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VIA ELECTRONIC SUBMISSION

Securities Act of 1933 Sections 2(a)(1) and 5
Securities Exchange Act of 1934 Sections 3(a)(10) and 12(g)

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549



WASHINGTON DC
4913 43RD ST. NW
WASH DC 20016
202-365-1448

Re: Pocketful of Quarters, Inc.

Dear Sir or Madam:

Pocketful of Quarters, Inc. (“PoQ” and together with its affiliates and subsidiaries, the “Company”), a privately-held Delaware corporation with its principal place of business in the State of Connecticut, was founded to address one of the biggest frustrations facing players of online video games today: the inability to use gaming credits, coins or other units of value purchased in, or earned playing, one online video game in other online games. PoQ proposes to offer Quarters (as defined below) for sale to those persons playing or seeking to play online video games (“gamers”) without registration under the Securities Act of 1933, as amended (the “Securities Act”), and the Securities and Exchange Act of 1934, as amended (the “Exchange Act,” and, together with the Securities Act, the “Securities Acts”).

On behalf of PoQ, CohenWilson LLP respectfully requests that the Division of Corporation Finance (the “Division”) confirm that it will not recommend to the Securities and Exchange Commission (the “Commission”) that the Commission take any enforcement action against PoQ or the Company, if PoQ offers and sells Quarters in the manner and under the circumstances described below, without registration under Section 5 of the Securities Act and Section 12(g) of the Exchange Act.

I. Factual Background

a. The problem of in-game currency fragmentation

The video game industry is large and fast-growing. Today, over one billion gamers spend in excess of \$138 billion per year on video games, with some projections anticipating the global video game market will surpass \$180 billion in revenue by 2021.¹ The economics of the industry have transitioned from games and gaming systems with relatively high initial costs to the consumer but which are generally free to play once purchased, to offerings that are free to play and instead generate revenue by inducing gamers to make ongoing in-game purchases using native in-game currencies. Free online games may also generate revenue through serving ads to players, maintaining interest through awards of these same in-game currencies to players. This shift is increasing accessibility for prospective game players by reducing barriers to participation. In many of today's most popular video games, native in-game currencies enable gamers to access exclusive features, such as the ability to customize their avatars with new costumes (or "skins"), as well as providing access to new levels and unlocking rare items.

Critically, while gamers are spending an increasing amount of money and time to buy or "earn" these in-game currencies, they frequently wind up failing to consume all of their hard-spent and/or hard-earned value. Gamers' inability to efficiently use their in-game currencies stems from the fact that current in-game currencies are not compatible across different games, which results in gamers often abandoning their purchased or earned in-game currencies and starting from scratch when they decide to play a new game. These siloed video game economies result in large unspent balances of in-game currencies that represent significant lost value for gamers and leave game developers with frustrated customers.

b. The Quarters Platform

To prevent the loss of value resulting from in-game currency fragmentation, improve player experience, and enhance gameplay behavior, PoQ has financed and developed a new platform for gamers that leverages the benefits of blockchain² technology (the "Quarters Platform"). PoQ believes that blockchain technology has the potential to significantly improve the user experience for gamers by creating a universal gaming token. The Quarters Platform includes two smart contracts,³ the "Quarters Smart Contract" and the "Q2 Smart Contract," as well as two independent blockchain-based cryptographically protected tokens:⁴ the "Quarters," which are the

¹ NewZoo, *April 2018 Quarterly Report, Global Games Market Report*.

² A "blockchain" is a distributed ledger maintained and updated (through a consensus mechanism) by a number of network participants, as compared to a traditional database that is stored in a central, permissioned, server.

³ "Smart contracts" are pre-programmed coded functions that allow for self-execution at specified times and/or based on reference to the occurrence or non-occurrence of an action or event (including data external to the network provided by third-party sources, known as "oracles"), generally through the use of a distributed computing platform such as the Ethereum Blockchain.

⁴ "Cryptographic tokens" are instances of computer code maintained on a blockchain-based ledger that are encrypted (secured) using cryptography, with each token typically representing a specific value or amount on the relevant ledger.

subject of this letter, and the “Q2 Tokens,” which are securities.⁵ In addition, the Quarters Platform includes other related software necessary for the functioning of the Quarters Platform, such as software for the creation of Quarters Hot Wallets, as defined below. The Quarters Platform, once launched, will support what PoQ believes will be the world’s first in-game token that gamers can use across participating online video games and to enter hosted e-sports tournaments⁶ (each, a “Participating Game”) allowing gamers to compete against one another in popular on-line games.⁷ The Quarters Platform at the time of launch will be fully functional and gamers will be able to engage with and/or compete against others in at least 30 games using Quarters.

i. A common in-game currency

Unlike any other in-game currency that exists to date, Quarters will interact across any Participating Game to provide gamers with a “wallet for all of your games.” To use the Quarters Platform, gamers will go to www.pocketfulofquarters.com (the “PoQ Website”) and register online to create a “hot wallet”⁸ that allows them to store their Quarters (a “Quarters Hot Wallet”). Gamers will then be able to purchase Quarters using U.S. Dollars on the PoQ Website or through distribution channels such as the Apple App Store or the Google Play Store⁹ pursuant to the standard agreements used by those distributors. Alternatively, gamers may purchase Quarters by sending ETH¹⁰ directly to the Quarters Smart Contract.

Once the Quarters Platform has launched, gamers will be able to immediately use the Quarters stored in their Quarters Hot Wallet to participate in e-sports tournaments hosted by PoQ as well as other Developers and Influencers, each as defined below, with Approved Accounts, as defined below, and to make in-game purchases in Participating Games. In addition, a gamer will receive any Quarters earned in-game in his or her Quarters Hot Wallet to use later in the same or

⁵ The Q2 Tokens are securities and the Company is required to comply with the federal securities laws in connection with the offer and sale of Q2 tokens. Accordingly, we are not seeking relief with respect to the Q2 Tokens.

⁶ E-sports tournaments are organized competitions involving video games. Gamers typically pay an entry fee to enter e-sports tournaments and the winners of these competitions typically are awarded a prize. Gamers wishing to enter e-sports tournaments may use Quarters to enter the tournaments and the winners may receive Quarters as awards. E-sports tournaments are organized and marketed by a host, and PoQ, Developers and Influencers may each host e-sports tournaments using the Quarters Platform.

⁷ Gamers will be able to use Quarters in twelve online video games at launch, such as Meteor Munch, Slots Invaders, and Galaga. Gamers will also be able to use the Quarters Platform to find and compete with other gamers around the world in e-sports tournaments hosted by PoQ in more than 20 games including many of the current top games, including Fortnite, Minecraft, Counterstrike GO, Apex, Call of Duty, and Area Q.

⁸ A digital asset “wallet” is software that interfaces with one or more blockchain(s) and stores public and private keys allowing wallet holders to monitor their digital asset balances and digitally sign transaction instructions to send and receive digital assets. A “hot wallet” is one that is connected to the Internet.

⁹ Purchases of Quarters conducted through the PoQ Website will occur via a licensed payment processor in a contractual arrangement with PoQ to provide such services. Purchases made through the Apple App store and Google Play store will occur via the standard payment processing solutions generally applicable to purchases made through those platforms.

¹⁰ ETH means any amount (including any fractional amount equal to or greater than one Wei) of the digital token commonly known as “Ether” exchanged on the Ethereum Blockchain.

any other Participating Game. Critically, gamers will only be able to spend Quarters to enter e-sports tournaments as described above and for use in Participating Games. By design, Quarters will have no value outside of their use in Participating Games. Approved video game developers (“Developers”) and approved video game marketers with established audiences (“Influencers” and together with “Developers” the “Approved Accounts”) will in turn be incentivized to develop or promote Participating Games. Developers will receive remuneration in Quarters from gamers that play the Participating Games they develop. Influencers will be compensated by PoQ for promoting Participating Games in either dollars or Quarters, depending on the circumstances, as described in more detail below. Developers can be approved by meeting specific criteria set by the Company, including the creation of one or more online games that will accept Quarters for in-game purchases, passing a comprehensive diligence check, and acceptance of the terms of the Approved Account Agreement (as defined below). Similarly, Influencers can be approved by meeting specific criteria set by the Company, including providing evidence of wide reach within the gamer community, passing a comprehensive diligence check, and acceptance of the terms of the Approved Account Agreement.

Approved Accounts may engage in promotional campaigns designed to attract gamers to Participating Games the Approved Accounts have developed or support. For instance, Approved Accounts may provide gamers with promotional codes for free or discounted Quarters to be allocated by the Company to gamers’ Quarters Hot Wallets. These promotional allocations of Quarters may be awards for achieving designated levels or in-game milestones in Developers’ games or in connection with a promotion being run by an Influencer. Pursuant to the terms of the Approved Account Agreement, the only thing Developers will be permitted to do with Quarters is transfer them to gamers as in-game rewards or transfer them to the Quarters Smart Contract in exchange for ETH. Likewise, pursuant to the Approved Account Agreement, the only thing Influencers will be permitted to do with Quarters is transfer them to the Quarters Smart Contract in exchange for ETH.¹¹ Approved Accounts are the only accounts technologically able to conduct such an exchange of Quarters for ETH via the Quarters Smart Contract. PoQ believes that the functionality of the Quarters Platform across a range of online video games will drive adoption by gamers, Developers and Influencers alike, and potentially inaugurate a new era of video game development.

PoQ financed the development of the Quarters Platform through the sale of Q2 Tokens and other investments. With that development now complete, PoQ proposes to launch the Quarters Platform by enabling gamers to purchase Quarters for use in Participating Games.

ii. Why blockchain?

The Quarters Platform relies on blockchain technology to provide transparency and security. The ability for all parties - gamers, Developers and Influencers - to view and audit all transactions is critical to gain the trust needed for large-scale adoption of a new gaming token accepted for use in multiple otherwise unrelated games. The Quarters Smart Contract and the Q2

¹¹ For a more detailed description of the role of Developers and Influencers, please see [Section I.c.iv.](#)

Smart Contract developed for the Quarters Platform ensure that Developers, Influencers, and Q2 Token investors are all paid in a secure and transparent fashion.

The Quarters Smart Contract controls the sale of Quarters and automatically executes the following functions upon receiving ETH as a result of a gamer purchasing Quarters: (i) sends Quarters to the relevant gamer's Quarters Hot Wallet; (ii) distributes 15% of the ETH from the sale of Quarters to the Q2 Smart Contract (to be subsequently distributed ratably to Q2 Token holders as a return on their investment in the Q2 Tokens), while (iii) holding 85% of the ETH from such sale at an address controlled by the Quarters Smart Contract. The ETH held in the Quarters Smart Contract as described above will be available to make future distributions to Approved Accounts in exchange for Quarters.

The Q2 Smart Contract plays a complementary role relating to the Q2 Tokens. Upon receiving a transfer of ETH from the Quarters Smart Contract as a result of purchases of Quarters by gamers, the Q2 Smart Contract retains the ETH and, upon instruction from a Q2 Token holder, automatically calculates and makes a distribution of such proceeds.

c. Quarters

i. Use of proceeds; manner of sale

Proceeds from the sale of Quarters will not be used to develop the Quarters Platform or any of its components, as this has already been financed and fully developed using the proceeds from the sale of the Q2 Tokens and other financial resources. The Quarters Platform is currently successfully running in a testnet environment and will be fully functional and operational immediately upon launch. Accordingly, the sale of Quarters is not an effort to raise seed or other capital or to otherwise attract “investors” seeking to profit from their purchase of Quarters or from the growth of an “ecosystem.” Instead, funds received from the sales of Quarters will be held in the Quarters Smart Contract in ETH and used to remunerate Developers, Influencers and Q2 Token holders as further described herein.¹²

The Company will market and sell Quarters to gamers solely for consumptive use as a means of accessing and interacting with the range of Participating Games. The marketing material and the sales documentation for Quarters will explicitly disclose that Quarters are for use in Participating Games only, should not be viewed or acquired as an investment, and that gamers should not expect to derive any economic profits from any Quarters they purchase. For example, the sales documentation will state that “[b]y design, Quarters are not redeemable for ETH from the Quarters Smart Contract by gamers and have no financial value for anyone other than Developers or Influencers with Approved Accounts.” The Company will include in all sales

¹² Where Quarters are purchased with fiat currency, PoQ will transfer an equivalent amount of ETH to the Quarters Smart Contract upon such purchases.

documentation representations and warranties to this effect.¹³ The Company, its agents and employees will refrain from making any statements or representations in connection with the sales process that are inconsistent with the sales documentation described herein and will not otherwise refer to an investment opportunity or potential profits in connection with the sale of Quarters.

ii. Key characteristics of Quarters

Two key characteristics of the Quarters are their unlimited supply and fixed price.¹⁴ Quarters will be made continuously available to gamers in unlimited quantities – the Quarters Smart Contract will always be able to mint more Quarters and gamers will always be able to buy more Quarters. The sale of Quarters will not have any “soft cap” or “hard cap.” In addition,

¹³ The Company will include language in the Quarters sales documentation substantially in the form provided below. It should be noted that this documentation will be accessed by Quarters purchasers electronically during the purchase process and will take the form of click-through terms of service agreements:

- “Quarters being sold are a functional part of the blockchain-driven gaming token platform described herein. The Quarters are neither designed nor expected by us to increase in value over time. Quarters are not an “investment opportunity” of any kind and should not be perceived as one by purchaser. They are not intended to be treated as a “security” in any jurisdiction.”
- “Instead, Quarters are simply software - computer code that you will store in electronic format and which will allow purchasers to interact with the Quarters Platform and the range of Participating Games. Quarters are a *consumer product*.”
- The sale of Quarters is not intended by the Company to be an offering of securities in any jurisdiction or an investment transaction of any type, and this agreement is not intended (i) to form the basis of, or to induce, any investment or financing decision with respect to the Quarters, (ii) to form the basis of any contract or constitute an offer to sell or a solicitation of an offer to purchase securities or any other product, and (iii) does not constitute and should not be considered as any form of recommendation or opinion or legal, financial, tax, investment or other advice whatsoever.”
- “Quarters do not have any value to gamers outside of their use within a Participating Game. Purchasers of Quarters do not receive any ownership interest, voting rights, management rights, property interest, or any interest in revenue or profit sharing. The sole use of Quarters is to enable gamers to interact with a range of Participating Games.”

¹⁴ The Company will establish retail and wholesale prices for Quarters applicable at launch of the Quarters Platform. The Company has no present intention to alter the retail or wholesale price of Quarters in the future. However, because the purchasing power of Quarters will be determined by each Developer separately and independently from the Company and will be set from time to time by a given Developer, a change in the unit price of a single Quarter by the Company would have no economic impact on gamers to the extent Developers simply reset the purchasing power of each Quarter in their games. Developers will set the price of items available for purchase in both Quarters and dollars. For example, where an in-game “golden sword” was priced by a given Developer at 200 Quarters or \$0.50 (at the initial Quarters retail price of \$0.0025 per Quarter), if the retail price of an individual Quarter was later doubled by the Company to \$0.0050 per Quarter and the Developer continued to be comfortable selling the sword for the equivalent of \$0.50, the Developer would simply adjust the in-game price of the sword from 200 Quarters to 100 Quarters. Likewise, from the perspective of the Company, a change in the retail price of Quarters would be unlikely to have any beneficial impact as purchasers will measure their spending in terms of the absolute amount spent on Quarters, rather than in terms of the number of Quarters they purchase. Someone with a gaming budget of \$5.00 per week would not be expected to alter that budget if the unit price of Quarters increased – they would simply buy a diminished number of Quarters to maintain their spending level. Even if there is a change to the sale price of Quarters, a gamer will not be able to sell Quarters, only use them in Participating Games.

Quarters will be offered for sale at a fixed price for either retail or wholesale purchases.¹⁵ Given the complementary characteristics of unlimited supply and a fixed sales price, price appreciation of Quarters will be highly unlikely, if not practically impossible. It will also not be possible for Quarters to trade in any secondary markets. This is because the terms of the Approved Account Agreement will prohibit Approved Accounts from transferring Quarters other than to the Quarters Smart Contract or, in the case of Developers, to gamers in connection with Gamer Rewards. Similarly, gamers will technologically only be able to transfer Quarters from their Quarters Hot Wallet to whitelisted Quarters Hot Wallet addresses of Approved Accounts.

iii. How gamers use Quarters

After purchasing Quarters by directly or indirectly transferring ETH to the Quarters Smart Contract or after earning Quarters during gameplay or through participation in an e-sports tournament, gamers will be able to use Quarters for one thing only: engaging with Participating Games by transferring Quarters to an Approved Account either to enter e-sports tournaments or make purchases during gameplay. In other words, the sole benefit to gamers of purchasing Quarters will be the ability to use them in Participating Games.¹⁶ The Company will prohibit gamers from transferring their Quarters to other gamers or trading them in any secondary markets by restricting the functionality of gamers' Quarters Hot Wallets by technologically prohibiting a transfer of Quarters to any wallet other than a Quarters Hot Wallet of a whitelisted Approved Account. Therefore, gamers will be able to transfer Quarters only to Developers with Approved Accounts and only then in connection with using them in Participating Games. Like arcade tokens that can be used on a variety of unrelated games but cannot be used outside the arcade, gamers will be able to buy Quarters and use them across the range of Participating Games, but they will not otherwise be able to transfer, redeem or resell them. Accordingly, gamers will be unable to monetize price appreciation, if there were to be any, in the Quarters.

PoQ will also provide gamers with free or discounted Quarters in connection with promotions designed to increase use of Quarters in Participating Games. For example, PoQ will provide forty (40) free Quarters to any gamer that opens and seeds a Quarters Hot Wallet. As another example, gamers who purchase and use Quarters in designated amounts may be eligible to receive a small amount of additional Quarters for free. PoQ may also pursue other promotions that involve giving away Quarters in the future. In any such future promotion, PoQ will allocate the Quarters directly to gamers' Quarters Hot Wallets. If Approved Accounts are involved in any

¹⁵ The initial suggested retail price for 400 Quarters is \$1.00 (*i.e.*, \$0.0025 per Quarter), with volume discounts possible. The wholesale price of Quarters, paid by distributors, is an amount equal to 777.5 Quarters per \$1.00 (*i.e.*, 0.0013 per Quarter). The wholesale price reflects the proceeds to the Company from the sale of Quarters by distributors. The difference between the retail price and the wholesale price reflects the proceeds to the distributor from Quarters sold through the distributor's sales channel. The Apple App store and Google Play store are currently the only distributors that will offer Quarters for sale to gamers once the Quarters Platform is launched. The retail cost of Quarters will remain the same whether a gamer purchases Quarters directly from the Company or via the Apple App store or Google Play store.

¹⁶ Quarters do not provide their owner with any right or privilege to participate in, or to administer, the business policies of PoQ and are not an investment of any type in PoQ or the Company. Quarters owners will have no equity or ownership interest in PoQ, the Company, the Developers of any of the Participating Games or in any other entity.

such promotion, the relevant Approved Accounts will use promotional codes to award Quarters to gamers. This would require gamers to use the promotional code to obtain the Quarters directly from PoQ. From an economic perspective, this promotional activity will have no impact on the price of Quarters, because all Quarters will continue to be sold at a set retail price. The economic cost of these promotions will not be borne by gamers.

iv. How Approved Accounts use Quarters

Developers with Approved Accounts will seek to collect Quarters from gamers by designing the most engaging Participating Games. PoQ will facilitate this process by providing software tools to Developers with Approved Accounts to enable players of their games to interact with the Quarters Platform. This will allow any Developer with an Approved Account to accept Quarters from gamers as payment for in-game purchases or participation in e-sports tournaments. Developers will not receive Quarters from any other source.

In addition, PoQ will be partnering with a limited number of Influencers to promote the sale of Quarters and monthly subscriptions to Quarters to gamers.¹⁷ Influencers will not distribute Quarters directly to gamers in connection with these sales or promotions. Instead, Influencers will provide gamers purchasing or receiving Quarters with redemption codes that will be unique to the Influencer and to particular marketing campaigns. Gamers will use the redemption codes received from Influencers to obtain Quarters directly from the PoQ Website. Gamers that do not yet have a Quarters account and Quarters Hot Wallet will be prompted to register and obtain a wallet before they will be able to obtain Quarters. These redemption codes will provide a means to track the effectiveness of Influencers' marketing of Quarters.

Influencers will receive compensation from PoQ for these and other marketing efforts. This compensation will be primarily in dollars. Influencers may also receive compensation in the form of Quarters from PoQ for hosting e-sports tournaments that use Quarters for the entry fee. In such a circumstance, Influencers will be contractually entitled to receive a percentage of the Quarters used by gamers to enter the relevant tournament and any such Quarters will be allocated by PoQ to the applicable Influencer's Quarters Hot Wallet at the conclusion of any such tournament. This is the sole method by which Influencers will receive compensation involving Quarters. Per the terms of the Approved Account Agreement, the only thing that Influencers will be permitted to do with any Quarters they receive is transfer those Quarters to the Quarters Smart Contract in exchange for ETH. Similarly, per the terms of the Approved Account Agreement, Developers will only be permitted to transfer Quarters to the Quarters Smart Contract in exchange for ETH as well as provide Quarters to the Quarters Hot Wallets of gamers that have used Quarters to play a particular game and earned in-game rewards in such game during gameplay ("Gamer Rewards").

¹⁷ Gamers will be able to purchase Quarters both on an as-needed basis and also through monthly subscriptions whereby Quarters will be allocated to gamers' Quarters Hot Wallets on a monthly basis.

Only Developers and Influencers with Approved Accounts who have been "white-listed" (*i.e.*, pre-approved) by PoQ will be capable of exchanging Quarters for ETH at pre-determined exchange rates by transferring their Quarters to the Quarters Smart Contract.¹⁸ To create an Approved Account, Developers and Influencers will be subject to appropriate KYC / AML checks at account initiation as well as on an ongoing basis. To achieve this, PoQ will maintain an up-to-date list of Approved Accounts and will allow only the Quarters Hot Wallets associated with these Approved Accounts to use the Quarters Smart Contract to exchange Quarters for ETH,¹⁹ while all other Quarters Hot Wallets will be technologically restricted from doing so.

Approved Accounts will be available only to Developers that have entered into an Approved Account Agreement with PoQ to provide Participating Games and to Influencers that have entered into an Approved Account Agreement with PoQ to promote the use of Quarters in one or more Participating Games. Approved Account Agreements will include terms prohibiting Developers and Influencers from transferring Quarters to any wallet address other than the Quarters Smart Contract address, and, in the case of Developers, to gamers' Quarters Hot Wallets in connection with Gamer Rewards (*i.e.*, transfers of Quarters from one Approved Account to other Approved Accounts, or to any other wallet address except as described above will be prohibited under the Approved Account Agreement). The Company will monitor Approved Account transaction activity on an ongoing basis to enforce compliance with these requirements.²⁰ Any violation of an Approved Account Agreement will result in the Developer or Influencer being suspended or terminated from use of the Quarters Platform.

II. Legal Analysis

For the reasons set forth below, we are of the opinion that the proposed sale of Quarters, if offered and sold in the manner and under the circumstances described above, will not involve the sale of a "security" within the meaning of Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act, and, therefore, that registration under the Securities Acts is not required. No reasonable gamer will acquire Quarters for investment purposes or with any reasonable expectation of profit. Quarters will be marketed and sold to gamers for their own use and only for consumption of gaming entertainment. Gamers will not technologically be able to

¹⁸ In determining the amount of ETH to be allocated to any Developer or Influencer with an Approved Account that transfers Quarters to the Quarters Smart Contract in exchange for ETH, a formula will be used by the Quarters Smart Contract that will take into account the number of Quarters being exchanged as well as the amount of ETH available in the Quarters Smart Contract at that time. Generally, the more Quarters a Developer or Influencer is exchanging, the greater the percentage of the available ETH they will receive.

¹⁹ Once the Quarters Smart Contract has received the transfer of relevant amount of Quarters from an Approved Account, it will send the corresponding amount of ETH from a hot wallet under its control to a public key address provided by the Approved Account. Finally, after calculating the amounts exchanged, the Quarters Smart Contract will update the Quarters blockchain-based ledger to reflect the transaction.

²⁰ This letter does not address whether PoQ or any participant on the Quarters Platform would be required to register with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") under the Currency and Foreign Transactions Reporting Act of 1970 (which legislative framework is commonly referred to as the "Bank Secrecy Act" or "BSA") and related rules and regulations.

transfer Quarters to other gamers or to any wallet that is not a white-listed Approved Account in exchange for use in a Participating Game. Likewise, Influencers will only be permitted to transfer Quarters to the Quarters Smart Contract in exchange for ETH and Developers will only be permitted to transfer Quarters to the Quarters Smart Contract in exchange for ETH or to gamers in connection with Gamer Rewards.

a. The Definition of a Security

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act each define the term security and list a variety of instruments that are securities.²¹ Although blockchain-based cryptographically secured tokens are not specifically included in the definition of a “security,” we consider whether such tokens could be deemed to be “investment contracts” as described in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) and its progeny.

b. Howey Analysis: “Investment Contract”

Commercial arrangements that do not fall plainly within the enumerated types of securities in Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act may still be treated as securities if these arrangements are deemed to constitute “investment contracts.” See *S.E.C. v. Edwards*, 540 U.S. 389 at 393 (2004)(the definition of an investment contract “embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits”). In accord with these flexible principles, federal courts have found all manner of schemes to involve investment contracts. See, e.g., *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith*, 756 F.2d 230 (2d Cir. 1985)(finding a scheme to offer bank certificates of deposit for sale to be an investment contract due to the nature of the arrangement, despite the fact that the Supreme Court had determined that conventional certificates of deposit issued by a bank, in and of themselves, are not securities); *S.E.C. v. Koscot Interplanetary, Inc.*, 497 F.2d 473 (5th Cir. 1974)(finding that a pyramid selling scheme constituted an investment contract); *S.E.C. v. Glen-Arden Commodities, Inc.*, 368 F.Supp. 1386 (E.D.N.Y. 1974)(finding an investment package involving the sale of whisky warehouse receipts to be a security within the ambit of the Securities Act).

“The test for whether a particular scheme is an investment contract was established in” the Supreme Court’s *Howey* decision. *Edwards*, 540 U.S. at 393. The test looks to “whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.” *Id.* at 393 (citing *Howey*, 328 U.S. at 301). “[I]n searching for the meaning and scope of the word “security” in the Act, form should be disregarded for substance and the

²¹ The definition of a security in Section 2(a)(1) of the Securities Act is “essentially identical in meaning” to the definition of security in Section 3(a)(10) of the Exchange Act. *SEC v. Edwards*, 540 U.S. 389, at 393 (2004). Therefore, our conclusion that Quarters are not securities, and our reasoning, applies to both Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.

emphasis should be on the economic reality.” *Tcherepnin v. Knight*, 389 U.S. 332 at 336 (1967) (citing to *Howey*, 328 U.S at 298).²²

Quarters, if offered and sold in the manner and under the circumstances described above, do not meet the elements of an “investment contract” as that term has been interpreted by the federal courts noted above. Well-settled legal principles applied to the facts and circumstances set forth above establish that the sale of Quarters in the manner described above does not represent a scheme devised to “use the money of others on the promise of profits” and thus does not constitute an “investment contract”. *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 at 848 (1975)(citing to *Howey*, 328 U.S. at 299). There will be no expectation of profit with respect to the sale of Quarters. Gamers will not be able to use Quarters for any purpose other than engaging with Participating Games. Quarters will be sold continuously in potentially unlimited supply at a set retail price. Gamers will not be capable of transferring Quarters to anyone other than to PoQ or Developers with Approved Accounts in connection with gameplay in Participating Games. As a result, the price of Quarters will remain steady. There will also be no opportunity for a gamer to sell Quarters, whether for a profit or otherwise. Further, none of the marketing materials or sales documentation will refer to the Quarters as an investment or an opportunity for purchasers of Quarters to profit. Under these circumstances, no gamer will be motivated to purchase Quarters by any reasonable expectation of profits. Instead, gamers will be motivated to purchase Quarters solely in order to use the Quarters for playing online video games.²³ We focus our legal discussion below on the “expectation of profits” aspect of the *Howey* analysis and the consumptive nature of the Quarters token.²⁴

²² Consistent with a focus on substance and economic reality, as well as the flexible principles embodied by the *Howey* test, the Commission applied the *Howey* test to cryptographic tokens in its “Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO” (“*SEC DAO Report*”), noting that offering cryptographic tokens for sale may be an offering of securities, and “[w]hether or not a particular transaction involves the offer and sale of a security—regardless of the terminology used—will depend on the facts and circumstances, including the economic realities of the transaction.” *SEC DAO Report*, at 17–18 (Exchange Act Rel. No. 81207)(July 25, 2017).

²³ The Quarters and the Quarters Platform exhibit many characteristics indicative of use or consumption consistent with the factors in Section II.C.3 of the recent Framework guidance from the Strategic Hub for Innovation and Financial Technology (“FinHub”) of the Commission. FinHub, *Framework for “Investment Contract” Analysis of Digital Assets* (the “*Framework*”), Section II.C.3, April 3, 2019. The Framework discusses high-level characteristics such as:

The digital assets’ creation and structure is designed and implemented to meet the needs of its users, rather than to feed speculation as to its value or development of its network; the digital asset can be redeemed within a developed network or platform to acquire or use goods or services; there is a correlation between the purchase price of the digital asset and a market price of the particular good or service for which it may be redeemed or exchanged; the digital asset is available in increments that correlate with a consumptive intent versus an investment or speculative purpose; the digital asset is marketed in a manner that emphasizes the functionality of the digital asset, and not the potential for the increase in market value of the digital asset; and restrictions on the transferability of the digital asset are consistent with the asset’s use and not facilitating a speculative market.

As explained in detail in this request, we believe Quarters have these characteristics.

²⁴ We do not specifically address the other aspects of the *Howey* analysis because we do not believe such an analysis is necessary to support our conclusions.

i. No Expectation of Profits

Under a *Howey* analysis, “profit” may take several forms, none of which are applicable to Quarters. “Profits include dividends, other periodic payments, or the increased value of the investment.” *Edwards*, 540 U.S. at 394. In *Forman*, the Court elaborated on the “profits” prong of the *Howey* test, noting that “[b]y profits, the Court has meant either capital appreciation resulting from the development of the initial investment... or a participation in earnings resulting from the use of investors’ funds...” 421 U.S. at 852-53.

As noted in Section I.c., Quarters do not provide holders with any right to dividends or any other distributions or payments of income or profits from any entity whatsoever. Therefore, the only way potentially to profit from the acquisition of Quarters is to resell them at a price greater than the purchase price. The analysis must therefore consider whether a Quarters holder has a reasonable expectation of profit due to an increase in the value of Quarters. We examine several elements relevant to the analysis in concluding that gamers purchasing Quarters would not have a reasonable expectation of profit based on an increase in the value of Quarters: (1) the technological specifications of Quarters, (2) the economics of the Quarters Platform, and (3) the marketing and manner of sale of Quarters. Consideration of each of these elements leads to the conclusion that no gamer, Developer, or Influencer interacting with the Quarters Platform will reasonably expect any profit from purchasing or holding Quarters; rather, gamers that purchase Quarters will simply use them for their consumptive purpose. Likewise, Developers and Influencers will seek to acquire Quarters solely as payment for the services they provide in connection with gameplay on the Quarters Platform. “[W]hen a purchaser is motivated by a desire to use or consume the item purchased,” rather than “the prospects of a return on investment . . . the securities laws do not apply.” *Id.* at 853-54 (citing to *Howey* 328 U.S. at 300).

A. Quarters Technological Specifications

Quarters include technologically implemented features that eliminate any potential for speculative or investment purchases by gamers. Quarters will be subject to significant transfer restrictions. Gamers will only be able to transfer Quarters from their Quarters Hot Wallets for gameplay to addresses of whitelisted Developers with Approved Accounts or to PoQ in connection with participation in e-sports tournaments. Gamers will not be able to transfer Quarters to other addresses. Influencers will be prohibited from transferring Quarters other than to the Quarters Smart Contract in exchange for ETH. Developers will be prohibited from transferring Quarters other than in connection with Gamer Rewards and transfers to the Quarters Smart Contract in exchange for ETH. This will prevent Quarters from trading on a peer-to-peer basis or on any exchanges, preventing a secondary market for Quarters from developing, and eliminating any potential for financial gain as a result of reselling at a price higher than that paid for the Quarters. Accordingly, there is no profit potential under *Howey*.

In *Forman*, the Court considered the lack of transferability and the lack of a secondary market for the co-op interests as important factors in the *Howey* analysis. *Forman*, 421 U.S. at 854. The Court focused on the representations in the Information Bulletin provided by the seller

and the explicit indication to prospective “purchasers that they will be unable to resell their apartments at a profit, since the apartment must first be offered back to Riverbay ‘at the price . . . paid for.’” *Id.* “This requirement effectively insures that no apartment will be sold for more than its original cost” and supports the conclusion that the share purchasers were motivated by a desire to find a place to live rather than an expectation of profit. *Id.* n.19.

In the recently granted TurnKey Jet no action request, the lack of transferability of the token was a relevant aspect of the expectation of profits prong of the *Howey* analysis. *TurnKey Jet, Inc.* (April 2, 2019)(“TKJ”).²⁵ There it was noted that contractual and technological restrictions on the transferability of tokens would be imposed such that purchasers of the tokens would not expect to profit from ownership of tokens, but, rather, expect only to use the tokens to purchase air travel services.

As in *Forman* and *TKJ*, the Company designed the Quarters Platform to prevent the transfer of Quarters outside of the Platform, thereby eliminating the creation of a secondary market in Quarters. There will be no means by which a gamer can transfer their Quarters other than to PoQ or a Developer in connection with gameplay or an e-sports tournament and, accordingly, no reasonable gamer would purchase Quarters with an expectation of profit. Similarly, Developers and Influencers will be prohibited from selling Quarters outside of the Platform and will not expect to realize a profit from any potential appreciation in the price of Quarters.

B. Economics of the Quarters Platform

The Quarters Platform has already been built (having been financed through the sale of Q2 Tokens and other investments), is running successfully in a testnet environment and, immediately upon launch, will be available to gamers. Quarters purchasers will be able to use their Quarters in Participating Games immediately upon purchase. At the time of launch, gamers will have access to at least 30 games they can engage with using Quarters. Although growth over time in the number of Participating Games will likely result in an increased demand for, and sales of, Quarters, the economic benefit of this growth will accrue to holders of the Q2 Tokens, not holders of Quarters, who will pay the same price for Quarters regardless of the number of Participating Games available to gamers.

PoQ will sell Quarters on an ongoing basis at an established retail price. Gamers will be able to purchase Quarters from PoQ as needed. As a result, a potentially unlimited supply of Quarters will be sold continuously at a fixed price and the number of Quarters in circulation at any time will be a function of consumer demand. This will result in price stability and strongly mitigates against any potential for an increase in the value of Quarters. Because there will be an unlimited

²⁵ The incoming letter in *TKJ* cited to prepaid tuition and prepaid funeral services no-action letters for the proposition that the instruments in those letters had similar characteristics to the shares offered in *Forman* and the token to be offered in *TKJ*, and, in particular, noted the limited transferability of all of those instruments. See *TKJ* at 10, n.2 (citing to *Tuition Plan Consortium, LLP* (February 4, 2003), *Fleet National Bank* (September 5, 1990), and *Michigan Funeral Directors Association* (September 28, 1987)).

supply of Quarters, gamers will have no reason to "hoard" Quarters and are expected to purchase Quarters only in such amounts as they may use in the reasonably near future.

Here, as in *Forman*, the economics ensure that gamers will not be motivated to purchase Quarters by an expectation of profit.

C. Marketing and Manner of Sale of Quarters

As described in detail in Section I.c.i. above, Quarters will not be marketed to the public, directly or implicitly, as an investment. Although the Quarters Platform and its Participating Games will be promoted with broad-based public advertising, all such advertising will characterize Quarters as a consumer digital good that can be used by gamers in Participating Games and not, directly or implicitly, as an investment. The Company, its agents and employees will refrain from making any statements or representations in connection with the sales process that are inconsistent with the sales documentation described herein and will not otherwise refer to an investment opportunity or potential profits in connection with the sale of Quarters.

The marketing materials used by the Company and the sales documents will contain significant disclosures regarding the sale of Quarters. These disclosures will make clear that:

- Quarters can only be used by gamers to engage with Participating Games and gamers cannot transfer them to other gamers or redeem them for ETH,
- Purchasers of Quarters do not receive any ownership interest, voting rights, management rights, property interest, or any interest in revenue or profit sharing in PoQ or the Company,
- The sale of Quarters is not any type of investment opportunity or a sale of securities,
- Purchasers should not expect Quarters to increase in value, and
- Quarters will not hold value outside of their use in Participating Games on the Quarters Platform.

All potential Quarters purchasers will be required to agree to a click-through terms of service pursuant to which they will represent that they are acquiring Quarters for use in Participating Games and that the purchaser is not purchasing Quarters on behalf of any other person or entity. They will further represent that they are not acquiring Quarters for any speculative or investment purpose or to benefit from appreciation in the price of Quarters (if there should be any).

This approach to marketing aligns with the approach described in *Forman*. 421 U.S. 853-54. There, the Court conducted an analysis of the Information Bulletin provided by the seller and used to market the housing units to prospective tenants and determined that investors were "attracted solely by the prospect of acquiring a place to live, and not by financial returns on their investments." *Id.* The Information Bulletin "emphasized the fundamental nature and purpose of

the undertaking” which was home ownership and cooperative community. *Id.* The Information Bulletin did not seek to attract investors with the promise of profits of any kind.²⁶ *Id.*

ii. Quarters are Consumptive Goods

Quarters will not be purchased with an expectation of profit. The technological specifications of, and contractual provisions applicable to, the Quarters, the economics of the Quarters Platform and the marketing and manner of sale of Quarters all lead to this conclusion. There simply is no economic benefit that accrues to Quarters holders and the motivation of gamers purchasing Quarters will be to use them in Participating Games. As in *Forman*, the reasonable expectation of a purchaser is that Quarters will provide an opportunity to use and consume the item purchased, not an opportunity for profit. Gamers who are prospective users of Quarters have indicated to PoQ that they like the idea of using single gaming token across a variety of games. They want to be able to keep their hard-earned tokens received as a result of playing one game and use them when playing a new game, and Quarters will be marketed to highlight that access to entertainment and not as investments. The ability to use one token in all Participating Games is what is expected to drive Quarters purchases. Accordingly, it is appropriate to classify the offers and sales of Quarters as offers and sales of consumptive goods and not as “investment contracts”.²⁷

III. Conclusion

In view of the foregoing, we respectfully request that the Division confirm that it will not recommend to the Commission that it take any enforcement action against PoQ or the Company

²⁶ In several no-action letter requests in which the Staff provided relief, the marketing was a relevant consideration in connection with the “expectation of profits” prong of *Howey*. The request in *LA Fan Club, Inc. Membership Program* (June 28, 2017)(“*LA Fan Club*”), drawing on the reasoning in *Forman*, highlighted that fan club memberships were marketed as opportunities for recreation and entertainment and not marketed as investments for profit, and not described as anything other than a means of obtaining the member benefits. The marketing materials provided that memberships were being offered exclusively for providing access to recreational and entertainment opportunities and should not be viewed as investments nor should purchasers expect to derive economic benefits or profits from their purchase. Purchasers were also required to make representations regarding their anticipated use of the membership and lack of investment intent as a condition of purchase. In the *San Francisco Giants Charter and Club Seat License Program* request for no action relief (February 2, 2006)(“*Giants*”), the Division provided no-action relief in relation to the Giants’ proposed operation of a service that would facilitate the resale of Charter and Club seat licenses (or “CSLs”) at the Giants’ home stadium. The requesting letter stated that the “Giants have not promoted, nor, in connection with the operation of the Service, will they promote CSLs as anything other than the exclusive right to purchase tickets to view Giants home games from prime seats at the Park, and in all of their and in all of their marketing materials relating to CSLs, the Giants have made and will continue to make it clear that licensees are expected to acquire CSLs solely for recreation and entertainment.”

²⁷ Quarters will be sold for use and consumption by gamers consistent with the hypothetical example of an online retailer in Section II.C.3 of the *Framework*. The Quarters Platform will be a fully operating business and consumers will be able to purchase Quarters with real currency in order to use Quarters in Participating Games on the Quarters Platform. Quarters will also be used to reward customers based on purchases of Quarters or the level of interaction with the Quarters Platform. Gamers will be able to use Quarters immediately and will be unable to transfer them to anyone but PoQ or a Developer in connection with gameplay. Similar to the characteristics in that example, Quarters will not be investment contracts.

if PoQ offers and sells Quarters in the manner and under the circumstances described above, without registration of the Quarters under Section 5 of the Securities Act and Section 12(g) of the Exchange Act.

PoQ plans to commence offering Quarters following receipt of a response from the Division, in the event the Division grants this request. If for any reason you conclude that you cannot respond affirmatively to our request, we would appreciate the opportunity to discuss the matter with you prior to the preparation of your response and ask that you please call the undersigned at 202-754-2012.

Please let us know if you have any questions or need any additional information. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Lewis Rinaudo Cohen". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Lewis Rinaudo Cohen, Esquire