ABUAD Law Journal (ALJ)
Vol. 12, ISSUE 1, 2024, Pages 28-40 https://doi.org/10.53982/alj.2024.1201.02-j
Published by College of Law, Afe Babalola University Law Journal,
College of Law, Afe Babalola University, Km 8.5, Afe Babalola Way,
P.M.B. 5454, Ado Ekiti, Ekiti State, Nigeria ISSN: *2971-7027*
www.abuad.edu.ng, abuadlawjournal@abuad.edu.ng

CRYPTO-EXCHANGES IN NIGERIA: A REVIEW OF THE REGULATORY FRAMEWORK

Aliyu Abdullahi*

Abstract

Regulating the exchange market in Nigeria seemed seamless until the coming of blockchain technology powered by smart contract. The blockchain platform spawned the idea for the trading of digital assets which by their nature could not be traded on the regular exchanges. This raises two major inquiries which are, to what securities silos are the digital assets be classified and whether trading digital assets on the blockchain platform requires special governing rules inform of codes or algorithms as substitute or in addition to the Investment and Securities Act herein after called the Act. To brace up with this new technology, the Nigerian Federal Government issued the National Policy on Digital Economy to regulate the digital economy generally in the country and formulated the National Blockchain Policy in particular. Additionally, the Security and Exchange Commission pursuant to Section 13 (o),(dd) of the Act issued Rules on Issuance, Offering and Custody of Digital Assets, to specifically regulate transactions of digital assets on the crypto-exchanges. Adopting doctrinal method of research, this paper examines the law and policy frameworks for the regulation of crypto-exchange in Nigeria with the sole objective of ascertaining the propriety and robustness of the issued instruments to regulate the crypto-exchange. The paper finds inter alia that neither the Act nor the issued Rules on Issuance, Offering and Custody of Digital Assets is sufficient to regulate digital assets transactions on the blockchain platform. Thus, the paper recommends hybrid of the regulatory governance to include codes, algorithms and the Act.

Key words:
AI, Blockchain, Exchange, Digital-Assets, Law and Policy

Crypto-exchanges in Nigeria: A Review of the Regulatory Framework.
https://doi.org/10.53982/alj.2024.1201.02-j

1.1 **Introduction**

As a disruptive technology, the blockchain is profiling literature in relation to the many sectors it applies.[1] One of the areas on which the blockchain attracts literature is the issuance, offering and custody of digital assets on crypto-exchanges. The crypto-exchange is powered by smart contract. The main theses around its operation and regulation is that, Crypto-exchange provides new models of activity proximate to traditional financial services activities concerning venues, participants (such as intermediaries) and products already subject to laws governing securities, futures and commodities.[2] This perceived similitude of the two exchange platforms leads to the insinuation whether the conventional securities laws can also be appropriate for effective regulation of the digital assets transaction on the crypto-exchanges.

While is true that the crypto-exchange is proximate to the conventional securities exchange, it is important to note that, blockchain technology represents "more than just an incremental improvement of the already existing routines, and promises – or threatens – a disruption of the status quo."[3] Therefore, from the legal perspective, discussion on this evolving technology requires exceptional caution because laws are premised on a settled and predictable terrain while the blockchain is yet to settle and still evolving. A writer poignantly made the point thus:

> The development of CCTech presents challenges to a legal system that has evolved at a time when CCTech did not exist. The struggle is to identify whether or how to regulate cryptos, what or who should be regulated, and to what extent should

* PhD, Department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria, Competition and Computational Law, aliyuabdullahi2019@gmail.com/ aliyua@abu.edu.ng 08062065488

[1] Michels J D and Millard C, *Response to the UNIDROIT Consultation on Digital Assets and Private Law* (Queen Marry University of Landon (London) 2023) 1 < www.https://ssrn.com/abstract. 4362164> Accessed on 23rd day of May 2023.

[2] Syre, Johnston, 'Taxonomies of Digital Assets: Recursive or Progressive?'. *Stanford Journal of Blochchain Law and Policy*. [2019] 3

[3] Joao Pedrro Quintains *et al*, 'Blockchain and the Law: A Critical Evaluation'*Stanford Journal of Blockchain Law and Policy* [2019] 1.

> regulation be applied given that this is a developing technology in its early diversification phase.[4]

In the course of this reality the blockchain continues to evolve and trading of assets there on also continues. Regardless of the disruption, it is therefore important to protect the exchanges against abuse in a manner that boosts the players' confidence and guarantees return on investment.[5] The objective of this treatise is to explore the best possible regulations of the digital assets transactions on the crypto-exchange. In doing this, the paper looks at the law on securities regulation in Nigeria vis-a-vis the nature and operation of the blockchain technology.

1.2 Securities and Digital Assets

In many jurisdictions, to ascertain regulatory silos for digital assets, the initial response of the regulatory authorities is to properly categorize the digital assets for the purposes of situating them within the established regulatory silos meant for the primary market.[6] The same categorization of the primary market is then applied to the secondary markets. This approach of categorizing digital assets for the purposes of applying the established legal framework on them seems convenient only where the categorization of the digital assets fits well into the existing security laws. If it doesn't fit, then, search for the proper regulatory approach continues.[7] There are three known silos of digital assets on the blockchain platform. We will identify those tokens, then attempt situating each to the definition of securities.

a) Protocol token: these are tokens used to compensate parties for participation in some activity that contribute to the maintenance of the blockchain and its network.[8]

[4] (n 2)
[5] ibid 2
[6] Syren Johnstone, 'Secondary Markets in Digital Assets: Rethinking Regulatory Policy in Centralized Environments', *Stanford Journal of Law and Policy* [2020] 6.
[7] ibid 6

[8] Jonathan Rohr and Aaron Wright, 'Blockchain-Based Token Sales, Initial Coin Offerings and the Democratization of Public Capital Markets' [2018] 14. <https://ssrn.com/anstarct=3048104> Accessed 26th November, 2023

b) App tokens also called utility tokens are those tokens that grant their holders the right to access, use, enjoy a given technology or participate in voting and governance of the online organization.[9] They also confer certain rewards.[10]

c) Investment tokens provide holders with economic rights, such as a share of profits generated by a project or organization. They are tokens that are substantially similar to securities. For investment tokens, which assign economic rights to their holders, the analysis is relatively straightforward. These are often securities dressed in different clothing and thus would be subject to securities laws.[11] Once offered and sold investment tokens are non-redeemable. The seller generally has no repurchase obligation, and the tokens are not subject to transfer regulations. These tokens are listed and also actively traded on secondary crypto-exchange markets.[12]

It is important to at this juncture define securities, and then weigh each of the above tokens against the definition. In Nigeria, Securities are defined thus:

> "securities" means-
> (a) debentures, stocks or bonds issued or proposed to be issued by a government;
> (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;
> (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
> (d) commodities futures, contracts, options and other derivatives, and the term securities in this Act includes those securities in the category of the securities listed in (a) - (d) above which may be transferred by means of any electronic mode approved by the Commission and which may be deposited, kept or stored with any licensed depository or custodian company as provided under this Act[13]

A careful look at the above definition shows that, the approach adopted by the Act to define securities is to mention the various classes of items that are traded as securities. The Act did not

[9]Henderson M T and Max Raskin, 'A Regulatory Classification of Digital Assets: Toward an Operational Howey Test for Crypto-currencies, ICOS, and other Digital Assets' [2019] *Columbia Business Law Review*. [2019] 444. <https://ssrn.com/anstarct=3265295> Accessed 7th day of September, 2023
[10] (n 8) 20
[11] ibid 26
[12] ibid 40
[13] The Investment and Securities Act, 2007

provide a definition that set guidelines or criteria of identifying what may qualify as security aside from the ones mentioned in the definition. Thus, it may not be suitable for the purposes of ascertaining whether tokens or digital assets are securities. Unlike the Nigeria's Act, the United States Investment and Securities Act[14] set a bench mark that any token sought to be traded as security must satisfy. The token or anything called must be for "investment contract." This bench marking makes the task of the Securities Commission easier in categorizing digital assets or tokens as securities or otherwise.

Thus, for tokens to be subjected to securities regulations in the United States, the tokens must be used for an investment contract. Determination of "investment contract" is a question of substance not of form as same was adopted by the United States' Supreme Court in *SEC v. W.J. Howey Co*.[15] In that case, the Court defined investment contract to mean a contract, transaction or scheme whereby [1] a person invests his money [2] in a common enterprise and [3] is led to expect profits solely from the efforts of the promoter or a third party. This definition is wide enough to include things that are ordinarily not securities but they tend to have the same purpose like the digital assets. The definition laid down three criteria thus:

a. A person invests his money;
b. In a common enterprise; and
c. Is led to expect profits solely from the efforts of the promoter or a third party.

We will now discuss the three forms of tokens which are the Protocol, App or Utility and Investment tokens against the three criteria set out in the above definition of securities with a view to finding out which among the tokens qualifies as securities.

The first criterion is investment of money. In the context of blockchain, all the three forms of tokens satisfy this criterion. Though the tokens are not "money" outright, an American court defined money broadly beyond currency to include money worth such as, goods, promissory notes, and services and all other forms of exchanges of value.[16] Relying on this

[14] Investment Act, 1933
[15] [1946] 328 U.S. Supreme Court, 293
[16] (n 8) 45

definition therefore, one can say, while investment token simply fits this criterion because monetary value can be ascribed to it, the two forms of tokens (Protocol token and App token) meet this criterion because they provide access to services that could otherwise only be accessed after payment.

The second criterion is "common enterprise," meaning the investment of money must not be proprietary. It must be an investment in a common pool jointly with other investors whose rights and liabilities rise and fall together. Common enterprise could be any of the followings:

a. Horizontal commonality: as a form of a common enterprise denotes an investment that apportions or prorates profit or loss to all investors in accordance with their investment ratio respectively.
b. Broad vertical commonality: under this form of common enterprise, the gain or loss of the investors are dependent on the expertise or efforts of promoter(s) of the enterprise. Here the gain or loss of the investors do not rise or fall with that of the promoter(s). They are just dependent on the promoter(s)' effort or expertise.[17] If the promoters' effort or expertise raises the profit, same also goes to the investors. It is thus possible here for the gains of the investors to increase while those of the promoters remain as it is.
c. Narrow or strict vertical commonality:[18] requires the investors' fortunes and that of the promoters are interwoven. Meaning the gain or loss of the investors rise or fall with that of the promoters not dependent as in the case of the broad vertical communality.

Just like the investment of money criterion, most of the tokens will fit into at least one of the above communalities. However, determining precisely which version of the commonalities will suffice to meet up with the common enterprise criterion is surprisingly difficult. For example, investment and utility tokens can both meet the horizontal commonality criterion especially when they are majorly sold to more than one purchaser, and the received funds are pooled to finance a given project. On the other vertical commonality may present a more difficult question

[17] ibid 47
[18] ibid 46

on account of variations in the way that a seller is linked to token purchasers. Thus it may not be so easy to situate any of the tokens into either of the communalities.

The last criterion is the profit expectation and it has two limbs to wit, (a) the investor must have a reasonable expectation of profits when purchasing the tokens; and (b) the profits (when realized) must result from the efforts of others. The United States Supreme Court defined profit as "Either capital appreciation resulting from the development of the initial investment . . . or a participation in earnings resulting from the use of investors' funds."[19]

The paper now examines whether any of the tokens satisfies the first limb of the last criterion which is profit expectation. Investment tokens as the name implies are largely purchased by the investors with the sole expectation of making profit as a result. Thus, investment tokens satisfy this limb of the criterion. However, profit expectation is not the major objectives of the Protocol and App tokens because they are primarily purchased or obtained to access services. Though they could be sold for profit at the secondary market, it is argued that this does not change their initial character or the predominant intent of the purchaser. Thus, argument against treating these tokens as satisfying the profit making criterion is stronger.[20]

The second limb is that the profit if realized must come from effort of others. This limb does not directly relate to the tokens but the medium through which the expected profit comes from. To meet this criterion, one has to ask if profit from trading on digital assets come from the effort of others or from the effort of the token-holders themselves? A straight forward answer to this question is difficult to provide as there are two conflicting responses. On one hand, it is argued that since token holders are entitled to participate in funding decision and trading of the tokens, then the profit therefrom comes from the efforts of the token holders themselves not others as such this limb is not satisfied. On the other hand, The United States' Securities and Exchange Commission Report of Investigation with regard to Digital Assets Offering Platforms (DOAPs) held contrary view. DOAPs are the major medium of offering the tokens. The contrary view is based on two reasons: (1) before presenting funding decisions for voting to the token

[19] *United Housing Foundation, Inc. v Forman*, (1975) 421 U.S. 837, 852.
[20] (n 8) 53

holders, the proposals for voting go through vetting and filtering process by other players including the co-founder; and (2) DAOPs Tokens holders are "widely dispersed and limited in their ability to communicate with one another.[21] It is submitted that the second view which is the American Report is more preferable. DAOPs are not operated only by the token holders. Other stakeholders like the project managers are also involved in operating the DAOPs. Thus, certainly, profit made from their operations cannot be said to have come from the token holders alone.

So far, the effort made in the preceding pages is to ascertain whether digital tokens share the attributes of traditional assets to warrant the application of existing security laws in their regulations. The paper answers this question in the affirmative. This brings us to the discussion on the second objective of this paper which is the adequacy of the legal framework to regulate transactions of securities on the blockchain platform.

1.3 Similitude between Stock and Crypto-Exchanges

This sub-head compares the two exchanges (crypto-exchange and stock-exchange) with the view to locating the basis for analogy on regulation. Starting from the known premises, a look at the concept of exchange outside the regulated environment is made first. Simply, an exchange means a platform for bringing together supply and demand.[22] Technically however, an exchange is defined as 'any exchange registered by the Commission pursuant to this Act which constitutes, maintains or provides a market place for bringing together, purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange.' The import of this definition is simply that, an exchange is a medium duly licensed for the sell and purchase of securities for capital formation. [23] From these two meanings of an exchange, it is obvious that, a number of things are required to ensure that the platform operates effectively. For example, it should operate under uniform rules to allow for prediction, hence it is

[21] ibid 69
[22] Macey J and Kanda H, 'Stock Exchange as a Firm: The Emergence of Close Substitutes for the New York and Tokyo Stock Excanges' [1989 - 1990] 75 *Cornell L. Rev*, 1006. 1. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clqv75&div=44&id=&page=> Accessed on 4th day of April 2022
[23] ibid

centralized; mechanisms must exist to facilitate price formation and discovery; there should also be gateway requirements to determine what goods are available for transaction and who is able to transact; transaction must be binding and subject to effective means of enforcement where not performed. An exchange must also provide mechanisms for order input; order matching; clearing and settlement.[24] While these five stages (together, the "Trading Mechanism") operate in a linear sequence, transparency at each stage will vary according to different exchange models or customs.[25]

Crypto-exchange on the other hand that is based on the blockchain ecosystem is a decentralized, disintermediated, and distributed technology, which enables decentralized, disintermediated, and distributed modes of social coordination in a mostly decentralized, disintermediated, and distributed manner.[26] Blockchain operates in a distributed form with no room for a proprietary middleman cum regulator. Using the internet and a blockchain, digital assets could be transferred across the globe like email or music files. A blockchain maintained a record of who owned these digital assets at any point in time without the need for a centralized intermediary, like a central bank or centralized exchange.[27]

On the other hand, because there is an absence of intermediation other than the non-sentient operation of the code, new risks may be created in the operation of the code.[28] The Virtual Markets Integrity Initiative Report issued by the New York State Attorney General (the "VMII Report") hinted that crypto-exchanges deserve attention for the following reasons: (i) represent large pools of capital risk and frequently hold customer assets, (ii) are significant in terms of investor losses incurred from exchange hacks and thefts, (iii) undertake a multiplicity of roles that create conflicts which have led to a division of labor in traditional markets, (iv) are

[24] (n 2) 14
[25] ibid
[26] ibid 1
[27] ibid
[28] ibid 12

subject to minimal or no regulation in the largest international financial centers, and (v) operate in markets where adequate market abuse surveillance mechanisms are absent.[29]

To further understand the nature and operation of the crypto-exchange, it is important to note they are of two types to wit, Central (CENTEX) and Decentralized (DEX) platforms. Each of these is briefly discussed. In CENTEX traders communicate electronically with a central operator that provides the gateway for information and which connects supply and demand via mechanisms established by the operator. The exchange operator can effect order execution in different capacities: (i) it can match, clear and settle the orders of a client with that of another client; (ii) it stands at the center of matched orders similar to a central counterparty; or (iii) it can match a client order with its own book, similar to a proprietary trader or market maker taking a proprietary position on the asset with the benefit of a spread on the buy/sell prices.[30] Although a CENTEX may be facilitating customers' trading of digital assets, the CENTEX does not need to utilize or interact with Computer Technology, except where the transaction will be recorded on-chain.[31]

There are similarities in structure between CENTEX and the traditional exchanges that may be the basis for the regulators to exercise regulatory oversight on the CENTEX especially when no CCTech is used.[32] For example, in both, there is a centralized operator responsible for the operations of the exchanges which can be licensed and subjected to regulatory requirements including inspection and enforcement and the license can be withdrawn for non-compliance. This paper holds the view that, the similarity is only to the extent that an external authority in the two exchanges exists, that is the platforms via which the assets are exchanged. The role of these two exchanging platforms in terms of order placement and execution significantly differ.[33]

[29] Lily Martinet, 'Exercising Digital Sovereignty Over Blockchain: A Case Study from France' *Stanford Journal of Blockchain Law and Policy*. [2022]1.
[30] ibid 11
[31] ibid 11
[32] Digital assets could be store and traded from two types of crypto wallets–hot wallets and cold wallets. While hot wallets require CCTech, the cold walltes do not and they are usually offline in USB sticks. BitIRA, 'Crypto and Exchanges Compared'[2022] 2 < http//:bitira.comcrypto-vs-stock-exchanges> accessed on 29th November, 2023
[33] (n 2) 11

In the traditional exchange, the exchange is different from the market makers usually the brokers who are controlled by the exchange rules and that of the Securities and Exchange Commission while in the case of CEXTEX, the exchange and the market makers could be the same like in the case of Binance or Kraken. Sometimes, the market making could be in automated form by an Automated Market Maker also referred to as (AMM). AMMs remove the intermediary from the equation, using an automated formula to allow buyers and sellers to trade directly with one another.[34] This automated process powered by the smart contract marks the difference between the stock-exchange platforms from the CENTEX. In the case of DEX, traders interact with other traders through distributed computer code. The operational rules of the code match and settle orders without the involvement of any person other than the order inputs of the buyer and seller. Unlike with CENEX, there is no even a central platform for the traders to meet to transact.[35]

Unlike the stock exchange which usually has working hours for opening and closing, the crypto-exchange operates 24hours, seven days a week. Most often, the crypto exchanges because of their CCTech nature operate across-boarders, transcending beyond single polity. It is also characterized by pseudonymity, as it allows transacting parties to participate in the system without disclosing their identity. The self-execution nature of the crypto-exchange involving huge dater continuing non-stop round the week further makes it difficult for regulation at least using the legal framework meant for the traditional exchange.

1.3.1 A Case for the Regulation of Crypto-exchanges

The growing investment in digital assets at the primary market is leading to the corresponding growth in digital assets trading at the crypto secondary market that is calling for the attention of regulatory authorities.[36] No matter the peculiar nature of the blockchain, it is risky to allow it operate on zero-oversight regime. A number of instruments are put in place for the development of digital economy in Nigeria. One of such instrument is the National Policy on Digital Economy to regulate the digital economy generally in the country. This instrument however does not have

[34] (n 32)
[35] (n 2)12.
[36] ibid 4

specific plan for the regulation of blockchain technology in its scope. There is also the National Blockchain Policy for Nigeria, a 32-pages document issued in May, 2023. Item 1.3.1 of the document on page 12 hopes to improve transparency and accountability in using the blockchain technology in Nigeria. However, being a policy document, nothing is said about crypto-exchange regulation in Nigeria.

The Security and Exchange Commission pursuant to Section 13 (o),(dd) of the Act issued Rules on Issuance, Offering and Custody of Digital Assets to specifically regulate transactions of digital assets on the crypto-exchanges. Part A of the Rules provides for the registration of digital assets as securities before they are qualify for trading under the Rules. However the Rules did not set out the criteria of ascertaining whether the assets sought to be registered qualified to be securities.[37] The Rules only state, "Where the digital asset is determined to be a security, the issuer shall apply to register the said securities."[38] Looking at the fact that digital assets have different character compared to the known securities, it would have been good for the Commission to specify or lay down a bench mark of determining how those assets can be classed as securities to ease the application of the Rules.

It appears that, the SEC desires to grant the Digital Assets Offering Platforms autonomy for operation in that, after making copious provision on what the DAOPs must satisfy before registration, the Rules empower the DAOPs after registration to regulate risk that may come with the transactions on the platforms.[39] A DAOP is mandated to identify and manage any risks associated with its business and operations, including any possible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls.[40] It appears the only sanction the Commission can impose on DAOPs that fail to manage risk for investment is cancellation by the Commission. This is because, the Commission has the power to cancel registration DAOPs if the DAOP fails to meet

[37] Part A, SEC Rules on Issuance, Offering and Custody of Digital Assets, 2022
[38] Item 4.04 of Part A ibid
[39] Item 17.0 ibid
[40] Items 17.1 ibid

the requirements as provided in the ISA 2007 and the Rules on Offerings and Custody of Digital Assets issued by the Commission.[41]

The Rule also has in PART C makes provisions for the regulation of Registration of Digital Asset Custodians (DACs). DACs are defined as persons who provide the services of providing safekeeping, storing, holding or maintaining custody of virtual assets/digital tokens for the account of another person.[42] In PARTS D and E the Rules provide for the registration of Virtual Assets Service Providers (VASPs) and Digital Assets Exchange (DAX) respectively. Virtual Assets Service Provider is an entity that executes the transfer of virtual assets while the DAX are the trading platforms for the digital assets or the virtual assets. The Rules does not make provision for the regulation of the autonomous nature of DAX which are in most cases blockchain and smart contract empowered. The therefore, the Rules on Initial Offering and Custody of Digital Assets did not address the two concerns this paper raised at the onset which were, to what class of the existing security silos will digital assets be classified for regulatory purposes and whether the existing legal framework, the Rules on Initial Offering and Custody of Digital Assets in particular and the Investment and Securities Act are sufficient to regulate exchange of tokens on the crypto-exchanges.

To avoid the risk of leaving crypto-exchanges unregulated, there is ongoing debate on the need for using Algorithm as the governing rules. Algorithmic regulation refers to regulatory governance systems that utilise algorithmic decision making.[43] A leading regulatory governance scholar defines regulation or regulatory governance as intentional attempts to manage risk or alter behaviour in order to achieve some pre-specified goal.[44] Algorithmic regulation as a cybernetic process has the three major components of system control which are: – information-gathering; standard-setting; and enforcement or behaviour modification.[45] It is argued that

[41] 28.1 (b) ibid
[42] Item 29.5 of Part C ibid
[43]Yeung Karen, 'Algorithmic Regulation: A Critical Interrogation' [2017] *Legal Studies Research Paper Series: Paper* 2017 (27) (King's College London-Dickson Poon School of Law, (Strand, London)). 2. <www.https://ssrn.com/abstract=2927505> Accessed 2nd March, 2024
[44] Black J, 'Learning from Regulatory Disasters', *LSE Law, Society & Economy Working Papers* [2014] (24*)* <http://eprints.lse.ac.uk/60569/1/WPS2014-24_Black.pdf> Accessed on 23 July 2023
[45] ibid 7-8

building these three components in coded rules or algorithmic regulations may effectively carter for the peculiar nature of the blockchain technology. Standards will be enforced and behavior altered when need be during the automated execution of digital assets offers and sells.

It is further submitted that, code-based legal systems have the advantages of efficiency; higher levels of predictability being pre-determined; and consistency; less uncertainty and ambiguity in the interpretation of rules; and ultimately the customizability of rules.[46] Blockchain code is also said to be able to monitor legal compliance, as well as to automate and uniformize enforcement in a non-discriminatory manner.[47] It is however alleged to have the following disadvantages. For instance, when the code-based legal rules are deliberately ambiguous and open-ended, it may be difficult to transform them into unambiguous and deterministic technical code. Secondly, interpretation and discretion are the major part of our legal systems, but hard to implement in rigid code-based systems. Furthermore, automatic enforcement removes the third party's discretionary powers of application.[48] Thus, the Commission will have very less role to play. To the best of the author's knowledge, no such Algorithmic Rules is developed and implemented for the regulation of crypto-exchange market.

1.4 Conclusion

Blockchain technology which is still in its formation stage has posed a number of legal issues that are yet to be satisfactorily addressed. This paper picked only two out of those legal issues that relate to crypto-exchange market as regulated by the Rules on Issuance, Offering and Custody of Digital Assets issued by the Security and Exchange Commission and discussed them here. A review of the Rules shows the two concerns are not yet addressed. For effective regulation of the crypto-exchange, it is important to settle the questions of when a crypto asset qualifies to be a security and how automated behavior of the crypto-exchange could be altered when the automation goes against the predetermined rules. The fact that crypto market is past growing with trillions naira worth investment and the fragile nature of exchange market calls for the need to have robust regulation for the safety of investors and the market. Though, the Rules

[46] (n 32) 4
[47] ibid
[48] (n 3) 19

on Issuance, Offering and Custody of Digital Assets is a commendable effort by the Commission for being timely, the paper recommends for collaboration between the National Information Technology Agency (NITDA) and the Security and Exchange Commission to see the possibility of using algorithmic regulations that alters behavior in case of breach of the codes while at the same time enabling the Commission to wade in, in deserving moments. There is also the need for the review of the Investment and Securities Act as per the definition of securities by adopting the United States' style of setting criteria or bench mark for securities identification that is not closed-ended such other forms of similar assets can be included.