

§ 800.304

31 CFR Ch. VIII (7-1-10 Edition)

Example 3. Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation extends to Corporation A rights in Corporation B that are characteristic of an equity investment but not of a typical loan, including dominant minority representation on the board of directors of Corporation B and the right to be paid dividends by Corporation B. This loan is a covered transaction.

§ 800.304 Timing rule for convertible voting instruments.

(a) For purposes of determining whether to include the rights that a holder of convertible voting instruments will acquire upon conversion of those instruments in the Committee's assessment of whether a notified transaction is a covered transaction, the Committee will consider factors that include:

- (1) The imminence of conversion;
- (2) Whether conversion depends on factors within the control of the acquiring party; and
- (3) Whether the amount of voting interest and the rights that would be acquired upon conversion can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion will not be included in the Committee's assessment of whether a notified transaction is a covered transaction, the Committee will disregard the convertible voting instruments for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the governance of the entity that issued the instruments.

Example 1. Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so in-

form the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

Example 2. Same facts as Example 1, except that the debentures at issue are convertible at the sole discretion of Corporation A after six months, and if converted, would represent a 50 percent interest in Corporation X. The Committee may consider the rights that would result from the conversion as part of its assessment.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending:

(1) One paper copy of the notice to the Staff Chairperson, Office of Investment Security, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, that includes, in English only, the information set out in § 800.402, including the certification required under paragraph (1) of that section; and

(2) One electronic copy of the same information required in paragraph (a)(1) of this section. See the Committee's section of the Department of the Treasury Web site, at <http://www.treas.gov/offices/international-affairs/cfius/> for electronic submission instructions.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice under paragraph (a) of such covered transaction.