

# The Nigerian Digital and Virtual Assets Landscape: Innovations of the Draft SEC Rules on Digital Assets Issuance, Offering Platform, Exchange, and Custody



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## INTRODUCTION

The Securities and Exchange Commission (**SEC**), as part of its plans to amend the Rules on Digital Assets Issuance, Offering Platform, Exchange and Custody 2022 (the **Extant Rules**),<sup>1</sup> issued an exposure draft on 27 September 2024, relating to the proposed amendments to the Extant Rules (the **Exposure Draft**).<sup>2</sup>

The amendments in the Exposure Draft aim to align the scope of the Extant Rules with current realities, foster certainty and regulate innovation in the Nigerian digital and virtual assets space. True to its objective, the Exposure Draft provides a more comprehensive framework for regulating digital assets in Nigeria.

In view of the proposed effective date of the Exposure Draft, 30 June 2025, we highlight, in this article, some of the major innovations of the Exposure Draft, examining its provisions vis-à-vis the Extant Rules, and the implications of the proposed amendments.

## HIGHLIGHTS OF THE EXPOSURE DRAFT

### **Recognition and Supersession of the Digital Assets Statement**

Following the issuance of the Extant Rules, there was a lack of clarity, amongst stakeholders regarding the

applicability of the “Statement on Digital Assets and their Classification and Treatment” issued by the SEC on 12 September 2020 (the **Digital Assets Statement**) because the Extant Rules made no reference to the Digital Assets Statement. This was especially the case as the Digital Assets Statement was the SEC’s first attempt at regulating the digital assets space in Nigeria, laying a foundational framework for the classification and treatment of digital assets.

The SEC attempts to correct this oversight by acknowledging and incorporating key provisions from the Digital Assets Statement such as the categorisation of digital assets in the Exposure Draft. However, once the Exposure Draft comes into effect, the Digital Assets Statement will no longer be in force.<sup>3</sup>



### **Scope of Regulated Assets and Persons**

The Exposure Draft takes a two-pronged approach in setting out the scope of its applicability. Firstly, it clarifies the types of tokens and services that shall be regulated by the SEC, as follows:<sup>4</sup>

1. An analysis of the Extant Rules can be found in Olaniwun Ajayi LP, ‘Newsletter on the New SEC Rules on Issuance, Offering Platforms and Custody of Digital Assets’ (23 May 2022) <<https://www.olaniwunajayi.net/blog/newsletter-on-the-new-sec-rules-on-issuance-offering-platforms-and-custody-of-digital-assets/>> accessed 18 January 2025.
2. SEC Nigeria, ‘Framework On Accelerated Regulatory Incubation Program (ARIP) For The Onboarding Of Virtual Assets Service Providers (VASPs)’, <<https://sec.gov.ng/framework-on-accelerated-regulatory-incubation-program-arip-for-the-onboarding-of-virtual-assets-service-providers-vasps/>> accessed 18 January 2025.
3. Exposure Draft, para 4.0, part A.
4. Exposure Draft, para 3.1, part A.

**01** Digital Assets Token Offerings, Initial Coin Offerings,<sup>5</sup> Security Token Offerings,<sup>6</sup> and any other blockchain or distributed ledger technology<sup>7</sup> (DLT)-backed offers of digital assets;<sup>8</sup>

**03** Asset-referenced tokens<sup>10</sup> issued as an investment instrument referencing another value and/or right including one or several official currencies or real-world assets;

**05** Digital asset investment services including custody, brokerage, portfolio management, and advisory services.

**02** Virtual assets<sup>9</sup> or crypto assets issued as an investment instrument referencing one or more official currencies or assets;

**04** Virtual/crypto assets issued as an investment instrument other than asset-referenced tokens and e-money tokens;<sup>11</sup> and this covers a wide variety of other digital assets;

Secondly, the Exposure Draft identifies different persons, who by reason of their activity, business model, or services, will be subject to the SEC's supervision, as follows:<sup>12</sup>

<p>Persons or entities engaged in any blockchain<sup>12</sup> investment-based activity or services in the Nigerian capital market irrespective of their physical location;</p> <p><b>01</b></p>	<p>Local and foreign Virtual Asset Service Providers (VASPs)<sup>14</sup> carrying out investments and securities business in Nigeria or engaging in certain services including operating a digital asset platform, or raising funds through the public issuance of digital assets;</p> <p><b>02</b></p>
<p>Persons that participate in the formation, promotion, maintenance, sale or redemption of digital asset offerings as organisers, sponsors, issuers, founders, purchasers or investors including where foreign-based;</p> <p><b>03</b></p>	<p>Persons or entities whose activities involve any aspect of DLT-related digital assets services including reception, transmission and execution of orders on behalf of another's behalf, distribution, portfolio management, investment advisory, trustee, custodial or nominee services;</p> <p><b>04</b></p>
<p>Persons that intend to operate any digital asset investment platform;</p> <p><b>05</b></p>	<p>Foreign or non-residential issuers or sponsors of digital assets;</p> <p><b>06</b></p>
<p>Foreign or non-residential operators actively targeting Nigerians directly or otherwise.</p> <p><b>07</b></p>	

5. Exposure Draft, para 5, part A defines an Initial Coin Offering as a distributed ledger technology capital-raising involving the issuance of tokens to the general public in return for cash, crypto-currencies or other assets;

6. Exposure Draft, para 5, part A defines a Securities Token Offering as any offering and sale of digital tokens that are considered securities.

7. Exposure Draft, para 5, part A of the Exposure Draft defines Distributed Ledger Technology as a technology that enables the operation and use of distributed ledgers.

8. Exposure Draft, para 5, part A defines Digital Asset as a digital token or crypto token as the case may be.

9. Exposure Draft, para 5, part A defines Virtual Asset as a digital representation of value that can be transferred, digitally traded and can be used for payment or investment purposes. It shall not include digital representations of fiat currencies, securities and other financial assets that are regulated under the Investments and Securities Act 2007.

10. Exposure Draft, para 5, part A defines Asset-referenced Token as a token that

represents a claim against the issuer which: (a) is intended to represent an asset and is embedded with underlying assets; (b) derives its value by reference to an underlying asset; (c) is secured by an underlying asset; or (d) is backed up by assets held as collateral for the primary purpose of encouraging price stability.

11. Exposure Draft, para 5, part A defines e-money token as a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency.

12. Exposure Draft, para 3.2, part A.

13. Exposure Draft, para 5, part A defines Blockchain as a system of recording information in a shared digital register which is duplicated and distributed across the whole network of computer systems within the business network.

14. Exposure Draft, para 5, part A defines a VASP as any person (individual or corporate) who is registered to perform any function relating to virtual assets services.



### Expansion of Scope of VASPs

Under the Extant Rules, only three (3) classes of VASPs exist, namely: (x) Digital Assets Offering Platforms (DAOP), (y) Digital Assets Exchange (DAX), (z) Digital Assets Custodians (DAC). The Exposure Draft includes Digital Assets Intermediary (DAI) to the scope of VASPs regulated by the SEC in a bid to make provisions for new services that have emerged following the issuance of the Extant Rules.

The DAI refers to any entity other than a DAOP, DAX or DAC that facilitates virtual assets transactions including by: (x) execution of orders for virtual assets on clients' behalf, (y) acceptance and transmission of orders for virtual assets on behalf of clients, (z) placing and distribution of virtual assets, (xx) providing advice on virtual assets investment, (yy) providing financial portfolio management on virtual assets, and (zz) providing transfer services for virtual assets on behalf of clients.<sup>15</sup> Examples of DAIs include brokers/dealers, portfolio managers, trustees and investment advisers.<sup>16</sup>

Further, the Exposure Draft sets out key compliance obligations of DAIs when performing their permissible activities. For example, where a DAI's service involves reception of orders to purchase or sell crypto-assets and transmission of such orders to third parties, the DAI must not receive any remuneration, discount or non-monetary benefit for routing orders received from clients to a particular DAX.<sup>17</sup> The DAI shall also take all necessary steps to obtain the best possible results for clients when executing orders—unless acting on specific client instructions.<sup>18</sup>



### Localisation Requirements

Under the Extant Rules, VASPs are required to be incorporated in Nigeria and maintain an office in Nigeria, managed by a director (location not specified) as a

prerequisite for registration with the SEC.<sup>19</sup> The Exposure Draft introduces additional localisation requirements including that: (i) the principal officers of the VASP must reside in Nigeria;<sup>20</sup> and (ii) the VASP must have at least five (5) directors, with at least 60% being of Nigerian origin<sup>21</sup>

The rationale underlying these inclusions seems to be to enhance the SEC's oversight over the operations of VASPs and to facilitate enforcement by the SEC.



### Considerations for registration of Foreign VASPs

The Exposure Draft recognises that foreign VASPs can be registered with the SEC. Additionally, the Exposure Draft stipulates some key considerations for the SEC in determining whether to register a foreign VASP. Specifically, the SEC may grant recognition to a foreign VASP if its primary country of operation: (x) is a member of the International Organisation of Securities Commission or West Africa Regulators Association; or (y) has entered into a reciprocal agreement with Nigeria.<sup>22</sup> In the event the foreign VASP meets either criterion, the foreign VASP must satisfy any of the following conditions:

1. it is authorised to carry on a similar business in the foreign jurisdiction; or
2. it is from a jurisdiction with whom the SEC has regulatory arrangements on enforcement and supervision, or
3. it is in the best interest of Nigeria to register the foreign VASP, having regard to certain factors including the area of specialisation and level of expertise that can be offered to the capital market, the contribution towards attracting investments in the capital market, and the degree and significance of the participation of Nigerians in the capital market.<sup>23</sup>

These provisions aim to ensure the availability of essential services not available locally, promote the transfer of technical expertise to Nigeria, and strengthen cross-border collaboration.<sup>24</sup>

15. Exposure Draft, para 23.2, part B; para 66.0, part G.

16. Exposure Draft, para 26.1(iv), part B.

17. Exposure Draft, para 70.1, part G.

18. Exposure Draft, para 68.1, part G.

19. Extant Rules, para 4.3, part D.

20. Exposure Draft, para 7.2 part B.

21. Exposure Draft, para 9.2, part B.

22. Exposure Draft, para 7.3, part B.

23. Ibid.

24. Exposure Draft, para 7.3, part A.



### Enhanced Advertising Standards for Digital Assets

The Exposure Draft introduces more stringent requirements for the promotion and advertisement of digital asset products and services, reflecting the SEC's objective to protect investors.

Going forward, the prior approval from the SEC must be obtained before advertising digital asset offers or issuing invitations to subscribe.<sup>25</sup> The Exposure Draft further requires that testimonials or endorsements used in advertisements emanate from previous investors or patrons of the advertised product or service. Such endorsements must clearly disclose whether the endorsing individual is being compensated for the endorsement.<sup>27</sup> Additionally, references to awards received by VASPs must be verified and cleared by the SEC before being included in advertisements.<sup>28</sup>

The Exposure Draft permits a VASP to engage social media influencers including financial influencers (**Finfluencers**)<sup>29</sup> in promoting its products or services<sup>30</sup> provided the VASP obtains prior no-objection authorisation from the SEC.<sup>31</sup> Finfluencers are allowed to promote the

products or services of VASPs provided they verify the licensing status of the VASP prior to the promotion. Furthermore, Finfluencers are obligated to disclose any compensation arrangements when promoting digital asset products or services to their followers or face a significant penalty of NGN10,000,000 fine or imprisonment for up to three (3) years or both.<sup>32</sup> Notably, the Exposure Draft prohibits Finfluencers, landmarks, celebrities and similar figures from forming part of advertisements.

Through the provisions, the SEC seeks to curb the promotion of unauthorised financial investment opportunities.<sup>33</sup> Further, the SEC seeks to ensure that investment decisions are guided by accurate information and sound judgment, rather than the perceived credibility of endorsers.



### Inclusion of the ARIP

In June 2024, the SEC had issued the Framework on Accelerated Regulatory Incubation Program for the Onboarding of VASPs and other Digital Investments Service Providers (the **ARIP Framework**).<sup>34</sup> Pursuant to the ARIP Framework, the Accelerated Regulatory Incubation Program (**ARIP**) was established to facilitate the onboarding of entities seeking to be registered with the SEC to provide virtual asset services.

The Exposure Draft seeks to make participation in the ARIP a compulsory precursor for valid registration by the SEC. Accordingly, all VASPs seeking registration with the SEC must first submit an ARIP initial assessment form via the SEC ePortal.<sup>35</sup> Following a successful application, the applicant shall be granted an approval-in-principle (**AIP**) by the SEC, for a period of twelve (12) months (the **AIP Period**).<sup>36</sup> At the end of the AIP Period, any qualified ARIP participant shall transition to registration by applying to the SEC in accordance with the registration requirements set out in the Exposure Draft.

25. Exposure Draft, para 15.1(a), part B.

26. Exposure Draft, para 15.1(b), part B.

27. Exposure Draft, para 15.1(c), part B.

28. By the Exposure Draft, para 5.0, part A, Finfluencers refer to persons who promote any digital assets product or service or share any financial investment opportunity on social media, or through any other medium of communication including unstructured supplementary service data (USSD), radio and television.

29. Exposure Draft, para 16.2, part B.

30. Exposure Draft, para 16.2(a), part B.

31. Exposure Draft, para 17.1, part B.

32. Exposure Draft, para 17.3, part B.

33. See Olaniwun Ajayi LP's LinkedIn publication on the ARIP Framework <[https://www.linkedin.com/posts/olaniwun-ajayi-lp\\_sec-framework-on-accelerated-regulatory-incubation-activity-7214575204319035392-SPqN?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/olaniwun-ajayi-lp_sec-framework-on-accelerated-regulatory-incubation-activity-7214575204319035392-SPqN?utm_source=share&utm_medium=member_desktop)>.

34. Exposure Draft, para 24.1, part B; ARIP Framework, para 8, part VI.

35. Exposure Draft, para 24, part B.



### De-coupling of Offering Platform and Custody Functions

Under the Extant Rules,<sup>37</sup> a DAOP is entitled to apply for DAC registration to offer custody services to token holders, provided that it sets up a distinct legal entity for the DAC services. However, the Exposure Draft<sup>38</sup> eliminates this possibility, mandating that DAOPs must appoint a distinct, SEC-registered DAC to handle custody services. According to the SEC, this disaggregation will ensure that all functions within the ecosystem operate independently.<sup>39</sup>

By requiring DAOPs to outsource custody services, the Exposure Draft enhances the security of token holders' assets by ensuring that specialised entities, with the necessary expertise and infrastructure, manage the custody function. This separation also helps in maintaining transparency and accountability, as it reduces the likelihood of a single entity controlling multiple critical functions, which could lead to potential conflicts of interest or operational risks. This will enhance overall trust and stability in the digital asset market.



### Recognition of Digital Broker Models for DAX

The SEC recognises that DAX operators may wish to: (x) expand their role beyond facilitating the trading of virtual or digital assets to actively participating in trades; or (y) offer additional services. In light of this, the Exposure Draft introduces the Digital Broker model (DBM) to enable DAX operators act as counterparties to investors for every buy or sell order initiated on their platform.<sup>40</sup> In order to operate the DBM or any model other than the traditional DAX, a DAX must obtain the SEC's prior approval and satisfy certain additional requirements including meeting an additional and separate minimum capital of NGN1,000,000,000.<sup>41</sup>

Operating a DBM offers several benefits for DAX operators, providing the potential to earn additional income through spreads (the difference between buy and sell prices), transaction fees, and other brokerage services. This model enables DAX operators to capture more value from each trade compared to a pure exchange-based model.



### Delisting Requirements for Digital Assets

The Exposure Draft includes provisions on the delisting of digital assets<sup>42</sup> which the Extant Rules omits. Particularly, the Exposure Draft provides for the establishment and implementation of policies and procedures by DAXs to manage the delisting of digital assets offered on its platform.<sup>43</sup>

A DAX must notify the SEC before delisting any digital asset offered on its platform, clarifying the basis for delisting and the impact of delisting on investors<sup>44</sup>

The proposed addition to the Extant Rules on the delisting of digital assets is a prudent regulatory measure designed to enhance the transparency and accountability of DAX operators and ensure market stability. By formalising the process, the SEC aims to create a structured and transparent approach to managing the lifecycle of digital assets on trading platforms.



### Upward Review of Fees

The Exposure Draft proposes significant increases in the fees for DAOPs and DAX operators.<sup>45</sup> Registration fees are set to increase by approximately 67% for DAOPs and 233% for DAX operators. Processing fees may increase by over 1,500% for DAOPs and over 3,000% for DAX operators. The sponsored individuals' fee for both categories is also set to increase by 400%. In addition, the Exposure Draft raises the minimum capital requirement for DAX operators by 100%.

Further, the Exposure Draft introduces a 0.3% levy payable to the SEC on the market value of all digital assets traded daily.<sup>46</sup>

37. Extant Rules, para 21.2, part B.

38. Exposure Draft, para 49.1, part D.

39. Exposure Draft, para 23.1, part B.

40. Exposure Draft, para 5.0, part A.

41. Exposure Draft, para 26.1(ii)(b), part B. The high capital requirement may be prohibitive for smaller exchanges intending to incorporate the DBM in their

business model.

42. Exposure Draft, para 57.0, part E.

43. Exposure Draft, para 57.1, part E.

44. Exposure Draft, para 57.2(a)-(d), part E.

45. Exposure Draft, para 26.0, part B.

46. Exposure Draft, para 26.8, part B.

## CONCLUSION

The Exposure Draft represents a significant stride towards establishing a robust and comprehensive regulatory framework for digital and virtual assets in Nigeria. By addressing ambiguities present in the Extant Rules, incorporating crucial elements from the previously issued Digital Assets Statement, and introducing novel provisions such as the Digital Broker Model and stringent advertising standards, the SEC aims to foster innovation while simultaneously prioritising investor protection. The heightened focus on localisation requirements, coupled with the mandatory participation in the ARIP, underscores the SEC's commitment to strengthening regulatory oversight and ensuring market integrity.

While the proposed upward review of fees, minimum capital requirements and the introduction of new levies may present initial challenges for some market participants, these measures are ultimately geared towards promoting the long-term stability and sustainability of the Nigerian digital asset ecosystem. The successful implementation of these proposed amendments will be pivotal in shaping the future of digital assets investment in Nigeria, fostering an environment conducive to both innovation and investor confidence.

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