



SEC STATEMENT ON DIGITAL ASSETS AND THEIR CLASSIFICATION AND TREATMENT

INTRODUCTION

Digital assets offerings provide alternative investment opportunities for the investing public; it is therefore essential to ensure that these offerings operate in a manner that is consistent with investor protection, the interest of the public, market integrity and transparency. The general objective of regulation is not to hinder technology or stifle innovation, but to create standards that encourage ethical practices that ultimately make for a fair and efficient market.

Section 13 of the Investment and Securities Act, 2007 conferred powers on the Commission as the apex regulator of the Nigerian capital market to regulate investments and securities business in Nigeria. In line with these powers, the SEC has adopted a three-pronged objective to regulate innovation, hinged on safety, market deepening and providing solution to problems. This will guide its strategy, its regulations and its interaction with innovators seeking legitimacy and relevance.

Consequently, the SEC will regulate crypto-token or crypto-coin investments when the character of the investments qualifies as securities transactions.

WHAT WILL BE REGULATED?

1. The position of the Commission is that virtual crypto assets are securities, unless proven otherwise. Thus, the burden of proving that the crypto assets proposed to be offered are not securities and therefore not under the jurisdiction of the SEC, is placed on the issuer or sponsor of the said assets.
2. Issuers or sponsors are expected to satisfy the burden of proving that the virtual assets do not constitute securities by making an initial assessment filing. However, where the finding of the Commission is that the virtual assets are indeed securities (not structured to be exclusively offered through crowdfunding portals or other exempt methods), then the issuer or sponsor must register the digital assets.
3. The registration process for virtual assets will therefore involve a two-prong approach - an initial assessment filing to satisfy the burden of proof and a filing for registration proper, either made directly by the issuer or sponsor or where the burden of proof is not satisfied.
4. Similarly, all Digital Assets Token Offering (DATOs), Initial Coin Offerings (ICOs), Security Token ICOs and other Blockchain-based offers of digital assets within Nigeria or by Nigerian issuers or sponsors or foreign issuers targeting Nigerian investors, shall be subject to the regulation of the Commission. Existing digital assets offerings prior to the implementation of the Regulatory Guidelines will have three (3) months to either submit the initial assessment filing or documents for registration proper, as the case may be.

WHO WILL BE REGULATED?

1. Any person, (individual or corporate) whose activities involve any aspect of Blockchain-related and virtual digital asset services, must be registered by the Commission and as such, will be subject to the regulatory guidelines. Such services include, but are not limited to reception, transmission and execution of orders on behalf of other persons, dealers on own account, portfolio management, investment advice, custodian or nominee services.
2. Issuers or sponsors (start-ups or existing corporations) of virtual digital assets shall be guided by the Commission's regulation. The Commission may require Foreign or non-residential issuers or sponsors to establish a branch office within Nigeria. However foreign issuers or sponsors will be recognized by the Commission where a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor.
3. A recognition status will also be accorded, where the country of the foreign issuer or sponsor is a member of the International Organization of Securities Commissions (IOSCO).

For these purposes, the Commission has adopted the following with respect to virtual crypto assets:

"Crypto Asset" means a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status in any jurisdiction. A Crypto Asset is –

- a. neither issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the Crypto Asset; and
- b. Distinguished from Fiat Currency and E-money."

The SEC hereby categorizes the following virtual assets/instruments as follows:

S/N	VIRTUAL DIGITAL ASSET	TREATMENT
1.	Crypto Asset- e.g non fiat virtual currency.	Treated as commodities if traded on a Recognized Investment Exchange and/or issued as an investment, and is subject to Part E of SEC Rules and Regulations and any other relevant sections and subsequent Rules which will be enacted in future
2.	Utility Tokens or "Non-Security Tokens" (e.g., virtual tokens. These tokens simply provide users with a product and/or service.	Treated as commodities. However, spot trading and transactions in Utility Tokens do not fall under SEC purview unless conducted on a Recognized Investment Exchange and therefore subject to Part E of SEC Rules and Regulations and any other relevant sections and subsequent Rules which will be enacted in future
3.	Security Tokens" (e.g., virtual tokens that have the features and characteristics of a security. Represent assets such as participations in real physical underlyings, companies, or earnings streams, or an entitlement to dividends or interest payments. In terms of their economic function, the tokens are analogous to equities, bonds, etc.	Deemed to be Securities pursuant to PART XVIII (315) of ISA, "definition of Securities". All financial services activities in relation to Security Tokens, such as operating primary / secondary markets, dealing / trading / managing investments in or advising on Security Tokens, will be subject to the relevant regulatory requirements. Market intermediaries and market operators dealing or managing investments in Security Tokens need to be registered / approved by SEC as CMOs, Recognized Investment Exchanges or Recognized Clearing Houses, as applicable.
4.	Derivatives and Collective Investment Funds of Crypto Assets, Security Tokens and Utility Tokens	Regulated as Specified Investments under the ISA & SEC Rules and Regulations. Market intermediaries and market operators dealing in such Derivatives and Collective Investment Funds will need to be registered / approved by SEC.

Signed

Management

11th September, 2020

