did the TSSB prove—the loss or misappropriation of a single dollar, and it identified no victim in the Order, even pseudonymously. Mr. Fuselier acknowledged that his investigation revealed that "people received their TXC distributions daily," that "the output of the mining operation was TEXITcoin," and that commissions owed to date had been paid to miners. Tr. Vol. 2 at 134:17–136:22. Purchasers received the entirety of the benefit of their bargain, earning TXC every day. *Id.* at 136:17–19.

Second, whatever harm the TSSB perceived, it was not immediate or imminent. The conduct underlying the Order began as early as 2024. *See, e.g.*, Tr. Vol. 1 at 217:16–20, 224:1–4 (content published in 2024); Tr. Vol. 3 at 76:8–13 (content published in June 2025); Tr. Vol. 2 at 196:21–197:1 (website content last updated July 30, 2025). Mr. Fuselier opened his investigation in March 2025. Tr. Vol. 2 at 121:8–11. But the TSSB did not issue the Order until February 2026—nearly a year after becoming aware of such conduct, and nearly two years after the conduct it said threatened immediate public harm began. Nor was it irreparable. The only harm the Order alleges is monetary, and "there is no irreparable injury [where] money damages would suffice and the amount can be measured." *Edison Cement Corp. v. N.C. Furniture Direct 1, Ltd.*, 2017 WL 3222565, at *2 (Tex. App.—Austin July 26, 2017).

The TSSB failed to set forth *any* evidence to satisfy its burden to prove immediate and irreparable harm. Accordingly, the TSSB has failed to substantiate any factual foundation for Conclusions of Law Nos. 6–7 and with them the statutory predicate for exercising emergency-enforcement authority—demonstrating once more why the Order should be set aside in its entirety.

V. TEXITCOIN, MINETXC, AND BLOCKCHAIN MINT MUST BE DISMISSED FOR WANT OF JURISDICTION

Independent of the foregoing, the Order should be set aside as to TEXITcoin, MineTXC, and Blockchain Mint because they are not properly named respondents. These are not entities and therefore cannot cease or desist from anything, and the TSSB has no jurisdiction over them. The TSSB's emergency enforcement authority pertains to "a person" that is reasonably believed to be "engaging in or is about to engage in fraud or a fraudulent practice in connection with" covered securities transactions, "has made an offer containing a statement that is materially misleading or otherwise likely to deceive the public," or "engaging or is about to engage in an act or practice that violates [Title 12 of the TSA] or a board rule." TEX. GOV'T CODE § 4007.104(a)(1)–(3). Under the TSA, the terms "person" and "company" are coterminous and include any foreign or domestic "corporation," "person," "company," "partnership," "association," "firm," "syndicate," or "trust." *Id.* § 4001.064(a).

Here, the TSSB has neither attempted to—and could not—demonstrate that TEXITcoin, MineTXC, or Blockchain Mint fall within one of these statutory headings. TEXITcoin is just a blockchain. Even the Order describes TEXITcoin as something that "purports to be an inexpensive mineable blockchain-based cryptocurrency." Order ¶ 5. Mr. Fuselier agreed with that description, agreed that a blockchain "is not an entity that's capable of being sued," and agreed that he had understood as much throughout his investigation. Tr. Vol. 2 at 129:12–20, 130:1–3. TEXITcoin cannot, of course, possess "assets or a balance sheet or liabilities or anything like that." Tr. Vol. 1 at 162:21–163:1.

MineTXC is the name of the website through which the mining packages were sold. Order ¶ 12; Tr. Vol. 1 at 163:5–8. Blockchain Mint is the name Mr. Gray used "for the striking of the copper points, the cold storage wallets." Tr. Vol. 1 at 163:15–18. But domain names and websites

are not legal entities with the capacity to act in their own right. *See, e.g.*, *Warner Bros. Entertainment, Inc. v. Jones*, 538 S.W.3d 781, 803–04 (Tex. App.—Austin 2017, pet. denied) (collecting cases holding that domain names for websites are assets, rejecting argument that "the website name . . . is an example of a trade name"). It is no accident that the only instrument associated with either is an assumed name certificate for Blockchain Mint, filed with the Collin County Clerk, on which the box marked "individual" is checked. RX 68; Tr. Vol. 1 at 138:12–15, 166:13–21. To his credit, even Mr. Fuselier acknowledged that Blockchain Mint and MineTXC "are not entities that can be sued." Tr. Vol. 2 at 130:4–7.

The Order nonetheless alleges that all four Respondents "are issuing" the mining packages, Order ¶ 8, when the TSSB knew this to be false in advance of the Order. As Mr. Fuselier conceded, TEXITcoin and Blockchain Mint "did not, in fact, offer these mining packages for sale." Tr. Vol. 2 at 131:24–132:4; *see also id.* at 131:9–11. His only explanation was that the names "were collectively known as TEXITcoin entities," that "[t]hey were all linked together," and that the grouping "got a little fuzzy in that way." *Id.* at 131:15–21; *see also, e.g.*, *id.* at 129:22–25 (explaining the "order was issued against something that the public knows by that name"). But this says nothing of what TEXITcoin, MineTXC, or Blockchain Mint actually did (or *could* do). None is an entity; none holds assets or liabilities; and none is capable of ceasing or desisting from anything, Tr. Vol. 1 at 164:17–20—as the TSSB knew *before* issuing its "emergency" cease-and-desist order. Indeed, Mr. Fuselier searched the Texas Secretary of State's records during his investigation, Tr. Vol. 2 at 128:20–22, and he knew "before the cease and desist order was filed" that the three were not legally formed entities, *id.* at 129:6–8. But the TSSB named them anyway. *Id.* at 129:9–11 ("Q. And even though you knew that they were not legal entities, they were named as respondents? A. Yes."). This is beyond the pale.

The Order should be set aside as to Respondents TEXITcoin, MineTXC, and Blockchain Mint for want of jurisdiction and all references to those entities removed from the Findings of Fact and Conclusions of Law.

VI. MINING PACKAGE REFUNDS ARE UNAVAILABLE

The TSSB's request to refund purchasers of mining packages is procedurally and jurisdictionally improper. Accordingly, neither the Court nor the TSSB may require refunds on the current posture. *First*, the TSSB does not have jurisdiction to order refunds for the mining packages. *See* TEX. GOV'T CODE § 4007.108(a) (limiting TSSB's refund authority to "a client or purchaser of securities"). For the reasons previously described, the TSSB cannot order refunds because the mining packages are non-security products. *See supra* § II. *Second*, even assuming *arguendo* that jurisdiction was satisfied, refunds are not appropriately before the Court because the TSSB did not seek refunds in the Order and instead first sought full refunds for all mining package purchasers in the Notice of Hearing. *Compare* Order *with* Notice of Hr'g at 2. *Third*, even if refunds were statutorily authorized (they are not), the TSSB failed to present evidence at the hearing to support the necessary findings *it requested* in the invalid Notice of Hearing. The TSSB's request should be denied.

A. The TSSB's Refund Request Is Not Properly Before the Court

The TSSB's choice to issue an emergency order has procedural and jurisdictional consequences that prohibit refunds. The TSSB's request for refunds is procedurally and jurisdictionally improper because the TSSB cannot request refunds in a notice of hearing without previously including a refunds request in an Order or on an emergency posture.

1. Restitution Cannot Be Requested Through A Notice of Hearing Where the TSSB's Referral Does Not Include Refunds

The TSA does not permit a restitution request to be granted where it is not included in the original emergency order. Refunds are therefore unavailable on this posture because the TSSB's SOAH referral underlying this case pertains only to the actual Order issued by the TSSB. The expedited-review framework is a statutorily defined three-step process. First, "a person against whom the emergency order is directed" may request a contested-case hearing "after . . . the order is served." TEX. GOV'T CODE § 4007.104(c). Second, where requested, the TSSB is obligated to "present evidence in support of the emergency order" at a contested hearing. *Id.* § 4007.104(d). Third, "[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.*, *Balanced Energy*, 2016 WL 4719125, at *8 (deleting findings of fact related to future bad-actor disqualification). The Court should reject the TSSB's attempt to shoehorn a new restitution remedy into this proceeding—expedited review of an injunctive emergency cease-and-desist order.

The Order's own notice describes the hearing the same way: a hearing request must "state the grounds for the request to set aside or modify the Order." Order at 7. Section 4007.104 does not mention refunds, restitution, disgorgement, or any other monetary remedy. And the Order contains no refund directive to affirm. *Id.* Accordingly, the Court should reject the TSSB's overreach for refunds that has no textual basis in the TSA.

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. That is a difference in kind, not degree, that goes far beyond mere modification. 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.) ("A prohibitive injunction forbids conduct, whereas a mandatory injunction requires it."). "While a prohibitive injunction forbids conduct, a mandatory injunction requires it." *Bulliner v. Garcia*, 2023 WL 2807212, at *3 (Tex. App.—Corpus Christi Apr. 6, 2023). Accordingly, mandatory relief is "an extraordinary remedy" only available "in cases of extreme hardship" and subject to a heightened evidentiary showing. *See id.* at *3–4; *RP&R, Inc.*, 32 S.W.3d at 400 (same). Compelling affirmative conduct imposes greater burdens on a respondent, and a greater risk of erroneous deprivation, than halting ongoing conduct.

2. Emergency Orders Are Not Enforcement Orders That Permit Restitution

The TSA's different treatment of temporary emergency orders and permanent enforcement orders 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. The statute reflects that difference. 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. 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 Secs. Bd.*, 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 not modification; it is an impermissibly new and different order. *See 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"). 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").

The only order in this case is an "EMERGENCY CEASE AND DESIST ORDER pursuant to Section 4007.104." Order at 1. The TSSB recognizes the difference. It argued that "if . . . the Deputy Securities Commissioner determines that Respondents violated The Securities Act, Section 4007.108(a) expressly authorizes the issuance of an enforcement order[.]" Pet. Resp. to Mot. Summ. Disp. at 33. That is an argument for a future enforcement order, not for adding refunds to the emergency order under review. The TSSB chose the emergency vehicle, and that vehicle does not carry a refund remedy. Simply put, the TSSB has pursued a different vehicle than what would permit the TSSB to obtain refunds in this case.

The TSSB cannot 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. Section 4007.108 only authorizes refunds "in an agreed order or an enforcement order." TEX. GOV'T CODE § 4007.108. The "enforcement order" contemplated by Section 4007.108 is an order pursuant to Section

4007.104 that follows a hearing. However, an emergency order is a separate abbreviated process pursuant to Section 4007.104 for temporary prohibitory conduct. *See id.* § 4007.104. There is no agreed order here, and no enforcement order has issued. The TSSB has not issued an "enforcement order."

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. Those limitations justify temporary prohibitory relief. They cannot justify a permanent, affirmative monetary remedy. The TSSB's request inverts the statute's sequence. The refund power reaches only "a dealer . . . regulated under this title." TEX. GOV'T CODE § 4007.108(a). Whether Respondents are dealers at all depends on the central disputed question in this case: whether the mining packages are securities. *See supra* § II. Ordering refunds on review of an emergency order would impose permanent liability based on determinations first made ex parte, before Respondents had any chance to be heard. As further evidence that refunds are unavailable, the TSSB has not identified a single other contested case in which refunds were ordered on this posture. *See* Pet. Resp. to Mot. Summ. Disp. at 33–34. Accordingly, neither the Court nor the Commissioner may order refunds here, since no enforcement order has issued against Respondents.

B. The TSSB Failed To Present Evidence Sufficient To Order Refunds

The TSSB's request fails because it did not present evidence to support a refund at the hearing. To defeat summary disposition, the TSSB represented that it would "present evidence establishing Respondents' violations of The Securities Act and demonstrat[e] that a refund order is appropriate and in the best interests of the investors." Pet. Resp. to Mot. Summ. Disp. at 33–34. It offered no such evidence. The ***single*** question it put to a witness on the subject was excluded. Tr. Vol. 2 at 178:2–5. There was no evidence of an accounting or comparable analysis showing

what purchasers spent, what value they recouped through coins, or other relevant (and complex) determinations. And in closing, the TSSB did not mention refunds at all. *See* Tr. Vol. 4 at 46:1–58:24. Thus, it did not meet its burden to "support" or "affirm" a refund obligation 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.*, *Balanced Energy, LLC*, 2016 WL 4719125, at *7–8 (deleting findings of fact related to future bad-actor disqualification).

Moreover, the requested remedy has no basis in the record. For example, a refund order requires findings on the figure refunded, which in a case of this nature cannot depend merely on the sticker price of mining packages themselves. *See* TEX. GOV'T CODE § 4007.108(b) ("The commissioner may not require payment of other damages or estimate harm in a refund order."). The TSSB acknowledged as much in its ineffective notice of hearing: praying that the proposal for decision include a refund order that "calculates the [figure refunded] as the amount of each investor's principal investment *less any returns or profits* paid by Respondents to said investor." Notice of Hr'g at 3. But all purchasers since September 1, 2019 have received their pro-rata distribution of TXC, which both at the time of distribution and to this day carries value on the open market and cannot be clawed back. The necessary implication of a categorical refund would not return purchasers to the status quo; it would leave *all* unjustly enriched. Moreover, the TSSB offered no evidence of what any purchaser paid, what TXC each purchaser received, or how a refund would account for TXC received by purchasers, including purchasers who later sold it. *See* Tr. Vol. 2 at 136:17–19 (Fuselier); Tr. Vol. 3 at 65:5–8 (Nickel). This is not a full enforcement action under Sections 4007.106–.108, with a purchaser-level evidentiary record and a full hearing on potential refund issues. It is a proceeding to decide whether Respondents must stop doing something, and it cannot be converted into one that requires them to pay. Accordingly, a "refund

order" that does not correspond to a purchaser's precise net loss (if any) would amount to compensation for "damages" or speculative "harm" that is statutorily forbidden to the TSSB. *See* TEX. GOV'T CODE § 4007.108(b). Regardless, the TSSB has neither offered nor admitted a single piece of evidence capable of informing the necessary calculations *it requested* in the invalid notice of hearing itself. The request should therefore be rejected out of hand. The Court should deny the TSSB's request for refunds.

VII. THE TSSB'S HEARING CONDUCT WARRANTS ADVERSE FINDINGS ON FRIVOLOUS ALLEGATIONS AND POSSIBLE SANCTIONS

Finally, Respondents reserve their right to seek sanctions, and the Court should itself seriously consider imposing them based on the TSSB's egregious conduct in this case. The Court may impose sanctions against a party, including a state agency, for "filing a motion or pleading that is groundless and brought . . . in bad faith." TEX. GOV'T CODE § 2003.0421(a)(1)(A); 1 TEX. ADMIN. CODE § 155.157(a)(1)(A). The Order relies on claims that were flatly contradicted by evidence already in the TSSB's possession when it made the relevant allegations, and the TSSB has refused to correct the record in the weeks since the hearing established the known falsity of those claims. Subject to reviewing the TSSB's post-hearing submission, Respondents reserve the right to seek sanctions under Section 2003.0421 and Rule 155.157 and to request that the findings set out below be included in the proposal for decision, TEX. GOV'T CODE § 2001.141(b). Respondents further preserve all claims for fees and costs. *See generally id.* § 2001.903 (allowing up to "$1 million for reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action"); TEX. CIV. PRAC. & REM. CODE § 105.005 (same, on judicial review of a contested-case hearing under the APA); 1 TEX. ADMIN. CODE § 155.157(b) (allowing a range of sanctions, including discovery expenses).

In short, the TSSB has not corrected allegations that it knew, and certainly now knows, to be untrue. A government attorney who learns a representation was untrue "has a duty . . . to take corrective action." Tex. Comm. on Prof'l Ethics, PEC No. 92–19, Op. 499 (1994); *see Ex parte Cook*, 691 S.W.3d 532, 536 (Tex. Crim. App. 2024) ("the State is obligated to pursue the truth to the best of its ability and present its evidence truthfully to the court"). The TSSB's failure to take corrective action when it knows it has made an incorrect allegation or representation is sanctionable. *See id.*

Here, the Order alleges that "[i]nvestors never receive any mining hardware or control over mining hardware." Order ¶ 16. Mr. Fuselier acknowledged that this allegation is false. Tr. Vol. 2 at 136:23–137:11. The Order alleges intentional failures to disclose, Order ¶¶ 28–32, but Mr. Fuselier acknowledged category-by-category that the TSSB knew the allegedly concealed information was disclosed. The Order also names three Respondents that the TSSB knew, before filing, were not legal entities and could not be sued. Tr. Vol. 2 at 129:6–11, 129:18–132:4.[8] Mr. Fuselier further acknowledged that neither TEXITcoin nor Blockchain Mint offered the mining packages for sale and that the Order's allegation to the contrary "is not correct." *Id.* at 130:16–132:4. Likewise, the TSSB's unsupported insistence on a restitutionary remedy—despite the referral-based review of an emergency order containing no such command, *see supra* § VI—is no less frivolous or sanctionable.

The TSSB's litigation strategy was, unfortunately, infused with the same bad-faith mentality. It not only ignored the Court's oral, pretrial designation order, but also affirmatively

[8] Naming parties against whom no claim lies is itself sanctionable. *State Off. of Risk Mgmt. v. Herrera*, 288 S.W.3d 543, 550–51 (Tex. App.—Amarillo 2009, no pet.) (upholding fee award for improperly joining defendants); *Funderbrugh v. Funderbrugh*, 2010 WL 2982906, at *3 (Tex. App.—Tyler July 30, 2010, no pet.) ("A party who makes misrepresentations to the court interferes with [its] core functions.").

misrepresented the video-evidence designations that were shared pursuant to the parties' written email agreement, before objections were due. *Contra* 1 TEX. ADMIN. CODE §§ 155.153(b)(5), 155.415; *contra also, e.g.*, *Thang v. Defy Intl., LLC*, 712 S.W.3d 647, 664–67 (Tex. App.—Hous. [14th Dist.] 2025, no pet.) (confirming emails meet the standards for a Rule 11 agreement). Sanctionable indifference also characterized the testimony sponsored and elicited by the TSSB: Mr. Block falsely testified he had never declared bankruptcy. *Compare* Tr. Vol. 3 at 42:5–10 ("Q: When you worked in sales, did you always disclose to your counterparties that you have filed for personal bankruptcy? A: Well, I have not[.]") *with id.* at 46:13–21 (presenting Mr. Block with a 1997 Chapter 7 petition matching his full name, former address, and Social Security number); *cf. Milton v. State*, 2011 WL 4361482, at *3 (Tex. App.—Houston [14th Dist.] Sept. 20, 2011, no pet.) (perjury "may be inferred from the circumstances." (citing *Mitchell v. State*, 608 S.W.2d 226, 229 (Tex. Crim. App. 1980))). The TSSB was "obligated to correct [this] perjured testimony given by one of their witnesses," even if it did not elicit the answer. *Turner v. State*, 2023 WL 5611423, at *6 (Tex. App.—Corpus Christi-Edinburg Aug. 30, 2023, pet. ref'd); *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (the State may not knowingly sponsor perjured testimony, "solicit[] false evidence," or "allow[] it to go uncorrected when it appears"). Respondents offered the TSSB the chance to withdraw the testimony rather than sponsor it. It declined *and then elicited still more testimony from this same perjurious witness*. Tr. Vol. 3 at 52:18–56:19. The TSSB's duty "continue[s] until remedial measures are no longer reasonably possible," *In re City of Lancaster*, 228 S.W.3d 437, 440 (Tex. App.—Dallas 2007, no pet.), and Respondents remain hopeful that the TSSB will rise to the standard expected of government counsel before the record formally closes.

Rather than a good-faith disagreement on whether digital mining activities intersect with the Texas Securities Act, TEX. GOV'T CODE § 4001 *et seq.*, the evidence laid bare the deficiencies in the legal and factual foundation of the TSSB's "emergency" order—raising serious concern

about its ethical basis as well. This is not rhetoric. It is now a matter of public record. Whether under the heading of sanctions or demonstrated reality, the evidence and testimony formally submitted counsel in favor of memorializing the TSSB's allegations for what they are: frivolous and unsubstantiated.

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 that sanctions be imposed under Section 2003.0421 and Rule 155.157, should the TSSB continue to support and sponsor false allegations and testimony against Respondents.

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CERTIFICATE OF SERVICE

I certify that on October 9, 2026, a true and correct copy of the foregoing was served on the following parties via e-filing:

Jeramy Heintz, Commissioner, Texas State Securities Board.

Justin Bontrager, Attorney, General Counsel Division, Texas State Securities Board.

Kristen McCourt, Attorney, Enforcement Division, Texas State Securities Board.

/s/ Avi Perry
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