ISA 2025 and NTAA 2025: Further Developments in the Regulatory Oversight of Virtual Assets

Introduction

Nigeria's approach to digital asset activity has shifted from restrictive circulars to targeted regulatory frameworks.[1] The recently enacted *Investments and Securities Act 2025* ("**ISA 2025**") which is the principal legislation for the regulation of Nigeria's capital market, now expressly recognises "digital and virtual assets" as securities and vests the Securities and Exchange Commission ("**SEC**") with oversight function of virtual asset service providers ("**VASPs**").

We had previously discussed[2] whether stablecoins qualified as securities under Nigeria law. However, on 26 June 2025, the President signed four (4) tax reform bills into law including the *Nigeria Tax Administration Act 2025* ("**NTAA**"). These laws have a significant impact on the regulation of digital assets in Nigeria. While the NTAA primarily governs digital asset taxation, it also introduces a definition of "virtual assets" and focuses the SEC's regulatory purview to a specific subset, i.e., those that qualify as securities.

This flash note examines the practical effect of the NTAA's virtual asset provisions vis-à-vis the ISA 2025 in respect of the regulatory landscape for digital assets in Nigeria.

Virtual Assets under the NTAA: Broader Category, Narrower Jurisdiction

Section 79 of the NTAA sets out an imperative for the President to designate a federal agency with the primary responsibility of regulating all forms of virtual assets as defined in the Fifth Schedule to the NTAA.[3] Until such designation is made, paragraph 2 of the Fifth Schedule preserves the SEC's oversight only over "virtual assets that qualify as securities."

The Fifth Schedule defines "virtual assets" as a digital representation of value that can be digitally traded or transferred and used for payment, investment, or other financial purposes which include cryptocurrencies, tokens, and digital collectibles. However, the definition excludes:

(a) national currencies and foreign national currencies;
(b) electronic money licensed by the Central Bank of Nigeria;
(c) instruments that provide the holder with access to products, services or benefits, such as loyalty programs and other reward systems; and
(d) digital representations of other assets whose issuance, bookkeeping, trading or settlement is regulated under the ISA.

This structure provides a definition for virtual assets which was hitherto not outlined in the ISA, but it also introduces a filter: not all virtual assets are securities. Regulatory purview depends not on the label but on how the asset functions.

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[1] Click here for a breakdown of the regulatory development in digital asset space as at 2024.
[2] https://www.aluko-oyebode.com/insights/do-stable-coins-qualify-as-securities-under-nigerian-law/
[3] Section 79 of the NTAA.

What is a Security: The Howey Test

Paragraph 2 of the Fifth Schedule sets out a four-pronged test to determine whether a virtual asset qualifies as a security. It must involve:

(a) an investment of money or other assets;
(b) investment in a common enterprise;
(c) an expectation of profits from the investment; and
(d) profit arising from the efforts of a promoter or third-party.

This replicates the *Howey* test established by the United States Supreme Court in *SEC v W.J. Howey Co.*[4] The emphasis is on whether the asset is being used to raise funds for a project or enterprise in which the holder expects to profit from someone else's managerial or entrepreneurial efforts. The question therefore arises as to whether virtual assets such as stablecoins, which are mainly used as a store of value or medium of exchange, would qualify as securities.[5]

Are Stablecoins "Securities"? A Functional Analysis

While ISA 2025 and the Exposure on Amendments to the Rules on Digital Assets Issuance, Offering Platform, Exchange and Custody ("**Proposed Amendments**") appear to include virtual assets such as stablecoins in the definition of securities, the *Howey* test introduces nuance. A plain fiat-pegged stablecoin, i.e., one backed 1:1 with a currency and used primarily as a payment or store-of-value tool fails the third and fourth limbs of the test. There is no profit expectation or reliance on a promoter's effort to generate returns. Such tokens are not to be treated as securities, according to the NTAA.

In contrast, yield-bearing stablecoins, algorithmic tokens, or those linked to treasury or staking protocols may create profit expectations and reliance on the issuer's performance. These would likely satisfy all four limbs and fall squarely within the regulatory purview of the SEC.

A Shift in Regulatory Lines and New Questions

The fundamental impact of the provisions outlined in the foregoing section is that upon coming into force of the NTAA, not all digital or virtual assets will remain under SEC supervision. Instead, only those that pass the *Howey* test will. Others such as stablecoins and e-money tokens, whose values are pegged to fiat currencies and are primarily utilised as store of value or mediums of exchange, are to be treated differently.

The NTAA also requires VASPs to register for tax purposes and obtain a licence from the SEC before commencing business. It defines VASPs as entities that offer exchange, custody, or management services relating to virtual assets on behalf of clients.

So far, the SEC has taken a lead role in virtual asset regulation, with the ISA 2025, its 2022 Rules on Issuance, Offering Platforms and Custody of Digital Assets, and the Accelerated Regulatory Incubation Program (ARIP). As at July 2025, two licensed DAXs in Nigeria are licensed under the SEC's ARIP framework.[6] The SEC's draft amendments to its digital asset rules, which define and address stablecoins further signal an intent to continue this oversight.

Yet, if the NTAA is to be strictly applied, VASPs that deal only in non-security tokens like stablecoins (e.g. the issuer of a fiat-backed stable coin) may now fall outside SEC jurisdiction from a product perspective. If the President designates yet another regulator under section 79, these entities may also face a new licensing and

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4 328 U.S. 293 (1946).
5 Click here for more insight into the extension of the Howey test to digital assets.
6 Click here for our analysis of the ARIP Framework.

compliance regime, in addition to existing SEC and CBN requirements. Thus, there is a need for clarity as to the role each regulator will play within a coordinated framework.

Conclusion: Charting the Way Forward

The NTAA 2025 introduces added clarity in the categorisation of virtual assets, but also limits the SEC's oversight to those that qualify as securities under the *Howey* test. While this may provide clearer lines for taxation and compliance, it might create jurisdictional overlap over digital and virtual assets.

However, given that digital assets offer two broad utilities i.e., as investment instruments and mediums of exchange/store of value, digital assets should be regulated based on their intrinsic quality and the specific utility they offer. As the principal regulator of investments and securities and registered exchanges that facilitate the trading of investments and securities, the SEC is well positioned to maintain its regulatory oversight over digital assets and VASPs generally.

In cases where digital assets are leveraged for providing payment solutions or employed as mediums of exchange akin to fiat currencies, they should be brought within the regulatory purview of the CBN as the principal regulator of the payments system and currency trading in Nigeria. Dual regulation may be required for hybrid instruments such as yield-bearing stablecoins. Accordingly, entities licensed by the SEC which also facilitate payments *via* stablecoins or other digital assets could foreseeably be required to comply with the relevant CBN regulations on payment services. The Nigeria Revenue Service will also play a key role from tax and tax compliance regime within the context of a coordinated framework.

All told, a pragmatic approach to the regulation of digital assets would be one that allows the principal regulators and agencies work in synchrony to ensure a synergy of approach and regulatory clarity in the financial markets.

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