

NIGERIAN SEC REGULATES DIGITAL ASSETS

In line with the powers conferred on the Securities and Exchange Commission “SEC” “the Commission” by Section 13 of the Investment and Securities Act, 2007, the Commission recently issued a **Statement on Digital Assets And Their Classification and Treatment** “the Statement” to now regulate crypto-token or crypto-coin investments when the character of the investments qualifies as securities transactions.

WHAT WILL BE REGULATED?

1. Virtual crypto assets: The effect of the Statement is that virtual crypto assets are classified as securities unless proven otherwise. However 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, otherwise the issuer or sponsor will be required to register the digital asset with the Commission.
2. 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.
3. Existing digital assets offerings operating in Nigeria prior to the implementation of these new regulations will have three months to register with the Commission.

WHO WILL BE REGULATED?

1. Any person, (individual or corporate) whose activities involve any aspect of Blockchain-related and virtual digital asset services. 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.

The Statement also adds that 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 the foreign issuer or sponsor is a member of the International Organization of Securities Commissions (IOSCO), and or a reciprocal agreement exists between Nigeria and the country of the foreign issuer or sponsor.

REGISTRATION PROCESS

1. Initial Assessment filing- to satisfy the burden of proving that the virtual assets do not constitute securities.
2. Registration of virtual assets either made directly by the issuer or sponsor or where the burden of proof is not satisfied.

The Statement further classified cryptocurrencies and utility tokens as commodities, security tokens as securities, and derivatives and investment funds as “specified investments.” The Commission will also be responsible for overseeing utility token spot trading and transactions where conducted on a Recognized Investment Exchange.

For more on this, kindly send an email to esohe@tonbofa.com

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