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SEC No-Action Letter Clears Ambiguity Surrounding the Existence of Utility TokensBy [David J. Sorin](#) and [Stephen Fox](#)

The SEC has issued its second-ever no-action letter to a token issuer. Pocketful of Quarters, Inc. (PoQ) sought the no-action letter in connection with the issuance of a cryptographically protected token (Quarters), which will be immediately usable across multiple gaming and e-sports platforms. Quarters will be a “stablecoin” with an unlimited supply and a fixed value equal to \$0.0025 per token. The sale of Quarters will not include any cap or discount to wholesale purchasers. Quarters will not have any use or value outside the Quarters platform (Platform), but will be exchangeable into Ethereum (ETH) at any time.

The SEC’s no-action letter focuses on the immediate functionality of the Quarters token. Proceeds from the sale of Quarters will not be used to develop the Platform nor any of its components, which already has been developed using proceeds from the sale of PoQ’s Q2 token and other financial resources. At the time of launch, the Platform will allow gamers to engage with and/or compete against others across at least 30 games using Quarters in an effort to decentralize in-game currencies. Further, Quarters will be marketed to purchasers solely for the consumptive use on the Platform. The SEC’s determination is in line with what is commonly referred to as a “utility token.”

Upon a gamer’s purchase of Quarters in exchange for ETH, the Platform’s smart contract system will automatically send Quarters to the gamer’s “hot wallet” and also distribute (1) 15% of the ETH from the sale of Quarters ratably to the holders of Q2 as a return on their investment and (2) 85% to an address controlled by the Platform’s smart contracts as a reserve for future withdrawals of Quarters and as compensation to authorized developers and influencers of the Platform. PoQ sold Q2 in June 2018 to certain accredited investors through a

SAFE instrument during the token’s pre-sale under Regulation D and then to other non-accredited investors pursuant to Regulation CF offering in October 2018.

The SEC’s analysis noted that “no reasonable gamer will acquire Quarters for investment purposes or with a reasonable expectation of profit.” Instead, Quarters will be marketed to and used by gamers solely for their own use and only for consumption of gaming entertainment. For these reasons, the SEC determined that Quarters does not meet the definition of an “investment contract” as outlined under the Howey test. The no-action letter clears the way for PoQ to sell tokens to consumers without the requirement of registration with the SEC or the application of an exemption from registration. Moreover, it clears any ambiguity as to whether or not tokens can be created that are not securities. With the SEC’s guidance, one may expect a renewed and heightened interest in the creation of finely crafted tokens that are outside the ambit of securities law and regulations.

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