WAS THE ACQUISITION OF TWITTER INC. BY ELON MUSK A TAXABLE TRANSACTION?

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Introduction

The social media and social networking service Twitter, Inc. ("Twitter") was *"a global platform for public self-expression and conversation in real time"* (Twitter, Inc. 2021, Feb. 17). Twitter as a place where users could create tweets and users could follow other users. Through topics, interests, and trends, Twitter helped *"…people discover what's happening through text, images, on demand and live video, and audio from people, content partners, media organizations, advertisers and others"* (Twitter, Inc. 2022, Feb. 16).

Starting in January 2022, entrepreneur, founder, and leader of several companies, including Telsa, Inc., Elon Musk began to acquire stock in Twitter. On April 13, 2022, Mr. Musk delivered to Twitter a non-binding proposal to acquire 100 percent of Twitter. On October 27, 2022, Twitter merged with and into X Holdings II, Inc. (Acquisition Sub), a wholly owned subsidiary of X Holdings I, Inc. (Parent), with Twitter surviving as a wholly owned subsidiary of Parent, which was majority owned and controlled by Mr. Musk.

The contentious transaction played out in the public eye, catching the attention of the world. At the same time, it offered a unique opportunity to examine the tax issues that were involved. What were the U.S. tax and non-tax consequences of the Merger for Twitter, Twitter shareholders, Parent, Elon Musk, and other investors in Parent?

The authors 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. 10, 2025***, a publication of the Western Casewriters Association. Qualified educators may request the instructor's manual at editor@jcri.org
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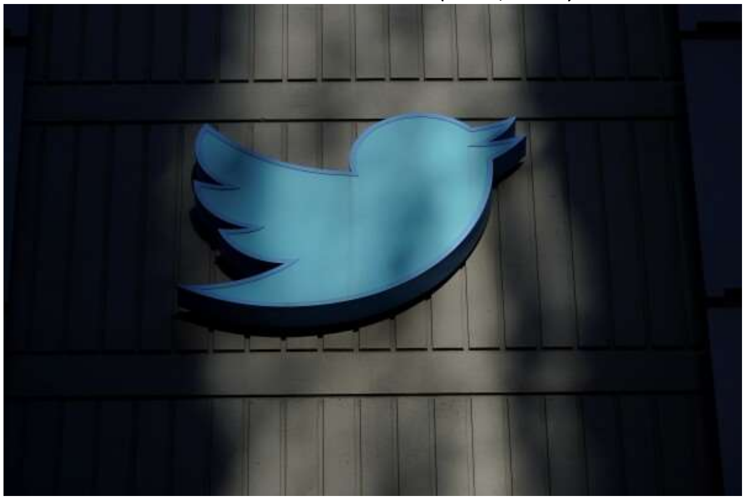
Parties Involved in the Merger

Twitter, Inc.

In 2006, two of the co-founders of Twitter, Jack Dorsey and Biz Stone, had an assignment at the podcasting platform Odeo to build something new over a two-week period. Mr. Dorsey drew a sketch of a text-entry box with the word *"Status"* above it and the domain name, my.stat.us. Messrs. Dorsey and Stone built the technology that became the basis for twttr, which was later renamed Twitter. On March 21, 2006, Mr. Dorsey sent the first post on twttr, later called a "tweet," writing *"just setting up my twttr"* (Landi 2021).

Exhibit 1. Twitter Logo

Source: Associated Press (2023, Jul. 1)



Twitter was incorporated in April 2007 and experienced remarkable growth in users. By April 2009, Twitter had an estimated 32.1 million users. By 2021, Twitter's average monetizable daily active usage ("mDAU"), defined as the number of Twitter users who were authenticated and accessed Twitter on any given day, was 217 million (Statista 2022).

In 2009, Twitter launched a verification system for important or significant accounts, which involved a process to verify and grant a blue check mark for the account. The intent of the blue check mark was that Twitter users could review a post and be confident that the post was from a specific person's or organization's actual account, rather than an impersonator (Stein 2023).

In November 2013, Twitter launched its initial public offering (IPO) and began trading on the New York Stock Exchange (NYSE) under the symbol "TWTR" (Schaefer 2013). On the first day of trading, Twitter raised approximately $2.1 billion with a market capitalization of $24.4 billion (Pepitone 2013). In 2021, Twitter's total revenue was $5.0 billion with $4.51 billion in advertising revenue and $571.8 million in data licensing and other revenue (Statista 2023).

Elon Musk

Elon Musk was an entrepreneur, founder, and leader of several businesses including the electric vehicle manufacturer, Tesla, Inc. (Tesla), and designer, manufacturer, and provider of launch services of rockets and spacecrafts through Space Exploration Technologies Corp. (SpaceX). Since April 2004, Mr. Musk served as a member of Tesla's Board of directors and, since 2008, as chief executive officer. Beginning in May 2002, he served as chairman of the SpaceX Board and later, in April 2004, he served as its chief technology officer.

Mr. Musk opened his Twitter account in 2009. By July 2022, he had over 100 million followers on Twitter and had tweeted more than 18,000 times. Beginning in January 2022, Mr. Musk began to buy Twitter stock. Mr. Musk became Twitter's largest shareholder by midyear, owning over nine percent of Twitter's common stock (Isidore 2022).

Exhibit 2. Elon Musk
Source: Associated Press (2023, Jul. 1)

Entering Into Merger Agreement

The Twitter Board of Directors (the Board) regularly reviewed Twitter's strategic direction and ongoing business plans with a view toward strengthening Twitter's business, furthering Twitter's mission to serve the public conversation, and enhancing stockholder value. The Board considered a variety of strategic alternatives including Twitter: 1) remaining an independent entity; 2) combining with other entities; 3) acquiring other entities; or 4) being sold to other entities.

In March of 2022, Mr. Musk contacted Jack Dorsey, Twitter's founder, former CEO, and one of Twitter's directors, to discuss the future direction of social media and the benefits of open social protocols. Mr. Musk also expressed his interest in joining the Board (Twitter, Inc. 2022, Apr. 25) and taking Twitter private (Feiner 2022, May 17). After considering several things, including Mr. Musk being a substantial shareholder, his active use of Twitter, his technical expertise in areas critical to Twitter's products and technology, and the perspectives he could bring to the Board, the NomGov Committee agreed to recommend that the Board should consider inviting Mr. Musk to join the Board (Twitter, Inc. 2022, Apr. 25). Although agreement was ultimately reached for Mr. Musk to join the Board, he declined and instead said he would be making an offer to take Twitter private (Twitter, Inc. 2022, Apr. 25).

In mid-April 2022, Mr. Musk delivered to Mr. Taylor a non-binding proposal to acquire 100 percent of Twitter for $54.20 cash per share (Proposal). He stated that it was his best and final offer and if it were not accepted, he would need to reconsider his position as a Twitter shareholder. Mr. Musk publicly announced his Proposal to acquire Twitter for approximately $43 billion (Twitter, Inc. 2022, Apr. 25; Siddiqui and Gregg 2022).

Over the next eight days, Mr. Musk tweeted comments that could have been interpreted to refer to his Proposal, which led the Twitter Board to believe Mr. Musk might commence an unsolicited tender offer for Twitter's common stock (Twitter, Inc. 2022, Apr. 25). In response to his comments, the Board announced that it had adopted a *poison pill plan* (the "Plan"). The Plan provided distribution rights to Twitter shareholders that would become exercisable if the Plan were triggered by an entity, person, or group acquiring 15 percent or more of Twitter's outstanding stock in a transaction not approved by the Board. Under the Plan, each shareholder, except for the acquiring person, entity, or group that triggered the Plan, could purchase additional Twitter stock (Twitter, Inc. 2022, Apr. 25).

Mr. Musk formed Parent and Acquisition Sub to carry out the transactions connected to a potential acquisition of Twitter. X Holdings I, Inc. (Parent) was formed solely for purposes of the Merger and was majority owned and controlled by Mr. Musk (Twitter, Inc. 2022, Apr. 25). X Holdings II, Inc. (Acquisition Sub) was formed solely for purposes of the Merger and was a wholly owned subsidiary of Parent (Twitter, Inc. 2022, Apr. 25). Shortly after, Mr. Musk publicly announced that to finance a potential acquisition of Twitter he had obtained commitment letters of $46.5 billion in equity and debt financing (Twitter, Inc. 2022, Apr. 25).

Exhibit 3. Elon Musk & Twitter Logo

Source: Feiner (2022, May 17)

In late April 2022, Twitter, Mr. Musk, and Parent negotiated the terms of the $44 billion Merger Agreement. Ultimately, the Board met and unanimously agreed for Twitter to be acquired by Mr. Musk, approved the Merger Agreement, and recommended that Twitter's shareholders vote to approve the Merger. Also, on the same day and following the Board meeting, Twitter, Parent, Acquisition Sub, and Mr. Musk signed and executed the Merger Agreement (Twitter, Inc. 2022, Apr. 25).

Reasons for the Merger

The Board recommended that Twitter shareholders vote for the Merger for several reasons including:

- The potential benefits to shareholders;
- The Merger was less risky than other possible alternatives, such as remaining an independent company or pursuing transactions with other entities;

- A negotiated agreement with Mr. Musk, rather than an unsolicited takeover by him, could possibly result in additional stockholder value and less disruption to Twitter's business; and
- The per share price reflected a fair and favorable price for the shares of Twitter's common stock and was the best value Twitter could reasonably obtain from Mr. Musk (Twitter, Inc. 2022, Apr. 25).

Events After Merger Agreement Signed

During this time Twitter announced that it had overstated its mDAUs from 2019 to 2021 because of an error in how it accounted for people linked to multiple accounts, and therefore it was issuing revised financial statements restating its mDAUs for those three years (Twitter 2022, Apr. 28). Following Twitter's announcement, Mr. Musk became concerned that Twitter used *"lax methodologies…to assess the actual prevalence of fake or spam accounts on its platform"* to calculate the number of false or spam accounts included in Twitter's mDAU (Twitter, Inc. 2022). Mr. Musk began to request access to Twitter data and other information so that he could *"make an independent assessment of the prevalence of fake or spam* [Twitter] *accounts"* (Twitter, Inc. 2022a, Jul. 8). Also, during this time, Mr. Musk requested Twitter to *"apply more rigorous computer-aided and third-party testing to determine the prevalence of fake or spam accounts on its platform with greater certainty"* (Twitter, Inc. 2022, Apr. 25). According to Mr. Musk, Twitter refused his requests.

Responding to Mr. Musk, Twitter denied that it used lax methodologies for counting false or spam accounts and that it would continue to work with Mr. Musk to help him *"gain a deeper understanding of* [Twitter's] *methodology for calculating mDAU."* Twitter also stated that it had addressed *"the vast amount of Mr. Musk's information requests"* which were becoming increasingly burdensome and its obligation to provide Mr. Musk information was limited to the specific purpose of facilitating the closing of the Merger (Twitter, Inc. 2022b, Jul. 8).

After little progress was made on this issue, Twitter and Mr. Musk appeared to be at a standstill on the proposed acquisition. Mr. Musk notified Twitter that he was terminating the Merger because Twitter had breached the terms of the Merger Agreement by not providing the data and information that he had requested, and that Twitter appeared to have made false and misleading representations upon which Mr. Musk had relied when entering into the Merger Agreement. In response to the termination notice, Twitter stated that it had not breached the Merger Agreement and Mr. Musk's termination was invalid and wrongful.

Twitter filed a lawsuit against Mr. Musk, Parent, and Acquisition Sub in the Delaware Court of Chancery (Chancery Court) in July asking the Court to order him to perform the Merger Agreement obligations and to complete the Merger (Twitter, Inc. 2022, Jul. 12). In its lawsuit, Twitter stated that three months after the Merger Agreement was signed., Mr. Musk refused to honor his obligations because the Merger no longer served *"his personal interests"* and that he believed he was *"free to change his mind, trash the company, disrupt its operations, destroy stockholder value, and walk away"* (Twitter, Inc. 2022, Jul. 12).

Chancellor McCormick of the Delaware Court of Chancery granted Twitter's motion to expedite the court proceedings and scheduled a trial to begin in October 2022 (Tillman 2022)." Mr. Musk quickly countersued Twitter asserting that Twitter breached the Merger Agreement asking the Chancery Court to rescind the Merger Agreement. Mr. Musk stated that he had expected that Twitter would hide nothing from him. Instead, Twitter "*played a months-long game of hide-and-seek to attempt to run out the clock"* before he "*could discern the truth"* about Twitter's representations. Further, the more Twitter evaded simple inquiries, the more Mr. Musk *"grew to suspect that Twitter had misled"* him (Musk 2022, Aug. 4).

During all this contentious activity, Twitter shareholders voted to approve the Merger on September 13, 2022 (Twitter, Inc. 2022, Sep. 13). At the same time as the legal proceedings, Twitter and Mr. Musk attempted to re-negotiate the terms of the Merger Agreement. Mr. Musk proposed buying Twitter at a discount of up to 30 percent of the originally agreed purchase price. An attorney representing Mr. Musk, Alex Spiro, stated that Twitter had offered to Mr. Musk *"billions off the transaction price,"* but he refused because Twitter had attempted to impose self-serving conditions on any potential deal (Hirsch & Conger 2022).

After negotiations failed, Mr. Musk contacted Twitter stating that he was willing to close the Merger under the original terms of the Merger Agreement of $54.20 per share if the legal proceedings were stopped and the debt financing proceeds had been received. Twitter rejected Mr. Musk's offer on October 4 (Musk 2022, Oct. 6). A few days later, Chancellor McCormick granted Mr. Musk's request to postpone the trial that was to begin on October 12, 2022, to October 28, 2022, because he had agreed to close the Merger and obtain financing on or by that date. Chancellor McCormick stated that if the Merger was not completed by October 28, 2022, the trial would proceed. Twitter opposed granting Mr. Musk's request to delay the trial because the Merger would not be able to close *"fast enough"* (Twitter, Inc. 2022, Oct. 6).

Merger Transaction

On October 27, 2022, the $44 billion Merger closed, and Acquisition Sub merged with and into Twitter with Twitter surviving as a wholly owned subsidiary of Parent and retaining substantially all of its assets. Twitter shareholders exchanged their Twitter common stock for $54.20 cash per share and their shares were cancelled (Twitter, Inc. 2022a, Oct. 27). See Appendix C.

As part of the Merger, Mr. Musk and some equity investors contributed their pre-Merger Twitter stock to Parent and received stock in Parent. For example, equity investor, Prince Alwaleed Bin Talal Bin Abulaziz Alsaud, rolled over more than 34 million shares of his pre-Merger Twitter stock to Parent in exchange for Parent common stock (Seligson 2022).

Some equity investors received $54.20 cash per share for their pre-Merger Twitter stock and contributed cash to Parent in exchange for Parent stock. For example, equity investor, the Qatar Investment Authority, received $54.20 cash for each share of its pre-Merger Twitter stock and those shares were cancelled. It also contributed $375 million to Parent in exchange for Parent common stock (Twitter, Inc. 2022b, Oct. 27; Seligson 2022).

Other equity investors who did not own stock in Twitter prior to the Merger contributed cash for Parent stock. For example, the founder of the software company Oracle, Larry Ellison, contributed $1 billion cash for Parent stock (Al Jazeera 2022; Kastrenakes & Lawler 2022).

Besides rolling over his pre-Merger Twitter stock, Mr. Musk also contributed cash for Parent stock.

On the day of the closing, Mr. Musk tweeted that *"the bird is freed"* (Musk 2022, Oct. 28). He also tweeted that the reason he acquired Twitter was *"because it is important to the future of civilization to have a common digital town square, where a wide range of beliefs can be debated in a healthy manner without resorting to violence."* Further, he stated that he did not acquire Twitter *"to make more money,"* rather he did it *"to try to help humanity"* (Musk 2022 Oct. 27). In a 2023 interview, Mr. Musk stated that he only went through with the Merger because a judge was about to force him to make the purchase (Clayton 2023).

Merger Financing

To finance the Merger, Mr. Musk committed to obtain $46.5 billion, $33.5 in equity financing and $13 billion debt financing, which covered the $44 billion purchase price and the $2.6 billion closing costs. Of the equity financing, Mr. Musk personally provided $26.4 billion, of which he funded a portion of by selling approximately $15.5 billion worth of his Tesla stock during the spring and summer of 2022. Individuals, investment firms, and other equity investors contributed the remaining $7.1 billion of the $33.5 billion equity financing. Of the debt financing, several banks, such as Bank of America, provided $13 billion in loans and other forms of debt financing, with an annual interest payment on the debt financing of approximately $1.5 billion (Al Jazeera 2022; Maurer 2023).

Post-Merger

On October 27, 2022, Twitter's common stock was delisted and stopped being traded on the NYSE. Mr. Musk became the sole director and CEO of Twitter (Twitter, Inc. 2022a, Oct. 27). Also, in October, Mr. Musk fired several Twitter executives including CEO Agrawal, chief financial officer (CFO) Ned Segal, and legal and policy executive Vijaya Gadde (Francis 2022; Thomas and Corse 2022). By spring 2023, Twitter's workforce of approximately 8,000 employees had been reduced through involuntary and voluntary terminations to approximately 1,500 employees (Clayton 2023).

In a March 2023 email to Twitter employees, Mr. Musk wrote that Twitter was worth $20 billion, less than 50 percent of its $44 billion purchase price. He also stated that someday Twitter could be worth $250 billion, but the path to get there would be difficult (Cao 2023; Conger & Ryan 2023). Further, Twitter remained in a precarious financial position and had been four months away from running out of money. Also, he said that *"radical changes"* needed to be made at Twitter, including mass layoffs and cost cutting, to avoid bankruptcy and streamline operations. Additionally, Mr. Musk stated that *"Twitter is being reshaped rapidly"* and could be thought of as *"an inverse start-up"* (Conger & Ryan 2023).

During the spring of 2023, Twitter's name was changed to X Corp. In July 2023, Twitter's blue bird logo was replaced with an "X". Prior to the logo change, Mr. Musk had posted on Twitter that: *"Soon we shall bid adieu to the Twitter brand and, gradually, all the birds"* (Corse 2023, Apr. 12). Then in August 2023, the subscription service, Twitter Blue, was renamed X Premium (Economic Times 2023).

Conclusion

Starting in January 2022, Elon Musk began to acquire stock in Twitter and in April 2022, he proposed to acquire 100 percent of Twitter. In October 2022, the Merger was completed, and Twitter became a subsidiary of Parent, which was majority owned and controlled by Mr. Musk.

What were the U.S. tax and non-tax consequences of the Merger for Twitter, Twitter shareholders, Parent, Elon Musk, and other investors in Parent?

Appendix A. Overview of Taxable Acquisitions and Tax-Free Acquisitive Reorganizations

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 (I.R.C. § 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 I.R.C. § 338; and 7) direct stock sales with an election under I.R.C. § 338(h)(10).

In a direct taxable stock acquisition, Acquirer 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.

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 an IRC § 338(h)(10) election, Target shareholders are taxed on the gain from the sale of their Target stock (Cash received for Target stock – Target shareholders' basis in Target stock = Target shareholders' taxable 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 taxable 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 Acquisitive Reorganizations

Statutory Requirements for Tax-Free Acquisitive Reorganizations

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

Non-Statutory Requirements for Tax-Free Acquisitive Reorganizations

Besides meeting the specific requirements of I.R.C. § 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 (Treas. Reg. §§ 1.368-1(c), 1.368-2(g), and 1.368-3(a)). 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 (Treas. Reg. § 1.368-1(d)).

For purposes of the COI requirement, Target shareholders must have a substantial proprietary 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 (Treas. Reg. § 1.368-1(e)). The COI requirement is not met if the consideration does not include any of Acquirer's stock (Treas. Reg. § 1.368-1(e)). For COI purposes, Acquirer's stock can be either common or preferred and voting or non-voting stock (John A. Nelson Co. v. Helvering, 296 U.S. 374 (1935)).

Under Treas. Reg. § 1.368-1(e)(2)(v) Ex 1, the COI requirement is met if Target shareholders receive and hold Acquirer stock that equals at least 40 percent of the value Target's stock. But some courts have accepted a lesser amount. For example, in John A. Nelson Co. v. Helvering, the US Supreme Court held that the COI requirement had been met because Target shareholders had received and held Acquirer's nonvoting preferred stock that equaled 38 percent of the value Target's stock (296 U.S. 374 (1935)). In A.L. Miller v. Commissioner, the COI requirement was met because the Target shareholders held Acquirer stock equal to 25 percent of the value of Target's stock (84 F.2d 415 (6th Cir. 1936)).

Tax Consequences in Tax-Free Acquisitive Reorganizations

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 (I.R.C. §§ 354 and 356). 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 (I.R.C. § 1223(1)). 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 (I.R.C. §§ 358 and 1223(1)).

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 (I.R.C. §§ 361 and 1032).

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 (I.R.C. §§ 361, 1001 and 1032; Rev. Rul. 72-327).

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 (I.R.C. §§ 362, 1223(1) and 1223(2)).

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.

I.R.C. § 351 Exchanges

Requirements for I.R.C. § 351 Exchanges

I.R.C. § 351 provides that the contribution of property by investors (transferors) to a corporation (transferee) they control after the contribution transaction may be treated as a tax-free (tax deferred) I.R.C. § 351 exchange. Specifically, I.R.C. § 351(a) states that: no gain or loss will be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock if immediately after the exchange such person or persons are in control of the corporation. The tax treatment of Section 351 is mandatory If the exchange of property for stock meets the requirements of Section 351.

For purposes of Section 351, the phrase one or more persons includes individuals, corporations, partnerships, and other entities (Treas. Reg. § 1.351-(1)(a)).

In a Section 351 exchange, property includes both tangible and intangible property. Specifically, under I.R.C. § 351, property is defined to include stock and securities, therefore transferors can exchange stock they own in a corporation for transferee corporation' stock (Rev. Rul. 74-502). Also, property includes cash and its basis equals its face value (Rev. Rul. 69-357; Holstein v. Commissioner, 23 T.C. 923 (1955)). However, services, such as accounting and legal services, are not considered property and therefore if a transferor provides services to the transferee in exchange for the transferee's stock, the transaction is not a Section 351 exchange (Treas. Reg. § 1.351-1(a)(1)(i)).

Even though I.R.C. § 351 states that persons must receive solely stock, they can receive a certain amount of other property and cash, referred to as boot (I.R.C. § 351(b)).

To be in control of the transferee corporation in a Section 351 exchange, the transferors must own immediately after the transfer, stock possessing at least 80 percent of the total combined voting power of all classes of voting stock and at least 80 percent of the total number of shares of all other classes of stock of the transferee, such as non-voting preferred stock. (I.R.C. § 368(c); Treas. Reg. § 1.351-1(a)(1)). In other words, to determine if the control requirement has been met and there is more than one transferor, all the transferors' shares are added together. If as a group, they own less than 80 percent of all shares of voting stock and own less than 80 percent of all other classes of stock, the control requirement has not been met and the transaction is not a Section 351 exchange. However, if a transferor provides services in exchange for the transferee's stock, its shares cannot be included with the other transferors' shares to determine control unless the transferor also transfers property to the transferee along with providing services.

The phrase immediately after the exchange does not require simultaneous exchanges by two or more persons. But the separate transfers must be made pursuant to a prearranged plan and done with "an expedition consistent with orderly procedure" (Treas. Reg. § 1.351-1(a)(1)).

Transferors' Tax Consequences

Transferors in a I.R.C. § 351 exchange generally do not recognize gain or loss if they transfer property to a corporation in exchange for the corporation's stock and that they control the corporation after the exchange. However, the transferors will recognize gain, but not loss, to the extent of the value other property and cash (boot) they receive along with the corporation's stock. The amount of recognized gain may not exceed the amount of boot (I.R.C. §§ 351(a) and (b); Treas. Reg. §§ 1.351-1(b)(1) and 1.351-2(a)).

To calculate the transferors' basis in the transferee's stock, both the transferors' realized and recognized gains must be first calculated. The transferors' realized gain equals the FMV of the transferee's stock plus the FMV of property and cash (boot) received from transferee less the basis of the transferors' property (transferee stock FMV + FMV of property received from transferee + cash received from transferee – basis of transferors' property = transferors' realized gain) (I.R.C. § 358; Treas. Reg. § 1.351-2(a)).

The transferors' recognized gain equals the lesser of the boot received or the realized gain. By first calculating the transferors' realized and recognized gains, the basis in the transferee's stock can then be calculated. The transferors' basis in the transferee corporation stock equals the basis of the property exchanged for transferee's stock, decreased by the amount of property and cash (boot) received, increased the amount of gain recognized, and decreased by the amount of assumed liabilities (transferors' basis in the property – value of property-amount of cash + recognized gain - assumed liabilities = transferors' basis in transferee corporation stock).

The transferors' holding period in the transferee corporation stock equals the holding period of the property transferred to transferee. If only cash was exchanged for the transferee stock, the holding period starts upon receiving the stock.

Transferee's Tax Consequences

The transferee corporation will not recognize gain or loss on exchanging its stock for the transferors' property. Its basis in the property received from the transferors equals the transferors' basis in their transferred property, increased by the amount of gain the transferees recognized in the Section 351 exchange. (transferors' property basis + transferors' recognized gain = transferee's basis in the transferors' property). The transferee's holding period in the transferors' transferred property equals the number of years the transferors' held the property (I.R.C. § 362; Treas. Reg. § 1.351-2(c)).

Taxable (Busted) I.R.C. § 351 Exchange

If any of the specific statutory and non-statutory requirements of I.R.C. § 351 exchange are not met, a transaction may be treated as taxable (busted) I.R.C. § 351 exchange.

Transferors' Tax Consequences

In a busted I.R.C. § 351 exchange, the transferors recognize gain or loss based on the difference in the value of the stock received and the adjusted of the relinquished property. The basis in the transferee's stock is the stock's FMV and the holding period in the stock begins upon receipt of it.

Transferee's Tax Consequences

In a busted I.R.C. § 351 exchange, the transferee's basis in the transferors' property would equal the property's FMV and its holding period in the property would start upon receipt of it.

Appendix B. Acquisition Timeline

Source: Authors

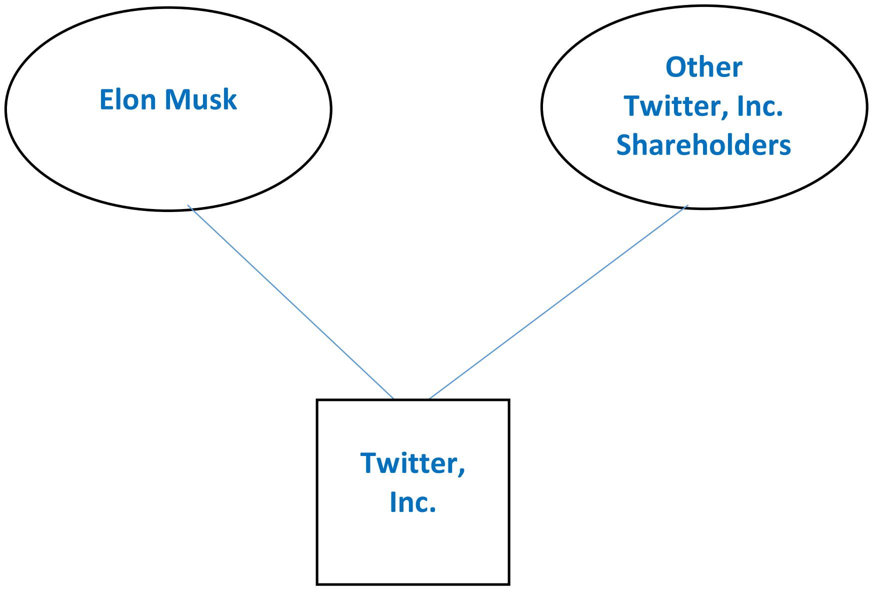
DATE	EVENT
1/22	Elon Musk began to buy Twitter, Inc.'s stock
3/22	Mr. Musk tweeted comments regarding Twitter's business, platform and functionality, and content moderation policies
3/26/22	Mr. Musk and Jack Dorsey, Twitter's founder, former chief financial officer (CFO) and one of Twitter's Board-of-directors, discussed the future direction of social media and the benefits of open social protocols
3/26 & 3/27/22	Mr. Musk and Egon Durban, one of Twitter's Board of directors discussed Mr. Musk joining Twitter's Board of directors (Board) and that he had acquired more than five percent of Twitter's common stock
3/27/22	Mr. Musk, Bret Taylor, Twitter's Board chairman, and Parag Agrawal, Twitter's chief executive officer (CEO) and a Board director, discussed Mr. Musk's interest in joining the Board and possibly taking Twitter private or starting a Twitter competitor
3/31/22	During a meeting of Messrs. Musk, Agrawal, and Taylor, Mr. Musk reiterated his interest in joining the Board, helping to improve Twitter's business and the possibility of taking Twitter private or starting a Twitter competitor
2/2/22	Twitter's Nominating and Corporate Governance Committee (NomGov Committee) met and agreed to recommend that the Board should consider inviting Mr. Musk to join it
4/3/22	The Board agreed with the NomGov Committee and decided to invite Mr. Musk to join it, if he entered into a cooperation agreement (Cooperation Agreement) that would limit his public statements about Twitter
4/4/22	• Mr. Musk publicly announced that he owned approximately 9.2 percent of Twitter's common stock, becoming Twitter's largest shareholder • Mr. Musk told Mr. Taylor that he would not agree to limit his public statements about Twitter but would be open to limiting his ownership of Twitter to approximately 15 percent with any increase subject to Board approval • The Board decided to ask Mr. Musk if he would enter into a revised Cooperation Agreement that would only limit the amount of Twitter stock he could purchase, but not limit his public statements about Twitter (Letter Agreement)
4/5/22	Twitter and Mr. Musk publicly announced that Mr. Musk had agreed to the Letter Agreement
4/9/22	Mr. Musk notified Messrs. Taylor and Agrawal that he would not be joining the Board and would be making an offer to take Twitter private
4/10/22	Twitter publicly announced that Mr. Musk had decided not to join the Board
4/12/22	The Board discussed Mr. Musk's offer, reviewed potential alternatives to his offer, and discussed adopting a shareholder rights plan (poison pill plan)

DATE	EVENT
4/13/22	Mr. Musk delivered to Mr. Taylor a non-binding proposal to acquire 100 percent of Twitter for $54.20 cash per share (Acquisition Proposal)
4/14/22	Mr. Musk publicly announced his proposal to acquire Twitter for approximately $43 billion
4/15/22	The Board announced that it had adopted a poison pill plan
4/19/22	Parent and Acquisition Sub formed
4/21/22	Mr. Musk publicly announced that he had obtained commitment letters of approximately $46.5 billion in equity and debt financing
4/23/22	Mr. Taylor and Mr. Musk met and Mr. Musk reiterated that his Acquisition Proposal was his best and final offer and that he was willing to take it directly to Twitter's shareholders.
4/24/22	• Mr. Musk informed the Board that he was committed to his Acquisition Proposal and that the Board should recommend his offer to Twitter's shareholders • Mr. Musk gave the Board a merger agreement (Merger Agreement)
4/24 & 4/25/22	Twitter, Mr. Musk, Parent, and Acquisition Sub negotiated the Merger Agreement terms
4/25/22	• The Board met and unanimously agreed for Twitter to be acquired by Mr. Musk, approved the Merger Agreement, and recommended that Twitter's shareholders vote to approve the Merger • Twitter, Parent, Acquisition Sub, and Mr. Musk signed and executed the Merger Agreement
4/28/22	Twitter announced that it had overstated its average monetizable daily active usage (mDAU) from 2019 to 2021 because of an error in how it accounted for people linked to multiple accounts, and therefore it was issuing revised financial statements restating its mDAUs for those three years
5/6/22	During a meeting with Twitter representatives, Mr. Musk asked questions about Twitter's mDAU figures, its representations that less than five percent of its mDAU figures compromised false or spam accounts, and Twitter's process to calculate its mDAU
5/9/22	• Mr. Musk began to request from Twitter data and other information so that he could make an independent assessment of the prevalence of fake or spam Twitter accounts and requested Twitter to apply more rigorous testing to determine the prevalence of fake or spam accounts with greater certainty • Mr. Musk stated that Twitter had not responded to his requests • Twitter denied using lax methodologies and stated it had addressed Mr. Musk's requests
6/2/22	The waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 expired

DATE	EVENT
7/8/22	• Mr. Musk notified Twitter that he was terminating the Merger Agreement and the acquisition of Twitter because Twitter had breached the Merger Agreement • Twitter stated that it had not breached the Merger Agreement and that Mr. Musk's termination was invalid and wrongful
7/12/22	Twitter sued Mr. Musk, Parent, and Acquisition Sub in the Delaware Court of Chancery (Chancery Court) asking the court to require them to perform their Merger Agreement obligations and to complete the Merger
7/19/22	Delaware Court of Chancery Chancellor Kathaleen Saint Jude McCormick granted Twitter's motion to expedite the court proceedings and scheduled a trial to begin in October 2022
8/4/22	Mr. Musk countersued Twitter asserting that Twitter breached the Merger Agreement and asking the Chancery Court to rescind the Merger Agreement.
9/13/22	Twitter shareholders voted to approve the Merger
9/22	Mr. Musk proposed buying Twitter at a discount of up to 30 percent of the original Merger terms
10/3/22	After negotiations failed, Mr. Musk contacted Twitter stating that he was willing to close the Merger under the original terms of the Merger Agreement provided that the legal proceedings were stopped and the debt financing proceeds had been received
10/4/22	Twitter rejected Mr. Musk's revised offer.
10/6/22	• Chancellor McCormick granted Mr. Musk's request to delay the trial until October 28, 2022, but if the Merger was not completed by or on that date, the trial would proceed in November 2022. • Twitter opposed granting Mr. Musk's request to delay the trial
10/27/22	• The Merger closed with Acquisition Sub merging with and into Twitter with Twitter surviving as a wholly-owned subsidiary of Parent • Twitter shareholders exchanged their Twitter stock for $54.20 per share and their shares were cancelled • Mr. Musk and some equity investors transferred cash & received Parent stock • Mr. Musk and some equity investors rolled over their Twitter stock and received Parent stock for their Twitter stock • Twitter's common stock delisted and stopped being traded on the NYSE • Mr. Musk became the sole director and CEO of Twitter • Mr. Musk fired several Twitter executives including CEO Agrawal
Spring 2023	• The pre-Merger workforce of approximately 8,000 employees reduced to approximately 1,500 employees through involuntary and voluntary terminations • Twitter's name changed to X Corp
July 2023	Twitter's blue bird logo replaced with an "X"

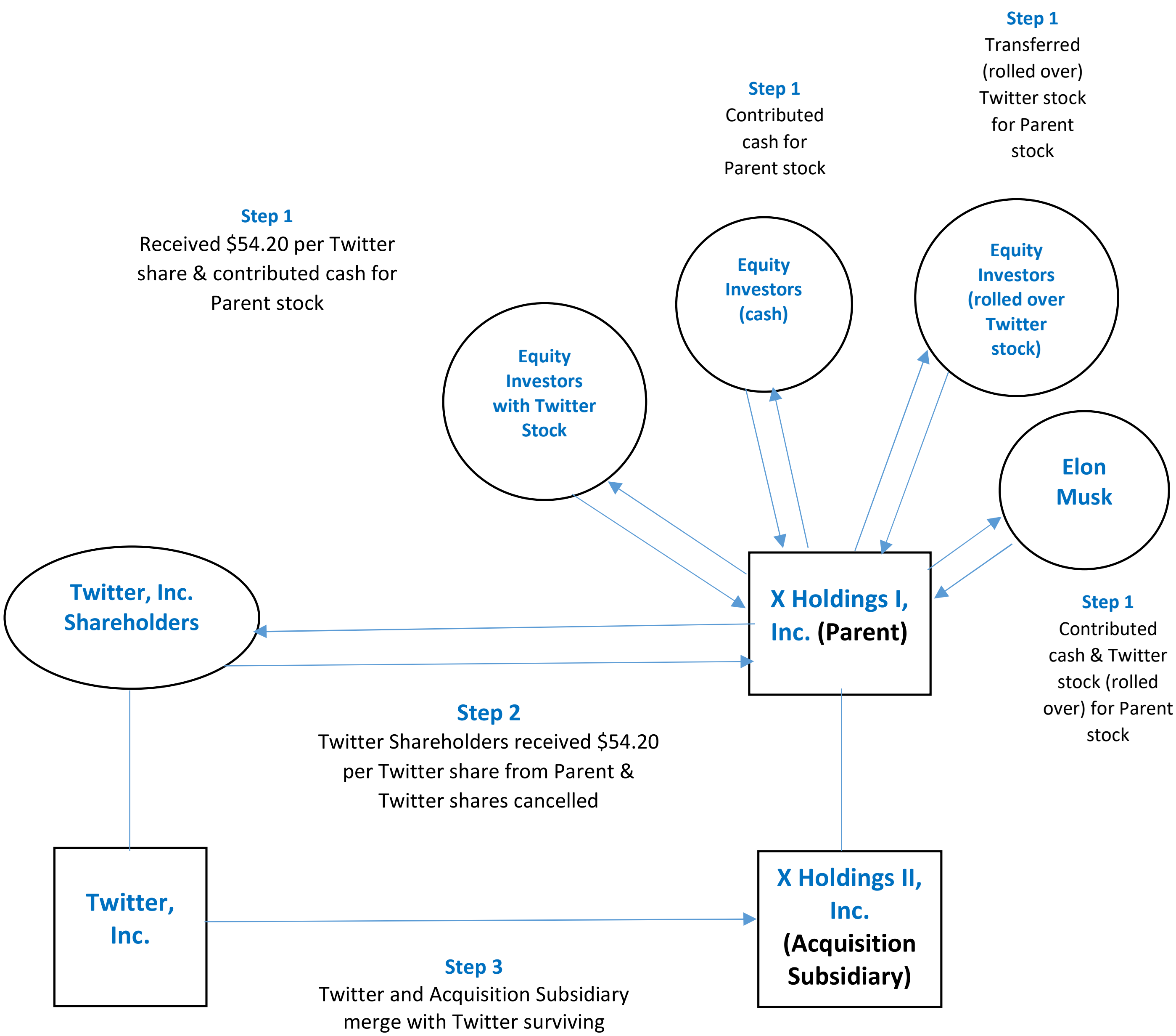
Appendix C. Pre-Merger Structure

Source: Authors



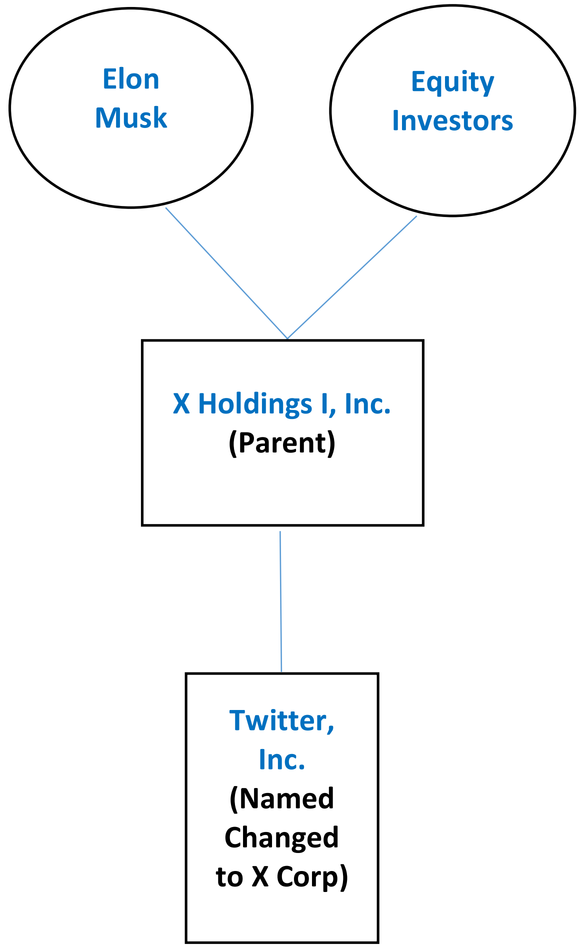
Appendix C. (cont.) Merger Transaction

Source: Authors



Appendix C. (cont.) Post-Merger Structure

Source: Authors



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