

Financial Markets Conduct (Nitro Corporation Pty Ltd) Exemption Notice 2015

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Nitro Corporation Pty Ltd) Exemption Notice 2015.

2 Commencement

This notice comes into force on 4 December 2015.

3 Revocation

This notice is revoked on the close of 3 December 2020.

4 Application

An exemption granted by this notice applies to the following accounting periods of the overseas issuers:

- (a) an accounting period of an overseas issuer that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would be required to be lodged under the Act; and
- (b) subsequent accounting periods.

5 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Financial Market Conduct Act 2013

Asciano means Asciano Limited (ABN 26 123 652 862), a company incorporated in Australia and listed on the Australian Securities Exchange

BIP means Brookfield Infrastructure Partners L.P., a Bermuda exempted limited partnership

BIPL means Brookfield Infrastructure Partners Limited, the general partner of BIP

BIP CDI means a CHESS Depository Interest which is a unit of beneficial ownership in BIP and which can be converted at the option of the holder at any time into a BIP Interest

BIP Interest means a fully paid limited partnership unit in BIP

Nitro means Nitro Corporation Pty Ltd (ACN 607 605 701), a company incorporated in Australia and an indirect subsidiary of BIP

overseas issuers means Nitro and BIPL

Regulations means the Financial Markets Conduct Regulations 2014

specified securities means the BIP CDIs and the BIP Interests.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

6 Exemptions

Nitro and BIPL are exempted in relation to the specified securities from Part 3, Part 4 and Part 7 of the Act.

7 Conditions

- (1) The exemptions in clause 6 are subject to the following conditions:
- (a) the only persons to whom the specified securities are offered in New Zealand are persons who, at the time of the offer, are shareholders of Asciano Limited; and
 - (b) it is a term of the offer of the specified securities that the BIP CDIs will be listed on the Australian Securities Exchange; and
 - (c) the BIP CDIs are offered as part of the consideration for the acquisition of shares in Asciano Limited; and
 - (d) the offer of the specified securities to persons in New Zealand is made in compliance with the laws of Australia; and
 - (e) Nitro and BIPL will offer the BIP Interests in New Zealand only as securities to which the BIP CDIs can be converted.
- (2) The exemption in clause 6 from Part 7 of the Act is subject to the further condition that Nitro and BIPL comply with the laws of their respective home jurisdictions that relate to the preparation, content, audit and public filing of their respective financial statements.

Dated at Auckland this 3rd day of December 2015.



Garth Stanish
Director of Markets Oversight
Financial Markets Authority

Statement of reasons

This notice comes into force on 4 December 2015 and is revoked on 3 December 2020.

This notice exempts Nitro Corporation Pty Ltd (**Nitro**) and Brookfield Infrastructure Partners Limited (**BIPL**), from compliance with New Zealand financial markets offer information, governance and financial reporting requirements contained in the Financial Markets Conduct Act 2013 (the **FMC Act**) in respect of an offer to existing New Zealand shareholders in Asciano Limited (**Asciano**).

Nitro and BIPL intend to offer Chess Depository Interests (each of which is a unit of beneficial ownership in an interest in Brookfield Infrastructure Partners L.P. and which can be converted at the option of the holder into a direct limited partnership unit in the same (**specified securities**)) to New Zealand Asciano shareholders in part consideration for the acquisition of their shares in Asciano.

The exemptions are on the conditions that the offer in New Zealand is made only to persons who are shareholders of Asciano, that the offer is made in compliance with Australian law and that BIPL and Nitro's financial statements are prepared in compliance with the laws of their respective home jurisdictions.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the FMC Act, considers it appropriate to grant the exemptions because—

- in making the offer during the transitional period from the Securities Act 1978 to the FMC Act, BIPL and Nitro would have been able to rely on the Securities Act (Overseas Companies) Exemption Notice 2013 (the **Class Notice**) but for the fact that the specified securities issued by Nitro may be converted into securities issued by another affiliated entity, BIPL:
- the policy reasons for the Class Notice continue to be valid under the FMC Act, that is, the offer will only be made to shareholders in New Zealand who already hold shares in a listed company in Australia and who can be taken to have assumed a degree of risk that might accompany an overseas investment. In these circumstances it is appropriate that Australian law applies to this offer to existing shareholders in that company:
- the exemptions will allow New Zealand shareholders to participate in the offer of the specified securities, and those shareholders will receive comprehensive information about the offer from the Australian offer document, therefore promoting the confident and informed participation of investors:
- The offer cannot be made under the mutual recognition regime because the specified securities are not debt securities, equity securities or managed investment products in an Australian registered scheme:
- the limited nature of the offer, which will be made only to Asciano shareholders and only as part of the consideration for their existing shares, means that the governance obligations in Part 4 of the FMC Act would be inappropriate and disproportionate in the circumstances. In addition, because the BIP CDIs will be listed on the Australian Securities Exchange and the BIP Interests are listed on the New York Stock Exchange and the Toronto Stock Exchange, the specified securities will be tradeable by investors:
- the exemptions will avoid unnecessary compliance costs by duplication of disclosure and financial reporting requirements.

In providing exemptions only from the New Zealand specific offer, governance and financial reporting requirements, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.