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TO : ALL AMERICAN DIPLOMATIC AND CONSULAR POSTS

MAY 29 2 54 PM '68

FROM : Department of State DATE:

SUBJECT : Proposed Amendments to Foreign Direct Investment Program

REF :

1. On April 30 and May 22, 1968, the Office of Foreign Direct Investments published in the Federal Register in proposed form certain clarifying amendments to the Regulations respecting the following sections:

Section 201 - (Prohibited Direct Investments in Affiliated Foreign Nationals)

Section 202 - (Partially repealed, subsection c now located in Section 504, other provisions in 201)

Section 203 - (Liquid Foreign Balances)

Section 306 - (Definition - Positive and Negative Direct Investment)

Section 307 - (Definition - Person)

Section 309 - (Definition - Property, property interest)

Section 312 - (Definition - Transfer of Capital)

Section 313 - (Definition - Net Transfers of Capital)

Enclosure:

Foreign Direct Investment Regulations; Proposed Amendments to Regulations

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FORM DS-323 10-64

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Drafted by:	Drafting Date:	Phone No.:	Contents and Classification Approved by:
E/OMA/IP:JAKlemstine:meh	5/27/68	3384	E/OMA - John C. Colman

Clearances: Commerce/OFDI - Mr. Rosenfeld L/E - Mr. Doud

Section 321 - (Definition - Year)

Section 322 - (Definition - Person within the United States)

Section 323 - (Definition - International Financial Subsidiary)

Section 324 - (Definition - Long-Term Foreign Borrowing)

Section 325 - (Definition - Incorporated and Unincorporated Affiliated Foreign Nationals)

Section 503 - (Positive Direct Investment not Exceeding $100,000)

Section 504 - (Authorized Positive Direct Investment in Scheduled Areas)

Section 505 - (Transfers between Affiliated Foreign Nationals)

Subpart I - (Rules for Affiliated or Associated Groups and Members Thereof and Persons Indirectly Owning or Acquiring Affiliated Foreign Nationals)

Subpart K - (Direct Investment in Canada)

2. While many of the changes and additions are primarily technical, posts may wish to note especially Sections 201, 203, 312, 321, 503 and 504. Section 201 sets forth prohibitions on direct investment except as otherwise authorized. Section 203 describes different categories of foreign balances and their calculations. Section 312 sets forth an expanded list of what may be considered as transfers of capital; and Section 321 provides for companies which use fiscal rather than calendar years.

3. Section 504 contains two new changes which are of interest: investors may now carry forward into immediate following year investment quotas not used in 1968 so that any investor not using his full allowable in 1968 will not be prejudiced if the program continues into 1969. Secondly, investors who do not elect to carry unused quotas forward may shift from Schedule C countries to Schedule B and A, and from Schedule B to Schedule A. Posts are cautioned that above does not mean liberalization of the program but is primarily designed to prevent large fourth

quarter preventative outflows by firms which have not used their allowables during the year.

4. The Department of Commerce has noted that the volume of applications for specific authorizations to proceed with pre-January 1 commitments has been subsiding. Occasional applications for prior commitments and new projects continue to be received; but unless there are exceptional circumstances, favorable action is tied to a mandatory requirement that any spending above investment quotas be financed from foreign sources during 1968.

5. Quarterly report Form FDI-102 has been forwarded to companies for completion and return by June 10. This report is expected to provide accurate data on direct investment outflows for the first quarter of 1968. In most respects the form is similar to base period report FDI-101. Those posts which are interested in copies of Form FDI-102 should forward requests by airgram, Attn: E/OMA.

RUSK

U.S. DEPARTMENT OF COMMERCE
OFFICE OF FOREIGN DIRECT INVESTMENTS

Foreign Direct Investment Regulations

Notice of Quarterly Report; Proposed Amendments to the Regulations

PROPOSED RULE MAKING

DEPARTMENT OF COMMERCE

Office of Foreign Direct Investments

[15 CFR Part 1000]

FORM FDI–102 (QUARTERLY REPORT); PROPOSED SUBSTANTIVE AMENDMENTS TO REGULATIONS; PROPOSED RULES FOR AFFILIATED OR ASSOCIATED GROUPS AND MEMBERS THEREOF AND PERSONS INDIRECTLY OWNING OR ACQUIRING AFFILIATED FOREIGN NATIONALS

Introduction. The Office of Foreign Direct Investments announced the issuance, on April 29, 1968, of Form FDI–102, the Quarterly Report. The form includes Supplements 1 through 6. The first Quarterly Report must be filed by all direct investors on or before June 10, 1968. Further filing requirements are set forth in the instructions for completing the report. The completed report is to be submitted to the Program Reports Division, Office of Foreign Direct Investments, U.S. Department of Commerce, Washington, D.C. 20230. Three sets of the form, the supplements and related instructions have been mailed by the Office to those direct investors which filed the Form FDI–101, the Base Period Report. In addition, they may be obtained in Room 2119, U.S. Department of Commerce Building, Washington, D.C., from any of the 42 U.S. Department of Commerce Field Offices, or from any of the 36 Federal Reserve district and branch banks.

Notice is also hereby given that the Office of Foreign Direct Investments proposes to promulgate various substantive amendments to the Foreign Direct Investment Regulations (the "regulations") respecting the following revised (and new) sections (15 CFR Part 1000): §§ 1000.201 (Prohibited Direct Investment in Affiliated Foreign Nationals); 1000.202 (Partially repealed; subsection (c) is located in new section 504); 1000.306 (Definition—Positive and Negative Direct Investment); 1000.307 (Definition—Person); 1000.309 (Definition—Property; Property Interest); 1000.312 (Definition—Transfer of Capital); 1000.313 (Definition—Net Transfer of Capital); 1000.321 (Definition—Year); 1000.322 (Definition—Person Within the United States); 1000.323 (Definition—International Finance Subsidiary) (New); 1000.324 (Foreign Borrowings) (New); 1000.325 (Definition—Incorporated and Unincorporated Affiliated Foreign Nationals) (New); 1000.503 (Positive Direct Investment Not Exceeding $100,000); 1000.504 (Authorized Positive Direct Investment in Scheduled Areas); 1000.505 (Transfers Between Affiliated Foreign Nationals); Subpart I—(Rules for Affiliated or Associated Groups and the Members Thereof and Persons Indirectly Owning or Acquiring Affiliated Foreign Nationals).

The basic purposes of the proposed amendments to the regulations are (i) to clarify the existing regulations, and (ii) to make provision for the application of the regulations to certain situations not heretofore treated in detail. The principal revisions and their effects are as follows:

1. Section 1000.201 has been redrafted to prohibit "positive direct investment" in affiliated foreign nationals in each Scheduled Area and "positive net transfers of capital" to affiliated foreign nationals in Schedule C countries except as authorized by revised §§ 1000.503 and 1000.504, and to require repatriation of earnings in each Scheduled Area so that no positive direct investment in excess of that authorized by revised §§ 1000.503 and 1000.504 exists at the end of the year. This section, when read with other amended sections, makes clear that the regulations relate generally to the net result of transactions over the period of a year. Section 1000.201(d), however, reserves to the Secretary of Commerce the power to reduce the compliance period from a year to a shorter period.

2. Section 1000.202 is repealed. Former § 1000.202 (a) and (b) have been repealed, thereby achieving the same result as now provided for by General Authorization No. 2 previously issued; if the repeal of § 1000.202 (a) and (b) becomes effective, General Authorization No. 2 will be unnecessary and will therefore be withdrawn. The provisions of former § 1000.202(c) have been incorporated in revised §§ 1000.201 and 1000.504(a)(3).

3. Section 1000.312, defining "transfers of capital", has been redrafted to define, on the basis of a specific identifiable transaction, transfers of capital by a direct investor to an affiliated foreign national (paragraph (a)) and transfers of capital by an affiliated foreign national to the direct investor (paragraph (b)).

4. Section 1000.313, which formerly defined reinvested earnings (now defined in revised § 1000.306(b)), now defines "net transfers of capital" to incorporated and unincorporated affiliated foreign nationals. A net transfer of captial to incorporated affiliated foreign nationals in any Scheduled Area during any period is defined in § 1000.313(a) as the aggregate of all transfers of captial by the direct investor to such affiliated foreign nationals less all transfers by the affiliated foreign nationals to the direct investor. The result may be negative when the transfers to the direct investor exceed the transfers by the direct investor. A net transfer of capital to unincorporated affiliated foreign nationals in any Scheduled Area during any period is defined in § 1000.313(b) as the aggregate net increase or net decrease in the aggregate net assets of such affiliated foreign national (whether the net increase or decrease results from transfers of capital, earnings, losses or any combination thereof); a net increase will result in a positive net transfer of capital to such affiliated foreign nationals, whereas a net decrease will result in a negative net transfer of capital. The sum of the results for § 1000.313 (a) and (b) constitutes the net transfer of capital to all affiliated foreign nationals in the Scheduled Area and during the period of time with respect to which the computations are made (see § 1000.313(c)). This sum can be positive or negative, de-

pending upon the results for § 1000.313 (a) and (b).

Section 1000.313(d) now contains the provisions concerning deductibility of foreign borrowings and "creeping" acquisitions formerly contained in § 1000.504 (b).

The definitions in § 1000.313 relate to § 1000.306, so that, in computing direct investment by a direct investor in affiliated foreign nationals in any Scheduled Area during any period, both outflows and inflows are taken into account, thereby assuring that direct investment in any period reflects the "net" transfer of capital; when reinvested earnings (or losses) of incorporated affiliated foreign nationals in such Scheduled Area are added to the net transfer of captial, the resulting amount gives the "direct investment" of the direct investor in the Scheduled Area for the period involved. This amount is then used to measure compliance with the annual direct investment ceilings contained in §§ 1000.503 and 1000.504. Section 1000.306 also makes clear that direct investment may be a positive or negative figure.

5. Section 1000.306 has been amended to define direct investment in terms of the net result of all transactions with all affiliated foreign nationals in a particular Scheduled Area over a period of time. As noted above, the revised section makes clear that this result may be positive (when the sum of the net transfer of capital by the direct investor to such affiliated foreign nationals and the direct investor's share in the reinvested earnings (or losses) of such incorporated affiliated foreign nationals is positive) or negative (when such sum is negative).

6. Section 1000.322, defining a "person within the United States", has been redrafted to make clear that a foreign national temporarily in the United States is not considered a person within the United States. In addition, certain U.S. citizens residing abroad and certain other persons may be considered "persons within the United States."

7. Section 1000.323 defines an international finance subsidiary, which had previously been defined in General Authorization No. 1, and makes clear that such a subsidiary is considered part of the direct investor for all purposes.

8. New § 1000.325 defines incorporated and unincorporated affiliated foreign nationals. The definition treats as incorporated a foreign national regarded as incorporated by foreign law.

9. Revised § 1000.503 restates the worldwide $100,000 authorization consistent with the redefined terms.

10. Revised § 1000.504 restates the general authorizations in former § 1000.504 consistent with the redefined terms and introduces provisions which permit the "downstream" carryover of all or any part of an unused allowable for any Scheduled Area to another Scheduled Area (i.e., from Schedule C to Schedules A or B and Schedule B to Schedule A) or, alternatively (to the extent not carried over to other Scheduled Areas), the carry forward of such unused allowable to later years. Although the proposed revisions to the regulations do not generally authorize a positive net transfer of capital to Schedule C affiliates over the period of a year, revised § 1000.504 allows such a positive net transfer of capital during any year equal to the amount of any negative net transfer of capital during the prior year.

11. Former § 1000.505 has been repealed to omit unnecessary provisions or provisions contained elsewhere in the regulations. New § 1000.505(a) makes clear that a transfer by one affiliated foreign national of a direct investor to another affiliated foreign national of the same direct investor is treated as a transfer by the transferor affiliated foreign national to the direct investor (i.e., an in-flow from the transferor's Scheduled Area) and as a further transfer from the direct investor to the transferee affiliated foreign national (i.e., an out-flow to the transferee's Scheduled Area). This computation applies if the direct investor has more than a 50 percent ownership interest in either the transferor or transferee affiliated foreign national; otherwise the transaction is disregarded in computing net transfers of capital by the direct investor to the Scheduled Areas of the transferor and transferee affiliated foreign national. New § 1000.505(b) reflects the position that short-term trade credits (1 year or less) between affiliated foreign nationals of a direct investor are to be disregarded in computing net transfers of capital by the direct investor; this exclusion does not apply, however, to short-term credits between a Canadian affiliate and a non-Canadian affiliate as stated in proposed General Authorization No. 4 previously published.

12. Subpart I, which includes proposed §§ 1000.901 through 1000.917, explains in detail the rules for affiliated or associated groups and members thereof and persons indirectly owning or acquiring affiliated foreign nationals with respect to (a) reporting requirements (b) authorizations under the regulations, and (c) exemptions from the regulations. Any person affected by this subpart who has previously filed FDI-101 may file a revised form.

Interested persons are invited to submit comments, suggestions or objections, in writing, to the Chief Counsel, Legal Division, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230. All such communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered. Subsequent to such time, these proposed amendments, if adopted, will be published in the FEDERAL REGISTER in final form either as proposed or as they may be changed in the light of comments received.

For purposes of completing Form FDI-101 and Form FDI-102, reporters shall follow the proposed amendments to the regulations if such amendments are not issued in final form prior to the date on which such forms are required to be filed.

The texts of the proposed amendments to the regulations are as follows:

1. Section 1000.201 is revised to read as follows:

§ 1000.201 Prohibited direct investment in affiliated foreign nationals.

(a) Except as provided in §§ 1000.503 and 1000.504, and as otherwise permitted by the Secretary of Commerce (hereinafter referred to as the Secretary) by means of rulings, instructions, authorizations, waivers, or exemptions or otherwise, positive direct investment (as defined in § 1000.306(a)) by a direct investor in affiliated foreign nationals of such direct investor in Schedule A, B, or C countries (as described in § 1000.319), and positive net transfers of capital (as defined in § 1000.313) by a direct investor to affiliated foreign nationals of such direct investor in Schedule C countries, are prohibited during any year (as defined in § 1000.321) commencing with the effective date.

(b) In accordance with the provisions of section 2 of Executive Order 11387 and in view of the prohibitions set forth in paragraph (a) of this § 1000.201, a direct investor is required to cause the repatriation of such direct investor's share of the total earnings of affiliated foreign nationals in each Scheduled Area so that no positive direct investment, in excess of the amount which may be authorized by or pursuant to other provisions of this part, shall exist in such Scheduled Area at the end of any year.

(c) To the extent delineated from time to time by the Board of Governors of the Federal Reserve System, nothing in this part shall apply to any bank or other financial institution certified by the Board as being subject to the Federal Reserve Foreign Credit Restraint Program, or to any program instituted by the Board under section 2 of Executive Order 11387.

(d) In addition to all other powers reserved to the Secretary in this part, the Secretary may, in his discretion, with respect to any direct investor, amend or revoke the authorizations set forth in §§ 1000.503 and 1000.504 by reducing the amount of positive direct investment authorized during a calendar year, by amending the application of such authorizations and § 1000.201 from "during any year" to periods shorter than a year, and by otherwise imposing conditions with respect to such authorizations as the Secretary shall deem appropriate to carry out the purposes of this part. In exercising his discretion with respect to any direct investor, the Secretary shall consider, among other factors, the following:

(1) Whether the positive direct investment of such direct investor during any calendar quarter is, or may reasonably be estimated to be, materially in excess of 25 percent of the positive direct investment generally authorized to such direct investor during the calendar year;

(2) Whether the transactions resulting in such positive direct investment during such quarter are in accordance with customary business practices of the direct investor; and

(3) Whether the direct investor has complied with the provisions of Subpart F of this part.

§ 1000.202 [Repealed]

2. Section 1000.202 is repealed in its entirety.

3. Section 1000.306 is revised to read as follows:

§ 1000.306 Positive and negative direct investment.

(a) Direct investment by a direct investor in all affiliated foreign nationals in any Scheduled Area during any period means:

(1) The net transfer of capital (as defined in § 1000.313(c)) made during such period by the direct investor to all incorporated and unincorporated affiliated foreign nationals in such Scheduled Area; and

(2) The direct investor's share in the total reinvested earnings or losses, as the case may be, of all incorporated affiliated foreign nationals in such Scheduled Area during such period (as computed in accordance with paragraph (b) of this section). If the sum of (1) and (2) is in excess of zero, the direct investment during such period shall be positive direct investment; if a negative amount, it shall be negative direct investment.

(b) A direct investor's share in the total reinvested earnings or losses, as the case may be, of all incorporated affiliated foreign nationals in any Scheduled Area during any period shall be determined by deducting from the sum of earnings and losses (without regard to U.S. taxes and foreign withholding taxes on the distribution of dividends) during such period of each such affiliated foreign national:

(1) The aggregate of all dividends and other distributions of earnings paid to such affiliated foreign nationals by incorporated and unincorporated affiliated foreign nationals, respectively, in other Scheduled Areas; and

(2) The aggregate of all dividends paid by such affiliated foreign nationals to the direct investor and the direct investor's share of all dividends paid by such affiliated foreign nationals to affiliated foreign nationals of the direct investor in other Scheduled Areas which own stock of such affiliated foreign nationals (before deducting foreign withholding taxes, but after deducting the aggregate of all dividends and other distributions of earnings referred to in subparagraph (1) of this paragraph): *Provided*, That, in calculating a direct investor's share in the total reinvested earnings or losses of incorporated affiliated foreign nationals for any year (including the years 1964, 1965, and 1966):

(i) A direct investor may elect, in such manner as the Secretary may determine, to treat dividends paid within 60 days after the end of the year as having been paid during such year; and

(ii) A dividend shall be deemed to have been paid to the direct investor, or to an affiliated foreign national of the direct investor, as the case may be, only to the extent the amount thereof is reflected as having been received on the books of account of the recipient.

(c) In making computations of earnings or losses of affiliated foreign nationals under this section or any other provision of this part, such earnings or losses shall be determined in accordance with accounting principles generally accepted in the United States and consistently applied; to the extent such principles are reflected in reports to stockholders, the computation shall follow the principles used in preparing such reports. The earnings and losses for all affiliated foreign nationals in each Scheduled Area shall be aggregated in order to determine the direct investor's share in the total earnings or losses of such affiliated foreign nationals. Adjustments to the earnings of affiliated foreign nationals required to conform to accounting principles generally accepted in the United States shall be applied to the aggregated reported results of the affiliated foreign nationals in the Scheduled Area involved. Earnings shall not be reduced by application or provision by the direct investor of reserves for devaluation or impairment of investment. Notwithstanding the foregoing, the Secretary shall have the right, generally or specifically, in his discretion to disapprove any such accounting principles determined by him to be inconsistent with the purposes of this part and to prescribe such principles as he may deem appropriate to carry out the purposes of this part.

4. Section 1000.307 is revised to read as follows:

§ 1000.307 Person.

(a) The term "person" means an individual, partnership, association, trust, estate, corporation, or other organization (including, for purposes of Subpart I of this part, an affiliated or associated group).

(b) See Subpart I of this part for special rules with respect to the treatment of affiliated or associated groups within the United States and the members thereof and of persons indirectly owning or acquiring interests in an affiliated foreign national.

5. Section 1000.309 is revised to read as follows:

§ 1000.309 Property, property interest.

The terms "property" and "property interest" include any property, real, personal, or mixed, tangible or intangible (including the value of services performed), or interest or interests therein, present, future, or contingent.

6. Section 1000.312 is revised to read as follows:

§ 1000.312 Transfer of capital.

(a) A transfer of capital by a direct investor to an affiliated foreign national means a direct or indirect transfer of funds or other property by or on behalf of or for the benefit of the direct investor directly or indirectly to or on behalf of or for the benefit of the affiliated foreign national, or in connection with the acquisition of an equity interest in or debt obligation of the affiliated foreign national, including, but not by way of limitation:

(1) A transfer of funds or other property by the direct investor to any person wheresoever located (including an affiliated foreign national) in connection with the acquisition of an equity interest in or debt obligation of an affiliated foreign national, except a debt obligation acquired by subrogation in connection with a transfer described in subparagraph (6) of this paragraph (a).

(2) A transfer of funds or other property by the direct investor to an affiliated foreign national as a contribution to the capital of the affiliated foreign national.

(3) A transfer of funds or other property by the direct investor to an affiliated foreign national in complete or partial satisfaction of a debt obligation of the direct investor held by the affiliated foreign national.

(4) A transfer of funds or other property (as a redemption of stock, liquidating dividend, or otherwise) by the direct investor to an affiliated foreign national in reduction of an investment by the affiliated foreign national in the direct investor.

(5) A transfer of funds or other property by any person wheresoever located to an affiliated foreign national in connection with a transfer by the affiliated foreign national to any person wheresoever located of an equity interest in or debt obligation of the direct investor held by the affiliated foreign national.

(6) A transfer of funds or other property by the direct investor to any person wheresoever located in complete or partial satisfaction of a debt obligation of the affiliated foreign national, including a transfer pursuant to a guarantee by the direct investor of a debt obligation of the affiliated foreign national or resulting from the assumption by the direct investor of a debt obligation of the affiliated foreign national.

(7) A transfer of funds or other property by the direct investor to any person wheresoever located in complete or partial satisfaction of a foreign borrowing made by the direct investor before or after the effective date, to the extent the use of the proceeds of the borrowing, whether before or after the effective date, constituted a transfer of capital by the direct investor to an affiliated foreign national.

(b) A transfer of capital by an affiliated foreign national to a direct investor in such affiliated foreign national means a direct or indirect transfer of funds or other property by or on behalf of or for the benefit of the affiliated foreign national directly or indirectly to or on behalf of or for the benefit of the direct investor, or in connection with the acquisition from the direct investor of an equity interest in or debt obligation of the direct investor, including, but not by way of limitation:

(1) A transfer of funds or other property by an affiliated foreign national to the direct investor in connection with the acquisition of an equity interest in or debt obligation of the direct investor.

(2) A transfer of funds or other property by an affiliated foreign national to

the direct investor as a contribution to the capital of the direct investor.

(3) A transfer of funds or other property by an affiliated foreign national to the direct investor in complete or partial satisfaction of a debt obligation of the affiliated foreign national held by the direct investor.

(4) A transfer of funds or other property by an affiliated foreign national to a person within the United States (other than the direct investor) in complete or partial satisfaction of a debt obligation of the affiliated foreign national held by such person, to the extent that such debt obligation was at any time previously held by the direct investor and the acquisition thereof by the direct investor constituted a transfer of capital by the direct investor to an affiliated foreign national.

(5) A transfer of funds or other property (as a redemption of stock, liquidating dividend, or otherwise) by an affiliated foreign national to the direct investor in reduction of an investment by the direct investor in an affiliated foreign national.

(6) A transfer of funds or other property by a foreign national (other than an affiliated foreign national) to the direct investor in connection with a transfer by the direct investor to such foreign national of an equity interest in or debt obligation of an affiliated foreign national held by the direct investor.

(7) A transfer of funds or other property by an affiliated foreign national to any person wheresoever located in complete or partial satisfaction of a debt obligation of the direct investor, including a transfer pursuant to a guarantee by an affiliated foreign national of a debt obligation of the direct investor or resulting from the assumption by an affiliated foreign national of a debt obligation of the direct investor.

7. Section 1000.313 is revised to read as follows:

§ 1000.313 Net transfer of capital.

(a) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all incorporated affiliated foreign nationals in any Scheduled Area during any period means (1) the aggregate of all transfers of capital made during such period by the direct investor to such affiliated foreign nationals, less (2) the aggregate of all transfers of capital made during such period by such affiliated foreign nationals to the direct investor.

(b) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all unincorporated affiliated foreign nationals in any Scheduled Area during any period means the aggregate net increase or net decrease, during such period, in the aggregate net assets of such affiliated foreign nationals (whether such net increase or decrease results from transfers of capital, earnings, or losses or any combination thereof, but excluding the head office account of a branch).

(c) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all incorporated and unincorporated affiliated foreign nationals in any Scheduled Area during any period means (1) the net transfer of capital by the direct investor to all incorporated affiliated nationals in such Scheduled Area during such period, and (2) the net transfer of capital by the direct investor to all unincorporated affiliated foreign nationals in such Scheduled Area during such period. If the sum of (1) and (2) is in excess of zero, the net transfer of capital during such period shall be deemed a positive net transfer of capital; if a negative amount, it shall be deemed a negative net transfer of capital.

(d) In calculating the amount of a net transfer of capital made by a direct investor to all incorporated and unincorporated affiliated foreign nationals in any Scheduled Area during any period (including the years 1965 and 1966) pursuant to paragraph (c) of this section:

(1) There shall be deducted an amount equal to that portion of the proceeds of foreign borrowings made by the direct investor, whether made in such period or any previous period, as is or was expended during such period in making a transfer of capital to any such affiliated foreign national (including for this purpose any borrowing made after the date of such transfer of capital but as part of one transaction or a group of integrated transactions, provided the borrowing was made within 90 days of the transfer and during the same year): *Provided*, That amounts borrowed by the direct investor with an original maturity of less than 12 months from the original date of the borrowing shall not be so deducted unless, in the case of a borrowing the proceeds of which were expended in making a transfer of capital during 1965 or 1966, such borrowing was not in fact repaid in less than 12 months from the original date of such borrowing, or, in the case of a borrowing the proceeds of which were expended in making a transfer of capital after the effective date, there exist provisions for renewal, extension or continuance of such borrowing for a total term of at least 12 months and the direct investor certifies (with respect to borrowings after the effective date) that it reasonably expects that such borrowing will not in fact be repaid in less than 12 months from its original date; and

(2) There shall be included all transfers of funds or other property as a result of which the direct investor became a direct investor in any affiliated foreign national and all transfers of funds or other property to or on behalf of or for the benefit of such affiliated foreign national made by or on behalf of or for the benefit of such direct investor within 12 months (whether or not during the same period) prior to the date of the transfer by which it became a direct investor in such affiliated foreign national, to the same extent as if the direct investor had been a direct investor in such affiliated foreign national during such 12-month period.

8. Section 1000.321 is revised to read as follows:

§ 1000.321 Year.

Unless otherwise specified, the term "year" or "portion of a year" means a calendar year or a portion thereof: *Provided*, That, a direct investor customarily maintaining its books of account on the basis of a year ("fiscal year") other than a calendar year may make application to the Secretary for permission to measure compliance with the provisions of this part on the basis of its fiscal year. The Secretary shall grant the application upon a showing to his satisfaction that, notwithstanding the granting of such application, the direct investor will substantially comply with the regulations, on a calendar year basis, during the first calendar year to which the application relates.

9. Section 1000.322 is revised to read as follows:

§ 1000.322 Person within the United States.

(a) The term "person within the United States" shall include, but not by way of limitation:

(1) An individual who is a resident of the United States;

(2) An individual, wherever residing, who is a citizen of the United States and the center of whose economic interests is located within the United States;

(3) A person, other than an individual or a corporation, organized under the laws of the United States or the center of whose economic interests is located within the United States;

(4) A corporation organized under the laws of the United States;

(5) A corporation organized under the laws of a foreign country, the operations of which are nevertheless managed and directed within the United States and substantially all of the stock of which is owned by persons within the United States and which has outstanding a class of stock as to which it is not considered a foreign issuer under section 4920(b) of the Internal Revenue Code.

(6) A subsidiary, branch, division or other subpart of a foreign national which constitutes a permanent establishment within the United States shall be considered a person within the United States for purposes of this part except that nothing herein contained shall limit a bona fide transfer of capital in the ordinary and customary course of business by such subsidiary, branch, division or other subpart to and for the benefit of its parent organization.

(b) For purposes of this part, United States shall mean any State, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States.

10. A new § 1000.323 is added to read as follows:

§ 1000.323 International finance subsidiary.

(a) The term "international finance subsidiary" of a direct investor means a corporation organized under the laws of the United States or of any State, territory, possession, District of Columbia, or the Commonwealth of Puerto Rico, all

of the stock of which (except directors' qualifying shares) is owned directly or indirectly by the direct investor, and the principal business of which is to borrow funds from foreign nationals other than affiliated foreign nationals and to hold debt or equity securities of affiliated foreign nationals.

(b) For purposes of this part, a direct investor and all of its international finance subsidiaries shall be considered a single person.

11. A new § 1000.324 is added to read as follows:

§ 1000.324 Foreign borrowing.

The term "foreign borrowing" means a borrowing by a direct investor from foreign nationals other than affiliated foreign nationals.

12. A new § 1000.325 is added to read as follows:

§ 1000.325 Incorporated and unincorporated affiliated foreign nationals.

(a) The term "incorporated affiliated foreign national" means an affiliated foreign national which is incorporated under the laws of a foreign country or which is regarded by the laws of a foreign country as being a corporation of such country.

(b) The term "unincorporated affiliated foreign natonal" means all affiliated foreign nationals not described in paragraph (a) of this section.

13. Section 1000.503 is revised to read as follows:

§ 1000.503 Positive direct investment not exceeding $100,000.

A direct investor is authorized, during any year, to make positive direct investment in all of its affiliated foreign nationals, wheresoever located (including affiliated foreign nationals in Schedule C countries) not amounting in the aggregate to more than $100,000.

14. Section 1000.504 is revised to read as follows:

§ 1000.504 Authorized positive direct investment in scheduled areas.

(a) The following provisions of this section shall apply to aggregate positive direct investment by a direct investor in all its affiliated foreign nationals during any year if such aggregate positive direct investment is in excess of $100,000.

(1) Positive direct investment by a direct investor during any year in affiliated foreign nationals in Schedule A countries is authorized in an aggregate amount not exceeding the sum of (i) 110 percent of the average of positive direct investment by the direct investor in all affiliated foreign nationals in Schedule A countries during the years 1965 and 1966 and (1) commencing with 1969, such additional amount as may have been carried forward from previous years pursuant to the provisions of paragraph (b) (1) of this section.

(2) Positive direct investment by a direct investor during any year in affiliated foreign nationals in Schedule B countries is authorized in an aggregate amount not exceeding the sum of (i) 65 percent of the average of positive direct investment by the direct investor in all affiliated foreign nationals in Schedule B countries during the years 1965 and 1966 and (ii) commencing with 1969, such additional amount as may have been carried forward from previous years pursuant to the provisions of paragraph (b) (2) (ii) of this section.

(3) Positive direct investment by a direct investor during any year in affiliated foreign nationals in Schedule C countries is not authorized except that reinvestment of the direct investor's share in the total earnings of incorporated affiliated foreign nationals is authorized in an aggregate amount not exceeding the sum of (i) that portion of the direct investor's share in the total earnings of all such incorporated affiliated foreign nationals during such year as does not exceed the lesser of (*a*) or (*b*) of this subparagraph and (ii) commencing with 1969, such additional amount as may have been carried forward from previous years pursuant to the provisions of paragraph (c) (1) (ii) of this section:

(*a*) An amount not exceeding 35 percent of the average of positive direct investment by the direct investor in all affiliated foreign nationals in Schedule C countries during the years 1965 and 1966; or

(*b*) An amount computed by multiplying the portion of the direct investor's share in the total earnings of all such incorporated affiliated foreign nationals during such year by a fraction, the numerator of which is the portion of the direct investor's share in the total earnings of incorporated affiliated foreign nationals in Schedule C countries which was reinvested during the years 1964, 1965, and 1966, and the denominator of which is the direct investor's share in the total earnings during such years of such affiliated foreign nationals. (If the numerator shall be zero or a negative amount, the amount of earnings which may be reinvested pursuant to this subdivision (ii) is zero.)

(b) (1) If the amount of positive direct investment authorized to be made by a direct investor during any year in affiliated foreign nationals in Schedule A countries pursuant to paragraph (a) (1) of this section exceeds the amount of direct investment (whether positive or negative) by the direct investor during such year in such affiliated foreign nationals, or if no positive direct investment is so authorized during any year in affiliated foreign nationals in Schedule A countries but direct investment by the direct investor during such year in such affiliated foreign nationals is negative, the direct investor is authorized to make additional positive direct investment, during the immediately following year, in affiliated foreign nationals in Schedule A countries up to the amount of such excess or such negative direct investment, as the case may be.

(2) If the amount of positive direct investment authorized to be made by a direct investor during any year in affiliated foreign nationals in Schedule B countries pursuant to paragraph (a) (2) of this section exceeds the amount of direct investment (whether positive or negative) by the direct investor during such year in such affiliated foreign nationals, or if no positive direct investment is so authorized during any year in affiliated foreign nationals in Schedule B countries but direct investment by the direct investor during such year in such affiliated foreign nationals is negative, the direct investor is authorized (i) to make additional positive direct investment in affiliated foreign nationals in Schedule A countries, during the current year, up to the amount of such excess or such negative direct investment, as the case may be, or (ii) to the extent additional positive direct investment in affiliated foreign nationals in Schedule A countries is not so made during the current year, to make additional positive direct investment in affiliated foreign nationals in Schedule B countries, during the immediately following year, up to the amount of such excess or such negative direct investment, as the case may be.

(c) (1) To the extent that, during any year, the portion of a direct investor's share in the total earnings of incorporated affiliated foreign nationals in Schedule C countries which the direct investor is authorized to reinvest during such year pursuant to the provisions of paragraph (a) (3) of this section exceeds the portion of such share actually reinvested during such year (or the direct investor is authorized to reinvest during affiliated foreign nationals during such year, as the case may be), or if the direct investor is not authoried under paragraph (a) (3) of this section to reinvest any portion of its share in the total earnings of incorporated affiliated foreign nationals in Schedule C countries during any year but such incorporated affiliated foreign nationals have total losses during such year, the direct investor is authorized (i) to make additional positive direct investment (in the form of transfers of capital and/or reinvested earnings) in affiliated foreign nationals in Schedule A or Schedule B countries during the current year in an aggregate amount not exceeding the amount of such excess or such losses, as the case may be, or (ii) to the extent additional positive direct investment in affiliated foreign nationals in Schedule A or B countries is not so made during the current year, to reinvest an additional portion of its share in the total earnings of incorporated affiliated foreign nationals in Schedule C countries during the immediately following year up to the amount of such excess or such losses, as the case may be.

(2) If a direct investor makes a negative net transfer of capital during any year to affiliated foreign nationals in Schedule C countries, the direct investor is authorized (i) to make additional positive direct investment (in the form of transfers of capital and/or reinvested earnings) in affiliated foreign nationals in Schedule A or Schedule B countries during the current year up to the amount of such negative net transfer of capital, or (ii) to the extent additional positive direct investment in affiliated foreign nationals in Schedule A or B countries is

not so made during the current year, to make positive net transfers of capital to affiliated foreign nationals in Schedule C countries during succeeding years in an aggregate amount not exceeding the amount of such negative net transfer of capital.

15. Section 1000.505 is revised to read as follows:

§ 1000.505 Transfers between affiliated foreign nationals.

(a) For the purposes of this part, any transfer of funds or other property made by an affiliated foreign national of a direct investor in any Scheduled Area to another affiliated foreign national of such direct investor in a different Scheduled Area shall be treated as a transfer of such funds or other property by the transferor affiliated foreign national to the direct investor and as a further transfer of such funds or other property by the direct investor to the transferee affiliated foreign national, unless, as to either the transferor or transferee affiliated foreign national, the direct investor does not own or acquire (1) securities possessing in excess of 50 percent of the aggregate voting power (including subsidiaries, sub-subsidiaries and all subsidiaries of lower tiers if the subsidiary in each case is connected to its parent by ownership by the parent of securities of the subsidiary possessing in excess of 50 percent of aggregate voting power); or (2) the right or power to receive, control, or otherwise enjoy more than 50 percent of the earnings, receipts, or income on profits; or (3) the right or power to receive, control or otherwise direct the disposition of more than 50 percent of the assets upon the liquidation, termination, or winding up thereof.

(b) Notwithstanding anything to the contrary contained in paragraph (a) of this section, the extension of a trade credit by one affiliated foreign national of a direct investor to another affiliated foreign national of such direct investor in the ordinary course of business pursuant to arm's-length terms shall not be deemed a transfer of capital by the direct investor to the affiliated foreign national receiving the credit nor a transfer of capital by the affiliated foreign national extending the credit to the direct investor if the obligation is in fact paid within 12 months after extension of the credit, in which event payment of the obligation shall not be deemed a transfer of capital by the direct investor to the affiliated foreign national receiving payment nor a transfer of capital by the affiliated foreign national making payment to the direct investor.

15. A new Subpart I is added to the regulations, consisting of §§ 1000.901 through 1000.917, inclusive, to read as follows:

Subpart I—Rules for Affiliated or Associated Groups and Persons Indirectly Owning or Acquiring Affiliated Foreign Nationals

GENERAL RULES FOR THIS SUBPART

Sec.
1000.901 General coverage.
1000.902 Foreign members.
1000.903 Percentage of ownership.
1000.904 Calculating indirectly owned interests.

RULES FOR MANDATORY GROUPS

1000.905 Definitions.
1000.906 Rules respecting mandatory groups.

RULES FOR ELIGIBLE GROUPS

1000.907 Definition.
1000.908 Rules respecting eligible groups.
1000.909 Elections.
1000.910 Consequences of an election.
1000.911 Consequences of failure to elect.
1000.912 Other eligible group rules.

RULES RESPECTING INDIRECT INTERESTS

1000.914 Interests subject to §§ 1000.914–1000.916.
1000.915 Section 504 allowable.
1000.916 Other rules.

SPECIAL RELIEF

1000.917 Filing of revised or original Forms FDI–101.

Subpart I—Rules for Affiliated or Associated Groups and Persons Indirectly Owning or Acquiring Affiliated Foreign Nationals

GENERAL RULES FOR THIS SUBPART

§ 1000.901 General coverage.

This subpart sets forth rules respecting affiliated or associated groups within the United States and their members and other persons within the United States indirectly owning or acquiring interests in an affiliated foreign national through ownership or acquisition of an interest in another person within the United States. Affiliated or associated groups within the United States include "mandatory groups" (defined in § 1000.905) and "eligible groups" (defined in § 1000.907).

§ 1000.902 Foreign members.

An affiliated or associated group which would be subject to this subpart but for the fact that one or more members of the group are not persons within the United States shall be treated as a group subject to this subpart with respect to members who are persons within the United States if there are two or more members of the group who are persons within the United States.

Example 1. R N.V. is a corporation which is not a person within the United States and whose shares are publicly held in foreign countries. R N.V. owns all the shares of Corporation A and Corporation B, Delaware corporations, a 60 percent interest in Corporation C, a Maine corporation, and all the shares in T A.G., a German corporation. The remaining shares of Corporation C are publicly held. Corporation A and B are members of a mandatory group and that mandatory group and Corporation C are, in turn, members of an eligible group covered by this subpart. R N.V. and T A.G. are not members of a group subject to this subpart because they are not persons within the United States.

Example 2. Corporation A, a Delaware corporation, owns all the shares of F S.A., a French corporation. The shares of Corporation A are owned equally by Corporation B, a Delaware corporation, Corporation C, a New York corporation, and Corporation D, a United Kingdom corporation. Corporations A, B and C are members of a group covered by this subpart. Corporation D is not a member of a group subject to this subpart because it is not a person within the United States.

§ 1000.903 Percentage of ownership.

Wherever in this subpart reference is made to the percentage interest of a person in another person, that percentage interest shall be calculated according to the following rules:

(a) The percentage interest in a person which is a corporation (or is an association having the attributes of a corporation, including transferable shares) shall be that percentage of the aggregate voting power of the corporation or association represented by the equity shares of that corporation or association which are owned. If a corporation shall have more than one class of equity shares outstanding, all classes of equity shares shall be aggregated and the shareholder's interest shall be calculated in accordance with the aggregate power to vote (incident to the shares owned by him) generally on matters appropriate for shareholder action. Contingent voting rights shall be disregarded until the contingency has occurred, and shares subject to unexercised warrants, conversion rights, options or like arrangements shall be disregarded.

(b) Percentage interests in associations, partnerships, trusts, joint ventures, and similar organizations shall generally be determined by the percentage of a participant's right to share in the earnings of such organization. If an interest in any such organization shall entitle the holder to a fixed amount out of, rather than a percentage of, earnings, or another arrangement is in effect which may cause the percentage of interests in earnings to vary in accordance with future conditions or contingencies, the interests shall be calculated either (1) by reference to the relative amounts of earnings actually distributed or distributable to each participant at the close of the most recent annual accounting period of the enterprise or (2) by any other reasonable method which fairly represents the relationship of the participants respecting the actual or potential earnings of the enterprise.

Example 3. A, B, and C, individuals within the United States, are partners in a new partnership formed to exploit mineral rights in Latin America. Pursuant to the partnership agreement, A is entitled to a salary, plus a first call on net profits up to $50,000, plus a one-fifth interest in the remaining net partnership profits and B and C are each entitled to two-fifths of the remaining partnership net profits. The partnership was entered into on the assumption that, in the first year of operation, A, B, and C would divide net profits approximately equally if the projection of profitability proved to be accurate. A, B, and C are each deemed to own a 33.3 percent interest in the partnership.

(c) In cases where an interest of any person in another person cannot be calculated under paragraphs (a) and (b) of this section, such interests shall be calculated on the basis of all the facts and circumstances of the case.

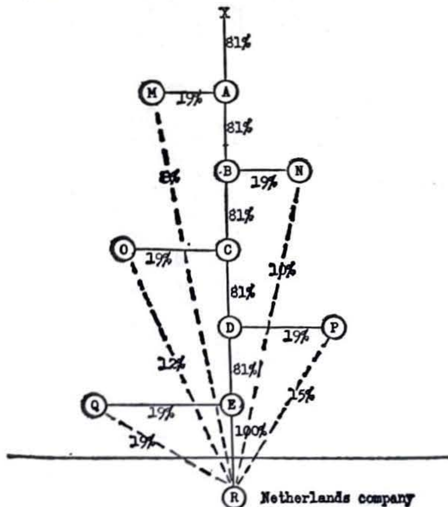
§ 1000.904 Calculating indirectly owned interests.

An interest which is indirectly owned or acquired includes an interest through ownership or acquisition of an intervening person or chain of persons. The

indirect owner's percentage interest in the person indirectly owned can be calculated by multiplying together the percentage interests of each person in the chain in each person in the chain (treating an appropriate amount of a higher tier corporation's stock held by a lower tier corporation as not outstanding).

Example 4. A, an individual residing within the United States, owns a 30 percent interest in Corporation A, a Delaware corporation. Corporation A owns a 60 percent interest in Corporation B, a New Jersey corporation. Corporation B owns (with the exception of qualifying shares) a German company. A owns indirectly an 18 percent interest (30 percent × 60 percent × 100 percent) in the German company.

Example 5. Corporations A, B, C, D and E, Delaware corporations, are members of a chain. Corporation A owns an 81 percent interest in Corporation B; similarly, Corporation B, in Corporation C; Corporation C, in Corporation D; and Corporation D, in Corporation E. X, an individual, owns an 81 percent interest in Corporation A. Corporation E owns a 100 percent interest in R, a Netherlands company. A 19 percent minority interest in Corporation A is owned by M; similarly, in Corporation B, by N; in Corporation C, by O; in Corporation D, by P; and in Corporation E, by Q. M, N, O, P, and Q are resident American individuals unrelated to each other or to X. N indirectly owns a 10 percent interest in R, the Netherlands company (19 percent × 81 percent × 81 percent × 81 percent × 100 percent); O indirectly owns a 12 percent interest in R (19 percent × 81 percent × 81 percent × 100 percent); P indirectly owns a 15 percent interest in R (19 percent × 81 percent × 100 percent); Q indirectly owns a 19 percent interest in R (19 percent × 100 percent); and M indirectly owns an 8 percent interest in R (19 percent × 81 percent × 81 percent × 81 percent × 81 percent × 100 percent). Thus, N, O, P, and Q are indirectly direct investors in the Netherlands company and M is not. X, A, B, C, D, and E are members of a mandatory group (as defined in § 1000.905). This Example 5 may be illustrated by the following diagram:



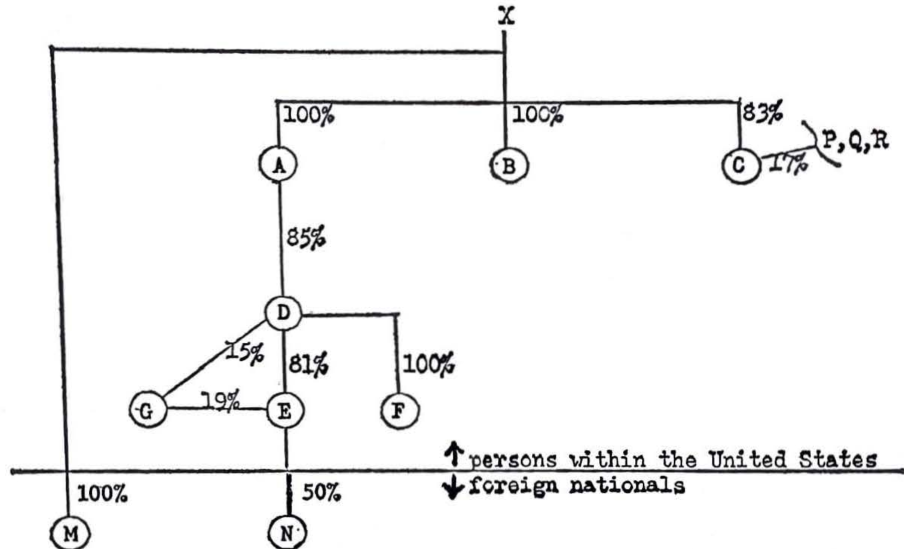
RULES FOR MANDATORY GROUPS

§ 1000.905 Definition.

(a) A mandatory group is any affiliated or associated group all of whose members can be described as follows:

(1) *Eighty percent group.* A person (including an individual) within the United States ("parent") and each person (whether corporation, partnership, association, trust, estate, or other organization but not including an individual) within the United States ("subsidiary") in which the parent owns in excess of an 80 percent interest and all subsidiaries of lower tiers within the United States: *Provided,* That in each case the subsidiary is connected to its immediate parent by ownership by that parent of in excess of an 80 percent interest. There shall also be included within the mandatory group the members of which are described in the preceding sentence any person in which the aggregate of directly owned interests of all such members exceeds 80 percent.

Example 6. X, an individual within the United States, owns all voting shares of Corporations A and B, Alabama corporations, and an 83 percent interest in Corporation C, a Florida corporation. The remaining securities of Corporation C are owned by P, Q, and R, unrelated individuals. Corporation A has an 85 percent interest in Corporation D, a Florida corporation. Corporation D, in turn, owns an 81 percent interest in Corporation E, a Florida corporation, and has a wholly owned Louisiana subsidiary, Corporation F. The minority interests in Corporations D and E are owned by Corporation G, an Alabama corporation. X owns a 100 percent interest in Corporation M, an Argentinian company, and Corporation E owns a 50 percent interest in Corporation N, a United Kingdom Company. Corporations A, B, C, D, E, and F and X are members of a mandatory group. P, Q, R, and Corporations G, M, and N are not members of the mandatory group. Corporations M and N are affiliated foreign nationals of the mandatory group. Example 6 may be diagrammed as follows:



Example 7. The facts are the same as in Example 6 except that Corporation A, B, and C and X each own 25 percent interest in Corporation H, an Illinois corporation. Corporation H is also a member of the mandatory group identified in Example 6.

(2) *Family relationship.* An individual, his spouse, and any other individual who is a "dependent" of such individual as that term is defined in section 152, Internal Revenue Code of 1954: *Provided,* That all such individuals are persons within the United States: *And provided further,* That in determining who are dependents of such individual for purposes of this paragraph section 152(b)(3) (relating to citizenship) and 152(c) (relating to multiple support agreements), Internal Revenue Code of 1954, shall not apply and children of an individual not in his custody shall not be treated as dependents.

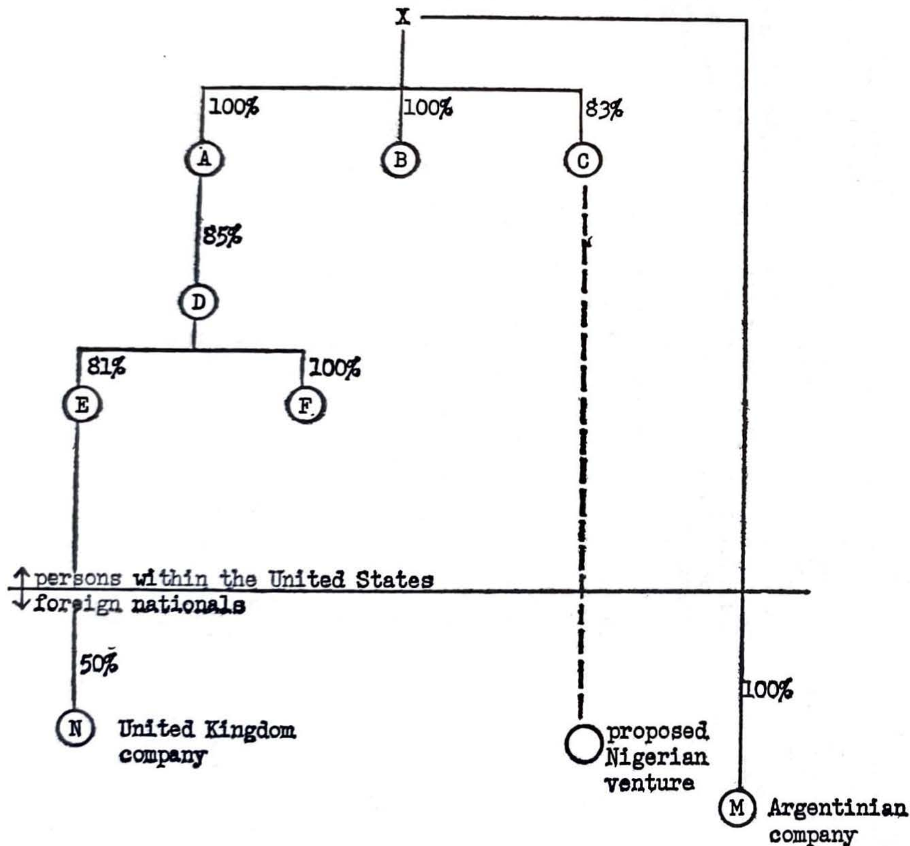
(b) Any mandatory group described in paragraph (a) of this section (including a mandatory group so described by application of the rule of § 1000.902 (relating to groups with foreign members) to paragraph (a) of this section) is an affiliated or associated group within the United States.

§ 1000.906 Rules respecting mandatory groups.

A mandatory group shall be treated as one person within the United States (and the separate identity of the members thereof shall be disregarded) for all purposes under the regulations in this part including, without being limited to, §§ 1000.201, 1000.203, 1000.503, 1000.504, 1000.505, 1000.602, and 1000.801.

Example 8. The facts are the same as in Example 6. X, the individual within the United States, and U.S. Corporations A, B, C, D, E, and F are members of a mandatory group. On January 1, 1968, X owns a 100 percent interest in Corporation M, an Argentinian company, and Corporation E owns a 50 percent interest in Corporation N, a United Kingdom company. A single Form FDI-101 shall be filed on behalf of the entire mandatory group and shall cover both Corporation M, the Argentinian company, and Corporation N, the United Kingdom company. Neither another member of the mandatory group (other than that member filing on behalf of the group) nor P, nor Q, nor R, the owners of the minority interest in Corporation C, nor Corporation G, the owner of the minority interest in Corporations D and E, shall file reports on Form FDI-101 with respect to Corporations M and N.

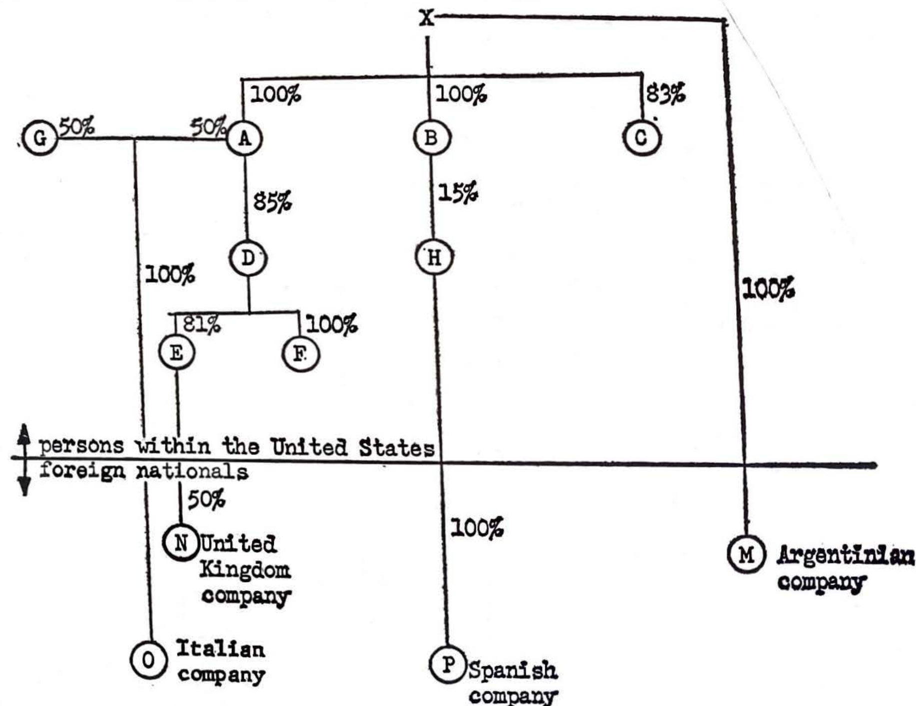
Example 9. The facts are the same as in Example 8. Form FDI-101 shows an average of positive direct investment for the years 1965 and 1966 inclusive in Schedule A countries of $500,000 and in Schedule B countries of $1 million. X proposes to make positive direct investment of $400,000 in Corporation M in 1968 while Corporation C plans to start up a Nigerian venture by a net positive transfer of capital in the amount of $300,000 in 1968. No other member of the mandatory group proposes to make any direct investment in 1968. Either transaction, but not both, is generally authorized. Under § 1000.504 positive direct investment is not authorized in excess of $550,000 during any year in affiliated foreign nationals of Schedule A. If X and Corporation C both propose to go forward, one person shall apply on behalf of all members of the group for all specific authorizations, setting forth the 1968 direct investment program of all members of the mandatory group which, in this case consists of $700,000 of direct investment in two projects in Schedule A countries. The following diagram illustrates Examples 8, 9, and 10:



Example 10. The facts are the same as in Example 8 except that, during 1968, Corporation A lends the Argentinian company $500,000 evidenced by the company's note payable in 1973. No other transactions take place with the Argentinian company or with any other foreign national located in a Schedule A country and Corporation M has no earnings in 1968. The loan is a positive direct investment by the mandatory group authorized by § 1000.504.

Example 11. The facts are the same as in Example 8 except that X makes a capital contribution of $90,000 during 1968 to Corporation M and Corporation D opens up a branch in France, transferring assets during 1968 valued at $80,000. Assuming no other relevant transactions, neither transaction is authorized by § 1000.503, because, together, they constitute positive direct investment in excess of the amount authorized by that section. The capital contribution to Corporation M is a positive direct investment generally authorized under § 1000.504. Assuming both transfers are made, the net positive transfer of capital to the French branch is a violation of § 1000.201 by the mandatory group and every member thereof.

Example 12. The facts are the same as in Example 8 except that, on January 1, 1968, Corporation A, which is a person within the United States, owns a 50 percent interest in a Texas partnership, also a person within the United States, having a wholly owned service-and-sales subsidiary in Italy, O.S.p.A. The other member of the Texas partnership is Corporation G, an unrelated Alabama corporation. On the same date, Corporation B owns a 15 percent interest in Corporation H, a Delaware corporation. Corporation H is otherwise owned by the general public and has a wholly owned Spanish subsidiary, Corporation P. The mandatory group identified in Example 8 (and not Corporation A or Corporation B alone) is itself a member of an eligible group, consisting of such mandatory group and Corporation G, with respect to O.S.p.A. and the mandatory group is a person within the United States which indirectly owns an interest in Corporation P through ownership of an interest in another person in the United States, Corporation H. Rules respecting these investments of the mandatory group are set forth in §§ 1000.907–1000.912 and §§ 1000914–1000.916, respectively. The following diagram illustrates Example 12:



Example 13. The facts are the same as in Example 8. Liquid foreign balances held by, or for the benefit of, any member of the mandatory group are liquid foreign balances subject to the requirements of § 1000.203. The mandatory group and all its members are responsible for reducing by June 30, 1968, the aggregate of such liquid foreign balances to the level permitted under § 1000.203 and thereafter for complying with the requirements of that section.

Rules for Eligible Groups

§ 1000.907 Definition.

(a) An eligible group is any affiliated or associated group all of whose members can be described as follows:

(1) *Control.* Persons within the United States who are shareholders in a corporation within the United States in which one of such shareholders

(i) Owns in excess of a 50 percent interest; or

(ii) Does not own in excess of a 50 percent interest but does own an interest of sufficient magnitude to constitute effective control;

but none of such shareholders owns in excess of an 80 percent interest.

Example 14. An individual resident within the United States, A, owns a 60 percent interest in Corporation B, a New York corporation. The other shareholders are unrelated members of the general public, no one of whom owns more than a 5 percent interest in Corporation B. Corporation B is an eligible group, and all of its shareholders are members thereof.

(2) *Group venture.* Two or more persons within the United States initiating or maintaining a foreign business venture or a series of foreign business ventures, provided that the relationship of such persons is either—

(i) Evidenced by an agreement, such as a joint venture agreement, articles of partnership or the like; or

(ii) Pursuant to a common design in which the members have agreed, whether orally or in writing, to associate themselves for the purpose; or

(iii) Is not any of these but the project is, in whole or in part, managed centrally by a person or persons, whether as agent, trustee, representative, or otherwise, on behalf of the members of the group,

Provided, That no member of the group owns a greater than 80 percent interest therein.

Example 15. Common examples of subdivision (iii) would include groups of individuals participating in an organized program for the exploration of oil or other minerals whether or not such individuals elect to be treated as individual owners under the Internal Revenue Code.

Example 16. A, an individual residing in New York, owns a 25 percent interest in Corporation M, a Bermudan corporation. A's brother, B, who resides in Massachusetts, owns a 10 percent interest in Corporation M; D, adult nephew of A and B, and E, his wife, residing in Georgia, each owns a 12½ percent interest in Corporation M. A 15 percent interest in Corporation M is owned by G, residing in Florida and mother of A and B. None of these individuals is a dependent of any person. The close family relationships existing among A, B, D, E, and G and the investment in a single company, Corporation M, are indicia of a common design in which A, B, D, E, and G have agreed to associate themselves. A, B, D, E, and G are members of an eligible group.

Example 17. X, an individual, resides in Philadelphia and holds, in association with several unrelated individuals, a 100 percent interest in a Bahamian corporation. Y is X's brother and resides in San Francisco. Y's wholly owned California corporation has an Austrialian subsidiary. Neither brother is dependent on the other. X and Y are not members of an eligible group. Note, however, that if either brother has, directly or indirectly, any transactions with the affiliated foreign national of the other brother, such transactions will be treated as transactions on behalf of such other brother. See paragraph (b) of § 1000.912.

Example 18. Twelve individuals, American residents, own all the shares in Corporation A, a Washington corporation. No individual owns more than a 9 percent interest in Corporation A. The same 12 individuals, in the same proportions, own all the shares of Coropration B, a Phillippines company, which acts as exclusive Philippines sales agent for Corporation A. There is no written agreement among the individuals with respect to Corporation B, but Corporation B has rights of first refusal over its outstanding shares. The similar shareholdings in Corporations A and B, the business relations between the two corporations, and the control over sale of the shares in Corporation B are all facts evidencing a common design in which the individuals have agreed to associate themselves together. The 12 individuals are members of an eligible group.

(3) *Closely held corporate ownership.* Persons within the United States who are shareholders in any corporation within the United States with 10 or fewer shareholders but no shareholder owns in excess of a 50 percent interest therein or, in any case, an interest of sufficient magnitude to constitute effective control over the corporation.

(b) Any eligible group described in paragraph (a) of this section or (including an eligible group so described through application of the rule of § 1000.902 (relating to groups with foreign members) to paragraph (a) of this section) is an affiliated or associated group within the United States.

§ 1000.908 Rules respecting eligible groups.

(a) The members of an eligible group may make the election provided in § 1000.909 and must make that election unless there is at least one member of the eligible group who—

(1) Owns a 10 percent or greater percentage interest in the eligible group, and

(2) Owns or acquires, directly or indirectly (including the aggregation of interests owned or acquired directly or indirectly), a 10 percent or greater percentage interest in an affiliated foreign national which is a group investment (as defined in paragraph (b) of this section).

The making of such election shall have the consequences set out in § 1000.910. The consequences of failing to make such election are set out in § 1000.911. Certain rules for the treatment of eligible groups and their members are unaffected by this election, and these rules are set out in § 1000.912.

(b) (1) A group investment shall mean direct investment in any affiliated foreign national (and such affiliated foreign national) owned or acquired by an eligible group or the members thereof—

(i) By means of ownership or acquisition directly or indirectly by a corporation, partnership, or similar recognized form of organization if the eligible group consists of such an organization; or

(ii) Pursuant to the purposes, and within the scope, of the common design or central management of the eligible group.

(2) A separate investment shall mean the direct investment in any affiliated foreign national (and such affiliated foreign national) owned or acquired by a member of an eligible group to the extent it is not a group investment of that eligible group. Separate investment and the member's share of group investment in the same foreign national shall be aggregated in determining whether the foreign national is an affiliated foreign national of such member.

Example 19. M, N, O, and P, individuals within the United States, each owns a 25 percent interest in Corporation A, a Delaware corporation. Corporation A holds title to an apartment building in Rio de Janeiro which it manages through an employee. Corporation A also owns a 25 percent interest in B Company, Ltd., a United Kingdom company. M owns directly an additional 25 percent interest in B Company, Ltd. N owns all the shares (except qualifying shares) of a Chilean company. The apartment building and the 25 percent interest in B Company, Ltd. are group investments. M's additional interest in B Company, Ltd. is a separate investment of M. The Chilean company is a separate investment of N.

§ 1000.909 Election.

(a) The method of making the election referred to in § 1000.908 shall be as follows:

(1) In the case of eligible groups which are group ventures or like organizations (subparagraph (2) of paragraph (a) of § 1000.907) or closely held corporations (subparagraph (3) of paragraph (a) of § 1000.907) by a document executed by or on behalf of all members of the eligible group or by so many of such members as have the power by their vote to bind such group pursuant to any constituent agreement to which all members are parties.

(2) In the case of eligible groups which are controlled corporations (subparagraph (1) of paragraph (a) of § 1000.907) by a document executed by the member of the group owning in excess of a 50 percent interest in the corporation or otherwise in effective control of the corporation.

(3) If any eligible group must make the election referred to in § 1000.908, such election shall be deemed to have been made without further action by the members of the group.

(b) Written notice of such election shall be filed with the Program Reports Division, Office of Foreign Direct Investment, U.S. Department of Commerce, Washington, D.C. 20230, on or prior to June 10, 1968, in connection with the filing of an original or revised Form FDI-101 pursuant to paragraph (b) of § 1000.602.

(c) Once the election is made, it may not be changed without the permission of the Secretary except as provided in § 1000.917 in connection with the filing of an original or revised Form FDI-101 as permitted in that section.

§ 1000.910 Consequences of an election.

The following rules shall apply to an electing eligible group and its members:

(a) One Form FDI-101 shall be filed by an electing eligible group and shall reflect the group investments of the eligible group, but shall not reflect the separate investments of any member. No other person shall file a Form FDI-101 reflecting the group investments.

Example 20. X, Y, and Z are individuals resident in the United States. They have formed a partnership which owns a 25 percent interest in a real estate venture in Mexico. In addition, Y owns directly a 15 percent interest in the Mexican venture and Z owns directly a 5 percent interest in the Mexican venture. X owns a 10 percent interest in an unrelated Mexican company. X, Y, and Z make the election provided in § 1000.908. The partnership files a Form FDI-101, reporting thereon the 25 percent interest in the Mexican venture and reflecting the partnership interests of X, Y, and Z on Supplement 1 to such Form. X and Y each file a Form FDI-101, reporting their respective separate investments. Z also files a Form FDI-101, reporting his separate investment, even though he is a direct investor only through aggregation of his separate investment and his share of the group investment. See paragraph (b) of § 1000.915.

(b) The phrase, "the average of positive direct investment by the direct investor * * * during the years 1965 and 1966 inclusive" as used in § 1000.504 means the average of positive direct investment which is required to be reported for those years by the direct investor on Form FDI-101. The positive direct investment generally authorized by § 1000.504 in each Scheduled Area is the "section 504 allowable" in such Scheduled Area.

Example 21. The facts are the same as in Example 20. The partnership positive direct investment averaged $1 million in 1965 and 1966, and also X and Y each had an average of positive direct investment of the same amount in his separate investment. Z's average of positive direct investment in his separate investment was $500,000. The partnership, X, and Y each have a section 504 allowable of $1,100,000 in Schedule A countries. Z has a section 504 allowable of $550,000 in Schedule A countries.

(c) With respect to positive direct investment authorized under § 1000.503:

(1) Except as provided in subparagraph (3) of this paragraph, an electing eligible group is authorized to make, during any year, positive direct investment in all of its affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $100,000.

(2) Except as provided in subparagraph (3) of this paragraph, the amount of positive direct investment authorized to any direct investor under § 1000.503 shall not be reduced by reason of the fact that such direct investor is a member of one or more electing eligible groups: *Provided,* That, if any direct investor has a 10 percent or greater percentage interest in one or more electing eligible groups, the amount of positive direct investment so authorized to such direct investor shall be reduced (not below zero) by that percentage of $100,000 which is equal to the sum of all of such direct investor's 10 percent or greater percentage interests in such groups.

Example 22. X, an individual resident within the United States, owns a 5 percent interest in Corporation A, a Delaware corporation. There are seven other shareholders in Corporation A. The shareholders make the election provided in § 1000.908. X is authorized to make positive direct investment during any year in all of its affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $100,000 except as provided in subparagraph (3) of this paragraph.

Example 23. The facts are the same as in Example 22. Y, an individual resident within the United States, is a shareholder in Corporation A and owns a 50 percent interest therein. Except as provided in subparagraph (3) of this paragraph, Y is authorized under § 1000.503 to make positive direct investments not amounting in the aggregate to more than $50,000 during any year, because the amount of positive direct investment Y is authorized to make under § 1000.503 is $100,000 less 50 percent of $100,000.

(3) Section 1000.503 shall not be deemed to authorize any member of an eligible group to make positive direct investment in any amount in a group investment or any eligible group to make positive direct investment in any amount in a separate investment of any member thereof.

(d) (1) The electing eligible group shall be treated as a direct investor for purposes of § 1000.203.

(2) No member of an electing eligible group shall be treated as a direct investor for purposes of § 1000.203 unless such member has a separate investment.

Example 24. W, X, Y, and Z, individuals residing in the United States, each own a 25 percent interest in Corporation A, a Texas corporation. Corporation A has a wholly owned subsidiary, B.S.A., a Mexican company. W has a separate investment in C company, a United Kingdom partnership, consisting of a 20 percent interest therein. X, Y, and Z have no separate investment. W, X, Y, and Z make the election provided in § 1000.908. Accordingly, Corporation A files a Form FDI-101 covering B.S.A., and W files a Form FDI-101 covering C Company. W, X, and Corporation A have maintained substantial bank accounts in banks located in the United Kingdom for several years. Corporation A is required to report on Form FDI-101 the bank accounts maintained by it during 1965-66 in the United Kingdom, but not the bank accounts maintained there by W or X. W reports on Line 17 of its Form FDI-101 the bank account maintained by him in the United Kingdom. Both Corporation A and W are subject to § 1000.203 with respect to the bank accounts reported on their respective Form FDI-101. X is not subject to § 1000.203 with respect to the bank account which he maintains in the United Kingdom.

Example 25. The facts are the same as in Example 24, except that the accounts maintained by X are, in fact, at all times held subject to the control of Corporation A, returnable to that corporation on its demand without material conditions. Monies held by X in bank accounts in the United Kingdom are held for the account of Corporation A. The monies shall be reported by Corporation A on Line 17 of Form FDI-101 filed by it, and Corporation A is subject to § 1000.203 with respect to monies in this account.

§ 1000.911 Consequences of failure to elect.

The following rules shall apply to a nonelecting eligible group and its members:

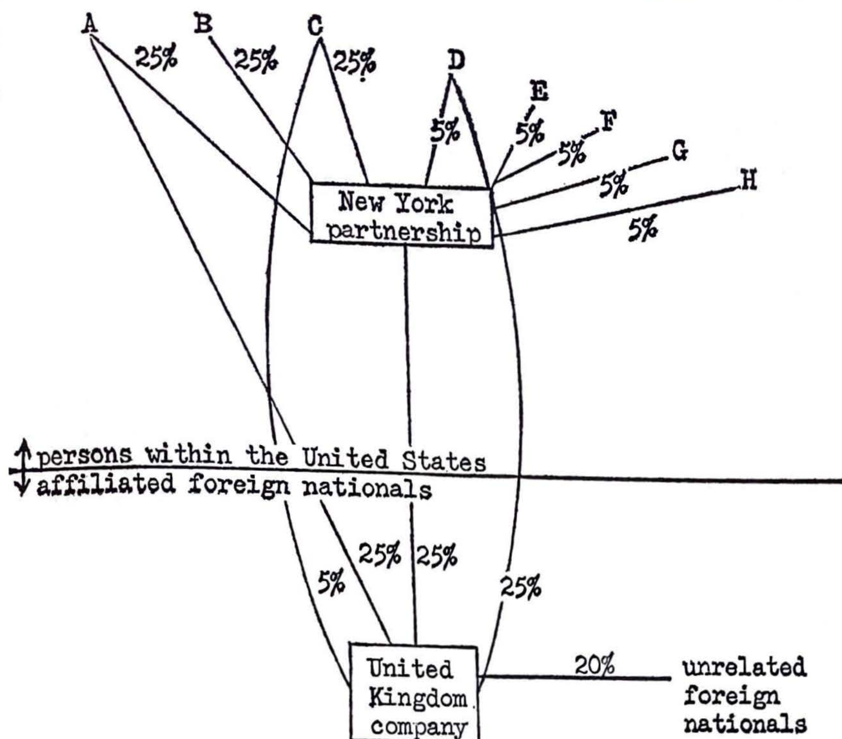
(a) One Form FDI-101 shall be filed by each member of the eligible group and shall reflect that portion of the group investment which is the same as the member's percentage interest in the eligible group: *Provided,* That any member of the eligible group shall not report any portion of the group investment if he either—

(1) Owns less than a 10 percent interest in the group; or

(2) Does not, directly or indirectly (including the aggregation of interests owned or acquired directly or indirectly) own or acquire a 10 percent or greater percentage interest in an affiliated foreign national which is a group investment.

The nonelecting eligible group shall file a Form FDI-101 to reflect the portion of group investment not reported by the members thereof. No other persons shall file a Form FDI-101 with respect to any portion of the group investment.

Example 26. A partnership, formed in New York, has eight partners with the following percentage interests in the partnership: A, B, and C each have a 25 percent interest, and D, E, F, G, and H each have a 5 percent interest. The partnership owns a 25 percent interest in a United Kingdom company. A and D each have directly an additional 25 percent interest in the same company, and C has directly a 5 percent interest in the same company. Example 26 may be diagrammed as follows:



The partners fail to make the election provided in § 1000.908. Despite the failure of the members to make the election, the partnership still reports on Form FDI-101 with respect to half of the group investment. The partnership reports for D, E, F, G, and H, because all of those partners have less than a 10 percent interest in the partnership. The partnership also reports for B, because B has a total percentage interest in the United Kingdom company of 6.25 percent. Thus, the election benefits only A and C. A reports with respect to a 31.25 percent interest in the United Kingdom company on his Form FDI-101, made up of a 25 percent interest directly owned and a 6.25 percent interest indirectly owned. C reports with respect to an 11.25 percent interest in the United Kingdom company, made up of a 6.25 percent interest indirectly owned and a 5 percent interest directly owned. Despite the fact that the partnership reports with respect to D's share of the group investment in the United Kingdom company (because D owns less than a 10 percent interest in the partnership), D still reports his separate investment in the United Kingdom company on a Form FDI-101. No other person reports with respect to the United Kingdom company.

(b) Section 504 allowables shall be calculated on the basis of the average of positive direct investment during the years 1965 and 1966 which is required to be reported by the direct investor on Form FDI-101.

Example 27. The facts are the same as in Example 26. In 1965, the partnership made positive direct investment in the United Kingdom company amounting to $850,000. In 1966, the amount was $1,150,000. The average of positive direct investment by the partnership in all Schedule B countries is $500,000. This result obtains because the partnership reports with respect to only half of the group investment. The section 504 allowable of the partnership in all Schedule B countries is $375,000 (65 percent of $500,000).

Example 28. Corporation A is a Georgia corporation. An individual, X, owns a 60 percent interest in Corporation A. There are 300 other shareholders, no one of whom own more than a 3 percent interest in Corporation A. Corporation A has a wholly owned subsidiary in Mexico. If X fails to make the election provided in § 1000.908, then X and Corporation A both file Forms FDI-101, reporting, respectively, a 60 percent and a 40 percent interest in the Mexican subsidiary. As a result, if Corporation A had made positive direct investment in the subsidiary during the years 1965 and 1966 in the amount of $1 million, X would have a section 504 allowable in Schedule A of $330,000 (110 percent of 60 percent of half of $1 million) and Corporation A would have a section 504 allowable in Schedule A of $220,000. If X transferred $300,000 to start up a Kenyan venture in calendar year 1968. That transfer, if a positive direct investment, is authorized to X under § 1000.504.

(c) With respect to positive direct investment authorized under § 1000.503:

(1) Subject to the provisions of subparagraph (3) of this paragraph, the amount of positive direct investment authorized to any direct investor shall not be reduced by reason of the fact that such direct investor is a member of one or more nonelecting eligible groups.

(2) Subject to the provisions of subparagraph (3) of this paragraph, a nonelecting eligible group is authorized, during any year, to make positive direct investment in all of its affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $100,000: *Provided,* That where one or more members of such nonelecting eligible group has a 10 percent or greater interest in such group, the amount of positive direct investment so authorized to such group under this subparagraph shall be reduced by that percentage of $100,000 which is equal to the sum of the percentage interests owned by members having a 10 percent or greater percentage interest in such group.

Example 29. X, an individual resident in New York, owns a 60 percent interest in each of two Maine corporations, Corporations A and B. Each corporation has affiliated foreign nationals. The remaining interests in each corporation are publicly held and no shareholder other than X owns more than a 5 percent interest in either corporation. Subject to the provisions of subparagraph (3) of this paragraph, X is authorized to make positive direct investment during any year in all of its affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $100,000. Subject to the provisions of subparagraph (3) of this paragraph, corporation A is authorized to make positive direct investment during any year in all of its affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $40,000. Subject to the provisions of subparagraph (3) of this paragraph, corporation B is authorized to make positive direct investment during any year in all of its affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $40,000. Every shareholder in Corporation A or B other than X is also authorized, subject to the provisions of subparagraph (3) of this paragraph, to make positive direct investment during the year in all of his affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $100,000.

(3) No member of an eligible group is authorized under § 1000.503 to make positive direct investment in any amount in a group investment and no eligible group is authorized to make positive direct investment in any amount in any member's separate investment.

(d) (1) A nonelecting eligible group shall be treated as a direct investor for purposes of § 1000.203.

(2) A member of a nonelecting eligible group shall be treated as a direct investor for purposes of § 1000.203 unless such member neither (i) owns a 10 percent or greater percentage interest in any nonelecting eligible group nor (ii) has any separate investment.

§ 1000.912 Other eligible group rules.

Whether or not the eligible group has made the election provided in § 1000.908, every person shall be treated as a direct investor in every group investment for purposes of § 1000.201 if he owns, directly or indirectly, a 10 percent or greater interest in the eligible group.

(a) A transaction effected by, on behalf of, or for the benefit of a partnership, association, trust, estate, corporation, or other organization in which a person has a greater than 50 percent interest shall be treated as if effected by such person for the purpose of § 1000.201.

(b) A transaction effected by, on behalf of, or for the benefit of a grandparent, parent, brother, sister, uncle, aunt, niece, nephew, child, grandchild, or spouse of an individual, or effected by, on behalf of, or for the benefit of spouses of any of the foregoing, shall be treated as if effected by such individual for the purposes of § 1000.201.

Example 30. A New York corporation, Corporation A, has 30 shareholders. Two shareholders, who are U.S. residents, X and Y, own, respectively, a 60 percent interest and a 30 percent interest in Corporation A. Corporation A has a 30 percent interest in a Mexican subsidiary. Neither X nor Y has a section 504 allowable in Schedule A. During

1968, in the only transaction with foreign nationals engaged in by either, X and Y, each buy long-term debentures issued by the Mexican subsidiary. X and Y have engaged in transactions prohibited by § 1000.201.

Example 31. A, an individual residing in New York, owns a 60 percent interest in Corporation A, a Delaware corporation. Corporation A is not a direct investor. A also owns a 10 percent interest in Corporation B, a Texas corporation, which owns a 100 percent interest in a Mexican corporation. During 1968, Corporation A buys debentures issued by the Mexican subsidiary. The purchase of debentures is treated as if made by A. Such a purchase is prohibited by § 1000.-201.

RULES RESPECTING INDIRECT INTERESTS

§ 1000.914 Interests subject to §§ 1000.-914–1000.916.

(a) Except as provided in paragraph (b) of this section, where one person within the United States ("primary owner") owns or acquires one or more affiliated foreign nationals and one or more other persons within the United States ("secondary owners") directly or indirectly own an interest in the primary owner, then both primary owner and secondary owners are subject to the rules set forth in §§ 1000.914–1000.916.

Example 32. X, an individual within the United States, owns a 10 percent interest in Corporation A, a Delaware corporation. Corporation A is the sole owner of an Argentinian corporation. X is a secondary owner and a person covered by Division IV of this subpart.

Example 33. Y, an individual, within the United States, owns (with the exception of qualifying shares) all the shares of S A.G., a German company. S A.G. owns a one-tenth interest in T GmbH, a second Germany company. Y is not a person covered by this subpart, because S A.G. is not a person within the United States.

(b) If any person is subject to both the rules of §§ 1000.914–1000.916 and to the rules of §§ 1000.905–1000.906 (relating to mandatory groups) or §§ 1000.907–1000.912 (relating to eligible groups), then the rules set forth in such §§ 1000.-905–1000.906 or §§ 1000.907–1000.912 shall prevail to the extent they are inconsistent with the rules set forth in §§ 1000.914–1000.916.

§ 1000.915 Section 504 allowable.

(a) The primary owner shall, and secondary owners shall not, report on Form FDI–101 with respect to any affiliated foreign national of such primary owner. The average of positive direct investment during 1965 and 1966 of the primary owner shall, and of the secondary owners shall not, include items of direct investment reported by the primary owner under the preceding sentence.

Example 34. X and Y, unrelated American resident individuals, each own a 12 percent interest in Corporation A, a Delaware corporation. Neither X or Y controls Corporation A. No other shareholder in Corporation A (of which there are 50) owns more than a 5 percent interest. Corporation A has a wholly owned Brazilian subsidiary. X and Y are secondary owners, and Corporation A is a primary owner, of the Brazilian subsidiary. Corporation A shall file a Form FDI–101, reporting with respect to the Brazilian subsidiary. X and Y do not file a Form FDI–101.

(b) If any person directly owns or acquires an interest in an affiliated foreign national which is less than a 10 percent interest, but such person also indirectly owns an interest in the same affiliated foreign national and (by the aggregation of directly and indirectly owned interests) owns or acquires a 10 percent or greater interest in the affiliated foreign national, then such person shall file a Form FDI–101 with respect to the interest in the affiliated foreign national which it owns directly.

Example 35. A, an individual residing in Florida, owns a 5 percent interest in Corporation B, a Florida corporation. Corporation B owns an 80 percent interest in Corporation C, a Jamaican corporation. A directly owns an additional 8 percent interest in Corporation C. A owns (by the aggregation of direct and indirect interests) a 12 percent interest in Corporation C. A shall file a Form FDI–101 with respect to his direct 8 percent interest in Corporation C.

§ 1000.916 Other rules.

(a) Notwithstanding any of the foregoing, every person owning, directly or indirectly, a 10 percent or greater interest in a primary owner shall be treated as a direct investor in any affiliated foreign national of such primary owner for purposes of § 1000.201.

(1) A transaction effected by, on behalf of, or for the benefit of a partnership, association, trust, estate, corporation, or other organization, in which a person has directly or indirectly a greater than 50 percent interest shall be treated as if effected by such person for the purpose of § 1000.201.

(2) A transaction effected by, on behalf of, or for the benefit of a grandparent, parent, brother, sister, uncle, aunt, niece, nephew, child, grandchild, or spouse of an individual, or effected by, on behalf of, or for the benefit of spouses of any of the foregoing, shall be treated as if effected by such individual for the purposes of § 1000.201.

(b) For purposes of § 1000.203, each primary owner shall be treated as a direct investor, and no secondary owner shall be treated as a direct investor unless such secondary owner (either directly or by the aggregation of interests owned or acquired indirectly and directly) owns a 10 percent or greater percentage interest in an affiliated foreign national.

(c) Each secondary owner and each primary owner is authorized to make positive direct investment, during any year, in all of his affiliated foreign nationals, wheresoever located, not amounting in the aggregate to more than $100,000, except that § 1000.503 does not authorize any person to make positive direct investment in any amount in

(1) An affiliated foreign national of which he is a secondary owner; or

(2) An affiliated foreign national of any other person when such other person owns directly or indirectly a 10 percent or greater interest in the person making the positive direct investment.

Example 36. X, an individual residing within the United States, owns Company A, a United Kingdom company, and also owns a 15 percent interest in Corporation B, a Delaware corporation, and does not have effective control of Corporation B. No other shareholder in Corporation B owns more than a 5 percent interest. Corporation B owns a 50 percent interest in a Belgian company. During 1968, X buys $60,000 of the Belgian company's debentures and $50,000 of the United Kingdom company's debentures. Assuming no other relevant transactions, X is not authorized to make any amount of positive direct investment in the Beligan company under § 1000.503, since it is an affiliated foreign national of which X is a secondary owner. Furthermore, X is not authorized under § 1000.503 to buy the debentures of the United Kingdom company, since the amount of positive direct investment made by X in his affiliated foreign nationals during 1968 is $110,000.

Example 37. The facts are the same as in Example 34 except that Corporation B buys $40,000 of the Belgian company's debentures and $50,000 of the United Kingdom company's debentures. Corporation B is not authorized under § 1000.503 to buy the debentures of the United Kingdom company, since it is an affiliated foreign national of X who owns a 15 percent interest in Corporation B. Corporation B is authorized to buy the Belgian company's debentures under § 1000.503.

SPECIAL RELIEF

§ 1000.917 Filing of revised or original Forms FDI–101.

Any person who has made a timely filing of Form FDI–101, and reported amounts on the basis of the instructions thereto, which amounts are materially changed because of the provisions of this proposed subpart, may elect to substitute an amended form FDI–101, reflecting the required changes, within 15 days after the date on which this subpart is promulgated in final form.

JOSEPH W. BARTLETT,
Acting Director, Office of Foreign Direct Investments.

APRIL 25, 1968.

[F.R. Doc. 68-5175; Filed, Apr. 29, 1968; 8:45 a.m.]

U.S. DEPARTMENT OF COMMERCE
OFFICE OF FOREIGN DIRECT INVESTMENTS

PROPOSED RULE MAKING

DEPARTMENT OF COMMERCE

Office of Foreign Direct Investments

[15 CFR Part 1000]

FOREIGN DIRECT INVESTMENT REGULATIONS

Notice of Proposed Rule Making

Introduction. Notice is hereby given that the Office of Foreign Direct Investments proposes to promulgate various amendments to the Foreign Direct Investment Regulations (the "regulations") (15 CFR Part 1000).

Proposed § 1000.203 of the regulations will replace current § 1000.203 (Liquid Foreign Balances). The proposals respecting §§ 1000.201 (Prohibited Direct Investment in Affiliated Foreign Nationals), 1000.312(a)(7) (Transfers of Capital), 1000.313(d)(1) (Net Transfer of Capital), 1000.324 (Long-Term Foreign Borrowing), 1000.503 (Positive Direct Investment Not Exceeding $100,000) and 1000.505(a) (Transfers Between Affiliated Foreign Nationals) supersede the proposals respecting such provisions which were published in the FEDERAL REGISTER on April 30, 1968, while proposed Subpart K supersedes proposed General Authorization No. 4 published in the FEDERAL REGISTER on March 12, 1968. Accordingly, all of such prior proposals are hereby withdrawn.

The principal revisions are as follows:

(1) Proposed § 1000.203 requires that, as of June 30, 1968, and as of the end of every month thereafter, the liquid foreign balances held by a direct investor be maintained at a level not in excess of the average end-of-month amounts of the same so held by the direct investor during 1965 and 1966. The section, as redrafted, defines the term "foreign balances" to include foreign bank deposits (including certificates of deposit and fixed interest deposits), negotiable instruments and commercial paper of unaffiliated foreign nationals (other than negotiable instruments or commercial paper arising from the export by the direct investor of goods or services from the United States to foreign nationals), and securities issued or guaranteed by a foreign country. The term "liquid foreign balances" is defined as foreign balances other than (a) negotiable instruments, commercial paper and securities which are not redeemable at the option of the direct investor and are not transferable and readily marketable; (b) bank deposits, negotiable instruments and commercial paper which have a period of more than 1 year remaining to maturity when acquired by the direct investor and which are not redeemable in full at the option of the direct investor within a period of 1 year after such acquisition; and (c) foreign balances which are subject to restrictions of a foreign country on liquidation and transfer. The proposed section also contains a definition of "direct investment liquid foreign balances" as liquid foreign balances representing the proceeds of foreign borrowings held by a direct investor in anticipation of making transfers of capital to affiliated foreign nationals. Direct investment liquid foreign balances are excluded in calculating the average end-of-month amounts of liquid foreign balances held during 1965 and 1966; they are included, however, in calculating the amount of liquid foreign balances held as of the end of any month commencing June 30, 1968, unless, among other things, the direct investor (prior to June 30, 1968, or the first date it holds direct investment liquid foreign balances, whichever is later) certifies to the Secretary that it will not make transfers of capital to affiliated foreign nationals (in the form of transfers of cash, negotiable instruments, commercial paper, certificates of deposit or securities) other than by utilizing the direct investment liquid foreign balances which it then holds.

(2) Proposed § 1000.324 defines "long-term foreign borrowings" by a direct investor, incorporating in the definition the 12-month maturity provision now included in current § 1000.504(b)(1) and previously published proposed § 1000.313 (d)(1). Proposed § 1000.324 makes clear that the refinancing of a foreign borrowing (by virtue of the renewal, extension or continuance thereof or the application of the proceeds of a subsequent foreign borrowing) does not constitute a repayment of the initial borrowing, and further provides that the issuance of equity securities by a direct investor upon the conversion of a debt instrument issued by the direct investor is deemed to be repayment of the borrowing in an amount equal to the principal amount of debt converted. Proposed § 1000.324 also defines the term "proceeds of a long-term foreign borrowing" to include the original proceeds paid to the direct investor plus all amounts subsequently paid to the direct investor which effectively represent a return of such original proceeds; in calculating the amount of proceeds which are available at any time to be expended in making transfers of capital, the direct investor should deduct the amount of the borrowing previously repaid and the amount of such proceeds previously expended in making transfers of capital.

Example 1. In January 1968, a direct investor borrows $1 million from a foreign bank pursuant to a 5-year term loan agreement and immediately lends $500,000 to an affiliated foreign national. The affiliated foreign national repays $100,000 to the direct investor on October 31, 1968, and the direct investor repays $250,000 of the long-term foreign borrowing to the foreign bank on December 31, 1968. In this situation, the direct investor has $600,000 of long-term foreign borrowing proceeds available on November 1, 1968, to be expended in making transfers of capital, and $350,000 so available on January 1, 1969.

(3) Section 1000.503 has been redrafted to make clear that the section does not authorize positive direct investment by a direct investor during any year of more than $100,000 in any one Scheduled Area or of more than $100,000 in the aggregate in all Scheduled Areas. It also provides that, if the incorporated affiliated foreign nationals of a direct investor in Schedule C have total losses during any year or if the direct investor has a negative net transfer of capital to Schedule C during any year, such losses or negative net transfer of capital shall not be taken into account in calculating positive direct investment in Schedule C for such year under § 1000.503.

Example 2. During 1968, direct investor has positive direct investment of $500,000 in Schedule A countries, negative direct investment of $300,000 in Schedule B countries, and negative direct investment of $100,000 in Schedule C countries. Section 1000.503 is inapplicable in this situation and the entire $500,000 positive direct investment in Schedule A is prohibited by § 1000.201 unless another general authorization is available or a specific authorization has been obtained.

Example 3. During 1968, direct investor has positive direct investment of $50,000 in Scehdule A countries and positive direct investment of $60,000 in Scehdule B countries. Section 1000.503 is inapplicable in this situation, regardless of the amount of positive or negative direct investment in Schedule C countries during 1968. The entire $50,000 of positive direct investment in Schedule A (as well as the entire $60,000 of positive direct investment in Schedule B) is prohibited by § 1000.201 unless another general authorization is available or a specific authorization has been obtained.

Example 4. During 1968, direct investor's incorporated affiliated foreign nationals in Schedule C have a total loss of $300,000 and direct investor makes a positive net transfer of capital of $400,000 to Schedule C. The positive net transfer of capital is not authorized by § 1000.503.

Example 5. During 1968, direct investor's share of reinvested earnings of incorporated affiliated foreign nationals in Schedule C amounts to $200,000 and direct investor makes a negative net transfer of capital of $100,000 to Schedule C countries. The reinvested earnings of $200,000 are not authorized by § 1000.503.

(4) Paragraph (a) of proposed § 1000.505 has been corrected to make clear that transfers between affiliated foreign nationals of a direct investor are deemed to

involve transfers by and to the direct investor if the direct investor has more than a 50 percent ownership interest in either the transferor or transferee affiliated foreign national.

(5) Proposed Subpart K conforms the language of what is now proposed General Authorization No. 4 (published in the FEDERAL REGISTER on Mar. 12, 1968) to the language employed in the proposed amendments to the regulations published in the FEDERAL REGISTER on April 30, 1968. The proposed subpart authorizes positive direct investment in Canada during any year without limitation as to amount. In addition, it (a) excludes direct investment in Canada from a direct investor's calculation of direct investment in Schedule B countries for the years 1965 and 1966 and for any period after the effective date of the regulations; (b) excludes from the term "long-term foreign borrowings" all borrowings by a direct investor after March 31, 1968, from Canadian residents or from corporations or other entities organized under the laws of Canada or any political subdivision thereof; and (c) excludes "Canadian foreign balances" (as defined in proposed § 1000.1105(b)(1)) from a direct investor's calculation of its holdings of foreign balances during 1965 and 1966 and after the effective date of the regulations.

Example 6. Direct investor (D) has a wholly owned subsidiary in Canada (X), while X itself has wholly owned subsidiaries in Brazil (Y) and the United Kingdom (Z). The following occurs during 1968: D makes a $1,000 capital contribution and $2,500 loan to X; D repays a loan of $200 to Z and Z repays a loan of $500 to Y; X makes $1,000 capital contributions to each of Y and Z. In this situation, the net positive transfer of capital to Non-Canadian Schedule B affiliates is $700 (consisting of D's $200 repayment to Z and X's $1,000 capital contribution to Z less Z's $500 repayment to Y), and the net positive transfer to Canadian affiliates (all of which is authorized by proposed section 1000.1102) is $1,500 (consisting of D's $1,000 capital contribution and $2,500 loan to X less X's $1,000 capital contributions to each of Y and Z.

Example 7. Direct investor (D) has wholly owned subsidiaries in Canada (W) and the United Kingdom (X). W has a wholly owned subsidiary in Australia (Y) and X has a wholly owned subsidiary in Canada (Z). The following occurs during 1968: Z earns $200 and pays a dividend of $100 to X; X earns $500 (including the dividend from Z) and pays a dividend of $300 to D; Y earns $100 and pays a dividend of $50 to W; W earns $200 (including the dividend from Y) and pays a dividend of $100 to D. In this situation, D's share in the total reinvested earnings of Non-Canadian Schedule B affiliates (X and Y) is $250, computed as follows:

Earnings of X and Y ($600) less dividend paid by Z to X ($100)	$500
Less dividends paid by X and Y ($350 less $100 dividend paid by Z to X)	-250
D's share in total reinvested earnings of X and Y	250

D's share in the total reinvested earnings of Canadian affiliates is $200, all of which is authorized by proposed § 1000.1102.

Interested persons are invited to submit written comments, suggestions, or objections concerning the proposed amendments to the Chief Counsel, Legal Division, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230. Such communications concerning the proposed amendments will be considered if received within 10 days after publication of this notice in the FEDERAL REGISTER. Subsequent to such time, the proposed amendments, if adopted, will be published in the FEDERAL REGISTER in final form either as proposed or as they may be changed in the light of comments received.

The texts of the proposed revisions are as follows:

1. The following § 1000.201 supersedes proposed § 1000.201 as published in the FEDERAL REGISTER of April 30, 1968:

§ 1000.201 Prohibited direct investment in affiliated foreign nationals.

(a) Except as provided in §§ 1000.503 and 1000.504, and as otherwise permitted by the Secretary of Commerce (hereinafter referred to as the Secretary) by means of rulings, instructions, authorizations, waivers, exemptions or otherwise, all of the following are prohibited during any year (as defined in § 1000.321) commencing with the effective date:

(1) Positive direct investment (as defined in § 1000.306(a)) by a direct investor in affiliated foreign nationals of such direct investor in Schedule A or B countries;

(2) A positive net transfer of capital (as defined in § 1000.313(c)) by a direct investor to affiliated foreign nationals of such direct investor in Schedule C countries; and

(3) Reinvestment by a direct investor of any portion of its share in the total earnings of incorporated affiliated foreign nationals of such direct investor in Schedule C countries (calculated in accordance with § 1000.306(b)).

(b) All transactions prohibited by section 1 of Executive Order 11387 which are not prohibited by this part are hereby authorized.

(c) To the extent delineated from time to time by the Board of Governors of the Federal Reserve System nothing in this part shall apply to any bank or other financial institution certified by the Board as being subject to the Federal Reserve Foreign Credit Restraint Program, or to any program instituted by the Board under section 2 of Executive Order 11387.

(d) In addition to all other powers reserved to the Secretary in this part, the Secretary may, in his discretion, with respect to any direct investor, amend or revoke the authorizations set forth in §§ 1000.503 and 1000.504 by reducing the amount of positive direct investment, positive net transfers of capital and/or reinvestment of earnings authorized during a calendar year, by amending the application of such authorizations and § 1000.201 from "during any year" to periods shorter than a year, and by otherwise imposing conditions with respect to such authorizations as the Secretary shall deem appropriate to carry out the purposes of this part. In exercising his discretion with respect to any direct investor, the Secretary shall consider, among other factors, the following:

(1) Whether the positive direct investment, positive net transfers of capital and/or reinvestment of earnings of such direct investor during any calendar quarter is, or may reasonably be estimated to be, materially in excess of 25 percent of the amount thereof generally authorized to such direct investor during the calendar year;

(2) Whether the transactions resulting in such excess during such quarter are in accordance with customary business practices of the direct investor; and

(3) Whether the direct investor has complied with the provisions of Subpart F of this part.

2. Section 1000.203 is amended to read as follows:

§ 1000.203 Liquid foreign balances.

(a) For purposes of this section:

(1) The term "foreign balances" means money on deposit in a bank in a foreign country (including certificates of deposit and fixed interest deposits of such a bank), negotiable instruments and commercial paper of an unaffiliated foreign national (other than negotiable instruments or commercial paper arising from the export by the direct investor of goods or services from the United States to foreign nationals) and securities issued or guaranteed by a foreign country;

(2) The term "liquid foreign balances" means foreign balances (as defined in subparagraph (1) of this paragraph) other than (i) negotiable instruments, commercial paper, and securities which are not redeemable at the option of the direct investor and are not transferable and readily marketable; (ii) bank deposits, negotiable instruments and commercial paper with a period of more than 1 year remaining to maturity when acquired by the direct investor and which are not redeemable in full at the option of the direct investor within a period of 1 year after such acquisition; and, (iii) foreign balances which are subject to restrictions of a foreign country on liquidation and transfer; and

(3) The term "direct investment liquid foreign balances" means liquid foreign balances (as defined in subparagraph (2) of this paragraph) which represent the proceeds of long-term foreign borrowings made by a direct investor (as defined in § 1000.324) and which are held by the direct investor in anticipation of making transfers of capital to affiliated foreign nations of the direct investor.

(4) Foreign balances shall be deemed to be held by a direct investor if title to such balances is held (i) by any person (including an affiliated foreign national of the direct investor) principally formed or availed of for the purpose of holding title to such balances; or (ii) by any person (including an affiliated foreign national of the direct investor), if such balances are returnable to the direct investor on its demand without material conditions and if the holding of such bal-

ances is unrelated to the business needs of such person; and

(5) Negotiable instruments, commercial paper and securities constituting foreign balances shall be valued at their respective fair market values or, if evidence of fair market value is not readily available, at the cost to the direct investor.

(b) (1) Except as provided in paragraph (c) of this section and as otherwise provided by the Secretary by means of rulings, instructions, authorizations, waivers or otherwise, each direct investor is hereby required, on or before June 30, 1968, to reduce the amount of liquid foreign balances held by such direct investor to an amount not in excess of the average end-of-month amounts of the same so held by such direct investor (whether or not a direct investor at that time) during 1965 and 1966; and, thereafter, to limit the amount of such balances held by the direct investor at the end of any month to such reduced amount.

(2) In calculating the average end-of-month amounts of liquid foreign balances held by a direct investor during 1965 and 1966, all direct investment liquid foreign balances so held by the direct investor shall be excluded. In calculating the amount of liquid foreign balances held by a direct investor as of the end of any month commencing June 30, 1968, all direct investment liquid foreign balances shall be included, unless:

(i) The direct investor maintains books and records which identify separately all proceeds of foreign borrowings which it receives, the amounts thereof held as foreign balances, liquid foreign balances and direct investment foreign balances, the uses to which the remainder of such proceeds have been put, and the income and profits earned by the direct investor from the investment and reinvestment of such proceeds in affiliated foreign nationals; and

(ii) The direct investor shall have filed with the Secretary (on or before June 30, 1968, or the first date on which the direct investor holds direct investment liquid foreign balances, whichever is later) a certificate executed by a duly authorized representative of the direct investor undertaking that the direct investor will not, at any time when it holds direct investment liquid foreign balances, make any transfers of capital (in the form of transfers of cash, certificates of deposit, negotiable instruments, commercial paper or other securities) to any affiliated foreign nationals of the direct investor prior to expending such direct investment liquid foreign balances, or the proceeds thereof, in making transfers of capital.

(c) A direct investor shall not be required to comply with the provisions of paragraph (b) (1) of this section at any time when the total amount of foreign balances held by the direct investor does not exceed $25,000.

3. The following paragraph (a) (7) supersedes paragraph (a) (7) of § 1000.312 as published in the FEDERAL REGISTER of April 30, 1968:

§ 1000.312 Transfer of capital.

(a) * * *

(7) A transfer of funds or other property by the direct investor to any person wheresoever located in complete or partial satisfaction of a long-term foreign borrowing made by the direct investor before or after the effective date, to the extent the proceeds of the borrowing were deducted in calculating net transfers of capital under § 1000.313(d) (1) during any period (including the years 1965 and 1966).

* * * * *

4. The following paragraph (d) (1) supersedes proposed paragraph (d) (1) of § 1000.313 as published in the FEDERAL REGISTER of April 30, 1968:

§ 1000.313 Net transfer of capital.

* * * * *

(d) * * *

(1) There shall be deducted an amount equal to that portion of the proceeds of long-term foreign borrowings by the direct investor as is or was expended during such period in making transfers of capital to affiliated foreign nationals (including for this purpose any borrowing made after the date of any such transfer of capital but as part of one transaction or a group of integrated transactions, provided the borrowing was made during the same period); and

* * * * *

5. The following § 1000.324 supersedes proposed § 1000.324 as published in the FEDERAL REGISTER of April 30, 1968:

§ 1000.324 Long-term foreign borrowing.

(a) "Long-term foreign borrowing" means a borrowing by a direct investor from any foreign national (other than an affiliated foreign national) with an original maturity of at least 12 months from the original date of the borrowing, including, but not by way of limitation, an extension of credit by any such foreign national to the direct investor in connection with the purchase of property (including securities) by the direct investor from such foreign national. For purposes of this paragraph (a) a borrowing shall be deemed to have an original maturity of at least 12 months if (in the case of borrowings made prior to the effective date of the regulations) the borrowing was (or is) not in fact repaid within 12 months from the original date of borrowing or (in the case of borrowing made after the effective date of the regulations) there exist provisions for renewal, extension or continuance of the borrowing for a total term of at least 12 months and not the direct investor certifies that it reasonably expects that the borrowing will not in fact be repaid in less than 12 months from its original date.

(b) (1) The refinancing in whole or in part of a long-term foreign borrowing (by virtue of the renewal extension of continuance thereof or a subsequent long-term foreign borrowing from the same or another lender) shall not, to that extent, be deemed a repayment of the borrowing.

(2) The delivery of equity securities of a direct investor to holders of debt instruments issued by the direct investor in connection with a long-term foreign borrowing, pursuant to the exercise of conversion or similar rights, shall be deemed a repayment of the borrowing to the extent of the principal amount of indebtedness surrendered by such holders in exchange for such equity securities.

(c) "Proceeds of a long-term foreign borrowing" means (1) the proceeds thereof originally paid to the direct investor (or, in the case of an underwritten issue of debt instruments, the price paid by the first purchasers thereof, other than underwriters or dealers) plus (2) all amounts (other than amounts representing income or profits earned from investments or reinvestments of such proceeds) subsequently paid to the direct investor by foreign nationals (including affiliated foreign nationals) which effectively represent a return to the direct investor of proceeds invested or reinvested in affiliated foreign nationals: *Provided*, That a return of such amounts to the direct investor shall not be deemed a transfer of capital to the direct investor by affiliated foreign nationals of the direct investor under § 1000.312(b).

(d) In calculating the amount of proceeds of a long-term foreign borrowing which are available to a direct investor to be expended in making transfers of capital to affiliated foreign nationals at any time, there shall be deducted (1) the principal amount of the borrowing theretofore repaid by the direct investor and (2) the amount of such proceeds of the borrowing theretofore expended by the direct investor in making transfers of capital to affiliated foreign nationals.

6. The following § 1000.503 supersedes proposed § 1000.503 as published in the FEDERAL REGISTER of April 30, 1968:

§ 1000.503 Positive direct investment not exceeding $100,000.

A direct investor is authorized, during any year, to make positive direct investment in Scheduled Areas A, B and C not amounting to more than $100,000 in any one Scheduled Area or to more than $100,000 in the aggregate in all such Scheduled Areas: *Provided*, That, if the incorporated affiliated foreign nationals of a direct investor in Schedule C countries have total losses during any year, or if the direct investor makes a negative net transfer of capital to affiliated foreign nationals in Schedule C countries during any year, such total losses or negative net transfer of capital shall not be taken into account in calculating positive direct investment in Schedule C countries during such year for purposes of this section: *And further provided*, That, if positive direct investment during any year in any Scheduled Area amounts

to more than $100,000 or if positive direct investment during any year in all Scheduled Areas amounts in the aggregate to more than $100,000, no part of such positive direct investment shall be authorized by this section.

7. The following paragraph (a) supersedes proposed paragraph (a) of § 1000.505 as published in the FEDERAL REGISTER of April 30, 1968:

§ 1000.505 Transfers between affiliated foreign nationals.

(a) For purposes of this part, any transfer of funds or other property made by an affiliated foreign national of a direct investor in any Scheduled Area to another affiliated foreign national of such direct investor in a different Scheduled Area shall be treated as a transfer of such funds or other property by the transferor affiliated foreign national to the direct investor and as a further transfer of such funds or other property by the direct investor to the transferee affiliated foreign national if, as to either the transferor or transferee affiliated foreign national, the direct investor owns or acquires (1) securities possessing in excess of 50 percent of the aggregate voting power (including subsidiaries, sub-subsidiaries and all subsidiaries of lower tiers if the subsidiary in each case is connected to its parent by ownership by the parent of securities of the subsidiary possessing in excess of 50 percent of aggregate voting power); or (2) the right or power to receive, control, or otherwise enjoy more than 50 percent of the earnings, receipts, or income on profits; or (3) the right or power to receive, control or otherwise direct the disposition of more than 50 percent of the assets upon the liquidation, termination, or winding up thereof.

* * * * *

8. The following Subpart K supersedes proposed General Authorization No. 4 published in the FEDERAL REGISTER of March 12, 1968:

Subpart K—Direct Investment in Canada

§ 1000.1101 Definitions.

(a) The term "Canadian affiliate" of a direct investor means an affiliated foreign national of the direct investor in Canada.

(b) The term "Non-Canadian Schedule B affiliate" of a direct investor means an affiliated foreign national of the direct investor in a Schedule B country other than Canada.

§ 1000.1102 Authorized positive direct investment in Canada.

Positive direct investment by a direct investor during any year in Canadian affiliates of the direct investor is authorized, without limitation as to amount.

§ 1000.1103 Net transfers of capital to Schedule B countries.

(a) For purposes of determining the net transfer of capital by a direct investor to all incorporated affiliated foreign nationals of the direct investor in Schedule B countries during any period (including the years 1965 and 1966) under § 1000.313(a), there shall be included only (1) the aggregate of all transfers of capital made during such period by the direct investor to incorporated Non-Canadian Schedule B affiliates of the direct investor less (2) the aggregate of all transfers of capital made during such period by such incorporated Non-Canadian Schedule B affiliates to the direct investor.

(b) For purposes of determining the net transfer of capital by a direct investor to all unincorporated affiliated foreign nationals of the direct investor in Schedule B countries during any period (including the years 1965 and 1966) under § 1000.313(b), there shall be included only the aggregate net increase or net decrease, during such period, in the aggregate net assets of unincorporated Non-Canadian Schedule B affiliates of the direct investor.

(c) Transfers of funds or other property between Canadian affiliates of a direct investor and Non-Canadian Schedule B affiliates of the direct investor shall be subject to the provisions of § 1000.505 to the same extent as if such affiliates were in different Scheduled Areas, except that the exemption provided by paragraph (b) of § 1000.505 shall be inapplicable to such transfers.

(d) Nothing contained in this subpart shall affect the applicability of § 1000.505 to transfers of funds or other property between Canadian affiliates of a direct investor and other affiliated foreign nationals of the direct investor in Schedule A or Schedule C countries, except that the exemption provided by paragraph (b) of § 1000.505 shall be inapplicable to such transfers.

§ 1000.1104 Reinvested earnings—Schedule B countries.

(a) For purposes of determining a direct investor's share in the total reinvested earnings or losses, as the case may be, of all incorporated affiliated foreign nationals of the direct investor in Schedule B countries during any period (including the years 1965 and 1966) under § 1000.306(a)(2), there shall be included only the direct investor's share in the total reinvested earnings or losses, as the case may be, of all incorporated Non-Canadian Schedule B affiliates of the direct investor during such period.

(b) In determining the direct investor's share in the total reinvested earnings or losses of all incorporated Non-Canadian Schedule B affiliates during any period pursuant to § 1000.306(b), all incorporated and unincorporated Canadian affiliates of the direct investor shall be deemed to be in a Scheduled Area other than Schedule B.

§ 1000.1105 Foreign balances.

(a) For purposes of § 1000.203, the term "foreign balances" shall not include (1) money on deposit in a Canadian bank (including fixed interest deposits of a Canadian bank); (2) negotiable instruments or commercial paper of individual residents of Canada or of corporations or other entities organized or existing under the laws of Canada or any political subdivision thereof; or (3) securities issued or guaranteed by the Government of Canada or any political subdivision thereof or by any agency or instrumentality of the Government of Canada or any such political subdivision.

(b) As used herein, the term "Canadian bank" means any branch or office within Canada of any of the following: Any bank or trust company incorporated under the laws of Canada or any province thereof, or any private bank or banks subject to supervision and examination under the banking laws of Canada or any province thereof. The Secretary may also designate any banking institution as a "Canadian bank" for the purposes of any or all sections of this subpart.

§ 1000.1106 Long-term foreign borrowing.

For all purposes of the regulations, a borrowing by a direct investor from an individual who is a resident of Canada or from a corporation or other entity organized or existing under the laws of Canada or any political subdivision thereof, shall not be deemed a "long-term foreign borrowing": *Provided*, That a borrowing involving the public offering, prior to April 1, 1968, of instruments of indebtedness of a direct investor shall be considered a long-term foreign borrowing in its entirety if such instruments were not sold primarily to residents of Canada or to corporations or other entities organized or existing under the laws of Canada or any political subdivision thereof.

§ 1000.1107 Canadian program.

If a program for governing transfers of capital to foreign countries or the nationals thereof by Canadian affiliates and other Canadian business ventures shall hereafter be instituted by the Canadian Government or by any department or agency thereof (which program is consistent with the purposes of the regulations) the regulations will be amended appropriately with respect to transfers of capital to or from Canadian affiliates of a direct investor certified as subject to, or participating in, such program by the Canadian Government or such department or agency.

§ 1000.1108 Effective date.

This subpart shall be effective as of the effective date of the regulations.

CHARLES E. FIERO,
Director, Office of Foreign Direct Investments.

MAY 20, 1968.

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