

(1) *Example 1.* Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an entity in which Corporation A has no voting interests or any rights. Corporation B is a U.S. business that manufactures a critical technology. Corporation B is therefore an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. The proposed transaction is a covered investment.

(2) *Example 2.* Same facts as the example in paragraph (d)(1) of this section, except that, pursuant to the terms of the investment, instead of observer rights, Corporation A has consultation rights with respect to Corporation B's licensing of a critical technology to third parties. Corporation A is therefore involved in substantive decisionmaking with respect to Corporation B, and the proposed transaction is a covered investment.

(3) *Example 3.* Corporation A is a foreign person that is an excepted investor. Corporation B, a foreign person that is not an excepted investor, owns a three percent, non-controlling equity interest in Corporation A. Corporation A proposes to acquire a four percent, non-controlling equity interest in Corporation C, an unaffiliated TID U.S. business. Pursuant to the terms of the investment in Corporation C and Corporation A's governance documents, Corporation A and Corporation B will each have access to material nonpublic technical information in Corporation C's possession. The transaction is a covered investment because Corporation B is making an investment that will result in access to material nonpublic technical information under § 800.211(b).

(4) *Example 4.* The Committee concludes all action under section 721 with respect to a covered investment by Corporation A, a foreign person that is not an excepted investor, in which Corporation A acquires a four percent, non-controlling equity interest with access to material non-public information in Corporation B, an unaffiliated TID U.S. business. One year later, Cor-

poration A proposes to acquire an additional five percent equity interest in Corporation B, resulting in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. Pursuant to the terms of the additional investment, Corporation A will receive the right to appoint a member to the board of directors of Corporation B. The proposed transaction is a covered investment because the transaction involves both an acquisition of an equity interest in an unaffiliated TID U.S. business and a new right under § 800.211.

(5) *Example 5.* Corporation A, a foreign person that is not an excepted investor, has executed a binding written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, an unaffiliated TID U.S. business. The proposed investment will afford Corporation A access to material nonpublic technical information in the possession of Corporation B. The only controlled technology produced, designed, tested, manufactured, fabricated, or developed by Corporation B became controlled under section 1758 of the Export Control Reform Act of 2018 after February 13, 2020, but prior to the date upon which the binding written agreement establishing the material terms of the investment was executed. The proposed transaction is a covered investment.

§ 800.304 Transactions that are not covered investments.

Transactions that are not covered investments include:

(a) An investment by a foreign person in an unaffiliated TID U.S. business that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the examples in paragraphs (f)(1) and (2) of this section.)

(b) An investment by a foreign person who is an excepted investor in an unaffiliated TID U.S. business. (See the example in paragraph (f)(3) of this section.)

(c) A transaction that results or could result in control by a foreign person of an unaffiliated TID U.S. business. (See the example in paragraph (f)(4) of this section.)

(d) A stock split or pro rata stock dividend that does not afford the foreign person any of the access, rights, or involvement specified in §800.211(b). (See the example in paragraph (f)(5) of this section.)

(e) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(f) Examples:

(1) *Example 1.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person that is not an excepted investor, acquires seven percent of the voting securities of Corporation X, an unaffiliated TID U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered investment.

(2) *Example 2.* The Committee concluded all action under section 721 with respect to a covered investment in which Corporation A, a foreign person that is not an excepted investor, acquired a four percent, non-controlling equity interest with board observer rights in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, which would result in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. The proposed investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including the access, rights, or involvement specified in §800.211(b). Assuming no other relevant facts, the proposed transaction is not a covered investment.

(3) *Example 3.* Corporation A, a foreign person who is an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment.

(4) *Example 4.* Corporation A, a foreign person who is an excepted investor,

proposes to purchase all of the shares of Corporation B, an unaffiliated TID U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment. It is, however, a covered control transaction. Whether Corporation A is an excepted investor and whether Corporation B is an unaffiliated TID U.S. business are not relevant to the determination of whether the transaction is a covered control transaction. (See §800.301.)

(5) *Example 5.* Corporation A, a foreign person that is not an excepted investor, holds 10,000 shares and board observer rights in Corporation B, an unaffiliated TID U.S. business, constituting 10 percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting 10 percent of the stock of Corporation B. The investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including those specified in §800.211(b). Assuming no other relevant facts, the acquisition of additional shares is not a covered investment.

§ 800.305 Incremental acquisitions.

(a) Any transaction in which a foreign person acquires an additional interest in, or for which a change in rights of the foreign person occurs with respect to, a U.S. business over which the same foreign person, or any entity that it wholly owns directly or indirectly, previously acquired direct control as a result of a covered control transaction for which the Committee concluded all action under section 721 shall be deemed not to be a covered transaction. If, however, a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

(b) Examples:

(1) *Example 1.* Corporation A, a foreign person, directly acquires a 40 percent voting interest and important