

**Office of the Chairman**

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Sir Christopher Hogg  
Chairman  
Financial Reporting Council  
Aldwych House, 71-91 Aldwych  
London WC2B 4HN  
United Kingdom

Dear Sir Christopher

**Review of the Combined Code**

I am writing in relation to the draft revised Combined Code, circulated by the Financial Reporting Council (FRC) with its final report on the 2009 review of the Combined Code.

The draft revised Code contains what we believe are some significant and commendable changes, in particular the greater focus on a board's mix of skills and experience.

There are four specific aspects of the draft revised Code on which I wish to comment.

Frequency of director re-election

In relation to director re-election, there are as we contended in our previous submission some strong arguments in favour of applying the same "rule" to every director. Of the two models presented in the draft revised Code, on balance and in principle, we prefer the approach of all directors being subject to annual election. There are transitional matters which need to be taken into account. Given that annual election of Directors is not common market practice, any adoption should be phased in over a time period.

For BHP Billiton however, as a dual listed company (DLC), with BHP Billiton Plc having its primary listing in London and BHP Billiton Limited having its primary listing in Australia, there are other relevant considerations - specifically, how directors may be nominated for election compared with other key markets, as well as the thresholds for placing any item on the Notice of Meeting.

In the UK if a shareholder wishes to nominate a candidate for election to the board the threshold is the same as proposing any other item: the support of 100 shareholders or 5% of voting rights is required. However in Australia corporate practice typically allows any shareholder to nominate a person for election to the board subject only to nominations deadlines and the candidate's consent. Optimally, there would be a sensible balance between, on the one hand, the ability of shareholders to put forward director-candidates and, on the other hand, the increasingly important role played by nomination committees in ensuring that the board as a whole is made up of a blend of the requisite skills and experience that allows appropriate probing and challenging of management. In our view the UK approach strikes the right balance allowing external candidates to run for the board if a meaningful level of shareholder support exists.

### Evaluation

We note – and support – proposed new Code provision B.6.2, which calls for an *external* evaluation of the board at least every three years.

We also note there has been no change (other than renumbering) to draft Principle B.6, which recommends a “formal and rigorous” *annual* evaluation of the board, each committee and each director. If reviews are done properly and seriously they require a substantial time commitment on the part of the board. In my experience, if serious reviews of the board, each committee and each director were conducted every year, there would be almost no period of the year when a review was not taking place. Requiring reviews to be conducted too regularly undermines their seriousness and can encourage box-ticking. It may be preferable to think in terms of a cycle of reviews, with at least *one* of the three (board, committees, individual directors) being reviewed formally and thoroughly each year. In the intervening years, a less formal and less time-consuming review could be conducted tailored to suit the circumstances.

### Corporate reporting

We note proposed new Code provision C.1.2, recommending that the annual report should include an explanation of the basis on which the company generates revenues and makes a profit from its operations and its overall financial strategy. It would be helpful if some additional guidance were to be provided in relation to draft provision C.1.2. Like several other large UK companies that have American Depositary Receipt programs, BHP Billiton is required to comply with US financial disclosure rules as well as UK rules, and some guidance on what if any additional information is anticipated by draft provision C.1.2 would be beneficial.

### Risk Management

We note that the risk management and internal control provisions are being extended to include a new main principle related to the board being responsible for defining the company’s risk appetite and tolerance. Considerations of risk, and related appetite or tolerance, can vary significantly between industries and companies. While certain financial risk and quantitative modelling type metrics may be relevant for the financial industry, other risk factors, including qualitative ones, may be more relevant to differing industries. We suggest that any guidance provided recognise that a board’s definition of its risk appetite and tolerance may be reflected via a range of quantitative and/or qualitative dimensions.

I trust you find our submission of assistance.

Yours sincerely



**D R Argus AC**  
Chairman