

## [Securities Regulation Daily Wrap Up, BROKER DEALERS—N.D. Tex.: Trade associations ask Texas court to vacate SEC's new dealer rules, \(Mar. 19, 2024\)](#)

Securities Regulation Daily Wrap Up

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By [John Filar Atwood](#)

The associations are managers of private funds, such as hedge funds, that would be swept into the rules' expanded definition of "dealer."

Three trade associations have sued the SEC over its new dealer rules, claiming that the agency has exceeded its statutory authority, that it failed to provide a reasoned basis for the rules, and that the rules impose an unnecessary burden on competition. The associations, which have asked a Texas judge to vacate the rules, represent managers of private funds that will be subject to the expanded definition of "dealer" and will have to register with the SEC and comply with the 1934 Act's reporting regime ([National Association of Private Fund Managers v. SEC](#), March 18, 2024).

[Adopted](#) in early February, the rules require market participants that take on significant liquidity-providing roles to register with the Commission and become members of a self-regulatory organization. A "dealer" is defined as any person whose trading activity regularly has the effect of providing liquidity to the marketplace.

**Private funds are customers.** The associations objected to the fact that the rules sweep in private funds, such as hedge funds, which are customers of broker-dealers, not dealers themselves, and which are governed by an entirely different regulatory structure. They noted that the SEC estimated that only about a dozen funds will be included in the new definition, but the associations believe this estimate considers the effect of only a single prong of the rule, and that the reach of the entire rules will be much greater.

The argument echoes objections raised by Commissioner Hester Peirce at the time the rules were adopted. In her view, the rules eliminate the distinction between a dealer and a trader by extending the definition to market participants that run investing and trading businesses, not dealing businesses. Many traders are customers, she noted, and would lose the protections they enjoy as customers under the new rules.

**No limiting principle.** According to the associations, the new definition of "dealer" is overbroad and lacks any limiting principle. As written, the rule would include everyone from a mutual fund to the Federal Reserve Bank of New York, the associations argued.

They also pointed out that Congress deliberately exempted private funds from federal registration due to the sophistication of private fund investors, and prior attempts by the SEC to bring them into the regulatory scheme have been unsuccessful. They cited a 2004 attempt by the SEC to redefine "client" to require fund managers to register because they had thousands of clients. The rule was struck down by the D.C. Circuit.

At the time of the adoption of the latest rules, Commissioner Caroline Crenshaw emphasized that the rules help close regulatory loopholes and "level the playing field by subjecting market participants that perform similar dealer functions to a common regulatory regime." The associations claimed that this reasoning is flawed because private funds are broker-dealers' customers, not competitors.

The associations asked the court to throw out the new rules, and to enjoin the SEC from implementing or applying the rules until the associations' case has been decided.

The case is [No. 4:24-cv-00250](#).

Attorneys: Dee J. Kelly, Jr. (Kelly Hart & Hallman, LLP) for National Association of Private Fund Managers and Managed Funds Association.

Companies: National Association of Private Fund Managers; Alternative Investment Management Association;  
Managed Funds Association

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