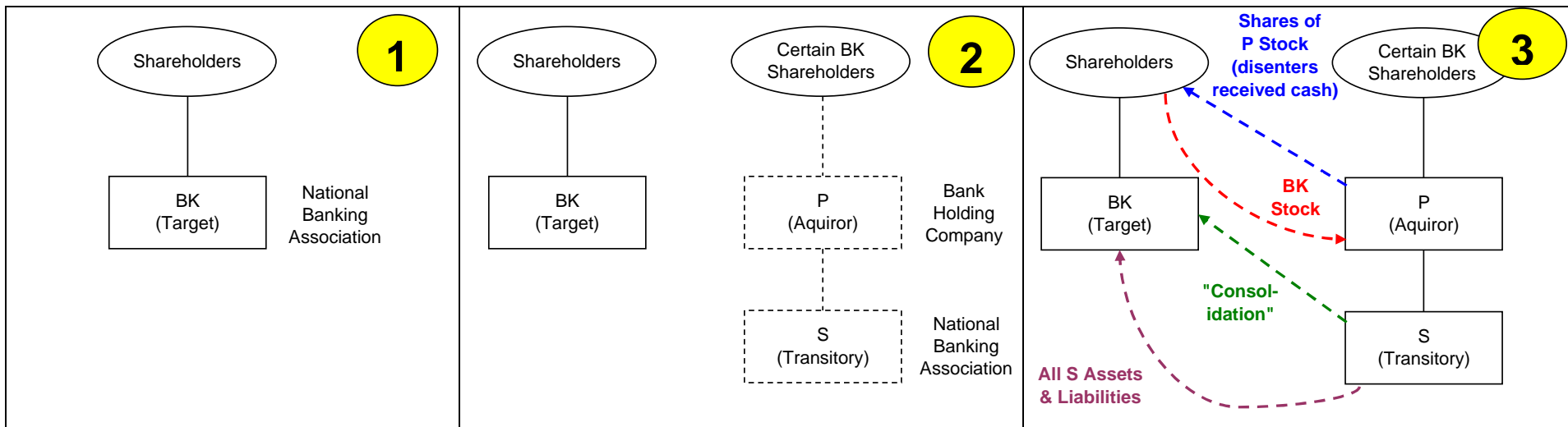


**Consolidation Treated As Merger
In Reverse Triangular Merger**

Initial Structure

Newco Formation

"Consolidation" (RTM)



BK is a national banking association organized under the national banking laws. For valid business reasons, it was desired that BK be operated through a bank holding company. Accordingly, certain shareholders of BK formed corporation P in the same state as BK. P qualified as a bank holding company under the Bank Holding Company Act of 1956. Pursuant to an Agreement of Consolidation, P formed S, a national banking association, as a wholly owned subsidiary of P in the same state as P. In a transaction that complied with the provisions of the National Banking Act, 12 U. S. C. section 215, S was "consolidated" under the charter of BK. Under the agreement, BK acquired all of the assets and assumed all of the liabilities of S. The shareholders of BK received shares of P stock in exchange for their stock in BK. Dissenters of BK received cash pursuant to 12 U.S.C. section 215. Except for the question here at issue, being carried out as a merger, the transaction met all of the requirements of section 368(a)(1)(A) and (a)(2)(E).

Although BK, under its old charter, survived as the consolidated association, the transaction was effected under the "consolidation" provisions under 12 U.S.C. section 215 and not the "merger" provisions of 12 U.S.C. section 215a. This was due to the policy of the Comptroller of the Currency not to accept applications for reverse triangular mergers under 12 U.S.C. section 215a where the existing national bank survives as the corporate entity. However, the Comptroller's office does not object to a

consolidation under 12 U.S.C section 215 when the existing national bank is the surviving entity. The Comptroller's concern stems from the lack of provision in 12 U.S.C. section 215a for dissenters' rights for the shareholders of the surviving association. The "consolidation," pursuant to the National Banking Act, 12 U.S.C. section 215, of P's wholly owned subsidiary S with BK is considered a merger for federal tax purposes. Accordingly, the transaction qualifies as a reverse triangular merger for purposes of section 368(a)(1)(A) and (a)(2)(E). Note that the regulations have since been expanded regarding the definition of a merger. See Reg. 1.368-2(b)(1)(ii)

Ending Point

