

## Fintech Market Update

# CRYPTOCURRENCY BAN: THE SEC PRESS RELEASE

A few hours ago, the Securities and Exchange Commission (“SEC”) issued a press release dated 12 February 2021 (the “**Press Release**”) in an attempt to provide regulatory certainty in view of the Central Bank of Nigeria (“**CBN**”) Letter on Cryptocurrency dated 5 February 2021 (the “**CBN Letter**”) which effectively prohibits cryptocurrency transactions in Nigeria ([see our market update on the CBN Letter](#)).

According to the SEC, the Press Release was occasioned by several comments and inquiries from the public on the perceived policy conflict between the SEC Statement on Digital Assets dated 11 September 2020 (the “**SEC Statement**”) and the CBN Letter.

We set out below the highlights of the Press Release and the real time implications for the Nigerian digital assets ecosystem.

## THE SEC POSITION

The Press Release states that the SEC does not see any contradictions or inconsistencies between the SEC Statement and the CBN Letter.

The Press Release goes on to state that in recognition of the fact that digital assets may have the full characteristics of investments as defined under the Investments and Securities Act 2007, the SEC Statement asserts that trading in such assets falls under SEC’s regulatory purview, except proven otherwise.

The implication here is that the CBN Letter does not in any way override the SEC Statement. Rather, it reiterates the point that both regulators are independent.

According to the Press Release, the primary objective of the earlier SEC Statement was not to hinder or stifle innovation, but to establish standards of ethical practices that ultimately make for a fair and efficient securities market.

## REGULATORY COLLABORATION

The above notwithstanding, the Press Release is careful to note that the SEC recognises that the CBN as the regulator of the banking system, has identified certain risks, which if allowed to persist, will threaten investor protection, which is a key mandate of the SEC.

Against this background, both regulators have agreed to work together to further analyse, and better understand the identified risks to ensure that appropriate and adequate mitigants are put in place, should such securities be allowed in the future.

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## THE SEC CAPITAL MARKET FINTECH STRATEGY

In a quest to promote innovation and reduce the entry barriers and the regulatory hurdles faced by financial technology companies (“**Fintechs**”), the SEC formulated a capital market fintech strategy in line with the recommendations of the Fintech Roadmap Committee of the Nigerian Capital Market dated April 2019, which gives Fintechs an opportunity to interact with the SEC via the proposed SEC Regulatory Incubation Framework prior to going live.

For the purpose of admittance into the SEC Regulatory Incubation Framework, however, the assessment of all persons (and products) affected by the CBN Letter is hereby put on hold until such persons are able to operate bank accounts within the Nigerian banking system. Whereas, the planned implementation of the SEC Regulatory Incubation Guidelines for Fintech firms who intend to introduce innovative models for offering capital market products and services will continue.

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## ANALYSIS

In essence, whilst stating that there is no conflict between the CBN Letter and the earlier SEC Statement on Digital Assets, the SEC Press Release is clearly accepting of the CBN position and gives further effect to it by halting the admittance of all persons (and products) affected by the CBN Letter into the SEC Regulatory Incubation Framework. It is arguable though, that given CBN's status as the apex regulator of financial institutions, the SEC had any other option but to give effect to the CBN Letter vis-à-vis its regulatory treatment of digital assets. It is in any event noteworthy that the SEC has promised that it will continue to monitor developments in the digital asset space and further engage all critical stakeholders with a view to creating a regulatory structure that enhances economic development while promoting a safe, innovative and transparent capital market. This is reflective of the SEC approach to date and the market expectation is that the promised collaboration with the CBN will produce an appropriate framework for the thriving market in cryptocurrency and other digital assets in Nigeria.

