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16 March 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

File Number S7-24-10

Dear Ms. Countryman:

BHP welcomes the opportunity to comment on the Securities and Exchange Commission's (**SEC**) proposed rulemaking to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers ('**1504 rule**').¹

BHP is among the world's top producers of major commodities, with iron ore, copper, metallurgical coal and petroleum assets primarily in Australia and the Americas.² The US is home to our Petroleum headquarters and we operate or have non-operating interest in several fields in the US Gulf of Mexico. We also hold non-operating interest in the Resolution Copper project in Arizona.

Our purpose as a company is to bring people and resources together to build a better world. We are proud of the valuable contribution we make to the communities where we operate and to society as a whole. Since 2015, BHP has issued an annual 'Economic Contribution Report' (**ECR**), in which we disclose the payments we have made to governments during the financial year on a country-by-country and project-by-project basis.³ We also disclose our total direct economic contribution on a country-by-country basis.

For nearly 20 years we have disclosed details of our tax and royalty payments. Being open about the taxes and royalties we pay to governments is in the best interests of our shareholders, employees, customers, communities where we operate and other stakeholders.⁴ Our ECR complies with several mandatory transparency regimes and reflects a number of voluntary disclosure programs.⁵

BHP has a long-standing commitment to transparency and the good governance of natural resources and their related revenues. Accordingly, BHP supports globally consistent and harmonized mandatory reporting requirements. We are a founding corporate supporter of the voluntary Extractive Industries Transparency Initiative (**EITI**), and contribute to implementation of the EITI Standard in EITI implementing jurisdictions where we operate.⁶ Setting a global standard for open and accountable management of natural resources revenues ensures that the disclosure of payments made by extractives companies to governments is understandable for stakeholders. It also provides reporting companies with the most efficient manner of compliance, helps reduce related costs and simplifies data consistency.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 2220-2221 (July 21, 2010).

² BHP is a Dual Listed Company structure comprising BHP Group Limited and BHP Group Plc. The two entities continue to exist as separate companies but operate as a combined group known as BHP. BHP Group Limited has a primary listing on the Australian Securities Exchange in Australia, and BHP Group Plc's ordinary shares trade on the London Stock Exchange. BHP Group Limited and BHP Group Plc are listed on the New York Stock Exchange in the United States, trading via American Depositary Receipts.

³ BHP, 'Economic Contribution Report 2019', available: <https://www.bhp.com/investor-centre/economic-contribution-report-2019/>

⁴ BHP, 'Operating with Integrity, Tax and Transparency', available: <https://www.bhp.com/our-approach/operating-with-integrity/tax-and-transparency/>

⁵ This includes the United Kingdom's Reports on Payments to Governments Regulations 2014, as amended by the Reports on Payments to Governments (Amendment) Regulations 2015 (the 'UK Regulations'). The UK Regulations implement the European Union Accounting Directive (Chapter 10, Directive 2013/34/EU; the 'EU Directive') in the United Kingdom. More information is on page 11 of our Economic Contribution Report 2019.

⁶ Extractive Industries Transparency Initiative, available: <https://eiti.org/>.

Our support for globally consistent and harmonized financial reporting is the guiding principle by which we evaluate and comment on the Commission's proposal.

General comments on the proposed 1504 rule

BHP appreciates the work of the Commission and especially the staff of the Division of Corporate Finance in the development of this proposal. The SEC has been open to engaging with BHP representatives on Section 1504 and our experience complying with global transparency systems. We appreciate the opportunity to share our knowledge and perspective.

The Commission has issued this proposal following enactment of Public Law 115-4, which disapproved of the SEC's 2016 final rule implementing Section 1504.⁷ As noted in the proposal, because of Congressional Review Act (5 USC 801-808) requirements the SEC is prohibited from issuing 'a new rule that is substantially the same' as the disapproved rule. Nonetheless, the original statutory language of Section 1504 remains in force, and regulations issued by the SEC must satisfy these requirements.

We are concerned that in aiming to avoid charges that the new rule is 'substantially the same' as the 2016 rule, the proposed 1504 rule moves too far away from the underlying statutory requirements. The proposed rule includes a number of provisions that, in BHP's view, conflict with Section 1504's mandate that the Commission implement the statute in a manner 'consistent with the guidelines of the Extractive Industries Transparency Initiative', and that the rules 'support the commitment of the Federal Government to international transparency promotion efforts'. We address our primary concern – the proposed rule's definition of a 'project' – below.

While the Commission argues that the variances from the EITI Standard will result in cost savings to issuers, BHP's experience is that consistent mandatory and voluntary reporting requirements across jurisdictions and initiatives such as EITI actually reduces overall costs and increases efficiencies for both issuers and data users. Our comments below illustrate some of our experiences in complying with transparency systems based on the EITI Standard and highlight the cost effectiveness of reporting to a single global standard.

Response to Questions 35-46: 'Definition of a "Project"'

BHP does not support the proposed 1504 rule's 'Modified Project Definition', which differs from the definition used in both the EITI Standard and mandatory disclosure regimes such as the European Union (EU) Directive. Under the SEC's proposal, US regulations would not align with those adopted by the EU, Canada and other nations.⁸ This will present data users with inconsistent information and could require issuers to produce multiple sets of disclosure information to accommodate the differing requirements and reconcile any differences between reports.

BHP recommends that the SEC instead adopt the EITI Standard's definition of a 'project', which is based at the contract level:

A project is defined as operational activities that are governed by a single contract, license, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government. – EITI Standard, Requirement 4.7⁹

This is consistent with the national and regional disclosure regimes noted above and aligns with Section 1504's underlying statutory mandate. Adopting the EITI Standard's definition of project currently in use globally will reduce disclosure burden and compliance cost for issuers.

Response to Questions 81-83: 'Alternative Reporting'

BHP supports the Commission's proposal to allow issuers to meet the requirements of the 1504 rule by providing disclosures that comply with a foreign jurisdiction's 'substantially similar' reporting regime. Including this provision supports a globally harmonized and consistent approach to disclosure and aligns with policies set by the EU and other countries. It also reduces compliance costs for issuers that must meet the requirements of more than one jurisdiction.

Concurrent with the issuance of the 2016 Final Rule, the SEC recognised as 'alternative reports' disclosures complying with the reporting requirements of the EU Directive (as implemented in an EU member country).¹⁰ As noted in the Commission's 2016 action, the requirements established by the EU are 'substantially similar' to the disclosure requirements established by the Commission at that time.

BHP encourages the SEC to make a similar and concurrent equivalence determination when finalizing the current proposed 1504 rule. This would support efficient reporting by issuers such as BHP who must comply

⁷ Public Law 115-4, 131 Stat. 9 (February 14, 2017).

⁸ See the EU Directive, the Extractive Sector Transparency Measures Act (Canada) and the International Monetary Fund's Fiscal Transparency Code.

⁹ Extractive Industries Transparency Initiative, 'EITI Standard 2019, Requirement 4.7', available: <https://eiti.org/document/eiti-standard-2019#r4-7>.

¹⁰ 81 Fed. Reg. 49163-49164 (27 July 2016).

with the requirements of the EU Directive. It will also ensure that data users do not receive two separate and incomparable data sets released by the same issuer.

Even if the SEC were to agree the use of alternative reports by issuers, BHP urges the adoption of the EITI's definition of a 'project' in its final rules to align with international transparency efforts. As noted by the Commission, only one-third of issuers that would be subject to the requirements of the proposed rules are already providing disclosure data in compliance with the requirements of a foreign jurisdiction. This leaves a significant number of issuers who will be providing disclosure information within a framework that will not align with global transparency frameworks. In BHP's view, this outcome would not align with Section 1504's underlying requirement to 'support international transparency promotion efforts'.

Response to Questions 78-80: 'Exhibits and Interactive Data Format Requirements'

In our comments on the Commission's 2016 proposed rule, BHP encouraged the SEC to look to existing international transparency regulations and frameworks to 'align data reporting formats to enable users to compare information on a like for like basis'.¹¹

We maintain this position, and encourage the Commission to engage with the EITI, the EU and other entities to develop and use a common data format for tax and payments to governments disclosures. As outlined below, the need to reconcile data between multiple disclosure regimens that use differing definitions has the potential to increase the compliance costs faced by issuers. It would also cause confusion among data users and would not advance global transparency efforts.

Conclusion

Thank you again for the opportunity to provide comments on the Commission's proposed 1504 rule.

BHP encourages the SEC to issue a final rule that aligns the definition of project with that established in the EITI Standard and utilized by global transparency regimes such as the EU Directive. Basing the rule's definition of a project at the contract level supports harmonized global transparency efforts while also helping reduce total costs for issuers and data users.

The Commission should also take steps to ensure that disclosure reports developed in accordance with the EU Directive are recognized as 'alternative reports' under the regulation. Such recognition should occur concurrently with the issuance of a final rule.

BHP is happy to respond to any questions from the Commission; please contact Leslie Arnold in our Washington, DC office at leslie.arnold@bhp.com.

Regards



Premila Roe
Group Tax Officer

¹¹ BHP to Securities & Exchange Commission, Comments submitted to File No. S7-25-15, available: <https://www.sec.gov/comments/s7-25-15/s72515-9.pdf>.

