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FTC Challenges Interlock Tied to Beretta-Ruger Minority Investment

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Last week, the Federal Trade Commission (FTC) announced another “interlocking directorate” enforcement action, demonstrating the antitrust agencies’ continued aggressive enforcement of Section 8 of the Clayton Act. The proposed consent order resolves antitrust allegations arising from Beretta Holding’s minority acquisition of shares in Sturm, Ruger & Co. The order settles allegations that the agreement, which allowed Beretta to appoint two members to Ruger’s board of directors, would create an illegal interlocking directorate since the parties are direct competitors in the production and sale of firearms. This action follows the FTC’s announcement that three individuals resigned from the board of Sevita Health in September 2025 due to FTC scrutiny and recent unconfirmed reports that the Department of Justice (DOJ) is investigating a venture capital firm for potential Section 8 violations.

In the Beretta-Ruger matter, the FTC alleged that under the parties’ agreement, Beretta, a subsidiary of Upifra, agreed to increase its stake in Ruger to as much as 25% of Ruger’s outstanding shares. In exchange, Beretta obtained contractual board designation rights: The agreement provided that Ruger’s board “shall” appoint two directors sourced by Beretta to the board, with those directors included on Ruger’s slate of nominees for the 2027 and 2028 annual meetings.

Section 8 of the Clayton Act is a strict liability statute that prohibits the same person from serving as an officer or director of two competing companies, known as an interlocking directorate, regardless of whether the arrangement has any actual anticompetitive effect. The antitrust agencies have interpreted the statute, which refers to the same “person” sitting on the board of competitive corporations, to extend to “representatives” of the relevant corporations.

The rule applies when the companies compete with one another and exceed certain statutory size thresholds, unless one of the statute’s de minimis exceptions applies. Those exceptions generally exempt interlocks where the companies’ overlapping sales are relatively small, either in absolute terms or as a percentage of total sales. Section 8 also provides a one-year grace period to unwind an interlock that becomes unlawful due to changed circumstances, such as a transaction that increases competitive sales above the relevant threshold.

The FTC’s complaint alleged that this arrangement would create an illegal interlocking directorate in violation of Section 8 of the Clayton Act and an unfair method of competition under Section 5 of the FTC Act. According to the complaint, Beretta and Ruger are horizontal competitors across multiple lines of firearms, which the FTC alleged Ruger had acknowledged in its securities filings.

The FTC took particular issue with the fact that, although the agreement nominally required Beretta’s board designees to be “independent,” it lacked robust independence safeguards and permitted waiver of certain independence requirements, potentially allowing Beretta personnel or other non-independent individuals to sit on Ruger’s board. Of note, the FTC did not allege that Beretta intended to appoint an officer or director of Beretta to the Ruger board – the apparent focus was on the alleged lack of “fulsome requirements” on independence for any director. Also of note, the order does not eliminate the appointment right altogether.

The proposed consent order permits the transaction to proceed but imposes structural safeguards on Beretta’s board rights, including that Beretta:

- May not appoint, nominate or otherwise cause any person to be appointed or nominated to Ruger’s board unless that person is a genuinely “Independent Director,” as defined to exclude anyone with a “Material Relationship” with Beretta or its parent.
- Must give the FTC at least 15 days’ advance written notice before any board appointment, designation, nomination or election involving Ruger.
- May not hire or enter into any financial or other relationship with an independent director it nominates that would compromise that director’s fiduciary duties, or that would facilitate the flow of Ruger’s nonpublic information to Beretta, for

one year after that director leaves the Ruger board.
- May not otherwise seek or receive Ruger's nonpublic information from any director it nominates.

The order runs for five years, with interim and annual compliance reporting obligations, and requires Beretta to circulate the order to new board members and officers on an ongoing basis.

Why this matters

- The enforcement action extends beyond officers or directors of competing corporations to appointed "representatives" and requires that those representatives be "independent." The FTC scrutinized the substance of the independence protections in the agreement, not just the label. Contractual board rights that merely describe designees as "independent," without a robust definition and without limits on waiver, will not insulate an interlocking directorate arrangement between competitors from scrutiny.
- The current administration has shown it is broadly open to remedies, including Section 8 enforcement. Often companies remedy interlocking directorate concerns by having the offending director step down from the relevant board, but without signing a consent. Here, the FTC required a consent order, but the order does not block the appointment power outright. The FTC's consent order provides a framework for parties considering investments in competitors, including independence requirements, information-sharing restrictions and a cooling-off period for departing directors.
- The FTC is prepared to use its administrative complaint and consent order process to address board interlocks proactively, before they are ever seated. The FTC press release announcing the Beretta enforcement action stated, "This latest enforcement action serves as a warning that the FTC will take action to prevent anticompetitive board of director overlaps between competitors."
- Building on increased enforcement activity in the Biden administration, the current administration has also been focused on interlocking directorate issues, and Section 8 enforcement remains a priority. In announcing the September 2025 Sevita enforcement action that resulted in three individuals resigning from the Sevita Health board, the FTC noted, "We are committed to enforcing the Clayton Act's prohibition on interlocking directorates, which risk suppressing competition." This action follows attention from the DOJ and FTC to interlocking directorates, including a wave of board resignations obtained by the DOJ in 2022 and 2023 without formal litigation. Given this continued scrutiny, it is important for companies to ensure that their boards comply with Section 8, including reviewing board memberships when board members are added as a result of new investments.

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