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13 June 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C 20549-1090

Dear Ms.Countryman

Re: Concept Release on The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478, File No. S7-10-22

BHP ("we", as applicable) is pleased to submit this letter in response to Release Nos. 33-11042 34-94478; File No. S7-10-22 (the "Concept Release"), in which the Securities and Exchange Commission (the "Commission") has requested comments on the proposed introduction of a framework mandating climate-related disclosures by public companies.

As the Commission recognizes, the private sector can play a key role in helping craft climate disclosure rules that will truly meet investor demands for consistent, comparable, and decision-useful information. We applaud the Commission's leadership in soliciting public comments on this important subject and thank you in advance for taking our views into consideration.

BHP supports the Commission's objectives and believes that the standardization of climate disclosure requirements could benefit investors and build on the work of companies that have placed climate action and transparency at the forefront of their corporate agendas. BHP would like to offer suggestions, based on its experience in producing climate disclosures on a voluntary basis, about how to modify aspects of the proposed rules to enhance the ability of registrants to provide clear and decision-useful climate disclosures, which may assist in achieving the overall objectives the Commission has outlined.

Introduction

BHP is a leading global resources company headquartered in Melbourne, Australia. We are focused on expanding our portfolio of future-facing commodities, including copper and nickel, to support the U.S. and global energy transition. Our purpose is to bring people and resources together to build a better world. We aim to provide deep and long-lasting benefit to the communities where we operate and conduct our business with a focus on environmental sustainability, respect for human rights, and ethical corporate governance. As a foreign private issuer with an American Depositary Receipt program listed on the New York Stock Exchange, we would be subject to the proposed rules. For additional information about BHP, please visit our website at https://www.bhp.com.

Climate change has increasingly become a critical issue for many public companies, across a wide variety of sectors, as they seek to manage rapidly evolving climate-related risks. As one of the world's largest mining companies, we are committed to playing our part to help accelerate the global pathway to decarbonization. This includes increasing awareness of the vital role of the mining industry in providing essential commodities as building blocks for the renewable energy and other decarbonization infrastructure required to enable a net zero greenhouse gas ("GHG") emissions future.

BHP's Climate Transition Action Plan 2021 outlines our updated approach to reducing GHG emissions and managing climate risks, including our climate change targets and goals. We have been recognized as a leader in climate-related disclosure and have taken an active role in the emerging climate disclosure landscape, bringing the perspective of a global resources company to the discussion about how to create useful measures, metrics and frameworks. We have been represented on the Task Force on Climate-Related Financial Disclosures (TCFD) since its inception and have continued serving as one of the leading voices in shaping the TCFD and other global standards from an industry sector perspective.

We support the Commission's move toward consistent and decision-useful climate-related financial risk disclosures which would seek to meet increased demand from investors and enable companies committed to credible action and contribution to the necessary system-wide decarbonization response to be better identified. To this end, we believe that the Commission should focus on the disclosures that are actually decision-useful and facilitate comparability.

We are encouraged by the Commission's overall proposal, including its conceptual alignment with the TCFD recommendations and the GHG Protocol. Above all, we are particularly supportive of the effort by governments and regulators to establish a common set of standards for public companies. The current practice allows different global organizations, stakeholders and individual companies to craft their own standards and interpretations, creating a difficult to navigate, potentially unreliable global disclosure system.

Given the need for an objective regulated system with a shared set of transparent standards and method to draw comparisons, we endorse the Commission's attempt to systematize climate reporting and replace the more ad hoc approach that currently exists. It is our belief that consistently applied disclosure standards overseen by regulators are also key to ensuring that certain metrics are not missed or misconstrued.

We also note the recent publication of the International Sustainability Standards Board (ISSB) exposure draft on Climate-related disclosures and support the focus of the working group formed by the ISSB, in which the Commission is participating, on enhancing the compatibility of global sustainability disclosures.

In reviewing the Commission's proposed disclosure requirements, we have focused on the need to balance enhancing the decision-usefulness, consistency and comparability of disclosures with the practicality of implementation and ongoing compliance.

While broadly supportive of the direction of the proposals, we believe certain aspects would require registrants to disclose significant amounts of information that, due to its financially immaterial nature, is not decision-useful and would risk diluting the effectiveness of the disclosures by overloading users with information. Further, we have identified a number of areas in which the practical application of the proposals is expected to be challenging, costly or potentially impracticable.

As such, as it continues the necessary work of enhancing corporate climate-related disclosures, we encourage the Commission to consider the following key areas for revisions:

- Safe harbors
- Materiality thresholds
- Application challenges for financial statement metrics, climate-related risk disclosures and GHG emissions disclosures
- Alternative reporting provisions.

Further commentary on each of these areas, along with a number of other observations on the proposals is included below.

Safe Harbors

The Commission has, in several recent circumstances, expanded the use of safe harbors to promote more meaningful disclosures by registrants, while balancing the attendant liability risks to issuers and other participants accompanying certain kinds of information. In this case, we appreciate the Commission's recognition of those concerns for the proposed climate-related disclosures, given evolving standards and relatively nascent disclosure practice, inherent requirements for judgments and predictions about the future and dependence on third-party or other forms of uncertain information.

We understand the Commission nevertheless holds the view that the treatment of climate-related disclosures as filed for purposes of potential liability under the Securities Act and Exchange Act is necessary to help promote accuracy and reliability for the benefit of investors. Accordingly, while the alternative to permit registrants to furnish, rather than file, climate-related disclosures would alleviate a number of liability concerns, we have given consideration to how to apply safe harbors to encourage the complete, candid and company-specific disclosures that the proposed rules would require in filed disclosures. In our view, the following key revisions to the Commission's safe harbor proposal would materially assist in balancing the foregoing considerations:

- *Clear safe harbors for climate-related forward-looking statements:* The proposed requirements would represent a meaningful expansion in the forward-looking statement disclosures required to be filed with or furnished to the Commission. While the safe harbors for forward-looking statements contained in the 1995 Private Securities Litigation Reform Act (**PSLRA Safe Harbors**) generally cover forward-looking statements, we strongly believe that providing registrants with clarity as to the application of safe harbors for mandated climate-related disclosures, such as those related to internal carbon prices, scenario analysis, transition plans and targets and goals, would be more appropriate than implicit or uncertain reliance on the PSLRA Safe Harbors. Accordingly, we respectfully submit that, similar to 17 CFR 229.305(d), the information required or permitted by Item 1502 (Strategy, business model, and outlook), Item 1503 (Risk Management) and Item 1506 (Targets and goals) of Regulation S-K, except for historical facts, should be explicitly considered a "forward-looking statement" for purposes of the PSLRA Safe Harbors.
- *Level of diligence*: The proposed safe harbor for Scope 3 emissions disclosures should be reframed so the level of diligence required is that a statement is made or reaffirmed in good faith, without the inherently fact-based “reasonable basis” component that may raise questions of fact that invite litigation and substantial discovery and could therefore impair the safe harbor’s effectiveness in encouraging disclosure of decision-useful information.
- *Coverage*: The scope of the proposed Scope 3 safe harbor should be expanded to address statements in the documents in which such disclosures are required or where such statements are otherwise reasonably expected to be made. Specifically, we respectfully suggest that the Commission expressly state that the proposed safe harbor applies to oral representations made by or on behalf of the registrant (and is not limited to statements made in a document filed with the Commission) and to statements made by an outside reviewer retained by the registrant or other parties acting on the registrant’s behalf, such as underwriters, consistent with the scope of the safe harbors for forward-looking statements contained in the PSLRA Safe Harbors.
- *Extended application to other third-party sourced or derived emissions data*: We appreciate the Commission’s recognition of the challenges that registrants face in producing disclosures that inherently rely on estimates or data that are outside the registrant’s control.For those reasons, the safe harbor (reframed as suggested in the two points above) should be extended to apply to: (a) Scope 2 emissions disclosures, which inherently rely on supplier or other third-party-provided emission factors; and (b) Scopes 1 and 2 emissions disclosures where they are reported as part of a registrant’s equity share or financial control boundary emissions inventory for an operation in which the registrant has an interest but does not have operational control.
- *Extended application to other third-party information*: Similarly, the proposed rules would require a range of disclosures that may be based on information that is outside a registrant’s control. To mitigate liability concerns arising from the challenges associated with producing those disclosures, we recommend that a safe harbor (framed as described above for GHG emissions data) apply to any third-party sourced or derived data or other information in the strategy, business model, and outlook disclosures required by proposed Item 1502 of Regulation S-K.

Further commentary on the above recommendations, including responses to a number of the specific questions posed by the Commission with respect to safe harbors is included in Attachment A, along with additional related recommendations or observations, including with respect to the disclosure of material changes to climate-related disclosures, the proposed rules for third-party attestation of emissions disclosures, the governance disclosure proposals and alternative reporting provisions.

Materiality thresholds

In relation to the financial statement metrics, the Commission proposes the introduction of bright-line materiality thresholds aimed at reducing the risk of underreporting decision-useful climate-related information. For example, the proposed rules would require disclosure of the financial impact of climate-related events and transition activities on each financial statement line item, unless the aggregate positive and negative impact on an absolute value basis is less than 1% of the total line-item value. A 1% threshold is also proposed to apply to the disclosure of aggregate climate-related expenditures expensed or capitalized during a period.

BHP acknowledges that information which users of the financial statements find useful for decision making may include certain of the impacts of climate change on the position or performance of a registrant.

However, we believe that the application of the general materiality principles currently in place for the preparation of financial statements better achieves the Commission's objectives, as the prescriptive application of a 1% materiality threshold to individual financial statement line items will result in the disclosure of information that is not considered decision-useful by users of the financial statements. As the Commission has previously considered, "information overload" may make it difficult for an investor to identify the information that is most relevant. The prescriptive thresholds proposed may result in registrants producing excessive information that creates confusion for investors and capital markets. The proposed threshold is not aligned with, and would add an additional framework to, the well-established general materiality principles currently applied in the preparation of financial statements.

BHP considers that a single materiality framework should be applied to a company's financial statements and separate materiality thresholds should not be introduced for specific areas of focus or determined by reference to individual line items. A single materiality approach is well established and has been accepted by registrants, auditors, regulators, and capital markets over an extended period.

Financial statement materiality for many publicly listed, profit-oriented companies is calculated as 5% of profit before tax, on a single year or average basis. This includes BHP where, as outlined in the Independent Auditors' Reports for the financial year ended 30 June 2021 (available at https://www.bhp.com/investors/annual-reporting/annual-report-2021), overall materiality was determined to be US$900 million[1], with a reporting threshold, for the communication of uncorrected audit differences to the Group's Risk and Audit Committee, of US$45 million. This general approach to materiality provides users with a level of disclosure that is decision-useful, such that users are not overloaded with information that is not relevant due to its financially immaterial nature. BHP has well established internal processes for the preparation, review and reporting of financial information, including to those charged with governance.

The application of the 1% materiality threshold to individual financial statement line items would result in certain items meeting the criteria for disclosure in the financial statements that are not currently considered material for internal decision making nor decision-useful for investors.

Such a threshold is not aligned with the nature of questions that BHP generally receives from investors which predominantly focus on significant events or changes in the Group's strategy or climate-related commitments. A 1% materiality threshold risks providing excessive amounts of information to users from which it is challenging to identify the information that is genuinely decision-useful.

As such, we would recommend applying the general materiality concepts currently in place to climate-related disclosures, thereby requiring disclosure of matters if considered material to the financial statements as a whole.

To provide additional context to the proposed 1% materiality threshold in relation to BHP's consolidated financial statements for the year ended 30 June 2021:

- In the income statement, 1% of other income amounts to US$5 million;
- On the balance sheet, 1% of total inventories amounts to US$58 million; and
- In the cash flow statement, 1% of purchases of property, plant and equipment amounts to US$66 million.

Each of the amounts outlined above is substantially less than the materiality applied to the broader financial statements and represents less than 0.05% of BHP's market capitalization on 22 April 2022.

[1] Which approximates to 5% of the three-year average Group profit before tax and exceptional items from continuing operations.

In addition, given that the 1% threshold proposed for the disclosure of financial impacts is assessed on an aggregate, absolute basis, combining the impacts of climate-related events and transition activities, the individual items that would need to be identified in order to ensure completeness of the required disclosures could be significantly below the 1% threshold. This would increase the likelihood of individually immaterial items that do not provide decision-useful information to users being included in the financial statements and potentially make it challenging for users to identify genuinely decision-useful information. Such a requirement would also significantly increase the resourcing, process and cost requirements for identifying, collating, verifying and auditing the information for disclosure.

While the Commission requested comment on whether possible alternative materiality thresholds may be appropriate, BHP believes that:

- The use of any percentage threshold, when applied to individual line items or to expenditure as a whole, rather than in determining a single materiality threshold for the financial statements, may result in the disclosure of information at a level not considered to be decision-useful for investors; and
- Given the broad spectrum of registrants that would be required to apply the proposed rules, the use of a defined dollar threshold, particularly the example quoted of US$1 million, would not address the particular circumstances of many companies,. and would result in the disclosure of information considered immaterial for many registrants. For example, US$1 million represents just 0.005% of BHP's profit before tax from continuing operations for the financial year ended 30 June 2021. Conversely, a defined dollar threshold could also result in material information not being disclosed by smaller registrants.

Further, while we acknowledge that that the Commission currently uses a specific 1% threshold for certain disclosures, we note that the disclosure examples provided by the Commission are generally narrow in scope, factual in nature and limited to certain line items in the financial statements (for example, the amount of excise taxes included in revenue). The examples do not generally impact the financial statements as a whole or require the application of significant judgment.

Application challenges for financial statement metrics, climate-related risk disclosures and GHG emissions disclosures

Financial statement metric disclosures

BHP, as a foreign private issuer, prepares financial statements in accordance with International Financial Reporting Standards and, as permitted, does not include a reconciliation to US GAAP when incorporating its financial statements into US filings.

While we have enhanced the climate-related disclosures in our financial statements in recent financial years, we acknowledge that there continues to be significant variation in climate-related disclosures across the financial statements of registrants.

As such, and in the context of our materiality comments above, we are broadly supportive of the introduction of specific disclosure requirements in relation to the impacts of climate change, specifically the requirement to disclose, if material using a single materiality framework applied to a registrant's financial statements as whole:

- The impacts of climate-related factors on the financial statements, including on key areas of judgment and estimation, and
- The proportion of capital expenditure in a period that is incurred towards climate-related activities (including expenditure contributing to the achievement of emissions reduction targets and amounts aimed at mitigating current or future physical risks).

However we have identified a number of potentially significant challenges to the achievement of the key aims of the proposal to increase the consistency, comparability, and reliability of climate-related decision-useful information for investors.

The challenges include:

- *Definitions and judgment:* the ability to achieve comparability and consistency will be impacted by registrants being required to apply significant judgment in determining the appropriate disclosures. For example, the judgment as to what constitutes a significant weather event and how to disaggregate the climate impact from complex scenarios with multiple underlying drivers. While certain direct impacts of a climate-related event may be separately and clearly identifiable, in many cases financial statement impacts may be the result of a range of causes. Identifying and isolating the climate-related impact may be highly complex or, in certain circumstances, impracticable;
- *Application timeline:* the proposed timeline for adoption, particularly for information in relation to historic fiscal years, may not allow sufficient time for registrants to develop appropriately governed systems and processes to collect and assess the information required to support the disclosures; and
- *Resources and cost:* the additional data collection, assessment, audit and assurance activities required to comply with the proposed disclosures are likely to be significant in terms of both resources and cost.

Considering the above challenges, in addition to re-considering the materiality threshold, we would propose any final rules:

- Allow registrants to choose not to disaggregate climate-related impacts from other drivers when impracticable, so long as the registrants that choose to do so disclose the reason disaggregation was not practicable; and
- Adopt a phased transition approach that would not require disclosure of information related to periods prior to the date at which the rules are effective for a registrant.

Further commentary on the above areas of challenge, including responses to specific questions posed by the Commission, are included in Attachment B, along with a number of other observations on the proposed financial statement metric disclosures.

Climate-related risk disclosures

BHP currently applies its risk management framework to seek to identify climate-related risks and assess their materiality, likelihood and potential impact. However, the identification and assessment of these risks often relies on information from third parties, such as government agencies or other companies, and, for aspects of physical risk assessment, depend on advances in climate science, giving rise to significant differences, practically, in the maturity of risk assessment processes across different types of transition and physical risk. To further illustrate our concern, we note that any modeling of physical impacts at site level detail would be inherently uncertain even within different temperature scenarios, and even more so at sub-site level detail. Furthermore, there can be significant differences in the availability of data required to underpin projections of future physical risks across geographies and any assessment of physical risks in the value chain would depend on detailed information that may not be available from customers, suppliers and other third parties.

Accordingly, we suggest that definition of the mandatory climate-related risk disclosures under proposed Item 1502 (Strategy, business model, and outlook) be limited to paragraphs (a)-(d) without the additional prescription in sub-paragraphs (a)(1) & (2) and (b)(1) & (2) (except that the requirement in sub-paragraph(a)(1) to discuss such climate-related risks, specifying whether they are physical or transition risks and the nature of the risks presented, could be incorporated as part of paragraph (a)). The granular detail of sub-paragraphs (a)(1) & (2) and (b)(1) & (2) might usefully be recast as guidance or examples of what could help to make climate-risk disclosures decision-useful (subject to each registrant's own circumstances), but should not be prescribed.

While Item 1502(a) generally speaks to materiality, the granular requirements may result in excessive amounts of information that is not material. Accordingly, we consider the suggested approach above to better reflect the Commission's intent to enable registrants to use the traditional concept of materiality to identify and disclose its material climate-related risks, which would align with the approach for other disclosures (e.g., what is required when preparing the MD&A section in a registration statement or annual report). The detail of sub-paragraphs (a)(1) & (2) and (b)(1) & (2) seems to presuppose the nature and disaggregation level at which a risk would be deemed material. This could undercut the registrant's determination of what are material climate-related risks to its business and in its particular operating environment(s), and thereby adversely affect the decision-usefulness of the disclosure. We note that the requirements of proposed Item 1503 (Risk management), particularly the disclosure of how a registrant determines the materiality of climate-related risks, would help investors to assess whether identified risks are discussed at the commensurate level of granularity.

GHG emissions disclosures

BHP, as a foreign private issuer, prepares its GHG emissions inventory using methodologies consistent with the Greenhouse Gas (GHG) Protocol: A Corporate Accounting and Reporting Standard, with reference to the additional guidance provided in the GHG Protocol: Scope 2 Guidance (amendment to GHG Protocol), GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard (Scope 3 Standard) and GHG Protocol Technical Guidance for Calculating Scope 3 Emissions (Scope 3 Guidance) as appropriate. We have also reviewed GHG emissions guidance across a range of other standards in preparing the disclosures, including Intergovernmental Panel on Climate Change (IPCC) Guidelines for National GHG Inventories, International Standard ISO 14064-1 and the Sustainability Accounting Standards Board (SASB). BHP also obtains reasonable assurance over Scope 1 and Scope 2 emissions data and limited assurance over Scope 3 emissions data.

While broadly supportive of the aims of the proposed rules concerning GHG emissions disclosure and related metrics, BHP has identified a number of potentially significant practical challenges in their application, including:

- *Organizational reporting boundaries:* BHP, for purposes of preparing its Scope 1 and Scope 2 emissions inventory and tracking its Scope 1 and 2 emissions reduction targets, uses the operational control boundary defined by the GHG Protocol: A Corporate Accounting and Reporting Standard. This boundary is also consistent with the operational control boundary BHP is required to use for its regulatory reporting in Australia under the National Greenhouse and Energy Reporting Act 2007 (NGER Act). Approximately 65 percent of BHP's reported Scope 1 and 2 emissions in FY2021 originated in Australia. For efficiency and consistency, BHP aims to align its corporate inventory organizational boundaries and its local regulatory boundaries as closely as possible. As a result, the Item 1504(e)(2) requirement to move the organizational boundary would create additional regulatory and voluntary reporting burdens (where a company has to use the GHG Protocol as the standard) as well as additional work for possible target restatement as the targets for most companies were set based on the boundaries in place now. BHP supports consideration by the Commission to allow the flexibility of choice for the organizational boundary approaches recommended by the GHG Protocol (e.g., financial control, operational control, or equity share). Investors would have sufficient information to understand what is included or excluded in the organizational boundary based on the methodological disclosures required in Item 1504. Finally, for Scope 3 emissions, it is often the data availability and data quality that determine the boundaries and, it may be difficult to meet a precise boundary definition for some of the Scope 3 categories. Therefore, the proposed rules should reflect these limitations when setting organizational boundaries for Scope 3 data.
- *Carbon offsets and renewable energy certificates:* BHP already publishes its approach to carbon offsetting and "quality" considerations when selecting carbon offsets and disclosed details regarding the underlying projects for carbon offsets we retired in FY2021, including project name, project developer, registry, type of project, methodology, location, and vintage and volume of offsets retired. However, the requirement under proposed Item 1506(d) to disclose the cost of offsets, and also renewable energy certificates, is inconsistent with commercial-in-confidence requirements. Whether a company is using offsets to reduce its own carbon footprint, the carbon footprint of its products, or as a revenue generating business, the unit cost of offsets is an input like any other and therefore commercial-in-confidence (and similarly for renewable energy certificates). Furthermore, if the Commission's objective is to help investors assess the quality of the offset, cost ($/tonne) is not a reliable metric and risks misinterpretation i.e. higher cost may be a factor purely of demand and does not necessarily mean higher quality, and a company's rationale for investing in carbon offset projects could include broader objectives, reflected in the $/tonne, rather than just acquiring high quality carbon offsets, for example testing new carbon methodologies / seeding the market. If enabling an assessment of quality of offsets is the objective, the Commission could require companies to detail their due diligence and selection criteria for offsets.
- *Disaggregation by GHG:* For Item 1504(a)(1), BHP supports the disaggregation rule by individual gases and the proposed definition by the Commission. BHP already tracks and reports Scope 1 emissions disaggregated by individual gases as defined in Item 1500(g). However, it may not be possible to apply this definition to Scope 2 and Scope 3 emissions due to inherent data limitations. For example, Scope 2 factors provided by local regulators are in tCO_2-e and do not always provide a breakdown by individual gas. Permitted Scope 3 factors under current reporting standards, on the other hand, may not even count all the gases. For example, publicly reported crude steel emission factors are represented in CO_2 only, e.g., by the World Steel Association Sustainability Indicators CO2 emissions Tonnes CO_2/Tonnes crude steel cast, which are used to estimate Scope 3 emissions in accordance with current reporting standards. Therefore, given inherent data limitations, the disaggregation by individual gas and requirement to include all seven GHGs should only be applicable to Scope 1 emissions at this stage.

- *Application timeline:* The rule proposed under Item 1504(a) should be applied prospectively only from the first reporting period i.e., it would be unreasonable to expect registrants to provide historic comparable information in the first reporting period, particularly for Scope 3 emissions. For example, companies may have to change their reporting boundaries to comply with Item 1504(e)(2) (subject to our comment above). This may require reporting for activities not previously included in a registrant's Scopes 1 and 2 emissions, e.g. non-operated joint ventures. As a result, it may not be possible to obtain and/or calculate the relevant historical data.
- *Disclosure updates:* Item 1506(c) would require that a registrant updates this disclosure each fiscal year by describing the actions taken during the year to achieve its targets or goals. Some elements of transition plans may take longer than one year to demonstrate progress e.g., decarbonization initiatives may have a lag time and some initiatives span multi-year timeframes. This requirement should leave flexibility for a registrant to apply its interpretation of the appropriate timeframe for reporting of actions in its context (e.g., three year timeframes).

Other observations:

- *Renewable* energy *credit or certificate*: Definition under Item 1500(n) 'Renewable energy credit or certificate' should provide a general definition for renewable energy certificate/credit and should include similar instruments from other jurisdictions such as Australian Large Scale Generation certificates and European Guarantees of Origin, particular for foreign private issuers.
- *Revenue GHG intensity metrics*: There should be a provision that Items 1504(d) (1) & (2) should be compared only within a sector. Otherwise, those rules may yield distorted comparability, particularly with the revenue intensity metric, e.g., most digital companies would have significant revenues but low emissions resulting in a distorted intensity ranking compared to companies with greater physical presence. This may result in diverting capital flows from hard-to abate sectors that need to decarbonize in order to achieve the goals of Paris Agreement.
- *Emission factors:* In relation to proposed Item 1504(e)(1), in some instances a registrant may be required by a mandatory emissions reporting regime in its home jurisdiction to apply a specified, externally determined emission factor. In that instance, to reduce the reporting burden, disclosing that emissions factors as required under an applicable regulatory requirement are used, and emissions are calculated in accordance with that regime, should be specified in the rule as sufficient.
- *Scope 3 data challenges*: Item 1504(e)(7) should be applicable only to Scope 1 and Scope 2 emissions, given the significant gaps and challenges that exist with Scope 3 emissions. Disclosing this information regarding Scope 3 would create a significant burden for the business (e.g., to ascertain the gaps) but would be of limited benefit to investors given the currently less well-advanced state of Scope 3 emissions reporting and the well-known data limitations.

<u>Alternative reporting provisions</u>

The Commission poses a series of queries (questions 183-189) about the utility and potential framework for adopting an alternative reporting provision to enable a registrant that is a foreign private issuer and subject to the climate-related disclosure requirements of an alternative reporting regime to satisfy its U.S. disclosure obligations by complying with the reporting requirements of the alternative reporting regime.

BHP is broadly supportive of any alternative reporting provision that would enable use of a single report and consistent approach for compliance across all its reporting jurisdictions. This would deliver substantial efficiency savings to registrants and avoid investors having to compare a company's climate-related filings across multiple jurisdictions. We see value in the certainty that would be achieved if the Commission identified the alternative regimes it deems "substantially similar" to the U.S. regime, rather than requiring case-by-case applications for recognition. More generally, we are strongly supportive of initiatives that enhance the likelihood of standardization of all forms of climate-related disclosures (whether voluntary or mandatory) across jurisdictions.

We thank you in advance for your consideration of our suggestions and again want to commend the Commission on its efforts to systematize climate reporting structures. In addition to the core input included with this letter, we have included several attachments with this letter that further elaborate or provide additional recommendations on ways you could enhance this important Rule.

On behalf of BHP,

David Lamont
Chief Financial Officer

Attachment A

<u>Safe harbors</u>

Safe harbor for climate-related disclosures comprising forward-looking statements

The Commission asks (questions 28, 31, 32, 51 and 174) whether it should adopt a separate safe harbor for specified climate-related disclosures, such as those related to internal carbon prices, scenario analysis, transition plans and targets and goals, rather than rely on the generic application of the PSLA Safe Harbors (if, and to the extent, applicable).

We strongly believe that express, clear and robust safe harbors for the mandated disclosures would foster better disclosure in light of the inherent challenges associated with certain of the disclosures that the Commission's proposals entail, particularly those that require registrants to make forward-looking disclosures. Protections that are uncertain or ambiguous as to their application may be prone to opportunistic litigation and therefore likely fail to promote the degree of full disclosure the Commission is endeavoring to achieve.

Specifically, we respectfully suggest, consistent with the Commission's approach in adopting Item 305 of Regulation S-K, that the Commission expand the PSLRA Safe Harbors to cover forward-looking statements included in the proposed disclosures as follows:

(a) explicitly apply the PSLRA Safe Harbors to all information required or permitted by proposed Item 1502 (Strategy, business model, and outlook, including disclosures related to internal carbon prices, scenario analysis and transition plans), proposed Item 1503 (Risk Management) and proposed Item 1506 (Targets and goals) of Regulation S-K, except historical facts; and

(b) define satisfaction of the "meaningful cautionary statements" prong of the safe harbors.

These amendments would be a valuable and effective accommodation that would give registrants' confidence to enhance their disclosures and make them more decision-useful. We have suggested Item 1503 (Risk Management) be included, together with Items 1502 (Strategy, business model, and outlook) and 1506 (Targets and goals) , as risk management inherently includes forward-looking elements, such as anticipating trends and emerging risks, and a climate-related risk management strategy is likely to involve adoption of a transition plan. The extension to all information required <u>or permitted</u> (as noted in paragraph (a) above) is intended to ensure the protection would also apply to statements a registrant may voluntarily disclose about actual or potential impacts of climate-related opportunities, or how it plans to achieve climate-related opportunities identified in a transition plan adopted as part of its climate-related risk management strategy.

The extensive litigation history of claims involving the PSLRA Safe Harbors shows that protection is not guaranteed. Cases testing how conditions of the PSLRA Safe Harbors apply have tended to turn on highly fact-specific determinations, such as whether a statement is truly "forward looking", and what it means for cautionary language to be "meaningful" or to "accompany" a forward-looking statement. Much of the content required by Items 1502 and 1506 will involve assumptions about future events, projections regarding future impacts of climate-related risks or similar forward-looking statements not intended to be promises or guarantees. However, those items will also likely require disclosure of information that is derived from or relies, in whole or in part, on forward-looking information, but may not be a forward-looking statement exclusively, or as conventionally defined. This ambiguity would be resolved by deeming all information required by Items 1502, 1503 and 1506 (excluding historical facts) to be "forward looking statements" (in similar form to 17 CFR 229.305(d)).

An unambiguous, reliable safe harbor regime will be essential to allowing registrants to deliver genuinely decision-useful content to investors, in the complex and rapidly evolving environment against which climate-related financial risks must be assessed and managed and disclosed.

Framing and coverage of the proposed safe harbor for Scope 3 emissions disclosures

The Commission notes that GHG emissions data can enable investors to assess a company's exposure to climate-related risks and has requested comment (question 133, inter alia) on whether the proposed safe harbor for Scope 3 emissions disclosure is clear and appropriate. As noted, we appreciate the Commission's recognition of the challenges that registrants face in producing disclosures that inherently rely on estimates or data that is outside the registrant's control and agree that it is important to provide registrants with confidence to disclose emissions data, including for Scopes 1, 2 and 3, and its context as robustly as possible to best inform investors' evaluations. To support this objective, we recommend:

(a) *Level of diligence*: The proposed safe harbor for Scope 3 emissions disclosures should be reframed so the level of diligence required is that a statement is made or reaffirmed in good faith, without the additional "reasonable basis" component.

The determination as to what constitutes a reasonable basis when preparing emissions disclosures would be inherently "fact-intensive" and, particularly given reliance on third-party data, may raise questions that invite litigation and result in substantial discovery and related costs and inefficiencies. This would impair the safe harbor's intent to encourage disclosure of decision-useful information.

This concern is particularly applicable to the proposed emissions disclosures because there is no absolute standard nor uniform historical practice applicable to Scope 3 disclosures and other externally sourced or derived emissions data. As a result, registrants may be compelled to undertake novel and unduly onerous procedures to try to mitigate the risk that their disclosures failed to meet the safe harbor standards, without materially enhancing the quality of their disclosures.

We suggest the valid intention behind a reasonable basis level of due diligence is already, but more suitably, achieved by the extent of prescription the Commission has proposed for the disclosure of GHG emissions metrics, in particular in proposed Item 1504(e) *Methodology and related instructions* (subject to BHP's comments in the GHG emissions disclosure section (in the body of this letter) in relation to Items 1504(e)(1) & (7)). Investors will be thereby well-positioned to evaluate the reasonableness and accuracy of the data without an impracticable burden being placed on registrants in relation to information outside their control.

(b) *Oral representations; documents furnished to the Commission*: The scope of the proposed Scope 3 safe harbor should be expanded to address statements in the documents in which such disclosures are required or where such statements are otherwise reasonably expected to be made. Specifically, we respectfully suggest that the Commission expressly state that the proposed safe harbor applies to oral representations made by the registrant or a person acting on its behalf, similar to the safe harbors for forward-looking statements contained in the PSLRA Safe Harbors provisions with respect to oral forward-looking statements.

The safe harbor, as proposed, applies to a statement that is made in a document filed with the Commission (as proposed by Item 1504(f)(1)). We respectfully request that the Commission confirms that the safe harbor is intended also to apply to any statement made regarding the selected disclosures in a document *furnished* to the Commission on Form 6-K, consistent with the Commission's guidance in relation to Rule 175.

(c) *Persons covered*: The scope of persons covered by the language "by or on behalf of a registrant" (as proposed by Item 1504(f)(1)) should be expanded to include both:

- an outside reviewer retained by the registrant (making a statement on behalf of such registrant); and
- an underwriter, with respect to information provided by the registrant or information derived from information provided by that registrant,

reflecting the scope of and, based on the same rationale as, the PSLRA Safe Harbors. Clarification with respect to outside reviewers would avoid the risk of an interpretation that the safe harbor failed to apply to the reports of third parties included in documents filed with the Commission and support underwriters in facilitating capital raisings by registrants.

(d) *Expanded application to other third-party sourced or derived emissions data*: The Commission asks (question 133) whether the safe harbor proposed for Scope 3 emissions disclosures should be extended to Scopes 1 and 2 emissions disclosures. The Commission has proposed the targeted safe harbor for Scope 3 emissions data to alleviate concerns that registrants may have about liability for information that would be derived from third parties in a registrant's value chain. In our view, a safe harbor (reframed as described in paragraphs (a)-(c) above) to mitigate against liability for statements that a registrant has made in good faith that rely on external estimates, data or other information that is outside the registrant's control, as is inherent with certain climate-related disclosures, should apply not only to Scope 3 emissions disclosures but equally to:

- Scope 2 emissions disclosures; while these emissions result from a registrant's operations, their calculation is dependent on supplier-provided emission factors for purchased electricity or an external average energy generation emission factor for a relevant electricity grid.

  Methods to calculate Scope 2 emissions are generally more advanced and reliable than for Scope 3, however, we think it would nonetheless be unreasonable to expose a registrant to the same liability standards in respect of this disclosure, where it is reliant on information that is not wholly within its control.

- Scopes 1 and 2 emissions where they are reported as part of a registrant's equity share or financial control boundary emissions inventory for an operation in which it has an interest but does not have operational control (such as non-operated joint venture, joint operations or associate activities). Reporting would therefore rely on data supplied by the operator.

  The Commission's proposal to require a registrant to set the organizational boundaries for its GHG emissions disclosure based on the scope and principles applicable to its consolidated financial statements makes extension of the safe harbor to this category particularly important. Under the GHG Protocol option for a company to base its organizational boundaries on an operational control (rather than equity share or financial control) approach, a registrant would report emissions in this category as Scope 3 and receive the benefit of the safe harbor as currently proposed. On the same logic, the safe harbor should extend to emissions that are required to be reported as Scopes 1 and 2 under the Commission's proposal to align organizational boundaries for emissions reporting with consolidated financial statements, but do not arise from operations under the registrant's control.

  Even where registrants are permitted to have the flexibility to choose one of the organizational boundary approaches recommended by the GHG Protocol, a registrant would require this accommodation if it chose to report Scopes 1 and 2 emissions calculated on an equity share and/or financial control basis where that inventory included operations in which it had an interest but operational control.

Safe harbor for third-party sourced or derived information in strategy, business model, and outlook disclosures

The Commission has asked (in a number of its questions) whether the safe harbor should apply to aspects of the information that would be required by proposed Item 1502 of Regulation S-K. To mitigate the liability concerns arising from challenges associated with producing disclosures that are based on information outside a registrant's control, we recommend that a safe harbor (framed as described above for GHG emissions data) apply to any third-party sourced or derived data or other information in the strategy, business model, and outlook disclosures required by proposed Item 1502 of Regulation S-K (including where third-party sourced or derived information from Proposed Article 14 of Regulation S-X is required to be included by Items 1502(c) or (d)).

To assist with the practical application of this safe harbor, a requirement could be added to Proposed Item 1502 of Regulation S-K to require identification of third-party sourced or derived data or other information, which would also assist investors in their evaluation of the reasonable basis for that information.

Time period for safe harbors

The Commission asks (question 133) whether a sunset provision should be added to eliminate the Scope 3 emissions disclosures safe harbor after a defined period or after certain conditions are satisfied. We believe that safe harbors for mandatory climate-related disclosures (including the expanded application we have proposed above) should apply indefinitely.

The inclusion of a sunset provision would represent a fundamental change to the framework for forward-looking statements under the PSLRA, which expressly provides that nothing in the terms of the safe harbor "impose[s] upon any person a duty to update a forward-looking statement." The rationale for safe harbors for climate-related disclosures are unlikely to alter materially over time (although, conversely, the materiality of historical disclosures is likely to lessen over time), and a requirement to monitor the applicability of any sunset requirements (and risk of failure to take requisite measures) would likely chill the utility of the proposed safe harbors and invite further litigation, undermining their sound underlying principles.

<u>Disclosure of material changes to climate-related disclosures</u>

In Section J (and a number of the following sections), the Commission notes that the proposed rules would require registrants to disclose any material change to the climate-related disclosure provided in a registration statement or reported in an annual Exchange Act annual report (Form 10-K or 20-F) on a Form 10-Q (if a domestic filer) or a Form 6-K (in certain circumstances, if a foreign private issuer filer).

The Commission does not appear to intend to require a foreign private issuer to disclose material changes to its climate-related disclosure provided in a registration statement or its annual report (e.g., on Form 20-F), except where such information falls within the types of information to be provided on Form 6-K. For example, footnote 692 says "… While we are proposing to amend Form 6-K to add climate-related disclosure to the list of the types of information to be provided on Form 6-K, a foreign private issuer would not be required to provide the climate-related disclosure if such disclosure is not required to be furnished pursuant to subparagraphs (i), (ii), or (iii) of General Instruction B."; and the proposed amendment to Part 249 – Forms, Securities Exchange Act of 1934 for Form 6-K does not include an equivalent to this proposed amended to Part 239 – Forms

Prescribed under the Securities Act of 1933 for Form 10-Q: "Item 1B. Climate-Related Disclosure. Disclose any material changes to the disclosures provided in response to Item 6 ("Climate-related disclosure") of Part II to the registrant's Form 10-K (17 CFR 229.310)".

However, the Commission asks across a series of questions (for example, questions 86, 125 and 177) whether it should require registrants to disclose various forms of material changes (such as in estimates, assumptions, or methodology among fiscal years for the proposed financial statement metrics; or to GHG emissions fourth quarter estimates) at regular intervals, such as quarterly, or more generally as they arise. Unlike domestic registrants that have clear reporting requirements set out in Form 10-Q, the application of these update requirements to foreign private issuers is not clear. Accordingly, we respectfully request that the Commission expressly clarify that nothing in the proposed Rules creates an affirmative obligation for foreign private issuers to provide interim updates for any material changes to the mandatory disclosures provided in a registration statement or on Form 20-F, beyond what, and only to the extent that, they would otherwise be required to disclose under subparagraphs (i), (ii), or (iii) of General Instruction B to Form 6-K.

In response to question 196, our view is that any climate disclosures on Form 6-K should continue to be treated as "furnished", not "filed". As the Commission notes in Section L, the treatment of disclosures on Form 6-K as furnished is a long-standing part of the foreign private issuer disclosure system and, consistently with the clarification sought above, we see no reason to disrupt the well-established approach to the triggers and treatment of information required to be provided on Form 6-K.

Third-party attestation of GHG Scopes 1 and 2 emissions data

In relation to registration statements, we note that the proposed rules would require the GHG emissions attestation report required by proposed Item 1505(a) for accelerated filers and large accelerated filers (like BHP) to be prepared and signed by a GHG emissions attestation provider. This would "expertize" certain of those disclosures and so subject the GHG emissions attestation provider to heightened liability under the U.S. federal securities laws for the attestation conclusion or, when applicable, opinion provided.

Given these implications, registrants and their attestation providers will need significant additional guidance on requirements for the GHG attestation, as existing standards are not nearly as developed as the corresponding examples cited for financial statements (for instance, there is a lack of consistent standards for sustainability assurance and the application of the concept of materiality in the context of emissions reporting). In addition, (and in response to question 139) the Commission could consider extending the period in which the attestation requirement applied for *limited assurance* beyond two years, before requiring the more demanding requirement to provide *reasonable assurance*. The appropriate extension beyond two years would depend on how quickly additional, uniform guidance became available and the specialist competency could be established, globally.

Governance disclosures

With respect to the Commission's query (question 34) about whether to require a registrant to identify the board members or board committee responsible for the oversight of climate-related risks, BHP would prefer just to identify board committees, consistently with its position that climate-related risks are core business risks over which the full board has oversight, assisted by relevant committees. Proposed Item 1501(a)(1)(i) would allow a registrant to identify a relevant board committee(s), rather than individual board members (and proposed Item 1501(b)(1)(i) provides similarly for identification of management committees, rather than individual management positions), and we support that optionality.

The Commission also asks (question 34) if it should, as proposed, require disclosure of whether any board member has expertise in climate-related risks and a description of the nature of such expertise. This is consistent with the Commission's recent proposal on cybersecurity disclosure (which would similarly require registrants to disclose if any member of the board of directors has relevant subject matter expertise). However, unlike other proposals by the Commission (e.g., the proposed rule concerning Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure) and the existing disclosure requirements regarding audit committee financial experts, the proposed rules do not state that being identified as having climate-related expertise would not result in a director being deemed to be an "expert" for purposes of Section 11 of the Securities Act, impose duties or liabilities on that director or relieve other directors of any of their obligations.

We would recommend that the Commission includes an analogous clarification in respect of the potential liability for a director identified as having expertise in climate-related risk matters.

Attachment B

Financial statement metric disclosures

Definitions and judgment

Given the complexity of climate change and its associated impacts on registrants and their financial reporting, BHP acknowledges that it would not be practicable for the Commission to issue a set of disclosure requirements that are entirely prescriptive and do not require the application of any judgment from the registrant.

We recognize that the Commission acknowledges this challenge and is therefore proposing that registrants may need to define policies and use estimation techniques when developing the proposed disclosures and that explanation of those methodologies should be included in the contextual commentary to be provided.

However, BHP believes that the extent of judgment required in certain areas will be extensive and, as such, will impact the achievement of comparability and consistency across reporters.

Example areas of particular challenge include:

- The definition of climate-related events. While the proposals include examples of severe weather events and natural conditions, judgment will be required in assessing which events and conditions meet the criteria for disclosure.

  By way of an example, relevant to BHP's operations, the Australian Bureau of Meteorology[2], states that Australia has a long-term average of experiencing 11 cyclones per year. Cyclonic activity and associated flooding can directly impact mining operations while also causing other supply chain disruptions, including to port, and shipping activities.

  In determining whether disclosure of the impacts of cyclones and associated flooding is necessary, judgment will be required as to whether individual cyclones are considered extreme weather events, given the long-term average of events and / or whether the impact of an individual event is considered severe. This level of judgment may result in single weather events being assessed differently by registrants.

- Identifying and isolating climate-related impacts. Registrants would be required to develop policies and methodologies for the disaggregation of climate-related drivers from other factors impacting the financial statements. In certain circumstances such disaggregation may be complex or impracticable.

  For example, commodity prices often significantly impact BHP's financial statements both directly, through revenues and price-linked costs, and indirectly, through the assumptions that inform key judgments and estimates, such as impairment assessments. Separately identifying the climate-related components of changes in commodity prices would be challenging and unlikely to result in consistent disclosures across registrants given their index / market-based nature and the many concurrent factors that drive price changes, including the impact of severe weather events affecting major supply or demand regions and a range of other global or regional economic, political, or social factors.

  As a further example, the proposal (page 128) includes, as a climate-related impact, a negative impact to the cost of revenue driven by increased input costs impacted by severe weather events that strained the registrant's main supplier. As proposed, a registrant would therefore have to extend assessment of severe weather events to its entire supply chain. Further judgment would then be required in assessing the extent to which those impacts had been passed through to the registrant by way of increased input costs. Such an assessment is considered impracticable.

Having highlighted the challenges above, BHP acknowledges that a degree of judgment will always be necessary and therefore accepts the proposals that registrants should develop methodologies and policies where appropriate. We also agree, in the context of our comments in respect of materiality, that it would be appropriate for a registrant to disclose contextual information in relation to its methodologies and policies where they have a material impact on the financial statements or disclosures.

However, considering the challenges outlined above we recommend the rules include the option for a registrant not to undertake such analysis where it is not considered practicable, but that registrants be required to disclose where such an approach is taken, and why.

[2] http://www.bom.gov.au/climate/cyclones/australia/

Application timeline

BHP is generally aligned with the proposal to require disclosure of information for historical fiscal years included in the registrant's financial statements as such a requirement is consistent with the many of existing financial reporting framework requirements, including IFRS under which we prepare our financial statements.

However, under the proposed implementation timeline BHP would be required to first include the disclosures in its financial statements for the year ended 30 June 2024 (FY2024) with historical financial information being included for the income and cash flow statements for the years ended 30 June 2023 and 2022.

Given the application challenges we have highlighted, including the need to develop policies, estimation methodologies, systems, and internal control frameworks, and considering that the final rules are unlikely to be issued before late in 2022, BHP considers it impracticable to prepare, present and have audited the proposed disclosures for fiscal years prior to FY2024.

As such, BHP would recommend a phased implementation approach for the financial statement disclosures which allows the inclusion of only current year fiscal information in the first year of adoption.

We note that such a phased approach is consistent with that proposed by the International Sustainability Standards Board in its IFRS S2 Climate-related Disclosures exposure draft.

Resources and cost

In our opinion, combining the low and prescriptive level of materiality proposed for the disclosures and the significant judgment required in identifying and isolating the climate-related impacts would be expected to result in a significant increase in the resources and costs required to meet a registrant's disclosure requirements. There is a risk that these additional costs to be incurred by registrants are not reflected in the benefits to users as the proposals may result in the disclosure of financially immaterial information that is not decision-useful.

BHP's reporting and governance frameworks are designed to reflect the existing regulatory framework and current definitions of materiality applied in the preparation of financial statements and the inclusion of the proposed disclosures in the financial statements would be expected to result in:

- Significant changes to internal reporting systems and processes, including the Group's enterprise resource planning and other financial systems;
- The design, implementation and management testing of a suite of controls to ensure the completeness and accuracy of the disclosures;
- Incremental external audit and assurance costs in relation to the financial statement disclosures, including the audit of internal control over financial reporting; and
- Additional costs associated with the XBRL tagging of financial statement disclosures.

In addition to the XBRL tagging of financial statement disclosure, the proposed rules would also require the tagging narrative and quantitative disclosures in Subpart 1500 of Regulation S-K. The extent to which XBRL tagging of financial statement and other disclosures provides an effective basis for investors to compare registrant disclosures would be enhanced by the availability of a standard taxonomy, limiting the need for registrants to design and use custom disclosure tags.

Given the complex and ever-changing nature of climate related events and risks, many of the costs will be incurred on a recurring basis and, when combined with the costs associated with meeting the disclosure requirements outside of the financial statements, may be considered to outweigh the benefits to the users of financial statements of providing disclosures at the level of detail and materiality proposed.

Other observations

In addition to our principal observations outlined above, we:

- Agree with the proposals that the scope of the financial statement metrics should be consistent with the scope of a registrant's consolidated financial statements and that the financial statement metrics should reflect the application of the same set of accounting principles applied in the preparation of the rest of the registrant's financial statements. (Question 53).

- Believe that the definition of line item generally appears to reference items appearing in a registrant's primary statements (income statement, balance sheet, and cash flow statement) and have therefore assumed any materiality threshold is not to be applied to individual items appearing only in disclosure notes. However, footnote 349 (page 127) also includes contingent liabilities in a list of example line items. As such, should the Commission retain a requirement to provide disclosure at a line-item level, further clarity should be provided on the definition.
- Consider it more appropriate to require disclosure in situations in which climate-related opportunities have impacted the financial statements and are included in determining whether the threshold for disclosure has been met, than for such disclosure to be optional. We consider that, in situations where there has been an actual impact to the financial statements, positive and negative impacts should be considered equally from a materiality of disclosure perspective.
- Do not consider it appropriate that materiality thresholds be applied at a segment level as, with regard to our proposal that a general materiality framework be applied to the financial statements as a whole, such a requirement would result in the disclosure of information that is not considered decision-useful and would be more onerous from a cost and resources perspective. (Question 54).
- Consider there to be potential duplication between the proposed financial impact and expenditure metric disclosures. For example, given that purchases of property, plant and equipment is a cash flow statement line item, the disclosure of impacts in excess of 1% on that individual line item may duplicate the proposed expenditure requirement to disclose amounts capitalized. Further, as the impact on individual expense line items would require disclosure if in excess of 1% there is potential overlap with the requirement to disclose the total amounts expense in relation to climate-related impacts and risks.