Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–18421 Filed 8–23–23; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than September 11, 2023.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Piedmont Financial Holding Company, Winston-Salem, North Carolina;* to acquire Wake Forest Bancorp, M.H.C., and Wake Forest Bancshares, Inc., and thereby indirectly acquire Wake Forest Federal Savings and Loan Association, all of Wake Forest, North Carolina, and thereby engage in operating a savings association pursuant to Section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–18371 Filed 8–24–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 221 0212]

EQT and Quantum; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 25, 2023.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''EQT and Quantum; File No. 221 0212'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex N), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Greta Burkholder (202–326–3225), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 25, 2023. Write ''EQT and Quantum; File No. 221 0212'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''EQT and Quantum; File No. 221 0212'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex N), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before September 25, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from QEP Partners, LP, by itself and through the entities under its control (including Quantum Energy Partners VI, LP; Q–TH Appalachia (VI) Investment Partners, LLC) (collectively, ''Quantum''), and EQT Corporation (''EQT,'' and together with Quantum, ''Respondents''). EQT has proposed acquiring THQ Appalachia I, LLC (''Tug Hill'') and THQ-XcL Holdings I, LLC (''XcL Midstream'') from Quantum for approximately $5.2 billion: $2.6 billion in cash and up to 55 million shares of EQT stock (''Proposed Transaction''). In addition to this consideration, and in connection with Quantum's anticipated status as one of EQT's largest shareholders, EQT agreed to facilitate the appointment of Quantum's CEO, or another Quantum-designated individual, to the EQT Board of Directors.

The Proposed Transaction raises several concerns. Specifically, both Quantum's anticipated position as one of EQT's largest shareholders and EQT's obligation to facilitate the appointment of a Quantum designee to the EQT board raise concerns that Quantum or EQT could have access to each other's competitively significant, non-public information and could participate in, or have influence over, competitive decision-making at each firm. Under Section 8 of the Clayton Act, it is per se illegal for directors and officers to serve simultaneously on the boards of competitors (subject to limited exceptions), as would occur here absent the Consent Agreement with the appointment of Quantum's designee to the board of its competitor, EQT. In addition to these concerns, a pre-existing joint venture between EQT and Quantum, The Mineral Company (''TMC''), raises concerns with respect to the exchange of competitively sensitive business information regarding the acquisition of mineral rights within the Appalachian Basin.

The Consent Agreement is designed to remedy allegations in the Commission's Complaint that: (1) Quantum's proposed acquisition of up to 55 million shares of EQT stock, together with or separately from assurances that a Quantum-designee will be nominated for a seat on the EQT Board of Directors, would result in an illegal interlocking directorate in violation of Section 8 of the Clayton Act, 15 U.S.C. 19, and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45 due to potential exchange of confidential, competitively sensitive information, and that (2) TMC, the pre-existing Quantum/EQT joint venture, is an unfair method of competition in violation of section 5 of the FTC Act, 15 U.S.C. 45.

The proposed settlement presents significant relief for these concerns. The Consent Agreement and proposed Decision and Order (''D&O'') prohibit Quantum from occupying an EQT Board seat and require Quantum to divest its EQT shares by a non-public date certain, effectively imposing a structural fix to concerns about the influence and information access that arise from Quantum's sizable EQT shareholder position. The D&O contains provisions that incentivize Quantum's rapid sale of the EQT shares, coupled with provisions effectively rendering Quantum's ownership passive pending the sale of its EQT shares. The D&O also reduces opportunities for exchanging confidential and competitively significant information between the firms beyond Quantum's EQT share ownership, notably by requiring EQT and Quantum to unwind the TMC mineral rights acquisition joint venture. The D&O contemplates the appointment of a monitor to ensure compliance with the terms of the ten-year order.

The proposed D&O imposes effective and administrable relief, while setting important Commission precedent on the application of Section 8 of the Clayton Act, Section 5 of the FTC Act, and the use of structural remedies to address these theories of harm. By restricting future opportunities for the parties to engage in conduct that would result in Section 8 violations and other unfair methods of competition involving natural gas activities in the Appalachian Basin, the proposed D&O signals the antitrust risks of excessive influence and anticompetitive information exchange.

The Commission has placed the Consent Agreement on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

I. The Respondents

Respondent QEP Partners, LP is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located in Houston, Texas. Respondent QEP Partners, LP controls Respondents Quantum Energy Partners VI, LP and Q–TH Appalachia (VI) Investment Partners, LLC. Through its private equity, investment, and structured finance funds, Quantum owns, controls, or has influence over entities producing natural gas in the Appalachian Basin and throughout the country. Quantum-owned entities include Tug Hill, a natural gas producer in the Appalachian Basin, and XcL Midstream, a natural gas gatherer and processor in the Appalachian Basin, two entities sought for purchase by Respondent EQT.

Respondent EQT is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located in Pittsburgh, Pennsylvania. EQT is the nation's largest producer of natural gas. EQT acquires mineral rights and produces natural gas and natural gas liquids primarily in the Appalachian

Basin, including areas close to Quantum's Tug Hill/XcL Midstream operations. EQT markets natural gas within and outside the Appalachian Basin.

II. The Agreements

On September 6, 2022, EQT and Quantum entered into a Purchase Agreement, under which EQT sought to acquire Tug Hill and XcL Midstream from Quantum for a total purchase price of approximately $5.2 billion. Roughly half of the consideration to Quantum would take the form of up to 55 million shares of EQT stock.[1] The Proposed Transaction would make Quantum one of EQT's largest shareholders. As additional consideration, EQT agreed to ''take all necessary action to facilitate'' the appointment of Quantum CEO Wil VanLoh, or another Quantum designee, ''to be included in a slate of director nominees recommended by the [EQT] Board'' for election as an EQT director.

The Commission's Complaint alleges that the Proposed Transaction, as structured, would violate Section 8 of the Clayton Act, 15 U.S.C. 19, as an illegal interlocking directorate, and that the Proposed Transaction—the acquisition of up to 55 million EQT shares or EQT's obligation to use best efforts to nominate a Quantum director—also constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45 due to risks of the exchange of competitively sensitive, non-public information.

In October 2020, EQT and a Quantum affiliate entered an agreement forming a joint venture, TMC. TMC served as a vehicle for EQT to purchase mineral rights in the Appalachian Basin, with funding largely supplied by Quantum. The TMC agreement requires EQT to offer a right of first refusal to TMC before EQT can purchase mineral rights within a specified geography. TMC receives forward-looking and competitively sensitive, non-public information about EQT's mineral rights acquisition plans, drilling plans, strategies, and operations. Quantum's participation in TMC management provided it with access to this information as well.

The Commission's Complaint alleges that the TMC joint venture is an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

III. Line of Commerce

The production and sale of natural gas is a relevant line of commerce. Natural gas is a critical fuel source with highly varied uses in the United States and worldwide. Natural gas purchasers generally cannot switch to alternative fuels without substantial costs and delay.

The acquisition of mineral rights is also a relevant line of commerce. To produce natural gas, a firm must first purchase or lease mineral rights from landowners. The mineral rights held by a producer can indicate key aspects of the producer's future production plans, including the areas the producer may drill and the amount of drilling activity the producer anticipates within a reasonable timeframe.

The Appalachian Basin, consisting of the portions of West Virginia, Pennsylvania, Ohio, Maryland, Kentucky, and Virginia that lie in the Appalachian Mountains, is widely recognized as a major natural gas producing area in the United States, and one of the largest in the world. A current shortage of available pipeline capacity to transport natural gas from the Appalachian Basin to demand centers outside of the Basin is a distinguishing characteristic of the region. Stranded excess gas supply in the Basin has artificially depressed local prices relative to pricing locations outside the Basin. Given current pipeline constraints, customers located within the Appalachian Basin cannot economically purchase gas from outside the Basin.

IV. Effects of the Agreements

The Commission's Complaint addresses two theories of harm. First, Quantum's acquisition of up to 55 million EQT shares would make Quantum—an EQT rival in the production and sale of natural gas in the Appalachian Basin—one of the largest shareholders of EQT. This shareholder position would provide Quantum with the ability to sway or influence EQT's competitive decision-making and to access EQT's competitively sensitive information. As one of EQT's largest shareholders, Quantum would have the opportunity to communicate directly with EQT and could discuss confidential business information or direct or otherwise influence EQT's competitive actions or strategies. Knowledge gained via its relationship with EQT could also influence Quantum's own competitive decisions or development of new businesses involved in the production and sale of natural gas. The Commission's Complaint alleges these opportunities are particularly problematic given certain actions by the Respondents, including the TMC joint venture and other activities involving providing nonpublic information that restricted competition, the natural gas industry's history of encouraging the exchange of competitively sensitive information, and competitors publicly signaling their strategic moves to other competitors.

Moreover, the Proposed Transaction explicitly contemplated Quantum CEO Wil VanLoh's appointment to EQT's Board of Directors. In addition to his role as CEO, Mr. VanLoh is the Chair of the Investment Committee for Quantum Energy Partners, Quantum's private equity subsidiary and the entity that oversees the investment decisions of Respondent Quantum Energy Partners VI, LP and its subsidiaries. Mr. VanLoh was previously a member of the Tug Hill Board of Directors and also sits on the Board of Directors of another natural gas company in which Quantum invests. As a result, Mr. VanLoh's appointment to EQT's Board of Directors while simultaneously serving as CEO of Quantum and Chair of Quantum's Investment Committee would create an illegal interlocking directorate between EQT and Quantum. Any other director appointed by Quantum would be, by virtue of the appointment, an agent of Quantum and under its control. Thus, appointing a Quantum-designated director (other than Mr. VanLoh) to EQT's Board of Directors would similarly create an illegal interlock between EQT and Quantum. The Complaint alleges that the above concerns violate both section 8 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Complaint's second theory of harm addresses the TMC joint venture specifically, as well as information exchange more generally. The TMC joint venture creates additional opportunities for sharing competitively sensitive business information. Respondents already may use TMC as a vehicle for information exchange, either with respect to competition for the purchase of mineral rights or in connection with EQT's future drilling plans. Via the TMC joint venture, EQT and Quantum (through portfolio companies involved in the acquisition of mineral rights and production and sale of natural gas in the Appalachian Basin) each can inform the other where it intends to procure mineral rights for future productions and how much it plans to bid. This information is forward-looking, non-public, and competitively sensitive, and its exchange among rivals, coupled with the non-compete agreements in place

[1] The number of shares ultimately due to Quantum is subject to customary purchase price adjustments, including adjustments for business proceeds and costs incurred during the interim period between signing and closing of the Proposed Transaction.

within the joint venture, harms competition in the acquisition of mineral rights. The Complaint also alleges that the TMC joint venture violates section 5 of the Federal Trade Commission Act.

V. The Proposed Order

The proposed Order imposes several terms to remedy these concerns. First, the Order requires Quantum to forego its right to a seat on EQT's Board. Quantum shall not, directly or indirectly, appoint any persons to EQT's Board, seek or obtain representation on EQT's Board, or have any of its agents or representatives serve simultaneously as an officer or director of EQT or in a decision-making capacity of any EQT entity. EQT, conversely, shall not, directly or indirectly, have any of its representatives serve simultaneously in any management capacity within Quantum, any operating entity controlled by Quantum, or any investment fund managed by Quantum. This Order provision makes it clear that Quantum is subject to the prohibition on interlocking directors and officers under section 8 of the Clayton Act, despite Quantum's limited liability and limited partnership corporate structure.

Second, absent prior Commission approval, the proposed Order prohibits Quantum from serving on the Board of any of the top seven Appalachian Basin natural gas producers, accounting for a substantial majority of the market.

Third, Quantum shall sell its EQT shares by a non-public date certain. Failure to sell by that date will result in the transfer of the shares to a trustee empowered to liquidate the shares unilaterally. Quantum cannot knowingly divest these shares to an entity that is one of the top seven natural gas producers in the Appalachian Basin without prior Commission approval. Quantum is also prohibited from sharing with EQT any non-public information regarding its stock position or intent to sell or hold any of the EQT shares.

Fourth, during the period when Quantum owns EQT shares, the shares will be held in a voting trust, and any votes will be carried out by the trustee pro rata with all other EQT shareholders. The proposed Order prohibits Quantum from engaging in the solicitation of proxies in connection with its EQT shareholder position, and further prohibits Quantum from directly or indirectly influencing EQT's Board of Directors, management, or operations. Together, these provisions effectively render Quantum's shares a passive investment until the shares are sold.

Fifth, for the duration of the proposed ten-year Order, Quantum is prohibited from acquiring additional EQT shares absent prior Commission approval. During the period when Quantum owns EQT shares, however, prior approval is not needed for shares acquired indirectly as consideration for EQT's acquisition of a Quantum business that is subject to a premerger notification under the Hart-Scott-Rodino Act. Prior approval is also not required during a period when Quantum no longer owns EQT shares for shares acquired indirectly as consideration for EQT's acquisition of a Quantum business.

Sixth, the proposed Order also requires Quantum and EQT to unwind TMC, including any noncompete provisions.

Seventh, the proposed Order imposes further limitations on future entanglements between EQT and Quantum. For example, as noted above, the proposed Order prohibits any of EQT's directors, officers, agents, or representatives from serving simultaneously in any management capacity within Quantum, any operating entity controlled by Quantum, or any investment fund managed by Quantum. The proposed Order also prohibits Quantum and EQT from entering into any noncompete agreements other than those in connection with and ancillary to the sale of a business, assets, or company.

Eighth, the proposed Order contains additional provisions designed to ensure the effectiveness of the relief. A monitor will be appointed to track compliance, and both Respondents must provide regular compliance reports. Provisions of the proposed Order that do not end upon the sale of EQT shares will last up to ten years.

And finally, the proposed Order requires EQT and Quantum to distribute the Order to each of their respective board members, officers, and directors, and to design, maintain, and operate an antitrust compliance program.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro Bedoya

In September 2022, the nation's largest natural gas producer, EQT Corporation (''EQT''), proposed to acquire certain natural gas assets from private equity firm, Quantum Energy Partners, LP (''Quantum''). EQT agreed to offer $2.6 billion in cash, up to 55 million shares of EQT stock, and a seat on EQT's Board of Directors. Quantum has a host of investments and operations across the oil and gas industry, and both companies and their affiliates compete head-to-head in the production of natural gas in the Appalachian Basin. The proposed transaction would make Quantum one of EQT's largest shareholders and secure Quantum a seat on the board of its direct competitor. After conducting a thorough investigation, the Commission determined it had reason to believe this deal was illegal.

Today, the Commission announces a settlement of charges that the proposed transaction would result in an illegal interlocking directorate in violation of Section 8 of the Clayton Act and an unfair method of competition in violation of Section 5 of FTC Act due to the potential for exchange of confidential and competitively significant information. Specifically, Quantum's anticipated position as one of EQT's largest shareholders and EQT's obligation to facilitate the appointment of a Quantum designee to the EQT board raise concerns that the firms could exchange non-public sensitive business information and participate in or influence each other's strategic decisions.

The potential risks to competition posed by this transaction are particularly concerning given the dense and tangled web of co-investments, joint operations, and other methods of coordination between and among natural gas producers and investors in the Appalachian Basin. The sector is characterized by a tight-knit set of players rife with entanglements and a history of suspicious ventures and information exchange. Along these lines, the Commission's complaint separately charges that a pre-existing joint venture between EQT and Quantum relating to mineral rights acquisitions constitutes an additional unfair method of competition in violation of the FTC Act.

The proposed consent order lays out several terms to remedy these concerns. The order prohibits Quantum from occupying an EQT Board seat and requires it to divest the EQT shares, imposing a structural remedy to address concerns about the influence and information access that arise from Quantum's sizable EQT shareholder position. The order additionally limits both current and future entanglements between the firms and reduces opportunities for exchanging confidential and competitively significant information between the firms, including by requiring EQT and Quantum to unwind their existing joint venture and any noncompete provisions.

I. Revitalizing Section 8

Section 8 of the Clayton Act states that ''no person shall, at the same time, serve as a director or officer in any two corporations . . . that are (a) engaged in whole or in part in commerce; and (b) 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[.]'' [1] It was designed to prevent ''control of great aggregations of money, capital, and property through the medium of common directors.'' [2] Lawmakers recognized that interlocking directorates could facilitate undue coordination, influence, or other means of dampening competition. Congress adopted an incipiency approach, seeking to eliminate the very structure that would facilitate these violations by ''removing the opportunity or temptation to such violations through interlocking directorates.'' [3] Interlocking directorates that violate Section 8 are *per se* illegal.[4] Beyond requiring that the interlocked companies be ''competitors'' whereby the ''elimination of competition'' between them would violate the antitrust laws, Section 8 does not require any type of showing of harm to competition.[5]

Legislative efforts to address corporate interlocks were catalyzed by congressional reports in 1887, 1912, and 1913 that showed firms had used interlocks to win personal favors or exclusive treatment of suppliers or customers.[6] One of the most vocal opponents of board interlocks was Louis Brandeis. Shortly before his appointment to the Supreme Court in 1916, Brandeis authored several books and articles that highlighted the need for addressing interlocking directorates.[7] He believed that having influential individuals serve on the same corporate boards intrinsically and inevitably created a host of risks, including conflicts of interest, collusion, and improper exchange of competitively sensitive information. In his view, the prohibition on interlocking directorates ''merely g[a]ve full legal sanction to the fundamental law of morals and of human nature: that 'No man can serve two masters.''' [8]

Though Section 8 has a clear purpose, it has rarely been enforced in the over 100 years since its passage, and even less so in the past four decades.[9] Historically, the antitrust agencies addressed Section 8 violations by dismissing actions or closing investigations after firms ended the offending interlock.[10] However, the Commission eventually recognized that ''informal settlements [we]re not producing an adequate level of compliance'' and that ''this policy did not accomplish what Congress set out to do.'' [11] Throughout the 1970s and 80s, the FTC challenged interlocking directorates under Section 8 on multiple occasions and entered consent orders in every one of those cases, even where the interlocks had been terminated.[12] In the wake of these actions, the defense bar and industry groups began lobbying Congress for Section 8 reform, resulting in the Antitrust Amendments Act of 1990.[13] This law narrowed the types of interlocks that would be covered under Section 8. The years since have seen an overall decline in Section 8 enforcement.[14] We worry that this has

[1] 15 U.S.C. 19.

[2] Interlocks in Corporate Management, 1965 Staff Report to Antitrust Subcomm., 89th Cong., 1st Sess., 12 (1965).

[3] *See U.S.* v. *Sears, Roebuck & Co.,* 111 F. Supp. 614, 616 (S.D.N.Y. 1953) (''[W]hat Congress intended by § 8 was to nip in the bud incipient violations of the antitrust laws by removing the opportunity or temptation to such violations through interlocking directorates.'').

[4] Michael Blaisdell, Fed. Trade. Comm'n, Interlocking Mindfulness (June 26, 2019), *https://www.ftc.gov/enforcement/competition-matters/2019/06/interlocking-mindfulness.*

[5] *In re Borg-Warner Corp., et al.* 101 F.T.C. 863, 925 (1983) (The ''role of competition analysis in Section 8 is not to measure market power or to assess competitive effects; it is to establish a nexus of competitive interests between corporations sufficient to warrant concern over collusion or other outright market division should interlocked directors seek to share or exchange information.'').

[6] *See* Pacific Railway Commission, S. Exec. Doc. No. 51, 50th Cong., 1st Sess. (1887); Investigation of United States Steel Corp., H.R. Rep. No. 1127, 62d Cong., 1st Sess. (1912); House Comm. on Banking and Currency, Investigation of Concentration of Control of Money and Credit, H.R. Rep. No. 1593, 62d Cong., 3rd Sess. (1913). Congress recognized that the concentration of control via interlocking directorships ''tended to suppress competition or to foster joint action against third party competitors'' and concluded that because of ''such [joint] control, the healthy competition of the free enterprise system had been stifled or eliminated.'' *Sears,* 111 F. Supp. at 616.

[7] *See* L. Brandeis, *Breaking the Money Trusts,* Harper's Weekly, Nov. 22, 1913, at 10; *id,* Nov. 29, 1913, at 9; *id,* Dec. 6, 1913, at 13; *id,* Dec. 13, 1913, at 10; *id,* Dec. 20, 1913, at 10; *id,* Dec. 27, 1913, at 18; *id,* Jan. 3, 1914, at 11; *id,* Jan. 10, 1914, at 18; *id,* Jan. 17, 1914, at 18.

[8] L. Brandeis, Other People's Money and How the Bankers Use It (1914). As Brandeis observed: ''The practice of interlocking directorates is the root of many evils. It offends laws human and divine. Applied to rival corporations, it tends to the suppression of competition and to violation of the Sherman law. Applied to corporations which deal with each other, it tends to disloyalty and to violation of the fundamental law that no man can serve two masters. In either event it tends to inefficiency; for it removes incentive and destroys soundness of judgment. It is undemocratic, for it rejects the platform: 'A fair field and no favors,'—substituting the pull of privilege for the push of manhood.'' *Id.*

[9] According to one commentary, Section 8 enforcement has been ''punctuated by a few bursts of mild activity and then followed by long periods of benign neglect.'' J. Randolph Wilson, *Unlocking Interlocks: The On-Again Off-Again Saga of Section 8 of the Clayton Act,* 45 Antitrust L.J. 317, 317 (1976); *see* ABA Section of Antitrust Law, Interlocking Directorates: Handbook on Section 8 of the Clayton Act 4 (2011) (''This sleepy enforcement effort has been noted by the courts. . . .'') (citing *Bankamerica Corp.* v. *U.S.,* 462 U.S. 122, 130–31 (1983)).

[10] From the effective date of the Clayton Act through 1965, when the Senate Judiciary Committee issued a report on corporate interlocks, the Commission filed only thirteen complaints challenging interlocking directorates. Of those cases, twelve were dismissed when the directors involved resigned on the directorships, and only one resulted in a consent order. During the same period, the Department of Justice brought only ten cases to enforce Section 8. A. H. Travers Jr., *Interlocks in Corporate Management and the Antitrust Laws,* 46 Tex L. Rev. 819, 821 n.8 (1968) (citing Staff of House Comm. On the Judiciary, 89th Cong., 1st Sess., Report on Interlocks in Corporate Management 227 (1965)); *see* Vern Countryman, *The Federal Trade Commission and the Courts,* 17 Wash. L. Rev. 1, 30 (1942); G.H. Montague, *The Commission's Jurisdiction Over Practice in Restraint of Trade,* 8 Geo. Wash. L. Rev. 365, 375 (1940).

[11] *In re Kraftco Corp.,* 89 F.T.C. 46 (1977).

[12] *See In re Kraftco Corp.,* 88 F.T.C. 362 (1976); *In re Kraftco Corp.,* 89 F.T.C. 46 (1977); *In re TRW Inc., et al.,* 90 F.T.C. 144 (1977); *In re Int'l Bus. Machines Corp.,* 89 F.T.C. 91 (1977); *In re Midland-Ross Corp.,* 96 F.T.C. 863 (1980); *In re Borg-Warner Corp.,* 101 F.T.C. 863 (1983); *In re Hughes Tool Co.,* 103 F.T.C. 17 (1984); *In re Big Three Indus., Inc.,* 103 F.T.C. 24 (1984).

[13] Pub. L. 101–588, 104 Stat. 2879, § 2 (1990) (increasing the statute's jurisdictional threshold and creating three *de minimis* exceptions in cases of relatively insignificant competitive overlap).

[14] *See Robert F. Booth Tr.* v. *Crowley,* 687 F.3d 314, 319–20 (7th Cir. 2012) (''Actually, the chance of suit by the United States or the FTC is not even 1%. The national government rarely sues under § 8. *Borg–Warner Corp.* v. *FTC,* 746 F.2d 108 (2d Cir.1984), which began in 1978, may be the most recent contested case. When the Antitrust Division or the FTC concludes that directorships improperly overlap, it notifies the firm and gives it a chance to avoid litigation (or to convince the enforcers that the interlock is lawful).''); Debbie Feinstein, Director, Bureau of Competition, Fed. Trade Comm'n, Have a Plan to Comply with the Bar on Horizontal Interlocks (Jan. 23, 2017), *https://www.ftc.gov/enforcement/competition-matters/*

Continued

over time led to under-deterrence and that corporate actors are not sufficiently appreciative of Section 8's prohibitions.

Over the past year, our colleagues at the Antitrust Division have sought to reactivate Section 8 and effectively put market participants back on notice.[15] Today's complaint and consent order build on that effort, marking the Commission's first formal Section 8 enforcement in nearly 40 years.[16] This action is notable not just because it signals a return to the Commission's prior approach of seeking binding prospective relief through consent orders, but also because it expands upon the remedies previously sought. Notably, the proposed order includes a prior approval provision that prohibits Quantum from taking a seat on the boards of any of the top seven natural gas producers in the Appalachian Basin, accounting for a substantial majority of the market.

The proposed order also puts industry actors on notice that they must follow Section 8 no matter what specific corporate form their business takes. Firms in the modern economy utilize a variety of corporate forms and structures to engage in commerce, and industry actors have become increasingly sophisticated at corporate organization and venture formation. This is especially true in the private equity and financial sectors, with various limited liability vehicles, limited partnerships, and structured funds intricately entangled through a web of corporate and fiduciary relationships. Indeed, Quantum uses a limited liability structure when setting up its portfolio companies, and Quantum itself is a limited partnership. Section 8's specific prohibition of interlocks among competitor ''corporations'' pre-dates the development of other commonly used corporate structures, such as limited liability companies.[17] Accordingly, we must update our application of the law to match the realities of how firms do business in the modern economy.[18] Today's action makes clear that Section 8 applies to businesses even if they are structured as limited partnerships or limited liability corporations.

II. Standalone Section 5 Enforcement

The Commission's complaint charges that the proposed transaction would facilitate the exchange of confidential, competitively sensitive information in violation of Section 5 of the FTC Act. Specifically, Quantum's anticipated position as one of EQT's largest shareholders and EQT's obligation to facilitate the appointment of a Quantum designee to the EQT board raise concerns that Quantum or EQT could have access to one another's competitively significant, non-public information and could participate in, or have influence over, competitive decision-making at each firm. In addition to these concerns, a pre-existing joint venture between EQT and Quantum, The Mineral Company (''TMC''), may also facilitate the improper exchange of competitively sensitive business information regarding the acquisition of mineral rights within the Appalachian Basin.

In November 2022, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act.[19] As the policy statement explains, Congress enacted Section 5 to create a new prohibition broader than, and different from, the Sherman Act. The text of the statute, which prohibits ''unfair methods of competition,'' distinguishes the FTC's authority from authority granted in the Sherman and Clayton Acts. Lawmakers also made clear that Section 5 was designed to extend beyond the reach of the other antitrust laws.[20] And the Supreme Court has repeatedly made clear that Section 5 prohibits not just those practices that violate the Sherman Act or Clayton Act.[21]

Through the late 1970s, the FTC frequently brought Section 5 cases against conduct that would not necessarily run afoul of the Sherman or Clayton Acts. We now call these ''standalone'' Section 5 cases. They included invitations to collude;[22] price discrimination claims against buyers not covered by the Clayton Act;[23] de facto bundling;[24] exclusive dealing;[25] and

2017/01/have-plan-comply-bar-horizontal-interlocks (''The Commission has generally relied on self-policing to prevent Section 8 violations, and as a result, litigated Section 8 cases are rare (with none construing the 1990 amendments). In recent Section 8 investigations, once staff raised concerns, an individual agreed to step down from one company in order to eliminate the interlock.''); *cf.* Press Release, U.S. Dep't of Justice, Tullett Prebon and ICAP Restructure Transaction after Justice Department Expresses Concerns about Interlocking Directorates (Jul. 14, 2016), *https://www.justice.gov/opa/pr/tullett-prebon-and-icap-restructure-transaction-after-justice-department-expresses-concerns;* Press Release, U.S. Dep't of Justice, Justice Department Requires Divestitures in Commscope's Acquisition of Andrew Corporation (Dec. 6, 2007), *https://www.justice.gov/archive/atr/public/press_releases/2007/228330.htm.*

[15] *See, e.g.,* Press Release, U.S. Dep't of Justice, Justice Department's Ongoing Section 8 Enforcement Prevents More Potentially Illegal Interlocking Directorates (Mar. 9, 2023), *https://www.justice.gov/opa/pr/justice-department-s-ongoing-section-8-enforcement-prevents-more-potentially-illegal;* Press Release, U.S. Dep't of Justice, Directors Resign from the Boards of Five Companies in Response to Justice Department Concerns About Potentially Illegal Interlocking Directorates (Oct. 19, 2022), *https://www.justice.gov/opa/pr/directors-resign-boards-five-companies-response-justice-department-concerns-about-potentially.*

[16] *See In re Hughes Tool Co.,* 130 F.T.C. 17 (1984); *In re Big Three Indus., Inc.,* 103 F.T.C. 24 (1984).

[17] Holian et al, *21st Century Section 8 Enforcement: Legislative Origins and the 1990 Amendments,* American Bar Association, Antitrust Magazine Online (April 2023).

[18] *See* Makan Delrahim, AAG., Antitrust Div., U.S. Dep't of Justice, Remarks at Fordham University School of Law (May 1, 2019), *https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-fordham-university-school-law* (''Moreover, whether one LLC competes against another, whether two corporations compete against each other, or whether an LLC competes against a corporation, the competition analysis is the same. We and the FTC review mergers in this way, and we investigate our conduct matters this way too.'').

[19] Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of The Federal Trade Commission Act (Nov. 10, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.*

[20] Section 5 of the FTC Act expands these protections to encompass ''conduct that violates the spirit of the antitrust laws,'' including ''interlocking directors and officers of competing firms not covered by the literal language of the Clayton Act.'' Section 5 Policy Statement at 13, 15; *see In re Borg-Warner Corp. et al.,* 101 F.T.C. 863 (June 23, 1983); *In re TRW, Inc.,* 93 F.T.C. 325 (1979); *In re Perpetual Fed. Sav. & Loan Assoc.,* 90 F.T.C. 608 (1977).

[21] *See, e.g., FTC* v. *Ind. Fed'n of Dentists,* 476 U.S. 447, 454 (1986) (holding that ''[t]he standard of 'unfairness' under the FTC Act is, by necessity, an elusive one, encompassing not only practices that violate the Sherman Act and the other antitrust laws''); *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 242 (1972) (holding that ''the Commission has broad powers to declare trade practices unfair.''); *FTC* v. *Texaco, Inc.,* 393 U.S. 223, 262 (1968) (holding that ''[i]n large measure the task of defining 'unfair methods of competition' was left to the [FTC] . . . and that the legislative history shows that Congress concluded that the best check on unfair competition would be [a practical and expert administrative body] . . . [that applies] the rule enacted by Congress to particular business situations''); *FTC* v. *Brown Shoe,* 384 U.S. 316, 321 (1966) (holding that the FTC ''has broad powers to declare trade practices unfair[,] particularly . . . with regard to trade practices which conflict with the basic policies of the Sherman and Clayton Acts'').

[22] *FTC* v. *Cement Inst.,* 333 U.S. 683, 708 (1948) (holding that conduct that falls short of violating the Sherman Act may violate Section 5).

[23] *Alterman Foods* v. *FTC,* 497 F.2d 993 (5th Cir. 1974); *Colonial Stores* v. *FTC,* 450 F.2d 733 (5th Cir. 1971); *R.H. Macy & Co.* v. *FTC,* 326 F.2d 445 (2d Cir. 1964); *Am. News Co.* v. *FTC,* 300 F.2d 104 (2d Cir. 1962); *Grand Union Co.* v. *FTC,* 300 F.2d 92 (2d Cir. 1962).

[24] *Atl. Refin. Co.* v. *FTC,* 381 U.S. 357, 369 (1965) (holding that all that is necessary is to discover conduct that runs counter to the public policy declared in the Act . . .'' and that ''there are many unfair methods of competition that do not assume the proportions of antitrust violations'').

[25] *FTC* v. *Mot. Picture Advert. Serv. Co.,* 344 U.S. 392, 394–95 (1953) (noting that ''Congress advisedly left the concept [of unfair methods of competition] flexible . . . [and] designed it to supplement and bolster the Sherman Act and the Clayton Act[,] [so as] to stop . . . acts and practices [in their incipiency] which, when full blown, would violate those Acts[,] . . . as well as to condemn as 'unfair methods of competition' existing violations of them'').

many other practices.[26] The Commission also initiated multiple actions challenging mergers or series of acquisitions on the basis of Section 5 violations, separate and aside from Sherman or Clayton Act liability.[27] In the 1980s, however, the Commission backed away from bringing standalone Section 5 cases. In 2015, the Commission effectively collapsed the distinction between Section 5 and the other antitrust statutes. Today's action represents the first time in decades that the Commission has challenged a deal as a standalone violation of Section 5. It should remind market participants that transactions that might not strictly violate Section 7 can still pose a risk to competition that the FTC has a statutory obligation to address.

Quantum's position on EQT's board of directors and its role as one of EQT's largest shareholders would provide Quantum with the ability to sway or influence EQT's competitive decision-making and to access EQT's competitively sensitive information. The Commission's complaint alleges these risks are particularly serious given certain past actions by the parties, as well as the natural gas industry's history of encouraging the exchange of competitively sensitive information and public signaling to competitors. The complaint alleges that the two firms' TMC joint venture separately violates Section 5 of the FTC Act as it creates additional opportunities for sharing competitively sensitive business information. Further, there is reason to believe that EQT and Quantum already may use TMC as a vehicle for information exchange for the purchase of mineral rights and in connection with EQT's future drilling plans. This information is forward-looking, non-public, and competitively sensitive, and its exchange among rivals, coupled with the noncompete agreements in place within the joint venture, harms competition.

The proposed order is designed to remedy these concerns. The order prohibits Quantum from occupying an EQT Board seat and requires it to divest the EQT shares, which would structurally eliminate key mechanisms for undue influence and information exchange. The order also limits both current and future entanglements between the firms and reduces opportunities for exchanging confidential and competitively significant information between the firms, including by requiring EQT and Quantum to unwind their existing joint venture and any noncompete provisions.

[26] *Atl. Refin. Co.,* 381 U.S. 357.

[27] *See, e.g., Golden Grain Macaroni Co.* v. *FTC,* 472 F.2d 882, 885 (9th Cir. 1972); *In re Dean Foods Co.,* 70 F.T.C. 1146 (1966); *In re Nat'l Tea Co.,* 69 F.T.C. 226 (1966); *In re Beatrice Foods Co.,* 67 F.T.C. 473 (1965); *In re Foremost Dairies, Inc.,* 52 F.T.C. 1480 (1956).

[FR Doc. 2023–18272 Filed 8–24–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0135; Docket No. 2023–0053; Sequence No. 3]

Submission for OMB Review; Prospective Subcontractor Requests for Bonds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding prospective subcontractor requests for bonds.

DATES: Submit comments on or before September 25, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0135, Prospective Subcontractor Requests for Bonds. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0135, Prospective Subcontractor Requests for Bonds.

B. Need and Uses

Part 28 of the Federal Acquisition Regulation (FAR) contains guidance related to obtaining financial protection against losses under Federal contracts (*e.g.,* bonds, bid guarantees, etc.). Part 52 contains the corresponding provisions and clauses. These collectively implement the statutory requirement for Federal contractors to furnish payment bonds under construction contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds.

This information collection is mandated by section 806(a)(3) of Public Law 102–190, as amended by sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994 (10 U.S.C. 4601 note prec.) (Pub. L. 103–335). Accordingly, the FAR clause at 52.228–12, Prospective Subcontractor Requests for Bonds, requires prime contractors to promptly provide a copy of a payment bond, upon the request of a prospective subcontractor or supplier offering to furnish labor or material under a construction contract for which a payment bond has been furnished pursuant to 40 U.S.C. chapter 31.

C. Common Form

The General Services Administration is the sponsor agency of this common form. All executive agencies covered by the FAR will use this common form. Each executive agency will report their agency burden separately, and the reported information will be available at *Reginfo.gov.*

D. Annual Burden

General Services Administration

Respondents: 317.
Total Annual Responses: 793.
Total Burden Hours: 270.

E. Public Comment

A 60-day notice was published in the **Federal Register** at 88 FR 39850, on June 20, 2023. No comments were received.