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NIGERIAN TAX ISSUES

A New Regulatory Order for Virtual/Digital Assets in Nigeria: Understanding the Implications of the Tax Reform Acts[1]

1. Introduction

The new tax reform Acts and the *Investment and Securities Act*, 2025 ("ISA") have each introduced transformative reforms within Nigeria's fiscal and investment sectors. Yet, their most consequential impact arguably lies in their collective effect on the nation's virtual/digital assets industry.

By expressly including virtual/digital assets within the definition of "securities" under section 357 of ISA, the Securities and Exchange Commission (SEC) seemed to assume exclusive regulatory authority over all such assets in Nigeria. However, a closer examination grounded in established rules of statutory interpretation and the distinct classifications of virtual/digital assets recognized by both the SEC and judicial precedent would reveal that ISA's treatment of these assets may not be as straightforward as it appears.

This interpretative tension has now been amplified by a little-noticed innovation in the *Nigeria Tax Administration Act* 2025 ("NTAA"). The NTAA introduces a framework that may significantly curtail the SEC's exclusive regulatory powers and redistribute oversight of virtual/digital assets amongst other federal agencies.

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This article examines that innovation in detail and explores its broader implications for Nigeria's emerging virtual/digital asset regulatory ecosystem. To lay the necessary foundation for this analysis, it is essential to understand the commonly accepted categorization of virtual/digital assets.

2. The Commonly Accepted Categorization of Virtual/Digital Assets

Broadly speaking, virtual/digital assets are digitally stored representations of value that can be transferred using cryptographically secured technologies such as distributed ledgers or blockchain technology. This general description aligns closely with the descriptions found in both the NTAA and the ISA. While the NTAA uses the term "virtual assets" and the ISA refers to "virtual and digital assets", the two are substantively consistent, with each describing digital representations of value whose nature depends on the type of value they embody.

Therefore, the categorization of a virtual/digital asset relies largely on its functional character. For instance:

a) Assets used primarily as a medium of exchange are commonly referred to as cryptocurrencies.

b) Those that enable participation in a common activity or network are called utility tokens.[2]

c) Digital collectibles, such as non-fungible tokens (NFTs), represent artistic or creative expressions.[3]

The above categories are distinguishable from digital assets which function as or constitute securities, that is, digital assets which represent ownership interests or investments in an enterprise, commonly referred to as security tokens.[4] Globally, the metric employed to draw this distinction remains that established in the famous United States of America case involving the *Securities and Exchange Commission v. W. J. Howey Co*.[5] The metric has been popularly christened as the "Howey Test".

The test provides that an asset or investment qualifies as a security if it involves:

a. an investment of money,

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2 See, Financial Industry Regulatory Authority, available at <https://www.finra.org/investors/investing/invest ment-products/crypto-assets>, last accessed 26th October 2025

3 See, Crossmint, available at <https://blog.crossmint.com/what-are-digital-collectibles/>, last accessed 26th October 2025.

4 See, Financial Industry Regulatory Authority, (n2).

5 328 U.S. 293 (1946).

b. in a common enterprise,

c. with an expectation of profits,

d. derived solely from the efforts of others.[6]

Applying this test, it becomes apparent that digital collectibles, cryptocurrencies, and utility tokens do not ordinarily qualify as securities. For instance, an investor in digital collectibles profits only if the asset appreciates or takes on a higher value. This outcome is determined primarily by the owner's own efforts, which may include valuation and marketing – proper valuation of the digital collectible by the owner, and the owner's ability to convince a third party to purchase the digital collectibles. Similarly, cryptocurrencies are a medium of exchange rather than an investment in a common enterprise.[7]

Despite these distinctions, the SEC has continued to assert exclusive regulatory authority over all forms of virtual/digital assets in Nigeria. This position has now come under intense scrutiny in light of recent legislative developments, chief of which are the new tax reform Acts. This has brought about mixed reactions, requiring a clearer restatement of applicable laws.

3. Securities and Exchange Commission's Powers Over Virtual/Digital Assets

Until 2020, when the SEC issued its Statement on Digital Assets and their Classification and Treatment ("SEC Statement"), Nigeria's virtual/digital asset landscape remained largely unregulated. The SEC Statement marked the first regulatory intervention and initiated a series of subsequent SEC regulations.[8] From the issuance of one regulation to another, the SEC gradually accumulated a great deal of regulatory powers over virtual/digital assets.

This steady expansion culminated in section 357 of ISA, which expressly includes virtual and digital assets within the statutory definition of "securities". From a layman's lens, the generic nature of the inclusion appears to place all categories of digital assets under SEC's jurisdiction, an interpretation that SEC itself has largely adopted.

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6 See, *Securities and Exchange Commission v. W. J. Howey Co*., 328 U.S. 293 (1946).

7 Justin Henning, "The Howey Test: Are Crypto-Assets Investment Contracts?" *University of Miami Business Law Review* Vol 27, issue 1, available at <https://repository.law.miami.edu/umblr/vol27/iss1/6>, last accessed 26th October 2025.

8 See, Framework on Accelerated Regulatory Incubation Program, available at <https://sec.gov.ng/documents/1294/ARIP-Framework-for-the-Onboarding-of-VASPs_4624.pdf> last accessed 3rd November 2025. See also, the Rules on Virtual/digital assets Issuance, Offering Platform, Exchange and Custody together with its amendments, available at <https://sec.gov.ng/documents/8/Rules-on-Issuance-Offering-and-Custody-of-Digital-Assets.pdf> last accessed 3rd November 2025.

For instance, the Director-General of SEC, Emomotimi Agama, has boasted that the inclusion of virtual/digital assets in the definition of securities under ISA has accorded SEC exclusive regulatory powers over all virtual/digital assets which qualify as securities or investment products.[9] The latter term "investment products" has been interpreted expansively to encompass all investments made for profit, thereby covering nearly, if not all, forms of virtual/digital assets, except those expressly recognised as legal tender.[10]

However, the present authors are of the view that this interpretation is questionable. Rather, as the NTAA now indicates, the legislature appears to have recognized the need for a more nuanced and segmented regulatory framework for digital assets. NTAA introduces a subtle but significant innovation which effectively qualifies and limits the previously assumed exclusive powers arrogated by SEC.

4. The Innovation of the Nigerian Tax Administration Act 2025

Amid the wide-ranging reforms and innovative provisions introduced by the new tax reform laws', including incentives, rates, and exemptions, there lies an easily ignorable provision with profound implications for digital/virtual assets regulation.

Section 79(1) of the NTAA appears to depart from the thematic preoccupation of the Act. It empowers the President of the Federal Republic of Nigeria to:

> *…by an order published in the Federal Government Gazette, [to] designate a relevant agency of the Federal Government with the primary responsibility for the regulation of all forms of virtual assets and the relevant tax authority shall administer the taxation of digital and virtual transactions and assets in accordance with the provisions of the Fifth Schedule to this Act*.

The import of this provision is far-reaching; it authorizes the President to allocate regulatory responsibility for each class of virtual/digital assets to different specialized agencies. On virtual asset classes, the Fifth Schedule to the NTAA itself lists the following as cognizable under virtual/digital assets:

a. Digital currencies

b. Tokens

c. Digital collectibles

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9 Aderonke Oni, "Digital asset fraud threatens market integrity, says SEC DG" (*the Cable*, July 10, 2025) available at <https://www.thecable.ng/digital-asset-fraud-threatens-market-integrity-says-sec-dg/> last accessed 26th October 2025.

10 See, Financial Industry Regulatory Authority, available at <https://www.finra.org/investors/investing/investment-products> last accessed 26th October 2025; and section 8 of the Fifth Schedule to the NTA 2025.

d. digital assets representing investments (i.e., securities).

In the same vein, **Paragraph 2 of the Fifth Schedule to the NTAA** explicitly restricts SEC's jurisdiction to only those virtual/digital assets that meet the characteristics of securities, providing that an asset qualifies as such if:

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

This statutory definition closely mirrors the *Howey Test*, thereby aligning Nigeria's approach with global best practices. It also distinguishes digital assets which qualify as securities from other forms of virtual assets, such as cryptocurrencies and digital collectibles.[11]

The implication is that SEC's authority now extends only to virtual/digital assets which exhibit the traditional characteristics of securities. Other types of virtual/digital assets are to be regulated by separate specialised agencies to be designated by the President. This development directly contradicts the prevailing assumption rooted in SEC's interpretation of ISA, that SEC retains overarching control over the entire digital/virtual asset ecosystem.

Given the delicacy and complexity of the virtual/digital assets industry, we submit that the tax reform laws recognise the paramountcy of realigning Nigeria's legislative posture on these matters.

5. Reconciling SEC's Powers and the NTAA Innovations

As earlier noted, the inclusion of virtual/digital assets in the definition of securities under ISA did not occur abruptly. Rather, it erupted from concerted and gradual efforts which began with the 2020 SEC Statement. Interestingly, that statement itself reflected a nuanced and informed appreciation of the nature of digital/virtual assets. This is evident in the excerpt below culled from the introductory part:

> Section 13 of the Investments and Securities Act, 2007 conferred powers on the Commission as the apex regulator of the Nigerian capital market to regulate investments and securities business in Nigeria. In line with these powers…the SEC will regulate crypto-token or crypto-coin investments when the character of the investments qualifies as securities transactions. (Emphasis supplied)

The language of the introduction as excerpted above demonstrates that SEC originally intended to regulate only those digital assets whose characteristics make them

[11] See, *Securities and Exchange Commission v. W. J. Howey Co.*, 328 U.S. 293 (1946).

securities, consistent with international best practices. The SEC Statement also categorized digital assets into: Crypto assets, Utility tokens, Security tokens, and Derivatives and Collective Investment Funds relating to the three earlier categories.

Apart from this classification's close alignment with global best practices of classification, it underscores the fact that not all virtual/digital assets are securities. Notably, the SEC Statement has not been revised, even though its underlying approach has since been overshadowed by ISA's expansive language.

A careful reading of ISA, however, suggests that its inclusion of "virtual and digital assets" was not meant to confer blanket regulatory powers upon SEC. The provision which lists traditional securities such as debentures, stocks, shares, and bonds, includes virtual and digital assets; and concludes with investment contracts, commodities, futures, options, and other derivatives.

This conclusion is formed on the application of the elementary *ejusdem generis* canon of interpretation. According to the Supreme Court of Nigeria in ***Okotie-Eboh v. Manager***,[12] this canon entails that 'interpreting the provisions of a statute's general words which follow particular and specific words of the same nature as themselves take their meaning from those specific words'. In other words, general words following specific terms should be interpreted in the context of those specific terms.

In that case, section 66(1) of the 1999 Constitution of the Federal Republic of Nigeria 1999 was up for interpretation. The section contains a list of specific tribunals and general tribunals that can disqualify a political party primaries' candidate on the basis of their character. In line with the e*jusdem generis* rule, the Court held that only general tribunals of the same kind as the specific tribunals listed in the section can wield the powers provided for in the section.

By this principle, "virtual and digital assets" in section 357 of ISA should be read in the context of other items listed as securities, implying that only digital assets of a similar nature, that is, those qualifying as investment instruments, fall under SEC's jurisdiction.

Any lingering ambiguity has now been dispelled by **section 79** and the **Fifth Schedule to the NTAA**, which expressly limit SEC's regulatory oversight to securities-type digital/virtual assets whilst empowering the President to assign other categories of digital assets to relevant specialist agencies.

For instance, similar to SEC's powers over virtual/digital assets which qualify as securities, the President may in the future empower the Central Bank of Nigeria to

[12] See, *Okotie-Eboh v. Manager* (SC) (2004) 18 NWLR (Pt. 905), 282, paras. C-D.

oversee virtual/digital assets which qualify as digital currencies, and the Nigerian Copyright Commission might oversee virtual/digital assets that qualify as art or creative expressions, such as digital collectibles and art-based tokens. The National Information Technology Development Agency (NITDA) could manage oversight of utility tokens or blockchain-based services.[13]

6. Conclusion

Whilst ISA extends SEC's authority to virtual/digital assets that qualify as securities, it leaves unaddressed the regulation of other digital/virtual asset categories such as cryptocurrencies, digital collectibles, and utility tokens. This legislative silence has enabled SEC to act as though it wields exclusive jurisdiction over all digital/virtual assets. We have submitted above that this is an overreach, one that NTAA rightly seeks to correct.

Through **section 79** and **paragraph 2 of the Fifth Schedule**, the NTAA empowers the President of Nigeria to designate appropriate federal agencies to regulate the various forms of virtual/digital assets, thereby establishing a multi-agency regulatory structure.

In essence, whilst SEC remains the competent authority for digital assets which function as securities, other specialized regulators will likely assume oversight of virtual/digital asset types within their domain of expertise. This realignment represents not only a correction of interpretative excesses under ISA but also a progressive step toward a balanced, specialized, and coherent regulatory framework for Nigeria's fast-evolving digital asset industry.

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[13] NITDA spearheaded the National Blockchain Policy (2023), approved by the Federal Executive Council, which expressly identifies NITDA as the lead implementing agency for Nigeria's blockchain ecosystem. Utility tokens and blockchain-based services are primarily technological enablers (digital utilities built on distributed ledger systems). Their regulation concerns issues like platform security, interoperability, data standards, user protection, and innovation policy, rather than investment protection or monetary stability. These fall squarely within NITDA's technology governance mandate, not SEC's financial regulatory mandate or the CBN's monetary jurisdiction.