



THE IMPACT OF THE SECURITIES AND EXCHANGE COMMISSION'S STATEMENT ON CRYPTOCURRENCIES ON SMES, START-UPS AND SMALL BUSINESSES



Introduction

On the 14th of September 2020, the Securities and Exchange Commission (“SEC”) released a statement on digital assets and their classification and treatment (“Statement”). The Statement is the first attempt by the Nigerian government to regulate digital assets and more specifically cryptocurrencies. Before the release of this statement, the Central Bank of Nigeria (“CBN”) had released two circulars, one in the year 2017 and the other in the year 2018. The CBN circulars highlighted the risks of transacting in cryptocurrencies and contained a warning to banks not to transact in cryptocurrencies. With the release of this statement it is evident that the Government is not averse to accepting cryptocurrencies into Nigeria, albeit with some regulation.

What does the statement contain?

1

The SEC will regulate cryptocurrency token investments that qualify as securities. In the statement the SEC classifies cryptocurrencies as securities unless they are proven otherwise. The statement however goes ahead to define tokens that are to be considered as securities as “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.” This implies that cryptocurrencies that have those characteristics will fall under the regulatory purview of the SEC.



2

Issuers or sponsors of cryptocurrencies are to register with the SEC and make an initial assessment to prove that the cryptocurrencies are not securities. If they are securities, the issuers or sponsors will have to register with the SEC. In the case of foreign or non-residential issuers or sponsors, the SEC may require them to establish a branch office within Nigeria. Where a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor, they will be recognised by the SEC. One of such cases where the issuer or sponsor will be recognised is where the country of the foreign issuer or sponsor is a member of the International Organisation of Securities Commissions (“IOSCO”). **It is important to note that the link to the initial assessment that was previously on the SEC's website is no longer there.**

3

Cryptocurrencies that serve as a medium of exchange, unit of account and store of value will be treated as commodities and if they are traded on a Recognised Investment Exchange and/or issued as an investment, they will be subject to the SEC and its Rules, specifically part E of the SEC Rules that covers the regulation of Securities Exchanges and transactions on Exchanges. There is an ambiguity regarding the meaning of a Recognised Investment Exchange because the traditional Exchanges being referred to in the SEC Rules do not have the blockchain feature that is needed to trade cryptocurrencies.

4

Utility tokens which are simply cryptocurrencies that provide the users with a product or service will be treated as commodities and if they are traded on a Recognised Investment Exchange they will be subject to the SEC and its Rules, specifically part E of the SEC Rules that covers the regulation of Securities Exchanges and transactions on Exchanges. It is important to note that spot trading of utility tokens does not fall under the SEC's purview.

5

Market intermediaries and market operators dealing or managing investments in cryptocurrencies considered by the SEC as securities will have to register with the SEC as capital market operators, Recognised Investment Exchanges or Recognised Clearing Houses.



6

Derivatives and collective investment funds of all cryptocurrencies whether they are securities or not will be regulated as specified investments under the Investment and Securities Act (“ISA”) and the SEC Rules. Those who operate collective investment funds with cryptocurrencies will have to be registered with the SEC.

Recommendations to SMEs, start-ups, and small businesses

Despite the release of the statement, the registrations with the SEC have not commenced. The link provided by the SEC to conduct an initial assessment filing has been removed from the SEC's website. Further guidelines are expected from the SEC to give a clearer picture of the procedure for registration and the regulatory purview of the SEC. SME's, start-ups, and small businesses whose businesses involve cryptocurrencies are advised to wait for further regulations before taking any action in furtherance of the information in the statement.

Conclusion

The statement by the SEC gives an impression of the Nigerian government's willingness to adopt cryptocurrencies into the financial ecosystem. This is a plus for the cryptocurrency industry, as adoption will in turn aid the acceptance by the business community. However, the statement contains some ambiguities which we hope will be made clear when further regulations are released.

1. <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/>
2. https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20ofis%20on%20virtual%20currency.pdf?__cf_chl_jschl_tk__=ef6cd394029d1d48f20d1534ecea1b793a647a16-1603096088-0-AXGBccp7sSfx-Wow6KBrzE7hG1gCqMO_EoHownzXvlV8imtfoK6xbJXGh9y7GbWnOW8tH-psY7XNOBLhBmsgjgQiu5c6oxsrJlWKseHZ_8oCa79Uchz1zLn5zIK8bMY2sF3AjG16O5H8Pd3zbVaGGX-oSttvzwcTqGS_59GmVKEW2sggF1DMZevMQKE3eFW-joGJ5UNZvWbWt57YaV2_LraWltXrqEM4_mb7ZzgS7hvgEeACO6WGQQOhbuC15Fg9Uoby5_7bC2-dmusR6j7kG7q84u6JA26JqzWkSmjSrzlfd5ot-UZOQ4DroJQ8OFRNRltD5CXJVPjJiMtBos8YAndkgTnBl6wtJa6f9RqsaTrRG7UMemHfgP21-QZKAQA
3. <https://www.cbn.gov.ng/out/2018/ccd/press%20release%20on%20virtual%20currencies.pdf>

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