

SMALL PUBLIC COMPANY COALITION
A 501(c)(6) Trade Organization

FOR IMMEDIATE RELEASE

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**SMALL PUBLIC COMPANY COALITION APPLAUDS INTRODUCTION OF
THE DEFINING DEALER ACT**
Restoring the Statutory Definition of “Dealer” Under the Securities Exchange Act of 1934

Washington, D.C. — **The Small Public Company Coalition** today issued the following statement in strong support of [H.R. 8328](#), “Defining Dealer Act” - legislation introduced by Representative Byron Donalds (FL-19) to overturn the Eleventh Circuit’s decisions in *SEC v. Almagarby* and *SEC v. Keener* and to repudiate the SEC’s novel and radical enforcement campaign targeting professional investors under a dangerously overbroad interpretation of the statutory definition of “dealer” under the Securities Exchange Act of 1934 (the “Exchange Act”).

Section 15(a) of the Exchange Act requires registration by persons “engaged in the business of buying and selling securities” for their own account. For decades, the line between a “dealer”—who intermediates between buyers and sellers, executes customer orders, and holds itself out to the public—and an investor or trader who deploys capital at its own risk was well understood. The SEC abandoned that understanding, and several courts, including the Eleventh Circuit, have followed it into serious error.

The Eleventh Circuit’s decisions in *Almagarby* and *Keener* rest on a single deeply flawed premise: that anyone whose business model is centered on the purchase and sale of securities for their own account is a “dealer,” irrespective of whether that person renders any of the services that have historically defined dealer status—maintaining a market, holding out to buy and sell on demand, executing customer transactions, or providing liquidity to the public. Under this logic, any active investor with a consistent investment strategy is potentially a “dealer.” The statutory trader exception is rendered meaningless, and the term “dealer” is unmoored from any discernible standard of conduct against which a market participant can calibrate its behavior or plan its affairs.

The consequences extend far beyond the specific defendants in those cases. The SEC’s enforcement theory, if left uncorrected by Congress, threatens to sweep in investment companies, registered investment advisers, family offices, venture capital funds, private equity funds, hedge funds, PIPE investors, and ELOC funds—in short, the full architecture of professional investing in this country. None of these institutions has historically been understood to be a “dealer.” None of them intermediates customer transactions. None of them is the kind of entity Congress had in mind when it enacted the dealer-registration provisions of the Exchange Act. Yet each of them now operates under the shadow of an enforcement theory with no principled limiting principle and no discernible standard of acceptable conduct.

This uncertainty is not theoretical. The SEC’s enforcement campaign and the rulings it has produced have had a broad and demonstrable chilling effect on capital formation—most acutely for the small and emerging companies that depend on private investment to fund their growth. Convertible debt financing, PIPE transactions, and equity line facilities have long provided essential capital to smaller public companies that cannot access institutional credit markets on competitive terms. As investors recalibrate their exposure to regulatory risk under this unpredictable enforcement theory, it is these companies—and their employees, suppliers, and communities—that bear the cost.

The interpretation embraced by the Eleventh Circuit is inconsistent with the text, structure, and legislative history of the Exchange Act. It is inconsistent with decades of Commission guidance and no-action practice. And it is inconsistent with fundamental principles of fair notice: regulated parties are entitled to know, in advance and with reasonable clarity, what conduct triggers registration obligations. An enforcement theory whose outer boundary cannot be articulated is not a legal standard—it is an invitation to arbitrary and unpredictable enforcement.

“The SEC has pursued a novel and boundless enforcement theory that treats professional investors as unregistered broker-dealers simply because buying and selling securities is central to what they do. That is not what the Exchange Act says, it is not what Congress intended, and it is not what decades of settled practice have reflected. The Defining Dealer Act restores clarity, protects capital formation, and ensures that the professional investment community can continue to serve the small public companies that depend on it.”

— **Marc Indeglia, President, Small Public Company Coalition**

Congress has both the authority and the responsibility to act. The Small Public Company Coalition urges Members of the House and Senate to pass legislation clarifying that the acquisition, holding, conversion, or disposition of securities for one’s own account—without holding out to the public or effecting transactions on behalf of customers—does not constitute “dealer” activity under the Exchange Act. Such legislation would restore the statutory framework Congress enacted, eliminate an enforcement regime with no discernible limiting principle, and preserve the private capital markets that small public companies depend on to grow, create jobs, and serve their communities.

The Small Public Company Coalition thanks Congressman Donalds for his leadership and calls on Congress to pass this legislation without delay. Our member companies, the investors who support them, and the broader capital markets cannot afford to wait for the courts to correct an error that the SEC has spent years propagating.

About the Small Public Company Coalition

The Small Public Company Coalition is a 501(c)(6) trade organization representing the interests of small businesses, investors, financial institutions, and other participants in the small and microcap markets before the Securities and Exchange Commission, Self-Regulatory Organizations, National Securities Exchanges, and the United States Congress. The Coalition advocates for regulatory frameworks that support capital formation, reduce compliance burdens,

and promote the growth and development of small public companies and the businesses and investors that serve them.

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