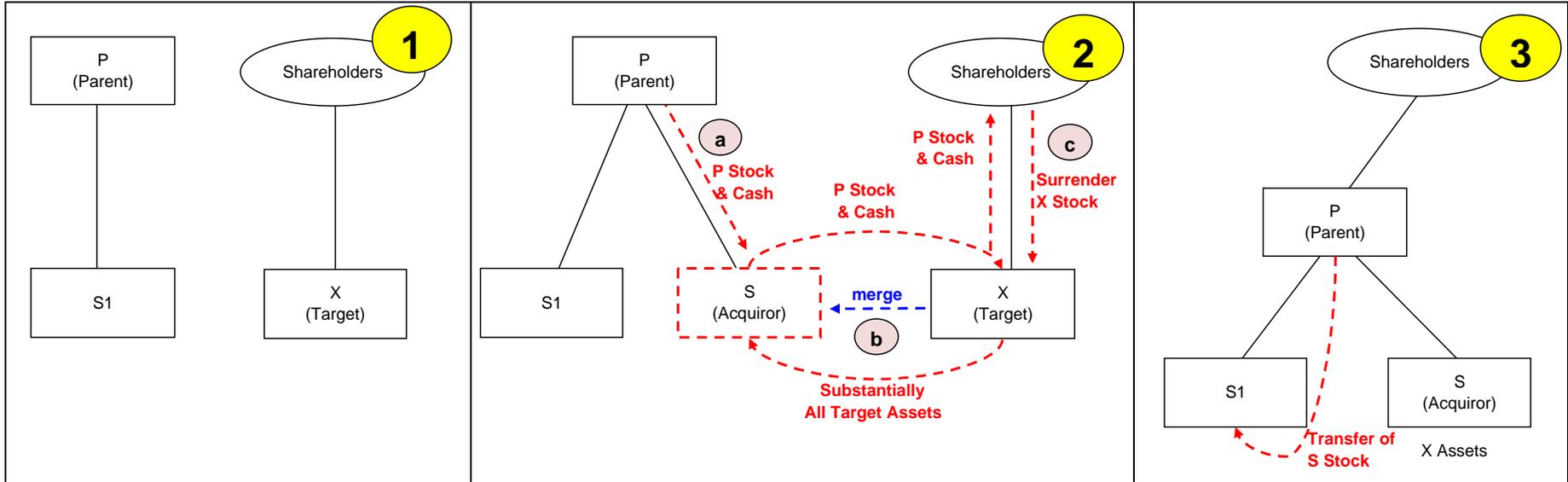


**Forward Triangular Merger
with Drop of Acquiror Stock**

Initial Structure

Forward Triangular Merger

Drop of Acquiror Stock



Continuity of Business Enterprise: Reg. 1.368-1(d)(1) requires that P must either continue X's historic business or use a significant portion of X's historic business assets in a business. Pursuant to Reg. 1.368-1(d)(4), P is treated as holding all of the businesses and assets of all members of its qualified group (a chain of corporations with 368(c) control). Because S and S1 are members of P's qualified group, P is treated as holding the businesses and assets of S, and therefore the transaction will satisfy the continuity of business enterprise requirement.

P Control of S: If the transaction were recast under the step transaction doctrine so that X's assets were viewed as being acquired by a second-tier subsidiary of P, the transaction would not qualify as a forward triangular merger.

The legislative history of 368(a)(2)(E) suggests that forward and reverse triangular mergers should be treated similarly. Reg. 1.368-2(k)(2) provides that a transaction qualifying under 368(a)(1)(A) and 368(a)(2)(E) is not disqualified by reason of the fact that part or all of the stock of the surviving corporation is transferred to one or more corporations controlled by the transferor. Therefore, P's transfer of S stock to S1 will not cause P to be treated as not in control of S for purposes of 368(a)(2)(D).

Ending Point

