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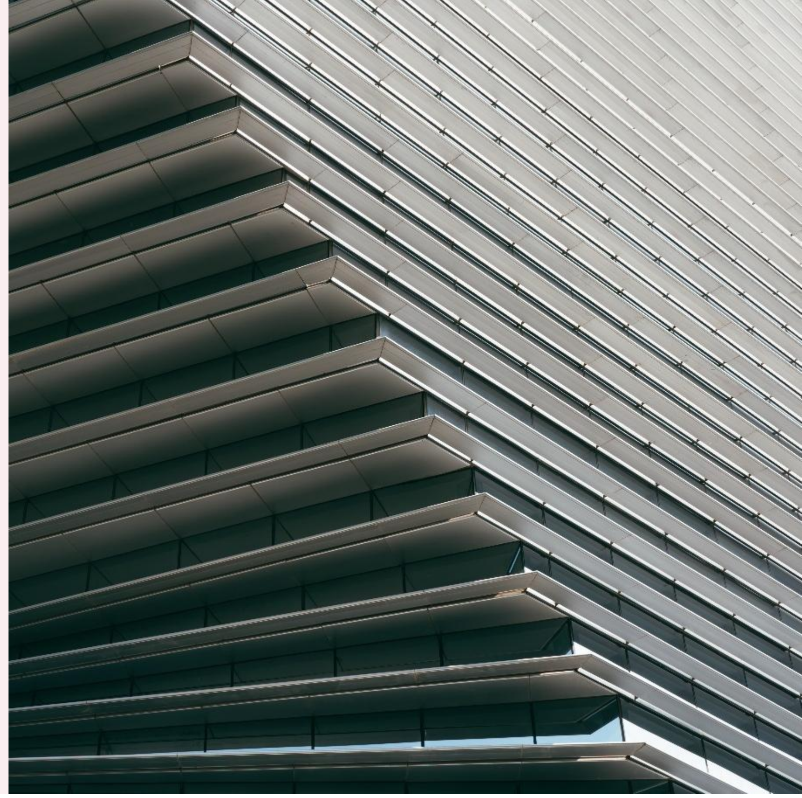

FTC Consent Order Against Beretta Holding Signals Continued Enforcement Focus on Section 8 Interlocking Directorates

September 23, 2026

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On September 16, 2026, the US Federal Trade Commission announced a proposed consent order resolving allegations that a proposed share purchase arrangement between firearm manufacturers Beretta and Sturm, Ruger & Co. would create an illegal interlocking directorate in violation of Section 8 of the Clayton Act. The arrangement contemplated Beretta increasing its equity stake in Ruger up to 25% and gaining the right to nominate up to two directors to Ruger's board. The proposed consent order restricts which individuals Beretta may appoint or nominate to Ruger's board, requires Beretta to give the FTC advance notice before selecting any such individual, and limits Beretta's interactions with its nominees following their appointment.

Key Takeaways

The FTC's proposed consent order with Beretta underscores that the FTC continues to actively scrutinize interlocking directorates under Section 8. The two most recent Section 8 enforcement matters—Beretta / Ruger and Sevita Health / Beacon Specialized Living Services—show that HSR notifications are a common means by which the antitrust agencies become aware of potentially unlawful interlocking directorates.

The FTC's complaint reaffirms the agency's position, consistent with past agency practice and court decisions, that Section 8 can be violated when a company places an "agent, deputy, or representative" on a competitor's board. However, that may not be the case if the director is sufficiently "independent" of the nominating company. The proposed consent order provides practical guidance as to what the FTC considers sufficient for "independence," and sets a high bar. According to the proposed consent order, to qualify as sufficiently independent to avoid potential Section 8 risks, the nominee cannot:

1. be an employee, officer, director, representative, or agent of Beretta, and cannot have held such a role in the past three years;
2. be a partner or employee of an external auditor of Beretta; or
3. have a "material relationship" with Beretta, which is defined to include having a familial, financial, contractual, employment, or any other relationship with Beretta that would reasonably be expected to impair the objectivity of his or her judgment as a director.

Legal Background: Section 8 of the Clayton Act

Section 8 of the Clayton Act, 15 U.S.C. § 19, broadly prohibits "interlocking directorates and officers" among competing corporations.[1] The statute bars any person from serving as a director or officer of two corporations that are engaged in commerce and are, "by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws." Several safe-harbor exceptions apply: the prohibition does not reach (i) "banks, banking associations, and trust companies"; (ii) corporations whose "capital, surplus, and undivided profits" fall below a de minimis threshold; and (iii) corporations whose "competitive sales" fall below one of several defined de minimis thresholds. The statute also provides a one-year grace period if a director or officer would otherwise become ineligible due to a change in the corporation's capital, surplus, or undivided profits or in its affairs.

What Happened

In May 2026, Beretta and Ruger announced an agreement under which Beretta, already Ruger's largest shareholder, would increase its stake to up to 25% of Ruger's outstanding shares.[2] The agreement gave Beretta the right to nominate two directors to Ruger's board, and provided that Ruger's board "shall" appoint the nominees, subject to due diligence and qualification criteria. The agreement imposed independence requirements on the Beretta-sourced directors, including by requiring that they not have served as a "director, officer, employee, partner, trustee, manager, consultant or advisor of any member of the Beretta Holding Group or of any other Competitor or any Affiliate of any Competitor." Notably, however, the agreement allowed Ruger to waive these criteria, "subject to compliance with applicable law." The agreement also required the companies to make a merger notification filing

1 See 15 U.S.C. § 19, "Interlocking directorates and officers," https://www.govinfo.gov/app/details/USCODE-2018-title15/USCODE-2018-title15-chap1-sec19.

2 See "Ruger and Beretta Holding S.A. Announce Strategic Cooperation Agreement" (May 4, 2026), https://berettaholding.com/ruger-and-beretta-holding-s-a-announce-strategic-cooperation-agreement.

under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended (the "HSR Act"), before closing.

On September 16, the FTC announced and filed a complaint under Section 8 of the Clayton Act and Section 5 of the FTC Act, 15 U.S.C. § 45.[3] The FTC simultaneously filed a proposed consent order resolving the allegations in the complaint. The complaint alleged that Beretta and Ruger are "competitors," citing a Ruger securities filing that described the two companies as such, and that Section 8 accordingly required any Ruger directors nominated by Beretta to be "independent" of Beretta.[4] According to the FTC, the agreement's waiver provision would have allowed Beretta to nominate its own members or other individuals who did not satisfy the independence requirements. The FTC alleged that this arrangement violated Section 8 because "[i]f a company chooses a natural person to serve on a competitor's board as its agent, the company and the natural person violate Section 8 unless an exception or safe harbor applies."

The proposed consent order prohibits Beretta from appointing or nominating any person other than an "Independent Director" to Ruger's board.[5] The order defines that term to exclude, among other categories, any "employee, officer, director, representative, or agent" of the relevant entity; any individual who has received "direct or indirect compensation" from the relevant entity; "a partner or employee of a firm" serving as the relevant entity's "internal or external auditor"; and any individual with a "material relationship" with the relevant entity, including a "familial, personal, financial, contractual, professional, employment, or any other relationship that would reasonably be expected to impair the objectivity of the Independent Director's judgment when participating as a director." The order also requires Beretta to provide the FTC with 15 days' notice before appointing, designating, nominating, electing, or otherwise causing any person to become a member of Ruger's board.

The proposed consent order also restricts Beretta's interactions with the Ruger directors it nominates. Under the order, Beretta is prohibited from hiring or entering into any relationship with a Beretta-nominated director that would "involve violating the Independent Director's fiduciary duty" or "involve the exchange of Nonpublic Information received about Ruger to a Relevant Person." Beretta is also prohibited from soliciting sensitive nonpublic Ruger information from its nominees.

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3 See Fed. Trade Comm'n, "FTC Takes Action to Prevent Anticompetitive Arrangement in Beretta, Ruger Deal" (Sep. 16, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/09/ftc-takes-action-prevent-anticompetitive-arrangement-beretta-ruger-deal.

4 See Fed. Trade Comm'n, Complaint, In the Matter of Beretta Holding S.A., https://www.ftc.gov/system/files/ftc_gov/pdf/Beretta-Ruger-Complaint.pdf.

5 See Fed. Trade Comm'n, Proposed Decision and Order, In the Matter of Beretta Holding S.A., https://www.ftc.gov/system/files/ftc_gov/pdf/Beretta-Ruger-Order.pdf.

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