



# INTRODUCTION

The Security and Exchange Commission (“SEC”) on 16 June 2021 announced its Regulatory Incubation Program (the “RI Program”) for financial technology companies or (“FinTechs”) offering services and products in the Nigerian Capital Markets space who are uncertain about their regulatory obligations, but still require some form of regulatory authorisation from SEC before they can commence business [1].

In the Regulatory Incubation Guidelines for Specific Category of FinTech Entrepreneurs issued by SEC (the “Guidelines”), the apex securities regulatory body in Nigeria stated that pursuant to Section 38 (2) of the Investment and Securities Act 2007 (the “Act”), it has the power to enable the deepening of the Nigerian Capital Markets through various methods such as the RI Program. In the Guidelines, SEC also reiterated that Section 38 (1) of the Act prohibits any expert or professional from carrying out any activity in the Nigerian Capital Markets except it is registered by SEC [2].

Therefore, in a bid not to stifle products and services that require SEC’s authorisation, and to enable businesses that offer such products and services to continue to carry out full or ancillary technology-driven capital markets activities, the RI Program was created. According to SEC, the RI Program is an “interim measure to aid the evolution of effective regulation which accommodates the innovation by FinTechs without compromising market integrity and within limits that ensure investor protection” [3].

## The RI Program

The RI Program is set to commence in the third quarter of 2021 and will have two stages; the Initial Assessment Phase and the Regulatory Incubation Phase. The RI Program will last for a period of one year which, according to SEC, will “enable the Commission to supervise some new models of providing Capital Market services in limited form before it becomes fully established to operate [4]”. During the one-year period, the businesses will operate under some prescribed basic but limited provisions which are contained in the Guidelines. Before an entity applies for the RI Program, the Guideline’s specify that the entity must:

- be using innovative technology to offer a new type of product or service, or applying innovation to an existing financial product or service;
- be involved in or seeks to be involved in an activity that, if carried on in or from Nigeria, is a financial service which SEC regulates;
- be ready to take-off with live customers and operate within the purview of the SEC Regulatory Framework;
- register as soon as rules guiding the RI Program are released by SEC;

[1] “Circular on the SEC Regulatory Incubation Program” by SEC, accessed 18 June 2021. <https://sec.gov.ng/circular-on-the-sec-regulatory-incubation-program/>.

[2] The Preamble of the Regulatory Incubation Guidelines for Specific Category of Fintech Entrepreneurs 2021.

[3] “Circular on the SEC Regulatory Incubation Program” by SEC, accessed 18 June 2021. <https://sec.gov.ng/circular-on-the-sec-regulatory-incubation-program/>.

[4] Regulatory Incubation of the Regulatory Incubation Guidelines for Specific Category of Fintech Entrepreneurs 2021

- offer a product or service that addresses a problem (compliance or supervision) or brings potential benefits to consumers or the Nigerian Capital Market;
- ensure that the product is safe for investors; and
- complete the FinTech Initial Assessment Form and discuss the proposal with SEC at an early stage.

If the entity meets the pre-qualification requirements, it will go through to the Initial Assessment Phase.

### **Initial Assessment Phase**

In this Phase, the FinTech Initial Assessment (FIA) Form will be filed by the entity and a processing fee of N200,000.00 (two hundred thousand Naira) shall be paid. A response will be given to the FIA Form within 15 working days from its submission.

If there is a regulatory framework which regulates the proposed product or service, SEC will provide guidance to the entity. If no framework exists for its regulation, the applicant will be directed to fill and submit the Regulatory Incubation (RI) Form within 16 working days.

The RI Form is to be submitted with an Implementation Plan for the product or service being offered by the applicant. The Implementation

Plan shall contain:

1. a full description of the business and the proposed innovative product, service or business model including type of technology;
2. the objectives and parameters for the incubation period;
3. the implementation timeline and key milestones for testing;
4. the existing/target customers;
5. a Risk Management Framework, clearly stating key risks and how they will be controlled and mitigated including insurance cover;
6. a description of how the entity will ensure that customers fully understand the risks;
7. a description of how communications with customers will be handled before and during the incubation period including how the entity will deal with queries, feedback and complaints;
8. a description of the next steps at the expiration of the incubation period: and
9. a clear exit plan if registration is not achieved, including how the entity will fulfil its obligations to its customers.

After filling the RI Form, SEC will respond within 20 working days of confirmation whether:

1. admission has been granted to the RI Program subject to the Terms and Conditions of Admission;
2. the applicant will be admitted to the RI Program at a future date; or
3. The application is declined.

After the Initial Assessment Phase has been passed, the applicant shall receive a Letter of Admission into the RI Program from SEC and, within three working days from the receipt of the letter, undertake to:

1. be deemed fit and possess relevant skills in financial services and/or technology;
2. act with integrity due care and diligence and provide referee information;
3. provide full information to clients and commit to send them regular feedback;
4. provide full disclosure to SEC on the business through an incubation implementation plan;
5. provide procedure for holding and controlling client assets;

6. comply with all relevant laws and regulations;
7. have an office in Nigeria;
8. comply with Anti-Money Laundering /Combating the Financing of Terrorism (AML/CFT) requirements; and
9. provide monthly reports to SEC.

### **Regulatory Incubation Phase**

While in the RI Program, any admitted entity must comply with all prescribed provisions in the Guidelines [5]. Some of these requirements are that the applicant:

1. must not conduct any other investment business except as presented to SEC;
2. must not carry out financial promotions which guarantee returns;
3. must not provide information containing any untrue or misleading statement; and
4. must have the capacity to on-board a maximum of 100 clients.



However, SEC may permit the applicant to on-board additional clients if the need arises. Any applicant that was operating before the RI Program and enters into the incubation phase with clients, is to maintain its existing clients and cease on-boarding new ones [6].

Applicants will receive feedback on their product or service from the RI Team at the end of every quarter and by the 10th month of admission, the applicant shall receive a guideline issued by SEC which will direct its business activities. At the end of the year, applicants will exit from the program with clear directives from SEC on next steps to take and will commence operations as an entity registered under SEC. If the entity does not follow SEC's registration requirements after the RI Program, their activities may be terminated by SEC [7].

The Guidelines provide that an entity may be removed from the RI Program if it:

1. is found no longer fit to participate in the process;
2. has breached any restrictions or conditions imposed on its participation;
3. has breached the Laws of the Federal Republic of Nigeria or the Guidelines;

4. deviates from its Implementation Plan; or has not promptly taken steps either to apply for registration or submit a notice of discontinuance after the one-year period of the regulatory incubation process [8].

## CONCLUSION

With the creation of the Incubator Program by SEC, it seems the apex capital markets regulator in Nigeria is staying true to its Three-pronged Objective [9] to regulate innovation in the Nigerian Capital Market by providing a tool to promote regulatory compliance, regulatory supervision, and innovation in the FinTech space.

Though there may be raised eyebrows about whether SEC will truly assist participants in its RI Program and how it will utilise the data and business plans it receives from its applicants, with the innovative drive SEC has shown, it is hoped that the experience and network SEC has with established FinTech companies will benefit the entities that participate in its RI Program.

[6] Restrictions and Conditions of the Regulatory Incubation Guidelines for Specific Category of Fintech Entrepreneurs 2021.

[7] "FinPort Innovation and FinTech Portal" by SEC, accessed 18 June 2021. <https://sec.gov.ng/finport/>.

[8] Termination/Removal from Regulatory Incubation of the Regulatory Incubation Guidelines for Specific Category of Fintech Entrepreneurs 2021.

[9] "FinPort Innovation and FinTech Portal" by SEC, accessed 18 June 2021. <https://sec.gov.ng/finport/>.



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