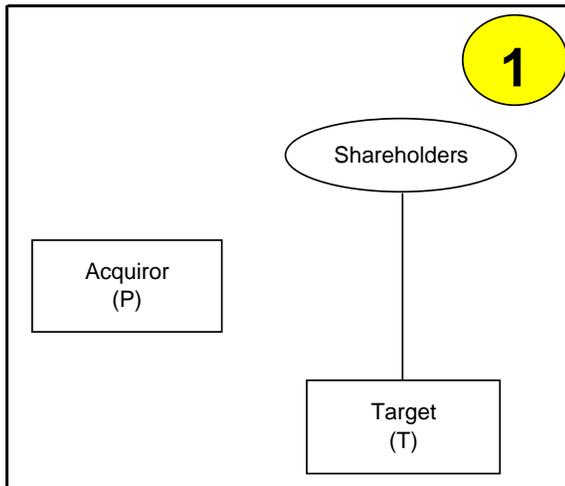
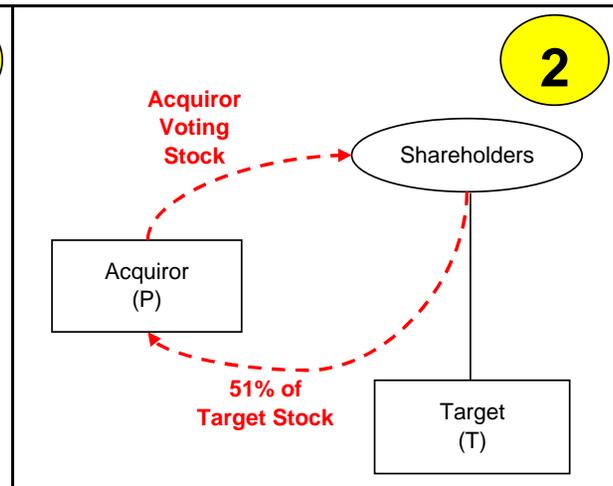


Two Step Reverse Triangular Merger

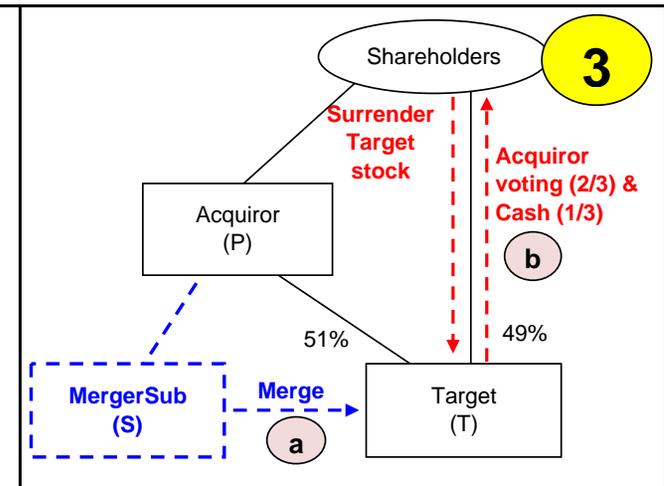
Initial Structure



**Tender Offer /
Stock for Stock Acquisition**



MergerSub Merger into Target



Section 368(a)(1)(A) provides that the term "reorganization" means a statutory merger or consolidation. Section 368(a)(2)(E) provides that:

[A] transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of [Acquiror] which before the merger was in control of [MergerSub] is used in the transaction, if (1) after the transaction, [Target] holds substantially all of its properties and of the properties of [MergerSub] (other than stock of [Acquiror] distributed in the transaction), and (2) in the transaction, former shareholders of [Target] exchanged, for an amount of voting stock of [Acquiror], an amount of stock in [Target] that constitutes control of [Target].

The facts assume that the tender offer and the merger are treated as an integrated acquisition by Acquiror of Target stock. The principles of *King Enterprises*, 418 F.2d 511 (Ct.Cl. 1969), support the conclusion that the tender offer exchange is treated as part of the merger for purposes of the reorganization provisions. See also *J.E. Seagram Corp.*, 104 T.C. 75 (1995). Consequently, the integrated steps, which result in Acquiror acquiring all of the stock of Target, must be examined together to determine whether the requirements of section 368(a)(2)(E) are satisfied.

In the transaction, the shareholders of Target exchange, for Acquiror voting stock, an amount of Target stock constituting in excess of 80% [51% + 2/3 of 49% = 83.67%] of the voting stock of Target. Thus, the transaction qualifies as a reverse triangular merger.

Ending Point

