

The big winner if OpenAI becomes a for-profit business? Microsoft.

OpenAI is considering transitioning from a nonprofit [into a for-profit company](#), and its deep-pocketed benefactor, Microsoft ([MSFT](#)), has a lot to gain if the ChatGPT developer gets the green light to act more like a startup.

"Anything that frees up OpenAI to focus on profit is likely to benefit Microsoft's investment in the company," said Sarah Kreps, director of the Tech Policy Institute in the Brooks School of Public Policy at Cornell University.

A reconfigured business structure would give Microsoft an opportunity to renegotiate its already generous profit cap, as well as discard a provision that [denies Microsoft an interest](#) in OpenAI-created [general artificial intelligence](#) (GAI), according to another observer.

"[OpenAI] is clearly saying that the nonprofit will no longer be in control, so presumably that means Microsoft and other investors will have more say about what OpenAI does," said Rose Chan Loui, founding executive director of the University of California Los Angeles's Lowell Milken Center for Philanthropy and Nonprofits.

Microsoft CEO Satya Nadella, right, speaks as OpenAI CEO Sam Altman looks on during the OpenAI DevDay event last November in San Francisco. (Justin Sullivan/Getty Images)

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But there are potential snags for Microsoft as OpenAI attempts to shed its charitable cloak. OpenAI's huge valuation, labyrinth of for-profit subsidiaries, and potentially risky technology make a for-profit switch legally and publicly complicated — and could invite pushback from regulators. Still, OpenAI's investors see plenty of upside. On Wednesday, the company announced it raised some \$6.6 billion in its latest funding round, valuing the Sam Altman-helped firm at \$157 billion. However, that valuation is largely contingent on OpenAI becoming a for-profit entity.

Whirlwind of change

OpenAI is in the midst of a whirlwind of change.Â

It is experiencing an extended executive exodus including, most recently, the departure of chief technology officer Mira Murati. It also faces increased competition from rivals including Google ([GOOG](#), [GOOGL](#)) and Amazon-backed ([AMZN](#)) Anthropic.

The reclassification to a for-profit structure would be yet another seismic shift for OpenAI, upending the way it was established nearly a decade ago.

It began in 2015 as a nonprofit under the name OpenAI Inc., a nod to its mission of advancing humanity instead of pursuing profits.

"The corporation is not organized for the private gain of any person," OpenAI's certificate

of incorporation stated in its organizing documents, along with a promise to keep its technology as open source for public benefit.Â

Things evolved in 2019 when OpenAI CEO Sam Altman and his team [created a for-profit subsidiary](#) to raise outside venture capital â€” including billions from Microsoft.

It was structured in such a way that the for-profit subsidiary, technically owned by a holding company owned by OpenAI employees and investors, remained under the control of the nonprofit and its board of directors while giving its biggest backer (Microsoft) no board seats and no voting power.

The inherent tension between these two parts of the enterprise is what contributed to a dramatic boardroom clash in 2023, when Altman was ousted by the board and then brought back five days later.Â

In the aftermath, Microsoft took a non-voting observer position on OpenAIâ€™s board, only to relinquish that seat this year as both OpenAI and Microsoft came under more regulatory scrutiny. The idea of upending the current structure has already attracted interest from US and European regulators and exacerbated an ideological divide between scientific and business leaders who [warn](#) that machine learning technologies like those developed by OpenAI should remain accessible to the public.

The technology, they argue, poses an existential threat to humankind and, therefore, should be operated in a way that's subject to public scrutiny.

Sam Altman, CEO of OpenAI, at a Senate Judiciary Subcommittee on Privacy, Technology, and the Law Subcommittee hearing in 2023. (Bill Clark/CQ-Roll Call, Inc via Getty Images)

Bill Clark via Getty Images

OpenAI and Microsoft are also part of an ongoing inquiry by the [US Federal Trade Commission](#) over concerns that AI market consolidation is â€œdistorting innovation and undermining fair competition.â€•

And multiple [calls](#) have been made for Californiaâ€™s attorney general to probe the legality of OpenAIâ€™s business structure. One came from Elon Musk, who co-founded OpenAI with Altman. He sued OpenAI, Altman and 21 named OpenAI subsidiaries.

Musk said the defendants fraudulently promised that his \$100 million in OpenAI investments would be used for public benefit.

A transition by OpenAI to for-profit status could also attract the attention of the Internal Revenue Service, given that OpenAI was granted tax-exempt status as a charitable organization.

'Did they get fair market value?'

One unknown question is to what extent Microsoft will be able to directly extract profits from its investments.

By law, a nonprofit must use its assets only for its stated charitable purposes. And OpenAI's assets, which include all of OpenAI's subsidiaries, may not be sold for anything less than fair market value. The question regulators will want to confirm is, "Did they get fair market value for the asset at the time?" said Gene Takagi, a principal at NEO Law Group.

Chan Loui added that regulators would require OpenAI to realistically value its assets, including residual interest. And she suspects that figure may be in excess of OpenAI's latest valuation.

â€œI think the greatest sensitivity probably is with how they remove the nonprofit's control,â€• she said. "And I think their best shot of avoiding conflict relating to restructuring is to compensate the nonprofit enough,â€• Chan Loui said.

â€œI think that's the best way for them to get the public on their side, the states on their side, and

the IRS on their side."

Elon Musk looks on during the Milken Conference in May. REUTERS/David Swanson/File Photo

Reuters / Reuters

What OpenAI is expected to do as part of its transition is register as a public benefit corporation. Such entities are like traditional corporations but with more freedom to spend on civically minded initiatives, according to Rick Alexander, a veteran corporate structuring lawyer and founder of the Shareholder Commons,

"It's a permission structure," Alexander said.

Other public benefit corporations include Elon Musk's xAI, Warby Parker ([WRBY](#)), Allbirds ([BIRD](#)), Lemonade ([LMND](#)), and Etsy ([ETSY](#)).^Â

And based on the success of Musk's xAI, OpenAI could benefit handsomely from the change. In May, xAI raised \$6 billion.

"This type of transition can generate considerable investor interest quickly," Kreps said. "This is such a capital-intensive industry, so anything OpenAI can do to attract investment will act as a positive feedback loop and accelerate its advantages."^Â

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