

From: [Walsh, Kathryn E.](#)
To: [REDACTED]; [Whitehead, Nora](#); [Gillis, Diana L.](#)
Subject: RE: Acquisition of Controlling Interest in Newco LLC
Date: Thursday, June 02, 2016 9:19:03 AM

In determining whether a transaction is an acquisition or a formation, we look at what each party is contributing. When one party is only contributing cash, we treat that as an acquisition. So, here B is acquiring assets from A.

From: [REDACTED]
Sent: Tuesday, May 31, 2016 7:38 PM
To: Walsh, Kathryn E.; Whitehead, Nora; Gillis, Diana L.
Subject: Acquisition of Controlling Interest in Newco LLC

Hi Kate, Nora and Diana,

I hope everyone had a great holiday weekend. In this transaction A and B are each committing to invest up to \$400 million in Newco LLC, and A and B will each own 50% of Newco LLC at closing. At closing, A will contribute: i.) a plant valued at \$150 million, and ii.) a plant under construction currently valued at \$50 million. B will contribute \$100 million cash which will be distributed to A as a return of capital at closing. Subsequent to the initial capitalization, capital commitments for the remaining spend on the plant under construction are payable 50-50 by each of A and B and are not subject to board-approved capital calls. The remaining capital commitments are payable pro rata as called by the board from time to time when needed to finance Newco's operations. Any portion of a Member's capital commitment that has not been called by the board within the 4-year period following closing will expire, unless extended at the discretion of the Member. Can you confirm whether the transaction is considered an acquisition by B of 50% of the LLC from A (rather than as a formation of a joint venture)?

Many thanks,

[REDACTED]

[REDACTED]