the Articles of Incorporation of JV Corp. both A and X have veto power over all decisions by JV Corp. identified under § 800.204(a)(1) through (5). The formation of JV Corp. is not an acquisition subject to section 721.

Example 3. Corporation A, a foreign person, and Corporation X, a United States person, form a separate corporation, JV Corp., to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain patents and equipment that do not under these circumstances constitute an identifiable business. The formation of JV Corp. is not an acquisition subject to section 721.

[56 FR 58780, Nov. 21, 1991, as amended at 59 FR 27179, May 25, 1994]

§ 800.302 Transactions that are not acquisitions under section 721.

The following transactions are not considered acquisitions for purposes of section 721:

(a) An acquisition of voting securities pursuant to a stock split or pro rata stock dividend which does not involve a change in control.

(b) An acquisition in which the parent of the entity making the acquisition is the same as the parent of the entity being acquired.

Example. Corporation A, a foreign person, merges its two wholly owned U.S. subsidiaries S1 and S2, and in addition creates a new U.S. subsidiary, S3. S3 then buys a business from S4, another wholly-owned U.S. subsidiary of Corporation A. These acquisitions are not subject to section 721.

(c) An acquisition of convertible voting securities that does not involve control.

Example. Corporation A, a foreign person, buys debentures, options and warrants of Corporation X, a U.S. person. By their terms, the debentures are convertible into common stock, and the options and warrants can be exercised for common stock. The acquisition of those debentures, options and warrants is not subject to section 721 so long as it does not involve control. The conversion of those debentures into common stock, or the exchange of those options and warrants for common stock, may be an acquisition for purposes of section 721. See § 800.201.

(d) A purchase of voting securities or comparable interests in a United States person solely for the purpose of investment, as defined in § 800.219, if, as a result of the acquisition,

(1) The foreign person would hold ten percent or less of the outstanding voting securities of the U.S. person, regardless of the dollar value of the voting securities so acquired or held, or

(2) The purchase is made directly by a bank, trust company, insurance company, investment, company, pension fund, employee benefit plan, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not involve the acquisition of entities.

Example 1. In an open market purchase solely for the purpose of investment, Corporation A, a foreign person, acquires 7 percent of the voting securities of Corporation X, which is incorporated under the laws of the United States. The acquisition of those securities is not subject to section 721.

Example 2. Same facts as Example 1 except Corporation A is an investment company which makes only portfolio investments. It purchases 14 percent of the voting securities of Corporation X for its own account, solely for the purpose of investment. The acquisition of those securities is not subject to section 721.

Example 3. Same facts as Example 2 except that a significant portion of the business of Corporation A is acquiring control over corporations. Its purchase of 14 percent of the shares of Corporation X is subject to section 721.

(e) An acquisition of assets in the United States that does not constitute a business in the United States. See §§ 800.201 and 800.301(b)(4).

Example 1. Corporation A, a foreign person, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a ''business'' within the meaning of section 721.

Example 2. Corporation X produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X under a long-term contract. Neither the proposed acquisition of those carriers, nor the actual acquisition, is subject to section 721.

Example 3. Same facts as Example 2, except that Corporation X, a U.S. person, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is subject to section 721.

Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business of Corporation X, including production facilities, customer lists, technology and staff. This acquisition is subject to section 721. See § 800.201.

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

(g) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

(h) An acquisition of a security interest, but not control, in the voting securities or assets of a U.S. person at the time a loan or other financing is extended (see § 800.303).

(i) An acquisition of voting securities or assets that does not involve an acquisition of control of a person engaged in interstate commerce in the United States.

Example 1. Corporation A, which is organized under the laws of a foreign state and is controlled by foreign persons, advises the Committee that it intends to acquire seven percent of the voting securities of Corporation X, which is organized under the laws of the United States and engaged in interstate commerce within the United States. In this particular case, Corporation A's purchase of this interest in Corporation X would not be sufficient to permit Corporation A to control Corporation X for purposes of § 800.204. This transaction is not an acquisition for purposes of section 721.

Example 2. Corporation A, which is organized under the laws of a foreign state and controlled by foreign persons, acquires from Corporation B 100 percent of the voting securities of Corporation X, a wholly-owned subsidiary of Corporation B that is organized under the laws of the United States. Corporation X currently has no employees, plants, equipment or subsidiaries in the United States. Corporation B maintains records in the United States on behalf of Corporation X and uses U.S. mail and telecommunications facilities on its behalf. For purposes of section 721, Corporation X is not engaged in interstate commerce in the United States, and the acquisition by Corporation A of securities of Corporation X is not an acquisition for purposes of section 721.

[56 FR 58780, Nov. 21, 1991, as amended at 59 FR 27179, May 25, 1994]

§ 800.303 Lending transactions.

(a) The extension of a loan or similar financing by a foreign person to a U.S. person, accompanied by the creation in the foreign person of a secured interest in securities or other assets of the U.S. person, does not, by itself, subject the transaction to section 721. However, if control is acquired by the foreign person at the time the loan or other financing is extended, then the transaction may be subject to section 721.

(1) The Committee will not, at the time of extension of the loan or other financing, accept notices from parties to a loan or other financing transaction in which control is not acquired by the foreign person at that time.

(2) The Committee will accept notices concerning transactions that involve loans or financing by foreign persons where, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of the U.S. person.

(3) For purposes of this section, in determining whether an acquisition of a U.S. person by a foreign person results in foreign control under section 721, the Committee will take into account arrangements which the foreign person might establish to transfer day-to-day control over the U.S. person to U.S. nationals.

(b) Control will not be deemed to be acquired for purposes of section 721 in cases involving an acquisition of voting securities or assets of a U.S. person by a foreign person upon default, or other condition, involving a loan or other financing, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-a-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its influence, ownership or control of the debtor such that control