



bhpbilliton

**SEC Proposed
Rules comments
File S7-10-16
Property
disclosure by
mining registrants**

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Executive Summary

The US Securities and Exchange Commission (SEC) has invited public comment on its Proposed Rules to modernise disclosure requirements for mining properties. BHP Billiton submitted an initial short-form response to the SEC on August 3, 2016. This document provides detailed responses regarding areas of agreement and areas of concern. BHP Billiton agrees with the intent to align the SEC requirements with the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) Template, nevertheless has concerns with a number of aspects as described further below.

Proposed Rules of greatest concern are:

- The two year pricing model for determination of Mineral Resources and Mineral Reserves because this will create volatility in our declarations, duplication of work undertaken for reporting in other jurisdictions and our contract prices are highly confidential. Volatility will arise as average spot prices experience greater fluctuations than consensus views on long-term commodity price forecasts. While such volatility is less likely than the impact observed from the 12 month pricing model used for oil and gas reserves, BHP Billiton recommends allowing registrants to continue to report Mineral Resources and Mineral Reserves based on their internal view of forward-looking prices. Further, the Proposed Rules do not appear to contemplate the impact of revised resource and reserve definitions on financial reporting.
- A number of the technical reporting requirements, especially relating to the prescriptive format for material properties, contain areas of duplication of information and would need to be completed in addition to reporting for other jurisdictions.
- Several areas relating to the application of CRIRSCO-based definitions are queried because they have been modified from the original form or intent. This is of particular concern in respect to liability of Qualified Persons and reporting of Mineral Resources and Mineral Reserves. The definition of materiality requires clarification, as it is unclear whether this is determined by reference to accounting concepts or other definitions.

BHP Billiton submits that the SEC should align the Proposed Rules with CRIRSCO-based Codes to create consistency with other jurisdictions and avoid volatility in companies' reported Mineral Resources and Mineral Reserves year-on-year.

We seek clarity on the timing of implementation of the Rules, and request that the SEC consider a transition period of at least 12 months noting that some of the requirements for registrants would take significant time to implement.

Overview

Purpose

BHP Billiton is an SEC foreign private issuer with two American Depositary Receipt listings on the New York Stock Exchange (NYSE). In addition to reporting Mineral Reserve information in accordance with SEC Industry Guide 7 requirements, the Group reports Mineral Resource and Ore Reserve information under CRIRSCO-based Codes (for the Australian Securities Exchange (ASX) and the London Stock Exchange (LSE)) which use principles based approaches.

The comments on the Proposed Rules are in direct response to SEC 17 CFR Parts 229, 239 and 249 (File Number S7-10-16) released on June 16, 2016. BHP Billiton provides this detailed response in relation to expected impact and provides associated supporting data. Where we anticipate a major impact, we have provided an indication of personnel cost in terms of Full Time Equivalent (FTE) days of work per annum and the overall number of FTEs required should the Proposed Rules be implemented.

Areas of Agreement

BHP Billiton highlights the following key areas of agreement with the Proposed Rules:

- We strongly agree with alignment to the CRIRSCO Template nomenclature throughout the Proposed Rules. In particular, we support the introduction of reporting requirements for Exploration Results and Mineral Resources.
- BHP Billiton agrees with the introduction of a Qualified Person requirement. We strongly endorse that there should be no requirement that the Qualified Person be independent from the registrant.
- We are also in agreement with the proposed changes to assumptions regarding operating approvals for the determination of Mineral Reserves, which aligns the SEC with CRIRSCO-based Codes.

BHP Billiton believes the Proposed Rules in the above areas to be consistent with CRIRSCO-based Codes which follow a well-established and globally recognised International Reporting Template for Exploration Results, Mineral Resources and Mineral Reserves. These have been tested for many years in global financial markets.

Areas of Concern

There are a number of specific areas in the Proposed Rules where we believe there is a significant divergence from CRIRSCO-based Codes.

BHP Billiton opposes the Proposed Rules' two year pricing model for Mineral Resources and Mineral Reserves. We submit that companies should be given the flexibility to estimate Mineral Resources and Mineral Reserves using forward-looking prices consistent with business plans and, in our case, aligned with our declarations in other reporting jurisdictions. This flexibility should equally apply to oil and gas reserve estimations, currently subject to a 12 month historic pricing convention.

We note that neither the CRIRSCO Template nor the Joint Ore Reserves Committee (JORC) Code require disclosure of the pricing or cost models used for Mineral Resources or Ore Reserves estimation. BHP Billiton considers that the research we conduct to estimate future commodity prices and other inputs into our business plans as sensitive intellectual property which we are not willing to disclose publically. BHP Billiton suggests the SEC adopt the approach of CRIRSCO and JORC to allow discussion of the methodology used to estimate the pricing models, without a requirement to disclose the price itself.

If this approach is not acceptable, we would prefer that registrants be allowed to compare our forward-looking prices to those produced by industry recognised experts (for example Wood Mackenzie) and comment on whether there is a material difference between the forward-pricing models. A sensitivity analysis of the Ore Reserves with respect to the pricing model used could also be conducted to allow investors to better understand the reserve risk.

BHP Billiton proposes that registrants should be allowed to use a mineral price that is higher for Mineral Resources determination than for Mineral Reserves. This is supported by the Society for Mining, Metallurgy and Exploration (SME) submission dated 4 August 2016 and allows for reasonable prospects of economic extraction (resource) as distinct from the economically mineable part (reserve) to be evaluated. By restricting registrants to using the same prices for both, we anticipate the Proposed Rules' pricing model could currently reduce Mineral Resources reported to the SEC by as much as 40% for our major projects compared to other jurisdictions.

We oppose the pricing model because:

- Using a ceiling of average prices for the 24-month period prior to the end of the last fiscal year will increase year-on-year volatility in companies' Mineral Resource and Mineral Reserve positions. Spot price fluctuations experience greater variability than long-term forward-prices creating unnecessary volatility. Further, we oppose the use of average historical prices, as price volatility has significantly impacted oil and gas reserve estimates at 30 June 2016, with reserves of US Onshore Assets impacted by the sharp decline in prices during the year.
- Our corporate planning objective is to mitigate the risks of fluctuating markets and commodity price volatility by aligning our forward-looking business plans with our strategy to develop long-life and expandable assets. Estimating Mineral Resources and Mineral Reserves in the context of historical prices is of no value to management or, we believe, to our investors, and would be completed for SEC reporting purposes only.

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- In CRIRSCO-based codes, the selection of commodity price is a prerogative of the Qualified Person in application of professional judgement and supported by a technical justification.
- The Proposed Rules state (page 85) ‘the sole exception to use of the 24-month trailing average ceiling price model would be when the registrant has a sales contract in place...’. The majority of our commodity sales are traded on the open market, but in some cases are subject to contractual sales agreements which are highly confidential.
- Consideration of foreign exchange rates when compiling historical prices will add significant complexity year-on-year to Mineral Resources and Mineral Reserves declarations.
- Investors may be misled by this pricing model during times of inflated market prices (with higher amounts of reserves presented), along with times when sharp decreases in prices are experienced. In times of inflated prices, the use of historical pricing models confers an unfair advantage on companies whose portfolio is focused on these impacted commodities.
- Resource and reserve information is disclosed annually in BHP Billiton’s SEC filing, which is also accompanied by financial statements prepared in accordance with International Financial Reporting Standards (IFRS). Forward-looking commodity prices underpin a number of financial statement items such as asset valuations, impairments assessments, depreciation calculations and closure provisioning. Presenting resource and reserve information calculated by reference to historical prices is inherently inconsistent with IFRS financial reporting and may mislead investors as they may expect disclosed resource and reserve estimates are reflected in the accompanying financial report.

BHP Billiton is required to report to the ASX and LSE under the CRIRSCO-based principles using forecast pricing aligned to our business models. If the proposed pricing model is implemented, this would result in duplication of effort in both the estimation and reporting of Mineral Resources and Mineral Reserves. Effectively, two sets of numbers for each of our properties (in excess of 200 individual deposits) would need to be estimated and declared annually. The use of forward-looking prices under the CRIRSCO Template would continue for IFRS financial reporting purposes.

BHP Billiton also notes the Proposed Rules appears to require a clarification for mining entities under codified accounting guidance within the US Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 930-360-35. This guidance includes glossary terms for “value beyond proven and probable reserves”, and also contains impairment guidance stating that entities shall consider current, historical and forward pricing rules when assessing future cash flows associated with reserves.

Additionally, the Proposed Rule to apply the same price to both resources and reserves is considered impractical for a wide range of commodities as this would not allow for a resource envelope to be developed around a reserve. The SME submission dated 4 August 2016 also puts forward this case (refer to clause 6.1.1). Optimisation of an Ore Reserve typically takes into account information within the limits of the Mineral Resource envelope. In restricting the limits of the resource envelope (by requiring use of the same price for resources and reserves) the optimisation may not capture the edges of the reserve effectively.

BHP Billiton notes that the Proposed Rules relating to technical reporting differ substantially from technical reports we prepare for other jurisdictions. The SEC Proposed Rules requirements relating to ‘Summary Disclosure’, ‘Individual Property Disclosure’ and ‘Technical Report Summaries’ are repetitive in parts and additional to technical reporting required by other regulators. We advocate that the CRIRSCO Template Table 1 reports as supplied to jurisdictions such as the ASX could replace the Technical Report Summary. We also have concerns relating to a number of specific requirements for Summary Disclosure and Individual Property Disclosure.

We advocate that SEC technical reporting should align with the CRIRSCO Template because:

- The Proposed Rules technical reporting requirements related to Mineral Resources and Mineral Reserves are considered by BHP Billiton to be overly prescriptive, especially for multi-jurisdiction foreign registrants. If a property is deemed material, and has a material change in Mineral Resources, it will need to be included in the Summary Disclosure section, the Individual Property Disclosure section as well as triggering a Technical Report Summary. This would all be in addition to our ASX reporting obligations that are required according to the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves JORC Code Table 1.

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- The proposal in relation to Individual Property Disclosure requires the registrant to report Mineral Resources as saleable product. This is considered inappropriate because application of modifying factors to a resource with this degree of granularity is analogous to defining a Mineral Reserve (refer to the CRIRSCO Template definition of Mineral Resources and Mineral Reserves). The published resource size would likely be reduced / undervalued using this approach.
- The Technical Report Summary requirement of including annual cash flow forecast for operating mines is, in BHP Billiton's view, inappropriate, as this is considered commercially sensitive, may affect a registrant's competitive advantage.

While the definitions for Qualified Persons, Mineral Resources and Mineral Reserves are largely aligned with the CRIRSCO-based Codes, BHP Billiton notes a number of areas of divergence, particularly in relation to Mineral Reserves. The definitions of Mineral Resources, Mineral Reserves and their modifying factors should be identical to the CRIRSCO Template standards to avoid confusion and promote consistency.

Areas where BHP Billiton considers there are critical differences from CRIRSCO-based definitions that should be modified to align include:

- The Qualified Person is required by the Proposed Rules to accept liability for technical aspects outside their field of expertise. CRIRSCO-based Codes allow the Qualified Person to include a limited disclaimer of responsibility and to rely on other subject matter experts with respect to areas such as legal, marketing, social or other areas where the Qualified Person is not expert.
- BHP Billiton requests that the SEC recognise the list of Recognised Professional Organisations from jurisdictions where the CRIRSCO Template is accepted, specifically including Member status of the Australasian Institute of Mining and Metallurgy (AusIMM), published by the ASX for Qualified Person membership.
- The Proposed Rules relating to reporting of Mineral Reserves excluding allowances for diluting materials and mining losses are in contrast to the CRIRSCO Template. Removing the inherent dilution for the Mineral Reserves estimation is not easily achieved and will not provide additional meaningful information to investors as reserves that incorporate dilution contain higher total contained metal and are a more accurate reflection of the expected extraction. The application of this rule would undervalue the registrant for US disclosure compared to other jurisdictions.
- The requirement to disclose Mineral Reserves at three points of reference across the categories of in-situ material, process plant delivered material, and saleable product is an unduly complex methodology to attempt to quantify dilution and recovery. Furthermore, 'in situ material' Mineral Reserves is akin to Mineral Resources and introduces new Mineral Reserves terminology compared to CRIRSCO-based Codes, likewise 'plant / mill feed' and should not be considered.

With respect to the reporting of Exploration Results, BHP Billiton is concerned by the new requirements for disclosure of material Exploration Results for each material mining property. Under other reporting jurisdictions (ASX for example), Exploration Results are only required to be disclosed if they are deemed to be material to investors and the market capitalisation of the company. The SEC provides instruction that in assessing the materiality of Exploration Results 'the registrant should consider their importance in assessing the value of a material property or in deciding whether to develop the property'. This suggests a lower threshold for materiality in relation to Exploration Results than applies in other jurisdictions such as the ASX. Further clarity is sought regarding the intent of this Proposed Rule and interpretation regarding materiality of an Exploration Result. For example, individual Exploration Results for bulk commodities may not be deemed significant, while a single drill-hole result for base-metals exploration might be considered material.

Omissions

BHP Billiton believes that there are a number of omissions in the Proposed Rules, the inclusion of which would add value including:

- Subsequent public reporting requirements relating to the written consent of Qualified Persons.
- The disclosure framework the SEC proposes should also apply to registrant investor presentations, news releases, website postings and any other release of information to the public relating to Exploration Results, Mineral Resources and Mineral Reserves.

- There is no rule proposed for the treatment of Exploration Targets as defined by the CRIRSCO Template.
- Further clarity is sought relating to the requirements for reporting of historic or foreign estimates. There is currently limited discussion regarding how registrants can publically report Mineral Resource or Ore Reserves estimates related to a historic property or property that contains estimates reported according to a non-CRIRSCO based Code.
- Provision for reporting of Scoping Study results is not provided and should be included. Disclosure of Scoping Study results should be voluntary, recognising that these studies are often commissioned for internal company purposes at an early stage of project development.
- Further clarity is also sought with respect to the definition of materiality and material property so these terms are aligned with other jurisdictions. In particular this relates to release of Exploration Results as discussed further below.

Comments to Proposed Rules

Consolidation of the Mining Disclosure Requirements

BHP Billiton agrees that consolidation of mining disclosure requirements would eliminate uncertainty and provide clearer understanding of Regulation S-K as proposed.

The Standard for Mining-Related Disclosure

Overview

BHP Billiton currently complies with the Australian Accounting Standards Board (AASB) for reporting in the ASX jurisdiction. The AASB adopted IFRS for application by entities reporting under the Corporations Act 2001 for annual reporting from 2005. The ASX published additional guidance (Guidance Note 31) describing factors that an entity should consider in determining whether a particular mining project is a material one. This guidance considers qualitative and quantitative factors together when assessing the classification of a property as material. A registrant may be in the best position to analyse these factors, exercising professional / technical judgement, to assess likely materiality.

Definitions of Exploration, Development and Production Stages

BHP Billiton supports the revision of the description of mining operations as applied in Guide 7 to consider registrants with multiple properties at different stages.

Qualified Person and Responsibility for Disclosure

BHP Billiton supports the introduction of a Qualified Person requirement in SEC reporting of Exploration Results, Mineral Resources and Mineral Reserves.

Whilst most of the requirement is aligned with CRIRSCO-based Codes, a particular concern in the Proposed Rule is that the Qualified Person is required to accept liability for technical aspects outside their field of expertise. CRIRSCO-based Codes allow the Qualified Person to include a limited disclaimer of responsibility and to rely on other subject matter experts with respect to areas such as legal, marketing, social or other areas where the Qualified Person is not an expert. The CRIRSCO Template Clause 8 also emphasises that a Public Report is the responsibility of the company acting through its Board of Directors and this should be considered as an assurance element for investors in the Proposed Rules. BHP Billiton opposes that any potential liability imposed on a Qualified Person be broader than that of the company's principal executive and financial officers.

BHP Billiton requests that the SEC recognise the list of Recognised Professional Organisations published by the ASX for Qualified Person membership. In particular, AusIMM Member status should be recognised as an acceptable Qualified Person prerequisite. We believe that the requirement should take into consideration

registrants with currently engaged Qualified Person(s) or Competent Person(s) for the reporting of Exploration Results, Mineral Resources and Mineral Reserves estimates in other jurisdictions. The recognition of their professional and qualified judgement in these matters is critical to ensure consistency in global reporting and avoid unnecessary costs of reporting.

The ‘Qualified Person’ Requirement

We believe that the Proposed Rules incorporates appropriate elements of the CRIRSCO-based Codes for reporting of Exploration Results, Mineral Resources and Mineral Reserves as an effective mechanism to provide the detail required according to the principles of materiality, transparency and competence.

BHP Billiton strongly supports the Proposed Rule as formulated without a consideration for the Qualified Person to be independent from the registrant. We diverge from the SME view to require an independent Qualified Person for initial disclosure or when triggered by a material change because these activities may occur in any stage of the development of a mining project and this can more effectively be informed by internal knowledge. For multinational companies like BHP Billiton with activities in a variety of commodities to engage one or several independent Qualified Person(s) would be costly with no substantial benefit for investors. The CRIRSCO Template does not preclude mining companies engaging independent Qualified Persons and by maintaining this flexible approach, registrants would not be required to employ a different set of Qualified Persons for their reporting activities under the SEC Rules.

The Definition of the ‘Qualified Person’

BHP Billiton supports the definition of the Qualified Person as proposed because this is predominantly aligned with CRIRSCO-based Codes.

BHP Billiton strongly supports the Proposed Rule’s acceptance of Recognised Professional Organisations (RPOs) in SEC mineral reporting as stated in item 1301¹. As proposed this rule provides flexibility to accommodate registrants with listing participation in other jurisdictions and also empowers registrants to assess how effective Recognised Professional Organisations are when establishing/requiring compliance with professional standards of competence and ethics or in the application of disciplinary powers. BHP Billiton conducts public reporting in compliance with ASX Listing Rules Appendix 5A which are based on the 2012 JORC Code. In this jurisdiction, the list of Recognised Professional Organisations is regularly updated and amended to incorporate professional bodies that satisfy the following criteria:

- Be a self-regulatory organisation covering professionals in the mining and/or exploration industry.
- Admit members primarily on the basis of their academic qualifications and professional experience.
- Require compliance with the professional standards of competence and ethics, established by the organisation, anywhere in the world (not just within the home jurisdiction of the organisation); and
- Have disciplinary powers, including the power to suspend or expel a member for breaches of professional standards of competence or ethics anywhere in the world.

The list includes reputable professional organisations from Europe, South Africa, Canada, Chile and Russia which promote compliance with CRIRSCO-based Codes and professional development, ethical and sustainable conduct amongst their associates. We believe that it is very unlikely that major securities trading markets already adhering to the CRIRSCO Template would include in their Recognised Professional Organisation list organisations that do not meet the criteria outlined above.

For these reasons, BHP Billiton’s position diverges from the SME recommendation that the Commission should be limited to the SME list of recognised professional organisations or the Appendix to NI 43-101 CP maintained by The Canadian Securities Administrators (CSA). We believe that the SME list should be specifically applicable for domestic registrants that have not been exposed to the scrutiny conducted in foreign jurisdictions to list RPOs.

¹ For an organization to be a recognized professional organization, it must:

(A) Be either:

(1) An organization recognized within the mining industry as a reputable professional association, or

(2) A board authorized by U.S. federal, state or foreign statute to regulate professionals in the mining, geoscience or related field;

...

Treatment of Exploration Results

BHP Billiton agrees with the inclusion of reporting material Exploration Results for material properties as this is a common practice promoted in other jurisdictions for junior to medium listed companies. Reporting of Exploration Results should not be mandated, unless they are material; this would be aligned to CRIRSCO-based Codes.

We also believe that the Proposed Rules should be amended to allow the inclusion of Exploration Targets as defined by the CRIRSCO Template to promote reporting consistency in all jurisdictions.

Treatment of Mineral Resources

BHP Billiton strongly supports the Proposed Rule's inclusion of disclosure of Mineral Resources in SEC reporting requirements because this can inform investors on the potential for development of mining projects and associated infrastructure with the addition of further studies and detailed economic assessment. We believe that declaring Mineral Resources at the appropriate level of detail and in accordance with CRIRSCO-based Codes would provide useful information to investors in the US. This would also promote consistency in reporting standards for domestic and non-domestic registrants.

Mineral Resource Definition

BHP Billiton generally supports the definition as proposed. A degree of concern is noted due to the omission of the word 'eventual' before economic extraction in the definition to provide flexibility to report Mineral Resources for the wide range of commodities and different types of mining developments. In this regard, we believe that the CRIRSCO Template provides further guidance on the interpretation of eventual economic extraction depending on the commodity or mineral involved and the professional judgement and assessment of the Competent Person(s). The consideration and guidance on eventual economic extraction for Mineral Resources creates a natural distinction between Exploration Targets, Mineral Resources and Mineral Reserves. Consequently, BHP Billiton suggests that the definition should be identical to Clause 21 of the CRIRSCO Template².

Mineral Resource Classification

BHP Billiton supports the Proposed Rules to classify Mineral Resources following the CRIRSCO Template into Measured, Indicated and Inferred. We also recommend the definitions be identical to CRIRSCO-based Codes because they are based on the confidence of the underlying information and consideration of continuity of geology and grade or quality. In particular, BHP Billiton considers that the requirement to disclose the uncertainty in each category should be disregarded because this implies a quantitative assessment with the use of specialised geostatistical tools that are not necessarily accessible and understood in the technical forum. BHP Billiton concurs with the SME position that a requirement to provide confidence limits would be impractical for more continuous deposits and potentially erroneous for discontinuous deposits with complex geological and structural controlling features.

BHP Billiton submits to the SEC that the definition and treatment of Inferred Resources in the initial assessment of Mineral Resources should be identical to the CRIRSCO Template to maintain consistency and avoid confusion when reporting in different jurisdictions. BHP Billiton concurs with the SME submission to include the inherent economic value of Inferred Resources for the initial assessment of Mineral Resources because exclusion would impose a significant disadvantage on registrants compared to other jurisdictions. In particular, those commodities with typically high continuity, e.g. coal and iron ore where significant Resources are classified as Inferred would have to reduce the reporting tonnages.

The Initial Assessment Requirement

BHP Billiton opposes the inclusion of an Initial Assessment in the reporting terminology because this is not aligned to the CRIRSCO Template and the requirement, as proposed, may impose a significant burden on registrants with likely little or no benefit for investors. It is recognised that most of the requirement is already incorporated in the reporting practices for Mineral Resources in jurisdictions where the CRIRSCO Template was adopted following the criteria detailed in Table 1.

² "A Mineral Resource is a concentration or occurrence of solid material of economic interest in or on the Earth's crust in such form, grade or quality and quantity that there are reasonable prospects for eventual economic extraction."

A particular concern is the deviation from the CRIRSCO Template to consider the two year historical pricing model for the determination of Mineral Resources. We submit that companies should be given the flexibility to estimate Mineral Resources using forward-looking prices consistent with business plans and, in our case, aligned with our declarations in other reporting jurisdictions. According to the CRIRSCO Template and also aligned to the SME submission, the selection of commodity price is a prerogative of the Qualified Person in application of professional judgement and supported by a technical justification. Entities reporting under the CRIRSCO Template and the SEC Proposed Rules would be required to prepare two sets of Mineral Resource estimates with Mineral Resources reported under the Proposed Rules likely to be lower and more volatile year on year. We anticipate the proposed pricing model could currently reduce Mineral Resources reported to the SEC by as much as 40% for our major projects compared to other jurisdictions.

BHP Billiton opposes the Proposed Rules regarding the Initial Assessment requirement, particularly in relation to the restriction of inclusion of Inferred Resources in demonstrating economic viability. This type of assessment is defined in the CRIRSCO Template as a Scoping Study, which allows the inclusion of Inferred Resources. We believe that for a number of commodities with inherent geological and grade/quality continuity issues, excising Inferred Resources from an assessment of economic viability could undervalue these properties.

As proposed, the assessment of modifying factors as per the outlined Proposed Rules Table 1 is considered overly prescriptive for the details required in site infrastructure, processing, environmental compliance and permitting factors. We believe that the criteria should be identical to CRIRSCO-based Codes to maintain consistency across jurisdictions. BHP Billiton strongly supports the recommendation of the SME in which the Qualified Person apply the CRIRSCO principles for the qualitative assessment of modifying factors in the definition of Mineral Resources.

USGS Circular 831 and 891

BHP Billiton supports the removal of Circular 831 and 891 to incorporate globally accepted definitions in the CRIRSCO-based Mineral Resource classification scheme.

Treatment of Mineral Reserves

BHP Billiton strongly supports the alignment of the definition of Mineral Reserves in SEC to CRIRSCO standards with the adoption of the framework of applying modifying factors to Measured and Indicated Mineral Resources and permitting either pre-feasibility or feasibility studies to determine and report Mineral Reserves. We anticipate that workload could be reduced when preparing a declaration of reserves to the SEC with the benefit of issuing information with more quality and consistency between jurisdictions.

The Framework for Determining Mineral Reserves

There are a number of aspects in the Proposed Rules regarding the framework for determining Mineral Reserves that should be revisited to achieve alignment to the CRIRSCO Template. BHP Billiton has assessed that significant unnecessary work will be generated in particular with the introduction of the definition of Mineral Reserves as proposed and the application of the 24-month pricing model.

BHP Billiton considers that the Proposed Rules related to reporting of Mineral Reserves excluding allowances for diluting materials and mining losses differ significantly from CRIRSCO-based Codes. Removing the inherent dilution for determining Mineral Reserves is not an ordinary process that can be easily achieved for a number of commodities and essentially the result would be similar to reporting Mineral Resources. We believe that this practice will not provide any additional meaningful information to investors as results with dilution will contain higher total contained metal, and application of this rule would undervalue the registrant for US disclosure purposes to other jurisdictions.

BHP Billiton strongly opposes the use of a ceiling price that is no higher than the 24-month period prior to the end of the fiscal year to determine Mineral Reserves. The introduction of this pricing model would increase year-on-year volatility in companies' Mineral Reserves positions compared to other jurisdictions which adhere to the CRIRSCO Template. We design our mining operations based on forward-looking prices so that pit shells, or underground stope outlines are optimally positioned along with associated infrastructure. The resultant Mineral Reserves estimates therefore inherently reflect how we plan to operate and our best estimates of the future production profile of the company's assets. We do not design our business or associated development based on historical prices. Furthermore, we believe that investors are likely to be misled by this pricing model during times of inflated market

prices. Use of historical pricing models in such instances confers an unfair advantage on companies whose portfolio is primarily focused on these inflated commodities.

BHP Billiton strongly supports the SME submission for the determination of Mineral Reserves using forward-looking market forecasts and prices which support business plans. BHP Billiton submits to the SEC that a prescriptive ceiling pricing of any nature and time period should not be considered. Our assessment of the use of a backward-looking 24-month average compared to 36-month average has provided similar impact for Mineral Reserves with a slightly reduced volatility when using historical 3-year prices as currently accepted under Industry Guide 7. Irrespective of the average period used for a ceiling price (24 or 36 months) the assessment has revealed that the annual difference in Mineral Reserves for our material properties compared to reporting in CRIRSCO jurisdictions could be a decrease that may vary from 0 to 15% depending on the Mineral Reserves size and the specific business plan.

Volatility from the use of historical pricing requirements is already evident from the SEC rule for reporting oil and gas reserves. We believe that use of long-term consensus prices reduces market volatility and provides a better basis for assessment of natural resources.

Resource and reserve information is disclosed annually in BHP Billiton's SEC filing, which is also accompanied by financial statements prepared in accordance with IFRS. Forward-looking commodity prices underpin a number of financial statement items such as asset valuations, impairments assessments, depreciation calculations and closure provisioning. Presenting resource and reserve information calculated by reference to historical prices is inherently inconsistent with IFRS financial reporting and may mislead investors as they may expect disclosed resource and reserve estimates are reflected in the accompanying financial report.

We strongly support the SME recommendation to align the pricing requirement to the CRIRSCO Template on the basis that the industry has access to reliable and independent consensus projections for short- and long-term price projections. This knowledge has also been developed within major companies like BHP Billiton to assist strategy and corporate business plans according to their risk profile and appetite. We believe that, in general, the industry has sufficient information to guide the decision of management and Qualified Person(s) on the price model to be used in the estimation of Mineral Resources and Mineral Reserves. Moreover, the common practice is to use a higher commodity price for Mineral Resources than that used for Mineral Reserves to generate a larger envelope for resources, which could potentially incorporate more material into reserves as mining, processing or technology evolves in the project.

The Type of Study Required to Support a Reserve Determination

BHP Billiton supports the Proposed Rules to adopt the use of either a Preliminary Feasibility Study or a Feasibility Study for the determination of Mineral Reserves.

Specific Disclosure Requirements

As quoted in CRIRSCO Template clauses 28 and 40 *"Table 1 provides, in a summary form, a list of the criteria which should be considered when preparing reports on Exploration Results, Mineral Resources and Mineral Reserves."* Its robustness and global acceptance as a standard template provides an effective checklist for disclosure of new or materially changed estimates of Mineral Resources and Mineral Reserves or when disclosing material Exploration Results in jurisdictions that adhere to CRIRSCO-based Codes. Nearly all the CRIRSCO-based Codes contain versions of Table 1, and these tables have generally become more extensive in their coverage over time. The requirements in the technical report summary in subpart 1302b of the Proposed Rules is largely aligned to the Canadian Form NI 43-101F1 technical report which includes more prescribed technical sections compared to CRIRSCO-based Codes Table 1. BHP Billiton submits to the Commission that either the technical report summary or CRIRSCO Template format should be equally accepted, and that the requirement for disclosure of a technical report summary should reflect this flexibility. Hydrogeology, geotechnical and processing aspects could be included in the CRIRSCO Table 1 template or in the NI43-101 format for the technical report summary.

Requirements for Summary Disclosure

BHP Billiton concurs with the majority of the Proposed Rules for Summary Disclosure as compliance with these requirements in our reporting activities would not impose a significant additional burden compared to the requirements in other jurisdictions.

Specific concern is noted regarding the required disclosure of commodity price and treatment of Mineral Resources to be reported as a saleable product. With respect to the proposed pricing model, the majority of our commodity sales are traded on the open market, but in some cases are subject to contractual sales agreements which are confidential and commercially sensitive. Contractual sales agreements are subject to Confidentiality Agreements, particularly for some commodities such as uranium.

On the disclosure of Mineral Resources we believe that proposed Table 3 should be amended for these reasons:

- Mineral Resources and Mineral Reserves should not be combined in the same tabulation.
- It is unclear that provision is given to include information on grade or quality; key elements that are important for investors and their advisers.
- Treatment of Mineral Resources as saleable product is inconsistent with industry practice as this essentially describes Mineral Reserves and should not be required. Mineral Resources should be reported in-situ as described in CRIRSCO-based codes.

BHP Billiton strongly recommends that registrants should be able to exercise their judgement to disclose Mineral Resources inclusive or exclusive of Mineral Reserves provided this is clearly stated. This is aligned with CRIRSCO-based codes.

Requirements for Individual Property Disclosure

The Item 1304 of the Proposed Rules for material properties in relation to the disclosure of additional information not included in the summary disclosure is considered by BHP Billiton to be overly prescriptive, especially for multi-jurisdiction foreign registrants. The rule as proposed requires the analysis and disclosure of detailed technical information and performance results during the last fiscal year to be reported.

The rule should be amended to align with other regulators like the ASX which requires registrants to disclose detailed technical information for Exploration Results, Mineral Resources or Mineral Reserves reported for the first time or when there is a material change. Individual property disclosure should be at a high level to provide the necessary information to enable an investor to have an informed understanding of the registrant's material mining properties. In this regard, the alignment of disclosure requirements is fundamental and BHP Billiton proposes to SEC to revise this requirement and consolidate it into a revised formatted 'technical report summary' that should be aligned to CRIRSCO Template Table 1.

BHP Billiton opposes the format given to the disclosure requirements for Individual Properties which would be required to disclose commercially sensitive information. In particular the following information should not be required in Tables 6 to 8:

- commodity price used to determine Mineral Resources and Mineral Reserves, in the case of some of our commodities that are traded under contract, the terms of which are confidential;
- total cost or book value of the property;
- disclosure of Mineral Resources at three points of reference, namely in-situ, plant/mill feed and saleable product as the latter two would essentially would be representing Mineral Reserves after the application of the modifying factors and,
- the combination of resources and reserves in the same tabulation (Table 6) may mislead investors and public in general and its practice should not be encouraged.

Requirements for Technical Report Summaries

BHP Billiton notes that the Proposed Rules relating to technical reporting differ substantially from technical reports that we prepare for other jurisdictions that adhere to CRIRSCO-based Codes. BHP Billiton considers that the requirements in the technical report summary are overly prescriptive, especially for multi-jurisdiction foreign registrants. The requirement for disclosure of a technical report summary predominantly aligned to the format of NI 43-101 F1 Technical Report would add new sections to disclose and impose a significant burden on the Qualified Person(s) for the reporting of Mineral Resources and Mineral Reserves. BHP Billiton is concerned that this would not provide additional benefit to guide investors.

It is recommended that the SEC standardise the format of the technical report summary balancing the amount of perceived or assessed burden imposed on registrants, particularly if they report according to the CRIRSCO Template Table 1 in other jurisdictions. BHP Billiton considers that the alignment of the requirement to the

CRIRSCO Template Table 1 or a flexible rule to report in either format would have a positive impact on our reporting obligations and strongly supports either of these alternatives.

Areas of concern relate to disclosing commercially sensitive information without carve-outs permitted to protect markets and competitive advantage. We advocate that CRIRSCO Template Table 1 reports as supplied to jurisdictions such as the ASX could replace the proposed requirements in the Technical Report Summary and Individual Property Disclosure. BHP Billiton strongly supports the requirement to disclose the Technical Report Summary for material properties that are reporting estimates of Mineral Resources or Reserves for the first time or when there is a material change in these estimates.

Under the Proposed Rules, if a property is deemed material, and there is a material change in Mineral Resources or Reserves, it will need to be included in the Summary Disclosure section, the Individual Property Disclosure section, as well as triggering a Technical Report Summary. For BHP Billiton this would be considerable duplicity in addition to our ASX reporting obligations, i.e. the JORC Code Table 1. Alignment to CRIRSCO-based Codes of the required technical information for disclosure would reduce a significant burden on foreign registrants.

Requirements for Internal Control Disclosure

BHP Billiton supports the requirement for the registrant and their Qualified Persons to describe that internal controls, have been put in place to help ensure the reliability of their mineralisation estimates. This should be included in the summary disclosure and individual property disclosure. However, given the detailed, technical nature of these controls, specifically including quality control and quality assurance measures, disclosure of these aspects would be best addressed in the Technical Report Summary (for example within Section 10 Sample Preparation, analysis and security, Section 11 Data verification, etc.).

Assessment of Impact

BHP Billiton questions the economic analysis conducted by the SEC with respect to estimates of additional compliance costs of preparing and filing forms relating to the Proposed Rules. The SEC estimates, for a registrant that is already subject to CRIRSCO-based Code requirements (such as BHP Billiton) an increase of 40 hours (page 226) in the reporting burden relating to its annual report, Form 20-F. We believe this is a significant underestimation for the reasons given below.

- While we understand the SEC cost estimate relates to the average burden for all registrants, both large and small, BHP Billiton has assessed the cost of compliance as significantly more impactful. BHP Billiton mineral assets encompass over 200 individual Mineral Resource and Mineral Reserve models, which are currently summarised into supporting technical documentation of approximately 20 separate Qualified Person's reports.
- Our assessment of potential cost reveals that as well as more onerous estimation and reporting requirements described above, additional training of the current Competent Persons will also be necessary. For our portfolio, the increase in FTE would be 12 in the first year and likely to decrease to seven FTE in subsequent years.

The Proposed Rule requiring a ceiling pricing model of 24-months trailing average to estimate Mineral Resources and Mineral Reserves would have a material impact on the reporting figures for BHP Billiton. Preliminary analysis of the impact on the Mineral Resources for our material properties indicates a variation of more than 40% to what we currently report to the ASX and LSE following CRIRSCO-based guidelines. The impact on Ore Reserves is not as significant as for Mineral Resources but it may represent material differences (>10%) for some of our assets. Furthermore, some of our assets may be reported in some jurisdictions but may not be able to be reported to the SEC as they may not be considered economic as Mineral Resources or Mineral Reserves according to the SEC definition applying the proposed pricing model.

In addition, the differing pricing models discussed above would lead to inconsistency in market information available to investors for the same properties reported in different jurisdictions.

Conclusions

In summary, as a leading global resources company with assets across a number of commodities and jurisdictions, BHP Billiton agrees with the modernisation of the disclosure requirements for mining properties through the Proposed Rules insofar as they attempt to align with the CRIRSCO Template. However, as discussed above, we consider the prescriptive requirements and areas of deviation from the CRIRSCO Template will result in confusing information for our investors due to non-aligned reporting of our Mineral Resources and Mineral / Ore Reserves across jurisdictions and place considerable burden on our reporting requirements.

BHP Billiton requests that the SEC give further consideration to the benefits of further alignment of the Proposed Rules with CRIRSCO-based Codes. This will allow consistency of Mineral Resources and Mineral Reserves estimation and reporting with other jurisdictions, and will not generate volatility in companies' portfolio position year on year. We believe that misalignment of SEC reporting requirements with other jurisdictions could result in a share price differential between the US and other markets.

A handwritten signature in black ink, appearing to read 'Laura Tyler', with a stylized flourish at the end.

Laura Tyler
Chief of Staff to the CEO,
Head of Geoscience

Appendix: Itemised Responses

Item 1: BHP Billiton supports the update of disclosure requirements for mining registrants in Item 102 of Regulation S-K and the proposal to rescind Industry Guide 7.

Item 2: Guide 7 should not be retained because this would cause confusion.

Item 3: Yes, the disclosure standard should relate to a mining registrant's material operations.

Item 4: The criteria to assess materiality should be identical to an internationally accepted standard, specifically IFRS, to avoid inconsistencies between jurisdictions for foreign registrants. General guidance, such as ASX Guidance Note 31, should also be referenced to provide guidance to a registrant in determining the materiality of a mining property.

Item 5: The proposed guidance that a registrants' mining operations are material if they consist of >10% or more of its total assets is helpful, but other qualitative factors should also be considered to align with international reporting systems and other jurisdictions.

Item 6: BHP Billiton supports the aggregation of mining operations when they share common infrastructure and are managed in integrated planning processes. We believe that this type of reporting provides valuable information for investors to understand the strategy and vision considered in our integrated operations. Consideration for more granular reporting should be allowed when aggregation is not possible. When assessing the materiality of its mining operations, a registrant should be required to aggregate all properties (in our case minerals and petroleum). For BHP Billiton mining and petroleum assets are part of a diversified portfolio and this rule as proposed (i.e. relating to minerals only) could artificially give major relevance to mining operations.

Item 7: First point of material external sale is an appropriate cut-off point to use.

Item 8: Refer to comment 4, environmental or social impacts are important considerations in assessing materiality of a mining property.

Item 10: BHP Billiton supports the Proposed Rules for registrants with multiple properties to provide Summary Disclosure. We also support the provision of Summary Disclosure for multiple properties which, individually or in aggregate, constitute a material mining operation instead of Individual Property Disclosure. This practice is consistent with reporting requirements in other jurisdictions.

Item 11: BHP Billiton is in favour of providing Summary Disclosure concerning combined mining activities rather than providing disclosure for individual properties when these share common infrastructure, integrated planning and execution.

Item 12: The disclosure of detailed information for material properties is also consistent with the CRIRSCO Template Clause 14 and the JORC Code Clause 14. BHP Billiton supports the disclosure of additional information (following JORC Table 1 criteria) as outlined in the ASX Listing Rules in reference to providing additional information for material properties reported for the first time or when there is a material change. This is discussed in more detail in Requirements for Individual Property Disclosure above.

Item 16: BHP Billiton supports the definitions for properties as proposed because they are clear and intend to facilitate compliance by registrants with properties in more than one stage of development.

Item 17: BHP Billiton supports the definitions as proposed for issuers that may have properties at different stages in consideration to the status of Mineral Reserves. This would facilitate compliance by registrants with properties in more than one stage of development.

Item 18: The definitions should be property-based and the issuer-based definitions should only be used if there are differing requirements for disclosure by registrants.

Item 19: The registrant should use the issuer stage definitions.

Item 20: BHP Billiton supports that the determination of Mineral Resources, Mineral Reserves and material Exploration Results should be based on, and accurately reflect information and supporting documentation prepared by a Qualified Person, because this approach aligns with the CRIRSCO Template. We would prefer the term

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Competent Person to align the terminology, as this is the most common term in all jurisdictions adhering to the CRIRSCO Template. The Qualified Person requirement will help mitigate the risks associated with reporting of Mineral Resources and Exploration Results with the requirement of personal accountability and credentials and experience relevant to the area of disclosure.

Item 21: BHP Billiton supports that the registrant is responsible for determining that the Qualified Person meets the qualification in the Proposed Rules in terms of the relevant experience and maintaining in good standing the affiliation to a recognised professional organisation. We believe that for major companies the required assurance for the public reporting of Exploration Results, Mineral Resources and Mineral Reserves should be practiced by proper governance measures in line with Sarbanes – Oxley (SOX) requirements.

Item 22: BHP Billiton supports that a registrant should be required to obtain an electronically or written and dated Qualified Persons signature supporting the Technical Report Summary, before it can disclose material Exploration Results, Mineral Resources or Mineral Reserves so that it can be satisfied that the information reported clearly and unambiguously reflects the work of the Qualified Person. This should be permitted in the home registrant's format, following CRIRSCO Table 1 to avoid additional work for limited value. An unabridged technical report should not be required because Technical Summary Reports in a consistent format(s) would align with CRIRSCO and provide sufficient, transparent information.

Item 23: BHP Billiton opposes the Proposed Rules requiring a registrant to file a Technical Report Summary as an exhibit / addendum to the annual report. We believe that this should not be required because this would cause unnecessary work for limited value. We support the proposal to file this report for the first time declaration, or when there is a material change in material projects (see Item 24). An internal assessment of the impact to implement this in our current material properties results in additional work of 0.2 FTE per annum to prepare these in the first year if the report follows the proposed structure. BHP Billiton requests that the SEC provides further clarification as to whether this requirement would be applicable to report for the first time in the USA even if this information has been already made public in other jurisdictions i.e. we have reported Resources for many years in other jurisdictions, however not previously in the US.

Item 24: BHP Billiton supports the Proposed Rules to file a Technical Report Summary when the registrant is disclosing for the first time Mineral Reserves, Mineral Resources or material Exploration Results or when there is a material change in a material project. This rule aligns with ASX Listing Rules requirements and supports the transparency and materiality principles in CRIRSCO-based Codes. BHP Billiton requests that the SEC provides further clarification on as to whether this requirement would be applicable to report for the first time in the USA even if this information has been already made public in other jurisdictions.

Item 25: BHP Billiton supports that a registrant should obtain a written consent of the Qualified Person for the use of the information prior to filing the document publicly with the Commission. This would instil a disclosure framework similar to the CRIRSCO Template.

Item 26: BHP Billiton supports the Proposed Rule to require a registrant to identify the Qualified Person and disclose whether they are an employee and if not, name the Qualified Person's employer. The principle of transparency in CRIRSCO-based Codes highlights that any potential for a conflict of interest by the Qualified Person or a related party should also be disclosed.

Item 27: As discussed in Item 26 this is required in CRIRSCO-based Codes.

Item 28: BHP Billiton strongly supports the Proposed Rules not requiring the Qualified Person to be independent. A requirement for independence would substantially increase the compliance burden on registrants and would be a detrimental component in programs for professional development. We support a CRIRSCO based approach which permits a Qualified Person to be an employee or other affiliate of the registrant provided the relationship is disclosed. This approach does not provide exemptions under which Qualified Persons are required to be independent and public reports are prepared under the principles of Materiality, Transparency and Competence when reporting a material change that could materially influence the economic value of the deposit.

Item 29: Refer to Item 28, we support a CRIRSCO based approach which permits a Qualified Person to be an employee or other affiliate of the registrants provided the relationship is disclosed.

Item 30: Refer to Item 26 regarding conflict of interest.

Item 31: BHP Billiton considers that the Technical Report Summary filing as proposed would impose a significant burden on registrants with multiple properties. To alleviate such a burden a technical report summary filing should

only be made for first or material changes to material projects to align with the CRIRSCO Template Table 1. For reference, BHP Billiton completed 46 Competent Person Reports in Fiscal Year 2015 on our publically reported resources and reserves, including 20 reports on divested operations. These reports represent comprehensive, detailed technical documents that are updated annually and in some cases contain commercial-in-confidence information. One of these resources and one reserves declarations required reports (prepared using the guidelines of the JORC Code 2012) to be publically released as they related to material changes on material projects as defined by ASX listing requirements. If technical summary reports for each material property needed to be filed (to the JORC Code 2012 guidelines), with current processes in place this would represent an additional 0.20 FTE per annum (excluding the divested assets). The NI43-101 reporting format is typically more prescriptive than that required by the JORC Code, so this format would create an additional burden on registrants.

In addition, if historical pricing models are used, the result would be that there are more frequent material changes (>10%) to our resources and reserves annually and therefore additional Technical Summary Report filings would be required. The section above on Requirements for Technical Report Summaries provides further details on our position in this regard.

Item 32: BHP Billiton supports the definition of Qualified Person as proposed, as this approach aligns with CRIRSCO-based Codes as discussed in the foreword of this response.

Item 33: BHP Billiton rejects the Proposed Rule whereby a Qualified Person is expected to sign individually and has liability, for fields for which he/she does not have expertise such as legal, marketing, social, and governmental regulations and potentially many other specialised inputs. BHP Billiton agrees with the SME and other respondents that limited disclaimers should be allowed and that the liability of Qualified Persons be limited, similarly to that afforded to auditors.

Item 34: BHP Billiton considers that the proposed instructions provide appropriate guidance for what is considered relevant experience. These are equivalent to the CRIRSCO Template.

Item 35: BHP Billiton supports that the Qualified Person should be a member, in good standing, of a Recognised Professional Organisation at the time the technical report is prepared. We believe that the criteria for professional organisations are appropriate and the definition should require or encourage continuing professional development as recommended by the SME.

Item 36: As discussed in the introduction, BHP Billiton strongly supports the flexible nature of the Proposed Rule and recommends that the Recognised Professional Organisations in jurisdictions that have adopted the CRIRSCO Template be accepted for SEC reporting.

Item 37: Instead of an entirely principles-based approach, BHP Billiton believes a recognised list of approved organisations would be more aligned with the CRIRSCO Template. The Commission can assess which organisations to approve and this can be updated every couple of years as required, thereby offering 'one source of the truth' and limiting duplication or work between registrants assessing similar organisations, possibly inconsistently.

Item 38: We support that the registrant should disclose the recognised professional organisation for transparency.

Item 39: BHP Billiton supports SME submission on the additional conditions as discussed in the three bullet points in the introduction to this section.

Item 40: BHP Billiton agrees that the Qualified Person definition is not restrictive but aligned with the CRIRSCO Template which is an internationally tested and effective system.

Item 41: This approach would not impose a significant burden to include the qualifications of the Qualified Person in the Technical Summary Report for material properties. However, the disclosure of qualifications would need to be formatted to ensure consistency amongst registrants. Relevant experience of the Qualified Person should also be included.

Item 42: BHP Billiton supports the Proposed Rules that require a registrant to disclose material Exploration Results for material properties as established in other jurisdictions with adherence to the CRIRSCO Template. These should be reported in a format consistent with the CRIRSCO Template to promote transparency and to allow a considered and balanced judgement of the significance of the results.

Item 43: BHP Billiton considers that the definition of Exploration Results should be aligned with the CRIRSCO Template so registrants reporting in multiple jurisdictions would report consistent and balanced announcements to the market. The definition should extend to include results of geophysical or remote sensing surveys and may encompass application of new technologies.

Item 44: The risks around reporting of Exploration Results can be minimised by including appropriate cautionary language as outlined in CRIRSCO-based Codes. The other mitigating measure is to prohibit the use of Exploration Results to derive precise estimates of tonnage, grade and production rates, or in the assessment of economic viability.

Item 45: The materiality definition should align with the CRIRSCO template in that a public report should contain all relevant information which investors and their advisors would reasonably require to make a reasoned and balanced judgement. Additional instruction should include that a company consider the importance of the Exploration Results in assessing the value of a material property, or in deciding whether to develop the property.

Item 46: BHP Billiton considers that for properties that are material when aggregated, but are not individually material, Exploration Results are unlikely to be material to the registrant. The rationale is that for major companies like BHP Billiton, material properties contain multiple mine pits, complex shared infrastructure for processing and transport and business plans supported by long-life resource inventories. The exploration activities would rarely deliver an impact on the inventory and business plans of the company.

Item 47: BHP Billiton supports that a registrant with material mining operations should be required to disclose Mineral Resources in addition to Mineral Reserves aligned with CRIRSCO-based codes. This provides useful information about the registrants operations and prospects.

Item 48: The risk associated with reporting Mineral Resources is higher uncertainty, particularly with respect to modifying factors, than Mineral Reserves; however, the broad reporting of Mineral Resources across other jurisdictions suggests this uncertainty is well understood by investors. The cautionary language associated with reporting of Mineral Resources in the CRIRSCO Template helps in mitigating this risk thus adherence to its nomenclature is highly advisable. BHP Billiton requests that definitions are aligned with the CRIRSCO-based Codes.

Item 49: The Proposed Rules should require a registrant with material mining operations to engage a Qualified Person to determine Mineral Resources. If there was an option not to report Mineral Resources, this does not achieve market reporting consistency and does not provide useful information about the registrants operations and prospects. Under no circumstances, should Mineral Resources be allowed to be reported without a registrant having engaged a Qualified Person because there is a significant risk that the determination may not be correctly made.

Item 50: The definition of the term Mineral Resource should be amended to be identical with CRIRSCO-based codes to align reporting of Mineral Resources between jurisdictions and the criteria to consider regarding eventual economic extraction. We believe that the consideration of eventual economic extraction in the Proposed Rules and related instructions should capture the explanation provided in the CRIRSCO Template so registrants are clear that the assessment of Mineral Resources is consistently being applied. The omission of this term would generate uncertainty for registrants when assessing and reporting resources.

Item 51: As noted in Item 50 we believe that the definition of Mineral Resources should be completely aligned to the CRIRSCO Template hence dumps, tailings and other forms of mineralised material should be included in the definition. BHP Billiton considers that the Proposed Rules should also incorporate Clause 41 of the CRIRSCO Template for specific reporting considerations of dumps and tailings and other mineralised materials. The clause provides guidance to itemise separately this material for public reporting so the investors can clearly distinguish and compare in-situ resources from other mineralised material. Similarly, we believe that the treatment of geothermal fields and mineral brines, which are not considered in the CRIRSCO Template, should be very specifically referenced in the Proposed Rules and therefore they should be reported separately from other solid Mineral Resources. We believe that specific requirements would be applicable when assessing geothermal fields and mineral brines as in most cases there could be significant social and environmental repercussions to consider for eventual economic extraction.

Item 52: We agree that the definition of Mineral Resource should exclude oil and gas resources as these are not part of the CRIRSCO Template and are defined elsewhere (refer to SEC oil and gas requirements).

Item 53: Refer to Item 50. The definition does not need to include reference to a Qualified Person to estimate or interpret the Mineral Resource. The role of the Qualified Person is clearly described in the CRIRSCO Template (and discussed above in sections relating to the Qualified Person).

Item 54: A registrant should be required (and not merely allowed) to classify its Mineral Resources into Inferred, Indicated and Measured as proposed because this aligns with CRIRSCO-based Codes. We also consider that the SEC should disregard the instruction for the application of geological uncertainty to classify Mineral Resources. Uncertainty could only be commented on when the Qualified Person has quantitatively determined this.

Item 55: BHP Billiton considers that the rule should be aligned with CRIRSCO-based Codes. In particular the consideration of geological uncertainty, level of risk based on the minimum percentage of conversion in the Proposed Rules would add confusion. We believe that it is unnecessary to describe the level of risk based on a minimum percentage the Qualified Person estimates would convert to Indicated or Measured. As the CRIRSCO Template describes, this is required by definition of Mineral Resource to be 'more likely than not' and more precise determination than this may not be practical.

Item 56: BHP Billiton considers that it should be allowed to include Inferred Mineral Resources to make a determination about the economic viability of extraction. As stated in the JORC Code Clause 21 the practitioner should be cautious when Inferred material is used to support technical and economic studies such as Scoping Studies. However, Clause 36 recognises that Inferred material could be included as dilution in Ore Reserves. It is also a common situation in the mining industry that in active mining operations the Inferred Resources form a surrounding envelope where the history of conversion to Indicated or Measured Inferred Resources is well understood. We believe that the Qualified Person is capable of understanding the risk of including Inferred Mineral Resources in making this determination. Consequently, we support alignment with the CRIRSCO Template Clause 22³.

BHP Billiton supports the recommendation in the SME submission that the Commission should keep its "reserve test" if this test is necessary whereby a mine plan (excluding inferred resources) is shown to be economic at the average spot or contract price for the previous 36 months (aligned with Item 46 of the SME Guide).

If the SEC is not in agreement with Mineral Resources and Mineral Reserves determination using forward-looking prices and costs, then BHP Billiton supports that the Commission should retain its "reserve test". Further discussion on this topic is available in above in the section relating to The Initial Assessment Requirement.

Item 57: BHP Billiton supports a definition noting that Inferred Resources have the lowest level of confidence which prevents the application of modifying factors for the conversion of Mineral Reserves as aligned with the CRIRSCO Template Clause 22. We believe that a cautionary statement is unnecessary and irrelevant because the definition of Inferred already captures the inherent risk and reduced level of confidence in the Inferred Resources. We strongly support the definition should be aligned with CRIRSCO-based Codes.

Item 58: BHP Billiton considers that the definition for Indicated Resources should be completely aligned with CRIRSCO-based codes. We believe that it is unnecessary to require the Qualified Person to describe the level of risk based on the confidence limits of relative accuracy for production estimates for one year periods. This is not aligned with the CRIRSCO Template and will require additional work with minimum perceived benefit for investors. In certain deposits where continuity is implicit (for example coal or iron ore), the quantification of confidence limits of relative accuracy is impractical. Therefore, we believe that this exercise may constitute good practice for some commodities but should not be prescribed.

Item 59: The definition of Indicated Mineral Resources should require that it has a lower level of confidence than Measured Resources, because this aligns with CRIRSCO-based codes.

Item 60: Measured Mineral Resources should be defined as proposed, because this aligns with CRIRSCO-based Codes. We believe that it is unnecessary to require the Qualified Person to describe the level of risk based on confidence limits of relative accuracy for production estimates for one year periods as this is not aligned with CRIRSCO and will require additional work.

³ "Confidence in the estimate is usually not sufficient to allow the results of the application of technical and economic parameters to be used for detailed planning. For this reason, there is no direct link from an Inferred Resource to any category of Mineral Reserves (see Figure 1). Caution should be exercised if this category is considered in technical and economic studies."

Item 61: BHP Billiton considers that the definition of Measured Mineral Resources should include that it has a higher level of confidence than Indicated or Inferred Resources, and that Measured Mineral Resources may convert to Proven or Probable Mineral Reserves as proposed.

Item 62: We do not think that it is necessary to disclose the numerical estimates of the level of confidence associated with each class of Mineral Resource. This would impose a significant amount of work on registrants but more specifically, it will not make sense when reporting deposits with multiple elements with varying geological uncertainty and when reporting multiple deposits in aggregated form.

Item 63: The Initial Assessment as proposed would introduce new reporting terminology that may confuse registrants for the early stage disclosure of Mineral Resources. The CRIRSCO template Clause 28 refers to Table 1 as “a list of the main criteria which should be considered when preparing reports on Exploration Results, Mineral Resources and Mineral Reserves.” For companies reporting under the JORC Code, the assessment would include the criteria listed in JORC Table 1 on an “if not why not basis”. This means that for companies listed in various jurisdictions, the information prepared by the Qualified (Competent) Person to support Mineral Resource estimates would be inconsistent and significant to moderate rework may be involved to comply with both jurisdictions. BHP Billiton is aligned to the SME recommendation to avoid introducing a new term. BHP Billiton envisions that significant synergies and cost/effort savings can be achieved should the SEC accept both NI 43-101 and CRIRSCO Template Table 1 reporting standards.

Item 64: The application of modifying factors in a qualitative manner to determine Mineral Resources is also aligned with the CRIRSCO Template considerations.

Item 65: Statements of Mineral Resources should include the declaration of cut-off grade.

Item 66: BHP Billiton considers that it is appropriate to base cut-off grade estimation on assumed unit costs for surface or underground operations. A detailed estimate of unit costs is not required for early stage projects but the assumptions and ranges of possible outcomes should be appropriate for the stage of study and level of understanding of the modifying factors. For deposits with Mineral Reserves and active operations, the unit costs should be estimated based on performance and forward-looking estimates.

Item 67: BHP Billiton agrees that the Qualified Person should base cut-off grade estimation for Mineral Resources on estimated mineral prices but does not support the Proposed Rules pricing model for a commodity price that is not higher than the 24-month historic price. The CRIRSCO Template establishes that practitioners and management should apply professional judgement to determine Mineral Resources (and Mineral Reserves) with forward-looking estimates of market conditions and commodity prices. Furthermore, under the CRIRSCO Template the Qualified Person has a prerogative to use any price that is reasonable and technically justifiable.

As discussed at the introduction of this section and in Chapter III the impact of using this pricing model for BHP Billiton Mineral Resources would present a material decrease of up to 40% for material projects when compared to the reports in other jurisdictions. We believe that this inconsistency would introduce unnecessary confusion for investors and therefore we agree with the SME recommendation that SEC should align its proposed pricing policy with the CRIRSCO Template.

Item 68: BHP Billiton firmly opposes the 24-month price ceiling rule. This is prescriptive and not aligned with the CRIRSCO-based Codes. BHP Billiton’s internal assessment of the use of 24-month versus 36-month ceiling prices, whilst reducing some volatility has determined that this method of Mineral Resources and Mineral Reserves definition, is still unacceptable. Registrants should be allowed to use forward-looking prices consistent with their business plans and, in our case, aligned with their declarations in other reporting jurisdictions.

The 12-month period used for oil and gas reserve reporting has significantly impacted oil and gas reserve estimates at 30 June 2016, with reserves of BHP Billiton US Onshore Assets impacted by sharp decline in prices during the preceding year. This impact would similarly affect minerals reporting if historical pricing models were applied in the current market environment.

Item 69: BHP Billiton considers that Mineral Resources might typically apply a higher price forecast than the associated Mineral Reserves to ensure the resources limit is not restricting the reserves optimisation; therefore use of the same price for resources and reserves is not acceptable.

Item 70: The Qualified Person should take into consideration preliminary judgement of technical and economic factors but these should align with the CRIRSCO template, and not be specified as part of an “initial assessment”

requirement. Inclusion of these factors within a table may be onerous for registrants with a large number of properties if they are required in addition to the Technical Report Summary as discussed in Item 63.

Item 71: BHP Billiton supports that the Qualified Person should be permitted to make assumptions as proposed but these should be required to be reported in table form (refer to CRIRSCO Template Table 1 in item 63) assuming this is additional to the Technical Report Summary.

Item 72: BHP Billiton considers that the Qualified Person should be given the option to include a cash flow analysis in an initial assessment as long as this is based on reasonable grounds. This analysis could include Inferred Mineral Resources providing that appropriate cautionary language is used to describe the uncertainty of this analysis. The Qualified Person should also discuss the confidence and accuracy level of his assumptions on capital and operating costs.

Item 73: BHP Billiton supports the inclusion of Inferred Mineral Resources in the cash flow analysis as this is supported by the CRIRSCO Template (scoping studies) and NI 43-101 (preliminary economic assessment) requirements.

Item 74: We believe this question should be related to Mineral Resources. If this is not the case, an initial assessment including a high proportion of Inferred Mineral Resources should not be used to support determination of Mineral Reserves.

Item 75: The use of approaches in Circulars 831 and 891 to classify Mineral Resources are outdated and should not be considered because they are not based on modern geostatistical methods that are now routinely applied.

Item 76: BHP Billiton considers that the framework for determination and disclosure of Mineral Reserves should be revised to align with CRIRSCO-based Codes. As presented, we have identified two issues in the framework regarding the exclusion of diluting material and the requirement for a Qualified Person to conduct the Pre-Feasibility or Feasibility study and these should be amended to align with the CRIRSCO Template.

On the first issue, we believe that for a wide range of commodities, dilution and ore loss are inherent components of the operational and processing factors to determine the technical and economic viability of Mineral Reserves thus the extraction of mineralised material without this consideration is physically unrealistic as defined in CRIRSCO-based Codes. For instance, in an open pit mine the estimate of Mineral Reserves requires the determination of a Selective Mining Unit (SMU) at which Mineral Resources can effectively be mined with suitable mine equipment and design. The amount of dilution and ore loss in the chosen SMU may influence significantly the productivity and/or economic viability of the project and as such the dimensions of the SMU are carefully determined. Therefore, we believe that a definition of "Mineral Reserves" that is net of allowances for dilution and ore loss would be inconsistent with its economic viability and would only increase confusion amongst practitioners and investors. In this regard, our view is aligned with the SME recommendation for the definition of Mineral Reserves.

On the second issue, the Commission requires that Mineral Reserves are determined from economically mineable Mineral Resources based on a preliminary feasibility (pre-feasibility) or feasibility study conducted by a Qualified Person. It is well known that a multidisciplinary team of experts generally conducts these studies and the Qualified Person takes that outcome to prepare Mineral Reserves estimates and declarations.

Item 77: BHP opposes the definition of Mineral Reserves as it is not aligned with the CRIRSCO Template. Removing the inherent dilution for the Mineral Reserves estimation would be difficult to achieve due to dilution occurring as an outcome of commercial software regularisation of block models. The proposal to require disclosure of Mineral Reserves at three points of reference across the categories of in-situ material, process-plant delivered material, and saleable product is unduly complex. The in-situ material as defined cannot be deemed to represent a Mineral Reserve, by the CRIRSCO template definition. Introducing new terms for 'plant / mill feed' reserves creates complexity of reporting, potential for confusion between jurisdictions and should not be considered.

Item 78: A life of mine plan should not be required to be disclosed as this would be commercially sensitive, and onerous on registrants with a large number of reserves model, increasing the compliance cost, particularly for non-material projects.

Item 79: We believe that the requirement to include a discounted cash flow analysis for the determination of Mineral Reserves is overly prescriptive compared to the CRIRSCO requirement to base reserves on studies that have determine a mine plan that is technically and economically achievable. The proposal could include guidance for Qualified Persons on the use of discounted or undiscounted cash flow analysis for the determination of reserves as

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a forward-looking projection of forecast production. We have assessed that, irrespective of the average period used for a ceiling price (24 or 36 months) the current impact in Reserves could be a decrease from 0 to 15% depending on the reserve size and the specific business plan.

Item 80: A forward-looking pricing model should be able to be used to reflect the registrant's expectation of its life of mine irrespective of whether these pricing assumptions are reported. In some cases the forward contract sales price should be able to be applied and may not be able to be reported if it is commercial in confidence. Companies views on long-term prices are seldom disclosed on a voluntary basis, thus this requirement would exceed existing disclosure practices for annual reports.

Item 81: Probable and Proven Mineral Reserves should be aligned with CRIRSCO definitions to promote consistency for reporting between jurisdictions.

Item 82: Modifying factors should be aligned with the CRIRSCO definitions.

Item 83: BHP Billiton submits that the instructions as proposed are not consistent with the CRIRSCO Template and should be amended.

Item 84: BHP Billiton supports the proposed definitions of Pre-Feasibility and Feasibility studies, because they are consistent with CRIRSCO Template.

Item 85: BHP Billiton supports Pre-Feasibility and Feasibility studies as appropriate requirements for the determination and disclosure of reserves because this approach has been tested in other jurisdictions aligned with the CRIRSCO Template.

Item 86: The decision to undertake a Pre-Feasibility or Feasibility study should depend on the assessment of the Qualified Person on the risks associated with the application of the Modifying Factors. This may depend on how a high risk is defined and eventually how this is assessed in a specific deposit or commodity. Caution is advisable because imposing this in the requirement could result in significant cost implications if a regulators view of high risk differs from that of the registrant.

Item 91: Registrants should be permitted to treat multiple mines with interrelated mining operations as one mining property. Disclosure of individual properties should be permitted where this provides more transparency to investors.

Item 92: If the registrant has only one mining property they should not be required to complete summary disclosure and individual property disclosure as this would be duplicating information for no benefit.

Item 93: No additional information than what is proposed should be included. The asset value should not be required for each property as this would be commercially sensitive information. Table 2 is similar to what is currently required by the ASX. Further, asset value should be defined as to what this includes for properties to avoid divergent practice.

Item 94: The requirement to report certain information for the 20 properties with the largest asset values would require that the Mineral Resources and Mineral Reserves might move in and out of the summary disclosure section year on year. It would be preferable for the registrant to include all properties for which it has declared Mineral Resources and Mineral Reserves that meet the public reporting requirements and internal company disclosure criteria.

Item 95: Summary disclosure should include Mineral Resources and Mineral Reserves as proposed because this will provide more complete information. These should be reported by class of Mineral Resources and reserves and total Mineral Resources and reserves for each area / property. Table 3 should not combine Mineral Resources and Mineral Reserves in the same table because of the significant amount of data that would need to be reported when including qualities. The guidance does not mention disclosure of grade/qualities, however these should be mandatory. Saleable products for Mineral Resources is considered unnecessary and the published resource size would likely be reduced / undervalued using this approach. It is not aligned with CRIRSCO-based codes. A requirement to disclose recoveries for a reserve allows the investor to determine saleable product.

Disclosure of contract price is commercially sensitive and should not be requested in Table 3. It is not considered necessary to exclude Inferred Mineral Resources from the total resources as proposed given these are also reported separately. To align with the CRIRSCO template categories should not be presented in combined form unless the individual categories are also provided. Mineral Resources should be permitted to be reported either inclusive or exclusive of Mineral Reserves, provided this is clearly stated, to align with other CRIRSCO based

codes and avoid additional work for registrants that report inclusive Mineral Resources in other jurisdictions. For bulk commodities, the prescribed reporting of exclusive Mineral Resources does not adequately capture dilution and yield. The format of Table 3 with inclusion of total by commodity, including aggregation across a number of geographic areas should not be required. A number of Qualified Persons are involved for individual properties and no one Qualified Person would typically take responsibility for the summation across a number of deposits.

Item 96, 97 and 98: Table 2 and Table 3 should not be required to be reported in XBRL format. The Qualified Person provides their written consent to publish to ensure the information they supply is represented in the form and context in which they intended it to be. Providing tables containing this information in an extractable format is not appropriate.

Item 99: Individual property disclosure should be at a high level to provide only necessary information to enable an investor to have an informed understanding of the registrant's material mining properties. The Proposed Rules with respect to individual property disclosure are too detailed and may be impractical to report. It would not be practical for example to name or number every individual title and all work completed for a property comprising a large number of licences. We disagree with the requirement to report contract pricing, property values, exclusive resources, three points of reference for resources and combining resources and reserves.

Item 100: We support a CRIRSCO-aligned approach and believe a property location map at the appropriate scale given the size of the property is useful.

Item 101: A tabular reporting format is useful, however BHP Billiton opposes a number of aspects within the proposed Tables. Tables 4 and 5 are too detailed for a registrant with a large number of titles and substantial exploration as well as production activities. These tables should only apply for issuers with exploration or development stage properties. With respect to Table 6, disclosure of Mineral Resources at three points of reference, namely in-situ, plant/mill feed and saleable product, before the application of modifying factors is challenged as these would essentially represent Mineral Reserves. The requirement to apply a historical commodity price ceiling for reporting Mineral Resources and reserves is discussed further in Items 68 and 80 and is not supported. The combination of Mineral Resources and reserves in the same tabulation (Table 6) may be misleading investors and public in general and should not be required. BHP Billiton supports the flexibility to report either inclusive or exclusive Mineral Resources as permitted under CRIRSCO-based Codes.

Item 102: Registrants should be permitted to disclose estimates of Mineral Resources and Mineral Reserves based on a forward-looking commodity price projection in lieu of the proposed pricing model that restricts the price used to a ceiling no higher than the 24-month trailing average.

- We prefer an alternate pricing model than that proposed which includes the use of a higher price for resources than that applied to reserves.
- Our preferred pricing model is aligned with alternative 1 (described on Proposed Rules page 206) which allows the registrant to apply the Qualified Person's or management's view of long term market trends. This would reduce the year on year volatility of resources and reserves estimates, align them with our reporting in CRIRSCO jurisdictions and lessen the number of material changes particularly in high volatility markets.
- In contract situations, commodity prices will be commercial-in-confidence and not able to be declared in a public report.

Please refer also to items 67, 68, 79 and 80 for further discussions on the pricing model.

Item 103: BHP Billiton supports the requirement to provide a comparison of Mineral Resources and reserves year on year and explanations of material changes as footnotes to Tables 7 and 8 – this is aligned with ASX reporting requirements.

Item 104: BHP Billiton supports the Proposed Rule to file a technical report summary when the registrant is disclosing for the first time Mineral Resources or Mineral Reserves, or material Exploration Results or when there is a material change in a material project. This rule aligns with ASX Listing Rules requirements and supports the transparency and materiality principles in CRIRSCO-based Codes.

Item 105: The proposed requirement to disclose a material change in Mineral Resources or Mineral Reserves should apply where there is an annual change in total resources or reserves of 10% or more. This is easily tracked and readily applied. We do not agree with the disclosure requirement related to 30% cumulative change over a number of years. This would need to be monitored across a number of consecutive reporting years.

Item 106, 107 and 108: Refer responses to 96, 97 and 98.

Item 109: BHP Billiton supports the inclusion of a technical report summary for first time or material changes to Mineral Resources and Mineral Reserves, but strongly requests that the SEC accepts reports prepared aligned with CRIRSCO-based Codes (or JORC) Table 1 format be accepted. These could be easily modified to include aspects such as hydrogeology, geotechnical and mineral processing.

Item 110: We support the Proposed Rule. Additional details may be included by the Qualified Person where deemed relevant. There is no need to expand the proposed item to provide additional specific examples.

Item 111: A Qualified Person preparing a technical reporting summary should address the 26 items on an 'if not, why not' basis and the reporting format should be acceptable in the format required by the foreign registrant's home jurisdiction.

Item 112: A Qualified Person who prepares a technical reporting summary that includes the results of an initial assessment should be permitted to include Mineral Resources in the economic analysis and report according to the proposal. The reporting format should be acceptable in the format required by the foreign registrant's home jurisdiction, rather than requiring an SEC-specific format.

Item 113: A Qualified Person preparing a technical reporting summary that reports material Exploration Results should provide the information specified and the reporting format should be acceptable in the format required by the foreign registrant's home jurisdiction.

Item 114: We should allow the Qualified Person to disclaim responsibility (limited liability) if he or she relies on a report, statement or another expert who is not a Qualified Person. These areas of limited liability should be clearly stated in the report.

Item 115: It is preferable that the technical report summary be clear and concise and not contain large amounts of technical or other project data (either in the report or as appendices).

Item 116 and 117: BHP Billiton supports the requirement for the registrant and their Qualified Persons to describe that internal controls, have been put in place to help ensure the reliability of their mineralisation estimates. This should be included in the summary disclosure and individual property disclosure. However given the detailed, technical nature of these controls, specifically including quality control and quality assurance measures, disclosure of these aspects would be best addressed in the Technical Report Summary (for example within Section 10 Sample Preparation, analysis and security, Section 11 Data verification, etc.).

Item 118: BHP Billiton supports the amendment of Form 20-F so that it conforms to the disclosure requirements of subpart 1300 of Regulation S-K and Item 601(b)(96).