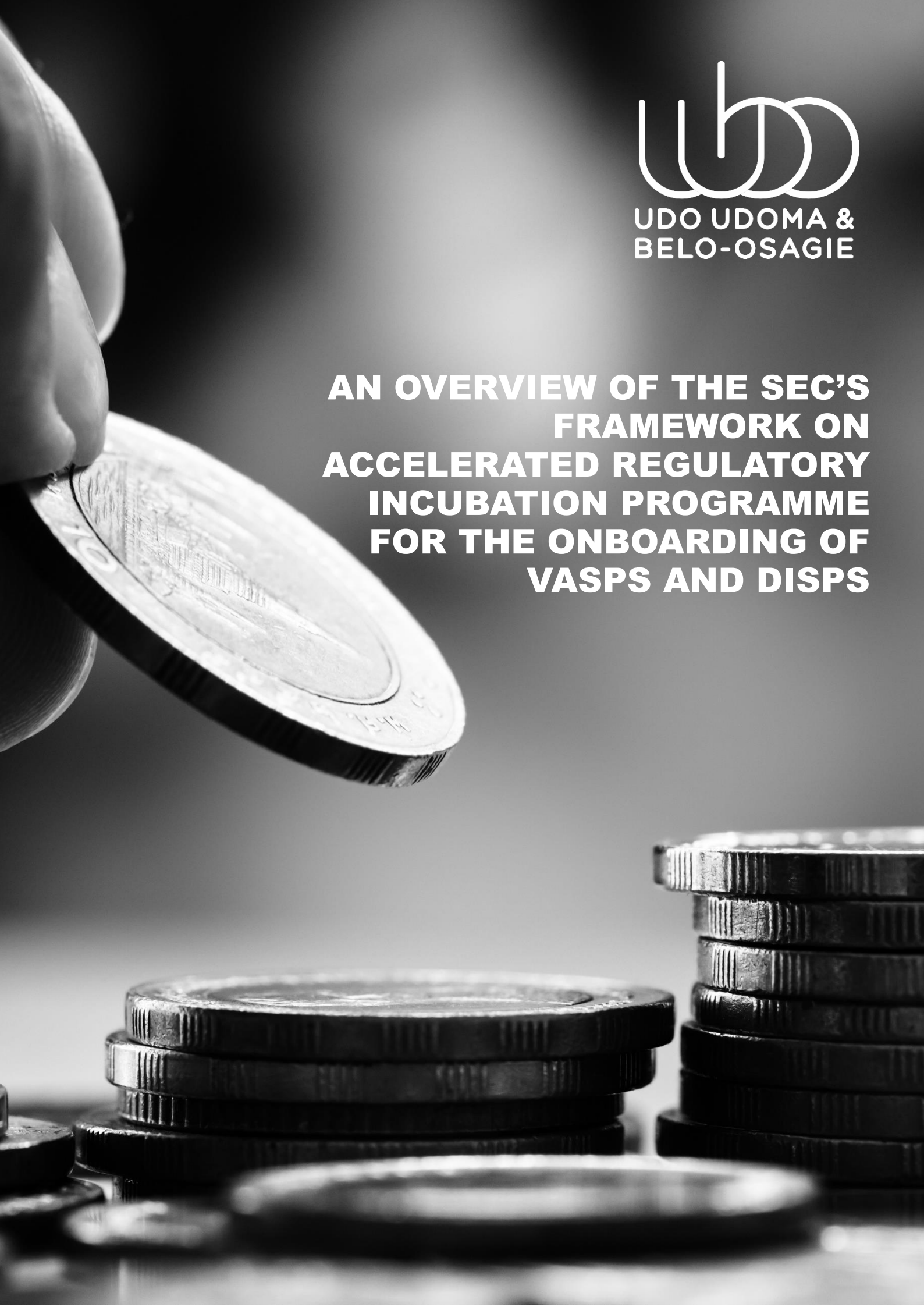




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**AN OVERVIEW OF THE SEC'S
FRAMEWORK ON
ACCELERATED REGULATORY
INCUBATION PROGRAMME
FOR THE ONBOARDING OF
VASPS AND DISPS**





Introduction

The Securities and Exchange Commission (“**SEC**”), on 21st June 2024, released a Framework on Accelerated Regulatory Incubation Programme (“**ARIP**”) for the Onboarding of Virtual Assets Service Providers (“**VASPs**”) and other Digital Investment Service Providers (“**DISPs**”) (the “**Framework**”). The Framework was issued further to the SEC’s extant Rules on Digital Assets Issuance, Offering Platforms, Exchange and Custody 2022 (the “**Rules**”), and the Proposed Major Amendments to the Rules on Issuance, Offering Platforms and Custody of Digital Assets in Nigeria 2024 (the “**Proposed Rules**”). The Framework sets out the requirements that VASPs and DISPs seeking to participate in the ARIP should satisfy before being eligible for such participation. We will, in this regulatory update, provide an overview of the ARIP, eligibility requirements and related matters.

Purpose of the ARIP

Under the Framework, the SEC has provided a special window for the onboarding of entities that propose to carry on virtual asset activities whose applications have been filed with the SEC, as well as other potential applicants that engage in such activities. This is to enable qualified entities to obtain an approval-in-principle from the SEC (“**AIP**”), pending when the Proposed Rules are issued and the Rules become operational. The primary purpose of establishing the ARIP is to provide guidance to its participants on the SEC’s regulatory requirements before they become fully operational in the Nigerian capital market. The ARIP is also aimed at giving the SEC an opportunity to better understand the digital asset business models of entities seeking to operate in the Nigerian capital market. Ultimately, this will enable the SEC to enhance its regulations to ensure they adequately address issues surrounding market integrity, investor protection and money laundering and boost its ability to effectively supervise the operations of the operators in the market.

Extent of the Applicability of the Framework

The Framework applies to a wide range of entities. Apart from VASPs and DISPs seeking registration with the SEC, the Framework is also applicable to, among other entities: (a) token issuers that carry on business activities in Nigeria or offer services to Nigerian consumers; (b) platforms that facilitate the offering, trading, exchange, custody and transfer of virtual/digital assets; and (c) promoters/organisers, issuers, founders, purchasers or investors who participate in the formation, promotion, maintenance, organisation, sale or redemption of an initial token offering.

In addition, only entities

- (a) incorporated at the Corporate Affairs Commission with an office in Nigeria;
- (b) having the Chief Executive Officer/Managing Director (or its equivalent) resident in Nigeria;
- (c) engaged in the business of investment and securities; and



- (d) seeking registration or have pending virtual asset-related applications with the SEC, can apply to the SEC for participation in the ARIP. All applications for participation in the ARIP must be filled by the applicant through a registered solicitor or adviser in Nigeria.

The Application Process and Requirements

The application process for the ARIP under the Framework is divided into two categories comprising the:

- (1) Initial Assessment Phase; and
- (2) Application Phase.

The Initial Assessment Phase is the stage at which the SEC considers the eligibility of an applicant to be a participant in the ARIP. An applicant commences the initial assessment by filling and submitting a form through the designated SEC portal – [SEC ePortal](#). After this stage, if the SEC deems an applicant eligible to apply as a participant in the ARIP, such an applicant can then commence the application phase. An applicant who scales the initial assessment phase is referred to as an Eligible Applicant under the Framework.

An Eligible Applicant must apply by filling out the appropriate form on the SEC portal. The Framework requires that a registered solicitor or adviser in Nigeria steers the application process on behalf of the Eligible Applicant. The requirements that the applicant is mandated to provide include:

- (i) a sworn declaration with the required depositions;
- (ii) an operational plan and a business model that clearly states the unique value proposition of the entity and how the entity will contribute to the overall development of the Nigerian capital market;
- (iii) the operational rules of the entity with satisfactory provisions that protect investors and the public, and also ensure proper regulation and oversight of its users and others; and
- (iv) a no-objection or approval letter from the relevant sectoral regulator of the entity, where applicable.

The SEC has the discretion to require any additional document from the applicant. On costs, the applicant is required to pay the SEC a non-refundable processing fee of ₦2 million. The applicant is required to have the required shareholders' funds. It is, however, unclear whether the "shareholders fund" refers to the minimum paid-up capital requirement in the Rules. The SEC will need to provide further clarification on what it means by shareholders' funds and whether it is dependent on the categories of applicants under the Rules, such as digital assets custodians and VASPs. This requirement for shareholders' funds forms the basis on which the applicant is required to provide evidence of a fidelity bond issued by a licensed insurance company covering a minimum of 25% of the required shareholders' fund.



Control Mechanisms and Restrictions

Under the Framework, an Eligible Applicant who successfully completes the application process and is issued an AIP will become a Qualified Applicant. The AIP will allow Qualified Applicants to operate and carry on their respective businesses within the ARIP, pending the issuance of a full license when the Rules become operational. Although the Framework does not explicitly distinguish a Qualified Applicant from an ARIP participant, it appears to subtly differentiate between the two. For instance, the Framework specifies that a Qualified Applicant

- (a) cannot engage in any other securities or investment business except the one presented to the SEC during the application;
- (b) is prohibited from conducting promotional activities; and
- (c) is restricted from expanding its customers base by more than 10% from the time it is onboarded into the ARIP. These restrictions appear counterintuitive as they make it challenging for Qualified Applicants to acquire customers without advertising their businesses to the public.

Furthermore, the Framework imposes certain obligations on ARIP participants, which could also apply to Qualified Applicants. These obligations include:

- (a) submitting weekly and monthly trading statistics to the SEC;
- (b) being subject to onsite and off-site inspections by SEC's officials;
- (c) Implementing safety measures for identifying, managing, and mitigating risks, such as undisclosed risks of financial loss or other risks to customers, investors, and market participants; and
- (d) implementing a comprehensive operational plan that includes a risk management framework.

The Framework also grants the SEC broad powers to impose additional financial requirements on ARIP participants based on the nature and risk of their business.

ARIP participants are required to comply with applicable Nigerian anti-money laundering laws and obligations, including the Money Laundering (Prevention and Prohibition) Act 2022, the Terrorism (Prevention and Prohibition) Act 2022, the SEC (Capital Market Operators Anti-Money Laundering and Combating the Financing of Terrorism) Regulations, 2022, and relevant sector-specific anti-money laundering regulations, where applicable. These obligations are required of Qualified Applicants as well. Therefore, unless the SEC indicates otherwise, it is safe to infer that these obligations for ARIP participants also apply to Qualified Applicants. This is because Qualified Applicants are also ARIP participants.



Termination of Participation by the SEC

The SEC may terminate an entity's participation in the ARIP if the participant is found unfit, materially breaches any condition, faces adverse changes, or fails to comply with the provisions of the Framework. Termination can also occur if a participant no longer meets the eligibility criteria, has breached significant terms of its participation, experiences significant negative changes impacting its ability to comply, or fails to adhere to critical provisions of the Framework.

ARIP Participants are required to maintain and periodically update a detailed operational plan. The SEC requires the plan to include a comprehensive business model, a description of the entity's operations and technology, risk management frameworks, and measures for investor protection and anti-money laundering compliance.

Transition to Registration

Participants who meet the ARIP's conditions for participation and have demonstrated satisfactory compliance with the Framework's requirements may transition to full registration with the SEC. Such participants will, however, need to undergo a review process with the SEC and meet any additional requirements that may be specified by the SEC.

Penalties

Non-compliance with the requirements of the ARIP may result in the imposition of penalties or sanctions on the relevant entity in breach. Such penalties may include suspension or termination from the ARIP, imposition of fines, or other sanctions that the SEC may deem appropriate. The severity of each penalty that the SEC may impose will depend on the nature and extent of the non-compliance.

Conclusion

With the increasing level of participation of Nigerian residents in the cryptocurrency industry, the ARIP is a welcome development and a step in the right direction. If properly implemented, it could help regulate the activities of current and potential participants in the virtual assets and digital investment services spaces and protect the members of the public who participate in the crypto space in Nigeria. The release of the Framework is a further indication that the Nigerian government is desirous of regulating the crypto market in Nigeria through the SEC. It is hoped that VASPs and DISPs will take advantage of the Framework and participation in the ARIP.

While the Framework has been largely welcomed by market participants, the SEC may need to consider some of the provisions and restrictions. Such areas include the restriction on engaging in promotional and advertising activities, limiting the acquisition of new customers to 10% etc. Some of these may need to be reconsidered and relaxed.

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