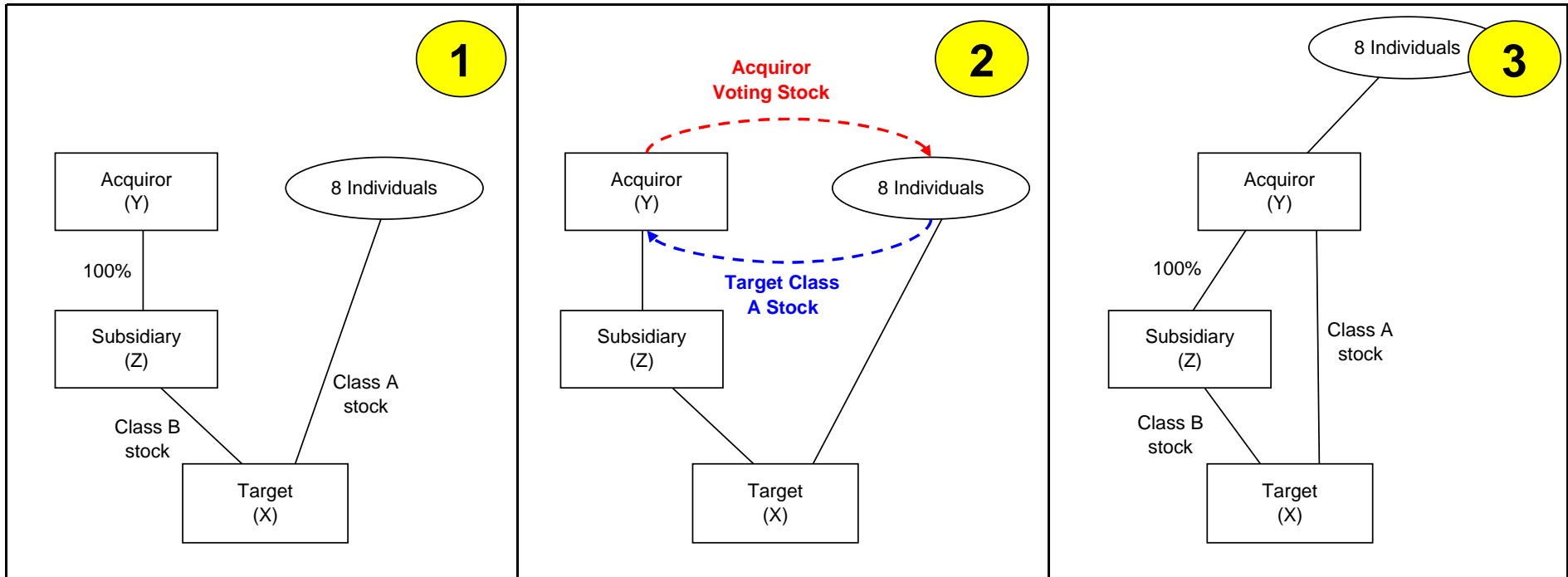


Failed B Reorg - Indirect Control

Initial Structure

Stock Acquisition

Ending Point



Section 368(a)(1) states, in part, that the term "reorganization" means -

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition).

The term "control" under section 368(c) means ownership of stock possessing at least 80% of the total combined voting power of all classes of voting stock and at least 80% of the total number of shares of other classes of stock. Section 318 attribution does not apply for purposes of determining section 368(c) control. The ruling holds that because Y did not directly own any of the shares of the Class B stock, Y did not have 368(c) control of X.

At the time of this ruling, reorganizations did not include triangular B reorganizations. The statute was amended in 1964 to allow for triangular B reorganizations. The holding of the ruling would not change as a result of the amendment. However, with a slight modification of the facts, the reorganization could now be structured as a tax free triangular B reorganization. If Y were to contribute its own stock to Z, and Z were to acquire the Class A stock of X in exchange solely for the voting stock of Y, then the transaction would qualify as a triangular B reorganization.