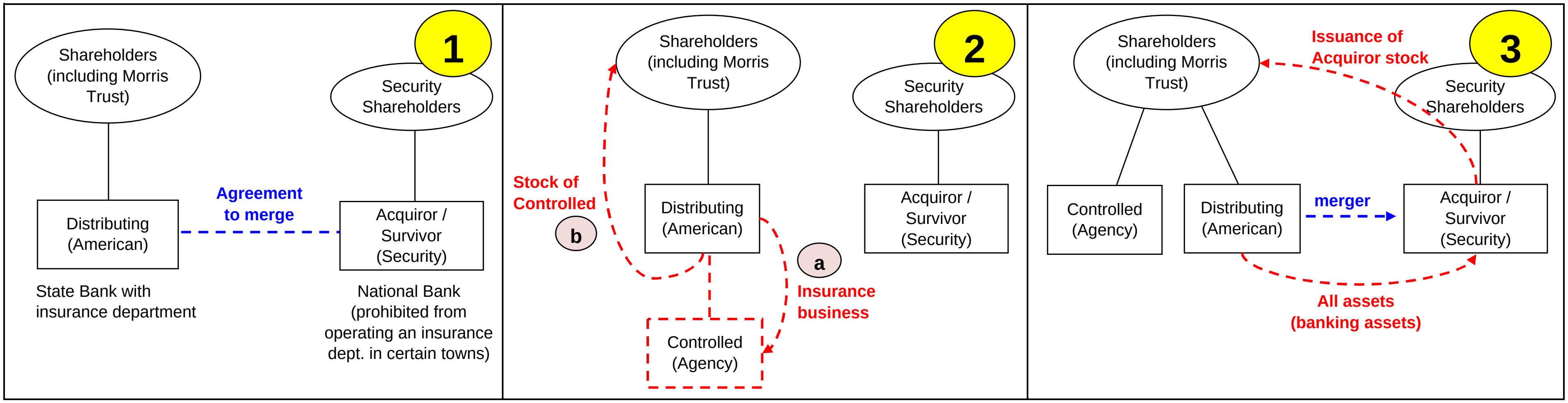
Commissioner v. Morris Trust
367 F.2d 794 (4th Cir. 1966)

Spin-Off Followed by Merger of Distributing

Initial Structure | **Spin-off of Insurance Dept.** | **Merger**



The Commissioner argued that the active business requirements of section 355(b)(1)(A) were not met, since American's banking business was not continued in unaltered corporation form. The statute requires that American be engaged in the active conduct of a trade or business "immediately after the distribution." The Fourth Circuit affirmed the Tax Court in that no gain should be recognized.

> [T]here is no violation of any of the underlying limiting principles. There was no empty formalism, no utilization of empty corporate structures, no attempt to recast a taxable transaction in nontaxable form and no withdrawal of liquid assets. . . . There was a strong business purpose for both the spin-off and the merger, and tax avoidance by American's stockholders was neither a predominant nor a subordinate purpose.

Today, section 355(e) would require Distributing to recognize gain on the distribution of Controlled. However, Distributing's shareholders would not recognize gain.

Ending Point