



**The Securities and Exchange  
Commission (SEC) Statement on the  
Classification and Treatment of  
Digital Assets**

## **The Securities and Exchange Commission (SEC) Statement on the Classification and Treatment of Digital Assets**

### **Introduction**

The Securities and Exchange Commission (“SEC” or “the Commission”) issued an official statement (“the Statement”) on 14 September 2020 on the classification and treatment of Digital Assets (crypto assets such as crypto currencies and tokens). The Statement which communicated SEC’s position, stated that crypto assets are securities which fall under the regulatory ambit of the Commission.

Section 13 of the Investment and Securities Act (ISA), 2007 confers powers on the Commission as the apex regulator of the Nigerian Capital market to regulate investments and securities in Nigeria.

The Statement has dispensed with any ambiguities or inconsistent assertions by establishing that digital assets fall under securities<sup>1</sup>. SEC has classified these digital assets in order to regulate them and protect investors.

### **SEC’s Position**

1. Crypto assets are securities unless proven otherwise and the burden of proving the contrary is on the issuer or sponsor of the said assets.
2. In order to register these crypto assets, an investor or sponsor must apply to the Commission for preliminary evaluation via an initial assessment filing<sup>2</sup> and then file a proper application for registration of the said digital assets.
3. To establish that the digital assets are not securities, the interested party is required to submit an initial assessment filing. However, where the finding of the Commission is that the virtual assets are indeed securities, then the issuer or sponsor is under an obligation to register the digital assets.
4. Digital assets that are exclusively offered through crowdfunding portals or other exempt methods are not deemed securities and as such are not required to be registered.
5. 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 are subject to the regulation of SEC.

It is worth mentioning that existing digital assets offerings prior to the implementation of Regulatory Guidelines will have three (3) months to either submit the initial assessment filing or documents for registration, as the case may be.

---

<sup>1</sup> <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/>

<sup>2</sup> An initial assessment filing is a Capital Market Fintech Assessment Form filled by business or individuals that plan to launch a digital innovation to enable SEC provide guidance on regulatory requirements.

SEC defined a crypto asset as: a digital representation of value that can be digitally traded and functions as:

- a. *a medium of exchange; and/or*
- b. *a unit of account; and/or*
- c. *a store of value, but does not have legal tender status in any jurisdiction.*<sup>3</sup>

In line with the classification of SEC, crypto assets are to be treated as commodities if they are traded on a Recognized Investment Exchange or issued as an investment. In addition, Utility tokens are to be treated as commodities.

Security tokens<sup>4</sup> are deemed to be securities pursuant to PART XVIII (315) of Investment and Securities Act (ISA) while Derivatives and Collective Investment Funds of Crypto Assets, Security Tokens and Utility Tokens are to be 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 and approved by SEC.

It should also be emphasized that spot trading<sup>5</sup> and transactions in Utility Tokens<sup>6</sup> will not fall under SEC regulation unless conducted on a Recognized Investment Exchange.

### **Scope of Application**

The Statement applies to sponsors and issuers of digital assets and/or any person (individual or corporate) involved in the provision of block-chain related and digital asset services. Such persons or entities must register with SEC and will be subject to any and all regulatory guidelines.

Foreign or non-residential issuers or sponsors may be required to establish a branch office in Nigeria or may be recognized where a reciprocal agreement exists between Nigeria and the domicile of the foreign issuer or sponsor.

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).

---

<sup>3</sup> <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/>

<sup>4</sup> A security token is a portable device that authenticates a person's identity electronically by storing some sort of personal information. The owner plugs the security token into a system to grant access to a network service. Security Token Services (STS) issue security tokens that authenticate the person's identity. <https://www.investopedia.com/terms/s/security-token.asp>

<sup>5</sup> Spot trading refers to the purchase or sale of a foreign currency, financial instrument or commodity for instant delivery on a specified spot date.

<sup>6</sup>a digital token of cryptocurrency that can be used to purchase a service offered by the issuer of the cryptocurrency.

## **Conclusion**

Prior to the Statement, crypto currencies and tokens were largely unregulated in Nigeria. The regulation of digital assets is long overdue as they are gaining immense popularity and have become a major investment option for the public. Admittedly, there are risks involved in these types of investments, and for this reason, regulation of these digital assets is imperative in order to protect the interest of investors and stakeholders. The merits of an effective regulatory framework include promoting transparency, creating standards that encourage ethical practices, and to encourage the development of a fair and efficient market.

It is expected that robust regulation on digital assets will be developed in the future and that effective implementation will follow.

Disclaimer: The information, materials and opinions contained herein are for general information purposes and are not intended to constitute legal or other professional advice, and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances.