

25 January 2015

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
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**File Number S7-25-15**

Dear Mr Fields

BHP Billiton welcomes the opportunity to provide comments to the Securities and Exchange Commission (**SEC**) rulemaking under Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act for proposed Rule 13q-1 and amendment to Form SD to implement payment disclosure requirements on resource extraction issuers.

BHP Billiton is a leading diversified resources company and among the world's largest producers of major commodities including iron ore, coal and oil & gas. Our operations around the world support local and national economies through creating jobs, purchasing goods and services through our supply chains and contributing significant payments of taxes and royalties to governments. In 2015, BHP Billiton paid US\$7.3 billion globally in taxes, royalties and other payments to governments. Our overall economic contribution during the same period including payments to suppliers, wages and employee benefits, dividends, taxes and royalties equated to approximately US\$35.7 billion.

BHP Billiton is committed to demonstrating the highest standards of corporate governance and transparency. In 2014, BHP Billiton formally adopted a set of Transparency Principles and in 2015 voluntarily published our *Economic contribution and payments to governments Report (Taxes Paid Report)* showing how much tax we pay on a country by country basis and on a project by project basis.<sup>1</sup> Transparency by governments and companies alike regarding revenue flows from the extraction of natural resources in a manner which is meaningful, practical and easily understood by stakeholders reduces the opportunity for corruption.

BHP Billiton has long been committed to the role transparency plays in contributing to the good governance of natural resources for the benefit of the governments and citizens of countries which host our operations. Our transparency journey began 15 years ago when BHP Billiton began publicly voluntarily disclosing our payments of taxes and royalties at a global level. Over this period we have progressively increased the granularity of our disclosure culminating in the release of our Taxes Paid Report in September 2015. This report has been issued on a voluntary basis ahead of mandatory reporting requirements imposed by the European Union (**EU**) and Canada.

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<sup>1</sup> <http://www.bhpbilliton.com/~media/bhp/documents/investors/annual-reports/2015/bhpbillitoneconomiccontributionandpaymentstogovernments2015.pdf?la=en>

BHP Billiton is a founding member of the Extractive Industries Transparency Initiative (**EITI**) which sets a global Standard promoting open and accountable management of natural resources. Countries implement the EITI Standard to ensure full disclosure of taxes and other payments made by oil, gas and mining companies to governments, with payments disclosed in an annual EITI Report. BHP Billiton is supportive of EITI implementation in jurisdictions in which we operate and currently participates in the EITI multi-stakeholder group in the United States.

We provide our substantive comments on the proposed rules below.

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## **Specific comments in relation to proposed Rule 13q-1**

### ***II.E Definition of Project***

#### 1. General

BHP Billiton supports the SEC's proposal to define the term "project" to be consistent with the definition contained in the EU Directive. BHP Billiton also supports the introduction by the SEC of a non-exhaustive list of factors to consider when determining whether agreements are "operationally and geographically interconnected" for the purpose of satisfying the definition of project. The inclusion of factors such as whether the agreements relate to the same resource, geographic area, whether they will be performed by shared key personnel or equipment, and whether they are part of the same operating budget would be helpful for resource extraction issuers to ensure they are in compliance with proposed Rule 13q-1.

### ***II.G Disclosure Required and Form of Disclosure***

#### 4. Alternative Reporting

There have been significant developments in the area of mandatory disclosure of payments by mining, oil and gas companies in recent years in a number of jurisdictions of relevance to BHP Billiton.

Mandatory disclosure requirements have been introduced in the EU (through implementation by Member States of Chapter 10 of the EU Accounting Directive) (**EU Directive**) under which BHP Billiton and other companies will disclose payments on both a country by country and project by project basis from 2016. Similar mandatory disclosure requirements which apply from 2016 have been legislated in the UK (Reports on Payments to Governments Regulations 2014) and Canada (Extractive Sector Transparency Measures Act).

In 2014, BHP Billiton formally adopted a set of Transparency Principles (included as Appendix 1) which we use to guide our engagement with domestic and international disclosure initiatives and as a lens through which to form a company view on emerging mandatory disclosure requirements in jurisdictions in which BHP Billiton operates. As outlined in the Preamble to our Transparency Principles, BHP Billiton supports the establishment of a globally consistent and mandatory disclosure framework which includes equivalence agreements between jurisdictions. BHP Billiton supports the inclusion of a provision in proposed Rule 13q-1 by which resource extraction issuers could use a report prepared for foreign regulatory purposes to comply with the proposed rules if the Commission

deems a foreign jurisdiction's applicable requirements to be "substantially similar". In particular, BHP Billiton would be supportive of the EU Directive being used as a basis for equivalence in order to comply with proposed Rule 13q-1.

We would suggest that proposed Rule 13q-1 include an automatic exemption when a resource extraction issuer complies with the EU Directive announced at the time the proposed Rule 13q-1 is adopted. There should also be flexibility for a resource extraction issuer to apply to the SEC for determination of an exemption outlining the grounds on which the regulatory requirements in a foreign jurisdiction are "substantially similar" to proposed Rule 13q-1. An exemption for a finite period of 5 years could be an appropriate amount of time for the SEC to grant an exemption of this nature.

## 5. Exhibits and Interactive Data Format Requirements

There is uncertainty in proposed Rule 13q-1 as to whether the exemption noted at item 4 extends to the electronic reporting of the information and interactive data format (i.e. resource extraction issuers will be required to electronically lodge data using eXtensible Business Reporting Language (**XBRL**) to assist users to compare information on a like for like basis). BHP Billiton recommends regulators in different jurisdictions seek to align data reporting formats to enable users to compare information on a like for like basis.

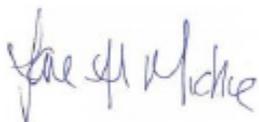
However, in the event data reporting formats do not achieve alignment across jurisdictions, BHP Billiton believes that it should be made clear that the "substantially similar" exemption is satisfied if the foreign regulatory requirement relies upon a different interactive data format. That is, issuers should not be required to convert data into a different interactive data format from that which is required under the foreign regulatory regime to comply with proposed Rule 13q-1.

\* \* \*

A globally consistent mandatory framework will create a level playing field amongst the resource sector while minimizing the reporting burden and compliance costs for companies operating in multiple jurisdictions and ensuring stakeholders are able to access and analyze uniform data.

Mandatory disclosure frameworks are an important step to enhanced natural resource governance. However it is critically important that data is meaningful, easily accessible and understandable so that it can contribute to informed debate regarding payments to and use of revenues by Governments from the commercial development of oil, natural gas and minerals.

Regards



Jane Michie  
**Head of Group Tax**

## APPENDIX 1

### BHP Billiton Transparency Principles

#### **Preamble**

Corruption directly impedes development, denying millions of people around the world their rights to the education and training necessary to earn a livelihood, to basic health services and to the essential infrastructure to improve their lives.

Good governance of natural resource wealth for the benefit of a country's citizens is the domain of sovereign governments, to be exercised in the interests of their national development and on behalf of their citizens. We believe that transparency around revenue flows from the extraction of natural resources is an important element in the fight against corruption. To this end, BHP Billiton has been a supporter of the Extractive Industries Transparency Initiative since its inception in 2002.

A level playing field will ensure all companies disclose on the same basis and reduce the reporting burden for those operating in multiple jurisdictions. To this end, appropriate national and extra-territorial mandatory corporate reporting should complement EITI and provide a globally consistent regulatory framework for all extractive industry companies.

#### **Principles**

##### ***Responsibility***

Governments, civil society and the corporate sector must work in partnership to support transparency and help fight corruption. We are committed to acting transparently and publicly reporting the payments we make to governments.

##### ***Openness***

Transparency is in the best interest of our shareholders, employees, contractors, partners, customers and the communities and societies in which we operate, and is essential to good governance and responsible investment.

##### ***Fairness***

Nations that share resource wealth and are accountable to their communities have the potential to attract greater, more responsible and longer term investment. Ensuring our host communities share in our success is critical to the long term future of our business.

##### ***Accessibility***

Revenue transparency information must be meaningful, practical and presented in a form that is easily captured, reported and understood. Governments, corporations and civil society organisations all have important roles to play in ensuring communities have the capacity to analyse and effectively interpret the information provided.