TLP ADVISORY

Overview of the VASP Guidelines

Client Briefing Note

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Overview

The Central Bank of Nigeria (CBN) recently released guidelines on the operations of bank accounts for Virtual Assets Service Providers (VASPs).

The journey of crypto in Nigeria has certainly been a rollercoaster ride with highs, lows, and twists. Below is an infographic depicting the timeline of events in Nigeria's crypto history.

Timeline of events in Nigeria's crypto history

1. **Jan 2017**

   The CBN issued a circular **(FPR/DIR/GEN/06/010)** outlining the risks associated with crypto transactions and emphasising concerns about money laundering and illicit activities.

2. **Sept 2020**

   The Securities and Exchange Commission (SEC) issued a "Statement on Digital Assets and their Classification and Treatment," recognising cryptocurrencies and digital assets as securities, bringing them under the SEC's regulatory purview via Section 13 of the Investment and Securities Act, 2007.

3. **Feb 2021**

   The CBN restricted banks from facilitating crypto transactions due to identified risks and vulnerabilities associated with crypto.

4. **May 2022**

   The Money Laundering (Prevention and Prohibition) Act, 2022, recognised VASPs as part of the definition of "financial institutions."

5. **May 2022**

   The SEC released the New Rules on Issuance, Offering Platforms, and Custody of Digital Assets (the "SEC New Rules"), providing a regulatory framework for the sector.

6. **May 2023**

   The Federal Executive Council (FEC) approved the National Blockchain Policy, indicating a broader acknowledgement of the significance of blockchain technology.

7. **June 2023**

   The Capital Gains Tax Act was amended to include digital assets in the list of chargeable assets.

8. **Dec 2023**

   The CBN issued the VASP Guidelines, lifting the ban on banks from facilitating crypto transactions.

Impact of the VASP guidelines

The VASP Guidelines mark a significant shift in the regulatory landscape for digital assets in Nigeria for the following reasons:

1. It effectively suspended the previous CBN Letter (BSD/DIR/PUB/LAB/014/001) that instructed banks to desist from dealing with crypto transactions.
2. It provides a framework for banking relationships and account opening for SEC-licensed VASPs in Nigeria.

Differentiating between virtual and digital assets goes beyond semantics

We must clear the fog around these terms. Generally, virtual assets are digital representations of value, traded digitally but not issued or guaranteed by any government (i.e., not legal tender). An example of a virtual asset would be non-fungible tokens (NFTs). Digital assets are a subset of virtual assets that behave like securities (equity and debt); examples include shares traded electronically or a digital security, such as a digital bond or an unsecured digital debenture. Digital assets could also be a digital representation of a fiat or currency issued by a government (for example, eNaira). We interpret this difference to mean that any digital token that is issued to represent a person's interest in another class of assets (such as fiat currency, equity, or debt) will be classified as a digital asset and not a virtual asset. These nuances matter, especially when toeing the regulatory line.

Understanding the synergy between the SEC and the CBN

Exploring the regulation of digital assets in recent times is revealing a united front between the CBN and the SEC. These two key regulators are teaming up to guide the country through the introduction of regulations around digital assets.

The CBN's cautious approach aligns with the SEC's commitment to fostering a secure and transparent digital asset landscape. While the CBN addresses broader financial stability concerns, the SEC dives into the specifics, ensuring VASPs and Digital Assets Exchange (DAX) operators (among other stakeholders) adhere to stringent guidelines.

While one of the aims of the VASP Guidelines is to set standards for Nigerian banks and financial institutions involved in digital asset transactions, the SEC New Rules cast a wide net, covering everything from trading and exchange to custodianship and financial services.

Decoding the VASP guidelines and the SEC new rules

Having distilled the essence of the VASP Guidelines, here are some key points to note:

A. Scope

The VASP Guidelines is:

- applicable to banks, payment service providers licenced by the CBN, and entities registered by the SEC for digital/virtual assets services (“Participants”).
- encompasses Virtual Asset Service Providers, Digital Asset Custodians, Digital Asset Offering Platforms, and more.

B. Activation of SEC regulatory framework

- The VASP Guidelines activate the SEC New Rules.
- Participants must comply with both the SEC New Rules and the VASP Guidelines.

C. Banks and financial institutions participation

- Permissible activities include opening designated accounts, providing settlement services, and acting as channels for foreign exchange flows, among others.
- Financial institutions are prohibited from holding, trading, or transacting in virtual currencies on their accounts.

D. Operation of designated accounts by VASPs

- VASPs can operate designated accounts for virtual/digital assets.
- Application requirements include SEC licences, corporate documents, Anti-Money Laundering (AML) policies, and more.

E. Transaction limits and monthly reporting

- Banks must establish transaction limits for designated accounts.
- Monthly returns to CBN are required, detailing activities on designated accounts.

F. Designated settlement accounts

- All obligations arising from transactions within the VASPs/Digital Assets (DA) entities' platform must be settled into the designated settlement accounts maintained by them in the banks.
- The settlement cycle is set at T+3, with minimum collateral requirements.

G. Risk management and compliance

- Financial institutions are mandated to implement risk management measures for Anti-money laundering, combating the financing of terrorism and combating proliferation financing (AML/CTF/CPF).
- Customer due diligence (CDD) is required for onboarding, significant transactions, and operational changes.

H. Monitoring and reporting of suspicious transactions

- Financial institutions are responsible for constant monitoring and reporting to the Nigerian Financial Intelligence Unit (NFIU).
- Enhanced due diligence (EDD) for designated accounts based on materiality and risk.

I. Consumer protection measures

- Financial institutions are required to establish consumer protection systems, complaint channels, and redress mechanisms.
- Adherence to CBN circulars on consumer complaint management is a requirement.

Cryptic future: what lies ahead?

The crypto landscape in Nigeria continues to unfold, blending tradition with innovation and caution with optimism. The CBN's VASP Guidelines and the SEC New Rules, an evolving regulatory script, promises a synergy between the regulator and the crypto community.

We are available to respond to your questions or address any concerns you may have in connection with the VASP Guidelines. Please direct your questions or concerns to **team@tlpadvisory.com**.

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