

WAS THE ACQUISITION OF H.J. HEINZ COMPANY BY BERKSHIRE HATHAWAY & 3G CAPITAL A TAXABLE TRANSACTION?

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In 2013, the ketchup company known for the slogan “57 Varieties,” the H.J. Heinz Company (Heinz), was a publicly traded Delaware company headquartered in Pittsburgh, Pennsylvania. It manufactured ketchup, sauces, soups, beans, and pasta under various brand names, including Heinz, T.G.I. Friday’s snacks, Plasmon infant nutrition, Lea & Perrins Worcestershire sauce, and Classico pasta sauce. Its profit in 2012 was over \$900 million on revenues of over \$11 billion and it employed more than 30,000 people.¹

In 2013, Heinz was acquired for over \$28 billion by an investment consortium comprised of Berkshire Hathaway, Inc. (Berkshire) and the global investment firm, 3G Capital Partners Ltd. (3G Capital) (Heinz Merger or Merger). After the Merger, Heinz became a subsidiary of a newly created company controlled by Berkshire and 3G Capital, the H.J. Heinz Holding Corporation (Heinz Holding).²

What were the U.S. tax and non-tax consequences of the Merger for Heinz, Heinz Holding, and their shareholders?

The author developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor’s manual were anonymously peer reviewed and accepted by the *Journal of Case Research and Inquiry*, Vol. 5, 2019, a publication of the Western Casewriters Association. The author and the *Journal of Case Research and Inquiry* grant state and nonprofit institutions the right to access and reproduce this manuscript for educational purposes. For all other purposes, all rights are reserved to the author. Copyright © 2019 by Gretchen R. Lawrie. Contact: Gretchen R. Lawrie, California State University, Los Angeles 5151 State University Dr. Los Angeles, CA 90032, glawrie@calstatela.edu

Companies

H.J. Heinz Company

In 1869, Henry J. Heinz and L. Clarence Noble formed the partnership, Heinz Noble & Company, and began selling horseradish, vinegar, and pickles. After the company went bankrupt in 1875, Henry Heinz, his brother, John Heinz and their cousin, Frederick Heinz founded the partnership of F & J Heinz and began manufacturing and selling ketchup, pickles, and other condiments. In 1896, Heinz began using the slogan, “57 Varieties.”

In 1888, Henry Heinz bought out his brother and cousin and renamed the company H.J. Heinz Company (Heinz), which was incorporated in 1900. In 1946, Heinz made its first public offering at \$25 per share on the New York Stock Exchange (NYSE) under the symbol “HNZ”.

Heinz was known for supporting various charitable and philanthropic causes in Pittsburgh and other communities. For example, in 1951, the H.J. Heinz Company Foundation (Heinz Foundation) was founded and funded by Heinz to promote the health and nutritional needs of children and families with priority given to programs and organizations in communities where Heinz operated. In 2010 and 2011, the Heinz Foundation contributed \$12.8 million to various Pittsburgh charities including the Greater Pittsburgh Community Food Bank, the Extra Mile Education Foundation, and Brother’s Brother Foundation.³

Berkshire Hathaway Inc.

In 1839, Oliver Chance founded the textile manufacturing company, Valley Falls Company, which in 1929 merged with Berkshire Cotton Manufacturing Company and was renamed Berkshire Fine Spinning Associates. In 1955, Berkshire Fine Spinning merged with Hathaway Manufacturing Company becoming Berkshire Hathaway Inc. (Berkshire).

At the time of the Heinz Merger, Berkshire was a publicly traded, conglomerate holding company headquartered in Omaha, Nebraska and was engaged in various business activities,

including property and casualty insurance and reinsurance, utilities and energy, freight rail transportation, finance, manufacturing, and retailing.⁴ In 2013, Berkshire's earnings were approximately \$18 billion on total revenue of over \$182 billion.

Berkshire's well known chief executive officer (CEO) and chairman, Warren E. Buffett, began buying in 1962 stock in Berkshire and eventually acquired enough stock to take control of Berkshire.

3G Capital Partners Ltd

In 2004, Alex Behring, Jorge Paulo Lemann, Carlos Alberto Sicupira, Marcel Herrman Telles, and Roberto Thompson Motta founded the private investment firm, 3G Capital. 3G Capital had acquired and invested in numerous companies, such as Burger King in 2010 for \$3.3 billion.⁵ 3G Capital was known implementing zero-based budgeting for the companies it had acquired.⁶

Merger Timeline

In early December 2012, Jorge Paulo Lemann, partner and co-founder of 3G Capital, met with Berkshire's CEO and chairman, Warren Buffett, and proposed that 3G Capital and Berkshire jointly acquire Heinz. Following the meeting, Mr. Buffett informed Mr. Lemann that Berkshire was interested in acquiring Heinz and would be willing to provide equity financing for a potential acquisition.

On December 13, 2012, the chairman, president, and CEO of Heinz, William R. Johnson, was asked by representatives of 3G Capital's financial advisor, Lazard Freres & Co., LLC, to meet with 3G Capital in order to "*share their views on the food and beverage industry.*"⁷ At a dinner meeting on December 18, 2012, Mr. Johnson discussed with Mr. Lemann and the managing partner of 3G Capital, Alexandre Behring, the food and beverage industry, potential industry

consolidation, and their respective businesses. They agreed to meet in 2013 to continue their discussion.

At a meeting on January 10, 2013, Mr. Behring told Mr. Johnson that, together with Berkshire, 3G Capital (the Acquirers) was interested in discussing the potential acquisition of Heinz and intended on making a proposal to acquire Heinz. Mr. Johnson stated that Heinz was not for sale, but that he would inform Heinz's board of directors of their discussion and would present any acquisition proposal to the board.

On January 14, 2013, Berkshire and 3G Capital delivered a joint letter to Mr. Johnson proposing to acquire all of Heinz's outstanding shares of common stock for \$70 in cash per share. After Heinz's board of directors deliberated about the Acquirers' proposal, on January 16, 2013, Mr. Johnson contacted Mr. Behring and told him that Heinz was considering the proposal, but that Heinz had made no decision about the proposal or whether to authorize further discussions.

On January 21, 2013, Heinz's board directed Mr. Johnson to inform the Acquirers that it was unlikely to authorize further merger discussions unless the Acquirers improved the financial terms of their proposal. On January 24, 2013, the Acquirers' increased their offer to \$72.50 in cash per share of Heinz common stock, which was a premium of 19.6 percent on Heinz's closing share price on that day of \$60.64. At its January 30, 2013 meeting, Heinz' board *"unanimously concluded that the [Acquirers'] revised proposal represented an attractive opportunity compared to other available alternatives (including remaining a standalone company) and that it would be in the best interest of Heinz shareholders and other constituencies to continue discussions with [Acquirers]"* and authorized further discussions with Acquirers.⁸

After several weeks of further negotiations, on February 13, 2013, Heinz's board of directors voted unanimously to approve the Merger and to recommend that Heinz shareholders vote to approve the Merger.⁹

Several factors Heinz's board of directors considered potentially positive about the Merger were:

1. the \$72.50 per share offer exceeded Heinz's likely value as a standalone company;
2. it was unlikely that other buyers would be willing to acquire Heinz at a price in excess of the \$72.50 per share offer, even if Heinz conducted an auction process or solicited other alternative acquisition proposals;
3. the Merger consideration was solely cash;
4. Heinz's headquarters would remain in Pittsburgh;
5. Heinz's heritage and the name H.J. Heinz Company would be preserved;
- and
6. Heinz's support for charitable and philanthropic causes in Pittsburgh and other communities would continue.¹⁰

Several potentially negative factors of the Merger that the board considered were that:

1. Heinz would no longer exist as an independent, public company;
2. Heinz's shareholders would not be able to participate in any value creation that Heinz could generate in the future and/or in any future appreciation in the value of Heinz;
3. Heinz had not solicited proposals from other potential buyers;
- and
4. The Merger consideration would be taxable to Heinz's shareholders.

On February 13, 2013, Heinz entered into a definitive merger agreement to be acquired by Berkshire and 3G Capital with each Heinz shareholder receiving \$72.50 per share or a total of \$23 billion. With Berkshire and 3G Capital also agreeing to assume Heinz's outstanding debt, the Merger was valued at \$28 billion. Berkshire and 3G Capital agreed to maintain Heinz's headquarters in Pittsburgh, preserve Heinz's heritage, support Heinz's philanthropic and charitable causes in Pittsburgh, and honor Heinz's obligations under the naming rights and promotion agreement relating to Heinz Field, a professional baseball stadium located in Pittsburgh.¹¹

In response to the public announcement of the Merger on February 14, 2013, Heinz CEO, Mr. Johnson stated that: "*[t]he Heinz brand is one of the most respected brands in the global food industry and this historic transaction provides tremendous value to Heinz shareholders*" and that Heinz looked "*... forward to partnering with Berkshire Hathaway and 3G Capital ... in what will be an exciting new chapter in the history of Heinz.*"¹² Berkshire CEO, Mr. Buffet stated that

Berkshire was “very pleased to be a part of this partnership” and that Heinz had “... strong, sustainable growth potential based on [its] high quality standards, continuous innovation, excellent management and great tasting products.”¹³

Concerning the Merger, 3G Capital partner Mr. Behring stated that 3G Capital had “... great respect for the Heinz brands and the strong business that management and its employees operate around the world” and recognized “Heinz’s value and heritage.”¹⁴ He also stated that the Merger would provide “...tremendous value to Heinz shareholders” and that as a private company, Heinz would “...have an opportunity to drive further growth and advance [its] commitment to providing consumers across the globe with great tasting, nutritious and wholesome products.”¹⁵

At a special shareholders meeting held on April 30, 2013, Heinz shareholders voted to approve the Merger with approximately 95 percent of the votes cast voting in favor of the Merger, which represented approximately 60 percent of Heinz’s total outstanding common stock.¹⁶

To carry out the Merger, several entities were formed including Hawk Acquisition Holding Corp (Hawk Holding) and its wholly owned subsidiaries: 1) Hawk Acquisition Sub, Inc. (HA Subsidiary); 2) Hawk Acquisition Intermediate Corporation I (HA I); and 3) Hawk Acquisition Intermediate Corporation II (HA II). As part of the Merger, Berkshire and 3G Capital each purchased for \$4.12 billion 425 million shares of Hawk Holding’s common stock. Berkshire also purchased shares of Hawk Holding’s 9 percent preferred stock for \$8 billion and warrants to purchase approximately 46 million additional shares Hawk Holding common stock.

On June 7, 2013, Heinz merged with and into HA Subsidiary, with Heinz surviving as an indirect, wholly-owned subsidiary of Hawk Holding Corporation, which was renamed the H.J. Heinz Holding Corporation (Heinz Holding).¹⁷ Heinz’s shareholders received \$72.50 in cash for each share of their Heinz common stock. With the assumption of Heinz’s outstanding debt, the total Merger consideration was approximately \$28.75 billion.¹⁸

In response to the June 7, 2013 announcement that the Merger had been completed, the new CEO of Heinz, 3G Capital partner Bernardo Hees stated that he looked “... *forward to building upon Heinz’s incredible platform and delivering world-class products for all of our consumers around the world, while maintaining... [Heinz’s] unwavering commitment to quality, safety and superior customer service.*”¹⁹ Former Heinz CEO Mr. Johnson became a part-time advisor to Mr. Hess on certain specific industry and strategic non-operating matters.²⁰

After the Merger, Heinz’s common stock ceased to be publicly traded and was delisted from the NYSE.



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Appendix A U.S. Tax Law Concepts

Source: Author's notes

Overview

For U.S. federal tax purposes, the acquisition of a corporation's (Target) stock and/or assets by another corporation (Acquirer) may be treated as a taxable acquisition or a tax-deferred acquisition, commonly referred to as a tax-free acquisitive reorganization under Internal Revenue Code (IRC) § 368(a). The term taxable acquisition means that Target is taxable upon the gain realized on sale of its assets to Acquirer and that Target's shareholders are taxable upon the gain realized on the sale of their stock to Acquirer. Whereas in a tax-free acquisitive reorganization, taxes due on gains realized by Target, Target shareholders, and/or Acquirer are deferred until a subsequent event, such as Target shareholders selling their Acquirer stock for cash after a reorganization.

Taxable Stock and Asset Acquisitions

Types of Taxable Stock and Asset Acquisitions

There are several different types of taxable acquisitions including: 1) direct stock sales; 2) direct asset sales; 3) cash mergers; 4) forward subsidiary cash mergers; 5) reverse subsidiary cash mergers; 6) direct stock sales with an election under IRC § 338; and 7) direct stock sales with an election IRC § 338(h)(10).

In a direct taxable stock acquisition, Acquirer's pays cash and/or notes for Target shareholders' stock with Target becoming a subsidiary of Acquirer or being liquidated. In a direct taxable asset sale, Target sells substantially all of its assets to Acquirer for cash, notes, property, and/or the assumption of Target's indebtedness. After the transaction, Target may continue to exist or liquidate and distribute the sale proceeds and any assets it retained to its shareholders.

In a taxable cash merger, Target merges directly into Acquirer in a transaction carried out pursuant to state law with Target's shareholders receiving cash and/or notes for their stock. Instead of merging directly into Acquirer, in a taxable forward subsidiary cash merger, Target merges, pursuant to state law, with and into Acquirer's wholly owned subsidiary, with Subsidiary, not Target surviving the merger. In a taxable reverse subsidiary cash merger, Target and Acquirer's Subsidiary merge, but Target, not Subsidiary, survives the merger.

In a stock sale with a Section 338 election, Acquirer purchases 80 percent or more of Target's stock within a 12 month period and then elects to have the transaction treated for federal tax purposes as if Target had sold its assets in a taxable transaction to a hypothetical new corporation for their fair market value (FMV). In a stock sale with a Section 338(h)(10) election, Acquirer purchases 80 percent or more of Target's stock from Target's parent corporation or from shareholders of a Target that is an S corporation and then elects to have the transaction treated for federal tax purposes as a sale of Target's assets, rather than as a sale of Target's stock.

Appendix A, cont.

Tax Consequences of Taxable Stock and Asset Acquisitions

In direct stock sales, reverse subsidiary cash mergers, direct asset sales without liquidation of Target, and direct stock sales with a Section 338(h)(10) election, Target shareholders are taxed on the sale of their Target stock (Cash received for Target stock – Target shareholders' basis in Target stock = Target shareholders' gain or loss). In cash mergers, forward subsidiary cash mergers, and direct asset sales followed by liquidation of Target, Target shareholders are taxed on the liquidation or deemed liquidation of Target and Target is taxed on the sale or deemed sale of its assets (Cash received for Target's assets – Target's basis in assets = Target's gain or loss). In direct stock sales with a Section 338 election, shareholders are taxed on the sale of their Target stock and Target is taxed on the deemed sale of its assets. In direct stock sales and reverse subsidiary cash mergers, Acquirer takes a FMV basis in Target stock acquired from Target's shareholders and takes a carryover basis in Target's assets. Whereas, in direct asset sales, cash mergers, forward subsidiary cash mergers, direct stock sales with a Section 338 or Section 338(h)(10) elections, the basis of Target's assets are adjusted to FMV.

Tax-Free Reorganizations

Statutory Requirements for Tax-Free Acquisitive Reorganizations

IRC § 368 provides for several different corporate tax-free acquisitive reorganizations, in which Acquirer uses its stock with either none or a limited amount of cash and other property (together referred to as boot) to acquire Target's stock and/or assets. In a IRC § 368(a)(1)(A) or Type A merger, Target's assets and liabilities are transferred to Acquirer with Target shareholders receiving Acquirer stock or a combination of stock and a limited amount of boot and Target dissolves by operation of state law.

In a IRC § 368(a)(1)(B) or Type B stock-for-stock reorganization, Acquirer acquires a controlling interest in Target's stock from Target shareholders solely in exchange for all or part of Acquirer's voting stock. A controlling interest means that immediately after the reorganization, Acquirer (or its subsidiary) owns at least 80 percent of the total combined voting power of all of Target's voting stock and at least 80 percent of the total number of shares of each other class of Target's stock.

In a IRC § 368(a)(1)(C) or Type C stock-for-assets reorganization, Acquirer acquires substantially all of Target's assets in return for consideration consisting solely of Acquirer's voting stock or a combination of Acquirer's voting stock and up to 20 percent of boot. Then, Target liquidates by exchanging Acquirer's stock for Target shareholders' stock and distributing boot and any other remaining Target assets to Target shareholders.

In a IRC § 368(a)(2)(D) forward triangular merger, Target merges with and into Acquirer's wholly owned Subsidiary, with Subsidiary, not Target, surviving the merger. In an IRC § 368(a)(2)(E) reverse triangular merger, Target merges with and into Acquirer's wholly owned subsidiary, with Target, not Subsidiary, surviving the merger.

Appendix A., cont.

Non-Statutory Requirements for Tax-Free Acquisitive Reorganizations

Besides meeting the specific requirements of IRC § 368, A tax-free reorganization must also meet the following non-statutory requirements: 1) plan of reorganization; 2) business purpose; 3) continuity of business enterprise (COBE); and 4) continuity of interest (COI). A tax-free reorganization must be carried out pursuant to a plan of reorganization adopted by each party to the reorganization, but it does not have to be in a particular form or in writing. Other than avoiding federal income taxes, a reorganization must have a valid business purpose, such as expanding product lines, reducing administrative and other costs, or avoiding state and local taxes.²¹

To meet the COBE requirement, Acquirer must either continue at least one significant line of Target's historical business or use a significant portion of Target's historic business assets in a business.²² For COI, Target shareholders must have a substantial equity interest in Acquirer after the reorganization, meaning that a substantial part of the value of the Target's stock must be exchanged for Acquirer's stock, which is measured by the percentage of Acquirer's stock that was used as consideration in the reorganization.²³

Tax Consequences

Target Shareholders' Tax Consequences

In a tax-free reorganization, Target shareholders may have a realized gain if the FMV of Acquirer's stock plus the amount of boot (cash and FMV of property) they received in the reorganization exceeds their Target stock basis (FMV of Acquirer's stock + cash + FMV of other property - Target stock basis = Target shareholders' realized gain or loss). However, they will only recognize (or pay tax) on a portion of their realized gain, which is referred to as a recognized gain. The amount of their recognized gain is equal to the lesser of the boot they received or their realized gain.²⁴ For example, if Target shareholders' realized gain is \$500 and they received \$100 of boot, their recognized gain is \$100, because the \$100 of boot is less than the \$500 of realized gain.

Target shareholders' basis in their Acquirer stock equals their Target stock basis plus any recognized gain minus the amount of boot received and minus the amount of liabilities assumed by Acquirer as part of the reorganization (Target stock basis + recognized gain - boot - assumed liabilities = Target shareholders' basis in Acquirer stock). If Target shareholders held their Target stock as a capital asset, their holding period in their Target stock is tacked on to their holding period in their Acquirer stock.²⁵ Their basis in boot received from Acquirer is its FMV on the date of the exchange and the holding period for the boot begins on the date of the exchange.²⁶

Target's Tax Consequences

In an acquisitive reorganization, Target will not recognize gain or loss on exchanging property for Acquirer's stock, nor on distributing Acquirer's stock to its shareholders. Target will also not recognize gain or loss on boot received as part of the reorganization, if it distributes the boot to its shareholders. But Target will recognize gain, not loss, if it distributes to its shareholders assets that were not transferred to Acquirer (i.e., retained assets), calculated as if Target had sold the distributed property for its FMV.²⁷

Appendix A., cont.

Acquirer's Tax Consequences

If Acquirer exchanges solely its stock for Target's stock and assets, Acquirer will not recognize gain or loss. However, if Acquirer also transfers other property (non-cash boot) as part of the reorganization, it will recognize gain or loss equal to the FMV of the property minus its basis.²⁸

Acquirer's basis in Target's transferred assets equals Target's basis in those assets plus any gain recognized by Target (Target assets' basis + Target's recognized gain = Acquirer's basis in Target assets). Target's holding period in its transferred assets is tacked on to Acquirer's holding period. Acquirer's basis in Target stock it receives from Target shareholders equals their basis in their Target stock plus any gain recognized by them (Target shareholders' basis in Target stock + Target shareholders' recognized gain = Acquirer's basis in Target shareholders' Target stock). Target shareholders' holding period in their transferred Target stock is tacked on to Acquirer's holding period in those shares.²⁹

Tax Consequences for Acquirer's Shareholders

If Acquirer's shareholders do not participate in a tax-free reorganization involving the Acquirer, generally there is no reorganization-related tax consequences for Acquirer's shareholders. Generally, Acquirer shareholders would not realize and/or recognize gain or loss and their basis and holding period in their pre-reorganization Acquirer stock would be the same after the reorganization.

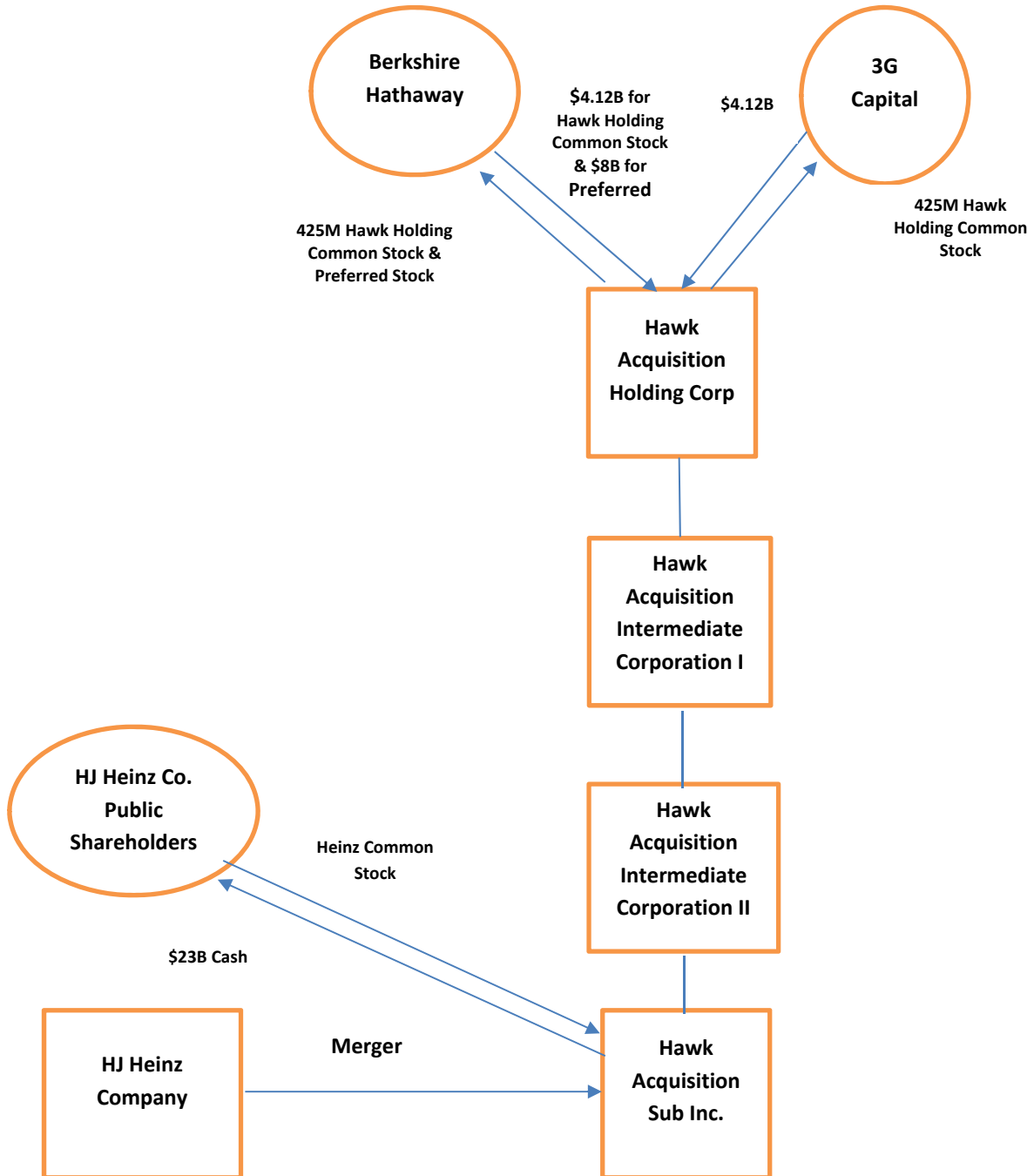
Appendix B Merger Timeline

Source: Author's notes

DATE	EVENT
December 2012	Jorge Paulo Lemann, partner and co-founder of 3G Capital, met with Berkshire's CEO and chairman, Warren Buffett, and proposed that 3G Capital and Berkshire jointly acquire Heinz.
December 2012	Mr. Buffett informed Mr. Lemann that Berkshire was interested in acquiring Heinz and would be willing to provide equity financing for a potential acquisition.
12/13/2012	William R. Johnson, chairman, president and CEO of Heinz, asked to meet with 3G Capital in order to discuss the food and beverage industry.
12/18/2012	At a meeting, Mr. Johnson discussed with Mr. Lemann and the managing partner of 3G Capital, Alexandre Behring, the food and beverage industry, potential industry consolidation, and their respective businesses and agreed to meet in 2013 to continue their discussion.
1/10/2013	At a meeting, Mr. Behring told Mr. Johnson that Berkshire and 3G Capital (Acquirers) were interested in discussing the potential acquisition of Heinz and intended on making a proposal to acquire Heinz. Mr. Johnson stated that Heinz was not for sale, but that he would inform Heinz's board of directors of their discussion and would present any acquisition proposal to the board.
1/14/2013	Berkshire and 3G Capital delivered a joint letter to Mr. Johnson proposing to acquire all of Heinz's outstanding shares of common stock for \$70 in cash per share.
1/16/2013	After Heinz's board of directors deliberated about the Acquirers' proposal, Mr. Johnson contacted Mr. Behring and told him that Heinz was considering the proposal, but that Heinz had made no decision about the proposal or whether to authorize further discussions.
1/21/2013	Heinz's board directed Mr. Johnson to inform the Acquirers that it was unlikely to authorize further merger discussions unless the Acquirers improved the financial terms of their proposal.
1/24/2013	The Acquirers' increased their offer to \$72.50 in cash per share of Heinz common stock.
2/13/2013	Heinz's board of directors voted unanimously to approve the Merger and to recommend that Heinz shareholders vote to approve the Merger.
2/13/2013	Heinz, Berkshire, and 3G Capital entered into a merger agreement with each Heinz shareholder receiving \$72.50 per share or a total of \$23 billion. With Berkshire and 3G Capital agreeing to assume all of Heinz's outstanding debt, the Merger was valued at \$28 billion.
4/30/2013	At a special shareholders meeting, Heinz shareholders voted to approve the Merger.
Spring 2013	To carry out the Merger, Hawk Acquisition Holding Corp (Hawk Holding) and its wholly owned subsidiaries: 1) Hawk Acquisition Sub Inc. (HA Subsidiary); 2) Hawk Acquisition Intermediate Corporation I (HA I); and 3) Hawk Acquisition Intermediate Corporation II (HA II), were formed.
Spring 2013	Berkshire and 3G Capital each purchased for \$4.12 billion 425 million shares of Hawk Holding's common stock. Berkshire purchased shares of Hawk Holding's 9 percent preferred stock for \$8 billion and warrants to purchase approximately 46 million additional shares Hawk Holding common stock.
6/7/2013	Heinz merged with and into HA Subsidiary, with Heinz surviving as an indirect, wholly-owned subsidiary of Hawk Holding Corporation, which was renamed the H.J. Heinz Holding Corporation (Heinz Holding).
6/7/2013	Heinz's shareholders received \$72.50 in cash for each share of their Heinz common stock.

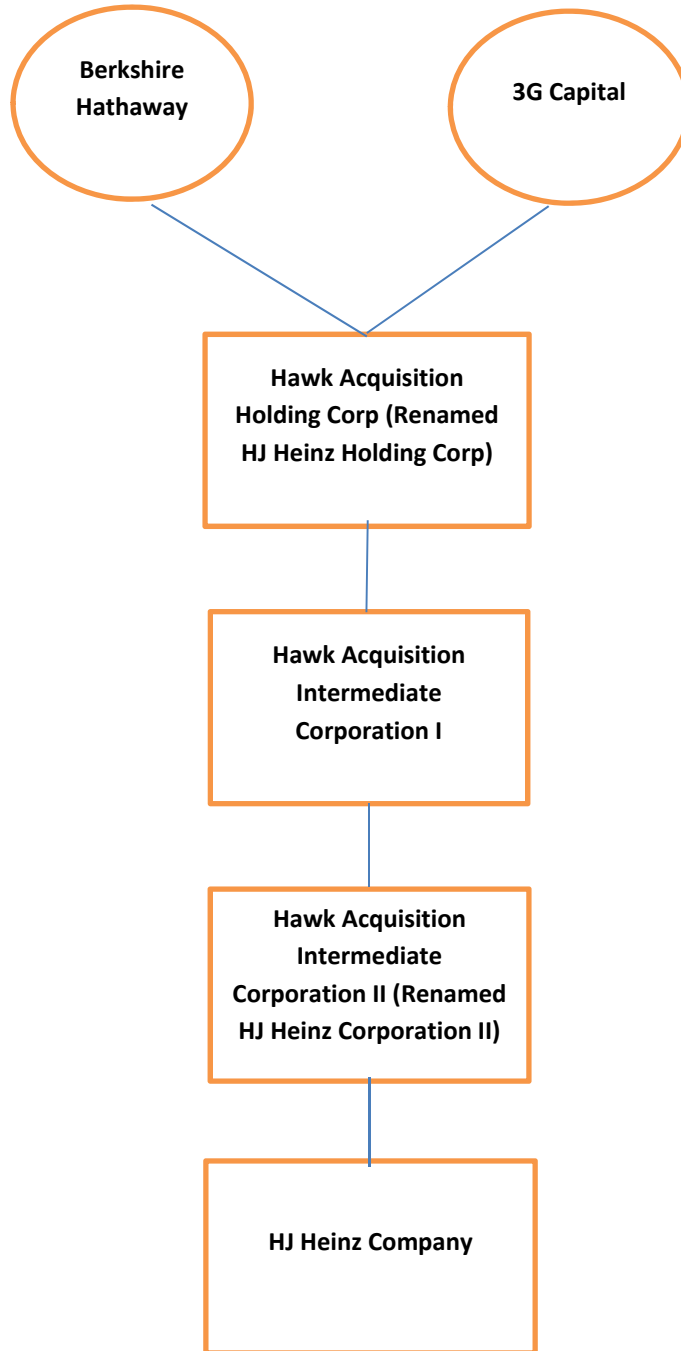
**Appendix C
Merger Transaction**

Source: Author's notes and H.J. Heinz Holding Corporation SEC Form S-4 (April 10, 2015)



**Appendix D
Post-Merger**

Source: Author's notes and H.J. Heinz Holding Corporation SEC Form S-4 (April 10, 2015)



Endnotes

- ¹ H.J. Heinz Company Schedule 14A Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (March 27, 2013) (Heinz Proxy); H.J. Heinz Company, United States Securities and Exchange Commission Form 10-K: Annual report for transition period from April 29, 2013 to December 29, 2013 (March 2014).
- ² Heinz Proxy; Berkshire and 3G Capital in a \$23 billion Deal for Heinz, Michael J. de la Merced and Andrew Ross Sorkin, NY Times (February 14, 2013); Berkshire Hathaway to swallow Heinz, Mateusz Perkowski, East Oregonian (February 21, 2013).
- ³ Heinz philanthropy won't change, despite new ownership, Thomas Olson, Tribune-Review (February 16, 2013).
- ⁴ Heinz Proxy.
- ⁵ *Id.*
- ⁶ Developed in the 1960s, zero-based budgeting is an accounting practice that requires starting a budget each year at a zero, rather than using the prior year's budget as the starting point (Shook the Food Business by Snagging Burger King, Kraft and Heinz. Now 3G is Reeling, Annie Gasparro and Vipal Monga, Shook the Food, Wall Street Journal (February 22, 2019)).
- ⁷ Heinz Proxy, p. 35.
- ⁸ Heinz Proxy, p. 38.
- ⁹ *Id.*
- ¹⁰ Heinz Proxy.
- ¹¹ The Merger Agreement was amended on March 4, 2013 (Heinz Proxy). H.J. Heinz Company Enters Into Agreement to Be Acquired by Berkshire Hathaway and 3G Capital, H.J. Heinz Company Press Release (February 14, 2013).
- ¹² H.J. Heinz Company Enters Into Agreement to Be Acquired by Berkshire Hathaway and 3G Capital, H.J. Heinz Company Press Release (February 14, 2013).
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ On the record date of March 18, 2013 for the special meeting, 203,258,999 of the 321,187,333 shares of Heinz common stock entitled to vote voted, with 192,117,965 shares voting for the Merger, 8,477,373 shares voting against, and 1,817,551 shares abstaining. (H.J. Heinz Company Shareholders Overwhelmingly Approve Acquisition by Berkshire Hathaway and 3G Capital, H.J. Heinz Company Press Release (April 30, 2013)).
- ¹⁷ Heinz Proxy. HA Subsidiary was a subsidiary of HA I, which was a subsidiary of HA II, which was a subsidiary of Hawk Holding (See Appendix C).
- ¹⁸ Heinz Proxy; H.J. Heinz Company Form 10-Q for period ended October 27, 2013 (December 11, 2013).
- ¹⁹ Berkshire Hathaway and 3G Capital Complete Acquisition of H.J. Heinz Company, H.J. Heinz Company Press Release (June 7, 2013).
- ²⁰ *Id.*
- ²¹ Treas. Reg. §§ 1.368-1(c), 1.368-2(g), and 1.368-3(a).
- ²² Treas. Reg. § 1.368-1(d).
- ²³ Treas. Reg. § 1.368-1(e).
- ²⁴ 26 USC §§ 354 and 356.
- ²⁵ 26 USC § 1223(1).
- ²⁶ 26 USC §§ 358 and 1223(1).
- ²⁷ 26 USC §§ 361 and 1032.
- ²⁸ 26 USC §§ 361, 1001 and 1032; Rev. Rul. 72-327, 1972- CB 197.
- ²⁹ 26 USC §§ 362, 1223(1) and 1223(2).



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