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Mavis Tan  
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Dear Ms Tan,

I am pleased to enclose a submission from BHP Billiton in relation to the ASX's consultation paper on proposed changes to ASX Listing Rules Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* in relation to analyst and investor briefings, analyst forecasts, consensus estimates and earnings surprises.

I trust you will find this submission to be useful to the consultation process. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

**Jane McAloon**  
President, Governance and Group Company Secretary

## **BHP BILLITON SUBMISSION TO ASX IN RELATION TO THE CONSULTATION PAPER ON PROPOSED CHANGES TO ASX LISTING RULES GUIDANCE NOTE 8 CONTINUOUS DISCLOSURE: LISTING RULES 3.1 – 3.1B.**

We welcome the opportunity to participate in this ASX consultation. BHP Billiton has a Dual Listed Company structure, combining an Australian company (BHP Billiton Limited) with a UK company (BHP Billiton Plc) as a single economic entity. We are therefore subject to the regulatory regimes of both Australia and the UK, and consistent with previous submissions on consultation papers to the ASX, we comment on the proposed changes to Guidance Note 8 from this perspective.

In summary, BHP Billiton is very supportive of the proposed changes to Guidance Note 8 which reflect the guidance by the Australasian Investor Relations Association (AIRA) in relation to the Compilation and Dissemination of Broker Forecasts and Consensus Estimates by Listed Entities. The proposed changes promote transparency and are consistent with BHP Billiton's commitment to maintaining the highest standards of disclosure, ensuring that all investors and potential investors have the same access to high-quality, relevant, accessible and timely information to assist them in making informed decisions. We do not propose to respond on each point in the consultation paper, however we would like to provide comment in relation to "correcting analyst forecasts and consensus estimates" and "publishing analyst forecasts or consensus estimates" (sections 7.4 and 7.5 respectively).

### ***Section 7.4: Correcting analyst forecasts and consensus estimates.***

BHP Billiton is supportive of the proposal by the ASX to re-write section 7.4 of Guidance Note 8. BHP Billiton agrees with ASX's position that an entity does not have an obligation to correct the earnings forecast of an individual analyst, or the consensus estimate of an individual market vendor, to bring it into line with internal earnings projections; and that there should be no obligation on an entity to publish its internal earnings projections just because they are different from an analyst's forecast or a consensus estimate of analysts' forecasts.

### ***Section 7.5: Publishing analyst forecasts or consensus estimates.***

BHP Billiton is supportive of the proposed new section 7.5 in Guidance Note 8 in relation to the publication of analyst forecasts or consensus estimates. BHP Billiton agrees with ASX's position that an entity can choose to publish a range of analysts' forecasts and consensus estimates with an appropriate disclaimer on the entity's website.

Section 7.5 in the consultation paper is currently drafted so that when publishing forecasts and estimates, companies are not selective and do not inadvertently provide de facto earnings guidance. Guidance is given by the ASX that the entity should disclose the source, completeness and currency of the information in question. Guidance is also given by the ASX that generally it is best if an entity publishing information about analyst forecasts includes all analysts known by the entity to cover its securities. In footnote 227, it is stated that if the entity has excluded a particular analyst, there should be a clear disclosure of the fact and a reasonable explanation as to why.

BHP Billiton suggests that guidance regarding exclusion of analysts (as well as some legitimate reasons for exclusion such as the source, completeness and currency of the information used in the analyst report) should be included in the substantive text of Guidance Note 8, rather than in a footnote. Companies will be reluctant to exclude analyst reports on the basis of a footnote in the Guidance Note, even where there are clear and legitimate reasons to do so. This could lead to the inclusion of inaccurate or out of date information that will ultimately misinform the market.

BHP Billiton strongly believes that guidance on the circumstances in which companies may exclude publishing certain analyst forecasts or estimates from the consensus figures should focus on the key underlying principles (no selective disclosure and no misleading information), rather than on specific prescriptive requirements. This approach ensures that companies will be able to

provide more accurate information to the market, while at the same time remaining transparent in this respect.

Companies may have objective and rational bases for excluding a particular analyst forecast, and it is our view that the updates to Guidance Note 8 should enable them to do so provided they comply with the key underlying principles of no selective disclosure and ensuring no misleading information as well as provide an explanation for exclusion on their website. BHP Billiton recognises that ASX may wish to include examples of the application of these principles, and suggests that ASX clarify that such examples are not prescriptive conditions nor an exhaustive list, but merely illustrative examples.

For example, footnote 227 suggests the only circumstance in which companies may exclude publishing certain analyst forecasts or estimates from the consensus figures is when the analyst has left his/ her firm *and* his/her last forecast is now substantially out of date. It is our view that forecasts (disregarding whether an analyst has left his/her firm) which are substantially out of date time-wise or because they have not been updated to reflect a key public announcement by the company (ie “stale information”) can distort consensus data and should be excluded, provided that the basis for excluding such forecast is objective, rational and fully disclosed. Further, if an analyst’s estimate has not been updated to incorporate a mining and resources company’s most recent and publicly available quarterly production and sales volume information, it is our view that this estimate is based on stale information. Excluding this analyst’s estimate from the consensus is once again both objective and rational and is *less* likely to provide a potentially misleading indication to the market. Similarly, there may be other good reasons for excluding certain analyst forecasts particularly in circumstances where the external variables factored into the estimates can be volatile and become substantially out of date quickly (even if a substantial period of time has not passed).

Additionally, the ASX’s position, as stated in section 7.4 of Guidance Note 8, is that if an analyst forecast or consensus estimate is materially in error due to a factual or computational error, it is important that the entity can point the error out to the analyst (provided it does so without disclosing non-public market sensitive information). BHP Billiton suggests that the ASX clarify that it is appropriate to remove an analyst’s estimate from published forecasts, estimates and consensus (with an appropriate explanation by the entity on its website) where the estimate is clearly wrong due to a factual or computational error and the analyst has not taken the opportunity to update their estimates.

BHP Billiton suggests that ASX also consider providing guidance in relation to the content of disclaimers that can be included by an entity when disclosing consensus data. Recognising that each disclaimer should be worded on a case by case basis to ensure a more accurate disclosure that reflects the company’s particular situation and reasons for exclusion, it may be appropriate to include guidance that the disclaimer should include such information as the company determines is necessary in the context of the key underlying principles noted above. For example, an appropriate disclaimer clearly made on the company’s website could state which analysts are “known analysts” from the company’s perspective as well as the reasons for excluding certain forecasts.

BHP Billiton’s view is that there should be clear guidance from ASX that exclusion is permitted as long as the reason for exclusion is objective, rational and clearly disclosed and does not amount to selective disclosure or misleading information. This approach will lead to companies calculating a more accurate consensus which is useful for their own purposes, in determining market expectations and whether there is likely to be a market sensitive earnings surprise, as well as contributing to a better informed market. An approach that is more restrictive than this risks leading to companies disseminating inaccurate information that is more likely to mislead rather than inform the market.