



TOPE ADEBAYO LP

YOUR QUESTIONS ABOUT INVESTMENT -BASED CROWDFUNDING ANSWERED



1 **Is Crowdfunding regulated in Nigeria?**

Yes, it is regulated by the Securities and Exchange Commission (“SEC”) Rules on Crowdfunding, which came into force on the 21st of January 2021.

2 **Who is required to register with the SEC under these Rules?**

The Rules apply specifically to investment-based crowdfunding, which involves raising funds from the public through online portals in exchange for shares, debt securities, and other investment securities approved by the SEC.



3 **Who is required to register with the SEC under these Rules?**

Entities that facilitate investment-based crowdfunding via Crowdfunding Portals are required to register with the SEC.

4 **What are the eligibility criteria for Fundraising entities?**

Entities eligible to raise funds through a Crowdfunding Portal must be MSMEs incorporated as a company in Nigeria, with a minimum of two years’ operating track record. Alternatively, MSMEs with less than two years of operating track record must have a strong technical partner with a minimum of two years’ operating track record or a core investor.

5 **Who are MSMEs?**

MSMEs, as defined by the Rules, are micro, small, and medium enterprises as prescribed by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) based on their total asset annual turnover or the number of employees.



6 Definition of MSMEs under SMEDAN?

Under SMEDAN, MSMEs are defined according to their classification based on two criteria – Employment and Assets (excluding land and buildings):

1. Micro Enterprises are companies with less than 10 employees and assets worth less than 5 million Naira.
2. Small Enterprises are companies with more than 10 but less than 49 employees and assets worth 5 million Naira but less than 50 million Naira.
3. Medium Enterprises are those with more than 50 but less than 199 employees and assets worth 50 million Naira but less than 500 million Naira.

7 According to the SEC Rules, who are the participants in crowdfunding?

The participants are the Fundraiser, Investors, and the Crowdfunding Intermediary

i. Fundraiser

A fundraiser is an individual or entity that is seeking to raise funds through crowdfunding. This could be a business, a startup, an individual with a creative project, or any other entity that has a funding need.

ii. Investors

Investors commit their resources to a crowdfunding project, in exchange for equity issued by the fundraiser. This could be a high net-worth individual, a qualified institution, and/or a retailer.

iii. Crowdfunding Intermediary

This is an entity that operates a crowdfunding portal. The intermediary is responsible for facilitating the transactions between fundraisers and investors through its portal. This includes verifying the identity of fundraisers and investors, ensuring that investments are compliant with the SEC Rules on Crowdfunding, and processing payments. A crowdfunding portal is an online platform that connects fundraisers with potential investors. The portal provides a platform for fundraisers to post their projects and for investors to browse and invest in projects that interest them.



8 Is there a limit on the total funds that can be raised through crowdfunding within a specific period?

The aggregate amount of investment instruments that can be offered and sold by the Fundraiser within a 12-month period is subject to the following limits:

- i. Medium Enterprise can raise a maximum of N100 Million;
- ii. Small Enterprise can raise a maximum of N70 Million;
- iii. Micro Enterprise can raise a maximum of N50 Million.

These limits do not apply to Commodities Investment Platforms.

9 How long can crowdfunding offers remain open under the Rules?

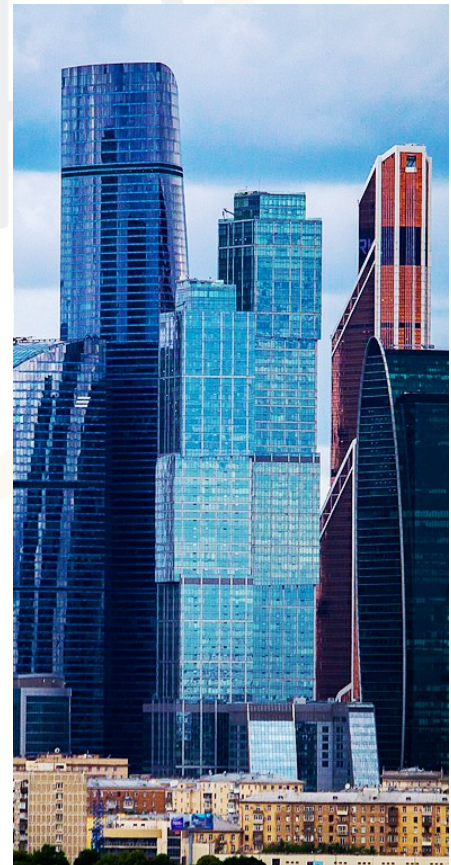
Crowdfunding offers are limited to a maximum of 90 days. This period consists of an initial 60-day duration, extendable for 30 days, subject to certain conditions specified by the Portal.

10 What happens if a crowdfunding offer fails to meet the minimum threshold for the target within the approved period?

If an offer fails to meet the minimum threshold for the target offering amount in the approved period, the offer must be withdrawn, and a refund made to the investors. The Fundraiser may commence a new offering after 30 days from the date of the withdrawal.

11 Can a Fundraiser raise funds on a portal where the Crowdfunding Intermediary or its officers own more than 5% of the securities of the Fundraiser?

No, unless approved by the SEC, a Fundraiser cannot raise funds on a portal operated by a Crowdfunding Intermediary or its officers who beneficially own or control more than 5% of the securities of the Fundraiser.



12 Can investors rescind their commitments?

Yes, investors enjoy a cooling-off period from the time they made their investment until 48 hours before the close of the offer within which they may cancel their investment. Also, Investors may rescind their investment within 7 days of the introduction of a material adverse change in the standardized offering. Upon cancellation or rescission, all funds invested shall be refunded to the investor within 48 hours.

13 Are there a Lock-In period and Tag-Along rights for Investors?

There is a “lock-in” period of one year in which investors shall not transfer their investment except as stipulated by the Rules. Post this period, the SEC rules on trading in securities of unlisted companies and the restriction of transferability of shares of a private company shall guide any purported transfer.

Also, retail investors and promoters shall have an accompanying tag-along right. This right which shall be provided for in the articles of association of the Fundraiser, allows these investors to withdraw from the company, sell their stake, or request for an early redemption of their investment if the controlling shareholders transfer control of the company to third parties within three years from the conclusion of the offer.

14 Are Crowdfunding Intermediaries required to be registered with the Securities & Exchange Commission?

The Rules require crowdfunding intermediaries that facilitate interactions between fundraisers and the investing public in Nigeria for investment-based crowdfunding, to be registered with the SEC. Under the Rules, a crowdfunding intermediary would be deemed to be operating a crowdfunding platform in Nigeria where the crowdfunding portal is operated in Nigeria; or where it targets Nigerian investors. A crowdfunding portal located outside Nigeria would be deemed to be targeting Nigerian investors where the crowdfunding intermediary promotes the crowdfunding portal in Nigeria.



15 Can Crowdfunding Intermediaries accept investments for ventures outside Nigeria?

Generally, the regulatory framework for crowdfunding in many jurisdictions, including Nigeria, tends to focus on domestic activities. The Rules are designed to govern the conduct of crowdfunding intermediaries and the offering of securities within the jurisdiction. However, the Rules recognize that crowdfunding platforms can be located outside of Nigeria, and they may target Nigerian investors. Also, there is no express restriction on investment in ventures outside Nigeria.



16 What are the registration requirements for Crowdfunding Intermediaries?

Corporate entities that wish to be registered with the SEC as crowdfunding intermediaries are required to submit an application (using the appropriate forms) to the SEC in addition to:

- i. the incorporation documents of the applicant as issued by the Corporate Affairs Commission (CAC);
- ii. the audited accounts of the applicant;
- iii. the applicant's profile;
- iv. the operation manual and business plan of the applicant;
- v. information on the crowdfunding IT system to be adopted by the applicant;
- vi. the proposed brand name of the crowdfunding portal including evidence of trademark registration; and
- vii. the domain names of any website through which the crowdfunding portal would be operated and applicable social media handles etc.

17 What is the minimum share capital for entities carrying on business as Crowdfunding Intermediaries?

Crowdfunding intermediaries need to have a minimum paid-up share capital of N100,000,000 (One Hundred Million Naira). The applicant is also to take up a Fidelity Insurance Bond covering at least 20% of the minimum paid-up capital as stipulated by SEC's rules and regulations.



18 Criteria for approval as a Crowdfunding Intermediary?

The applicant needs to satisfy that:

- i. the applicant will be able to operate a fair and transparent crowdfunding system;
- ii. the principal officers of the applicant are fit and proper persons;
- iii. the applicant has sufficient financial, human and other resources for the operation of a crowdfunding portal as may be prescribed by SEC from time to time; and
- iv. the rules of the applicant make satisfactory provisions for the protection of investors and public interest; management of conflicts; the regulation and supervision of its users etc.



19 Obligations of Crowdfunding Intermediaries?

Crowdfunding Intermediaries must comply with several obligations, including disclosing information on the portal, displaying investor education materials, conducting due diligence on Fundraisers, appointing a Custodian registered with the SEC, and ensuring compliance with the Nigerian Data Protection Regulations.

20 What activities are registered Crowdfunding intermediaries prohibited from undertaking?

Registered crowdfunding intermediaries are prohibited from:

- i. providing financial assistance to investors to invest in a fundraising offer hosted on its portal or compensating any introducer for providing it with information on potential investors;
- ii. soliciting investments;
- iii. facilitating secondary trade for investment instruments issued under the platform; and
- iv. using any alternative website or social media portal other than the portal registered with SEC.



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Penalty for failure to register with the SEC?

Crowdfunding intermediaries that fail to comply with the provisions of the Rules will be liable to a fine of not less than N100,000 (one hundred thousand Naira) and N5,000 (five thousand Naira) for every day the violation continues.



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How has the operation of investment-based crowdfunding changed following the Rules?

The Rules introduce significant changes to the operation of investment-based crowdfunding, including the prohibition of Crowdfunding Intermediaries from facilitating secondary trades between buyers and sellers for investment instruments issued under the Rules.

23

What is a Commodities Investment Platform (CIP) under the Rules?

A Commodities Investment Platform (CIP) is an electronic platform that connects investors to specific agricultural or commodities projects to sponsor such projects in exchange for a return.



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Restrictions on Commodities Investment Platforms (CIPs)?

CIPs cannot be registered as fund managers with the SEC, must exclusively focus on crowdfunding for investments in agriculture or other commodities, cannot host crowdfunding portals for non-agricultural or commodities projects, and are subject to a fundraising limit of N1,000,000,000 within a 12-month period (subject to SEC approval for exceeding this amount).

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What is the overall impact of the SEC Rules on Crowdfunding in Nigeria?

The Rules represent a substantial regulatory framework for a previously unregulated financing method. Crowdfunding operators may need to undergo significant operational restructuring to align with the new requirements, emphasizing investor protection and regulatory compliance. Proper engagement with the SEC and stakeholders is crucial for maintaining compliance while remaining competitive in the market.



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