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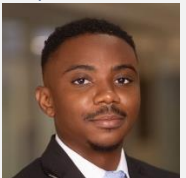
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Client Alert

SEC Further Tightens Rules on Digital Assets with New Amendments

In wrapping up an undeniably eventful year for the digital asset ecosystem in Nigeria, the Securities and Exchange Commission (the “**SEC**” or “**Commission**”) has further tightened the rules applicable to virtual asset service providers (VASPs) through the Exposure of Amendments to the Rules on Digital Assets Issuance, Offering Platform, Exchange and Custody (the “**Exposure Amendments**” or “**New Rules**”) published on 16 December 2024.

Expected to take effect on 30 June 2025, the New Rules set out a number of drastic changes. In this client alert, we highlight some of the key amendments and how these changes could significantly impact on the manner in which digital assets are promoted and offered in the Nigerian market.

Restatement of the SEC’s Position

The New Rules start off with a restatement of the SEC’s policy direction on digital assets regulation which is that crypto-token or cryptocurrency investments will be treated as securities, unless otherwise demonstrated. As a result, the burden to prove that any crypto assets proposed to be offered in Nigeria are not securities and therefore not under the regulatory purview of the SEC, is placed on the issuer or sponsor of the relevant assets.

Expanded Scope of Regulated Activities

Although the SEC Accelerated Regulatory Incubation Programme (ARIP) Framework dated 21 June 2024 (the “**ARIP Framework**”) already provides for a wide range of activities as potentially falling under the ARIP Framework, the New Rules specifically capture (a) foreign or non-residential issuers or sponsors of digital assets and (b) foreign or non-residential operators that actively target Nigerian investors directly or through their subsidiaries, agents/intermediaries, through promotions, publications in Nigeria or direct e-mails to Nigerian addresses.

The foregoing creates a potential challenge to the continued ability of non-Nigerian VASPs to rely on the principle of reverse solicitation (which allows offshore service providers to serve individuals of a particular country if the products and services have been requested at the individual's own exclusive initiative) to provide their services on an offshore basis without establishing a local entity or obtaining any in-country regulatory authorisations.

At the very minimum, offshore VASPs will need to re-evaluate their marketing strategy for Nigeria and the extent to which the New Rules impact on their reliance on reverse solicitation.

Expanded Scope of Defined Terms

The New Rules provide definitions for terms like **"airdrop"**, **"stablecoin"**, **"custodial wallet"**, **"non-custodial wallet"**, **"off ramp"**, **"on ramp"**, **"Finfluencer"** etc.

Although some of these defined terms are not specifically linked to a regulatory requirement, it is an indication of the SEC's growing sophistication on the characteristics of digital assets, deepening familiarity with the operations of VASPs, and how the SEC might interpret potentially distinct products and services within the context of assessing a licensing or regulatory requirement.



Grounds for Exemption from Registration

The New Rules provide that the SEC may register a foreign VASP such as a Digital Assets Custodian (DAC) and accord a 'recognition status' to such operator where its primary jurisdiction is a member of the International Organization of Securities Commissions (IOSCO), West Africa Regulators Association (WASRA) or where a reciprocal agreement exists between Nigeria and the jurisdiction of such VASPs.

This approach is comparable to the EU passporting regime for financial products whereby a financial firm uses an authorization obtained in an EU Member State to sell its products or services to consumers in another EU Member State. It would of course effectively permit the importation of VASP services into Nigeria, and given the requirement for a reciprocal agreement, the expectation is that Nigerian VASPs will also have the opportunity to export their services. This arrangement is however, subject to a number of additional requirements including a determination that it is in the best interests of Nigeria to register the foreign VASP, and the New Rules set out specific criteria to be assessed in making such a determination. The SEC's rationale for this appears ensuring the provision of certain critical services that may not be available in country and to encourage the transfer of expertise/skills whilst enhancing cross border collaboration.

Given that a number of offshore VASPs are licensed in at least one IOSCO jurisdiction, it will be interesting to see how this will play out as it establishes a viable window for established VASPs to apply for an exemption. It is however, unclear if this route will be less cumbersome than applying for a license from the SEC in-country. There is also the possibility that should the majority of offshore VASPs opt for this route rather than in-country registration, the SEC could at some point in the future consider imposing limitations on the permissible activities of VASPs operating under recognition status only.

Board Composition & Management Requirements

Under the ARIP Framework, there is a requirement for the Chief Executive Officer (CEO) / Managing Director (MD) or equivalent personnel of a VASP seeking to be registered with the SEC to be resident in Nigeria.

The New Rules however provide for additional requirements with respect to the board composition of a VASP. Firstly, there is a requirement for a minimum of five (5) board members whose appointment shall be subject to the prior approval of the SEC prior to incorporation of the relevant Nigerian entity. Secondly, 60% of the board members shall be of Nigerian origin. Other requirements include the board chairman and majority of the board members being non-executive directors and the appointment of one independent non-executive director.

There also appears to be a term limit on the CEO who shall hold office for a period of five (5) years in the first instance and with the option for re-appointment for a further period of five (5) years and no more. Furthermore, in addition to being sponsored individuals, the appointments of a CEO and principal officers are also subject to the SEC's prior approval.

Introduction of a New Registration Category

Under the existing rules, a VASP can be registered as a Digital Asset Offering Platform (DAOP), Digital (Virtual) Assets Exchange (DAX) or Digital Asset Custodian (DAC). The New Rules have introduced an additional registration category known as a Digital Asset Intermediary (DAI).

The DAI category is aimed at capturing entities that facilitate transactions involving virtual assets, including execution of orders for virtual assets on behalf of clients; acceptance and transmission of orders for virtual assets on behalf of clients; placing of virtual assets; providing advice on virtual assets investment; providing financial portfolio management on virtual assets; and providing transfer services for virtual assets on behalf of clients.

Rules on Advertisement, Marketing and Promotion of Digital Asset products

The New Rules contain extensive provisions on the promotion, marketing and advertisement of digital asset products and services on social media, or any other medium of communication including unstructured supplementary service data (USSD), radio and television.

These new requirements are expected to curb what the SEC refers to as "the growing popularity of financial influencers promoting digital asset products and services or sharing of any unauthorized financial investment opportunity... as well as to create greater public awareness".

First, advertisements relating to digital asset offers or invitations to subscribe require the SEC's prior approval. Similarly, a VASP who engages a social media influencer (paid or unpaid) for the promotion of any digital asset products or services to its followers on any social media platform or through any other medium of communication is required to obtain a no-objection authorization from the SEC prior to the engagement.

There are also specific restrictions on the use of testimonials and endorsements. Specifically, celebrities, fictional characters and financial influencers (referred to as Finfluencers under the New Rules) are prohibited from forming parts of advertisements. To this extent, Finfluencers are no longer allowed to participate in digital assets related adverts although from a practical perspective, this could prove challenging to enforce particularly within the context of promoting Nigeria's buzzing creative economy. Similarly, before engaging in any promotional activities, Finfluencers are required to verify that the VASPs, products and services they intend to promote are licensed or approved by the SEC.

Finfluencers who receive compensation to promote digital asset products or services are to disclose this arrangement to their followers. Failure to do so will result in a penalty of not less than ₦10,000,000 (Ten Million Naira), imprisonment for up to three years, or both. In addition, any violations or suspected act of misleading advertisement, marketing or promotion shall result in strict enforcement actions, including financial penalties and public sanctions.

Overall, it is not entirely clear whether Finfluencers are outrightly prohibited from promoting digital assets or what is indeed required is the SEC's pre-approval and disclosure of the arrangement.

Incorporation of the Provisions of the ARIP Framework

The New Rules incorporate the provisions of the ARIP Framework with regards to registration as a VASP in Nigeria. Hence, all VASPs seeking registration are to first complete and submit an ARIP initial assessment form via the SEC's ePortal.

An approval-in-principle (AIP) is granted to successful applicants, valid for a specified period, not exceeding 12 calendar months. Qualified VASPs, at the expiration of the AIP period, transition to regularization after complying with all applicable registration requirements or any other provisions as may be prescribed by the SEC from time to time.

As a registration requirement, VASPs are to submit memorandum and articles of association which expressly indicate the applicant's power to perform the specified function it seeks registration under. The object clause of such an applicant is to clearly stipulate the intended capital market activity (ies) and/or ancillary activities.

Updated Financial Requirements for Registration

The New Rules have increased the regulatory fees payable by DAOPs as set out in both the Current Rules and the March 15 Rules. It also introduces registration fees payable by the other categories of VASPs.

The processing fee for DAOPs has been increased from ₦300,000 (Three Hundred Thousand Naira only) to ₦5,000,000 (Five Million Naira); the registration fee from ₦30,000,000 (Thirty Million Naira only) to ₦50,000,000,000 (Fifty Million Naira); and the sponsored individual fee from ₦100,000 (One Hundred Thousand Naira only) to ₦500,000 (Five Hundred Thousand Naira /Individual). The minimum paid up capital remains the same.

CBN Reference Rate

There is also a requirement for VASPs to ensure that quotes are based on the best market conditions and the rate for conversion of foreign currency denominated assets are the official exchange rate recognized by the CBN. To this extent, it would not be permissible for VASPs to quote rates that are not reflective of what is obtainable on the official market.

SEC Fees on Market Deals

The SEC is seeking a fee of 0.3% of the market value from cryptocurrency exchanges for every digital asset traded and payable on a daily basis. It is not entirely clear if the DAX operators will be allowed to pass on this transaction fee to users or if it will be the responsibility of the DAX operator alone. That said, it is likely to impact on trade volumes and user activity.

Conclusion

The expectation is that the New Rules will certainly ruffle feathers within the market which might not be entirely receptive to them given that some of the changes come with significant financial and technical implications. It should be noted that the SEC has set a two-week timeline from the date of publication for receipt of comments from the public, but it remains to be seen whether robust engagement from the public and VASPs will lead to any changes to the proposed New Rules.