

THE NIGERIAN SECURITIES AND EXCHANGE COMMISSION TO COMMENCE REGULATION OF DIGITAL ASSET AND DIGITAL ASSET OFFERINGS



In a bid to cater to innovators seeking legitimacy and relevance as well as enhance investor protection, the Securities and Exchange Commission (“SEC”) issued a statement on the 14th of September, 2020, indicating its intention to commence the regulation of Digital Assets and Initial Offering of Digital Assets which qualify as securities under the Nigerian Securities Law.



The participation of the apex regulator of the Nigerian capital market is expected to bolster market confidence, establish standards of operations and encourage ethical practices that will protect the investor community whilst entrenching fair market practices.

Categories of Digital Assets falling within the SEC’s regulatory purview

The SEC has broadly defined Digital assets as any digital representation of value capable of being traded virtually and which functions as either a medium of exchange or a unit of account; or a store of value, which does not have legal tender status neither is it guaranteed or backed by the Government of any specific jurisdiction. Its operations are

backed primarily by a subsisting agreement within the community of users and is clearly distinguished from Fiat Currency and E-money.



The implication is that the SEC has now categorized all Digital Assets as securities over which it exercises regulatory oversight by virtue of Section 15 of the Investment and Securities Act except where the Issuer or Sponsor is able to prove otherwise to the satisfaction of the commission.

The 4 categories of digital assets/instruments which have now been classified as securities by the SEC include:

1. **Crypto Assets (non fiat virtual currencies):** will qualify securities if issued as an investment or as commodities if traded on an exchange or capital trade point;
2. **Utility Tokens or Non-Security Tokens (tied to the provision of an underlying product or service);** will be treated as commodities or as securities if traded on an exchange or capital trade point. Spot trades of utility tokens are however excluded.
3. **Security Tokens (which gives participation in a tangible underlying assets or its receivables in the form of distributions)** will be treated as securities

4. Derivatives and Collective Investment Funds of Crypto Assets (any derivative or fund which underlying asset is a digital asset falling under the Purview of SEC Regulation) will be classified as securities under the relevant rules.

Registration of Digital Asset and Offerings to the Public:

Sponsors or creators of Digital Assets are required to apply to the SEC for an initial assessment via an initial assessment filing. Through this filing the Sponsor will provide information required to establish whether or not the asset qualifies as securities registrable with SEC. Without clearly stating the criteria for exemption the SEC has hinted that assets issued via a crowd funding portal will be exempt. It is expected also that where issuance will be by other means than an invitation to the public, such would also be exempt. Once the SEC determines that an asset is not exempt, the sponsors shall proceed with an Initial Asset Registration.

All Digital Assets Token Offering (DATOs), Initial Coin Offerings (ICOs), Security Token ICOs and other block chain based offers within Nigeria or by Nigerian issuers or sponsors or by foreign issuers targeting Nigerian investors will now fall under the SEC's jurisdiction. Consequently, Sponsors or promoters of new issues will require registration whilst Sponsors/Issuers of already issued but qualifying Digital Assets now have 3 months to either submit the initial assessment filing or documents for actual registration.

HOW TO GET STARTED

Do you require further information on the registration of Digital Assets in Nigeria? Our capital markets team is available to support to you. You may contact our team on: Email: info@dealhqpartners.com
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