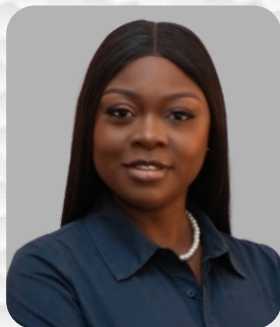




# Investment and Securities Act, 2025: *Addressing Some Gaps Around Virtual Assets and Digital Assets*



**Oluwatoyin  
Adenugba**  
Partner



**Omolade Afonja**  
Senior Associate



**Clinton Nwawulu**  
Trainee Associate



## 1. Introduction

- 1.1. The Investments and Securities Act, 2025 (ISA 2025/ *'Act'*) is not just a legislative upgrade, it is a re-engineering of Nigeria's capital market framework to align it with the current local and global market practices, trends, and demands. One of the significant provisions of the Act is its expansion of instruments considered as 'securities' to include virtual and digital assets.
- 1.2. This inclusion is not a novelty within the regulatory framework of the Nigerian Capital Market. In its proactive approach to adapt to the technologically changing world, the Securities and Exchange Commission (SEC/ Commission) had in 2022, issued the New Rules on Issuance, Offering Platforms, and Custodian of Digital Assets ('Rules'). The Rules not only recognized digital assets as securities where they represent debt or equity claims on the issuer, but also provided detailed regulatory framework for the whole ecosystem and its participants. The change therefore, is to 'regularize' the Act as the fundamental law of the industry, and expressly give the Commission powers over digital assets securities in Nigeria.
- 1.3. In this article, we go beyond merely recognizing the inclusion of virtual and digital assets as securities in the Act. Instead, we delve deeper into an insightful examination of how the Act rectified subtle, yet significant misconceptions, ambiguities, and gaps in the Rules, particularly with regards to the difference between virtual assets and digital assets; and its implication.

Perchstone & Graeys

SOLICITORS ADVOCATES & ARBITRATORS

## 2. The Misconception and the Gap: Virtual Asset is not a Security and Cannot be Issued

- 2.1. Part A of the SEC Rules defines digital assets as *'digital tokens representing debt or equity claim on the issuer'*. This term 'digital asset' should not be confused with 'virtual asset'. According to Part D of the SEC Rules, and the CBN's Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers, 2023 ('Guidelines'), a virtual asset is a *"digital representation of value that can be transferred, digitally traded, and can be used for payment or investment purposes"*, but does not include digital representations of fiat currencies, such as the e-Naira.
- 2.2. From its definition, a virtual asset has a wider coverage than digital assets. It includes not only non-Fungible tokens (NFTs), but also extends to cryptocurrencies (e.g., Ether, Bitcoin),





stable coins (e.g., USDT), and other digital representations. As expressed in the definition, these instruments are not only used for payments, but also for investment purposes, including as FX risk hedging tool (e.g., crypto options and futures), derivatives (e.g., crypto derivatives), forex trading, and speculative investments.

- 2.3. Despite the growing use of virtual assets for investment purposes, the SEC Rules currently only recognize the issuance of digital assets by issuers, and not virtual assets. This implies that under the SEC Rules, virtual assets are not formally acknowledged as issuable instruments, even though they are actively being created and traded. In addition, each time a digital asset is issued under the SEC Rules, the Commission must determine whether such digital assets qualify as ‘security’ under the ISA, 2007. This suggests that not all digital assets are recognized as securities except those that represent debt or equity claims. It is also suggested that virtual assets, although used for investment purposes, are not classified as securities, and may therefore fall outside the regulatory scope of the SEC.
- 2.4. This regulatory ambiguity is further compounded by the ISA 2007’s failure to define securities; but merely lists instruments considered as such. These instruments include bonds (debt) and stocks (equity), and derivatives or risk hedging tools such as futures and options. The inclusion of derivatives and risk hedging instruments could, in principle, support the classification of virtual assets as securities. However, the SEC Rules limit digital assets to those that constitute debt and equity claims. This narrow interpretation not only conflicts with the ISA 2007, but also effectively excludes the issuance of virtual assets, despite their widespread use and investment relevance.

### **3. An Attempt to Clear the Misconception**

- 3.1. It can be argued that the SEC Rules intended to limit the issuance of digital assets by issuers strictly to equity and debt; and not to derivatives, or other forms of securities. This approach aligns with established capital market practice of raising funds either through the issuance of debt or equity securities, even though there are different kinds of securities and investments.
- 3.2. While issuance of securities is limited to instruments representing debt and equity, this does not preclude investors from trading other securities such as options, rights, and derivatives. Similarly, although the SEC Rules limit issuance to digital assets representing debt or equity claims, investors are not precluded from investing in or trading other virtual assets. Hence, Part D of the Rules introduces Virtual Assets Service Providers (VASPs). These are entities that conduct or operate exchanges, facilitate transfers, safekeep or administer virtual assets, or provide financial services related to an issuer’s offer or sale of virtual assets. This



classification brings VASPs under the umbrella of Capital Market Participants, and their activities within the Commission's regulatory oversight.

#### **4. The Limitation of the Clarification**

- 4.1. The above argument notwithstanding, the SEC Rules' provision on VASPs does not address the absence of guidance on the issuance and issuers of virtual assets. The provision focused primarily on exchanges, offering platforms, custodians, and entities that provide financial services related to an *'issuer's offer and/or sale of virtual assets providers'*, but completely overlooked *"the issuers and the issuance of virtual asset"*. This is a significant omission of an important group of participants and market activity within the virtual asset value chain. Ironically, the inclusion (as VASPs) of entities who provide financial services to issuers of virtual assets seemed to neglect the fact that under Part A, issuers can only offer digital assets, and not virtual assets; thus, creating a conflict. Perhaps, this could have been rectified by defining virtual assets to include digital assets.
- 4.2. The implication is that such gap within the regulation can be abused, negatively affect investors, and create uncertainty that may deter investments as investors are not likely to invest in an uncertain environment. It is in light of this that it becomes imperative to consider whether these issues have been rectified under the ISA 2025.

#### **5. ISA 2025: Rectifying the Gaps and Misconceptions**

- 5.1. The ISA 2025, like its 2007 version, not only listed instruments that are securities, it also expressly included virtual assets and digital assets; thus, laying to rest the uncertainty surrounding virtual asset as securities. The implication is that digital representations of value that are transferable, digitally tradable, and can be used for payment or investment purposes are now confirmed as securities. The Act also included virtual assets, digital assets, and other distributed ledger technology offers, tokens, and products in the second schedule as types of investments. This reinforces the investment purpose of not only digital assets -which represent debt or equity claims (such as real estate tokens), but also all types of virtual assets and blockchain related products, including smart investment contracts. These provisions bring the Act into general alignment with current investment practices.
- 5.2. Furthermore, section 86(1) of the Act provides that all securities (including virtual assets and digital assets) *'to be issued under the Act shall be registered with the Commission under the terms and conditions of the Act and the rules and regulations made under it'*. This provision focuses on the securities, thus making all digital assets, virtual assets, and similar distributed ledger-based products issued under the Act subject to registration with the Commission.





- 5.3. Finally, the Rules' inadvertent omission of issuers of virtual assets appears to be addressed by section 3 of the Act, which provides that the Commission shall regulate investments and securities business in Nigeria as defined in this Act. Part II of the Second Schedule defines *Investment Business* to include *dealing in securities*, an action that includes buying, *selling*, subscribing for, or underwriting investments or offering, or agreeing to do so either as principal or as an agent. Needless to say, the act of *selling virtual assets* (now being both securities and investments) effectively captures issuers of virtual assets, bringing them within the regulatory oversight of the Commission, thus rectifying the gap in the Rules. Also, section 86(2) provides that the issuer of securities shall file a registration statement with the Commission.

## 6. A Lingering Question

- 6.1. Nevertheless, in light of sections 3(3d), 95, 86(1), as well as 86(5) of the ISA 2025 which provide that '*securities shall not be issued, transferred, sold, or offered for subscription or sale to public without the prior registration of the securities with the Commission*', the lingering question is whether those provisions apply only where such actions are done in relation '*to the public*' within the meaning of the Act, or whether they apply to each of such actions even when not related to the public. It would be helpful for the SEC to also clarify if digital assets issued by private companies outside the capital market should be registered, where such digital assets simply represent shares in those private companies. This is in view of the risk of possible regulatory overlap between SEC and Corporate Affairs Commission.

## 7. Conclusion

- 7.1. The SEC Rules' intervention provided significant impetus to spur further progress and evolution of the Nigerian Capital Market. However, it inadvertently created some ambiguities and gaps that might have been abused, and could have affected both investors and investments. The inclusion of digital assets, virtual assets, and other distributed ledger-based products in the ISA 2025, not only clarified those ambiguities and reaffirms the Commission's regulatory authority over them, but also fully demonstrates the investment and security applications of these emerging fintech products.



Lagos - 1, Perchstone & Graeys Close Off Remi  
Olowude Way, Lekki, Lagos  
Tel: +234 704 598 4788

Abuja - D3, Jima Plaza, Plot 1267, Ahmadu Bello  
Way, Opp. GTBank, Area 11, Garki, Abuja  
Tel: +234 09-2919191, 0704 598 4792, +234 704 574 3012

Benin - 40, Adesogbe Rd, Benin City, Edo State  
Tel: +234 704 553 0230

London - 107, Kingston Hill, Kingston-Upon-Thames, London  
Tel: +447526535389

Email: [counsel@perchstoneandgraeys.com](mailto:counsel@perchstoneandgraeys.com)  
[info@perchstoneandgraeys.com](mailto:info@perchstoneandgraeys.com)

**Copyright:** All rights reserved. No part of publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of Perchstone & Graeys.

**Disclaimer:** We invite you to note that the content of this article is solely for general information purposes only and should in no way be construed or relied on as a legal opinion. We urge you to contact us should you require specific legal advice on any of the topics treated in this publication.