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An Overview of the
Securities and Exchange
Commission Regulatory
Incubation Guidelines

AN OVERVIEW OF THE SECURITIES AND EXCHANGE COMMISSION REGULATORY INCUBATION GUIDELINES

The Securities and Exchange Commission (SEC) recently released the SEC Regulatory Incubation Guidelines for Specific Category of Fintech Entrepreneurs. Through its Regulatory Incubation (RI) Program, the SEC seeks to provide an environment for Fintechs to operate under limited provisions for a specified period. Regulatory Incubation makes it possible for regulators to create new rules or amend existing ones to better accommodate new business models.

Pre-Qualification Requirement

The Guidelines provide for a set of requirements that applicants to the RI Program must meet in order to participate. A cursory look at the pre-qualification requirements reveals that importance is placed on the innovation, usefulness and safety of the fintech product or service sought to be provided. The requirements can be summarized as follows:

1. Innovative technology shall be used to offer a new type of product or service, or add innovation to an existing product or service;
2. The activity in question shall be a financial service within the scope of the activities regulated by the SEC;
3. The Applicant shall be ready to start with live customers and operate within the purview of the SEC Regulatory Framework;
4. The Applicant shall undertake to apply for registration as soon as the SEC provides Rules;
5. The product or service in question shall be one that addresses a problem or brings potential benefits to consumers or industry;
6. The product must be safe for investors;
7. The Applicant shall complete the Fintech Assessment Form and discuss the proposal with the SEC.

What requirements must an Applicant fulfil in respect of Regulatory Incubation Operations?

The Guidelines specify certain requirements an Applicant to the RI Program must meet in respect of Regulatory Incubation Operations namely:

1. Possession of relevant skills in financial services and/or technology
2. Undertaking to act with integrity, due care and diligence and provide referee information
3. Undertaking to provide clients with full information and regular feedback
4. Undertaking to provide full disclosure to the SEC on the business through an incubation implementation plan
5. Undertaking to provide procedure for holding and controlling client assets
6. Undertaking to comply with relevant laws and regulations
7. Operating a Nigeria office
8. Undertaking to comply with AML/CFT requirements
9. Provision of monthly reports to the SEC.

What should be included in an Implementation Plan?

As earlier stated, an Applicant to the RI Program is to provide an Implementation Plan to the SEC as part of the application requirements. The Guidelines specify what is to be included in an Implementation Plan. They are as follows:

1. Full description of the business and the proposed innovative Fintech product, service or business model including type of technology;
2. The objectives and parameters for the incubation period;
3. Implementation timeline and key milestones for testing;
4. Target or existing customers;
5. Risk Management Framework;
6. Description of how the Fintech Operator intends to ensure customers understand the risks;
7. Methodology of handling communications with customers before and during the incubation period;
8. Description of steps to be taken at the expiration of the incubation period; and
9. An exit plan if registration is not achieved.

Are there any restrictions Fintech operators under Regulatory Incubation must adhere to?

The Guidelines place certain restrictions on Fintech operators under Regulatory Incubation. Such operators are not permitted to conduct any other investment business except as presented to the SEC. They are also prohibited from financial promotions such as any notice, circular, letter or other written or electronic communication, guaranteeing returns. Fintech operators under Regulatory Incubation are not permitted to provide misleading or untrue information.

What conditions are Fintech Operators under Regulatory Incubation supposed to adhere to?

Fintech Operators under Regulatory Incubation are expected to have the capacity to onboard a maximum of 100 clients, however, this number can be increased upon the appraisal and approval of the SEC. In the case of Fintech operators that are already in operation, the Guidelines specify that they are to maintain their existing clients but cease onboarding new clients. Fintech operators are to ensure that their clients are fully informed of the product or service before onboarding.

Fintech Operators are to be under regulatory incubation only for a maximum period of one (1) year. At the end of this period, eligible Fintech Operators are expected to apply for registration or discontinue activity.

Can a Fintech Operator be removed from Regulatory Incubation?

The SEC reserves the right to terminate a Fintech Operator's participation in the Regulation Incubation process in the following circumstances:

1. The Fintech Operator is no longer meets the eligibility criteria
2. A breach of any of the restrictions or conditions has occurred
3. A breach of the law or guidelines has occurred
4. The Fintech Operator deviates from the implementation plan presented to the SEC
5. The Fintech Operator failed to take steps to apply for registration or submit notice of discontinuance at the end of the regulatory incubation process.

Applicants can also withdraw from the Regulatory Incubation process at any time by notifying the SEC.

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