

SEC Qualifies Blockstack and YouNow Regulation A Offerings

Blockchain and the Law on July 12, 2019

Blockstack

On July 10, the Securities and Exchange Commission (the “SEC”) qualified Blockstack PBC’s (“Blockstack’s”) [offering circular](#), enabling Blockstack to commence sales and distribution of up to \$40 million worth of its Stacks Tokens (“Stacks”) under Regulation A. This marks the first time in history that the SEC has qualified a Regulation A offering of blockchain-native digital assets.

We previously covered the initial public filing of Blockstack’s April 11, 2019 preliminary offering circular (which was originally filed by Blockstack’s subsidiary, Blockstack Token LLC) [here](#). Blockstack Token LLC subsequently filed an amended preliminary offering circular on May 16; then Blockstack filed a further-amended version on July 10.

The SEC’s decision to qualify Blockstack’s offering circular represents a milestone for Blockstack, as well as the blockchain industry as a whole. It is a key step down what may be a viable pathway for companies to raise capital to develop open, cryptographically secured networks powered by digital assets.

Much, however, remains to be determined from a regulatory standpoint, including:

- *At what point, if at all, can Blockstack realize its stated ambition to no longer treat Stacks as securities under the federal securities laws?* While Blockstack’s stated ambition is theoretically consistent with recent SEC staff [guidance](#), which stated that the analysis of whether a digital asset represents an investment contract (and thus, a security) may change over time, the SEC’s guidance only provides a litany of factors that may be relevant to this determination; there is no bright line.
- *Will Blockstack need to register the Stacks as a class of equity securities under Section 12(g) of the Securities Exchange Act, and thereby become a fully-fledged public reporting company?* Conspicuously, the final offering circular removes disclosure contained in the May 16 version stating Blockstack’s determination that Stacks should be classified as “debt” (as opposed to “equity”) securities, thereby taking them outside the purview of Section 12(g). And while Regulation A contains

a conditional exemption from Section 12(g) for Tier 2 offerings such as Blockstack's, the exemption requires (among other things) that the issuer utilize a SEC-registered transfer agent, which Blockstack is not doing.

- *Are persons who run validator nodes on the Blockstack network required to register as broker-dealers under the federal securities laws? Are these persons, or Blockstack, required to register as a clearing agency or transfer agent under the federal securities laws? Must Blockstack register with FinCEN as a money services business, or obtain a BitLicense from the New York State Department of Financial Services? The offering circular (along with exhibits thereto) sets forth Blockstack's reasoning for why, in their belief, no such registration or licensing is required. However, this does not mean that applicable federal and state regulators will agree.*

These uncertainties – among others – should be carefully considered by market participants moving forward with similar offering structures. Nevertheless, the value in the precedent that Blockstack has now set is undeniable.

YouNow

Indeed, other companies are already moving forward with similar approaches. Most notably, yesterday, the SEC also qualified the Regulation A [offering circular](#) of YouNow, Inc. ("YouNow"), for up to \$50 million worth of Props Tokens ("Props"). Rather than solicit cash (or cryptocurrency) consideration for the sale of Props, YouNow and its affiliate, The Props Foundation Public Benefit Corporation, will use YouNow's Regulation A program solely to distribute Props as rewards and grants to users, developers and other contributors within YouNow's network of consumer-facing digital media applications.

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