

# ALBERTA SECURITIES COMMISSION

## ORDER

Citation: Re Bison Acquisition Corp., 2021 ABASC 107

Date: 20210712

### Bison Acquisition Corp. and Brookfield Infrastructure Corporation Exchange Limited Partnership

#### Background

1. Bison Acquisition Corp. (**Bison**) formally commenced an unsolicited take-over bid (the **Offer**) for all of the issued and outstanding common shares of Inter Pipeline Ltd. (respectively, the **IPL Shares** and **IPL**) by issuing an Offer to Purchase and Circular to IPL shareholders on February 22, 2021 (the **Bid Circular**). Bison is a special purpose entity formed under the laws of Alberta to facilitate the Offer, and was established by a number of private funds managed by Brookfield Asset Management Inc. The Offer was varied on June 4, 2021 and June 21, 2021.
2. Following the announcement of the Offer, IPL's board of directors (the **IPL Board**) undertook a strategic review process to evaluate the Offer and explore alternative transactions. On March 8, 2021, the IPL Board issued a Directors' Circular recommending that IPL shareholders reject the Offer.
3. On June 1, 2021, IPL and Pembina Pipeline Corporation (**Pembina**) executed an arrangement agreement (the **Pembina Arrangement**), pursuant to which Pembina would acquire all of the issued and outstanding IPL Shares in a share-for-share transaction. The IPL Board unanimously recommended that IPL shareholders vote in favour of the Pembina Arrangement. A meeting of IPL shareholders to vote on the Pembina Arrangement is scheduled for July 29, 2021 (the **IPL Shareholder Meeting**).

#### The Applications

4. Bison and Brookfield Infrastructure Corporation Exchange Limited Partnership (together, **Brookfield**) applied to the Alberta Securities Commission (the **Commission**) for an order (the **Brookfield Application**):
  - (a) cease trading all securities that are proposed to be issued or exchanged in connection with the two shareholder rights plans adopted by the IPL Board and effective as of May 8, 2017 and March 31, 2021 respectively, including the issuance of any IPL Shares upon the exercise of such rights;
  - (b) restraining IPL from paying, and the IPL Board from causing or permitting IPL to pay, the \$350 million break fee contemplated by the Pembina Arrangement; and

- (c) cease trading all securities that are proposed to be issued or exchanged in connection with the Pembina Arrangement, including the proposed transfer of all outstanding IPL Shares to Pembina in exchange for common shares of Pembina.
5. IPL applied to the Commission for an order (the **IPL Cross-Application**):
- (a) requiring that Brookfield provide certain public disclosure in a notice of change to the Bid Circular setting out the material terms of the cash-settled total return share swap agreements (the **Total Return Swaps**) entered into by Brookfield and a swap dealer (the **Swap Counterparty**) between April and October 2020;
  - (b) requiring Brookfield to disclose publicly the instruments or contracts that govern the Total Return Swaps in an unredacted form;
  - (c) directing that the IPL Shares that are the reference asset under the Total Return Swaps (the **TRS Shares**) be considered securities beneficially owned, or over which control or direction is exercised, by Brookfield or by a person acting jointly or in concert with Brookfield for the purposes of s. 2.29.1(c) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**), and therefore exclude any TRS Shares that are tendered to the Offer from the mandatory minimum tender condition in s. 2.29.1(c) of NI 62-104; and
  - (d) deeming the TRS Shares to be voted at the IPL Shareholder Meeting in respect of the Pembina Arrangement to have been voted in the same proportion for and against the special resolution of IPL shareholders to approve the Pembina Arrangement as all other IPL Shares voted at the IPL Shareholder Meeting, other than any IPL Shares beneficially owned or over which control or direction is exercised by Brookfield and any of its affiliates.
6. In addition to the relief sought in the IPL Cross-Application, Pembina applied to the Commission for an order (the **Pembina Cross-Application**) cease trading all securities that are proposed to be issued or exchanged in connection with the Offer, including the proposed transfer of IPL Shares to Brookfield in exchange for cash or securities of Brookfield and its affiliates pursuant to the Offer.
7. The hearing of the Brookfield Application, the IPL Cross-Application, and the Pembina Cross-Application (collectively, the **Applications**) took place on July 9, 2021.

### **Decision**

8. Having regard to the evidence and submissions received, the Commission:
- (a) dismisses the Brookfield Application; and
  - (b) considering it to be in the public interest to do so, orders that:
    - (i) notwithstanding s. 2.29.1(c) of NI 62-104, under ss. 198(1)(b) and (2) of the *Securities Act* (Alberta) (the **Act**), Brookfield shall not purchase any IPL

securities deposited under the Offer unless more than 55% of the number of IPL securities that are subject to the Offer, excluding any IPL securities beneficially owned by Brookfield or by any person acting jointly or in concert with Brookfield, have been deposited under the Offer and not withdrawn (the **Modified Minimum Tender Condition**);

- (ii) under s. 198(1)(g) and (h) of the Act, Brookfield shall publicly disclose the Modified Minimum Tender Condition in accordance with the Notice of Variation requirements in s. 2.12 of NI 62-104; and
- (iii) under s. 179(1)(b) of the Act, Brookfield shall publicly disclose the following in accordance with the Notice of Variation requirements in s. 2.12 of NI 62-104:
  - (A) the name of the Swap Counterparty;
  - (B) the dates of the International Swaps and Derivatives Association agreements between Brookfield and the Swap Counterparty;
  - (C) the dates of the swap transactions pursuant to which Brookfield acquired an economic interest in IPL Shares;
  - (D) material information concerning Brookfield's commercial relationship with the Swap Counterparty, similar in nature to that contained in the analyst reports referred to at pages 36-40 of the transcript of the cross-examination of Brian Baker on June 28, 2021; and
  - (E) the existence of, amount of, and conditions for the payment of the completion fee included in the January 27, 2021 engagement letter between BMO Nesbitt Burns Inc. and Brookfield.

July 12, 2021

**For the Commission:**

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 Kari Horn

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 Tom Cotter