

SECURITIES EXCHANGE COMMISSION RELEASES EXPOSURE RULES ON CROWDFUNDING



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The Securities and Exchange Commission (SEC), on the 28th of March 2020, released its Proposed Rules on Crowdfunding (the Proposed Rules). Crowdfunding, over the years, has become popular globally as a means of raising capital by small businesses from the public via online electronic platforms without having to register the securities with a securities commission. The process will typically be subject to the regulatory oversight of the relevant securities commission. In recent times, there have been efforts by small businesses in Nigeria to raise capital from the public through online electronic platforms; however, before now, there has not been any regulatory framework for crowdfunding in Nigeria. The efforts by SEC to release the Proposed Rules is very commendable as it provides the necessary legal and regulatory framework and guidance for undertaking crowdfunding in Nigeria.

CROWDFUNDING: KEY TERMS

The Proposed Rules defines crowdfunding as the process of raising funds to finance a project or a business through an online electronic platform. The online electronic platform is described in the Proposed Rules as a Crowdfunding Portal. An entity raising funds through a Crowdfunding Portal is referred to as an Issuer. The Proposed Rules defines an Issuer as the originator, maker, or creator of a security or investment instrument that will be registered with a Crowdfunding Intermediary.

A Crowdfunding Portal may be registered or operated by an entity registered with the Commission as a Crowdfunding Intermediary. A Crowdfunding Intermediary is registered to facilitate transactions involving the offer or sale of securities or investment through an online electronic platform. The Proposed Rules indicate that only an entity registered as Exchange, Dealer, Broker, Broker-Dealer, or Alternative Trading Facility may be registered as a Crowdfunding Intermediary.

OVERVIEW OF THE PROPOSED RULES

WHO CAN RAISE FINANCING THROUGH CROWDFUNDING?

The Proposed Rules targets investment-based crowdfunding by Micro, Small, and Medium Enterprises (MSMEs). The Proposed Rules stipulate that MSMEs eligible to raise funds through a Crowdfunding Portal must be an incorporated company in Nigeria with a two-year minimum operating track record. It also states that within 12 months, the maximum amount that can be raised by a medium enterprise, a small enterprise, and a micro-enterprise is N100 million, N70 million, and N50 million, respectively.

This limit, however, does not apply to MSMEs that operate as digital commodity investment platforms or such other MSMEs as SEC may designate from time to time. MSMEs shall issue investment instruments or securities in exchange for the capital raised from the public. These investment instruments have been limited to shares, plain vanilla bonds or debentures, and simple contracts.

CROWDFUNDING PORTALS

Crowdfunding Portals are also required to register with SEC; the approval is subject to the satisfaction that the operator of the portal is fit and proper, can manage risks associated with the business, and the overall standard and ability of the portal. The Proposed Rules stipulate a minimum paid-up capital of N100 million for Crowdfunding Portals.

Crowdfunding Portals are required to carry out due diligence on its prospective issuers, verify issuers'

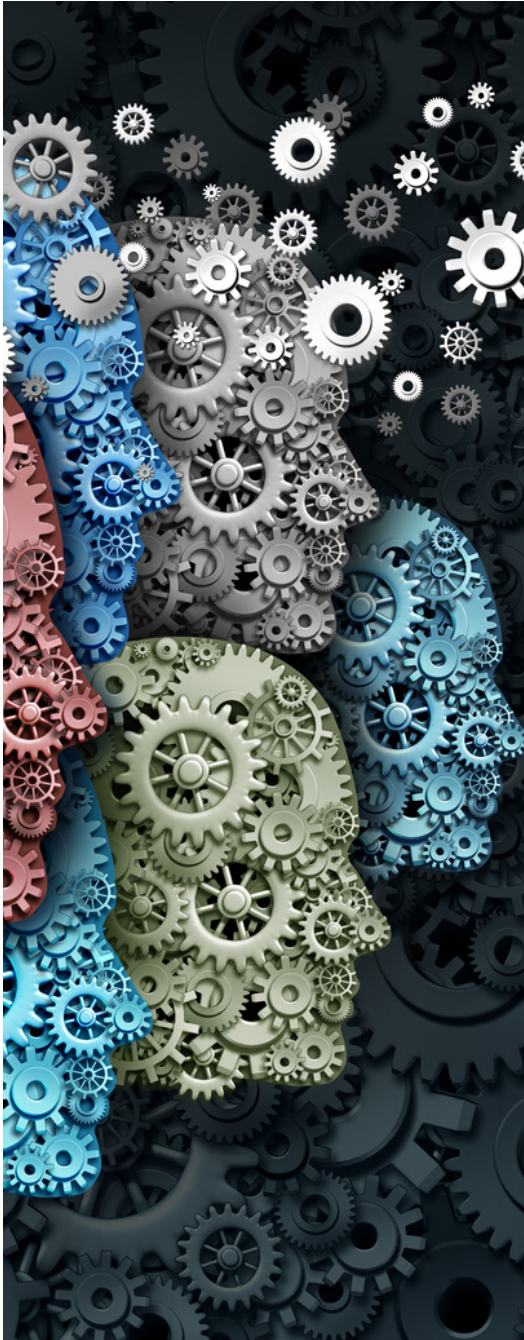
business propositions and ensure that its directors and sponsors are fit and proper persons. The Crowdfunding Portal shall also monitor the activities of issuers on their platform to ensure their compliance with the provisions of the rules, report issuer misconduct where necessary, and file all quarterly and monthly reports with SEC.

ISSUERS AND INVESTORS

Issuers that intend to raise funds and offer their securities through a crowdfunding portal are required to submit the following information to the crowdfunding portal:

- key characteristics of the company
- the purpose of the listing and the targeted offering amount
- audited financial statements





Issuers are also required to submit offer documents to the crowdfunding intermediaries containing the particulars of the issuer, its directors, officers, and shareholders with more than 5% of its securities, description of their business, and the principal risks involved, the financial condition of the issuer, etc. A Crowdfunding offering by an issuer shall not remain open for more than 60 days.

The Proposed Rules stipulate that retail investors are permitted to invest only 10% of their annual income. High net Worth and Qualified Institutional Investors are, however, not subject to any limitations on investments.

The rules grant investors a period of 48 hours from the close of any investment offer within which they may withdraw their investment. Investors are also given a period of 7 days within which to withdraw investments where an adverse change occurs that affects the project of the issuer. Furthermore, investors are entitled to a refund of all debited or blocked funds within 48 hours after canceling an offer or an agreement to purchase investment securities.

CONCLUSION

The Proposed Rule is a welcome development. It ensures that persons raising capital through a Crowdfunding Portal can be held accountable. The rules are, however,

restrictive in terms of the amount of funds that can be raised through crowdfunding. It is proposed that the limit in respect to the amount of capital that can be raised should be increased, particularly in favour of Medium enterprises.

For Enquiries:

FOLA OLUSANYA

Partner & Practice Head, Corporate Commercial

folaulusanya@jacksonettiandedu.com

KUNLE SOYIBO

Partner & Sector Head, Financial Services

kunlesoyibo@jacksonettiandedu.com