

**SECURITIES AND EXCHANGE
COMMISSION: FRAMEWORK ON
ACCELERATED REGULATORY
INCUBATION PROGRAMME**

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On 21 June 2024, the Securities and Exchange Commission (“SEC” or the “Commission”) released a Framework on Accelerated Regulatory Incubation Programme for the Onboarding of Virtual Assets Service Providers (VASPs) and other Digital Investment Service Providers (DISPs) (the Framework) to onboard existing and potential VASPs and other DISPs through an Accelerated Regulatory Incubation Programme (the “Programme” or “ARIP”). The Programme will be applicable pending the amendments to the SEC Digital Asset Rules.

This article provides a detailed analysis of the Framework including the roles of applicants and participants.

APPLICABILITY AND ELIGIBILITY

The Programme shall apply to VASPs¹ and other DISPs that are seeking fresh registration with the Commission or have approached the Commission for registration prior to the Framework. Entities who intend to apply into the Programme must be: (i) incorporated and have an office in Nigeria and its Chief Executive Officer/Managing Director or its equivalent shall be resident in Nigeria

(ii) performing investments and securities business
(iii) seeking registration or have pending virtual asset related applications with the Commission. Foreign entities seeking admission into ARIP are therefore advised to first of all set up a Nigerian entity for that purpose and ensure that their key officials are resident in Nigeria.

REQUIREMENTS AND PROCEDURE FOR APPLICATION

The Framework provides that application into the Programme must be done online via the SEC ePortal³ and through a registered solicitor or adviser. Although⁴ the SEC ePortal is accessible to all, we advise that intending applicants seek the services of a registered solicitor or adviser in compliance with the provisions of the Framework. In addition, applicants shall be required to file the following documents: (i) a sworn undertaking regarding matters listed under paragraph 15(a)(i)-(vi) of the Framework (ii) an operational plan and a business model (iii) the rules of the entity it seeks to operate (as may be applicable) (iv) where an applicant is regulated by another sectorial regulator, an approval letter from the relevant sectorial regulator

¹ Paragraph 5 of the Framework

² Paragraph 6 of the Framework

³ Paragraphs 8 and 18 of the Framework

⁴ Paragraph 16 of the Framework

⁵ Paragraphs 15(a) – (c), 17, and 18 of the Framework

and (v) relevant SEC Forms and copies of its constitutional documents duly certified by the CAC.

The thorough application requirement is to ensure that applicants are properly screened to protect the interests of investors and market participants.

There are two stages in the application process⁶- (i) the Review Stage: this is the determination of the eligibility of an applicant upon a review of the initial assessment form submitted by the applicant; and (ii) the Application Stage, which involves the issuance of approval-in-principle (AIP) to the eligible applicant to operate in line with the ISA, 2007 and the Commission’s Rules and Regulations.⁷

The Commission upon a review of an application may either approve/defer approval or reject such application.⁸ The implication of this is that eligibility of an applicant does not necessarily guarantee approval by the Commission.



OPERATIONS FEE, REPORTING REQUIREMENTS, AND CONTROLS AND RESTRICTIONS

An applicant seeking registration is required to pay a non-refundable processing fee of N2,000,000.00 (Two Million Naira) as well as show evidence of required shareholders’ funds⁹ and current Fidelity Bond covering at least 25% of the required shareholders’ funds.¹⁰ The requirement for the Fidelity Bond is a familiar requirement by the SEC for all intending capital market operators.

Upon successful registration with the Programme, participants will be obliged to submit to the Commission weekly and monthly trading statistics (where applicable) as well as reporting requirements; quarterly financials as well as compliance reports; key issues arising from misconduct, fraud, or operational incident reports; actions or steps to address customer complaints, emergent risks, etc.¹¹ In addition, participants will be subject to the Commission’s on-site and off-site inspection, audit, and monitoring, including making their premises, systems, books, and records readily available to the Commission or its officers or any person appointed by the Commission for inspection, audit, and other supervisory purposes.¹² The essence of this requirement is to ensure strict regulation of the participants’ activities; thus securing the interest of investors and market participants in the market.

⁶ Paragraphs 7-11 of the Framework

⁷ Paragraph 11 of the Framework

⁸ Paragraph 13 of the Framework

⁹ While this is not stated in the Framework, this will be the minimum capital requirement to operate as a VASP or DISP

¹⁰ Paragraph 20 of the Framework

¹¹ Paragraph 21 of the Framework

¹² Paragraphs 22 and 24 of the Framework

Furthermore, the Framework incorporates control mechanisms as well as restrictions to guide the operations of the participants and qualified applicants. The control aims to ensure compliance with applicable rules and regulations regarding the prevention of money laundering as contained in the AML/CFT/CPF Law.¹³ The restrictions, on the other hand, are related to:¹⁴ (i) conducting any other securities and/or investment business except as presented to the Commission; (ii) carrying out promotional activities such as any notice, circular, letter, or other written or electronic medium of communication either publicly or privately; (iii) providing information that is incomplete, untrue, or misleading; and (iv) growing their customer base by more than 10% from point of entry into the Programme. Although these controls and restrictions are geared towards maintaining market integrity, we believe that some of these provisions require further clarifications on their specific intent.

Finally, while successful applicants proceed to registration, the Framework provides an opportunity for unsuccessful applicants to apply to be considered under the existing Regulatory Incubation programme.¹⁵ It is worthy of note that concurrent or separate applications are not considered under the Programme.¹⁶

TERMINATION/REMOVAL

The Framework permits the Commission to terminate participation in the Programme where any of the events mentioned in paragraph 33 (a) – (e) occur. In addition to any other enforcement action, the Commission may also withdraw or suspend an approval to participate in the Programme at any time before the end of the Programme period if, amongst others,¹⁷ the participant fails to implement any required safety measure or controls and/or contravenes any applicable law. However, prior to the Commission’s decision to suspend or withdraw approval, the applicant shall be given an opportunity to be heard.¹⁸ This provision is highly commendable as it complies with the principle of fair hearing as enshrined in section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).



¹³ Paragraph 28 of the Framework

¹⁴ Paragraph 29 of the Framework

¹⁵ <https://sec.gov.ng/regulatory-incubation-program/> See also Paragraphs 30 and 31 of the Framework

¹⁶ The only exception to this is where the filings from the applicant as set out in the applications are materially different from each other. See Paragraph 32 of the Framework.

¹⁷ Please see Paragraph 34(i)(a) to (g) for other instances. Paragraph 34(ii) further states that the Commission may, without prejudice to paragraph 34(i), withdraw approval of a participant in ARIP before the end of the ARIP period.

¹⁸ Paragraph 35 of the Framework

TRANSITION TO REGISTRATION

Upon expiration of the ARIP period, the following events shall occur:

- (a) Successful participants will seamlessly transition to registration.¹⁹
- (a) The Commission will grant successful participants a formal registration approval to operate in the capital market; adopt new regulations, guidelines, or notices based on insights gained from the Programme; and issue a denial of permission for the participant to operate in Nigeria under prevailing Rules and Regulation²⁰
- (c) The Commission may organise training and examination of sponsored individuals.²¹

The Framework is not intended to circumvent applicable Rules and Regulatory requirements.²²

PROVISIONS ON CONFIDENTIALITY AND PENALTIES/SANCTIONS

Applicants and/or participants are advised to take measures towards protecting their intellectual properties²³ by marking as “Confidential” all intended information submitted to the Commission or shared in connection with the Programme which is intended to be confidential.²⁴ The Framework assures the applicants and participants that the Commission will treat all “confidential” information as such and will not disclose such information unless required by law or authorised by the applicant and/or participant in writing.²⁵ This provision on confidentiality will give applicant/participant the confidence to share information with the Commission, having an assurance of the protection of such information.

Finally, the Framework sets penalties, ranging from monetary sanctions to suspension from capital market activities, for non-compliance.²⁶ The penalties would serve as deterrence against possible non-compliance by the ARIP participants.



CONCLUSION

The Framework is highly ingenious and marks a significant development in SEC’s efforts to regulate the virtual/digital assets space. While, in the short term, it would serve as a useful tool by the SEC to govern the activities of VASPs and DISPs, the insights to be gained from the Programme would, in the long term, be of immense benefit in the designing of a highly sophisticated and detailed regulation to govern this very unique market.

¹⁹ Paragraph 37 of the Framework

²⁰ Paragraph 37 (a), (b), and (c) of the Framework

²¹ Paragraph 38 of the Framework

²² Paragraph 39 of the Framework

²³ Paragraph 44 of the Framework

²⁴ Paragraph 45 of the Framework

²⁵ Paragraph 46 of the Framework

²⁶ Paragraphs 40 - 43 of the Framework

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