

other relevant facts, the foreign investors do not control Corporation A.

(3) *Example 3.* Corporation A, a foreign person, is a private equity fund that routinely acquires equity interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

(4) *Example 4.* Corporation A, a foreign person, acquires a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A also acquires certain veto rights that determine important matters affecting Corporation B, including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

(5) *Example 5.* Corporation A, a foreign person, acquires a 13 percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member board of directors. Corporation A receives minority shareholder protections listed in paragraph (c) of this section but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

(6) *Example 6.* Corporation A, a foreign person, acquires a 20 percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

(7) *Example 7.* Limited Partnership A comprises two limited partners, each of which holds 49 percent of the interest in the partnership, and a general partner, which holds two percent of the interest. The general partner has sole au-

thority to determine, direct, and decide all important matters affecting the partnership and a fund operated by the partnership. The general partner alone controls Limited Partnership A and the fund.

(8) *Example 8.* Same facts as the example in paragraph (e)(7) of this section, except that each of the limited partners has the authority to veto major investments proposed by the general partner and to choose the fund's representatives on the boards of the fund's portfolio companies. The general partner and the limited partners each have control over Limited Partnership A and the fund.

NOTE 1 TO § 800.208: See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires 10 percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment. See § 800.303 regarding the Committee's treatment of transactions that do not result in control over a U.S. business by a foreign person, but may be covered investments. See § 800.305 regarding the Committee's treatment of a subsequent transaction involving a foreign person that previously acquired control of the U.S. business.

#### § 800.209 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of a particular financial instrument to exchange any such instrument for an equity interest.

#### § 800.210 Covered control transaction.

The term *covered control transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including such a transaction carried out through a joint venture.

#### § 800.211 Covered investment.

The term *covered investment* means an investment, direct or indirect, by a foreign person other than an excepted investor, in an unaffiliated TID U.S. business that is proposed or pending on or after February 13, 2020, and that:

- (a) Is not a covered control transaction; and
- (b) Affords the foreign person:

(1) Access to any material nonpublic technical information in the possession of the TID U.S. business;

(2) Membership or observer rights on, or the right to nominate an individual to a position on, the board of directors or equivalent governing body of the TID U.S. business; or

(3) Any involvement, other than through voting of shares, in substantive decisionmaking of the TID U.S. business regarding:

(i) The use, development, acquisition, safekeeping, or release of sensitive personal data of U.S. citizens maintained or collected by the TID U.S. business;

(ii) The use, development, acquisition, or release of critical technologies; or

(iii) The management, operation, manufacture, or supply of covered investment critical infrastructure.

(c) Notwithstanding paragraphs (a) and (b) of this section, no investment involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102 shall be a covered investment.

(d) Example: Corporation A, a foreign person that is not an excepted investor, makes a non-controlling investment in Corporation B, a U.S. business, that affords Corporation A the right to nominate one of the directors on Corporation B's board of directors. Corporation B, through its wholly-owned subsidiary Corporation X, designs and manufactures a critical technology. Corporation A's investment in Corporation B is a covered investment.

**§ 800.212 Covered investment critical infrastructure.**

The term *covered investment critical infrastructure* means, in the context of a particular covered investment, the systems and assets, whether physical or virtual, set forth in column 1 of appendix A to this part.

**§ 800.213 Covered transaction.**

The term *covered transaction* means any of the following:

(a) A covered control transaction;

(b) A covered investment;

(c) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could

result in a covered control transaction or a covered investment; or

(d) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

(e) Examples:

(1) *Example 1.* Corporation A, a foreign person, acquires a 10 percent non-controlling equity interest in Corporation X, a U.S. business. Corporation X subsequently provides Corporation A the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional equity interest in Corporation X. Assuming no other relevant facts, the change in rights is a covered transaction.

(2) *Example 2.* Corporation A, a foreign person that is not an excepted investor, acquires a 10 percent non-controlling equity interest in Corporation X, an unaffiliated TID U.S. business, but Corporation A is not afforded any of the access, rights, or involvement specified in § 800.211(b) at the time of its investment. Corporation X later expands its board of directors and provides Corporation A with the right to appoint a director. Assuming no other relevant facts, the change in rights is a covered transaction.

(3) *Example 3.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. The transaction is a covered transaction.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state, is wholly owned and controlled by a foreign national, and is not an excepted investor. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, makes a non-controlling minority equity investment in Corporation X, an unaffiliated TID U.S. business that