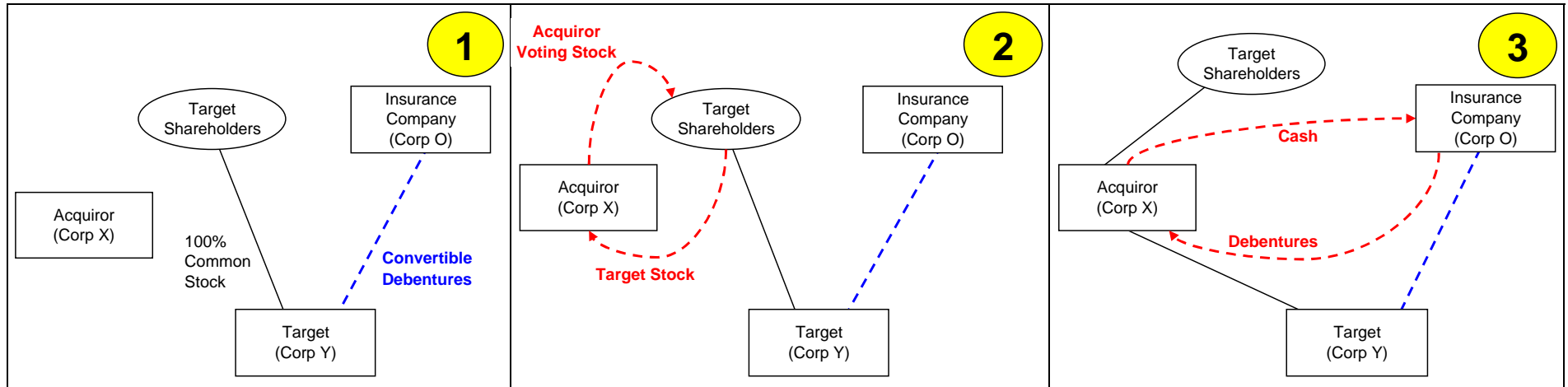


B Reorganization & Cash Purchase of Convertible Debentures

Initial Structure

Stock for Stock Exchange

Cash for Debentures



Acquiror entered into an agreement with the shareholders of Target to acquire all of the stock of Target in exchange solely for voting stock of Acquiror. Acquiror also agreed with Insurance Company, which did not own any of the stock of Target, to purchase for cash an entire issue of convertible debentures of Target that Insurance Company held.

Section 368(a)(1)(B) provides in part that the term "reorganization" means the acquisition by one corporation, in exchange solely for all or part of its voting stock, 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 Supreme Court, in *Helvering v. Southwest Consolidated Corporation*, 315 U.S. 194 (1942), held that contract rights to purchase stock in the form of stock warrants did not constitute voting stock for purposes of section 112(g)(1) of the Revenue Act of 1934, which corresponds in pertinent part to section 368(a)(1) of the Internal Revenue Code of 1954.

Since the convertible debentures of Target do not confer upon the holder any rights or liabilities as a shareholder prior to the conversion of the debentures into stock of Target, such debentures resemble the warrants described in *Southwest Consolidated*. Therefore, the rationale of that decision is applicable to the present case.

Accordingly, the convertible debentures do not constitute stock of Target for purposes of section 368(a)(1)(B). Furthermore, under the facts described, Acquiror's purchase of the debentures for cash from Insurance Company will not constitute additional consideration for the acquisition of the stock of Target. Therefore, since the stock of Target will be acquired solely in exchange for voting stock of Acquiror, the transaction meets the requirements of section 368(a)(1)(B).

Ending Point

