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U.S. Antitrust Agencies Continue to Focus on Interlocking Directorates

Federal Trade Commission encourages companies to review the composition of their boards to ensure compliance with Section 8 of the Clayton Act.

On September 15, 2025, the Federal Trade Commission (FTC) [announced](#) that it resolved an enforcement action relating to section 8 of the Clayton Act. Section 8 generally prohibits a director or officer of one company from serving on the board of a competitor, subject to certain de minimis exceptions and safe harbors.

The FTC's Enforcement Action

As described in the FTC's announcement, three members of the board of Sevita Health were also serving on the board of Beacon Specialized Living Services, Inc. Both companies "provide services, including residential facilities, to individuals with intellectual and developmental disabilities."

The matter was resolved with resignations to remove the interlocks and the issuance of a press release. The FTC did not commence a formal administrative proceeding or require a consent order. This approach is consistent with how section 8 matters have [historically](#) been resolved by the antitrust agencies. In the prior administration, the Antitrust Division of the U.S. Department of Justice (DOJ) issued numerous press releases announcing board resignations to resolve interlocking directorate matters.

The announcement does not say how the FTC learned of the particular interlocks at issue. Indeed, there are many ways in which the DOJ and FTC can become aware of interlocks, including proactive monitoring, tips from the public and academic studies. The agencies also uncover evidence of interlocks in the course of merger or conduct investigations. The HSR [rules](#) now require that filers provide information about officers and directors that could reveal a potential section 8 issue.

Background on Section 8 of the Clayton Act

Section 8 of the Clayton Act, 15 USC §19, states that, if the corporations are above a certain size, "[n]o person shall, at the same time, serve as a director or [board-appointed] officer in any two corporations . . . that 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."

[Currently](#), section 8 applies where each corporation has capital, surplus and undivided profits aggregating more than \$51,380,000. Section 8 does not apply if the competitive sales of either corporation are less than \$5,138,000. Additionally, if the competitive sales of either corporation are less than 2% of that corporation's total sales, or less than 4% of each

corporation's total sales, the interlock is exempt. Competitive sales are "all products and services sold by one corporation in competition with the other."

The law provides for a one-year grace period such that a person who was not initially prohibited from serving as an officer or director may continue to serve until one year after the corporations become competitors and the competitive sales exceed the relevant threshold.

Section 8 has been interpreted to cover both "direct" interlocks – i.e., when the same individual serves as a director or officer of competing corporations – and on occasion "indirect" interlocks – i.e., where different individuals serve as directors or officers of competing corporations, but both have been "deputized" to act on behalf of the same third entity (e.g., a private equity fund). The interlock at issue here appears to be direct. According the FTC, "three individuals [were] serving as directors for both Sevita and Beacon simultaneously."

Action Item

Periodically Review Board Memberships for Potential Competitive Overlap

In the announcement, the director of FTC's Bureau of Competition stated: "We encourage all firms to review their board memberships to avoid any overlaps with competitors—including when new board members are added as a result of investments by private equity firms or other new shareholders."

Potential section 8 issues can arise when a company appoints new officers and directors. They can also arise as a company's business evolves or as a fund's portfolio—and the businesses within in it—shift and expand. Indeed, companies that are not initially competitors may become competitors as product and service lines change and markets evolve. Therefore, companies and private equity funds should be aware of the prohibitions of section 8 and periodically evaluate board memberships as part of their ongoing antitrust compliance program.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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