

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	19 Civ. 9439 (PKC)
	:	
- against -	:	ECF Case
	:	
TELEGRAM GROUP INC. and TON ISSUER INC.,	:	
	:	
Defendants.	:	
	:	
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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
LOCAL RULE 56.1 STATEMENT IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

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Pursuant to Rule 56.1 of the Local Rules of the Southern District of New York, Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) respectfully submits this statement of undisputed material facts as to which Plaintiff contends there is no genuine issue to be tried in support of its motion for summary judgment.

A. Telegram Messenger

1. Telegram Messenger¹ is a social media application that allows its users to communicate with each other, and to view contents of certain websites privately without running the risk of being surveilled. (PX12, Durov Tr. at 41:9-25.)²

2. Pavel Durov (“Durov”), Telegram’s CEO, thinks of “Messenger” as synonymous with “Telegram.” (*Id.* at 35:14-37:16.)

3. From 2013 up until the time of the Telegram Open Network (“TON”) offering (the “Offering”), Durov funded Messenger exclusively with his personal savings resulting from the sale of his social media network “VKontakte” or “VK.” (*Id.* at 47:20-48:16.)

4. Through 2017, Telegram’s employees were principally focused on developing the Messenger application. Today, the same team does work for both Telegram Messenger and the TON blockchain. (*Id.* at 32:24-34:6.)

5. In 2017, Telegram had approximately 180 million monthly active users, whereas today it has approximately 300 million active users. (*Id.* at 43:6-20.)

¹ Capitalized terms not defined herein have the meanings ascribed to them in the Parties’ Joint Stipulation of Undisputed Facts, filed concurrently by Defendants.

² Exhibits to the Parties’ Stipulation of Undisputed Facts are designated herein as “JX” followed by the exhibit number (*e.g.*, JX1). Exhibits to Plaintiff’s Rule 56.1 Statement are attached to the Declaration of Ladan F. Stewart (“Stewart Declaration”), filed concurrently by Plaintiff, and are designated herein as “PX” followed by the exhibit number (*e.g.*, PX1).

6. Telegram has full control over the servers for Telegram Messenger. (*Id.* at 43:22-44:6.)

7. Telegram also pays for expenses relating to renting space to host the servers and networking equipment it uses for Messenger. (*Id.* at 282:24-283:15.)

8. Telegram believes that the size and public perception of its brand could affect the perception of TON, such that if there are many users who are happy with Telegram, they would likely be interested to see if they can find a project developed by the same team. (*Id.* at 88:7-89:12; 91:8-92:5.)

9. After the launch of TON, Telegram will continue to work on growing Messenger and its user base. (*Id.* at 267:2-12.)

10. Telegram does not and has never charged users for either downloading or using its Messenger application in any way. (*Id.* at 47:9-18.)

11. Telegram has never charged users a fee for using Messenger because it has a long term vision focused on growth, and believes it would not be commercially sensible to start charging users. (*Id.* at 54:15-55:3.)

12. From the time of the Offering, “way over 90” percent of Telegram’s expenses have been funded from Offering funds. (*Id.* at 52:7-53:3.)

13. Since the Offering, Telegram has not distinguished between the money spent on Messenger and money spent on TON. (*Id.* at 62:16-63:10, 259:13-260:1.)

14. Since the Offering, all of Telegram’s coders have been involved in the development of TON as well as of Messenger. (*Id.* at 69:8-20.)

15. Because Telegram is a private company, Durov believes that it would be unusual for Telegram to start publishing its financial statements and he does not believe that such statements are relevant. (*Id.* at 359:14-22.)

B. The TON Offering

16. In 2017, Messenger needed funds to keep buying more equipment and continue funding its growth. (PX12 Durov. Tr. at 132:20-133:4, 137:20-24.)

17. One of Durov's friends and eventual investors suggested to Durov in August of 2017 that he (the friend) invest in Telegram and that Durov invest in the friend's company, to which Durov responded "at this point Telegram needs cash to keep buying more servers," but was non-committal on an equity investment. (PX15 at TLGRM-017-000000553.)

18. In September 2017, Durov told the same friend that Telegram was "likely to abandon [its] immediate plans to attract VCs capital unless somebody throws some insane offer [their] way," for example \$500M for 10%. (*Id.* at TLGRM-017-000000554.)

19. Telegram first considered doing a public offering but gave up the idea because a public offering in the United States could be treated as an unregistered security. (PX12, Durov Tr. at 110:16-112:4.)

20. Telegram's purpose when it was considering a private/public offering and for the Offering was the same—to raise funds for TON and Messenger's corporate purposes. (*Id.* at 115:21-116:24.)

21. Selling equity was not a top option for Telegram because it was concerned it could affect the company's integrity, values, ethos, and what it stands for. (*Id.* at 120:10-15.)

22. In January 2018, Durov told investors: "We selected this offering size not only to give us sufficient capital to develop TON and the associated functionality within Telegram Messenger over the next number of years...." (PX16 at TLGRM-011-00000040.)

23. On or about January 16, 2018, Durov wrote: “Last year we considered raising funds via selling equity,” which was “abandoned” in “favor of the current strategy” for “two fundraising stages.” (*Id.*)

24. On or about January 24, 2018, Durov listed various questions he thought might be raised by investors, including “Use of funds on Telegram vs. TON.” He instructed his team to tell an investor, in response to a question about Telegram’s intended use of funds from the Offering: “Our position here: We see both TON and Telegram as Integral parts of the success of the project as Telegram provides the necessary user base and adoption to make the whole idea of mass market crypto-currency work. This is why we don’t separate the use of funds between the two and will allocate resources where they are most needed. We also don’t want to restrict ourselves to a rigid allocation of funds and budgets between TON and Telegram as we want to be able to compete and evolve in the constantly changing environment. (PX17.)

25. Durov also noted: “No contingency or delays, our reputation and credibility will suffer if we delay and we are already motivated to launch according to the schedule. If we fail to launch they will get all the remaining funds back. If the [sic] are few/no remaining funds left and we haven’t done any work they can hypothetically sue us for fraud/misrepresentation, the agreement allows for that.” (*Id.*)

26. In connection with a banking application, Durov drafted a document in 2018 (PX12, Durov Tr. at 155:9–156:13), explaining that Telegram “does not plan to develop sources of revenue in the next three years, but will continue leveraging current capital to fund further growth.” (PX18 at TLGRM-012-00015929; *see also id.* at TLGRM-012-00015932 (“the company projects the budget for 2019 at \$180 million and the budget for 2020 at \$220 million . . . the company does not generate revenue at present, or plan to do so in the foreseeable future,

and will rely on its substantial financial resources to fund this growth plan for the next several years.”).

27. When Telegram was coming up with the idea of TON, it “realized [it] would have to come up with a way of eventually distributing Grams” so they “decided to enter the purchase agreements with private purchasers” to do so. (PX12, Durov Tr. at 89:14-90:22.)

28. On or about January 16, 2018, Durov told an investor that since they got such a high demand from institutional investors in the first round, “Telegram as a company won’t have to sell Grams or any other cryptocurrency directly to its users.” He added: Throughout this process “we have emphasized the importance of Grams being widely distributed.” (PX16 at TLGRM-011-00000040.) He also stated: “The counsel we got from Skadden indicates that making the entire sale 100% institutional drastically decreases any regulatory risks for Telegram, which is our goal.” (*Id.* at TLGRM-011-00000041.)

29. On or about May 3, 2018, Hyman told an investor that after the initial plan change from a public to an initial so-called private offering, “principally for regulatory purposes” that “retail investors have to wait for the blockchain launch.” (PX19.)

30. On the same day, Hyman told another investor: “We decided for regulatory reasons that we will never do any form of direct public offering.” (PX20.)

31. Hyman told another investor on May 3: “We had ruled out a public ico back in January principally for regulatory reasons.” (PX21.)

32. On or about May 7, 2018, Hyman responded to another investor who said he had read about “a delay in the public ICO,” by stating that the article “was inaccurate- had decided back in January not to do a public ICO principally for regulatory reasons.” (PX22.) After noting that Telegram had “completed two private rounds” and was considering a third

round, “subject to market conditions,” he explained: “The public will get access to Grams post the blockchain launch which is on track for Q 4.” (*Id.*)

33. Telegram employee Shyam Parekh (“Parekh”) understood that the change from a private/public offering to the newly configured Offering was due to regulatory uncertainties about cryptocurrencies. (PX14, Parekh Tr. at 25:12-26:25.)

34. The price per Gram in each round of the offering was calculated by obtaining the average price of all the Grams that could be bought using the amounts raised in each round, under the Reference Price Formula. (PX12, Durov Tr. at 126:20-127:8.)

35. The same set of Offering Documents were used for both the U.S. and the foreign investors. (PX23 (Telegram’s Response to Interrogatories) at 6, Response 1.)

36. Telegram used the “same standard of communications” with respect to U.S. and non-U.S. investors. (PX14, Parekh Tr. at 64:1-16.)

37. Fifty-eight percent of Grams contemplated to be issued were sold to investors in the Offering. (PX12, Durov Tr. at 275:21-25.)

C. The Offering Documents

38. Ilya Perekopsky (“Perekopsky”) and John Hyman (“Hyman”) were authorized by Telegram to use the Two Page Teaser to market Telegram’s fundraising efforts. (PX12, Durov Tr. at 150:1-20.)

39. The Two-Page Teaser described the “Scope of Proposal” to include “Participation in the private sale of Telegram Open Network (<<TON>>) tokens.” (JX3 at 1.)

40. The Two-Page Teaser referred to a Simple Agreement for Future Tokens (“SAFT”). (*Id.* at 1.)

41. The Two-Page Teaser stated: “The SAFT will give investors with the right to receive TON tokens... called Grams, after the deployment of the TON Blockchain in Q4 2018.” (*Id.* at 1.)

42. The Two-Page Teaser stated: “The discount for private sale will exceed 50% of the initial public sale price, and the team expects it to exceed 70% of the price of the last token sold.” (*Id.* at 1.)

43. The footnote stated: “See the next page for issuing and pricing parameters.” (*Id.* at 1.)

44. The Two-Page Teaser stated: “Given the significant discount between the private placement and the public sale, it is anticipated that the lock-up period will be lifted in 4 equal tranches starting 3 months after the blockchain launch.” (*Id.* at 1.)

45. The Two-Page Teaser then set forth a chart outlining 25% locked for three months, 25% locked for 6 months, 25% locked for 12 months and 25% locked for 18 months. (*Id.* at 1.)

46. The Two-Page Teaser provided a Timeline that included a private sale to be closed in January-February 2018, followed by a public sale beginning March 2018, a December 2018 projected date for the token issuance for all investors and a January-March, 2019 date for listing tokens at the major cryptocurrency exchanges. (*Id.* at 1.)

47. The Two-Page Teaser stated that Telegram expected to raise \$600 million in the private sale before February 2018 and \$600 million plus in a public sale in March 2018. (*Id.* at 2.)

48. The Two-Page Teaser set forth a formula for calculating the price of Grams sold in the private sale and a formula for calculating the price of Grams sold in the public sale. (*Id.* at 2.)

49. The Two-Page Teaser contained a chart entitled “Private Discount” that set forth the private discount to the public sales price of Grams. The private discount ranged from 65.2% if \$400 million was raised in the public sale to 72% if \$800 million was raised in the public sale. (*Id.* at 2.)

50. The Two-Page Teaser provided a “Token Allocation Example” that stated that a \$50 million investment will provide the right to receive 162.1 million Grams out of 2,564.9 million totally issued to the private and public sale investors, assuming a \$600 million private and \$600 million public sale, and stated: “The private sale per-token price would be **68.2%** lower than that of the public sale.”³ (*Id.* at 2 (emphasis in original).)

51. The Four-Page Teaser stated that Telegram was introducing “a next-generation multi-blockchain Proof-of Stake system – TON (Telegram Open Network) designed to host a new generation of cryptocurrencies and decentralized applications, at a massive scale.” (JX4 at 1.)

52. The Four-Page Teaser stated: “To reach mainstream adaptation, a cryptocurrency, its underlying blockchain design and ecosystem require: “Speed and Scalability,” “Intuitive user interfaces” and “An engaged used base.” (JX4 at 1.)

53. The Four-Page Teaser explained each of these phrases in more detail. (JX4 at 1.)

³ All bolded and italicized references are contained in the referenced document, unless otherwise noted.

54. The Four-Page Teaser explained that: “An engaged user base that provides pre-existing critical mass necessary for the ecosystem to grow and eventually become adopted by hundreds of millions of users. (JX4 at 1.)

55. The Four-Page Teaser stated that: “Telegram is in a unique position to provide this combination and establish the first mass market cryptocurrency.” (JX4 at 1.)

56. The Four-Page Teaser stated that: “Telegram will use its expertise to create TON, a fast and infinitely scalable multi-blockchain architecture. By combining minimum transaction time with maximum security, TON can become a VISA/Mastercard alternative for the new decentralized future.” (JX4 at 1.)

57. The Four-Page Teaser stated that:

- “In October 2017, Telegram reached 170 million monthly users and delivered 70 billion messages every day.
- Telegram will rely on its 10-year experience in building **user-friendly interfaces** for tens of millions to build light wallets, markets and identification services that will allow users to get on board with cryptocurrencies in an intuitive way, integrated into Telegram applications, the TON Wallet can instantly become the world’s most adopted cryptocurrency.
- Telegram will leverage its **existing ecosystem** of communities, developers, publishers, payment providers and merchants to drive demand and value for TON cryptocurrency.” (JX4 at 1.)

58. The Four-Page Teaser stated: “Since taking cryptocurrencies mainstream in 2018 would not be possible using the existing blockchain platforms, Telegram co-founder Dr.

Nikolai Durov set out to find a novel solution to match the required speed and scalability. His research resulted in the design for the Telegram Open Network – a fast and secure blockchain and network project.” (JX4 at 2.)

59. The Four-Page Teaser contained a section entitled: “Telegram Messenger-TON Integration.” That section stated, in part, that: “....TON light wallets will be built into Telegram applications on all platforms. This will make over 170 million users instantly connected to the blockchain, making it immediately mainstream. This will allow millions of users to securely store their funds in the TON blockchain.” (JX4 at 2.)

60. That section of the Four-Page Teaser further stated, in part, that: “Since the majority of actors in the new digital economy already have active Telegram accounts, it is natural for Telegram to offer a secure universal ID. After passing KYC-AML (unclear) on Telegram once, users will get a virtual passport to log in to services that require user verification, which will eliminate a major point of friction for everyone engaging with crypto-assets.” (JX4 at 2.)

61. That section of the Four-Page Teaser further stated, in part, that: “Telegram’s existing ecosystem will offer simple ways of buying the TON cryptocurrency (grams) – and a range of services to drive demand and fundamental value for them.

- Bot Platform;
- Groups and Channels;
- Digital Content and Physical Goods
- A Gateway for Decentralized Services.” (JX4 at 2.)

62. The Four-Page Teaser set forth a “Roadmap” of events as follows:

- Q1 2018 Launch of Telegram External ID

- Q2 2018 Launch of the Minimal Viable Test Network of TON
- Q3 2018 Testing and Security Audits of TON
- Q4 2018 Deployment of Stable Network of TON
- Q4 2018 Launch of Telegram Wallet
- Q1 2019 Creation of TON-based economy in Telegram (JX4 at 3.)

63. The Four-Page Teaser stated: “To obtain the resources required to make TON a reality, Telegram is launching a token sale. The token sale will use a provisional Ethereum-based ERC20 Token (TON), to be converted 1:1 to native TON tokens (grams) after deployment of TON Blockchain in 2018.” (JX4 at 3.)

64. ERC20 tokens are digital tokens used on the Ethereum platform.

65. The Four-Page Teaser stated that the total supply of native Ton tokens (grams) will amount to 5,000,000,000. (JX4 at 3.)

66. The Four-Page Teaser stated that: “During the initial stages of active TON development, at least 52% of the entire supply will be retained by the TON Reserve to allow for a fast and stable evolution of the platform.” (JX4 at 3.)

67. The Four-Page Teaser stated that 44% of the total supply will be sold in accordance with a formula. (JX4 at 3.)

68. The Four-Page Teaser explained that: “The price of the first token will be \$0.10 USD, and each next token will be priced one billionth higher than the previous one. As a result the additional supply coming from the TON Reserve will always be more expensive than

the price paid by any of the existing buyers. This stricture and volume should allow the market to define the fair price and volume for the token sale.” (JX4 at 3.)

69. The Four-Page Teaser described Pavel Durov and Nikolai Durov as the founders and leaders of VK and Telegram. It stated: “Between them they have over 20 years of experience in building billion dollar companies used by hundreds of millions of people.” (JX4 at 4.)

70. The Four-Page Teaser also described various awards won by each Durov, including a number of gold medals and championships in international mathematics and programming championships won by Nikolai Durov. (JX4 at 4.)

71. The Four-Page Teaser also stated: “Telegram is a team of A-players. To become part of this team, each of its 15 developers had to either win the world’s top programming contest or take the first place in one of the nation-wide multi-level coding competitions held by the founder of Telegram.” (JX4 at 4.)

72. Telegram circulated three versions of a primer to potential and actual investors, a “Primer” (JX7) (referred to herein as the “Initial Primer”), a “Pre-Sale Primer” dated January 18, 2018 (JX8), and a “Stage A Primer” dated February 21, 2018 (JX9) (collectively the “Primers”).

73. The undated “Initial Primer” was likely created in late 2017 before the “Presale Primer.” (PX12, Durov Tr. at 151:11-152:15.)

74. Although there were some variations in content, much of their content was identical. (JX7; JX8 and JX9.)

75. The Primers all stated: “This paper outlines a vision for a new cryptocurrency and an ecosystem capable of meeting the needs of hundreds of millions of consumers, including 200 million Telegram users.” (*Id.* at 3.)

76. The Initial Primer stated: “Launching in 2018, this cryptocurrency will be based on multi-blockchain Proof-of-Stake system – TON (*Telegram Open Network, after 2021 The Open Network*) – designed to host a new generation of cryptocurrencies and decentralized applications. (JX7 at 3.)

77. The Pre-Sale Primer and Stage A Primer stated: “Scheduled to launch in 2018, this cryptocurrency will be based on multi-blockchain Proof-of-Stake system – TON (*Telegram Open Network, or ultimately The Open Network*) – designed to host a new generation of cryptocurrencies and decentralized applications.” (JX8 at 3; JX9 at 3.)

78. The Primers stated: “Despite their revolutionary potential, existing cryptocurrencies lack the qualities required to attract the mass consumer. There are three main hurdles....” (JX7 at 4; JX8 at 4; JX9 at 4.)

79. The Primers listed the third hurdle as: “The market of goods and services that can be bought with cryptocurrencies is limited, and the **demand** for crypto-assets **comes mainly from investors, not consumers.** (*Id.*)

80. The Primers stated: “The current state of blockchain technology resembles automobile design in 1870: it is promising and praised by enthusiasts, but inefficient and too complicated to appeal to the mass consumer.” (*Id.*)

81. The Primers stated that, to reach mainstream adoption, a cryptocurrency – and its underlying blockchain design and ecosystem requires, as one of three listed factors, “**An engaged user base.**” (*Id.*)

82. The Initial Primer described that factor as follows: “**An engaged user base** that serves as the pre-existing critical mass necessary for the ecosystem to grow and eventually become adopted by hundreds of millions of users.” (emphasis in original). (JX7 at 4.)

83. The Pre-Sale Primer and Stage A primer described that factor as follows: “**An engaged user base** that drives demand for services in the ecosystem and provides pre-existing critical mass for future growth.” (JX8 at 4; JX9 at 4.)

84. The Primers stated: “Telegram is uniquely positioned to establish the first mass-market cryptocurrency by providing a platform that combines these properties.” (JX7 at 5; JX8 at 5; JX9 at 5.)

85. The Primers stated: “Telegram will use its expertise in encrypted distributed data storage to create TON, **a fast and inherently scalable** multi-blockchain architecture. ... By combining minimum transaction time with strong security, TON can become a Visa/Mastercard alternative for the new decentralized economy.” (*Id.*)

86. The Primers stated: “The Telegram team will rely on its 10-year experience in building **user friendly interfaces** for tens of millions to create light wallets, exchanges, and identification services that will allow users to get on board with cryptocurrencies in an intuitive way. Integrated into Telegram applications, the TON wallet will become the world’s most adopted cryptocurrency wallet.” (*Id.*)

87. The Primers stated: “Telegram will leverage its **existing ecosystem** of communities, developers, publishers, payment providers, and merchants to drive demand and value for TON cryptocurrency.” (*Id.*)

88. The Primers contained a brief history of Telegram, including noting that: “In October 2017, Telegram reached 170 million monthly users, delivering 70 billion messages every day.” (*Id.* at 6.)

89. The Initial Primer said: “At least 500000 new users join Telegram daily. At this rate, the service is expected to hit **200 million monthly users in Q1 2018**. These users can provide the required critical mass to push cryptocurrencies towards wide spread adoption.” (JX7 at 6.)

90. The Pre-Sale Primer and Stage A Primer said: “Over the past twelve months, an average of more than 500,000 new users have joined Telegram daily. At this rate, the service is expected to hit **200 million users in Q1 2018**. These users can provide the required critical mass to push cryptocurrencies toward wide spread adoption.” (JX8 at 6; JX9 at 6.)

91. The Primers stated that because taking cryptocurrencies mainstream in 2018 would not be possible using the existing blockchain platforms, Dr. Nikolai Durov created the “design for the Telegram Open Network – a fast and secure network project.” (JX7 at 7; JX8 at 7; JX9 at 7.)

92. The various White Papers authored Dr. Durov describe in detail his design of the TON Network. (JX18-28)

93. The Primers stated: “As a multi-blockchain project, TON requires sophisticated network protocols – such as the TON P2P Network used to access the TON blockchains – that can be reused to give a significant boost in flexibility to the platform. The following components are scheduled to be released after the TON Blockchain core and will further increase the potential uses of the TON infrastructure.” (JX7 at 9; JX8 at 9; JX9 at 9.)

94. The Primers then listed the following components and described them (the following parentheticals contain quotes from the longer descriptions contained in the Primers): TON Storage (“a distributed file-storage technology”); TON Proxy (“a network proxy/anonymizer layer used to hide the identity and IP addresses of TON nodes”); TON Services (“a platform for third-party services of any kind that enables smartphone-like friendly interfaces for decentralized apps and smart contracts, as well as a Worldwide Web-like decentralized browsing experience.”); TON DNS (“a service for assigning human-readable names to accounts, smart contracts, services, and network nodes.”); and TON Payments (“a platform for micropayments and a micropayment channel.”) (JX7 at 9-10; JX8 at 9-10; JX9 at 9-10.)

95. The Primers stated: “Telegram-TON integration will provide a clear path to cryptocurrencies for millions of people. Telegram Messenger will not only serve as an example of the possibilities offered by integrating with TON, but will also add unique features to the TON platform, leveraging Telegram’s massive user base and developed ecosystem.” (JX7 at 11; JX8 at 11; JX9 at 11.)

96. The Primers stated: “TON light wallets will be built into Telegram applications, allowing millions of users to store their funds secretly in the TON blockchain.” (*Id.*)

97. The Primers stated: “Telegram mobile and desktop applications with integrated wallets will also double as TON clients, enabling secure transfers of value within the TON blockchain and interaction with TON smart contracts and applications.” (*Id.*)

98. The Primers stated: “According to Tokenmarket, as of late 2017, 84 percent of upcoming blockchain-based projects had an active Telegram community, more than

all other major chats applications combined. Forbes and other media outlets have called Telegram the <<cryptocurrency world's preferred messaging app>> and <<as ubiquitous to the cryptocurrency world as Snapchat is to a teenager.>>” (JX7 at 12; JX8 at 12; JX9 at 12.)

99. The Primers stated: “Because the majority of actors in the new digital economy already have active telegram accounts, it is natural for Telegram to offer a secure universal ID.” (*Id.*).

100. The Primers stated: “...Telegram will launch a TON-based **ad exchange** where parties interested in promoting their projects can connect with the relevant channel owners and negotiate a price in a transparent and fully automated way.” (JX7 at 13; JX8 at 13; JX9 at 13.)

101. The Primers stated that: “Telegram’s in-app economy will supply the TON market with a wide range of goods and services that can be obtained with TON coins.” (*Id.*)

102. The Primers contained a “Roadmap” that contained milestones for TON and Telegram. (JX7 at 15; JX8 at 15; JX9 at 15.)

103. The Pre-Sale and Stage A Primer Roadmap listed the “Launch of Telegram Wallet in Q4 2018” and “Start of a TON-based economy in Telegram in Q1 2019.” (JX8 at 15; JX9 at 15).

104. The Initial Primer stated: “To obtain the resources required to make TON a reality, Telegram is launching a token sale in Q1 2018. The token sale will likely use a SAFT to be converted 1:1 to native TON tokens (Grams) after the deployment of the TON Blockchain in Q4 2018.” (JX7 at 16.)

105. The Pre-Sale Primer stated: “To obtain the resources required to make TON a reality, Telegram is launching a token sale starting in Q1 2018. The TON tokens (Grams)

will be sold pursuant to purchase agreements providing for the delivery of Grams to purchasers after the launch of the TON Blockchain, which is expected to take place in Q4 2018.” (JX8 at 16.)

106. The Stage A Primer stated: “Telegram is conducting a token sale in two stages: an initial sale, which was completed in February 2018, and this subsequent sale. The TON tokens (Grams) are being subscribed for pursuant to purchase agreements. The purchase agreements provide for payment of fiat currency by the purchasers to Telegram in exchange for the delivery of Grams by Telegram to a TON light wallet at a TON blockchain account address designated by the applicable purchaser upon the launch of the TON Blockchain, which is expected to take place in Q4 2018.” (JX9 at 16.)

107. The Primers stated: “After the TON Blockchain is fully deployed, the annual inflation rate in the supply of Grams derived from the fundamental parameters of TON is projected at two percent and, as a result, we expect that the supply of Grams will double to 10 billion in 35 years. This inflation represents a payment made by all members of the community to the validators for keeping the system functional.” (JX7 at 16; JX8 at 16; JX9 at 16.)

108. The Initial Primer stated: “During the initial stage of active TON development, at least 52 percent of the entire supply will be retained by the TON Reserve to protect the nascent cryptocurrency from speculative trading and to maintain flexibility at the early stages of the evolution of the system.” (JX7 at 16.)

109. The Initial Primer included the a price formula for Grams and stated: “The price of the first token to be sold will be approximately 0.1 USD, with and each (sic) successive token will be priced one billionth higher than the previous one. As a result, the additional supply

coming from the TON Reserve will always be more expensive than the price paid by any of the existing buyers.” (*Id.* at 16-17.)

110. The Pre-Sale Primer and Stage A Primer stated: “Ten percent of the initial supply of grams (500 million Grams) will be reserved to be used as incentives for the ecosystem – to encourage installation of third-party validators, TON Storage, and TON Proxy nodes and to reward users for activating wallets and completing the know your customer (KYC) and anti-money laundering (AML) screening procedures.” (JX8 at 16; JX9 at 16.)

111. The Pre-Sale Primer stated: “Telegram plans to execute the sale of Grams in two stages.” It then set forth the formula for calculating the price of Grams at each stage of the sale. (JX8 at 17.)

112. The Pre-Sale Primer stated: The first stage will begin in January 2018 and is scheduled to close in February 2018. No more than approximately 45 percent of the initial supply of Grams (approximately 2.25 billion Grams or 850.0 million USD of Grams calculated in accordance with the formula above) will be sold in this stage.” (*Id.*)

113. The Pre-Sale Primer stated that the Grams subscribed for in this stage will be subject to lock-up restrictions beginning on the date the TON Blockchain is launched and that the Grams will be released from the lock-up as follows: 25% three months after launch, 25% six months after launch, 25% twelve months after launch, and 25% eighteen months after launch. (*Id.*)

114. The Pre-Sale Primer stated: “The second stage of the offering is scheduled to begin in late March 2018. Grams sold in this stage will not be subject to a lock-up period. Between the first stage and the second stage, no more than 66% of the initial supply of Grams (3.3 billion) can be sold. Grams that are not subscribed for will remain in the Ton Reserve.” (*Id.*)

115. The Stage A Primer set forth the same pricing formula described in the Pre-Sale Primer and stated: “The initial sale began in January 2018 and closed in February 2018. Approximately 45 percent of the initial supply of grams (approximately 2.25 billion Grams, or 850.0 million worth of Grams calculated in accordance with the formula above) were subscribed for in the initial sale.” (JX9 at 17.)

116. The Stage A Primer stated: “Telegram is now entertaining offers for subscriptions for Grams in the subsequent sale. No more than 21 percent of the initial supply of Grams (approximately 1.05 billion Grams) can be sold in the subsequent sale. Grams sold in the subsequent sale will not be subject to a lock-up following the launch of the TON Blockchain.” (*Id.*)

117. The Stage A Primer stated that this subsequent sale would be split into two stages, stage A, which would offer “up to 850.0 Million USD worth of Grams for subscription in stage A” and stage B, which would offer a not yet determined amount of Grams. (*Id.* at 17-18.)

118. Stage B did not take place. Stip. 54.

119. The Pre-Sale Primer and the Stage A Primer stated: “At the time the TON Blockchain is launched, the TON Reserve will hold a minimum of 1 billion Grams. These grams may be sold by the Ton Reserve after the launch of the Ton Blockchain at a price no less than the reference price calculated in accordance with the following formula.” (JX8 at 18; JX9 at 18.)

120. The Initial Primer, in a section entitled Use of Funds” stated: “Funds raised during the Telegram ICO will be used for the development of Telegram and TON and for the ongoing expenses required to support the growth of the ecosystem.” (JX7 at 18).

121. The Initial Primer stated: “More than 80 percent of collected funds will be spent on equipment, bandwidth, colocation, and user verification costs. The rest will be allocated for wages, offices, and legal and consulting services.” (*Id.*)

122. The Initial Primer stated: “The annual budget of Telegram in 2017 amounted to \$70 million, out of which \$62 million were (sic) spent on equipment, bandwidth, colocation, and user verification costs. Telegram’s spending is projected at \$400 million in the next three years (approximately \$100 million in 2018; \$130 million in 2019, and \$170 million in 2020). A total spending of about \$620 million to support continuing organic user growth should allow Telegram to reach one billion active users by January 1, 2022.” (*Id.*)

123. The Initial Primer stated: “The founders of Telegram will be responsible for the efficient use of funds resulting from any sale of tokens from the Ton Reserve. Overtime, all responsibilities related to TON and its Reserve will be transferred to the TON Foundation, a not-for-profit organization.” (JX7 at 19.)

124. The “Use of Funds” Sections of the Pre-Sale Primer and Stage A Primer stated: “We intend to use the proceeds raised from the offering for the development of the TON Blockchain, for the continued development and maintenance of Telegram Messenger, and for general corporate purposes at Telegram. Such expenses are expected to include, among others, equipment, bandwidth, colocation, and users verification costs, as well as wages, offices, and legal and consulting services.” (JX8 at 19; JX9 at 19.)

125. The “Use of Funds” Sections of the Pre-Sale Primer and Stage A Primer also stated: “We expect that proceeds from any Grams sold by the TON Reserve following the launch of the TON Blockchain will be used to stabilize the price of Grams and to fund the continued development of the TON BlockchaIn and its ecosystem.” (*Id.*)

126. The “Use of Funds” Sections of the Pre-Sale Primer and Stage A Primer also stated: “While we currently anticipate that the funds will be used as outlined above, their actual use may vary depending upon numerous factors....” (*Id.*)

127. The Initial Primer stated: “By 2021 the initial TON vision and architecture will have been implemented and deployed. TON will then let go of the <<Telegram>> element in its name and become <<The Open Network>>.” (JX7 at 19.)

128. The Pre-Sale Primer and the Stage A Primer, in the section entitled “Governance”, stated: “Over time, all responsibilities related to TON and the TON Reserve are expected to be transferred to the TON Foundation, a not-for-profit organization. Ultimately, TON intends to let go of the ‘Telegram’ element in its name and become ‘The Open Network.’ Telegram will serve as a launch pad for TON, ensuring its technological superiority and widespread adoption at launch. But the future of TOM is in the hands of the global open-source community.” (JX8 at 20; JX9 at 20.)

129. The Primers had a description of the background of the Durovs and the qualifications of its “world-class team of 15 developers.” It stated: “Core team members have ten years of experience in building scalable projects for tens of millions of users. Before building Telegram, they created VK, the largest Europe-based social network with more than **100 million active users**, which still enjoys a dominating share in its local markets.” (JX7 at 20; JX8 at 21; JX9 at 21.)

130. The Primers contained short descriptions of the technical qualifications of 11 members of the development team. (*Id.*)

131. Attached to the Pre-Sale Primer was the Risk Factors (Attachment B). (Stip. 78.)

132. Telegram asked prospective investors to sign a document entitled: “Telegram – Indication of Interest (“IOI”) setting forth certain terms of the offering. (Stip. 71; JX5 (Pre-Sale IOI); Stip. 73; JX6 Stage A IOI.)

133. The initial IOI described the “Deal Structure” as follows: “Issuance and sale by a direct or indirect subsidiary (the ‘**Issuer**’) of Telegram Group Inc. of a new cryptocurrency called ‘**Grams**’, which will be issued following the development and launch of a new blockchain platform (the ‘**TON Network**’). The parties intend to use proceeds generated by the sale of Grams to develop and launch the TON Network and develop associated functionality within Telegram Messenger.” (JX5 at 1.)

134. The initial IOI stated: “The Issuer intends to offer the ability to subscribe for Grams through a ‘**Pre-Sale**’ and a ‘**Subsequent Sale.**’ (JX5 at 1.)

135. The Pre-Sale IOI stated that, based on the expected maximum subscription of \$850 million for the First Round, described as the Pre-Sale, an average price per Gram of \$0.37756101 was expected based on the pricing formula for Grams described in the White Paper. It further stated: “Each Gram subscribed for in the Pre-Sale will be priced at the applicable Pre-Sale Purchase Price.” (JX5 at 1.)

136. The Pre-Sale IOI stated that, based on an assumed aggregate of \$US1.15 billion worth of Grams subscribed for in the Subsequent Sale (and US\$850.0 million worth of Grams subscribed for in the Pre-Sale), the pricing formula for Grams implies an average price of approximately US\$1.45 per Gram subscribed for in the Subsequent Sale. (JX5 at 1.)

137. The IOI for Stage A described the “Deal Structure” as follows: “ “Issuance and sale by TON Issuer Inc (the ‘**Issuer**’), a wholly owned subsidiary of Telegram Group Inc. (the ‘**Parent**’), of a new cryptocurrency called ‘**Grams**’, which will be issued following the

development and launch of a new blockchain platform (the ‘**TON Network**’). The Parent and the Issuer intend to use the proceeds raised from the offering for the development of the TON Blockchain, for the continued development and maintenance of Telegram Messenger and for general corporate purposes at Telegram Messenger. Such expenses are expected to include, among others, equipment, bandwidth, colocation, and user verification costs, as well as wages, offices, and legal and consulting services.” (JX6 at 1)

138. Telegram warranted in the Purchase Agreement, under a section entitled “Parent’s Warranties and Obligations” that: “To the extent permitted by applicable law ..., [Telegram] shall use its reasonable endeavors to facilitate the use of Tokens as the principal currency used on Telegram Messenger by building TON Wallets into Telegram Messenger.” (JX11 at 10-11).

**D. Telegram Marketed the Investment to Sophisticated and Reputable Investors—
“Tier-1 Firms”**

139. Telegram selected investors using “standard capital market syndicate type discussions, around is such and such an investor a credible investor.” (PX14, Parekh Tr. at 72:14-73:12; *see also id.* at 74:10-20.)

140. In considering how much to allocate to investors in the Offering, Telegram considered the reputation and sophistication of the purchasers and their experience in technology-related investments. (PX12, Durov Tr. at 285:7-24.)

141. Telegram prioritized “Tier-1 firms” in determining allocations of Grams in the Presale. (PX24.)

142. Perekopsky explained that in considering allocation criteria, Telegram considered “highly sophisticated, reputable funds or individuals that already had some track record” and that Telegram tried to diversify investors geographically, but did not consider

whether the funds were “active in the cryptocurrency space” or whether they had the “sophistication as Blockchain node validators.” (PX13, Perekopsky Tr. at 122:17-125:9.)

143. Parekh did not ask and is not aware of anyone at Telegram asking about how long investors would hold the Grams, whether they were buying them for consumptive use, whether they were buying them to use as goods and services, or whether they intended to act as validators. (PX14, Parekh Tr. at 130:14–131:14, 135:1–136:20, 150:23–151:14.)

144. In January 2018, Durov told a friend and eventual Gram purchaser that he was “excited that [he’d] like to take part in the TON distribution” and that Telegram was “planning to provide you with the same level of allocation we grant other tier-1 firms . . . which is 15M.” (PX24.)

145. In December 2017, Durov agreed to reserve \$20M of the presale round for an investor suggested by another friend “due to their reputation.” (PX15 at TLGRM-017-00000573.)

146. Durov told another friend and eventual investor that he had compiled “[a] 20-page primer . . . to make the idea understandable for mass readers,” and sent the friend the primer via Messenger. (PX25 at TLGRM-007-00000310.)

E. The Success of Telegram’s Messenger Platform and the Strength of Its Team Led Investors to View TON as a Good Investment Opportunity, Likely to Generate Returns for their Firms

i. Investors’ Discussions with Telegram and Requests for Information

147. One investor thanked Durov and other Telegram personnel “for the opportunity to invest in Telegram,” adding “excited to be part of what you are building.” (PX26.)

148. An investor and friend of Durov’s asked him whether “tokens issued to employees and developers pre-launch” would be “subject to the same lockup restrictions as the

investors,” explaining that “this is what typically happens for IPOs to ensure the people needed to deliver the core intellectual property have incentives to stay engaged through the lockup.” The investor added that it “would help to know to ensure your stake is as I assume it is fundamental [sic] aligned with the success of TON (more is better!).” (PX25 at TLGRM-007-00000319.)

149. Another investor asked Telegram “what stock exchanges are you going to set-up on initially,” whether “the token wallet” “is going to be a part of Telegram app,” and what Telegram’s “view was on initial trading price.” (PX27.)

150. In Perekopsky’s words, when an investor asks about exchanges, “you can probably put them to this category . . . of people who were like showing an interest to selling part of them.” (PX13, Perekopsky Tr. at 174:25-175:12.)

151. One investor sent a request for detailed information about Telegram Messenger’s users, demographics, retention, engagement, and commercial intent. (PX28.)

152. Another investor’s query focused on “when do investors receive the first badge [sic] of tokens and can liquidate.” (PX29.)

153. Eight of the initial purchasers have submitted sworn declarations outlining, among other things, their views on the TON investment. These declarations are attached to the Stewart Declaration as PX 1 through PX8.

ii. Sworn Declarations Submitted by Eight Initial Purchasers

154. Eight of the initial purchasers (the “Initial Purchasers”) have submitted sworn declarations outlining, among other things, their views on the TON investment. These declarations are attached as PX 1 through PX 8.

155. In summary, these Initial Purchasers’ declarations state the following.

156. Prior to purchasing Grams, the following Initial Purchasers reviewed and

relied upon Telegram's offering materials, including the Technical White Papers and the Pre-Sale Primers. (PX1 at ¶ 8; PX2 at ¶¶ 10, 11, Exhibit B; PX3 at ¶¶ 10, 11; PX4 at ¶ 9, 18; PX5 at ¶ 9; PX6 ¶ 2; PX 7 at ¶ 9; PX7 at ¶ 9; PX8 at ¶ 9.)

157. The following Initial Purchasers based their decision to purchase Grams in part on their communications directly with Telegram. (PX1 at ¶ 11, Exhibit B; PX2 at ¶ 9, Exhibit B; PX4 at ¶ 11; PX5 at ¶¶ 8, 9; PX6 at ¶ 2; PX7 at ¶ 10; PX8 at ¶ 8.)

158. The following Initial Purchasers did not purchase Grams for consumptive use. (PX2 at ¶ 18; PX3 at ¶ 20; PX4 at ¶ 24 (possible consumptive use of portion of Grams but primarily hoped to sell for profit); PX5 at ¶ 22; PX6 at ¶ 6; PX7 at ¶ 21.)

159. The following Initial Purchasers purchased Grams in order to profit from their investments by selling Grams at an opportune time on secondary markets once the lockup period was over. (PX1 at ¶¶ 14, 19; PX2 at ¶¶ 14, 17; PX3 at ¶¶ 12, 18, 19; PX4 at ¶¶ 12, 13, 24, Exhibit C; Exhibit D; PX5 at ¶ 21; PX6 at ¶ 6; PX7 at ¶¶ 18, 19, 21, Exhibit A; PX8 at ¶ 11.)

160. The following Initial Purchasers purchased Grams with the hope that there would ultimately be a secondary market for trading Grams, including because of direct communications with Telegram about listing Grams on exchanges. (PX1 at ¶¶ 14, 18; PX3 at ¶¶ 16, 19, Exhibit D; PX7 at ¶ 18.)

161. Several factors informed the following Initial Purchasers' views that an investment in Grams could be profitable. (PX1 at ¶ 15; PX 2 at ¶¶ 13, 14, Exhibit D, Exhibit E; PX3 at ¶ 12, Exhibit B; PX4 at ¶¶ 8-15; PX5 at ¶ 12, Exhibit A; PX6 at ¶ 4; PX7 at ¶¶ 19, 21, Exhibit A; PX8 at ¶¶ 11, 16, Exhibit A.)

162. The following Initial Purchasers believed the price of Grams would ultimately trade higher than they purchased Grams for because they believed that Telegram's

Messenger application would continue to grow and drive demand for Grams. (PX1 at ¶ 15; PX2 at ¶¶ 7, 9, 13, 14, Exhibit C, Exhibit D, Exhibit E; PX3 at ¶ 12; PX4 at ¶¶ 8, 12, 13, 14, 15, Exhibit A, Exhibit C, Exhibit D; PX5 at ¶¶ 7, 9, 10, 11, 12, 13, Exhibit A, Exhibit B; PX6 at ¶ 3; PX7 at ¶¶ 19, 20, Exhibit A; PX7 at Exhibit A; PX7 at Exhibit A.)

163. The following Initial Purchasers believed the price of Grams would ultimately trade higher than they purchased Grams for based on their confidence in the Telegram founders' reputations and past success with Telegram Messenger, which gave them confidence that Telegram could build and launch the TON Network. (PX1 at ¶ 15; PX2 at ¶ 14, Exhibit E; PX3 at 12; PX4 at ¶¶ 12, 13; PX5 at Exhibit A, Exhibit B; PX6 at ¶ 3; PX7 at ¶ 19, Exhibit A; PX8 at Exhibit A.)

164. The following Initial Purchasers believed Grams would ultimately trade higher than the price at which they purchased Grams because Telegram told investors it planned to do additional offerings of Grams at higher prices because there was a lot of demand for Grams. (PX1 at ¶ 15, Exhibit C; PX3 at Exhibit B; PX4 at ¶¶ 12, 16, Exhibit C; PX5 at Exhibit A; PX7 at 19; PX8 at Exhibit A.)

165. One Initial Purchaser believed Grams would ultimately trade higher than the price at which it purchased Grams because the founders were retaining a portion of Grams for themselves, which would incentivize them to deliver a successful working product and "our interests were tied to the founders' interests." (PX7 at ¶19.)

166. At the time the following Initial Purchasers bought Grams, they believed that the Telegram team would continue to support and grow the TON network after launch. (PX2 at ¶ 14; PX3 at Exhibit B; PX4 at ¶ 14; PX6 at ¶ 3; PX7 at ¶ 20.)

167. The following Initial Purchasers do not plan to become validators of the

TON network, or have not taken any substantial steps to do so. (PX2 at ¶ 20; PX3 at ¶ 22; PX4 at ¶ 23; PX5 at 22; PX6 at ¶ 6; PX7 at ¶ 22; PX8 at ¶ 18.)

168. Telegram did not ask the following Initial Purchasers at the time they entered into the Purchase Agreements whether they planned to act as validators on the TON Blockchain. (PX3 at ¶ 22; PX6 at ¶ 6; PX7 at ¶ 23; PX8 at ¶ 8.)

169. At the time the following Initial Purchasers executed the Purchase Agreements, they understood they were entering into an agreement with Telegram to buy Grams, which they owned at the time they transferred their funds, but which were to be delivered at a later date. (PX2 at ¶ 17; PX3 at ¶ 16; PX4 at ¶ 15; PX6 at 6; PX8 at ¶15.)

170. Telegram did not ask the following Initial Purchasers at the time they entered into the Purchase Agreements what they planned to do with Grams after they purchased them. (PX2 at ¶ 19; PX3 at ¶ 21; PX4 at ¶ 25; PX5 at ¶ 23; PX6 at ¶ 6; PX7 at ¶ 23; PX8 at ¶ 12.)

171. The following Initial Purchasers heard rumors about interests in Grams trading on secondary markets before Grams had launched, and some discussed those rumors with Telegram. (PX1 at ¶ 25; PX2 at ¶ 21, Exhibit F; PX3 at ¶ 23, Exhibit E; PX4 at ¶ 26, Exhibit E; PX7 at ¶ 26; PX8 at ¶ 17.)

iii. The Investors' Internal Investment Analyses

172. In addition to those Initial Purchasers who have submitted sworn testimony in this matter, many others explained their investment rationale in internal documents and communications around the time of their investment.

173. For example, an “investment thesis” prepared by one of the initial purchasers in or around February 2018 states:

- a. “[T]here is only one [digital asset project] which boasts a pre-existing network

valued in the billions, and a team who has already built successful applications for hundreds of millions of users.”

- b. “Telegram is projected to reach 200 million users in Q1 2018. We cannot underestimate the potential value of existing network effects in deploying new technologies.”
- c. “If TON is able to capture at least the full value of Telegram’s existing user base, we see TON valued at a market capitalization of over \$30B in 2021, giving an annualized return of 180% to early investors.”
- d. “In the context of this offering, it is crucial to not just examine Telegram as a product, but also, Telegram as a team. . . . [T]he skills and synergies of a team that has built scalable products for tens of millions of users over an extended time period is invaluable.”
- e. Telegram’s user base has a “[s]trong pre-existing crypto community,” “[r]apidly growing and authentic,” with “demographic diversity” and “proven user experience.”
- f. Forecasting “a price of \$7.23 per Gram in 2021,” resulting in “a 181% annualized return over three years.”
- g. “Blurred Line between Telegram and TON blockchain”: “Investing in the TON Blockchain could mean that you are funding Telegram itself without gaining equity in Telegram.” (PX30.)

174. Another investor wrote in its investment memo, dated January 2018:

- h. “Telegram has some key advantages. Its messaging application has already 180M users which would make it de facto the largest cryptocurrency wallet provider in

the world. Their engineering team is truly world-class and has demonstrated (with their messaging app) that they can deliver a user friendly and secure application to hundreds of millions of users. It is also the leading communication platform for cryptocurrency today, with 84% of upcoming Blockchain projects having a Telegram group. Telegram is also used as the predominant community platform for those actively buy/selling tokens, which we believe will drive up the price of TON's Gram coin post initial launch."

- i. Telegram will leverage its existing ecosystem of communities, developers, publishers, payment providers, and merchants to drive demand and value for the TON currency."
- j. [W]e also believe that because of the discount offered to participants in the resale, market conditions, momentum and scarcity, this coin will go up sharply in price in the short term. It could offer a return comparable to what we might see from a VC investment (5-10x) that is realizable in 3-6 months (once the lockup begins to expire) instead of 7-9 years. We believe that our unique advantage as VCs here is not our ability to form a view on the long-term value and influence that outcome, but access. This presale is being offered to 'blue chip' VCs that can help signal quality to other investors in the ICO and public market. That is why our peer firms and ourselves are being offered the opportunity. This access is more like a 'friends and family' allocation in a hot IPO than a traditional VC round." (PX31.)

175. Another investor wrote in its January 2018 investment memo:

- a. "Telegram plans to leverage its large and engaged userbase and an existing

ecosystem of developers, merchants, and payment providers. Also they plan to address the scaling and governance challenges faced by various blockchains and build the foundational components like DNS, proxy, storage, etc.”

- b. “TON has an effective way to bootstrap the blockchain by leveraging Telegram’s 200M active users. Also, nearly 84% of crypto projects have an active Telegram community, which provides TON an engaged group of users to build upon.”
- c. “Telegram has one of the strongest teams that we have seen in the crypto space . . . [with] experience building scalable, decentralized systems as part of Telegram.”
- d. “Through its integration with Telegram, TON can incentivize thousands of existing Telegram bot developers that have built more than 800k bots to build DAPPs on top of TON platform.”
- e. “If [TON] becomes as big as ETH, TON could have a market cap of \$75B, which would be 40x on our investment.” (PX32.)

176. Similarly, a different investor wrote in its analysis, dated February 2018:

- a. “Telegram is where the conversation happens for all things crypto.”
- b. “TON’s initial go to market will be through the Telegram Messenger ecosystem. Telegram Messenger can serve as an example of the unique possibilities offered by integrating with TON, while also adding features to the TON platform, leveraging Telegram’s user base and developed ecosystem.”
- c. “Telegram’s existing ecosystem will also be able to offer simple ways of buying the TON coins, and a range of services to spend them on.”
- d. “Telegram’s founder and team . . . have proven to be repeat heavy hitters building products and services that hundreds of millions of people are using in a short

period of time”

- e. “In the bull case, TON could be the AWS (products and services to be built on top of it) + WeChat (all the consumer facing products that are widely used and use the same distribution + currency) of the new blockchain world that is emerging.
- f. “The Telegram Messenger ecosystem provides a significant go to market advantage for TON.”
- g. “We believe this investment could return 10x.” (PX33.)

177. One investor amended and restated its LLC operating agreement in February 2018, whereby the “purpose” of the LLC would be partly to “acquire, hold and distribute, for investment purposes, the Investment,” with the “Investment” defined as to “acquire and hold, for investment purposes, a new cryptocurrency called ‘Grams’.” (PX34 at 3, 9.)

178. Another investor had internal discussions about the possibility of selling 20% of the Grams “during the first three days of trading” after distribution. (PX35 (English language translation of original Russian text).)

F. Telegram Told Investors the Second Round Offering Was Completed in March 2018

179. On or about May 2, 2018, the Wall Street Journal reported that “in March, [Telegram] said it raised another \$850 million from 94 investors in a second private deal and that “Telegram’s latest filing, on March 29, suggested fundraising could be ongoing, but the person briefed on the matter said Telegram is no longer considering a public deal open to retail investors.” (PX 131 at 2.)

180. On or about May 11, 2018, one investor asked for “the date the second round was completed,” to which Hyman responded “March 16.” (PX132.)

181. On or about March 19, 2018, however, Parekh had told Hyman that Telegram had \$400 million in executed purchase agreements. (PX133.)

182. As of April 6, 2018, Telegram had sent wiring instructions for \$750 million but had received only \$490 million. (PX134 at TLGRM-015-00000528.)

183. That figure rose gradually over the next few months as Parekh, Hyman, and Perekopsky worked on obtaining new purchase agreements and payment thereon. (PX135–136.)

184. As of March 2018 when it filed Forms D with the SEC, Telegram had not received \$850 million from Stage A purchasers, and was missing approximately \$200 to 300 million. (PX12, Durov Tr. at 99:24-100:3, 101:6-13.)

185. As of March 2018 when it filed Forms D with the SEC, although Telegram had not received \$850 million from Stage A purchasers, it considered itself to have “sold” \$850 million worth of Grams because it viewed the Gram Purchase Agreements as “legally binding agreements,” so it viewed \$850 million as the amount of transactions it had already entered into. (*Id.* at 99:24-104:9.)

186. When asked if it was fair to say that Telegram had not actually received \$850 million as of March 29, Telegram’s CEO stated “[y]es” but explained: “We believed that having all those purchase agreements signed by the purchasers means that we have the comfort of knowing those funds will eventually be transferred, or would eventually be transferred. Those are legally binding agreements and if we decided to do so, we could try to start a litigation with each of the purchasers that failed to meet their obligations. . . .” (PX12, Durov Tr. at 99:25–101:5.)

G. Telegram Viewed Grams as Securities, and Referred to Them as Such

187. In update emails to investors, Telegram referred to the “sale of Grams,” not the sale of interests in the right to receive Grams. *See, e.g.*, (PX36 (email from Hyman dated February 20, 2018: “no more than \$1.7 billion worth of Grams will be sold”).)

188. On or about February 6, 2018, a representative from one of the Initial Purchasers told Hyman: “The other contributing factor” to a “very rough [crypto] market” was “the regulators SEC getting hyper active last two weeks, which has caused many traditional players that were fooling around in the space to pause pending further clarity.” (PX37 at TG-007-00000726.)

189. In an email to an investor’s accountant on March 6, 2019, Parekh said that the investor had the right to 72,835,916.68 Grams and that “the Fund has clear title to such securities,” “will be entitled to receive . . . Grams when they are issued,” and that “the securities are not pledged.” (PX38.)

190. In describing the lockup provision, Parekh explained that “it is relatively conventional capital markets logic that if you have an initial purchase who comes in in an earlier round and pays a lower price, they tend to have more restrictive terms, in terms of their ability to take their shares.” (PX14, Parekh Tr. at 35:21-36:25.)

191. Parekh analogized the staking of Grams to be selected as a TON Blockchain validator to stock lending. (*Id.* at 99:7-14.)

192. Perekopsky explained the lockup provision as an incentive—the lower the price, the later you would have access to your Grams: “it seemed natural for us that first investors who paid a lower price, that they will be locked up for some time, and people who paid a higher price, they can use their Grams sooner.” (PX13, Perekopsky Tr. at 131:4-20.)

193. Telegram did not reach out to businesses to accept Grams, but it did talk to digital token trading exchanges because “we understood the importance of exchanges, because exchanges would give an opportunity to users, to people to get Grams.” (*Id.* at 167:2-24).

194. An advisor from Blackmoon Financial Group explained to Perekopsky that price stabilization was a “common practice” in “fiat markets’ IPO” as a way to “provide liquidity” and noted that this is common in crypto markets too at the time “of both listing at the exchange and the subsequent trading.” (PX39.)

H. Telegram Began Discussions with a Number of Digital Asset Trading Platforms Starting in January 2018 and Continued These Discussions Right Up Until the Filing of the SEC’s Lawsuit

195. On or about January 21, 2018, in response to an investor inquiring “[h]ow do investors get liquidity post lock up?” Hyman told the investor that “Telegram has been inundated with exchanges keen to list grams.” (PX40.)

196. On or about March 8, 2018, an individual representing themselves as “working closely with a former colleague who’s running the process to help [Telegram] in Asia” emailed the exchange Bitmex to request a meeting, noting that Telegram is “keen to establish relationships with potential investors in their ICO and to discuss areas of potential cooperation with important players in the ecosystem – the second round of the ICO is basically done and they’re not planning to raise any money for several months, so for now the focus is more on potential cooperation.” (PX42.)

197. In or around November 2018, Parekh had discussions with Coinbase. (PX43.)

198. In a “deck highlighting the details of this potential partnership” (*id.*), sent to Parekh, Coinbase outlined its exchange trading, OTC trading, and custody services. (PX44.)

199. On or about March 18, 2019, Parekh requested from Coinbase “the listing

application papers,” which Coinbase sent to Parekh later that day. (PX45.)

200. On or about September 23, 2019, Parekh introduced a Coinbase representative to Alexander Filatov of TON Labs (discussed below): “I wanted to introduce you. Nick is with Coinbase, who are looking to develop a custody and exchange solution for Grams, in which context they had some technical queries with regard to TON. I thought make sense for you to speak to discuss this and potentially other areas of mutual interest.” (PX46.)

201. Representatives from Coinbase and TON Labs subsequently engaged in a dialogue. (PX47.)

202. On or about October 9, 2019, Coinbase announced that it “intends to support the secure storage of GRM” at TON’s launch. (PX48.)

203. On or about October 21, 2018, a representative from the eToro digital asset trading platform sent an email to Parekh stating: “We would like to be one of the first exchanges to offer TON, and would appreciate if we could setup a call with a technical team to see how we can support it.” (PX49.)

204. This email was sent in response to a September 5, 2018 email from Parekh providing an update on the development of TON. (*Id.*)

205. In or about March 2019, Parekh discussed possible custody solutions with Anchorage, including the desire for certain Grams holders to have “a custodian that provides brokerage/liquidity.” (PX50.)

206. On or about April 4, 2019, in response to an investor inquiry, Parekh stated: “As regards listing, we’ve had inquiries from a number of large exchanges, and are in discussions with a few of them to see how they might be able to support Grams.” (PX27.)

207. On or about June 17, 2019, Parekh was introduced via email to the

founder of “one of the largest crypto exchanges in the world. And the dominant leader in the China market. They are very interest [sic] in ton network.” (PX51.)

208. In or about September 2019, Gram Vault (discussed below) submitted a listing request to Bittrex for Grams. (Ex. PX52.)

209. In its corporate account request to Bittrex submitted on or about August 14, 2019, Gram Vault stated: “Gram Vault provides the Clients with services for liquidation of Grams through private and market deals. The services are offered through a network of OTC desks and integration with all major exchanges.” (PX53.)

210. In or around September 2019, Gram Vault submitted an application to list Grams on the Poloniex digital asset trading platform. (PX54.)

211. In or about September 2019, Telegram engaged in discussions with the exchange Binance. As part of those discussions, Binance inquired as to when and how many tokens would be “unlocked on day 1 of exchange listing.” (PX55.)

212. Telegram connected Binance with TON Labs. (PX56.)

I. As Investors Sought Liquidity, Grams Began Trading in the Secondary Market Immediately after the First Round of the Offering Closed

i. Hyman Makes Repeated Inquiries Regarding Secondary Trading and “Grey Market”

213. On or about February 6, 2018, Telegram’s Hyman asked one of the investors: “Have you seen any ton trades yesterday.” (PX37 at TG-007-00000727.) The investor responded: “Not that I am aware, but the market is not transparent and very fragmented. With your docs, it’s impossible to do a clean transfer, so the trading I’ve seen has been relationship based, as you are essentially getting married to the counterparty for 18 months. Really interesting.” (*Id.*)

214. On or about February 8, 2018, the same investor told Hyman: “Lots of

people running around today looking for allocations – looks like you denied all of NY and some others on a KYC basis. All of that demand flowing in to the secondary market. Some willing to pay up to \$1.” (*Id.* at TG-007-00000728.)

215. That same day, Hyman copied this statement from the investor into a separate chat among himself, Durov, Perekopsky, and Parekh, along with the note “Update on grey market.” (PX57 at TLGRM-015-00000957.)

216. On or about February 9, 2018, Hyman again asked the same investor: “Any gray market activity in TON.” (PX37 at TG-007-00000729.) The investor responded: “Everyone running around wiring today. Have not heard anything new. Will ping if I see something.” (*Id.*)

217. Hyman followed up on or about February 12, 2018: “Anything new Price wise where’s activity.” (*Id.*) The investor responded: “60-70 still.” (*Id.*)

218. On or about February 23, 2018, Hyman once again asked: “have you seen any grey market gram activity if so at what prices.” (*Id.* at TG-007-00000730.) The investor responded: “Lots of activity. It’s all between 70-90 cents. The spreads are wide to with middle men taking 7-15% on the deals.” (*Id.*)

219. On or about March 1, 2018, Hyman again asked the investor: “have you seen any green market activity in the telegram tokens . . . grey market.” (*Id.*) The investor replied: “It’s been quiet lately. We saw a deal fall apart two days ago as the buyers are kind of marginal now.” (*Id.* at TG-007-00000731.)

ii. Investors Look to Buy and Sell Grams, and Telegram Is Aware of Much of these Efforts

220. On or about March 14, 2018, a representative from one of the investors noted in an internal email that another investor is “selling part of their 1st round at 74 cents – that

is almost 2x cheaper. They invested \$9M, and are ready to sell 50% or 25% of what they have for \$9M or \$4.5M.” (PX58.)

221. On or about April 5, 2018, an individual contacted a potential investor about an opportunity to purchase “6mm grams, so a total ticket size including fees of \$7.8mm” at a price of \$1.30 per Gram. (PX59.)

222. On or about April 14, 2018, a representative from another investor forwarded to Parekh an email from “BNK to the Future.com” stating: “Telegram Token Sale: We have been given an allocation in the Telegram token sale which is our first ‘priority access’ deal for BF Token (BFT) holders. Those that are not token holders yet are still able to apply for any remaining allocations before Tuesday March 13, 2018. For more details and to apply click here. NOTE – This particular deal is not open to US investors.” (PX60 at 16196.)

223. On the same email chain, on or about April 13, 2018, a different investor forwarded to Parekh an earlier email from BNK to the Future.com, stating: “Congratulations to Telegram: We syndicated \$16,258,117 from our qualifying investors on our Online Investment Platform as part of their \$1.7bn raised to date.” (*Id.* at 16198.)

224. On or about July 9, 2018, a representative of a crypto trading firm and affiliate of one of the initial purchasers emailed Hyman, Perekopsky, and Kudina: “[our firm] is one of the largest crypto trading firms in the world, and provide the deepest liquidity, in the [sic] more names than anyone in the ecosystem, and as such, I was hoping you could help me. I have been trying to have a discussion with the Treasury group at Telegram, to discuss our value proposition, relative to Telegram’s cryptocurrency liquidity needs.” (PX61 at 712.)

225. On or about May 16, 2019, a representative of a digital asset trading platform identifying itself as “the top 1-10 largest crypto exchange according to the

CoinMarketCap,” emailed Telegram’s Perekopsky: “I’m contacting you because [REDACTED] is considering listing IOU notes on Grams and your cooperation and comments would be much appreciated! We do believe that our proposal is extremely important and beneficial for Telegram.” (PX62 at TLGRM-007-00071955.)

226. The email went on to state: “While the PA with Telegram prohibits sale or transfer of rights on Grams we believe that it originally arises from the Reg.D requirement of the 12 months prohibition on resale. And since the 12 months period has passed from the deal closing date for both rounds we believe that Telegram may be able to grand [sic] permission to the seller on transfer of its rights to the SPV. In the scenario when Telegram is not in a position to permit such transfer we may proceed with a pure credit type of IOU notes and cover the risk by a guarantee of future delivery of Grams or financial settlement on the price difference from independent sources with no link to PA with Telegram.” (*Id.*)

227. On or about August 19, 2019, CoinDesk, which describes itself as a “leader in blockchain news,” published an article titled “Early Investors in Telegram Crypto See 400% Returns – But buyers Risk It All.” (PX63.) The article noted that “[b]etween over-the-counter (OTC) desks, sales on small cryptocurrency exchanges, and at least one investment fund, opportunities to buy the tokens, known as grams, before the blockchain’s Oct. 31 launch date are not hard to find.” (*Id.*)

228. The article further noted that “the purchase agreement’s restrictive terms didn’t stop investors who wanted to exit – it only made the secondary market for grams an underground business.” (*Id.*) The article quoted an OTC trader as follows: “There are more and more offerings of the gram tokens, with a price tag from \$1.60 to \$2.” (*Id.*) The article relayed another OTC trader’s statement that buyers and sellers only sign IOUs, or a paper saying that one

side of the deal owes assets to the other. (*Id.*)

iii. Liquid Lists Grams on Its Exchange, and Tells Telegram Beforehand

229. The August 19 CoinDesk article described a secondary sale whereby “[i]n June of [2019], Japan-based crypto exchange Liquid announced a sale of grams in partnership with Gram Asia, reportedly one of the original investors in TON. The sale was not available to residents of the U.S. or Japan. The sale started July 10 at \$4 per token and was completed in a couple of weeks. According to Liquid’s website, tokens purchased during the sale were subject to vesting: buyers won’t get them immediately after the launch of TON, but in several tranches three, six, 12 and 18 months after the launch . . . Seth Melamed, global head of business development and sales at Quoine, the parent company of Liquid . . . noted [] that the gram sale made the exchange’s user base grow tremendously: about 25,000 new users signed up in July, compared to only 5,000 new users in June. Roughly half of them bought the placeholder tokens that will be swapped for grams after the network launch. . . . It’s not clear, however, what happens if Gram Asia loses its allocation as a result of a public re-sell campaign. . . . Asked how Liquid will make sure Gram Asia delivers the tokens, Melamed said the two entities have a contract. ‘There is another entity that acts as a guarantor to deliver Liquid Gram in the event Gram Asia fails to perform its contractual obligation,’ Melamed said, refusing to identify the third-party guarantor.” (PX63.)

230. In or about November 2018, Perekopsky emailed two representatives of Liquid/Quoine as well as a representative of Koinvestor: “Let me introduce you to our legal team from Skadden [who] have seen the questions [sic] the Japanese regulator. Before we proceed with answers could we make a phone call together to understand better some details.” (PX64.) Perekopksy copied two Skadden attorneys on his email. (*Id.*)

231. A few days later, Skadden emailed the same group asking: “Regarding

the application to list Grams in Japan, can you advise if there are certain Japanese law firms that you've worked with in the past . . .” (PX65.)

232. On or about January 24, 2019, a representative from Liquid/Quione emailed Durov: “It has been a while but thank you for hosting us when we visited you last year. I have been updated by Katsu, [REDACTED] and Ilya that things are progressing well in terms of listing Gram on our exchange. . . .” (PX127.)

233. When asked at his deposition in January 2020 if he had met with Liquid with respect to their sale of Grams, Durov responded “definitely no” and he could not recall meeting anyone from Liquid. (PX12, Durov Tr. at 345:22–346:7.)

234. In response to the SEC staff’s request to Telegram about the purported offering of Grams by Liquid, Telegram’s counsel, Skadden, sent the following email to the SEC staff on or about July 9, 2019: “Unfortunately Telegram does not have any further information to provide regarding the Liquid announcement – it has not had any involvement with Liquid or its announcement; does not know which Gram purchasers (if any) could be involved; does not have any information about and has not had any communications with ‘Gram Asia’; and has not had any communications with Liquid or its representatives regarding the purported offering.” (PX41.)

235. On or about May 28, 2019, Perekopsky received the following email from Liquid: “We are happy to learn that the Telegram Open Network testing process is on good track and reaffirms your plans that you disclosed in the White Paper. We as Liquid exchange would also like to be helpful and contribute to the development of TON ecosystem. It is our strong belief that the more investors from different parts of the world invest in TON the better it is for the ecosystem. We are continuously receiving a lot of demand from Asian retail investors.

To satisfy this demand we would like to launch an Initial Exchange Offering with our partner Gram Asia who will contribute grams. There will be no trading before the grams are issued by TON. Investors will receive grams only after the issue of grams and release of lockup. The proceeds from the IEO will be kept by Liquid and distributed only when grams are received by investors. The IEO will be targeted to investors from Asia excluding Japan as well as excluding the USA and all other prohibited countries. Next week we are planning to launch the marketing of the IEO and would be great to get your quote for the press release which will be published through the mainstream media such as TechCrunch. . . .” (PX66.)

236. On or about May 28, 2019, Telegram received another email from Liquid: “[W]e have been told that we will be doing an IEO for the GRAM token working with an entity called Space Investments Limited registered in Cayman Islands. Is there any association to Space Investments Limited and TON Issuer Inc and Telegram Group Inc?” (PX67.)

237. There is no evidence in the record that Telegram took any steps to reach out to Space Investments Limited (“Space Investments”) in response to this email until January 11, 2020—two days ago. (PX68.)

238. In or around March 2018, Hyman responded to an investor inquiry about Space Investments stating that it was “a trusted partner and funds invested via them will reach us.” (PX119.)

239. On or around September 29, 2018, an investor contacted Telegram about “an offer of cooperation” from Space Investments. (PX120.)

240. Perekopsky responded that Space Investments “is a reliable partner of Telegram in a few projects and investor to TON. They participated in the Pre-sale round and participated in stage ‘A’ round. The total volume of their investment to Grams exceeds \$60M.

Space has been cleared from AML/KYC perspective by our KYC provider Lawson Conner and by our bank Credit Suisse. They still have available allocation in the current round.” (*Id.*)

241. The Liquid “Gram Token Sale” began on or around July 10, 2019.
(PX69.)

242. Liquid noted on its website: “We are working with Gram Asia for the purposes of this sale. Gram Asia is the largest holder of Gram tokens from Asia, and a trusted partner of Liquid, with a long-standing relationship forged through business ties.” (PX2, Ex. F.)

243. On or about June 11, 2019, an analyst from an affiliate of one of the TON investors emailed Gram Asia: “we specialize in providing two-sized, institutional-sized liquidity for 40+ cryptoassets. We are also investors in Telegram tokens and plan to be market-making from day 1. How about a chat on ways we can work together?” (PX70.)

244. On or about June 12, 2019, a representative from one of the investors told Perekopsky: “BTW, I am going to talk to the Liquid exchange about their TON listing. Will lyk what I learn...” Perekopsky responded: “Ok, thanks.” (PX71 at TLGRM-017-00000521.)

245. On or about July 4, 2019, an investor asked Parekh for “the official Telegram position” on the “Gram Asia/Liquid exchange news about the impending listing and sale of Grams,” “considering that there are very strong and broad restrictions on transfer of Grams prior to official launch/listing.” (PX72.)

246. Parekh responded on or about July 7, 2019: “We have seen those stories, but they are completely unconnected with Telegram. We have not commented publicly on the advice of counsel, but I would refer you to this article on Cointelegraph:

<https://cointelegraph.com/news/sale-of-telegrams-token-gram-on-exchange-liquid-is-not-official-source>.” (*Id.*)

iv. Other Exchanges Follow Liquid and List Grams

247. The CoinDesk article referenced above also states: “A few small exchanges followed Liquid’s lead: a Korean exchange, Upxide, announced it was selling Grams in partnership with Liquid on July 14 and Bitforex offered its users “Gram IOUs.” (PX63.)

248. The article went on to note: “The secrecy in the secondary market encourages fraud: according to [an OTC trader], many of the traders he saw advertising gram deals aren’t actually investors in Telegram, and most OTC offerings are blatant scams.” (*Id.*)

249. [RESERVED]

250. [RESERVED]

251. The email further stated: “The main advantage of this scheme is that we’re building the ‘safety layer’ and reduce the risks related to the direct exposure on purchase agreements and SEC.” (*Id.*)

252. On or about August 19, 2019, representatives from an affiliate of one of the investors circulated the August 19, 2019 CoinDesk article referenced above and also noted based on press reports: “Another token sale for Telegram happening on Tekenomy. Same price as Liquid 1Gram = 4USDT.” (PX74.)

253. On or about August 10, 2019, Perekopsky and Parekh received an email from Decentral Park attaching a research report on TON. (PX75.) The research report, entitled “The Current State of Telegram Open Network, A sleeping giant awakens,” noted that “[i]n March 2019, the little known Xena exchange listed a leveraged, cryptocurrency-settled derivative contract for the GRM token (XGRAM), which in the first month of trading reached up to \$8 per XGRAM, though in a highly illiquid environment. At the moment, the price per XGRAM stands at \$3.30. . . . The Chinese exchange Lbank has also listed a Gram/ETH futures pair, which at the time of writing trades at the equivalent of \$1.00.” (*Id.* at TLGRM-012-

00016231.)

254. The Decentral Park report also noted that the Liquid exchange’s “physically settled futures sale for \$4 per Gram” raised \$12.5 million. (*Id.* at TLGRM-012-00016231–32.)

255. The Decentral Park report further noted the sale “unsecured futures agreements” by ATAIX for \$3.99 per Gram in September 2019. (*Id.* at TLGRM-012-00016232.)

v. Other Resales

256. The August 19, 2019 CoinDesk article describes “another notable offering [] from a large player in Russia. ATON, an asset management and investment banking company based in Moscow, with reportedly \$2.5 billion in assets under management, sent its clients an intriguing proposal in May. In a 13-slide presentation obtained by CoinDesk, ATON presented TON as a potential rival to Mastercard and offered indirect interest in grams, in the form of shares in a specially created investment vehicle, New Technology Fund SPC Limited, registered in the British Virgin Islands. . . . The fund offers investors access to future grams, the presentation says, at a price of \$1.33 per token. Investors will get 25 percent in 12–18 months and the last tranche in 18–24 months. . . . While the offering may have been a violation of the agreement with Telegram, the investors who talked to CoinDesk noted a possible loophole that can allow the participants in token sale to sell their allocation quietly. When signing the paperwork with Telegram, investors had to disclose their beneficiaries with shares larger than 25 percent, and after the deal, notify Telegram if new shareholders of such size bought in. However, changes smaller than 25 percent don’t have to be reported, and this might be a way to hide re-selling. . . One of the investors said that, according to his information, ATON has already sold the shares in the gram-based fund worth \$10 million. ‘Everyone was shocked when people

got that presentation. But ATON said they got written permission from Telegram,’ he added.” (PX63.)

257. On or about April 10, 2019, one of the initial purchasers entered into a “Participation Agreement” with another entity (the “Participant”), whereby the Participant would “receive a participation in the purchase of 5,297,157.14024602 tokens among the Tokens that [the investor] will be entitled to by subscribing a total participation amount of US\$2,400,000.” (PX76.)

258. A memorandum to the Participant’s operating committee, dated March 23, 2019, stated: “We believe Telegram represents a dominant leader in the crypto instant messaging and social media space, with a highly scalable platform to drive and capitalize on digital asset’s global mainstream application. . . . Given [the Participant’s] relationship with the seller, **we have procured a highly attractive secondary opportunity at \$0.453 per token, representing 66% discount to the last private round valuation.** Assuming targeted exchange listing in 4Q19 at a price at least on par with previous round (\$1.33 per token), [Participant] **stands to receive principal within 7-9 months with 66% remaining stake for significant long termed upsides.**” (PX77 at 831 (emphasis in original).)

J. Telegram Has Made Efforts to List Grams and to Develop the TON Blockchain and Ecosystem with the Help of Its Current and Former Business Associates

259. Durov and Perekopsky met in university and subsequently worked together at VKontakte. (PX13, Perekopsky Tr. at 19:12-20:14)

260. In 2017, Durov hired Perekopsky to work for Telegram and help raise funds for Telegram, while he understood that Perekopsky was involved with Blackmoon Crypto as a fundraiser for that company. (PX12, Durov Tr. at 143:5-144:22.)

261. Durov discussed with a friend on or about October 30, 2017 that

Perekopsky would “help run point” on the offering, noting he “raised \$30M for Blackmooncrypto last month.” (PX15 at TG-017-00000559.)

262. Perekopsky recruited Hyman to Telegram. (PX13, Perekopsky Tr. at 66:2-25.)

263. Hyman in turn recruited Parekh to Telegram in approximately January 2018, as Hyman was Parekh’s old boss at Morgan Stanley. (PX14, Parekh Tr. at 19:11-24.)

264. As detailed below, Perekopsky’s friend and partner at Blackmoon Crypto, Oleg Seydak, was involved in the Telegram offering from the very start, and continued his involvement when he, along with Hyman and others, formed Gram Vault in 2018.

265. As also detailed below, Hyman, along with two other founders of Gram Vault—Alexander Filatov and Michel Lejnev—is also associated with TON Ventures. Filatov is also the CEO of TON Labs.

266. Perekopsky testified that because of Telegram’s very limited internal resources, the Telegram team relied on their friends and colleagues to do some of the work. (PX13, Perekopsky Tr. at 167:2-169:7.)

267. Durov told a friend and investor in April 2019 that Telegram’s tech team was “stretched too thin” but that there was a “dev team” “affiliated with large 2nd stage investors” who had “invested a lot of time into studying what we do.” (PX15 at TLGRM-017-00000599.)

i. Blackmoon

268. Blackmoon Finance Limited (which does business as Blackmoon Financial Group) has the following ownership structure: 33.39% by Four Rooms LTD which is in turn 100% owned by Seydak; 32.17% by Perekopsky; 18% by Flint Capital VC; and 16.44% by other monitory shareholders, each of whom owns less than 3.5%. (PX78 at 25.)

269. Through Four Rooms LTD, of which he is 100% owner, Seydak owns 100% of Blackmoon VF Ltd (which does business as as Blackmoon Crypto). (*Id.* at 25.)

270. Through Four Rooms LTD, of which he is 100% owner, Seydak owns 100% of Swiss Digital Group AG (which does business as Gram Vault). (*Id.* at 25.)

271. Seydak is the Founder and CEO of Blackmoon Crypto. (PX79 at 22.)

272. Perekopsky is Blackmoon Crypto's Co-Founder. (*Id.* at 22.)

273. Sergey Vasin is Blackmoon Crypto's Chief Operating Officer. (*Id.* at 22.)

274. Moshe Joshua joined Blackmoon Crypto as Chief Product Officer in or about November 2017. (PX80.)

275. Hyman was, as of March 2018, an Advisor to Blackmoon Crypto. (PX79 at 24.)

276. In or around November 2017, Seydak, Perekopsky, Hyman, and Nicolas Tranter had "advanced negotiations" with several asset managers on behalf of Blackmoon Crypto. (PX80.)

277. According to Blackmoon Crypto's white paper, published in or around March 2018, under the heading "Our History": "Blackmoon Financial Group is a financial technology and investment management company incorporated in Ireland that has been operational since August 2014, having its roots in venture capital investments in financial technology since 2012. The company is lead [sic] by Oleg Seydak, entrepreneur, financial technology investor, founder of Blackmoon Financial Group, former co-founding partner of Flint Capital; and Ilya Perekopsky, entrepreneur and IT angel-investor, and former vice president and chief commercial officer of VK.com." (PX79 at 11.)

278. The white paper goes on to state that in 2014: "Oleg and his friend Ilya

Perekopsky, then vice president at VK.com, teamed up to found and make initial investments in Blackmoon Financial Group.” (*Id.*)

279. Perekopsky reviewed the Blackmoon Crypto white paper at the time it was created. (PX13, Perkeopsky Tr. at 37:8-38:8.)

280. Perekopsky continues to receive dividends from Blackmoon Financial Group to this day, every quarter or six months. (*Id.* at 34:10-36:6.)

281. In or about November 2017, Blackmoon Crypto’s Moshe Joshua (“Joshua”) sent emails to a number of prospective investors “soliciting investments” in TON, noting: “I believe this is a one-of-a-kind opportunity, tailored to your investment views and current focus, one I am personally going to be investing in myself.” Joshua copied Perekosphy on the emails, whom he introduced to the prospective investors as “Telegram’s Chief Investment Adviser, who is in charge of managing the capital raise.” Blackmoon Crypto’s Seydak was copied on all of these emails. (PX81; *see also* PX82–86.)

282. In addition to sending to each prospective investor a non-disclosure agreements on behalf of Telegram, Joshua sent to at least one investor Telegram’s white paper and primer. (PX85.)

283. At least one of these outreaches by Joshua led to an in-person “informal meet & greet” in London on or about January 10, 2018, with Perekopsky, Hyman, Seydak, and Joshua in attendance. (PX87.)

284. Joshua emailed Perekopsky on or about June 6, 2018 to provide a “SUMMARY OF BIZ-DEV RESPONSIBILITIES” which included “Market-Making/Liquidity Providers,” negotiating with crypto exchanges, and helping investors towards “a smoother liquidation” of Grams. (PX88.) Joshua also stated: “this will be easier and more powerful with

an official Telegram title (ie with @telegram and a formal agent relationship in place). It goes without saying that once I open these forms of communication officially, I expect the weight of responsibility to grow.” (*Id.*)

285. Also on or about June 6, 2018, Seydak emailed Perekopsky about “price stabilisation mechanics,” which described the obligation of “stabilization agents” to include “provid[ing] liquidity to avoid strong market movements, that is to be a market maker” and “buying out the stock if the price goes down below a certain predefined level.” (PX39.)

ii. Gram Vault

286. Gram Vault was founded by Seydak, Hyman, Alexander Filatov, and Michel Lenjev. (PX89 at p.8).

287. According to an investor presentation by Gram Vault entitled “The original custodian of the Telegram Open Network”:

- a. In June 2017, Pavel Durov has the “original idea of the TON and Grams” and “Gram Vault founders become advisers to the Telegram on its tokens sale.”
- b. In November 2017, “Gram Vault founders participated in preparation of the TON documentation and communication with investors.”
- c. In June to December 2018, “A set of meetings with the Telegram team. Consolidation of positions of a few largest investors and preparation for the launch of Gram Vault.”
- d. In December 2018, “Gram Vault is founded by a group of 5 founding partners representing interest of more than \$600 mil invested in Grams.” (*Id.* at p. 4.)

288. Vasin (who, as noted, is Blackmoon Crypto’s Chief Operating Officer) is also employed by Gram Vault. (PX54.)

289. As part of its application to list Grams on the Poloniex exchange, Seydak

described Gram Vault's business model as follows: "We provide holistic services to the original investors in TON. These services include safekeeping, stacking [sic] (proof of stake mining), buying and selling of Grams. Concerning the latter the clients buy and sell from us with a deferred delivery from our side. We do the OTC and market deals to hedge/balance our position." (PX78 at 14.)

290. Vasin made the following representations to Poloniex on behalf of Gram Vault:

- a. When asked "How are you associated with this project? What is your position with the team?" Vasin responded "COO at the largest custody of Gram tokens (75% of the second round, 50% of the first). Telegram itself doesn't work with the exchanges."
- b. When asked "Please list the members of your leadership team and the URLs of their LinkedIn/Github pages. What are their backgrounds?" Vasin responded with names and biographies of Nikoali Durov, Pavel Durov, and certain Telegram engineers."
- c. When asked "Who are your advisors?" Vasin responded "Skadden."
- d. When asked "What date did the ICO start on, and when did it end?" Vasin responded "2018-01-20, 2018-03-04."
- e. When asked "If your project is live: How many users have you acquired? How many users are active?" Vasin responded "Telegram Messenger has a 300mln+ user base." (PX54.)

291. Hyman, Lejnev, and Filatov (through Genesis Digital Ltd., of which he is co-founder (PX89 at 8)) have contributed funds to Swiss Digital Group, including close to

\$700,000 by Hyman in July 2019. (PX90.)

292. Gram Vault purports to represent initial purchasers with approximately \$700 million in investments in TON. (PX91.)

iii. TON Ventures and TON Labs

293. As detailed below, three of the founders of Gram Vault—Hyman, Filatov, and Lejnev—are associated with TON Ventures LP (“TON Ventures”).

294. TON Ventures purports to be composed of initial purchasers of Grams. (PX92.)

295. TON Labs was founded in or about May 2018. (PX93 at SEC-SEC-E-0038698.)

296. TON Labs is affiliated with TON Ventures. (PX14, Parekh Tr. at 167:24–168:23.)

297. Filatov is TON Lab’s Managing Partner and CEO. (PX93 at SEC-SEC-E-00386700.)

298. Gram Vault and TON Labs are “sister” companies. (PX94.)

299. Geneva Management Group acts as the Administrator for TON Ventures (PX92), and as a “strategic partner” of Swiss Digital Group (PX89 at 4).

300. Hyman is associated with TON Ventures and uses the email exchange “@ton.ventures.” (PX95; PX14, Parekh Tr. at 91:7-92:6.)

301. Filatov is associated with a foreign investor that invested a total of \$95 million in the Offering. (PX96–98.)

302. Lejnev is a beneficial owner of more than 25% of that same foreign investor. (PX99.)

303. As noted, Lejnev and Filatov are both founders of Gram Vault (PX89),

and, on or about February 29, 2019 Lejnev became a director of Swiss Digital Group (PX100).

304. On or about November 13, 2018, Filatov, on behalf of the foreign investor with whom and Lejnev are affiliated, emailed Perekopsky: “As we discussed at the last meeting with Pavel / yourself, I would like to take this opportunity to offer your group participation in the TON Ventures LP fund as a Limited Partner. The objective of the fund is to stimulate development of the upcoming TON ecosystem by investing into carefully selected teams/projects around the world that are ready to develop infrastructure and use case applications on the TON Blockchain.” (PX92.)

305. In or around April 2019, Steven Yun from Koinvestor emailed a leading crypto market maker seeking assistance with liquidating \$700 million of Grams after launch, and noted “[i]t is this GramVault, which has the trust of largest investors, that I am affiliated to carry out the OTC transactions.” (PX101–PX102.)

306. In or around July 2019, Gram Vault (Seydak and Hyman), TON Labs (Filatov), and Telegram (Parekh) were in discussions with Anchorage in connection with a potential partnership whereby Anchorage would serve as custodian for some of Gram Vault’s U.S. clients. (PX94, PX103.)

307. Noting that “the Telegram developer team is totally focused on the finalization and testing of the network,” Parekh directed Anchorage “to talk with Alexander and his developers at TON Labs, who as mentioned have been assisting Telegram with the testing these last few months” to discuss Anchorage’s technical questions. (PX103.)

308. According to Anchorage’s contemporaneous notes, Parekh noted on a call: “Because the Telegram team is so stretched (TON Labs has more engineers than Telegram). They have been partners of telegram for 6 months and helping testing from day one.” (PX104.)

309. The conversations among Gram Vault, TON Labs, Telegram, and Anchorage continued in October 2019. (PX105.)

310. In or around August 2019, Telegram gave consent to an investor to disclose its Purchase Agreements to Gram Vault to permit onboarding with Gram Vault. (PX106.)

311. In or about August 2019, Perekopsy, Parekh, and Filatov discussed listing Grams on Binance. (PX130.) Binance indicated that they had “been in touch with TON Labs” but that they had more questions, to which Perekopsky responded: “Listing on Binance will be great for your and our users I think. So let’s try to make it happen.” (*Id.* at 5–6.)

312. In or around October 2019, Seydak on behalf of Gram Vault participated in a call with Telegram’s counsel to discuss delivering the Grams directly to GramVault. (PX128.)

313. An article published by CoinDesk on or around September 10, 2019—after Blackmoon Crypto’s announcement that it would be the first exchange to sell Grams—stated: “[A] fledgling exchange with fewer than 4,000 users . . . has an edge, in part because of its relationship with a custodian that claims to have signed up over a third of the investors,” noting that Seydak is the CEO of both Blackmon and Gram Vault. (PX107.)

314. The article goes on: “Another possible advantage for Blackmoon is its association with the secretive messaging app company behind the \$1.7 billion TON project. . . . According to people familiar with the TON development and investment processes, Blackmoon is part of a network of loosely affiliated entities working with Telegram on the infrastructure for the blockchain and token.” The article also notes that Blackmoon Financial Group was co-founded by Perekopsky, Telegram’s Vice President. (*Id.*)

315. In a promotional communication circulated by Blackmoon Crypto in September 2019 entitled, “Why Grams will be traded on Blackmoon?”, Blackmoon Crypto stated: “Traders will have access to Grams tokens on the Blackmoon Exchange right after Telegram Open Network launch. Real on-chain Grams, available for withdrawal to Telegram native wallet. No lock-up. No futures or other derivatives. To provide our clients with access to Grams, Blackmoon partnered with Gram Vault – a Swiss-regulated custodian for the original investors of Telegram Open Network. This will make on-chain Grams available on Blackmoon when Telegram blockchain goes live and Grams are minted.” (PX108.)

316. The Blackmoon Crypto posting also referred to such features as: “Market, limit, stop and stop-limit orders conditional on market movements”; “Powerful chart tools with multiple tabs”; “Price alerts and customized trading workspaces”; and “More than 200 trading pairs including tokenized assets.” (*Id.*)

317. The close nature of the relationship with Telegram of Blackmoon, Gram Vault, Ton Ventures/TON Labs was apparent to players in the cryptocurrency markets. For example:

- a. A representative of an affiliate of one of the initial purchasers noted that Gram Vault is “very close to the founders” of Telegram. (PX109.)
- b. Another firm noted in a research paper that “Blackmoon Financial Group [is] an entity indirectly connected to TON’s Executive Team,” (PX75 at TLGRM-012-00016234), and pointed favorably to the fact that this group had already officially announced that it would list Grams, thus providing them liquidity. (*Id.*) This firm also noted “TON has two main research groups working on TON’s development; TON core and TON Labs. . . . A direct affiliation of TON Labs and TON core has

never been confirmed, but from the speed of reaction on fresh TON releases one can conclude that TON Labs are the first to receive direct updates from TON core. It is also known that REDACTED TON Labs, invested in TON in 2018 while still being a partner at VC fund SP capital and helped to organise the Gram token sale.” (*Id.* at TLGRM-012-00016251.)

- c. In an email to an investor, Parekh referred to TON Labs as independent, but “one of [Telegram’s] partners . . . who have been assisting Telegram with testing of the network and who are also building various applications to run on the TON Network.” (PX110.)
- d. A representative of another investor viewed Hyman as being “from Telegram” even in June 2019, a year after Hyman had left Telegram. (PX111 at 4.)
- e. Filatov (at a TON Labs email address), emailed Perekopsky, Parekh, Hyman (at a TON Ventures email address), and Seydak (at a Gram Vault email address):
 “Dear team, we will try hard to close Coinbase on the listing (along with 100 questions answered today) and support. Agreed on a separate call with [Gram Vault], timing tbc for later this week / early next week.” (PX95.)

K. Telegram Paid Promoters to Find Other Investors

318. Telegram entered into a finder’s fee agreement with ATON, a Russian broker and asset manager, in June 2018, whereby ATON would undertake to introduce potential investors to Telegram in exchange for 10% of the gross proceeds of the investment. (PX112.)

319. Telegram has paid at least \$1.2 million in finder’s fees to ATON pursuant to this agreement. (PX115.)

320. In May 2019, an individual representing themselves as “an investor of Telegram” sent an email to Parekh, attaching a marketing brochure (in Russian) from ATON and

stating: “this week i have received an offer, where i can purchase Telegram tokens the same price (1,33\$) as bought it 1 year ago only with a 3-month lock-up, so its obvious that the seller is the first round investor. I believe that this action violates rights os [sic] the second round investors cause we bought the tokens more expensive but with the time advantage.” (PX113 at TLGRM-012-00015883.) An English language translation of the marketing brochure (TLGRM-012-00015885 – 97) is attached as PX114.

321. The marketing brochure noted: “Telegram is one of the largest and fastest growing messengers in the world” (*id.* at 15887); “simplicity and safety of crypto currency exchange: TON wallet in-built into Telegram” (*id.* at 15888); “in 2019 the crypto currency market demonstrates growth again” (*id.* at 15899); and “Evaluation of TON Board” of “the value of one Gram” at “+494%” (*id.* at 15892).

322. A 37-page equity analysis on TON Telegram dated May 15, 2019, prepared by ATON was obtained by at least one investor and was available online. (PX116.)

323. Telegram entered into a similar commission agreement with Da Vinci Capital Group (“Da Vinci”) whereby Telegram would pay Da Vinci 10% of gross proceeds of any investment Da Vinci introduced to Telegram.

324. Telegram admits it paid Da Vinci finders’ fees. (PX12, Durov Tr. at 217:14–218:10.)

325. On or about June 22, 2018, an individual contacted an affiliate of one of the investors, stating: “we have an opportunity to participate in Telegram. We have an interesting opportunity available to participate in TON Fund at 1.33 USD price please see the teaser attached. The price is at 1.33 as during the second round and we will only take a minimum fee for the fund (2.00%, and 10% performance fee). According to news, there is strong positive

news flow that will be released in early July. They expect the round 3 at 2.22 USD be done to wide range of investors in the autumn backed up by the issuance of the new blockchain mechanism and payment products. The tokens are expected to be issued by the year end.” (PX117.)

326. The email attached a slide deck prepared “for Da Vinci Capital Investors Only,” describing an “opportunity to invest in one of the largest ICO in the history of cryptocurrencies.” (*Id.* at 8465.)

327. On or about February 20, 2018, Hyman emailed an unidentified individual attaching marketing material from Da Vinci, and stated: “The following has been forwarded to us. Can you please explain why you are talking about a price below the contemplated issue price – it makes no sense and is confusing people.” (PX118.)

328. The marketing document attached to Hyman’s email referred to a “‘Subsequent Sale’ Subscription to Telegram (Gram) Token sale, March 2018”; noted the deal would be “managed by Da Vinci Capital (the Investment Manager) with the advisory support of AddCapital”; listed the price for Grams as “from ~\$1.1 to ~\$1.45 per Token”; noted the “[b]ooming market of crypto assets[’] [growth] by 79x”; and stated that it “will provide instant liquidity” upon delivery of Grams. (*Id.*)

329. Telegram entered into a similar finder’s fee agreement with a third entity, Space Investments, whereby Space Investments would earn 15% of gross proceeds of any purchase agreements it facilitated on behalf of Telegram. (PX138.)

330. As noted, Liquid informed Telegram in or around May 2019 that it “will be doing an IEO for the GRAM token working with Space Investments.” (PX67.)

331. Telegram admits these payments were payments for finders’ fees. (PX12,

Durov Tr. at 217:14–218:10.)

L. Investors’ Expectation of Profit from the TON Investment Was Reasonable

332. It was reasonable for a purchaser to buy Grams in Pre-Sale and Stage A with the expectation of profit derived from the work of Telegram in developing the TON Blockchain. (PX10 (Expert Report of Patrick B. Doody (“Doody Report”)) at ¶¶ 5, 15-53.)

333. It was unlikely that a reasonable purchaser of Grams in Pre-Sale and Stage A would acquire Grams in order to purchase goods and services, because, among other reasons, there was no identifiable uses for Grams at that time. (*Id.* ¶¶ 5; 8-9; 50-53.)

334. It did not make sense from a business perspective to tie up substantial capital for approximately one year or more just to purchase a potential currency that might not be widely accepted in the future. (*Id.* ¶¶ 5, 53.)

335. Telegram’s Reference Price formula’s provision that the TON Foundation would never sell Grams at a price below the Reference Price, which would always be higher than the price the Pre-Sale and Stage A investors paid for their Grams, sent a strong signal to potential purchasers that there potential for profit would not be negatively impacted when Grams are sold from the TON Reserve. (*Id.* ¶ 38.)

336. The Reference Price formula sent a strong signal to potential purchasers that Telegram would protect their investment from losses. (*Id.* ¶¶ 6, 37-46.)

337. The Reference Price formula’s various price support mechanisms provided a strong incentive to buy Grams with the intent to generate a profit based on Telegram’s efforts. (*Id.* ¶¶ 38-42.)

338. Reasonable purchasers of Grams at network launch are also likely to still be purchasing Grams as an investment with the intent to profit from the effort of Telegram, rather than purchasing Grams to buy goods and services, given that there appear to be only

minimal commercial uses for Grams anticipated at launch. (*Id.* ¶¶ 9, 52.)

339. Pre-Sale and Stage A investors received large discounts from the expected Reference Price at launch of the TON Blockchain. (PX11 (Expert Report of Carmen A. Taveras (“Taveras Report”)) ¶¶ 25–32.)

340. Investors in Pre-Sale expected to receive a 91.1% discount from the expected Reference Price at launch based on the information contained in the January 2018 Indication of Interest letter. (*Id.* ¶ 30.)

341. Investors in the Stage A expected to receive a 75.1% discount from the expected Reference Price at launch based on the information contained in the February 2018 Indication of Interest letter. (*Id.*)

342. Pre-Sale and Stage A Investors could expect to make a combined profit of \$5,844,901 for each round if the Reference Price formula’s Gram buyback provision was used to buy back all their Grams. (*Id.*)

M. Telegram Has Not Provided Investors with Financial and Other Information

343. On or about March 6, 2019, Parekh told auditors working on behalf of one of the initial purchasers: “We have not provided financial statements for Telegram Group Inc or any of its subsidiaries, as this is not contemplated in the Purchase Agreement signed in connection with the offering.” (PX38.)

344. On or about May 27, 2019, Parekh told another investor: “We have not provided any financial statements, as this was not part of the Purchase Agreement entered into by investors in the two rounds.” (PX121.)

345. On or about May 28, 2019, Parekh told that investor: “We have not provided investors any valuation information.” (PX122.)

346. During the Offering, when asked by an investor for information regarding

Telegram’s Messenger’s user base, Perekopsky replied: “Telegram is not in a position to provide further information – we have treated all investors equally and [your firm] has been given the same access to the Company as your peers.” (PX28.)

347. Telegram did not have a policy of providing investors financials for Telegram and Durov “struggles” to grasp the relevance [financial statements] may have for the general public. (PX12, Durov Tr. at 355:21-356:15; 359:10-22.)

N. TON’s Validation Function

348. Telegram’s vision for the TON blockchain requires that the aggregative value of stakes deposited and accepted in validation be high enough for the network to be able to process large transactions securely. (PX12, Durov Tr. at 72:27-78:5.)

349. Durov believes it would be good to have more than 20 validators at launch. (*Id.* at 78:7-80:4.)

350. Durov believes it is difficult to predict how many validators the TON blockchain will have upon launch. (*Id.* at 311:9-19.)

351. Telegram did not have a policy obligating its employees to ask investors if they had any intention or interest in acting as validators on the TON blockchain, or to fill out a form recording information regarding their interest. (*Id.* at 85:4-86:10.)

352. Parekh did not ask and is not aware of anyone at Telegram asking about whether the investors were going to participate in the validation process (PX14, Parekh Tr. at 130:14–131:14), nor about whether they had the ability to do so (*id.* 134:10-25).

353. Parekh spoke to only a dozen or so investors that had vague interests in acting as validators. (*Id.* at 131:20–134:9.)

354. Perekopsky similarly explained that in considering allocation criteria, Telegram did not consider whether the funds were “active in the cryptocurrency space” or

whether they had the “sophistication as Blockchain node validators.” (PX13, Perekopsky Tr. 122:17-125:9.)

355. Investors have submitted sworn testimony that they did not intend to act as validators. (*See supra* at ¶¶ 158-60; 167.)

356. Investors have confirmed that Telegram did not ask them, prior to their investments, whether they intended to act as validators. (*See supra* at ¶ 168.)

357. Stage A Grams purchasers are free to spend Grams however they deem necessary upon launch. (PX13, Perekopsky Tr. at 292:9-23.)

358. During the pre-launch phase of network development, Telegram has been the primary contributor to productivity growth. (PX126 (Expert Report of Stephen McKeon Expert on behalf of Defendants (“McKeon Report”)) ¶ 203.)

359. Network effects and platform productivity are significant determinants of token prices. (*Id.* ¶ 200.)

360. Telegram will continue to have significant influence and control over the success and value of Grams going forward through Telegram Messenger. (*Id.* ¶ 50 (“Marketing materials indicate that the limitations of alternative cryptocurrencies was a primary motivation for the development of TON, as none of the existing cryptocurrencies were viewed as viable for deployment to the hundreds of millions of users of the Telegram Messenger application.”).)

361. It was reasonable for investors to purchase Grams to finance the development of the TON Blockchain with the expectation of profit to be derived from the success of the TON blockchain. (*Id.* ¶ 70 (“The development of a new blockchain network is often financed by purchasers that provide capital well in advance of network launch. They may be motivated by the prospect of investment returns from price appreciation and/or an intention to

use the resultant cryptoasset for utility purposes such as providing validation services.”.)

362. Purchases of large quantities of a cryptocurrency, especially prior to the launch of the blockchain, are more consistent with an intent to profit from the later sale of the cryptocurrency rather than to purchase it for consumptive use. (*Id.* ¶ 71 (“Once network goes live and the native asset is distributed to early purchasers, they are able to sell the assets on secondary markets, where it becomes feasible for consumers to purchase the assets in smaller quantities that are consistent with a wider variety of consumptive uses.”); *see also id.* ¶ 76 (noting that the vast majority of wallets for Ether, in one data set, held “less than 10 ETH, which may be consistent with consumptive use rather than investment purposes.” Conversely, holding large amounts of a cryptocurrency is more consistent with investment intent.”), *see also id.* ¶ 135 (“Cryptocurrency users are typically motivated by one of two reasons, which may not be mutually exclusive. The first is profit, typically through price appreciation, and the second is consumptive utility value, which can take many forms.”).)

363. It was reasonable for initial purchasers to purchase Grams with the intent to profit from their subsequent sale in the secondary markets. (*Id.* ¶ 73 (“Similar to markets for commodities, cryptoasset market participants consist of both consumers and speculators.”).)

364. The validation process requires substantial technical resources. (*Id.* ¶ 89 (“As in any PoS blockchain designed to ensure high transaction count and fast processing speeds, a TON validator operation is not a trivial activity, and it requires considerable disk space, computing power, network bandwidth, as well as a continual commitment to 100% uptime. The specifications of the TON blockchain require that validators use high-performance (multi-processor) servers with good network connectivity and a sufficient amount of accessible memory.”).)

O. Grams Will Be Securities at Launch

365. Reasonable investors in the market expect that the return on Grams will be directly correlated to Telegram’s efforts post-launch.

366. For example, one fund that invests specifically in digital assets and blockchains explicitly tied the market price for Grams to the number of active users on Telegram’s Messenger, predicting a price of \$2.67 in the first year of Grams, up to \$4.51 by year five, even assuming Messenger users use Grams as currencies. (PX75 at TLGRM-012-000216233.)

367. This same fund noted positively the “250M (and growing) active users on its front-end” for TON, referring to Messenger, but noted that “interoperability appears a long way out” and that “it is common for blockchain networks to spend at least one or two years post Mainnet launch to achieve a stable state.” (*Id.* at TLGRM-012-00016220.)

368. On a business call with Parekh following the filing of the SEC Complaint, one investor continued to ask Telegram about “Telegram’s messaging activity” and the “growth” rate for the app, as well as what percentage of Telegram’s expenses would be spent on Messenger vs. TON “in the next ~6 months.” (PX123.)

369. Another investor asked Telegram whether wallet will be integrated into Messenger. (PX124.)

370. The publicly-released “testnet” version of the TON Blockchain code, while complete enough to run simple transactions on simulated assets, lacks critical components that would be required in a fully developed and running system. (PX9 (Expert Report of Maurice P. Herlihy (“Herlihy Report”)) ¶¶ 8; 27-28; 34.)

371. There is no systematic analysis proving either the design or specific implementation of these components is secure and correct. (*Id.* ¶¶ 8; 29-32; 35.)

372. Potential users cannot evaluate the security and effectiveness of the TON Blockchain (and the utility of the Gram token) until these software components have been developed, released, and their security and performance evaluated and established. (*Id.* ¶¶ 8; 33; 36.)

373. Few, if any, of the suite of services that the Telegram public documents claim will eventually be purchasable by Gram holders appear to exist today and the TON Blockchain is not yet mature enough to support them. (*Id.* ¶¶ 8; 37.)

374. From the outset of the Offering through the present, Telegram has reserved for itself the flexibility to change features of the TON project, including with respect to TON wallet, the TON foundation, and the role of Telegram in validating blockchain nodes. (PX12, Durov Tr. at 158:23-162:19, 276:17-277:25, 301:2-9.)

375. Telegram retains flexibility to make efforts with respect to TON wallet post launch. (*Id.* at 261:22-262:21.)

376. Durov told an investor and friend in 2018 that the advice of his lawyers was that Telegram “retain flexibility” with respect to how they would handle the TON foundation. (PX25 at TLGRM-017-00000320.)

377. Defendants “have reserved and continue to reserve all rights to change, modify, or eliminate the existence or functions of the TON Foundation.” (PX23 at 8, Response 2.)

378. Telegram has stated that it “may in its sole discretion determine whether to develop applications for users on the TON Blockchain.” (*Id.* at 31, Response 16.)

379. Telegram has stated that “TON Foundation will determine whether to sell Grams by comparing the Reference Price . . . and current market price of Grams. The TON

Foundation will be responsible for determining which exchanges are utilized for this purpose and how such price determination is being made, and the TON Foundation will make this information publically available.” (*Id.* at 31, Response 16.)

380. Telegram’s recent public statement, released on or about January 6, 2020, noted: “Telegram reserves all rights to further add to, clarify or revise these or any other aspects of the TON Blockchain or Grams.” (PX125.)

381. Telegram retains authority over what to do with the 42% of Grams not sold in the Offering. (PX12, Durov Tr. at 277:1-9.)

P. Other

382. The Ton Foundation’s ability to buy and sell Grams pursuant to the Reference Price formula is not enough to guarantee stability in the market price of Grams. (PX11 (Taveras Report) at ¶¶ 8-24; 33-51.)

383. Digital assets like Grams are not suited to serve as a currency given that they are subject to “periods of volatility clustering” and a “higher frequency of extreme returns.” (PX129 (Rebuttal Expert Report of Stephen McKeon) ¶ 52.)

384. Grams will be available to the public in any quantity, even fractional quantities. (PX12, Durov Tr. at 301:19-24.)

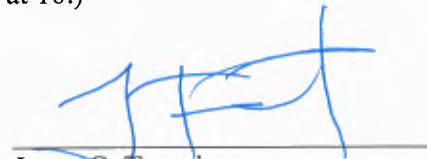
385. From time to time Telegram updates the market on the size of its Messenger user base. (*Id.* at 357:12-359:22.)

386. Parekh was not aware of any efforts by Telegram to contact the SEC prior to the Pre-Sale. (PX14, Parekh Tr. 47:3-48:16.)

387. As late as July 2019, Telegram was planning to distribute approximately 250 million free Grams following the network launch. (PX 138 at 2.)

388. Both the Pre-Sale Primer and the Stage A Primer stated: “Four percent of the initial supply of Grams (200 million Grams) will be reserved for the development team, subject to a 4-year vesting period.” (JX8 at 16; JX9 at 16.)

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