EXAMINATION OF THE LEGAL REGIME FOR THE OPERATION OF CROWDFUNDING IN NIGERIA

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Abstract

Crowdfunding is a financing mechanism that permits an investor to gather resources from the public to finance a new business undertaking or project. Thus, crowdfunding facilitates raising of funds from the public thereby preventing frustration of business due to lack of fund. The legal regime that governs crowdfunding principally include the Companies and Allied Matters Act, Investment and Securities Act and SEC Rules on Crowdfunding. However, the problem identified by this paper was that, modern trend of internet fraud activities, unstable economy and prevalence of insecurity has diminished the interest of the public to investing their money into business start-ups. This is because of the danger of the sustainability of such start-ups in an environment susceptible to fraud, inflation and insecurity which consequently leads to a higher risk of business failure. Accordingly, the objective of this paper was to examine the legal framework governing the relationship between the fundraiser (issuer), operator (Crowdfunding intermediary) and the public who invest their money into crowdfunding in Nigeria; with a view to making reforms. The sources of information relied upon in this paper include relevant books, articles in journal publication, statutes, regulation and internet materials. Thus, this paper found (among others) that the Rules on Crowdfunding is in conflict with the Companies and Allied Matters Act, as well as the Investment and Securities Act which disallow private companies from sourcing finance from the public while the SEC Rules on Crowdfunding makes private companies eligible fundraisers. Accordingly, it was recommended (among others) that, the Companies and Allied Matters Act as well as Investment and Securities Act should be amended to incorporate crowdfunding in Nigeria so as to resolve the conflict originating from the SEC Rules on the subject matter.

Keywords: Crowdfunding, Fundraiser, Investor, Operator, Crowdfunding portal and Nigeria

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1.1 Introduction

Entrepreneurial activities in Nigeria have significantly increased in recent years due to unemployment, technological innovation and the expansion of the digital economy. No doubt, the greatest challenge of any business start-up across the globe is to access capital for expansion of operations. Consequently, where such opportunity is not forthcoming for the commencement of a business, it is either that such business remains on hold or becomes frustrated by lack of capital and therefore, may never see the light of the day. Sometimes, whilst in this frustration, the entrepreneur attempts to source funds from donations from family, friends, personal savings and bank credit facilities, failure of which may keep the business pending until such fund is gotten. Therefore, rather than suspend the commencement of such businesses until funds are gotten from those sources, start-ups can make use of the mechanism of crowdfunding by receiving capital from the public through selling of investment interest for the purposes of ease of fund raising and saving businesses from collapsing.

Therefore, Crowdfunding involves sourcing fund from the public for business purposes. At the same time, the need to protect the public interest is also very important. For this reason, the Security and Exchange Commission (SEC) provides guidelines for the regulation of the interest of both parties (that is, the entrepreneur who needs money and the public investing their money in the business).

However, the main problem identified in this paper is that, modern trend of internet fraud activities, unstable economy and prevalence of insecurity has diminished the interest of the public to investing their money into business start-ups. This is because of the danger of the sustainability of such start-ups in an environment susceptible to fraud, inflation and insecurity which consequently leads to a higher risk of business failure. Accordingly, the objective of this paper is to examine the legal framework governing the relationship between the fundraiser (issuer), operator (Crowdfunding intermediary) and the public who invest their money in crowdfunding in Nigeria; with a view to making reforms.

1.2 Meaning of Crowdfunding

The Security and Exchange Commission Rules on Crowdfunding [1] defines Crowdfunding to mean ―the process of raising funds to finance a project or business from the public through online platform‖[2]. Crowdfunding involves the pooling of finances from a large number of individuals and entities to facilitate the operation of business start-ups. Thus, crowdfunding makes use of the easy access to vast networks of people through crowdfunding portal or websites to bring investors and entrepreneurs together[3]. It is important to note that there are four main types of crowdfunding and they include:

a. Reward-Based Crowdfunding: This is a type of crowdfunding where people contribute funds to a business start-up in anticipation for returns in the form of gifts of the product or service which the fundraiser offer.
b. Donation-Based Crowdfunding: This is a type of crowdfunding used mostly by non-profits organisations, community movements or social entrepreneurs where members of the community give funds to support such business whilst expecting nothing in return. It is also used to finance businesses in emergent situations, such as natural disasters.
c. Debt-Based Crowdfunding: This is a type of crowdfunding similar to a bank loan where the entrepreneur agrees to repay the loan with interest over a specified period of time.
d. Equity or Investment-Based Crowdfunding: this is a type of crowdfunding where investors put funds into start-ups in return for shares acquisition. The investors are entitled to profits based on their shares in the start-up[4].

It is important to point out that, the regulation is only applicable to investment based crowdfunding[5] which is defined as the process of raising funds from the public through an online portal in exchange for shares, debt securities or other investment instruments approved by the Commission. By implication, only debt-based and equity or

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[1] The Security and Exchange Commission Rules, Rules and Regulation on Crowdfunding, (21 January, 2021) Ibid, Rule 1.
[2] Ibid, Rule 1.
[3] Harlem, ―Regulatory Framework for Crowdfunding in Nigeria‖ < https://www.harlemsolicitors.com/2021/03/07/the-regulatory-framework-for-crowdfunding-in-nigeria/ > accessed on 7th February, 2026
[4] < https://www.qubit.capital/blog/types-of-crowdfunding-models > accessed on 07 February, 2026
[5] Rule 2, SEC Rules on Crowdfunding (n2)

investment-based crowdfunding are regulated. The Regulation is not applicable to donation-based, debt-based and reward-based crowdfunding. This is because the latter does not come within the meaning of investment securities which is the focus of the Securities and Exchange Commission.

1.3 Participants to Crowdfunding

Part 4 of the Security and Exchange Commission Rules on Crowdfunding[6], identifies the participant to include, Fundraisers, Investors, Operators and their Portal, all of these are discussed below.

1.3.1 Fundraiser (Issuer)

This refers to the originator of the security or investment instrument which must be registered with the Intermediary[7].In other words, a fund raiser is that business entity seeking to raise fund through a registered crowdfunding portal. It is the issuer of the investment instrument that is being offered to the public as a security[8]. However, a fund raiser must be a private company falling within the meaning of a Micro, Small, & Medium Enterprise as described by the Small & Medium Enterprises Development Agency of Nigeria (SMEDAN)[9]. Thus, the rules set out the criteria for eligibility of an enterprise. To qualify as fundraiser, the entity must be either be a:

a. Micro, Small, or Medium Enterprises incorporated as a company in Nigeria with a minimum of two-years operating track record; or
b. Micro, Small, or Medium Enterprises incorporated as a company in Nigeria with less than 2 years operating track record, which has a strong technical

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[6] Ibid

[7] Ibid, Rule 1

[8] Omoyajowo K. (2021) CROWDFUNDING REGULATORY FRAMEWORK IN NIGERIA: An Appraisal of the Highlights of SEC Crowdfunding Regulation. < https://ssrn.com/abstract=4148797. > accessed on 06 January, 2026, p.1.

[9] 2021 – 2025 National Policy on Micro, Small and Medium Scale Enterprises in Nigeria < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nafdac.gov.ng./wp-content/uploads/Publications/Laws/NATIONAL-POLICY-ON-MSMEs-x.pdf&ved=2ahUKEwje2_r-oceSAxUpUkEAHQSdA8sQFnoECCAQA&usg=AOvVaw0-sY8QVo6hmNxnCki2BUIj > accessed on 07 February, 2026

partner that possesses a minimum of 2 years operating track record or has a core investor[10].

From the foregoing, it is clear that Public Companies[11], business names, partnerships or other form of business organisation not registered as a Private Company under Part B of the Companies and Allied Matters, Act[12] are not eligible Fundraisers or issuers of investment instruments in Crowdfunding transactions. Therefore, a fundraiser (registered Private Company) may offer or sell investment instruments without the need for prior registration of the investment instruments pursuant to the Investment and Securities Act, provided that the total sum or aggregate amount of investment instruments that can be offered and sold by the Fundraiser within a 12-month period shall comply with the following limits:

a. The maximum amount which may be raised by a Medium enterprise shall not exceed N100 Million;
b. The maximum amount which may be raised by a Small enterprise shall not exceed N70 Million;
c. The maximum amount which may be raised by a Micro enterprise shall not exceed N50 Million[13].

The limits set forth above shall not apply to Commodities Investment Platforms, or such other MSMEs as may be designated by the Commission from time to time. Retail investors may not invest more than 10% of their net annual income in a calendar year. Sophisticated, High Net worth and Qualified Institutional Investors are not subject to the limits set forth above. The SEC Rules and Regulation on Crowdfunding[14] defines the expression Micro, Small and Medium Enterprises (MSMEs) to be as prescribed by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) in relation to total asset annual turnover or number of employees. This classification has been prescribed by the SMEDAN via it publication in the 2021 – 2025 National Policy on Micro, Small and Medium Scale

[10] Rule 3, (n2)
[11] Ibid, Rule 39 (b)
[12] 2020 (as amended by the Business Facilitation Act, 2023)
[13] Rule 4 (n2).
[14] Ibid, Rule 1;

Enterprises in Nigeria[15]. In relation to crowdfunding here, the classification into micro, small and medium enterprises can be graphically represented as follows.

SIZE OF ENTERPRISE	EMPLOYEES OF ENTERPRISE	ASSETS	MAXIMUM THRESHOLDS
Micro Enterprises	3 – 9	3 - 25 million naira	50 million naira
Small Enterprises	10 – 49	25+ but less than 100 million naira	70 million naira
Medium Enterprises	50 – 199	100+ but less than 1000 million naira	100 million naira

However, it must be noted, that not all incorporated entities even though they may be private companies are eligible to act as a fundraiser. The rules does not permit entities with complex structures; public listed companies and their subsidiaries; companies with no specific business plan or a blind pool; companies that propose to use the funds raised to provide loans or invest in other entities; and such other entity as may be specified by the Commission to act as fundraisers[16].

1.3.2 Investor

This refers to an entity that seeks to make, is making, or has made an investment with the expectation of achieving returns. An investor has some rights under the proposed Rules such as 48 hours grace window to withdraw the investment after offer closes, right to withdraw his investment within 7 days of becoming aware of any material adverse change affecting the issuer and right to be refunded debited sums within 48 hours after cancellation or withdrawal[17]. However, an investor is not allowed to transfer their investment instrument for a period of one year after allotment. This is called the lock in period. This restrictions is subject to certain exceptions He is allowed to effect transfer where it is;

a. to the fundraiser of the securities or investment instrument;
b. to a qualified institutional investor/High Net-worth Individual(s);

[15] 2021 – 2025 National Policy on Micro, Small and Medium Scale Enterprises in Nigeria (n9)
[16] Rule 39 (n2).
[17] Ibid, Rule 22

c. part of an offer for sale registered with the Commission;
d. to retail investors registered on the crowdfunding portal or to a family member of the investor or to a trust created for the benefit of the family member of the investor or in connection with the death or divorce of the investor or other similar circumstance[18]

1.3.3 The Operator (Crowdfunding Intermediary)

This is an entity organized and registered as a corporation by the Security and exchange commission to facilitate transactions involving the offer or sale of securities or investment instruments through a Crowdfunding Portal[19]. The operator owns, controls and manages the crowdfunding portal, website or platform through which the funds are pooled. As such, SEC places emphasis on obligations to the crowdfunding intermediary in discharging its obligations to the investor and the fundraiser.

For an entity to be eligible for registration as a crowdfunding intermediary, the entity must make an application to the Securities and Exchange Commission accompanied with prescribed document provided for by Rule 6 of the rules on Crowdfunding. Examples of some of this document includes the certificate of incorporation, memorandum and articles of association and amendments (if any) all certified by the Corporate Affairs Commission (CAC), prescribed CAC Form(s) showing Statement of Share Capital, Return of Allotment, and Particulars of Directors[20].

The applicants must further satisfy the commission that it will be able to operate an orderly, fair and transparent system in relation to the investment instruments that are offered through its electronic platform[21]; the board, chief executive, and any officer of the Crowdfunding Intermediary who is primarily responsible for the operations or financial management of the Crowdfunding Portal, are fit and proper persons who are not

[18] Ibid, Rule 27.
[19] Ibid, Rule 1,
[20] Ibid, Rule 6.
[21] Ibid, Rule 7 (a) (i)

disqualified on any of the grounds listed in rule 7 such as conviction for an offence involving fraud or dishonesty or any offence in relation to capital market[22].

Also the applicant must show that the Crowdfunding Intermediary will be able to manage any risk associated with its business and operation[23] and able to take appropriate action against any person in breach of any rules, policies, terms and other standards of the portal including directing the person in breach to take any necessary remedial measure[24]; and will make satisfactory provisions for the protection of investors and public interest, ensure proper functioning of the market, promote fairness and transparency manage any conflict of interest that may arise[25] and finally show the Crowdfunding Intermediary has sufficient financial, human and other resources for the operation of the Crowdfunding Portal, as prescribed by the Commission from time to time[26].

Entities which previously operated as Operators before the coming of the rules were required to restructure their operations and comply with the rules by apply for registration not later than 90 days from the effective date of these rules[27]. Thus, the commission issued a notice dated the 25th of May 2021, to all existing investment crowdfunding requiring compliance on or before 30th of June 2021. Anything after this date, every operator is presumed to be registered with the Security and Exchange Commission.

1.3.4 Crowdfunding Portal

This refers to the website, platform, portal, intermediary portal, application, or other similar module that facilitates interaction between Fundraisers and the investing public[28]. It simply means the virtual space or place where the offer or sale of investment security is carried out.

Only entities registered to carry out business as an operator or crowdfunding intermediary are eligible to operate a Crowdfunding portal[29].The rule recognises and controls

[22] Ibid. Rule 7 (a) (ii)
[23] Ibid. Rule 7 (a) (iii)
[24] Ibid. Rule 7 (a) (iv)
[25] Ibid. Rule 7 (a) (v)
[26] Ibid. Rule 7 (a) (vi)
[27] Ibid, Rule 43.
[28] Ibid, Rule 1
[29] Ibid, Rule 5 (a)

crowdfunding portals which are not domiciled or registered in Nigeria but target Nigerian investors. Therefore, It covers this by providing that an entity is be deemed as facilitating, operating, providing or maintaining a crowdfunding portal in Nigeria if[30]:

a. the crowdfunding portal is operated, provided or maintained in Nigeria;
b. the crowdfunding portal is located outside Nigeria but targets Investors in Nigeria; or
c. the component parts of the portal when taken together are physically located in Nigeria even if any of its component parts, in isolation, is located outside Nigeria;

A crowdfunding portal that is located outside Nigeria will be considered as actively targeting investors in Nigeria if the operator, or the operator‘s representative, promotes directly or indirectly the Crowdfunding Portal in Nigeria[31]. It must be noted that an entity is not deemed an operator of a crowdfunding portal simply because it is a technology service provider, whom merely provides the infrastructure, software or the system to an operator of a crowdfunding portal or the entity is an operator of a communication infrastructure that merely enables orders to be routed to an approved stock market or the entity simply acts as an operator of a financial portal that aggregates content and provides links to financial sites of service and information provider[32]

1.4 Legal Framework on Crowdfunding in Nigeria

In Nigeria, the following legal regimes governs the operation of Crowdfunding:

1.4.1 The Investment and Securities Act (ISA) [33]

The Investment and Securities Act, 2025 established the Securities and Exchange Commission[34] providing for its headquarters at the Federal Capital Territory, Abuja with Zonal offices across Nigeria[35]. The Act sets out the powers and functions of the Commission in the capital market in Nigeria[36]. The Act empowers public companies,

[30] Ibid, Rule 5 (b)
[31] Ibid, Rule 5 (c)
[32] Ibid, Rule 5 (e)
[33] No. 2, 2025
[34] Ibid, Section 1
[35] Ibid, Section 2
[36] Ibid, Section 3

statutory companies and banks to receive deposits and savings from the public however private companies are expressly prohibited from partaking in advertising shares to the public. Section 95 (1) of the Investment and Security Act,[37] states that a person shall not make any invitation to the public to acquire or dispose of any securities or to deposit money with any corporate person for a fixed period or payable at call, whether bearing or not bearing interest unless the person or body corporate concerned is;

a. a public company and the securities it seeks to offer to the public have been registered with the Commission;
b. a statutory body or bank established by or under an Act of the National Assembly and is empowered to accept deposits and savings from the public or issue its own securities, as defined under this Act, promissory notes, bills of exchange and other instruments;
c. an entity licensed by the Central Bank of Nigeria and empowered to accept deposits and savings from the public;
d. a collective investment scheme;
e. government body or an agency of a government body, supranational body or such other entity approved by the Commission to issue securities under this Act; or
f. a free trade zone entity whose capital raising exercise has been approved by the Commission[38]

The above provision is an absolute bar on companies that do not fall within the above category from issuance of investment instrument to the public. This therefore means that private companies are disallowed from offering their securities via shares or debentures to the members of the public by advertisement in newspaper, media. This position differs from SEC Rules on Crowdfunding that is applicable to only private companies in Nigeria as will be discussed below.

1.4.2 Companies and Allied Matters Act (CAMA)[39]

The provisions of Companies and Allied Matters Act on non-issuance of securities by private companies to the public is similar to Section 95(1) of the ISA. Section 22(5) of

[37] Ibid.
[38] Ibid, Section 95(1),
[39] (2020) as amended by the Business Facilitation (Miscellaneous Provisions) Act, 2022.

Companies and Allied Matters Act provides that ―a private company shall not, unless authorised by law, invite the public to:

a. Subscribe to any share or debenture of the company; or
b. deposit money for fixed periods or payable at call, whether or not bearing interest.‖

From the foregoing provisions, it is clear that only public companies, statutory bodies and banks are permitted to receive deposits and savings from the public. It will be shown in subsequent pages that that the SEC rules on Crowdfunding regulates private companies only, thereby barring public companies from participating in crowdfunding.

1.4.3 The Security and Exchange Commission"s (SEC) Rules on Crowdfunding[40]

The Commission published Rules on Crowdfunding on the 21st of January 2021 pursuant to Section 13 of the repealed Investment and Securities Act (ISA) 2007. The Rules on Crowdfunding continues to operate by virtue of the repeal and savings provision in Sections 355 and 356 of the Investment and Securities Act (ISA)[41], which had the effect of ensuring the continuous application of Rule and Regulation made under the ISA, 2007. The Rules apply to Investment-Based Crowdfunding.[42] One notable feature of the Rules is that, unlike the ISA and CAMA, private companies are not barred from participating in Crowdfunding. It must be noted, that the Rules prohibit entities that have complex structures; public listed companies and their subsidiaries; companies with no specific business plan or a blind pool; companies that propose to use the funds raised to provide loans or invest in other entities; and such other entity as may be specified by the Commission to act as fundraisers[43]. As earlier noted, the idea of Crowdfunding itself, connote offers to the public at large, and this mechanism seem to contravene the explicit provisions of the Companies and Allied Matters Act[44] and the Investment and Security

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[40] 2021

[41] 2025

[42] Oruche, S.R., (2021), Nigeria: Crowdfunding for Small to Medium Scale businesses: (An Analysis under the Nigerian Law)' (Mondaq, 7 December) at < https://www.mondaq.com/nigeria/securities/1138928/crowdfunding-for-small-to-medium-scale-businesses-an-analysis-under-the-nigerian-law? >Accessed 23 December, 2026.

[43] Ibid, Rule 39.

[44] Section 22(5), CAMA. 2020 (as amended)

Act.[45] In light of this contradiction, can the SEC rules be said to be valid? Nevertheless, the SEC been aware of these Acts went ahead and published the Rules and Regulation on Crowdfunding which is appears to be in conflict with the ISA and CAMA. Therefore, as the law stands in relation to the rules on Crowdfunding, only unlisted public companies can raise capital through crowdfunding.

To navigate the statutory restriction imposed on private companies, it is advisable that such companies enter into a simple investment contract between itself and investors. Investment contract contemplated in this paper are transactions whereby one or more parties agree to invest a specific amount of money, to a particular business or company (private company in this case) with the expectation of getting returns from the income or profit generated by the business or company. These contracts structure the Crowdfunding contribution as an agreement with projected returns rather than direct issuance of company shares, and thereby avoiding corporate governance breaches.

1.5 Obligations of the Fundraiser in Crowdfunding in Nigeria[46]

A fundraiser in Crowdfunding has certain obligations under the SEC Rules on Crowdfunding. An Operator has the duty to restrict the access of the fundraiser on a breach of any of these duties and the operator must notify the Commission of such breach. The obligations of the fundraiser are discussed below:

1.5.1 Issuance of an Offering Document

A fundraiser shall issue an offering document[47]. An offering document must be short, easy to read, standardized for comparability and digital friendly by utilising hypertext links[48] to give easy access to detailed information[49].

[45] Section 95(1), ISA, 2025

[46] Part 6, (n2)

[47] Ibid, Rule 30

[48] This is a text embedded with hyperlinks enabling a user to click on it and be directed to another page for detailed explanation. It akin to a reference to another page to read more on an item. < Https://www.geeksforgeeks.org/html/hyperlink-vs-hypertext/ > accessed on 7th February, 2026

[49] Rule 31, (n2).

1.5.2 Disclosure of Details of Fundraising

The offering document shall disclose warnings to investors, the name and address of the Fundraiser, directors and officers, holders of more than 5% of the Fundraiser‘s equities, description of the business of the Fundraiser, principal and peculiar risks facing the business of the Fundraiser, copies of resolutions of the board of the company, a narrative discussion of the financial condition of the Fundraiser, use of proceeds, target offering amount and the deadline to reach the target offering amount. It must also disclose the number and price of the securities or investment instruments being offered and the associated obligations, capital structure and ownership of the Fundraiser, risk factors, information about an investor‘s right to cancel his/her investment and exit options for investors which shall be in accordance with the provisions of these rules, the rules and regulations of the Commission, and applicable companies law[50].

1.5.3 Disclosure of Risk involved in the Business

The rules require a fundraiser to make a comprehensive risk disclosure associated with the investment in its offering documents. The risk must cover any difficulty that may be encountered in sale of securities, any restriction that may be placed on the ability of the investor to cancel his investment, the risk of investment performing below expectations, and failure of profitability of investments[51].

1.5.4 Continuous Disclosure of Changes and Progress of Business

A fundraiser is mandated to continuously disclose and deliver to the investor as well as the operator any changes in it documents, it annual audited financial statement to an investor via it website. A fundraiser must also make available on its website, the Crowdfunding Portal and by email to each of its investors, a notice within 24 hours of in the event it discontinues, changes, or changes the control of its business[52].

[50] Ibid, Rule 32.

[51] Ibid, Rule 33.

[52] Ibid, Rule 34.

1.5.5 Observing Prohibitions or Restrictions

A Fundraiser is prohibited from advertising investment instrument other than through a crowdfunding intermediary[53], therefore, a fundraiser is prohibited from paying commission, finders' fee, referral fees or similar payment to any person in connection with an offering other than to the Crowdfunding Intermediary. A Fundraiser is also prohibited from placing an offer concurrently on multiple crowdfunding portal and any investment instrument offer must be permissible and not contrary to the provision of the rules. Finally, a Fundraiser must not assist an investor in financing the purchase of investment instruments[54].

1.6 Obligations of the Operator in Crowdfunding in Nigeria

An operator of a Crowdfunding portal has the following obligations to an investor, failure of which he may be held liable[55]:

1.6.1 Disclosure of Risks and Information

An operator must provide information necessary to explaining and understanding it's Crowdfunding portal. Such information required to be disclosed include details of the fundraiser's ownership, management and overall controls structure in place at the time of the offering, details of control measures that will guard against losses or certifications possessed by the underlying business, and other information as may be necessary to understanding the offer of a fundraiser[56]. The operator must provide materials for proper investor's education on general risks warning, communication channels, complaints handling or dispute resolution and its procedures, the fees, charges and other expenses that it may impose on a Fundraiser or investor.

1.6.2 Due Diligence

An Operator must be diligent in carrying out investigations to verifying a prospective Fundraisers business. An operator must ensure that a Fundraiser's seeking to offer and sell investment instruments through the crowdfunding portal has complied with the

[53] Ibid, Rule 36

[54] Ibid, Rule 38

[55] Ibid, Part 3, Rule 11-20

[56] Ibid, Rule 11 (1); ibid, Rule 16

requirements Rules on Crowdfunding. the operator carries out it due diligence obligation by taking reasonable steps to conducting background checks on the Fundraiser to ensure that the board of directors, officers and controlling shareholder(s) of the Fundraiser are fit and proper and shall in particular, verify that the board, chief executive, and any officer of the Fundraiser who is primarily responsible for its operations or financial management have not been convicted, whether within or outside Nigeria, of an offence involving fraud or other dishonesty or any offence relating to capital market. The operator also ensures that a prospective fundraiser has not been blacklisted by a professional body which the fundraiser belongs[57].

1.6.3 Monitoring and Reporting

An operator must monitor the conduct of Fundraisers on its portal and take action against misconduct of the Fundraisers. The operator must ensure that the fundraising limits imposed on the Fundraiser are not breached and that the fundraiser complies with all reporting obligation required by the Rules such as making quarterly and annual returns, An operator must report to the SEC by filing monthly reports specifying the total number of Fundraisers on it crowdfunding portal, total number of investors who invested through the portal ,number and types of securities or investment contracts issued and total amount raised on the portal during the reporting period. An operator is required to make a quarterly report of observed breaches or risk incidents and steps taken to address same, complaints received and steps taken to resolve same during the reporting period from investors[58].

1.6.4 Data Protection and Privacy

An Operator must establish appropriate safeguards for ensuring the integrity, security and confidentiality of information received from investors. This duty may be fulfilled by ensuring that the crowdfunding portal is insured from failure or closure and making available hard copiers of information and documents on the portal in a secured facility to avoid permanent loss of information that may arise due to website crash[59].

[57] Ibid, Rule 12

[58] Ibid, Rule 13

[59] Ibid, Rule 14

1.6.5 Operation of Trust Account

An Operator must appoint a custodian registered by the SEC to establish and maintain a separate trust account (in an interest yielding account) for each funding round on its portal for the benefit of the fundraiser. The custodian will then release the funds to the Fundraiser after three conditions are met. These conditions include, the targeted amount sought to be raised or the minimum threshold has been met; there is no material adverse change relating to the offer during the offer period; and all applicable requirements for the registration of securities have been met[60].

1.6.6 Attestation of a Fundraiser"s Businesses

An operator must make attest or certify to the verification of the legitimacy of the Fundraiser‘s business. The attestation must verify that the operations of the Fundraiser‘s business are in agreement with the fundraiser‘s disclosed objectives and will continue to be so and in the event of any purposed changes, the investors will be promptly notified and given opportunity to withdraw from their investment before such change[61].

1.6.7 Compliance

An Operator must ensure compliance with all rules all rules, regulations, code of conduct, and laws governing capital market operators in Nigeria Policies and procedures. As part of it compliance obligations, an Operator must permit the examination and inspection of all of its business and business operations that relate to crowdfunding activities, such as its premises, systems, portal, and records by representatives of the Commission[62].

1.6.8 Record Keeping

An Operator must make and preserve adequate records of all information relating to investors, Fundraisers, communications that occur on or through its portal, notices, maintenance and internal change logs carried out on the portal, documents relating to the crowdfunding portal. These records are subject to examination at any time by the representatives of the Commission[63].

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[60] Ibid, Rule 15

[61] Ibid, Rule 11 (1) (g) and (h)

[62] Ibid, Rule 17

[63] Ibid, Rule 18

1.6.9 Notifications to Investor

An operator is required to make continuous notification of events to an investor of a crowdfunding in Nigeria. The operator must make notifications to an investor of changes in fundraiser's business, investor education programmes. It also protecting an investor by notifying the Commission, to restrict access of a Fundraiser to its portal, if it has reason to believe that the Fundraiser or any of its officers has been convicted of fraud or otherwise raises reasonable suspicions of fraudulent activity and taking measures to reduce the risk of fraud on it portal,

A breach of any of the above obligations by an operator makes him liable to a fine of not less than N100, 000.00 (One Hundred Thousand Naira Only) and the sum of N5, 000.00 (Five Thousand Naira Only) for every day the violation continues and shall in addition be liable for any loss of investor funds arising due to the Crowdfunding Intermediary's failure to meets its obligations[64]. It should be noted that the SEC rules in silent on financial liability of a fundraiser for damages wrongly caused to an investor. Thus, in such a case, the investor will have to seek financial remedies through other means.

1.7 Conclusion

Crowdfunding is a financing mechanism that permits an investor to gather resources from the public to finance a new business undertaking. Thus, crowdfunding facilitates raising of funds from the public thereby preventing frustration of business due to lack of fund. The legal regime governing crowdfunding principally include Companies and Allied Matters Act, Investment and Securities Act and Security and Exchange Commission Rules on Crowdfunding. Accordingly, participant of crowdfunding include, the fundraiser, operator, Crowdfunding portal and investor all of which are saddled with obligations to perform; and subjected to sanctions where breaches occur.

Nevertheless, in view of the issues discussed in this paper, it is found that the Rules on Crowdfunding is in conflict with the Companies and Allied Matters Act, as well as the Investment and Securities Act which disallow private companies from sourcing finance from the public while the SEC Rules on Crowdfunding makes private companies eligible fundraisers. Therefore, as the law stands in relation to the rules on crowdfunding, only

[64] Ibid, Rule 42

unlisted public companies can raise capital through crowdfunding. Accordingly, it is recommended that, the Companies and Allied Matters Act as well as Investment and Securities Act should be amended to incorporate crowdfunding in Nigeria so as to resolve the conflict originating from the SEC Rules on the subject matter.

In addition, it is also found that, the SEC Rules on Crowdfunding 2021, provides compensation to an investor against damages occasioned by an operator. It does not provide for compensation for losses occasioned by acts of fundraiser to an investor; consequently, the Commission cannot give a summary punishment to address the losses. Accordingly, it is recommended that the SEC Rules on Crowdfunding 2021 should be amended to provide compensation in situations of losses by a fundraiser to an investor so as to the Commission to provide immediate to an investor who suffers loss.