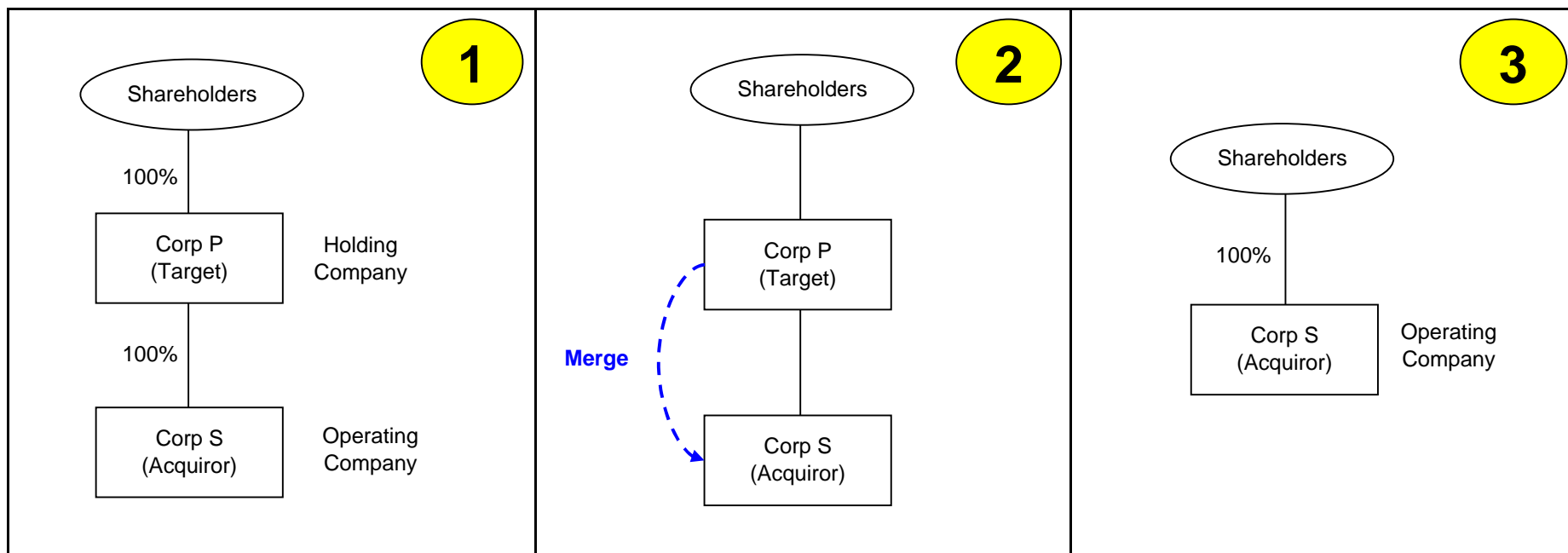


Downstream Merger of Holding Company - COBE Requirement

Initial Structure

Downstream Merger

Ending Point



P is a holding company whose only asset consists of all the stock of an operating subsidiary, S. P merges into S and the P shareholders exchange their P stock for S stock.

The continuity of business enterprise (“COBE”) test must be satisfied in order for a transaction to qualify as a section 368(a)(1) reorganization. Reg. 1.368-1(b). The COBE test requires that the acquiring corporation either continue the target corporation’s historic business or use a significant portion of the target corporation’s assets in a business. Reg. 1.368-1(d). For purposes of the COBE requirement, the historic business of P is the business of S, its operating subsidiary. Therefore, after the merger, S continues to conduct P's historic business. The COBE requirement is satisfied when a holding company is merged into its wholly owned operating subsidiary.