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The Chairman
International Accounting Standards Board
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Dear Sir

Re: Invitation for Comment on IFRIC Draft Interpretation D23 *Distributions of Non-cash Assets to Owners*

BHP Billiton welcomes the opportunity to comment on "D23 Distributions of Non-cash Assets to Owners" issued by the IASB in January 2008.

Whilst we agree with the need for clarity on the accounting for non-cash distributions to owners, we disagree with a number of the key components of the draft interpretation. Our primary concerns are as follows:

- We find it difficult to understand why distributions of non-cash assets to its existing owners are recorded at fair value
- Given the very strong focus in the framework and other accounting standards that transactions with owners as owners do not generate an impact on the income statement, we do not understand why this principle has been changed
- The reliance on IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* to provide a platform to measure the dividend payable. Given the certainty of timing and amount of proposed dividends, we query the use of IAS 37 is the key vehicle for measurement,

We agree that it would be helpful if all distributions to owners, regardless of the types of assets to be distributed (cash or non-cash), should be addressed by a single stand-alone standard. However, we do not believe that IAS 37 is the appropriate vehicle for this guidance as the commitment to pay a dividend is not a provision (for the reasons noted above) and there is currently insufficient appropriate detailed guidance to address the different forms of dividends which are used and their resultant outcomes.

We have provided further detail on these points in our responses below

Specific matters on which comment is sought

Question 1 – Specifying how an entity should measure a liability for a dividend payable.

Paragraph 9 of the draft interpretation proposes that an entity should measure a liability to distribute non-cash assets to its owners in accordance with IAS 37 Provisions, Contingent Liabilities and Contingent Assets. The IFRIC concluded that all dividends payable, regardless of types of assets to be distributed, should be addressed by a single standard.

Do you agree with the proposal? If not, do you agree that all dividends payable should be addressed by a single standard? Why? What alternative would you propose?

We have a number of concerns with the measurement aspect in the draft interpretation, as follows:

- i) IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* defines a provision as "a liability of uncertain amount or timing". Given that dividends are certain in both the amount and timing, we do not agree with the proposal that an entity should measure dividends (non-cash or cash) in accordance with IAS 37. Accordingly, where a dividend has been declared and is payable, it is probable that an outflow of resources will result from the settlement of the present obligation and it should be measured as a liability in accordance with the Framework.

- ii) We believe that the solution proposed by D23, which separates the recognition of a liability to make a distribution to owners from the settlement of that liability, to be somewhat artificial. That is, it separates what is in substance a single transaction with owners as owners (a dividend) into two transactions: recognition of a liability to pay a dividend (a transaction with the owners as owners) and then settlement of the liability (a transaction with owners as creditors). In the case of a regular cash settled dividend, measurement issues are rare, accordingly, the separation of the single event into two transaction steps is of little consequence. However, distributions of non-cash assets to owners are in reality a one step process. That is, the distribution of a non-cash asset to shareholders generally requires approvals from shareholders and/or legal courts before an obligation arises and before that obligation can be settled. Accordingly, the distribution should be measured and recognised at a single point in time without an artificial dissection into liability creation and settlement.
- iii) Given that the distribution of a non-cash asset is to the existing owners, we do not believe that the distribution should be recognised in a manner that gives rise to the recognition of a gain. Rather, we believe the asset should be derecognised at its carrying value.
- iv) We believe that more clarity should be provided as to whether the Draft Interpretation is intended to apply to both returns on investments and returns of investments. Whilst BHP Billiton believes it is the intention that the Draft Interpretation only applies to the former (being dividends) it is not clear that it could not also apply to returns of investments.
- v) We also believe it would be beneficial to users to provide an illustrative example of a distribution where the owners are given the choice of receiving either non-cash assets or a cash alternative.
- vi) If the IFRIC continues with its intention to use IAS 37 to measure a distribution of non-cash assets to owners at fair value of the asset to be distributed, we note that IAS 37 does not address or define the term "fair value". It requires only that the liability be measured at the best estimate of the expenditure required to settle a liability which is either (IAS 37, p.37):
 - a) the amount that an entity would rationally pay to settle the obligation at the end of the reporting period; or
 - b) the amount that an entity would pay to transfer the obligation to a third party at the end of the reporting period.

As differences between the estimates determined in accordance with (a) and (b) above may arise in practice, one being internally focussed the other having an external focus, inconsistencies in measurement may still arise and the IFRIC is silent as to which measurement method should take precedent where differences result.

In the situation of an entity choosing to distribute an existing asset to its owners as a distribution, neither of the measures described in a) or b) make any commercial sense as a basis of measurement. An entity with an existing asset (say shares in another company) which it has chosen to distribute to owners (say on a pro-rata basis, executed as a dividend in specie) is likely to have decided to make that distribution for strategic reasons, and to make it as a non-cash distribution to satisfy capital management objectives. Accordingly, the entity would rationally not be prepared to pay anything to either settle or transfer the obligation to complete the distribution.

Further, paragraph 10 proposes "that where an entity is providing a choice of either a cash or non-cash alternative, the entity shall estimate the dividend payable by considering both the fair value of each alternative and the associated probability of owners selecting each alternative." We believe that in practice it would be extremely difficult to accurately determine which alternative owners would select.

With respect to the second part of the question as to whether dividends payable should be addressed by a single standard, we believe that all dividends payable, regardless of the types of assets to be distributed (cash or non-cash), should be addressed by a single stand-alone standard. However, we do not believe that IAS 37 is the appropriate vehicle for this guidance as the commitment to pay a dividend is not a provision (for the reasons noted above) and there is currently insufficient appropriate guidance to address the different forms of dividends which are used and their resultant outcomes.

Question 2 – Specifying how any difference between the carrying amount of the assets distributed and the carrying amount of the dividend payable should be accounted for when an entity settles the dividend payable.

Paragraph 12 of the draft interpretation proposes that, when the dividend payable is settled, any difference between the carrying amount of the assets distributed and the carrying amount of the dividend payable should be recognised in profit and loss. Paragraphs BC28 – BC43 of the Basis for Conclusions explain the reasons for this proposal. The Basis for Conclusions also includes an alternative view that the difference should be recognised directly in equity (BC44).

Which views do you support and why?

As noted above, BHP Billiton does not believe that the distribution of a non-cash asset should be measured at fair value. However, if the outcome of IFRIC's considerations is that all distributions must be made at fair value, we prefer the alternative view that any difference between the carrying amount of the assets distributed and the carrying amount of the dividend payable should be recognised directly in equity and not recognised in profit and loss due to the following:

- i) we believe that an asset distribution is a transaction between the entity and its owners acting in their capacity as owners (that is, a single transaction) and as such, recognition of a gain through profit and loss is inconsistent with both the definition of income provided in the *Framework* (para.75) and IAS 1 (para.106(c)) which requires that transactions between an entity and its owners acting in their capacity as owners shall be recognised directly in equity.
- ii) The rationale provided in paragraphs 28 – 43 as to why any difference between the carrying amount of the assets distributed and the carrying amount of the dividend payable should be recognised in profit and loss do not provide a compelling reason why the principles noted above in i) should be changed.
- iii) Booking the credit to profit and loss on this one type of transaction with owners as owners compromises the intent and outcome of all other transactions with owners as owner, which are required to be taken to equity.
- iv) The proposed treatment of taking the credit balance to profit and loss is noted in the basis for conclusions to give rise to the same accounting results regardless of whether an entity distributes non-cash assets to its owners, or sells the non-cash assets first and distributes the cash received to its owners. We do not concur with this rationale for two reasons; i) it is dangerous to conclude that a sale transaction by the entity followed by a cash distribution would produce the same outcome as a non-cash distribution as vastly different tax or commercial implications may arise; ii) the proposed sequence of events in the draft interpretation results in the credit balance being taken through profit and loss after the distribution was declared and obligation recognised. In those jurisdictions where dividends may only be paid out of available profits, the transaction sequence proposed by the interpretation may be unlawful. This contrasts to a disposal transaction where the asset is disposed of and profit recorded, prior to the recognition of any dividend obligation. In this situation, , the credit balance can create sufficient profits to allow a distribution to owners.
- v) The Draft Interpretation does not appear to have contemplated situations where an entity has adopted the revaluation model. In this case, entities will have recognised progressive revaluations in equity. The draft interpretation does not describe how the final uplift should be booked (income statement or equity).

Application of our preferred alternative method of accounting, operating within the constraints of a "fair value" measurement of the distribution obligation, could require:

- The chosen assets being distributed to be identified as a separate class of assets – held for distribution (refer comments below re held for sale classification)
- Those assets would be measured at fair value, with the revaluation gains recognised directly in equity
- The distribution declared would be charged against the revaluation reserve in the first instances, with the balance against other equity balances as appropriate.

Question 3 – Whether an entity should apply the requirements of IFRS 5 to non-current assets held for distribution to owners.

Both the Board and the IFRIC concluded that the requirements in IFRS 5 Non-current Assets Held for Sale and Discontinued Operations should be applied to non-current assets held for distribution to owners as well as to non-current assets held for sale.

Do you agree that an entity should apply IFRS 5 to non-current assets that are held for distribution to owners? If not, why and what alternative would you propose?

The Board noted that IFRS 5 requires an entity to classify a non-current asset as held for sale when the sale is highly probable and the entity is committed to a plan to sell. For assets held for distribution to owners, this raises the following three questions:

- (a) should an entity apply IFRS 5 when it is committed to make a distribution or when it has an obligation to distribute the assets?*
- (b) Do you think there is a difference between those dates?*
- (c) If there is a difference between the dates and you think that an entity should apply IFRS 5 at the commitment date, what is the difference? What indicators should be included in IFRS 5 to help an entity to determine that date?*

We agree that applying the requirements of IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations* would provide important information to users of financial statements regarding non-cash distributions of assets to shareholders. However, in applying IFRS 5, we believe there are practical difficulties in determining when such transactions meet the criteria for IFRS 5 of being highly probable.

We expect that an entity would be considered to be committed to making a distribution when the distribution is announced by the Board of Directors and there is strategic commitment to making such distribution. However, we believe that the entity does not become obligated to distributing the assets until such time as the shareholders have approved the distribution and appropriate regulatory approval has also been obtained, if applicable (e.g. court approval). When the distribution is subject to regulatory or shareholder approval, we believe that for the distribution to be highly probable, the entity must be obligated to making the distribution as the entity cannot predict the outcome of court approval or the voting of shareholders and creditors (where appropriate). On this basis, we believe that there could be instances where the date an entity is committed to a distribution is different to the date that an entity becomes obligated to making the distribution and further, that IFRS 5 should be applied from the date an entity becomes obligated to making the distribution.

In addition, IFRS 5 requires that when an asset is classified as being held for sale that the asset should be measured at the lower of its carrying amount and fair value less costs to sell. BHP Billiton believes it would be beneficial for the Draft Interpretation to provide authoritative guidance on the determination of fair value in the context of an asset to be distributed to owners where no consideration is received and there are no selling costs.

We would like to thank the IFRIC for providing the opportunity to comment on this important issue.



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