

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re BHP BILLITON LIMITED : Civil Action No. 1:16-cv-01445-NRB  
SECURITIES LITIGATION :  
: CLASS ACTION  
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This Document Relates To: : STIPULATION OF SETTLEMENT  
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ALL ACTIONS. :  
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This Stipulation of Settlement, dated as of September 14, 2018 (the “Stipulation”), is made and entered into by and among: (i) Lead Plaintiffs City of Birmingham Retirement and Relief System and City of Birmingham Firemen’s and Policemen’s Supplemental Pension System (together, “Funds” or “Plaintiffs”), on behalf of themselves and each of the Class Members, by and through their counsel of record in the Litigation (as defined herein); and (ii) Defendants BHP Billiton Limited and BHP Billiton plc (together, “Defendants” or “BHP,” and with Plaintiffs, the “Settling Parties”), by and through their counsel of record in the Litigation. The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

The Settling Parties agree that certification of the Class, for settlement purposes only, is appropriate in the Litigation. For purposes of this settlement only, the Class comprises all Class Members, as defined in ¶1.7 below. The Settling Parties intend that the provisions herein concerning certification of the Class shall have no effect in the event the settlement does not become Final, as defined in ¶1.15 below.

## **I. THE LITIGATION**

An indirect subsidiary of BHP, BHP Billiton Brasil Ltda. (“BHP Brasil”), and Vale S.A. (“Vale”) each are 50% shareholders of Samarco Mineração, S.A. (“Samarco”), an iron-ore mining company located in Brazil. On November 5, 2015, the Fundão tailings dam, which is part of Samarco’s Germano iron ore mining complex in Minas Gerais, Brazil, failed, releasing mining waste (called tailings) that caused property damage and resulted in the loss of life.

On February 24, 2016, Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) filed a Complaint for Violations of the Federal Securities Laws on behalf of plaintiff Jackson County Employees’ Retirement System and a putative class of all purchasers of Defendants’ ADRs (as

defined below) between September 25, 2014 and November 30, 2015, inclusive, alleging claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 against: (i) BHP; (ii) Jac Nasser (“Nasser”), Chair of BHP’s Board of Directors; (iii) Andrew Mackenzie (“Mackenzie”), BHP’s Chief Executive Officer; (iv) Peter Beaven (“Beaven”), BHP’s Chief Financial Officer (“CFO”); and (v) Graham Kerr (“Kerr”), BHP’s CFO from November 2011 until October 1, 2014, arising out of allegedly false and misleading statements and omissions pertaining to BHP’s focus on safety and its risk management and monitoring protocols.

Subsequently, on March 15, 2016, Pomerantz LLP (“Pomerantz”) filed a Complaint for Violations of the Federal Securities Laws on behalf of plaintiff Gary Katz, alleging similar claims against the defendants named in the February 24, 2016 complaint. On April 25, 2016, the Funds and others separately moved to consolidate the pending cases and for the appointment of lead plaintiffs and lead counsel under the Private Securities Litigation Reform Act of 1995, and, thereafter, all but one of the competing lead plaintiff movants withdrew their applications and/or filed non-oppositions to the Funds’ motion. On June 14, 2016, the Court entered an Order granting the Funds’ motion and appointing them as Lead Plaintiffs and their counsel, Robbins Geller, as Lead Counsel.

On August 15, 2016, the Funds, together with plaintiff James A. Crumpley, a purchaser of the ADRs of BHP Billiton plc represented by Pomerantz, filed the Consolidated Amended Complaint for Violations of the Federal Securities Laws (“CAC”), comprised of 105 pages and 355 numbered paragraphs. The CAC alleged that BHP and its executives misrepresented and/or omitted material information concerning: (i) BHP’s commitment to health and safety; (ii) the adequacy of BHP’s safety, risk management, and monitoring protocols; (iii) BHP’s compliance with local laws and regulations; (iv) Samarco’s production capacity and projected performance;

(v) the toxicity of tailings-based mudflows resulting from the failure of the Fundão dam; (vi) BHP's progressive dividend policy; (vii) uncertainties and risks relating to Samarco; and (viii) the completeness of BHP's Forms 20-F for fiscal years 2014 and 2015.

On October 14, 2016, the named defendants jointly filed a motion to dismiss the CAC pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, variously asserting that: (i) the CAC alleged non-actionable claims for mismanagement, not fraud; (ii) the CAC did not plead any actionable misstatements or omissions; (iii) the CAC did not plead scienter; and (iv) the Section 20(a) claim failed in the absence of a violation of Section 10(b). On July 26, 2017, after the parties had completed briefing the motion to dismiss, the Court heard oral argument on the motion.

On April 5, 2017, Plaintiffs submitted a letter to the Court concerning Judge Woods' decision to sustain certain claims in a putative class action against Vale, entitled *In re Vale S.A. Securities Litigation*, No. 1:15-cv-09539-GHW (S.D.N.Y.) ("Vale Litigation"), to which BHP responded on April 21, 2017. On August 1, 2017, the Court requested the parties' views on statements alleged in the Consolidated Amended Class Action Complaint filed on April 29, 2016 in the Vale Litigation, in which Vale allegedly referenced an analysis commissioned by Samarco that confirmed the tailings were not toxic or threatening to the environment. On August 9, 2017, the parties each submitted a letter to the Court expressing their views on the issue.

On August 28, 2017, the Court issued a Memorandum and Order, filed August 29, 2017, granting in part and denying in part the named defendants' motion to dismiss the CAC, holding that the CAC adequately alleged corporate scienter and determining that the CAC "sufficiently alleged that BHP made [ten] actionable misstatements regarding its commitment to safety and its risk management controls, and omissions of facts needed to make these statements not

misleading.” The Court further held that the CAC had failed to allege scienter as to defendants Nasser, Mackenzie, Beaven and Kerr, and dismissed 32 of the CAC’s alleged misstatements.

Lead Counsel thereafter continued its investigative efforts, which included, among other things: engaging and liaising with counsel in Australia and Brazil to obtain documents, contact potential witnesses, observe hearings (where appropriate), and evaluate the substantive and/or procedural law applicable to obtaining discovery in those forums; gathering, translating, reviewing and analyzing voluminous materials obtained from criminal and regulatory proceedings in Brazil; reviewing public information, including press releases, articles and analyst reports, regarding BHP and the failure of the Fundão dam; submitting to, and negotiating with, the U.S. Securities and Exchange Commission a request, pursuant to the Freedom of Information Act, for certain U.S. regulatory filings concerning BHP and Vale; and identifying and contacting potential witnesses, located in the U.S. and abroad, to discuss aspects of the claims, Samarco’s operations, and BHP’s involvement (if any) in those operations. Lead Counsel also engaged mining experts and damages consultants.

On October 12, 2017, BHP and the Plaintiffs submitted for the Court’s consideration the Joint Rule 26(f) Report, in which they each set forth their respective views, after discussions and negotiations, on the scope of discovery, including the discovery available from non-parties. On October 16, 2017, the Court issued an order approving the non-disputed portions of the Joint Rule 26(f) Report and resolving the parties’ disputes as to the scope of discovery.

On October 13, 2017, BHP filed its Answer to the CAC, which consisted of 355 numbered paragraphs, asserted 29 affirmative defenses, and spanned 65 pages. On October 17, 2017, Plaintiffs served their First Set of Requests for the Production of Documents, comprised of 55 individual requests, to which BHP responded and objected in writing on November 29, 2017.

On October 25, 2017, BHP served its First Request for Production of Documents, comprised of 29 individual requests, to which Plaintiffs responded and objected in writing on December 4, 2017.

The parties exchanged Rule 26(a) Initial Disclosure Statements on October 20, 2017. They also negotiated a Stipulation and [Proposed] Order of Confidentiality, which the Court so ordered on October 30, 2017, and negotiated and executed a Form of Production Agreement concerning the form of production of hard copy and electronically-stored information for discovery purposes.

Plaintiffs thereafter served subpoenas for documents and testimony on Marcus Philip Randolph (“Randolph”) (BHP’s Chief Executive of Ferrous & Coal, a member of BHP’s Group Management Committee (“GMC”), and Chairman of Samarco’s Board of Directors before the Class Period) and Timothy Cutt (“Cutt”) (BHP’s President of Petroleum and a GMC member during the Class Period), and reviewed their and BHP’s written responses and objections, served on November 14, 16, 22 and 30, 2017. Plaintiffs also engaged in discussions with counsel for Randolph and Cutt regarding the subpoenas, ultimately securing acceptable representations from Cutt concerning his lack of involvement in Samarco.

On March 8, 2018, Plaintiffs filed a motion in New Mexico federal district court, where Randolph resides, to compel the production of documents in contemplation of a deposition (to be scheduled at a later date), and thereafter engaged in further negotiations with his counsel on the scope of his production obligations. Randolph ultimately produced certain documents responsive to the subpoena.

Additionally, on March 16, 2018, BHP and the Plaintiffs reached an agreement concerning the scope of discovery, including the identities of document custodians, the relevant

time period for discovery, and production from non-party Samarco. These issues were the subject of negotiations from November 2017 until March 2018. These negotiations and the negotiations with Randolph were complicated by the fact that Randolph and other then-current and former Samarco board members had been criminally charged in Brazil, which gave rise to concerns associated with the privilege against self-incrimination under Brazilian and/or U.S. law. BHP produced information from Samarco alongside its own materials in connection with its rolling productions.

In April 2018, Plaintiffs served a subpoena for documents and testimony on Nasser, to which he responded and objected in writing on May 4, 2018 and thereafter engaged in negotiations, through counsel, concerning the scope of the subpoena in contemplation of a deposition, to be scheduled at a later date. In April 2018, Plaintiffs also served a document subpoena on Gibson Dunn & Crutcher LLP, Vale's counsel, seeking materials related to the Vale Litigation, and later secured information from Vale.

For their part, Plaintiffs engaged in negotiations with defense counsel concerning the scope of Plaintiffs' production obligations and ultimately produced tens of thousands of pages of responsive material concerning the allegations of the CAC, facts relating to BHP and Samarco, and Plaintiffs' transactions in BHP securities. Additionally, in May 2018, Plaintiffs each produced a member of their respective Boards of Managers to testify in connection with class certification proceedings: (i) Catina Williams for City of Birmingham Retirement and Relief System; and (ii) Dexter Cunningham for City of Birmingham Firemen's and Policemen's Supplemental Pension System.

Additionally, Plaintiffs engaged Dr. Steven P. Feinstein as their market efficiency expert. In connection with class certification discovery: (i) Plaintiffs served Dr. Feinstein's opening

report on March 14, 2018; (ii) Lead Counsel represented Dr. Feinstein at his April 24, 2018 deposition; (iii) Lead Counsel analyzed the competing expert reports of Dr. Rene M. Stulz (May 11, 2018 and amended on May 18, 2018); (iv) Lead Counsel conducted Dr. Stulz's deposition on June 21, 2018; and (v) Plaintiffs served Dr. Feinstein's rebuttal expert report on July 5, 2018. On June 29, 2018, Plaintiffs filed motions for class certification and to exclude the report and opinions of Dr. Stulz. By that time, Plaintiffs had assembled a team of ten English and/or Portuguese-language attorneys to review, code and analyze the documents obtained in discovery and from other sources.

In June 2018, the parties agreed to engage in mediation and retained the services of the Honorable Layn R. Phillips, a retired judge of the U.S. District of Oklahoma and a nationally-recognized mediator of complex cases and class actions. Following the exchange of mediation statements in July 2018 and a conference between the parties and their loss causation and damages consultants, the parties attended a full-day mediation on August 1, 2018 in New York City. The parties were unable to successfully resolve this matter at that time.

Subsequently, the parties and the mediator engaged in further discussions, and on August 6, 2018, the parties reached an agreement-in-principle to resolve the Litigation, which agreement they memorialized in a term sheet the same day (subject to the negotiation and further memorialization of mutually acceptable terms in this Stipulation). Also on August 6, 2018, the parties advised the Court of their agreement-in-principle to resolve this Litigation. Thereafter, the parties negotiated the terms of this Stipulation.

## **II. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

This Stipulation constitutes a compromise of matters that are in dispute between the Settling Parties. Defendants are entering into this Stipulation solely to eliminate the cost, disruption and uncertainty of further litigation. Each Defendant denies any wrongdoing, and this

Stipulation shall not be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants or their Related Parties (as defined herein) with respect to any claim or allegation of any fault, liability, wrongdoing, or damage whatsoever, or any infirmity in the defenses that Defendants or Related Parties have, or could have, asserted. Defendants expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever.

### **III. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. Plaintiffs and their counsel recognize, however, the expense and length of continued proceedings necessary to prosecute the Litigation through trial and appeals. Plaintiffs and their counsel also have taken into account the uncertain outcome and risk of litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs and their counsel also are mindful of the inherent problems of proof under, and possible defenses to, the securities law violations asserted in the Litigation. Plaintiffs and their counsel believe that the settlement set forth in the Stipulation confers substantial benefits upon the Class. Based on their evaluation, Plaintiffs and their counsel have determined that the settlement set forth in the Stipulation is in the best interests of Plaintiffs and the Class.

### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

Based on the foregoing and subject to the approval of the Court, Plaintiffs (for themselves and the Class Members) and Defendants, by and through their respective counsel of record, stipulate and agree that the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all

Settling and Related Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

**1. Definitions**

As used in the Stipulation the following terms have the meanings specified below:

1.1 “ADR” means a BHP ADR or a BBL ADR.

1.2 “Authorized Claimant” means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.3 “BBL ADR” means an American Depositary Receipt that evidences an ownership interest in a specified number of American Depositary Shares, which in turn, represent an interest in a specified number of ordinary shares of BHP Billiton plc.

1.4 “BHP” means BHP Billiton Limited and BHP Billiton plc.

1.5 “BHP ADR” means an American Depositary Receipt that evidences an ownership interest in a specified number of American Depositary Shares, which in turn, represent an interest in a specified number of ordinary shares of BHP Billiton Limited.

1.6 “Claims Administrator” means the firm of Gilardi & Co. LLC.

1.7 “Class” means all persons and entities who purchased or otherwise acquired an interest in the ADRs between September 25, 2014 and November 30, 2015, inclusive, on any exchange or otherwise. Excluded from the Class are (i) Defendants, (ii) Related Parties (as defined in ¶1.24), (iii) Immediate Family Members of any natural persons in (ii), (iv) any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant had a controlling interest during the Class Period, and (v) the legal representatives, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class are any persons and entities who are found by the Court to have timely and validly requested exclusion.

1.8 “Class Member” means a Person who falls within the definition of the Class as set forth in ¶1.7 above.

1.9 “Class Period” means the period from September 25, 2014 through November 30, 2015, inclusive.

1.10 “Court” means the United States District Court for the Southern District of New York.

1.11 “Defendants” means BHP Billiton Limited and BHP Billiton plc.

1.12 “Defendants’ Counsel” means Sullivan & Cromwell LLP.

1.13 “Effective Date,” or the date upon which this settlement becomes “effective,” means one (1) business day after the date by which all of the events and conditions specified in ¶8.1 of the Stipulation have been met and have occurred or have been waived.

1.14 “Escrow Agent” means the law firm of Robbins Geller Rudman & Dowd LLP or its successor.

1.15 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, immediately after the determination of that motion or appeal so that it is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise in such a manner as to permit the consummation of the settlement substantially in accordance with the terms and conditions of this Stipulation. For purposes of

this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this settlement, but shall not include any appeal which concerns only the issue of (i) Plaintiffs’ counsel’s attorneys’ fees and expenses, (ii) payments to Plaintiffs for their time and expenses, (iii) the Plan of Allocation of the Settlement Fund, as hereinafter defined, or (iv) the procedures for determining Authorized Claimants’ recognized claims. Any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to one or more of (i)–(iv) shall not in any way delay or preclude a judgment from becoming Final.

1.16 “Immediate Family Members” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this definition, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

1.17 “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.18 “Lead Counsel” means Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101.

1.19 “Litigation” means the action captioned *In re BHP Billiton Limited Securities Litigation*, No. 1:16-cv-01445-NRB.

1.20 “Net Settlement Fund” means the Settlement Fund less any attorneys’ fees, expenses, and interest and any award to Plaintiffs provided for herein or approved by the Court and less Notice and Administration Expenses, Taxes and Tax Expenses, and other Court-approved deductions.

1.21 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.22 “Plaintiffs” means City of Birmingham Retirement and Relief System and City of Birmingham Firemen’s and Policemen’s Supplemental Pension System.

1.23 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Allocation is not part of the Stipulation and neither Defendants nor their Related Parties shall have any responsibility or liability with respect thereto.

1.24 “Related Parties” means each of a Defendant’s respective present and former parents, subsidiaries, joint ventures (including, for the avoidance of doubt, Samarco), divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, attorneys, advisors, accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives, and assigns of each of them, in their capacity as such.

1.25 “Released Claims” means any and all claims, debts, demands, rights or causes of action or liabilities of every nature and description (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, local, foreign, statutory or common law, or any other law, rule or regulation, whether asserted or unasserted, fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, against BHP or the Related

Parties, arising out of or relating to both: (i) the allegations, circumstances, events, transactions, facts, matters, occurrences, representations or omissions involved in, set forth, or referred to in the Litigation, and (ii) the purchase or acquisition of ADRs during the Class Period. For the avoidance of doubt, Released Claims does not include, nor is it intended to include, the claims asserted or that may be asserted in: (a) *Banco Safra S.A. – Cayman Islands Branch v. Samarco Mineração S.A.*, No. 1:16-cv-8800-RMB (S.D.N.Y.), (b) *Impiombato v. BHP Billiton Limited*, VID649/2018 (Vict. Registry – Fed. Ct. of Austl.), or (c) any other cases, consolidated into any of the foregoing actions or otherwise, to the extent that the claims asserted in the matters set forth in (a)–(c) do not arise out of or relate to the purchase or acquisition of ADRs or an interest therein during the Class Period. Released Claims does not include any claims relating to the enforcement of the settlement or any claims against any person or entity who or which submits a request for exclusion from the settlement class that is accepted by the Court.

1.26 “Released Persons” means each and all of the Defendants and their Related Parties.

1.27 “Settlement Amount” means Fifty Million Dollars (\$50,000,000.00) in cash to be paid by wire transfer to the Escrow Agent pursuant to ¶3.1 of this Stipulation.

1.28 “Settlement Fund” means the Settlement Amount plus all interest and accretions thereto and which may be reduced by payments or deductions as provided herein or by Court order.

1.29 “Settling Parties” means, collectively, Defendants, Plaintiffs, and the Class.

1.30 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

1.31 “Unknown Claims” means any Released Claims which Plaintiffs or Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement or seek exclusion from the Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the U.S., or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without

malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

1.32 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

## **2. Stipulation of Class Certification**

2.1 The Settling Parties stipulate to: (i) certification, for settlement purposes only, of the Class (as defined above), pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (ii) appointment of Plaintiffs as the class representatives; and (iii) appointment of Lead Counsel as class counsel. Certification of the Class shall be binding only with respect to the settlement of the Litigation and only if the Judgment contemplated by this Stipulation becomes Final and the Effective Date occurs.

## **3. The Settlement**

### **a. The Settlement Amount**

3.1 In consideration of the settlement of the Released Claims against the Released Persons, BHP shall pay or cause to be paid the Settlement Amount by wire transfer in accordance with instructions to be provided by the Escrow Agent within fifteen (15) business days of the entry of an order granting preliminary settlement approval. Alternatively, if the entire Settlement Amount is not timely paid to the Escrow Agent, Lead Counsel may terminate the settlement but only if: (i) Lead Counsel has notified Defendants' Counsel in writing of Lead Counsel's intention to terminate the settlement, and (ii) the entire Settlement Amount is not transferred to the Escrow Agent within five (5) business days after Lead Counsel has provided such written notice. The Escrow Agent shall deposit the Settlement Amount plus any accrued

interest in a segregated escrow account (the “Escrow Account”) maintained by the Escrow Agent.

3.2 BHP’s sole monetary obligation under this Stipulation shall be for BHP to pay or cause to be paid the Settlement Amount and BHP shall not be liable for any other amounts, provided however, that BHP shall bear the costs of disseminating notice under the Class Action Fairness Act of 2005, as provided under ¶4.2 below.

**b. The Escrow Agent**

3.3 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶3.1 hereof in U.S. Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the U.S. Government or an Agency thereof, or fully insured by the U.S. Government or an Agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund and the Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

3.4 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, by an order of the Court, or with the written agreement of Defendants’ Counsel.

3.5 Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Stipulation. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

3.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

3.7 Prior to the Effective Date and without further order of the Court, up to \$400,000 of the Settlement Fund may be used by Lead Counsel to pay reasonable costs and expenses actually incurred in connection with providing notice to the Class, locating Class Members, soliciting claims, assisting with the submission of claims, processing Proof of Claim and Release forms, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any (“Notice and Administration Expenses”). After the Effective Date, Lead Counsel may pay all further reasonable Notice and Administration Expenses, regardless of amount, without further order of the Court.

3.8 It shall be Lead Counsel’s sole responsibility to disseminate the Notice and Summary Notice (as defined below) to the Class in accordance with this Stipulation and as ordered by the Court. Class Members shall have no recourse as to the Released Persons with respect to any claims they may have that arise from any failure of the notice process.

**c. Taxes**

3.9 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶3.9, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the

necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶3.9(a) hereof) shall be consistent with this ¶3.9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶3.9(c) hereof.

(c) All (a) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (b) expenses and costs incurred in connection with the operation and implementation of this ¶3.9 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶3.9) (“Tax Expenses”), shall be paid out of the Settlement Fund; in all events the Released Persons and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of the Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as,

and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither the Released Persons nor their counsel are responsible nor shall they have any liability for any Taxes or Tax Expenses. The parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶3.9.

**d. Termination of Settlement**

3.10 In the event that the Stipulation is not approved or the Stipulation is terminated, canceled, or fails to become effective for any reason, the Settlement Fund less Notice and Administration Expenses or Taxes or Tax Expenses paid, incurred, or due and owing in connection with the settlement provided for herein, shall be refunded (together with any tax refunds when obtained) pursuant to written instructions from Defendants' Counsel in accordance with ¶8.4 herein.

**4. Preliminary Approval Order and Settlement Hearing**

4.1 Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the "Preliminary Approval Order"), substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the settlement set forth in the Stipulation, and approval for the mailing of a settlement notice (the "Notice") and publication of a summary notice (the "Summary Notice"), substantially in the forms of Exhibits A-1 and A-3 attached hereto. The Notice shall include the general terms of the settlement set forth in the Stipulation, the proposed

Plan of Allocation, the general terms of the Fee and Expense Application, as defined in ¶7.1 hereof, and the date of the Settlement Hearing as defined below.

4.2 Lead Counsel shall request that after notice is given, the Court hold a hearing on a date not less than ninety (90) calendar days from the date Defendants' Counsel serves notice to the appropriate state and federal officials under the Class Action Fairness Act of 2005, 28 U.S.C. §1715(d) (the "Settlement Hearing") and approve the settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application and Plaintiffs' request for payment of time and expenses, if any.

## **5. Releases**

5.1 Upon the Effective Date, as defined in ¶1.13 hereof, Plaintiffs shall, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons, whether or not such Class Member executes and delivers the Proof of Claim and Release or shares in the Settlement Fund. Claims to enforce the terms of this Stipulation are not released.

5.2 The Proof of Claim and Release to be executed by Class Members shall release all Released Claims against the Released Persons and shall be substantially in the form contained in Exhibit A-2 attached hereto.

5.3 Upon the Effective Date, as defined in ¶1.13 hereof, all Class Members and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any U.S. or non-U.S. court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of the Released Persons.

5.4 Upon the Effective Date, as defined in ¶1.13 hereof, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs, each and all of the Class Members, and Plaintiffs' counsel from all claims and causes of action of every nature and description (including Unknown Claims) whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants, except for claims relating to the enforcement of the Settlement.

**6. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of the Settlement Fund**

6.1 The Claims Administrator, subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

6.2 The Settlement Fund shall be applied as follows:

(a) to pay all the Notice and Administration Expenses;

(b) to pay the Taxes and Tax Expenses described in ¶3.9 hereof;

(c) to pay attorneys' fees and expenses of counsel for the Plaintiffs (the "Fee and Expense Award"), and to pay Plaintiffs for their time and expenses, if and to the extent allowed by the Court; and

(d) after the Effective Date, to distribute the Net Settlement Fund to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

6.3 After the Effective Date, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be

necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following.

6.4 Within ninety (90) days after the mailing of the Notice or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release.

6.5 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a valid Proof of Claim and Release within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Stipulation and the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Judgment. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not an obligation) to accept late-submitted claims for processing by the Claims Administrator so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

6.6 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible, reallocate (which reallocation may occur on multiple occasions) such balance among Authorized Claimants who cashed their prior distribution check in an equitable and economic fashion and whose distribution amount is at least \$10. Thereafter, any *de minimis* balance which

still remains in the Net Settlement Fund shall be distributed to the following charitable organization: the Investor Protection Trust.

6.7 The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claim of any kind against the Released Persons with respect to the matters set forth in ¶¶6.1-6.9 hereof; and the Class Members, Plaintiffs, and Lead Counsel release the Released Persons from any and all liability and claims arising from or with respect to the administration, investment or distribution of the Settlement Fund.

6.8 No Person shall have any claim against Plaintiffs, Plaintiffs' counsel or the Claims Administrator, or any other Person designated by Lead Counsel based on determinations or distributions made substantially in accordance with the Stipulation and the settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

6.9 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the settlement set forth therein.

**7. Plaintiffs' Counsel's Attorneys' Fees and Expenses**

7.1 Lead Counsel may submit an application or applications (the "Fee and Expense Application") for: (a) an award of attorneys' fees; plus (b) expenses or charges in connection with prosecuting the Litigation; plus (c) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. Lead Counsel reserves the right to make additional applications for fees and expenses incurred.

7.2 The fees and expenses, as awarded by the Court, shall be paid to Lead Counsel, as ordered, immediately after the Court executes the Judgment and an order awarding such fees and expenses. Lead Counsel may thereafter allocate the attorneys' fees among other Plaintiffs' counsel, in a manner in which it in good faith believes reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Litigation.

7.3 In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then (a) Lead Counsel with respect to the entire Fee and Expense Award, and (b) such of Plaintiffs' counsel who have received any portion of the Fee and Expense Award shall, within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such Plaintiffs' counsel and their respective law firms receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and

its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

7.4 Plaintiffs may submit an application for an award for their time and expenses in connection with the prosecution of the Litigation. In the event, however, that the Effective Date does not occur, or the judgment or the order approving Plaintiffs' application for an award for their time and expenses is reversed or modified, or the Stipulation is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes final and not subject to review, then Plaintiffs shall within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such amounts for time and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification.

7.5 The procedure for and the allowance or disallowance by the Court of any applications by any Plaintiffs' counsel for attorneys' fees and expenses, or the expenses of the Plaintiffs, to be paid out of the Settlement Fund, are not part of the settlement set forth in the Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to the Fee and Expense Application, or Plaintiffs' expense application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the Litigation set forth therein.

7.6 Any fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. The Released Persons shall have no responsibility for any payment of attorneys' fees and/or expenses to Plaintiffs' counsel or Plaintiffs.

7.7 The Released Persons shall have no responsibility for the allocation among Plaintiffs' counsel, and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation.

**8. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

8.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

- (a) the Settlement Amount has been deposited into the Escrow Account;
- (b) the Court has entered the Preliminary Approval Order, as required by ¶4.1 hereof;
- (c) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto;
- (d) Defendants have not exercised their option to terminate the Stipulation pursuant to ¶8.3 hereof; and
- (e) the Judgment has become Final, as defined in ¶1.15 hereof.

8.2 Upon the Effective Date, any and all remaining interest or right of the Defendants or the Defendants' insurers in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in ¶8.1 hereof are not met, then the Stipulation shall be canceled and terminated subject to ¶8.4 hereof unless, within fourteen (14) calendar days of such cancellation or termination, Lead Counsel and Defendants' Counsel mutually agree in writing to proceed with the Stipulation and/or any mutually agreed-to amendment thereof.

8.3 If Persons who would otherwise be Class Members have timely requested exclusion from the Class, Defendants shall have the option to terminate the settlement in the event that Class Members purchasing more than a certain percentage of ADRs during the Class Period exclude themselves from the Class, as set forth in a separate agreement (the “Supplemental Agreement”) executed between Plaintiffs and Defendants, by and through their counsel. If the Court requires that the Supplemental Agreement be filed, the parties shall request that it be filed under seal.

8.4 Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, within ten (10) business days after written notification of such event is sent by Defendants’ Counsel or Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest), less expenses which have either been disbursed pursuant to §§3.7 and 3.9 hereof, or are chargeable to the Settlement Fund pursuant to §§3.7 and 3.9 hereof, shall be refunded to Defendants by the Escrow Agent pursuant to written instructions from Defendants’ Counsel. The Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written instructions from Defendants’ Counsel.

8.5 In the event that the Stipulation is not approved by the Court or the settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Litigation as of August 5, 2018. In such event, the terms and provisions of the Stipulation, with the exception of §§1.1-1.31, 3.7-3.10, 7.3-7.4, 8.4-8.7, and 9.8 hereof, shall have no further force and effect with respect to the Settling Parties and the Related Parties; shall not be used in this Litigation; shall be null

and void and inadmissible in any other proceeding for any purpose, under the law of any jurisdiction, including the United States, Australia, United Kingdom, South Africa and Brazil; and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses, and interest awarded by the Court to any of Plaintiffs' counsel or expenses to the Plaintiffs shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of the Stipulation.

8.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts disbursed pursuant to ¶¶3.7 or 3.9 hereof. In addition, any expenses already incurred pursuant to ¶¶3.7 or 3.9 hereof at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶¶3.10 and 8.4 hereof.

8.7 Each Defendant warrants and represents as to itself only, that it is not "insolvent" within the meaning of 11 U.S.C. §101(32) as of the time the Stipulation is executed and as of the time the payments of the Settlement Amount are actually transferred or made as reflected in the Stipulation. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Amount, or any portion thereof, by or on behalf of any Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the U.S. Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of any other Defendant, then, at the election of Lead Counsel, as

to the Defendant as to whom such order applies, the settlement may be terminated and the releases given and the judgment entered in favor of such Defendant pursuant to the settlement shall be null and void. In such instance, the releases given and the judgments entered in favor of other Defendants shall remain in full force and effect. Alternatively, Lead Counsel may elect to terminate the entire settlement as to all Defendants and all of the releases given and the judgments entered in favor of the Defendants pursuant to the settlement shall be null and void and Plaintiffs may proceed as if the settlement were never entered into.

**9. Miscellaneous Provisions**

9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

9.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and any Class Members against the Released Persons with respect to the Released Claims. Accordingly, Plaintiffs and their counsel and Defendants and their counsel agree not to assert in any forum that this Litigation was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party or Related Party as to the merits of any claim or defense. The Final Judgment will contain a finding that, during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the Settlement Amount and the other terms of the settlement were negotiated at arm's length and in good faith by the Settling Parties, including through a mediation process supervised and conducted by Judge Phillips, and reflect a settlement that was

reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Litigation.

9.3 Neither this Stipulation nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants or their respective Related Parties, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or their respective Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, under the law of any jurisdiction, including the United States, Australia, United Kingdom, South Africa and Brazil. The Defendants and/or their respective Related Parties may file this Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9.4 Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

9.5 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

9.6 All of the Exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

9.7 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

9.8 The Stipulation and the Exhibits attached hereto and the Supplemental Agreement constitute the entire agreement among the parties hereto and no representations, warranties or inducements have been made to any party concerning the Stipulation or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.

9.9 Lead Counsel, on behalf of the Class, is expressly authorized by the Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms and also is expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Class which it deems appropriate.

9.10 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

9.11 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or on pdf via e-mail shall be deemed originals.

9.12 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

9.13 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the

purpose of entering orders providing for awards of attorneys' fees and litigation expenses to Lead Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Class Members.

9.14 Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

9.15 The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

9.16 No opinion or advice concerning the tax consequences of the proposed settlement to individual Class Members is being given or will be given by the parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

9.17 Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the settlement.

9.18 If any party is required to give notice to another party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided to any

such party at the email address or physical address of their respective counsel as set forth on the signature pages of this Stipulation.

9.19 Pending approval of the Court of the Stipulation and its Exhibits, all proceedings in this Litigation shall be stayed and all Class Members shall be barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any of the Released Claims against any of the Released Persons.

9.20 This Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice-of-law principles, except to the extent that federal law requires that federal law govern.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated September 14, 2018.

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN  
JOSEPH RUSSELLO  
MICHAEL G. CAPECI



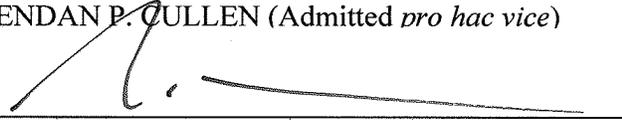
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Counsel for Defendants BHP Billiton Ltd. and  
BHP Billiton plc

**CERTIFICATE OF SERVICE**

I, Samuel H. Rudman, hereby certify that on September 19, 2018, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice. I further certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 19, 2018, at Melville, New York.

*s/ Samuel H. Rudman*  
\_\_\_\_\_  
SAMUEL H. RUDMAN

**INDEX OF EXHIBITS TO STIPULATION OF SETTLEMENT**

<b>DOCUMENT</b>	<b>EXHIBIT</b>
[Proposed] Order Preliminarily Approving Settlement and Providing for Notice	A
Notice of Pendency of Class Action and Proposed Settlement	A-1
Proof of Claim and Release	A-2
Summary Notice	A-3
[Proposed] Final Judgment and Order of Dismissal with Prejudice	B

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re BHP BILLITON LIMITED	:	Civil Action No. 1:16-cv-01445-NRB
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	[PROPOSED] ORDER PRELIMINARILY
	:	APPROVING SETTLEMENT AND
	:	PROVIDING FOR NOTICE
ALL ACTIONS.	:	
_____	X	EXHIBIT A

WHEREAS, a class action is pending before this Court styled *In re BHP Billiton Limited Securities Litigation*, No. 1:16-cv-01445-NRB (the “Litigation”);

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in accordance with a Stipulation of Settlement, dated as of September 14, 2018 (the “Stipulation”), which, together with the Exhibits annexed thereto, set forth the terms and conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, all defined terms herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes:** The Court hereby certifies, for settlement purposes only, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, a Class defined as follows:

All persons and entities who purchased or otherwise acquired an interest in the ADRs between September 25, 2014 and November 30, 2015, inclusive, on any exchange or otherwise. Excluded from the Class are (i) Defendants, (ii) Related Parties, (iii) Immediate Family Members of any natural persons in (ii), (iv) any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant had a controlling interest during the Class Period, and (v) the legal representatives, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class are any persons and entities who are found by the Court to have timely and validly requested exclusion.

2. **Class Findings:** Solely for purposes of the proposed settlement of this Litigation, the Court finds that each element required for certification of the Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure has been met: (a) the members of the Class are so numerous that their joinder in the action would be impracticable; (b) there are questions of

law and fact common to the Class; (c) the claims of Plaintiffs in the Litigation are typical of the claims of the Class; (d) Plaintiffs and Lead Counsel have and will fairly and adequately represent and protect the interests of the Class; (e) the questions of law and fact common to the Class predominate over any individual questions; and (f) a class action is superior to other available methods for the fair and efficient disposition of the action.

3. The Court hereby finds and concludes that pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and for the purposes of the settlement only, Plaintiffs are adequate class representatives and certifies them as Class Representatives for the Class. The Court also appoints Lead Counsel as Class Counsel for the settlement class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

4. **Preliminary Approval of the Settlement:** The Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, as being fair, reasonable, and adequate to the Class, subject to further consideration at the Settlement Hearing described below.

5. **Settlement Hearing:** A hearing (the “Settlement Hearing”) shall be held before this Court on \_\_\_\_\_, 201\_\_, at \_\_\_\_\_.m. [a date that is at least ninety (90) calendar days from the date of this Order], at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, to determine: (a) whether the proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; (b) whether a Judgment, as provided in ¶1.17 of the Stipulation, should be entered dismissing the Litigation with prejudice against Defendants; (c) whether the proposed Plan of Allocation is fair and reasonable and should be approved;

(d) the amount of fees and expenses that should be awarded to Lead Counsel; and (e) the amount that should be awarded to Plaintiffs for their time and expenses.

6. The Court may adjourn the date of the Settlement Hearing without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

7. **CAFA Notice:** Defendants are required to serve the notice required under the Class Action Fairness Act of 2005, 28 U.S.C. §1715 *et seq.* (“CAFA”) no later than ten (10) calendar days following the filing of the Stipulation with the Court. Defendants shall be solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing, Defendants’ Counsel shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit or declaration, of compliance with CAFA §1715(b).

8. **Approval of Form and Content of Notice:** The Court: (a) approves, as to form and content, the Notice of Pendency of Class Action and Proposed Settlement (the “Notice”), the Proof of Claim and Release form (the “Proof of Claim”), and Summary Notice annexed hereto as Exhibits A-1, A-2, and A-3, respectively; and (b) finds that the mailing and distribution of the Notice and Proof of Claim and the publication of the Summary Notice in the manner and form set forth in ¶¶9-10 of this Order: (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Litigation, of the effect of the proposed settlement (including the Released Claims to be provided thereunder), of Lead Counsel’s motion for an award of

attorneys' fees and litigation expenses, of their right to object to the settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and litigation expenses, of their right to exclude themselves from the Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all Persons and entities entitled to receive notice of the proposed settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4, as amended, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

9. **Retention of Claims Administrator and Manner of Giving Notice:** The firm of Gilardi & Co. LLC ("Claims Administrator") is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Lead Counsel shall make reasonable efforts to identify all Persons who are Class Members and not later than \_\_\_\_\_ [ten (10) business days after the Court signs and enters this Order] (the "Notice Date"), Lead Counsel shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be sent by email and/or by First-Class Mail to all Class Members who can be identified with reasonable effort and to be posted on the settlement website: [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com);

(b) Not later than fourteen (14) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal* and once over a national newswire service; and

(c) At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall cause to be served on Defendants' Counsel and filed with the Court proof, by affidavit or declaration, of such mailing and publishing.

10. **Nominee Procedures:** Nominees who purchased or otherwise acquired an interest in the ADRs for the beneficial ownership of Class Members during the Class Period shall send the Notice and the Proof of Claim to all such beneficial owners of ADRs within ten (10) days after receipt thereof, or, send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners who are Class Members out of the Settlement Fund, which expenses would not have been incurred except for the sending of such notice, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

11. **Participation in the Settlement:** Class Members who wish to participate in the settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than ninety (90) days from the Notice Date. Any Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court. Notwithstanding the foregoing, Lead Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. By submitting a Proof

of Claim, a Person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Proof of Claim and the subject matter of the settlement.

12. Any Class Member who does not timely and validly submit a claim or whose claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her, or its right to share in the Net Settlement Fund; (b) shall be forever barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the settlement and all proceedings, determinations, orders, and judgments in the Litigation relating thereto, including, without limitation, the Judgment, and the Released Claims provided for therein, whether favorable or unfavorable to the Class; and (d) will be barred from commencing, maintaining, or prosecuting any of the Released Claims against any of the Released Persons, as more fully described in the Stipulation and Notice. Notwithstanding the foregoing, late Proof of Claim forms may be accepted for processing as set forth in ¶11 above.

13. **Exclusion from the Class:** Any Person falling within the definition of the Class may, upon request, be excluded from the Class. Any such Person must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”), postmarked no later than \_\_\_\_\_ [twenty-one (21) calendar days prior to the Settlement Hearing]. To be valid, a Request for Exclusion must state all of the information requested by §X of the Notice. A Request for Exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph and are excluded from the Class shall not be Class Members, shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment entered in the Litigation.

14. Any Class Member who does not timely and validly request exclusion from the Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Class; (b) shall be forever barred from requesting exclusion from the Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and settlement and all proceedings, determinations, orders, and judgments in the Litigation, including, but not limited to, the Judgment, and the Released Claims provided for therein, whether favorable or unfavorable to the Class; and (d) will be barred from commencing, instituting, prosecuting, or continuing to prosecute any of the Released Claims against any of the Released Persons, as more fully described in the Stipulation and Notice.

15. **Appearance and Objections at Settlement Hearing:** Any Class Member who does not request exclusion from the Class may enter an appearance in the Litigation, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, they will be represented by Lead Counsel.

16. Any Class Member who does not request exclusion from the Class may appear and show cause why the proposed settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded to Lead Counsel, or why the time and expenses of Plaintiffs should or should not be awarded; provided, however, that no Class Member or any other Person shall be heard or entitled to contest such matters, unless that Person has demonstrated his, her or its membership in the Class and delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are: (i) received on or before \_\_\_\_\_ [twenty-one (21) calendar days prior to the Settlement Hearing] by

Robbins Geller Rudman & Dowd LLP, Joseph Russello, 58 South Service Road, Suite 200, Melville, NY 11747, and Sullivan & Cromwell LLP, Brendan P. Cullen, 1870 Embarcadero Road, Palo Alto, CA 94303; and (ii) filed with the Clerk of the United States District Court for the Southern District of New York on or before \_\_\_\_\_ [twenty-one (21) calendar days prior to the Settlement Hearing].

17. Any objections, filings, and other submissions by the objecting Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Class. Objectors who enter an appearance and desire to present evidence at the Settlement Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

18. Any Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and litigation expenses and shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the settlement, the Plan of Allocation, or the requested attorneys' fees and litigation expenses, or from otherwise being heard concerning the settlement, the Plan of Allocation or the requested attorneys' fees and litigation expenses in this or any other proceeding.

19. **Settlement Fund:** All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

20. **Taxes:** Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or with respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings with respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

21. **Supporting Papers:** All opening briefs and supporting documents in support of the settlement, the Plan of Allocation, and any application by Lead Counsel for attorneys' fees and expenses or by Plaintiffs for their time and expenses shall be filed and served by \_\_\_\_\_ [thirty-five (35) calendar days prior to the Settlement Hearing]. Replies to any objections shall be filed and served by \_\_\_\_\_ [seven (7) calendar days prior to the Settlement Hearing].

22. **Settlement Administration Fees and Expenses:** All reasonable expenses incurred in identifying and notifying Class Members, as well as in administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the settlement is not approved by the Court, or otherwise fails to become effective, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred and properly disbursed pursuant to §§3.7 and 3.9 of the Stipulation.

23. Neither the Defendants and their Related Parties nor the Defendants' Counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or

expenses submitted by Plaintiffs or Lead Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the settlement.

24. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees or payment of expenses, shall be approved.

25. **Use of this Order:** Neither this Order, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken or submissions made pursuant to or in connection with the Stipulation, and/or approval of the settlement (including any arguments proffered in connection therewith): (a) shall be offered against any of the Defendants or their respective Related Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants or their respective Related Parties with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Litigation or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants or their respective Related Parties, or in any way referred to for any other reason as against any of the Defendants or their respective Related Parties, in any civil, criminal, administrative, or other action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (b) shall be construed against any of the Settling Parties as an admission, concession, or presumption that the consideration to be given under the settlement represents the amount which could be or would have been recovered after trial; provided, however, that if the Stipulation is approved by

the Court, the parties and the Released Persons and their respective counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the settlement.

26. **Termination of Settlement:** If the Stipulation and the settlement set forth therein is not approved or consummated for any reason whatsoever, the Stipulation and settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo ante*.

27. **Stay and Temporary Injunction:** Pending final determination of whether the settlement should be approved, all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation, are stayed subject to further order of the Court. Pending final determination of whether the settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Class, from commencing, instituting, prosecuting, or continuing to prosecute any and all of the Released Claims against any of the Released Persons.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A-1**



**TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED AMERICAN DEPOSITORY RECEIPTS (“ADRs”) OF BHP BILLITON LIMITED AND/OR BHP BILLITON PLC (TOGETHER, “BHP” OR “DEFENDANTS”) DURING THE PERIOD FROM SEPTEMBER 25, 2014 THROUGH NOVEMBER 30, 2015, INCLUSIVE (THE “CLASS”)**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION WHETHER OR NOT YOU ACT. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE \_\_\_\_\_**. IF YOU HAVE QUESTIONS ABOUT THIS NOTICE, THE PROPOSED SETTLEMENT, OR YOUR ELIGIBILITY TO PARTICIPATE IN THE SETTLEMENT, PLEASE DO NOT CONTACT BHP OR ITS COUNSEL. ALL QUESTIONS SHOULD BE DIRECTED TO LEAD COUNSEL (*SEE* SECTION V BELOW).

This Notice of Pendency of Class Action and Proposed Settlement (“Notice”) has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York (the “Court”). The purpose of this Notice is to inform you of the pendency and proposed settlement of the case entitled *In re BHP Billiton Limited Securities Litigation*, Civil Action No. 1:16-cv-01445-NRB (the “Litigation”) and of the hearing (the “Settlement Hearing”) to be held by the Court to consider the fairness, reasonableness, and adequacy of the settlement as set forth in the Stipulation of

Settlement between Plaintiffs and Defendants, dated as of September 14, 2018 (the “Stipulation”), on file with the Court.<sup>1</sup>

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to (i) the truth of the allegations in this Litigation or any other litigation as to any of the Defendants or their Related Parties; (ii) the merits of the claims or defenses asserted by or against Defendants or their Related Parties; or (iii) that the consideration to be given under the settlement represents the amount which could be or would have been recovered after trial. This Notice is solely to advise you of the pendency and proposed settlement of the Litigation and of your rights in connection therewith.

#### **I. STATEMENT OF PLAINTIFFS’ RECOVERY**

The proposed settlement will create a cash fund in the principal amount of Fifty Million Dollars (\$50,000,000.00) (the “Settlement Amount”), plus any interest that may accrue thereon less certain deductions (the “Settlement Fund”).

This is a securities class action brought against BHP alleging that BHP made materially false and misleading statements to investors during the period from September 25, 2014 through November 30, 2015, inclusive (the “Class Period”), in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder. An indirect subsidiary of BHP, BHP Billiton Brasil Ltda. (“BHP Brasil”), and Vale S.A. (“Vale”) each are 50% shareholders of Samarco Mineração, S.A. (“Samarco”), an iron-ore mining company located in Brazil. On November 5, 2015, the Fundão tailings dam, which is part of Samarco’s Germano iron ore mining complex in Minas Gerais, Brazil, failed, releasing

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation, which is available at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

mining waste (called tailings) that caused property damage and resulted in the loss of life. Plaintiffs allege that during the Class Period, Defendants made false and misleading statements regarding BHP's focus on safety and its risk management and monitoring. BHP denies Plaintiffs' allegations. At the time of the proposed settlement, Plaintiffs had completed substantial fact discovery, had completed class certification discovery and filed their motion for class certification, had engaged mining and other experts, and were preparing the case for trial. Defendants at all times denied that they had made any false statements or omissions, and continue to maintain that their statements complied with all applicable laws and regulations in the United States and elsewhere.

The Settlement Fund, subject to deduction for, among other things, costs of class notice and administration and certain taxes and tax-related expenses, and for attorneys' fees and expenses as approved by the Court and for certain expenses of the Plaintiffs, will be available for distribution to Class Members. Your recovery from this fund will depend on a number of variables, including the number of shares of ADRs you purchased or acquired during the Class Period, the timing of your purchases and any sales, and how many other Class Members make claims. While the recovery for any Class Member is dependent on numerous factors, including the timing and price of a Class Member's transactions in ADRs, if all eligible Class Members make claims, it is estimated that the average distribution per eligible ADR of BHP Billiton Limited will be approximately \$0.37, and per eligible ADR of BHP Billiton plc will be approximately \$0.38, before deduction of Court-approved fees and expenses. Historically, actual claims are less than 100%, resulting in higher per-ADR distributions on average.

## **II. STATEMENT OF POTENTIAL OUTCOME**

In addition to disagreeing on whether or not Defendants made any false or misleading statements, Plaintiffs and Defendants do not agree on the average amount of damages per ADR,

if any, that would have been recoverable if Plaintiffs were to have prevailed on each claim alleged.

At trial, Plaintiffs would have presented expert testimony that certain disclosures regarding the failure of the Fundão iron-ore tailings dam in Brazil, which allegedly corrected the alleged false and misleading statements regarding BHP's focus on safety and risk management and monitoring, caused the trading price of the ADRs to decline on November 6 and 25, 2015. In sum, if Plaintiffs won and the jury accepted all of their expert's testimony, Class Members could have recovered between \$0 and \$255 million.

At trial, Defendants would have taken the position, also supported by their expert testimony, that none of the declines in the trading price of the ADRs could be attributed to any corrective disclosure related to the alleged fraud, and that, therefore, Class Members had suffered no damages at all. Defendants would have pointed to disclosures during the Class Period that revealed the inherent risks associated with tailings dams (such as Samarco's Fundão dam that failed during the Class Period) and specified that the allegedly false and misleading statements and omissions did not, in fact, pertain to Samarco's Fundão dam or operations, because BHP did not operate Samarco. Defendants would also have asserted that there was no evidence that any of the alleged false and misleading statements were false, and that the statements were in fact true statements. Defendants would have argued that adverse news regarding the impacts of the Fundão dam failure, none of which revealed any indicia of fraud, was the substantial cause of the decline in the price of the ADRs – none of which would give rise to a claim for damages.

In short, the parties disagree on the merits of this case, including whether or not: (a) false and misleading statements or omissions were made; and (b) damages were suffered and are recoverable. Thus, although Plaintiffs continue to maintain that they brought meritorious claims,

Defendants deny that they are liable in any respect or that Plaintiffs or the Class suffered any injury. Accordingly, recovery of any amount at trial was far from certain.

### **III. REASONS FOR SETTLEMENT**

Plaintiffs believe that the proposed settlement is a very good recovery and is in the best interests of the Class. Because of the risks associated with continuing to litigate and proceeding to trial, there was a danger that the Class would not have prevailed or, if they had, how much, if any, damages could be recoverable. The proposed settlement provides a certain benefit to Class Members and will avoid the years of delay that would likely occur in the event of a contested trial and appeals.

In light of these risks, the amount of the settlement and the immediacy of recovery to the Class, Plaintiffs and Lead Counsel believe that the proposed settlement is fair, reasonable, and adequate, and in the best interests of the Class. Plaintiffs and Lead Counsel believe that the settlement provides a substantial benefit to the Class, namely \$50,000,000 in cash (less the deductions described in this Notice), as compared to the risk that the claims in the Litigation would produce a smaller, or no, recovery after a class certification motion, summary judgment motions, trial, and appeals, possibly years in the future.

Defendants have denied all claims asserted against them in the Litigation and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the settlement may not be construed as an admission of any wrongdoing by Defendants or their Related Parties (as defined herein).

### **IV. STATEMENT OF ATTORNEYS' FEES AND EXPENSES SOUGHT**

Lead Counsel has not received any payment for its services in conducting this Litigation on behalf of the Plaintiffs and the Class Members, nor has it been paid for its litigation expenses.

If the settlement is approved by the Court, Lead Counsel will apply to the Court for an award of attorneys' fees and expenses. Lead Counsel has advised that its application for attorneys' fees will not exceed 30% of the Settlement Amount and its application for expenses will not exceed \$500,000, plus interest thereon, to be paid from the Settlement Fund. If the amounts requested are approved by the Court, the average cost per ADR, based on a 100% claim rate, will be \$0.11 for the BHP Billiton Limited ADRs and \$0.12 for the BHP Billiton plc ADRs. In addition, the Plaintiffs may each seek the Court's approval for up to \$25,000 in time and expenses incurred in representing the Class.

**V. IDENTIFICATION OF ATTORNEYS' REPRESENTATIVES**

For further information regarding this settlement, you may contact a representative of Lead Counsel: Joseph Russello, Robbins Geller Rudman & Dowd LLP, 58 South Service Road, Suite 200, Melville, NY 11747, Telephone: 631/367-7100. Additional information, including copies of pleadings and documents filed in the case, is also available on the settlement website at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

**VI. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A hearing (the "Settlement Hearing") will be held on \_\_\_\_\_, at \_\_\_\_\_.m., before the Honorable Naomi Reice Buchwald, United States District Judge, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, NY 10007-1312. The purpose of the Settlement Hearing will be to determine: (1) whether the proposed settlement, as set forth in the Stipulation, consisting of Fifty Million Dollars (\$50,000,000.00) in cash, should be approved as fair, reasonable, and adequate to the Class Members; (2) whether a Final Judgment and Order of Dismissal with Prejudice should be entered by the Court dismissing the Litigation with prejudice against Defendants, and whether the Releases specified and described in the Stipulation (and in

this Notice) should be granted; (3) whether the proposed plan to distribute the settlement proceeds (the “Plan of Allocation”) is fair, reasonable, and adequate; and (4) whether the application by Lead Counsel for an award of attorneys’ fees and expenses and the expenses of Plaintiffs should be approved, and, if so, in what amounts.

The Court may adjourn the Settlement Hearing from time to time and without further notice to the Class. The Court may also approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

## **VII. DEFINITIONS USED IN THIS NOTICE**

As used in this Notice, the following terms have the meanings specified below. Any capitalized terms not specifically defined in this Notice shall have the meanings set forth in the Stipulation. In the event of any inconsistency between any definition set forth below or elsewhere in this Notice and any definition set forth in the Stipulation, the definition set forth in the Stipulation shall control.

1. “ADR” means a BHP ADR or a BBL ADR.
2. “Authorized Claimant” means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.
3. “BBL ADR” means an American Depositary Receipt that evidences an ownership interest in a specified number of American Depositary Shares, which in turn, represent an interest in a specified number of ordinary shares of BHP Billiton plc.
4. “BHP” means BHP Billiton Limited and BHP Billiton plc.
5. “BHP ADR” means an American Depositary Receipt that evidences an ownership interest in a specified number of American Depositary Shares, which in turn, represent an interest in a specified number of ordinary shares of BHP Billiton Limited.
6. “Claims Administrator” means the firm of Gilardi & Co. LLC.

7. “Class” means all persons and entities who purchased or otherwise acquired an interest in the ADRs between September 25, 2014 and November 30, 2015, inclusive, on any exchange or otherwise. Excluded from the Class are (i) Defendants, (ii) Related Parties (as defined in ¶23 below), (iii) Immediate Family Members of any natural persons in (ii), (iv) any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant had a controlling interest during the Class Period, and (v) the legal representatives, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class are any persons and entities who are found by the Court to have timely and validly requested exclusion.

8. “Class Member” means a Person who falls within the definition of the Class as set forth in ¶7 above.

9. “Class Period” means the period from September 25, 2014 through November 30, 2015, inclusive.

10. “Court” means the United States District Court for the Southern District of New York.

11. “Defendants” means BHP Billiton Limited and BHP Billiton plc.

12. “Defendants’ Counsel” means Sullivan & Cromwell LLP.

13. “Effective Date,” or the date upon which this settlement becomes “effective,” means one (1) business day after the date by which all of the events and conditions specified in ¶8.1 of the Stipulation have been met and have occurred or have been waived.

14. “Escrow Agent” means the law firm of Robbins Geller Rudman & Dowd LLP or its successor.

15. “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached to the Stipulation, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, immediately after the determination of that motion or appeal so that it is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise in such a manner as to permit the consummation of the settlement substantially in accordance with the terms and conditions of the Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this settlement, but shall not include any appeal which concerns only the issue of (i) Lead Counsel’s attorneys’ fees and expenses, (ii) payments to Plaintiffs for their time and expenses, (iii) the Plan of Allocation of the Settlement Fund, as hereinafter defined, or (iv) the procedures for determining Authorized Claimants’ recognized claims. Any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to one or more of (i)–(iv) shall not in any way delay or preclude a judgment from becoming Final.

16. “Immediate Family Members” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this definition, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

17. “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached as Exhibit B to the Stipulation.

18. “Lead Counsel” means Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101.

19. “Net Settlement Fund” means the Settlement Fund less any attorneys’ fees, expenses, and interest and any award to Plaintiffs provided for herein or approved by the Court and less Notice and Administration Expenses, Taxes and Tax Expenses, and other Court-approved deductions.

20. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

21. “Plaintiffs” means City of Birmingham Retirement and Relief System and City of Birmingham Firemen’s and Policemen’s Supplemental Pension System.

22. “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Allocation is not part of the Stipulation and neither Defendants nor their Related Parties shall have any responsibility or liability with respect thereto.

23. “Related Parties” means each of a Defendant’s respective present and former parents, subsidiaries, joint ventures (including, for the avoidance of doubt, Samarco), divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, attorneys, advisors, accountants, auditors, and insurers of each of them; and

the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives, and assigns of each of them, in their capacity as such.

24. “Released Claims” means any and all claims, debts, demands, rights or causes of action or liabilities of every nature and description (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, local, foreign, statutory or common law, or any other law, rule or regulation, whether asserted or unasserted, fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, against BHP or the Related Parties, arising out of or relating to both: (i) the allegations, circumstances, events, transactions, facts, matters, occurrences, representations or omissions involved in, set forth, or referred to in the Litigation, and (ii) the purchase or acquisition of ADRs during the Class Period. For the avoidance of doubt, Released Claims does not include, nor is it intended to include, the claims asserted or that may be asserted in: (a) *Banco Safra S.A. – Cayman Islands Branch v. Samarco Mineração S.A.*, No. 1:16-cv-8800-RMB (S.D.N.Y.), (b) *Impiombato v. BHP Billiton Limited*, VID649/2018 (Vict. Registry – Fed. Ct. of Austl.), or (c) any other cases, consolidated into any of the foregoing actions or otherwise, to the extent that the claims asserted in the matters set forth in (a)–(c) do not arise out of or relate to the purchase or acquisition of ADRs or an interest therein during the Class Period. Released Claims does not include any claims relating to the enforcement of the settlement or any claims against any person or entity who or which submits a request for exclusion from the settlement class that is accepted by the Court.

25. “Released Persons” means each and all of the Defendants and their Related Parties.

26. “Settling Parties” means, collectively, Defendants, Plaintiffs, and the Class.

27. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

28. “Unknown Claims” means any Released Claims which Plaintiffs or Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement or seek exclusion from the Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the U.S., or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever

settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

### **VIII. THE LITIGATION**

On February 24, 2016, Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) filed a Complaint for Violations of the Federal Securities Laws on behalf of plaintiff Jackson County Employees’ Retirement System and a putative class of all purchasers of Defendants’ ADRs between September 25, 2014 and November 30, 2015, inclusive, alleging claims under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 against: (i) BHP; (ii) Jac Nasser (“Nasser”), Chair of BHP’s Board of Directors; (iii) Andrew Mackenzie (“Mackenzie”), BHP’s Chief Executive Officer; (iv) Peter Beaven (“Beaven”), BHP’s Chief Financial Officer (“CFO”); and (v) Graham Kerr (“Kerr”), BHP’s CFO from November 2011 until October 1, 2014, arising out of allegedly false and misleading statements and omissions pertaining to BHP’s focus on safety and its risk management and monitoring protocols.

Subsequently, on March 15, 2016, Pomerantz LLP (“Pomerantz”) filed a Complaint for Violations of the Federal Securities Laws on behalf of plaintiff Gary Katz, alleging similar claims against the defendants named in the February 24, 2016 complaint. On April 25, 2016, the plaintiffs City of Birmingham Retirement and Relief System and City of Birmingham Firemen’s and Policemen’s Supplemental Pension System (the “Funds”) and others separately moved to

consolidate the pending cases and for the appointment of lead plaintiffs and lead counsel under the Private Securities Litigation Reform Act of 1995, and, thereafter, all but one of the competing lead plaintiff movants withdrew their applications and/or filed non-oppositions to the Funds' motion. On June 14, 2016, the Court entered an Order granting the Funds' motion and appointing them as Lead Plaintiffs and their counsel, Robbins Geller, as Lead Counsel.

On August 15, 2016, the Funds, together with plaintiff James A. Crumpley, a purchaser of the ADRs of BHP Billiton plc represented by Pomerantz, filed the Consolidated Amended Complaint for Violations of the Federal Securities Laws ("CAC"), comprised of 105 pages and 355 numbered paragraphs. The CAC alleged that BHP and Messrs. Nasser, Mackenzie, Beaven and Kerr misrepresented and/or omitted material information concerning: (i) BHP's commitment to health and safety; (ii) the adequacy of BHP's safety, risk management, and monitoring protocols; (iii) BHP's compliance with local laws and regulations; (iv) Samarco's production capacity and projected performance; (v) the toxicity of tailings-based mudflows resulting from the failure of the Fundão dam; (vi) BHP's progressive dividend policy; (vii) uncertainties and risks relating to Samarco; and (viii) the completeness of BHP's Forms 20-F for fiscal years 2014 and 2015.

On October 14, 2016, the named defendants jointly filed a motion to dismiss the CAC pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, variously asserting that: (i) the CAC alleged non-actionable claims for mismanagement, not fraud; (ii) the CAC did not plead any actionable misstatements or omissions; (iii) the CAC did not plead scienter; and (iv) the Section 20(a) claim failed in the absence of a violation of Section 10(b). On July 26, 2017, after the parties had completed briefing the motion to dismiss, the Court heard oral argument on the motion.

On April 5, 2017, Plaintiffs submitted a letter to the Court concerning Judge Woods' decision to sustain certain claims in a putative class action against Vale, entitled *In re Vale S.A. Securities Litigation*, No. 1:15-cv-09539-GHW (S.D.N.Y.) ("Vale Litigation"), to which BHP responded on April 21, 2017. On August 1, 2017, the Court requested the parties' views on statements alleged in the Consolidated Amended Class Action Complaint filed on April 29, 2016 in the Vale Litigation, in which Vale allegedly referenced an analysis commissioned by Samarco that confirmed the tailings were not toxic or threatening to the environment. On August 9, 2017, the parties each submitted a letter to the Court expressing their views on the issue.

On August 28, 2017, the Court issued a Memorandum and Order, filed August 29, 2017, granting in part and denying in part the named defendants' motion to dismiss the CAC, holding that the CAC adequately alleged corporate scienter and determining that the CAC "sufficiently alleged that BHP made [ten] actionable misstatements regarding its commitment to safety and its risk management controls, and omissions of facts needed to make these statements not misleading." The Court further held that the CAC had failed to allege scienter as to defendants Nasser, Mackenzie, Beaven and Kerr, and dismissed 32 of the CAC's alleged misstatements.

On October 12, 2017, BHP and the Plaintiffs submitted for the Court's consideration the Joint Rule 26(f) Report, in which they each set forth their respective views, after discussions and negotiations, on the scope of discovery, including the discovery available from non-parties. On October 16, 2017, the Court issued an order approving the non-disputed portions of the Joint Rule 26(f) Report and resolving the parties' disputes as to the scope of discovery.

On October 13, 2017, BHP filed its Answer to the CAC, which consisted of 355 numbered paragraphs, asserted 29 affirmative defenses, and spanned 65 pages. On October 17, 2017, Plaintiffs served their First Set of Requests for the Production of Documents, comprised of

55 individual requests, to which BHP responded and objected in writing on November 29, 2017. On October 25, 2017, BHP served its First Request for Production of Documents, comprised of 29 individual requests, to which Plaintiffs responded and objected in writing on December 4, 2017.

The parties exchanged Rule 26(a) Initial Disclosure Statements on October 20, 2017. They also negotiated a Stipulation and [Proposed] Order of Confidentiality, which the Court so ordered on October 30, 2017, and negotiated and executed a Form of Production Agreement concerning the form of production of hard copy and electronically stored information for discovery purposes.

Plaintiffs thereafter served subpoenas for documents and testimony on Marcus Philip Randolph (“Randolph”) (BHP’s Chief Executive of Ferrous & Coal, a member of BHP’s Group Management Committee (“GMC”), and Chairman of Samarco’s Board of Directors before the Class Period) and Timothy Cutt (“Cutt”) (BHP’s President of Petroleum and a GMC member during the Class Period), and reviewed their and BHP’s written responses and objections, served on November 14, 16, 22 and 30, 2017. Plaintiffs also engaged in discussions with counsel for Randolph and Cutt regarding the subpoenas, ultimately securing acceptable representations from Cutt concerning his lack of involvement in Samarco.

On March 8, 2018, Plaintiffs filed a motion in New Mexico federal district court, where Randolph resides, to compel the production of documents in contemplation of a deposition (to be scheduled at a later date), and thereafter engaged in further negotiations with his counsel on the scope of his production obligations. Randolph ultimately produced certain documents responsive to the subpoena.

Additionally, on March 16, 2018, BHP and the Plaintiffs reached an agreement concerning the scope of discovery, including the identities of document custodians, the relevant time period for discovery, and production from non-party Samarco. These issues were the subject of negotiations from November 2017 until March 2018. Those negotiations and the negotiations with Randolph were complicated by the fact that Randolph and other then-current and former Samarco board members had been criminally charged in Brazil, which gave rise to concerns associated with the privilege against self-incrimination under Brazilian and/or U.S. law.

In April 2018, Plaintiffs served a subpoena for documents and testimony on Nasser, to which he responded and objected in writing on May 4, 2018 and thereafter engaged in negotiations, through counsel, concerning the scope of the subpoena in contemplation of a deposition, to be scheduled at a later date. In April 2018, Plaintiffs also served a document subpoena on Gibson Dunn & Crutcher LLP, Vale's counsel, seeking materials related to the Vale Litigation, and later secured information from Vale.

For their part, Plaintiffs engaged in negotiations with defense counsel concerning the scope of Plaintiffs' production obligations and ultimately produced tens of thousands of pages of responsive material concerning the allegations of the CAC, facts relating to BHP and Samarco, and Plaintiffs' transactions in BHP securities. Additionally, in May 2018, Plaintiffs each produced a member of their respective Boards of Managers to testify in connection with class certification proceedings: (i) Catina Williams for City of Birmingham Retirement and Relief System; and (ii) Dexter Cunningham for City of Birmingham Firemen's and Policemen's Supplemental Pension System.

Additionally, Plaintiffs engaged Dr. Steven P. Feinstein as their market efficiency expert. In connection with class certification discovery: (i) Plaintiffs served Dr. Feinstein's opening

report on March 14, 2018; (ii) Lead Counsel represented Dr. Feinstein at his April 24, 2018 deposition; (iii) Lead Counsel analyzed the competing expert reports of Dr. Rene M. Stulz (May 11, 2018 and amended on May 18, 2018); (iv) Lead Counsel conducted Dr. Stulz's deposition on June 21, 2018; and (v) Plaintiffs served Dr. Feinstein's rebuttal expert report on July 5, 2018. On June 29, 2018, Plaintiffs filed motions for class certification and to exclude the report and opinions of Dr. Stulz. By that time, Plaintiffs had assembled a team of ten English- and/or Portuguese-language attorneys to review, code and analyze the documents obtained in discovery and from other sources.

In June 2018, the parties agreed to engage in mediation and retained the services of the Honorable Layn R. Phillips, a retired judge of the U.S. District of Oklahoma and a nationally recognized mediator of complex cases and class actions. Following the exchange of mediation statements in July 2018 and a conference between the parties and their loss-causation and damages consultants, the parties attended a full-day mediation on August 1, 2018 in New York City. The parties were unable to successfully resolve this matter at that time.

Subsequently, the parties and the mediator engaged in further discussions, and on August 6, 2018, the parties reached an agreement-in-principle to resolve the Litigation, which agreement they memorialized in a term sheet the same day (subject to the negotiation and further memorialization of mutually acceptable terms in the Stipulation). Also on August 6, 2018, the parties advised the Court of their agreement-in-principle to resolve this Litigation. Thereafter, the parties negotiated the terms of a Stipulation of Settlement, which sets forth the terms and conditions of the settlement. The Stipulation, dated September 14, 2018, can be viewed at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

On \_\_\_\_, 2018, the Court preliminarily approved the settlement, authorized this Notice to be disseminated to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

**IX. TERMS OF THE PROPOSED SETTLEMENT**

A settlement has been reached in the Litigation between Plaintiffs and Defendants, the terms and conditions of which are set forth in the Stipulation and the Exhibits thereto. A portion of the settlement proceeds will be used to pay attorneys' fees and expenses to Lead Counsel and Plaintiffs' time and expenses, to pay for this Notice and the processing of claims submitted by Class Members, and to pay Taxes and Tax Expenses. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed, in accordance with the Plan of Allocation described below, to Class Members who submit valid and timely Proofs of Claim.

The effectiveness of the settlement is subject to a number of conditions and reference to the Stipulation is made for further particulars regarding these conditions.

**X. REQUESTING EXCLUSION FROM THE CLASS**

Each Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written request for exclusion from the Class, addressed to:

*BHP Securities Litigation*  
EXCLUSIONS  
c/o Gilardi & Co. LLC  
3301 Kerner Blvd.  
San Rafael, CA 94901

The request for exclusion must: (1) include your name, address, and telephone number; (2) state that you "request exclusion from the Class"; (3) state the date(s), price(s), and amount(s) of ADRs that you purchased, sold, or otherwise acquired or disposed of during the period September 25, 2014 to November 30, 2015, inclusive; and (4) be signed by you or your

representative. YOUR EXCLUSION REQUEST MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_. A request for exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

No further opportunity to request exclusion will be given in this Litigation. If you choose to be excluded from the Class: (a) you are not entitled to share in the proceeds of the settlement described herein; (b) you are not bound by any judgment entered in the Litigation; and (c) you are not precluded by the settlement from otherwise prosecuting an individual claim against Defendants, to the extent any such claim exists, based on the matters complained of in the Litigation.

**If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in the Litigation, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitations or repose.**

BHP has the right to terminate the settlement if valid requests for exclusion are received from persons and entities entitled to be Class Members in an amount that exceeds an amount agreed to by Plaintiffs and BHP.

**XI. THE RIGHTS OF CLASS MEMBERS WHO WISH TO PARTICIPATE IN THE SETTLEMENT OR WHO TAKE NO ACTION**

If you are a Class Member and have not elected to request exclusion, you have the following options:

1. You may submit a Proof of Claim as described below. If you choose this option, you will share in the proceeds of the proposed settlement if your claim is timely, valid, and entitled to a distribution under the Plan of Allocation described below and if the proposed

settlement is finally approved by the Court; and you will be bound by the Judgment and release to be entered by the Court as described below.

2. You may do nothing at all. If you choose this option, you will not share in the proceeds of the settlement, but you will be bound by any judgment entered by the Court, and you will have fully released all of the Released Claims against the Released Persons.

3. You may object to the settlement, the Plan of Allocation, and/or the application for attorneys' fees and expenses in the manner described in Section XVII below.

4. If you are a Class Member, you may, but are not required to, enter an appearance through counsel of your own choosing and at your own expense, provided that such counsel must file an appearance on your behalf on or before \_\_\_\_\_, and must serve copies of such appearance on the attorneys listed in Section XVII below. If you do not enter an appearance through counsel of your own choosing, you will be represented by Lead Counsel: Robbins Geller Rudman & Dowd LLP, Joseph Russello, 58 South Service Road, Suite 200, Melville, NY 11747.

## **XII. PLAN OF ALLOCATION**

The Net Settlement Fund will be distributed to Class Members who are entitled to a distribution from the Net Settlement Fund and who submit a valid and timely Proof of Claim under the Plan of Allocation described below.

In the unlikely event there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, and as is more likely, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants.

The calculation of claims below is not an estimate of the amount you will receive. It is a formula for allocating the Net Settlement Fund among all Authorized Claimants.

A claim will be calculated as follows:

1. Based on the formulas stated below, a “Recognized Loss Amount” will be calculated for each purchase or acquisition of the ADRs during the Class Period that is listed on the Proof of Claim form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that Recognized Loss Amount will be zero.

2. Sixty-four percent (64%) of the Net Settlement Fund shall be allocated to ADRs of BHP Billiton Limited purchased or otherwise acquired during any of the periods shown below in Table-1, and claims for such shares shall be calculated as follows:

(a) Sold within the same period, the Recognized Loss Amount per ADR is zero.

(b) Sold in a subsequent period, the Recognized Loss Amount per ADR is the lesser of: (i) the decline in inflation per ADR shown in Table-1; or (ii) the purchase price per ADR less the sales price per ADR.

(c) Retained at the end of November 30, 2015 and sold before the close of trading on February 26, 2016, the claim per ADR shall be the lesser of: (i) the decline in inflation per ADR shown in Table-1; and (ii) the difference between the purchase price and the average closing price up to the date of sale as set forth in Table-3 below.

(d) Held as of the close of trading on February 26, 2016, or sold thereafter, the claim per ADR shall be the lesser of: (i) the decline in inflation per ADR shown in Table-1; and (ii) the difference between the purchase price and \$23.88 per ADR.<sup>2</sup>

3. Thirty-six percent (36%) of the Net Settlement Fund shall be allocated to ADRs of BHP Billiton plc purchased or otherwise acquired during any of the periods shown below in Table-2, and claims for such shares shall be calculated as follows:

(a) Sold within the same period, the Recognized Loss Amount per ADR is zero.

(b) Sold in a subsequent period, the Recognized Loss Amount per ADR is the lesser of: (i) the decline in inflation per ADR shown in Table-2; or (ii) the purchase price per ADR less the sales price per ADR.

(c) Retained at the end of November 30, 2015 and sold before the close of trading on February 26, 2016, the claim per ADR shall be the lesser of: (i) the decline in inflation per ADR shown in Table-2; and (ii) the difference between the purchase price and the average closing price up to the date of sale as set forth in Table-4 below.

(d) Held as of the close of trading on February 26, 2016, or sold thereafter, the claim per ADR shall be the lesser of: (i) the decline in inflation per ADR shown in Table-2; and (ii) the difference between the purchase price and \$21.34 per ADR.<sup>3</sup>

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<sup>2</sup> Under Section 21(D)(e)(1) of the Exchange Act, “in any private action arising under this Act in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the statute, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of ADRs of BHP Billiton Limited during the 90-day look-back period. The mean (average) closing price for these ADRs during this 90-day look-back period was \$23.88, as shown in Table-3.

**TABLE-1**

Purchase Date	Date of Sale			Retained Beyond 11/30/2015
	9/25/2014 through 11/5/2015	11/6/2015 through 11/24/2015	11/25/2015 through 11/29/2015	
9/25/2014 through 11/5/2015	\$0.00	\$1.30	\$2.53	\$2.68
11/6/2015 through 11/24/2015		\$0.00	\$1.23	\$1.38
11/25/2015 through 11/29/2015			\$0.00	\$0.15
Purchased on or After 11/30/2015				\$0.00

<sup>3</sup> As explained in footnote 2 above, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of ADRs of BHP Billiton plc during the 90-day look-back period. The mean (average) closing price for these ADRs during this 90-day look-back period was \$21.34, as shown in Table-4.

**TABLE-2**

Purchase Date	Date of Sale			Retained Beyond 11/30/2015
	9/25/2014 through 11/5/2015	11/6/2015 through 11/24/2015	11/25/2015 through 11/29/2015	
9/25/2014 through 11/5/2015	\$0.00	\$1.44	\$2.53	\$2.69
11/6/2015 through 11/24/2015		\$0.00	\$1.09	\$1.25
11/25/2015 through 11/29/2015			\$0.00	\$0.16
Purchased on or After 11/30/2015				\$0.00

**TABLE-3****BHP ADRs Closing Price and Average Closing Price  
November 30, 2015 – February 26, 2016**

Date	Closing Price	Average Closing Price	Date	Closing Price	Average Closing Price
11/30/2015	\$26.68	\$26.68	1/14/2016	\$21.68	\$25.46
12/1/2015	\$27.31	\$27.00	1/15/2016	\$20.19	\$25.30
12/2/2015	\$26.89	\$26.96	1/19/2016	\$20.07	\$25.15
12/3/2015	\$26.25	\$26.78	1/20/2016	\$19.38	\$24.98
12/4/2015	\$26.48	\$26.72	1/21/2016	\$21.00	\$24.87
12/7/2015	\$25.51	\$26.52	1/22/2016	\$21.48	\$24.78
12/8/2015	\$24.44	\$26.22	1/25/2016	\$20.75	\$24.67
12/9/2015	\$24.94	\$26.06	1/26/2016	\$22.01	\$24.60
12/10/2015	\$25.13	\$25.96	1/27/2016	\$21.35	\$24.52
12/11/2015	\$23.81	\$25.74	1/28/2016	\$21.79	\$24.46
12/14/2015	\$23.67	\$25.56	1/29/2016	\$21.91	\$24.40
12/15/2015	\$23.81	\$25.41	2/1/2016	\$21.73	\$24.33
12/16/2015	\$24.58	\$25.35	2/2/2016	\$20.33	\$24.24
12/17/2015	\$23.62	\$25.22	2/3/2016	\$21.39	\$24.18
12/18/2015	\$23.93	\$25.14	2/4/2016	\$22.89	\$24.15
12/21/2015	\$24.28	\$25.08	2/5/2016	\$22.58	\$24.12
12/22/2015	\$24.54	\$25.05	2/8/2016	\$22.71	\$24.09
12/23/2015	\$25.96	\$25.10	2/9/2016	\$21.79	\$24.04
12/24/2015	\$26.14	\$25.16	2/10/2016	\$21.65	\$23.99
12/28/2015	\$25.82	\$25.19	2/11/2016	\$21.19	\$23.94
12/29/2015	\$26.31	\$25.24	2/12/2016	\$22.72	\$23.92
12/30/2015	\$26.00	\$25.28	2/16/2016	\$23.16	\$23.90
12/31/2015	\$25.76	\$25.30	2/17/2016	\$24.12	\$23.91
1/4/2016	\$25.48	\$25.31	2/18/2016	\$23.99	\$23.91
1/5/2016	\$25.27	\$25.30	2/19/2016	\$23.98	\$23.91
1/6/2016	\$23.76	\$25.25	2/22/2016	\$25.29	\$23.93
1/7/2016	\$22.46	\$25.14	2/23/2016	\$24.09	\$23.94
1/8/2016	\$21.96	\$25.03	2/24/2016	\$22.80	\$23.92
1/11/2016	\$21.40	\$24.90	2/25/2016	\$22.83	\$23.90
1/12/2016	\$20.64	\$24.76	2/26/2016	\$22.56	\$23.88
1/13/2016	\$20.38	\$24.62			

**TABLE-4****BBL ADRs Closing Price and Average Closing Price  
November 30, 2015 – February 26, 2016**

Date	Closing Price	Average Closing Price	Date	Closing Price	Average Closing Price
11/30/2015	\$24.25	\$24.25	1/14/2016	\$19.31	\$22.88
12/1/2015	\$24.82	\$24.54	1/15/2016	\$17.87	\$22.72
12/2/2015	\$24.37	\$24.48	1/19/2016	\$17.74	\$22.58
12/3/2015	\$23.74	\$24.30	1/20/2016	\$17.07	\$22.42
12/4/2015	\$24.19	\$24.27	1/21/2016	\$18.55	\$22.31
12/7/2015	\$23.12	\$24.08	1/22/2016	\$18.71	\$22.22
12/8/2015	\$21.96	\$23.78	1/25/2016	\$18.32	\$22.11
12/9/2015	\$22.67	\$23.64	1/26/2016	\$19.37	\$22.04
12/10/2015	\$22.47	\$23.51	1/27/2016	\$18.99	\$21.97
12/11/2015	\$21.16	\$23.28	1/28/2016	\$19.63	\$21.91
12/14/2015	\$20.72	\$23.04	1/29/2016	\$19.65	\$21.86
12/15/2015	\$20.87	\$22.86	2/1/2016	\$19.67	\$21.80
12/16/2015	\$21.67	\$22.77	2/2/2016	\$18.27	\$21.72
12/17/2015	\$21.01	\$22.64	2/3/2016	\$19.42	\$21.67
12/18/2015	\$21.30	\$22.55	2/4/2016	\$20.88	\$21.66
12/21/2015	\$21.51	\$22.49	2/5/2016	\$20.49	\$21.63
12/22/2015	\$21.93	\$22.46	2/8/2016	\$20.49	\$21.61
12/23/2015	\$23.23	\$22.50	2/9/2016	\$19.43	\$21.56
12/24/2015	\$23.23	\$22.54	2/10/2016	\$19.03	\$21.51
12/28/2015	\$22.96	\$22.56	2/11/2016	\$18.62	\$21.46
12/29/2015	\$23.17	\$22.59	2/12/2016	\$20.27	\$21.43
12/30/2015	\$22.82	\$22.60	2/16/2016	\$20.31	\$21.41
12/31/2015	\$22.65	\$22.60	2/17/2016	\$21.34	\$21.41
1/4/2016	\$22.24	\$22.59	2/18/2016	\$21.33	\$21.41
1/5/2016	\$22.25	\$22.57	2/19/2016	\$21.22	\$21.41
1/6/2016	\$20.87	\$22.51	2/22/2016	\$22.55	\$21.43
1/7/2016	\$19.58	\$22.40	2/23/2016	\$21.14	\$21.42
1/8/2016	\$18.97	\$22.28	2/24/2016	\$19.89	\$21.39
1/11/2016	\$18.76	\$22.15	2/25/2016	\$19.83	\$21.37
1/12/2016	\$18.14	\$22.02	2/26/2016	\$19.80	\$21.34
1/13/2016	\$17.86	\$21.89			

For Class Members who held ADRs at the beginning of the Class Period or made multiple purchases, acquisitions, or sales during the Class Period, the First-In, First-Out (“FIFO”) method will be applied to such holdings, purchases, acquisitions, and sales for purposes of calculating a claim. Under the FIFO method, sales of ADRs during the Class Period will be matched, in chronological order, first against ADRs held at the beginning of the Class Period. The remaining sales of ADRs during the Class Period will then be matched, in chronological order, against ADRs purchased or acquired during the Class Period.

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if a Class Member had a net overall loss, after all profits from transactions in all ADRs described above during the Class Period are subtracted from all losses. However, the proceeds from sales of ADRs that have been matched against the ADRs held at the beginning of the Class Period will not be used in the calculation of such net loss.

No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

The Court has reserved jurisdiction over an appeal by any Class Member of the Claims Administrator’s determinations regarding a Class Member’s claim or to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. Defendants, Defendants’ Counsel, and all other Released Persons will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. No Person shall have any claim against the Plaintiffs, Lead Counsel, any claims administrator, or other Person designated by Lead Counsel, or Defendants or Defendants’ Counsel, based on

distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court.

### **XIII. PARTICIPATION IN THE SETTLEMENT**

**TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY SUBMIT A PROOF OF CLAIM.** A Proof of Claim is enclosed with this Notice or it may be downloaded at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com). Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail or submit it online so that it is postmarked (if mailed) or received (if filed electronically) no later than \_\_\_\_\_. The claim form may be submitted online at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com). Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

### **XIV. DISMISSAL AND RELEASES**

If the proposed settlement is approved, the Court will enter the Judgment. In addition, upon the Effective Date, Plaintiffs and each of the Class Members, for themselves and for any other Person claiming (now or in the future) through or on behalf of them, and regardless of whether any such Plaintiff or Class Member ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim, any distribution from the Settlement Fund, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons, and shall be permanently barred and enjoined from instituting, commencing, prosecuting or continuing to prosecute any such Released Claim against the Released Persons except to enforce

the releases and other terms and conditions contained in the Stipulation or the Judgment entered pursuant thereto.

#### **XV. APPLICATION FOR FEES AND EXPENSES**

At the Settlement Hearing, Lead Counsel will request the Court to award attorneys' fees not to exceed 30% of the Settlement Amount, plus expenses not to exceed \$500,000, plus interest thereon. In addition, the Plaintiffs may each seek the Court's approval for up to \$25,000 in expenses (including lost income) they incurred in representing the Class. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

The fee requested by Lead Counsel will compensate counsel for its efforts in achieving the settlement for the benefit of the Class, and for its risk in undertaking this representation on a wholly contingent basis. Lead Counsel believes that the fee requested is well within the range of fees awarded to plaintiffs' counsel under similar circumstances in other litigation of this type. The fee to be requested has been approved by the Plaintiffs.

#### **XVI. CONDITIONS FOR SETTLEMENT**

The settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from the Judgment or to move to alter or amend the Judgment, or the determination of any such appeal or motion in a manner to permit the consummation of the settlement substantially as provided for in the Stipulation. If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions as of August 5, 2018. In that event, the settlement will not proceed and no payments will be made to Class Members.

## **XVII. THE RIGHT TO OBJECT AND BE HEARD AT THE HEARING**

Any Class Member who does not request exclusion from the Class and who objects to any aspect of the settlement, the Plan of Allocation, or the application for attorneys' fees and expenses,<sup>4</sup> may appear and be heard at the Settlement Hearing. However, any such Person must submit a written notice of objection, such that it is *received* on or before \_\_\_\_\_, by each of the following:

***To the Court:***

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE  
500 Pearl Street  
New York, NY 10007-1312

***To Lead Counsel:***

ROBBINS GELLER RUDMAN  
& DOWD LLP  
JOSEPH RUSSELLO  
58 South Service Road, Suite 200  
Melville, NY 11747

***To Defendants' Counsel:***

SULLIVAN & CROMWELL LLP  
BRENDAN P. CULLEN  
1870 Embarcadero Road  
Palo Alto, CA 94303

Any objections, filings, and other submissions by the objecting Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class

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<sup>4</sup> Plaintiffs' submission in support of approval of this settlement, the Plan of Allocation, and the award of fees and expenses, will be filed no later than \_\_\_\_\_, 2018.

Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Class, including the number of ADRs you purchased or otherwise acquired an interest in during the Class Period and sold or held during the Class Period. Objectors who enter an appearance and desire to present evidence at the Settlement Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing. Only Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

#### **XVIII. SPECIAL NOTICE TO NOMINEES**

Nominees who purchased or acquired ADRs for the beneficial interest of other Persons during the Class Period shall, within ten (10) calendar days after receipt of this Notice: (1) provide the Claims Administrator with the names and addresses of such beneficial owners; or (2) forward a copy of this Notice and the Proof of Claim by First-Class Mail to each such beneficial owner and provide Lead Counsel with written confirmation that the Notice and Proof of Claim have been so forwarded. Upon submission of appropriate documentation, Lead Counsel will reimburse your reasonable costs and expenses of complying with this provision. Additional copies of this Notice may be obtained from the Claims Administrator by writing to:

*BHP Securities Litigation*  
Claims Administrator  
c/o GILARDI & CO. LLC  
P.O. Box 30217  
College Station, TX 77842-3217

#### **XIX. EXAMINATION OF PAPERS**

This Notice contains only a summary of the terms of the proposed settlement and does not describe all of the details of the Stipulation. For a more detailed statement of the matters involved

in the Litigation, reference is made to the pleadings, to the Stipulation, and to other papers filed in the Litigation, which may be inspected at the office of the Clerk of the Court, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312. In addition, certain case- and settlement-related documents, including the Stipulation of Settlement, may be viewed at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

If you have any questions about the settlement of the Litigation, you may contact Lead Counsel at the address listed below or by e-mail at [bhpclaims@rgrdlaw.com](mailto:bhpclaims@rgrdlaw.com).

ROBBINS GELLER RUDMAN & DOWD LLP  
JOSEPH RUSSELLO  
58 South Service Road, Suite 200  
Melville, NY 11747  
Telephone: 631/367-7100

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.**

DATED: \_\_\_\_\_, 2018

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

# **EXHIBIT A-2**



## I. GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of Pendency of Class Action and Proposed Settlement (the “Notice”) that accompanies this Proof of Claim and Release form (“Proof of Claim” or “Claim Form”), including the Plan of Allocation set forth in the Notice. The Notice describes the proposed settlement, how Class Members are affected by the settlement, and the manner in which the Net Settlement Fund will be distributed if the settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. This Claim Form is directed to all persons or entities who purchased or otherwise acquired an interest in American Depository Receipts (“ADRs”) of BHP Billiton Limited and/or BHP Billiton plc (together, “BHP”) from September 25, 2014 through November 30, 2015, inclusive (the “Class Period”) (the “Class”). Certain persons and entities are excluded from the Class, as set forth on page \_\_\_, paragraph 7 of the Notice.

3. To recover as a Class Member based on your claims in the action entitled *In re BHP Billiton Limited Securities Litigation*, No. 1:16-cv-01445-NRB (the “Litigation”), you must complete and, on page \_\_\_ hereof, sign this Proof of Claim. If you fail to submit a timely and properly addressed (as set forth in paragraph 5 below) Proof of Claim, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed settlement.

4. Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the settlement of the Litigation. The distribution of the Net Settlement Fund will

be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.

5. YOU MUST MAIL OR SUBMIT ONLINE AT WWW.BHPSECURITIESLITIGATION.COM YOUR COMPLETED AND SIGNED PROOF OF CLAIM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, POSTMARKED (IF MAILED) OR RECEIVED (IF FILED ELECTRONICALLY) NO LATER THAN [\_\_\_\_\_], 2018. IF MAILED, THE COMPLETED AND SIGNED PROOF OF CLAIM MUST BE SENT TO:

*BHP Securities Litigation*  
Claims Administrator  
c/o GILARDI & CO. LLC  
P.O. Box 30217  
College Station, TX 77842-3217

Do not mail or deliver your Claim Form to the Court, the parties to the Litigation, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above. If you are NOT a Class Member, as defined in the Notice, DO NOT submit a Proof of Claim.

6. If you are a Class Member and you have not timely requested exclusion in connection with the proposed settlement, you are bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.

## **II. CLAIMANT IDENTIFICATION**

If you purchased or otherwise acquired an interest in the ADRs of BHP Billiton Limited (which trade on the New York Stock Exchange under the ticker symbol “BHP”) and/or BHP Billiton plc (which trade on the New York Stock Exchange under the ticker symbol “BBL”) and held them in your name, you are the beneficial purchaser or acquirer as well as the record

purchaser or acquirer. If, however, you purchased or acquired ADRs and they were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser or acquirer and the third party is the record purchaser or acquirer.

Use Part I of this form entitled “Claimant Identification” to identify each purchaser or acquirer of record (“nominee”), if different from the beneficial purchaser or acquirer of the ADRs that form the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE ADRs UPON WHICH THIS CLAIM IS BASED.**

All joint purchasers and acquirers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

### **III. CLAIM FORM**

Use Part II of this form entitled “Schedule of Transactions in ADRs of BHP Billiton Limited and/or BHP Billiton plc” to supply all required details of your transaction(s) in any of the ADRs. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to ***all*** of your ***purchases or acquisitions*** of ADRs which took place during the period between September 25, 2014 and November 30, 2015, inclusive, and ***all*** of your ***sales*** of ADRs which took place

between September 25, 2014 and February 26, 2016, inclusive, whether or not such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to *all* of the shares of ADRs you held at the opening of trading on September 25, 2014 and the close of trading on February 26, 2016. Failure to report all such transactions or holdings may result in the rejection of your claim.

List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a “short sale” is deemed to be the date of purchase of ADRs. The date of a “short sale” is deemed to be the date of sale of ADRs.

Copies of broker confirmations or other documentation of your transactions in ADRs should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

**NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All claimants **MUST** submit a manually signed paper Proof of Claim whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*In re BHP Billiton Limited Securities Litigation*

Civil Action No. 1:16-cv-01445-NRB

PROOF OF CLAIM AND RELEASE

**Must Be Postmarked (if Mailed) or Received (if Filed Electronically) No Later Than:**

\_\_\_\_\_  
Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State or Province

\_\_\_\_\_  
Zip Code or Postal Code

\_\_\_\_\_  
Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
\_\_\_\_\_  
Individual  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
Record Owner's Name (if different from beneficial owner listed above)

PART II: SCHEDULE OF TRANSACTIONS IN ADRs OF BHP BILLITON LIMITED AND/OR BHP BILLITON plc

A. Number of shares of ADRs *held* at the opening of trading on September 25, 2014 (list for each of BHP Billiton Limited and BHP Billiton plc, as applicable):

\_\_\_\_\_ (BHP Billiton Limited, ticker symbol “BHP”)

\_\_\_\_\_ (BHP Billiton plc, ticker symbol “BBL”)

B. *Purchases/acquisitions* of ADRs (September 25, 2014 – November 30, 2015, inclusive) (list for each of BHP Billiton Limited and BHP Billiton plc, as applicable):

	Trade Date Month Day Year	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price
BHP Billiton Limited (ticker symbol “BHP”)	1. _____	1. _____	1. _____
	2. _____	2. _____	2. _____
	3. _____	3. _____	3. _____

	Trade Date Month Day Year	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price
BHP Billiton plc (ticker symbol “BBL”)	1. _____	1. _____	1. _____
	2. _____	2. _____	2. _____
	3. _____	3. _____	3. _____

**IMPORTANT:** If any purchase listed covered a “short sale,” please mark Yes.  Yes

C. Sales of ADRs (September 25, 2014 – February 26, 2016, inclusive):

BHP Billiton Limited (ticker symbol "BHP")	Trade Date Month Day Year	Number of Shares Sold	Total Sales Price
	1. _____	1. _____	1. _____
2. _____	2. _____	2. _____	
3. _____	3. _____	3. _____	

BHP Billiton plc (ticker symbol "BBL")	Trade Date Month Day Year	Number of Shares Sold	Total Sales Price
	1. _____	1. _____	1. _____
2. _____	2. _____	2. _____	
3. _____	3. _____	3. _____	

D. Number of shares of ADRs *held* at the close of trading on February 26, 2016 (list for each of BHP Billiton Limited and BHP Billiton plc, as applicable):

\_\_\_\_\_ (BHP Billiton Limited, ticker symbol "BHP")

\_\_\_\_\_ (BHP Billiton plc, ticker symbol "BBL")

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

#### **IV. RELEASE**

1. I (We) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the settlement, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, directors, agents, fiduciaries, beneficiaries or legal representatives, in their capacities as such, and any other person or entity legally entitled to bring Released Claims on my (our) behalf, in that capacity, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Claim (including Unknown Claims) against the Released Persons, and shall forever be barred and enjoined from bringing any action asserting any of the Released Claims against any and all of the Released Persons.

2. “Released Persons” is defined as each and all of the Defendants and their Related Parties. “Related Parties” means each of a Defendant’s respective present and former parents, subsidiaries, joint ventures (including, for the avoidance of doubt, Samarco Mineração, S.A.), divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, attorneys, advisors, accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, heirs, executors, trusts, trustees, administrators, agents, representatives, and assigns of each of them, in their capacity as such.

3. “Released Claims” means any and all claims, debts, demands, rights or causes of action or liabilities of every nature and description (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, local, foreign, statutory or common law, or any other law, rule or regulation, whether asserted

or unasserted, fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, against BHP or the Related Parties, arising out of or relating to both: (i) the allegations, circumstances, events, transactions, facts, matters, occurrences, representations or omissions involved in, set forth, or referred to in the Litigation, and (ii) the purchase or acquisition of ADRs during the Class Period. For the avoidance of doubt, Released Claims does not include, nor is it intended to include, the claims asserted or that may be asserted in: (a) *Banco Safra S.A. – Cayman Islands Branch v. Samarco Mineração S.A.*, No. 1:16-cv-8800-RMB (S.D.N.Y.), (b) *Impiombato v. BHP Billiton Limited*, VID649/2018 (Vict. Registry – Fed. Ct. of Austl.), or (c) any other cases, consolidated into any of the foregoing actions or otherwise, to the extent that the claims asserted in the matters set forth in (a)–(c) do not arise out of or relate to the purchase or acquisition of ADRs or an interest therein during the Class Period. Released Claims does not include any claims relating to the enforcement of the settlement or any claims against any person or entity who or which submits a request for exclusion from the settlement class that is accepted by the Court.

4. “Unknown Claims” means any Released Claims which Plaintiffs or Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement or seek exclusion from the Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Plaintiffs shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the U.S., or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly settle and release and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

5. This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Stipulation becomes effective on the Effective Date.

**V. CERTIFICATIONS**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Class as set forth in the Notice;
3. that the claimant has **not** submitted a request for exclusion from the Class;
4. that I (we) own(ed) the ADRs identified in the Claim Form and have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof, and that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases or acquisition of ADRs and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
8. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Litigation; and

9. that I (we) hereby warrant and represent that I (we) have included the information requested about all of my (our) transactions in ADRs which are the subject of this claim, which occurred during the Class Period as well as the opening and closing positions in such securities held by me (us) on the dates requested in this Claim Form.

I declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied on this Proof of Claim by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
(Month/Year)  
in \_\_\_\_\_  
(City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing,  
*e.g.*, Beneficial Purchaser or Acquirer, Executor  
or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. If this claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your Claim Form and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your Claim Form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to the address below.
8. **Do not use red pen or highlighter** on the Proof of Claim or supporting documentation.

**THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE AT  
WWW.BHPSECURITIESLITIGATION.COM  
OR, IF MAILED, POSTMARKED NO LATER THAN \_\_\_\_\_  
ADDRESSED AS FOLLOWS:**

*BHP Securities Litigation*  
Claims Administrator  
c/o GILARDI & CO. LLC  
P.O. Box 30217  
College Station, TX 77842-3217

# **EXHIBIT A-3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re BHP BILLITON LIMITED	:	Civil Action No. 1:16-cv-01445-NRB
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	SUMMARY NOTICE
	:	
ALL ACTIONS.	:	EXHIBIT A-3
_____	X	

**TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED AMERICAN DEPOSITORY RECEIPTS (“ADRs”) OF BHP BILLITON LIMITED OR BHP BILLITON PLC (COLLECTIVELY, “BHP”) DURING THE PERIOD FROM SEPTEMBER 25, 2014 THROUGH NOVEMBER 30, 2015, INCLUSIVE (THE “CLASS”)**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York (the “Court”), that the above-captioned litigation (the “Litigation”) has been certified for the purpose of settlement only as a class action on behalf of the Class, except for certain persons and entities who are excluded from the Class by definition as set forth in the full printed Notice of Pendency of Class Action and Proposed Settlement (the “Notice”).

YOU ARE ALSO NOTIFIED that Plaintiffs in the Litigation have reached a proposed settlement of the Litigation for \$50,000,000.00, that, if approved, will resolve all claims in the Litigation.

A hearing will be held on \_\_\_\_\_, at \_\_\_\_\_m., before the Honorable Naomi Reice Buchwald, United States District Judge, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, NY 10007-1312, for the purpose of determining: (1) whether the proposed settlement of the claims in the Litigation for the principal amount of \$50,000,000.00, plus interest, should be approved by the Court as fair, just, reasonable, and adequate; (2) whether a Final Judgment and Order of Dismissal with Prejudice should be entered by the Court dismissing the Litigation with prejudice against Defendants, and the Releases specified and described in the Stipulation of Settlement (the “Stipulation”) dated September 14, 2018 (and in

the Notice) should be granted<sup>1</sup>; (3) whether the Plan of Allocation is fair, reasonable, and adequate and should be approved; and (4) whether the application of Lead Counsel for an award of attorneys' fees and expenses and Plaintiffs' expenses in connection with this Litigation should be approved.

IF YOU PURCHASED OR OTHERWISE ACQUIRED ADRs DURING THE PERIOD FROM SEPTEMBER 25, 2014 THROUGH NOVEMBER 30, 2015, INCLUSIVE, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION. If you have not received a detailed Notice and a copy of the Proof of Claim and Release form, you may obtain copies by writing to *BHP Securities Litigation*, Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 30217, College Station, TX 77842-3217, or at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release by mail (*postmarked no later than* \_\_\_\_\_) or electronically (*no later than* \_\_\_\_\_), establishing that you are entitled to recovery. If you are a Class Member and do not submit a proper claim form, you will not be eligible to share in the distribution of the net proceeds of the settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Litigation.

If you are a Class Member and you desire to be excluded from the Class, you must submit a request for exclusion, in writing and in accordance with the instructions set forth in the Notice, to *BHP Securities Litigation*, Exclusions, c/o Gilardi & Co. LLC, 3301 Kerner Blvd., San Rafael, CA 94901, *postmarked no later than* \_\_\_\_\_. All Class Members who do not

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<sup>1</sup> All capitalized terms used in this Summary Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation, which is available at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

timely and validly request exclusion from the Class in response to the Notice will be bound by any judgment entered in the Litigation pursuant to the Stipulation.

Any objection to the settlement, the Plan of Allocation, or the fee and expense application must be in accordance with the instructions set forth in the Notice and *received* by each of the following recipients *no later than* \_\_\_\_\_:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE  
500 Pearl Street  
New York, NY 10007-1312

*Lead Counsel:*

ROBBINS GELLER RUDMAN  
& DOWD LLP  
JOSEPH RUSSELLO  
58 South Service Road, Suite 200  
Melville, NY 11747

*Defendants' Counsel:*

SULLIVAN & CROMWELL LLP  
BRENDAN P. CULLEN  
1870 Embarcadero Road  
Palo Alto, CA 94303

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, BHP OR BHP'S COUNSEL REGARDING THIS NOTICE.** If you have any questions about the settlement, you may contact Lead Counsel at the address listed above or by an e-mail to Lead Counsel at [bhpclaims@rgrdlaw.com](mailto:bhpclaims@rgrdlaw.com). Copies of certain pleadings and other documents filed in the Litigation can also be found at [www.bhpsecuritieslitigation.com](http://www.bhpsecuritieslitigation.com).

DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	X	
In re BHP BILLITON LIMITED	:	Civil Action No. 1:16-cv-01445-NRB
SECURITIES LITIGATION	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	[PROPOSED] FINAL JUDGMENT AND
	:	ORDER OF DISMISSAL WITH PREJUDICE
ALL ACTIONS.	:	
	:	EXHIBIT B
	X	

This matter came before the Court for hearing pursuant to the Order of this Court, dated \_\_\_\_\_, 201\_\_, on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement dated as of September 14, 2018 (the “Stipulation”). Due and adequate notice having been given to the Class as required in the Court’s Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Definitions: This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

2. Jurisdiction: This Court has jurisdiction over the subject matter of the Litigation, and all matters relating to the settlement, as well as personal jurisdiction over all parties to the Litigation, including all Class Members.

3. Incorporation of Settlement Documents: This Judgment incorporates and makes a part hereof: the Stipulation, the Notice and the Summary Notice, all of which were filed with the Court on \_\_\_\_\_, 2018.

4. Class Certification for Settlement Purposes: Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court finally certifies this Litigation as a class action brought on behalf of the Class, which is defined as all persons and entities who purchased or otherwise acquired an interest in BHP Billiton Limited and BHP Billiton plc (together, “BHP”) ADRs between September 25, 2014 and November 30, 2015, inclusive, on any exchange or otherwise. Excluded from the Class are (i) Defendants, (ii) Related Parties (as defined in ¶1.24 of the Stipulation), (iii) Immediate Family Members of any natural persons in (ii), (iv) any person, firm,

trust, corporation, officer, director, or other individual or entity in which any Defendant had a controlling interest during the Class Period, and (v) the legal representatives, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class are any persons and entities who are found by the Court to have timely and validly requested exclusion.

5. With respect to the Class, and for purposes of this settlement only, the Court finds and concludes that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied as: (a) the Class Members are so numerous that joinder of all Class Members in the Litigation is impracticable; (b) there are questions of law and fact common to the Class that predominate over any individual questions; (c) the claims of the Plaintiffs are typical of the claims of the Class; (d) the Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of all the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Class Members in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Class Members, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the Litigation. Accordingly, for settlement purposes only, the Class is certified, Plaintiffs are appointed Class Representatives, and Lead Counsel is appointed Class Counsel.

6. Notice: The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Litigation; (ii) the effect of the proposed settlement (including the releases to be

provided thereunder); (iii) Lead Counsel's motion for an award of attorneys' fees and litigation expenses; (iv) their right to object to any aspect of the settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and litigation expenses; (v) their right to exclude themselves from the Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4, as amended, and all other applicable law and rules.

7. Final Settlement Approval and Dismissal of Claims: Pursuant to Federal Rule of Civil Procedure 23, this Court hereby fully and finally approves the settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the settlement; the releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Litigation) and finds that the settlement is, in all respects, fair, reasonable, and adequate to the Class. The Court further finds that the settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Settling Parties. Accordingly, the Stipulation and the settlement embodied in the Stipulation are hereby finally approved in all respects. The Settling Parties are hereby directed to perform its terms.

8. The Litigation and all claims contained therein, as well as all of the Released Claims, are hereby dismissed with prejudice as to the Settling Parties, including the Class. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

9. Binding Effect: The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Plaintiffs and all other Class Members (regardless of whether or not any individual Class Member submits a Proof of Claim or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns.

10. Releases: The releases set forth in paragraph 5 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the settlement, Plaintiffs and each of the other Class Members, on behalf of themselves, and each of their respective heirs, executors, administrators, predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, directors, agents, fiduciaries, beneficiaries or legal representatives, in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Claim (including Unknown Claims) against any of the Released Persons, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any or all of the Released Claims against any of the Released Persons.

(b) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the settlement, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally and forever released, relinquished, and discharged Plaintiffs, Class Members (except any Class Member who

timely and validly requests exclusion from the Class), and Lead Counsel from all claims and causes of action of every nature and description (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Litigation, except claims to enforce the settlement and the terms of the Stipulation and claims or defenses arising from claims by any Class Member concerning a deficiency in administration of the settlement.

11. Notwithstanding paragraph 10 above, nothing in this Judgment shall bar any action by any of the parties to enforce or effectuate the terms of the Stipulation or this Judgment.

12. Only those Class Members filing valid and timely Proofs of Claim shall be entitled to participate in the settlement and receive a distribution from the Settlement Fund. All Class Members shall, as of the Effective Date, be bound by the releases set forth herein whether or not they submit a valid and timely Proof of Claim.

13. Injunction: Upon the Effective Date, Plaintiffs and all Class Members and anyone claiming through or on behalf of any of them, are forever barred and enjoined from filing, pursuing, commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind (whether within the United States or not) asserting any of the Released Claims (including Unknown Claims) against any of the Released Persons.

14. Upon the Effective Date, the Court permanently bars, enjoins, and restrains any and all claims for contribution arising out of the Litigation (including, but not limited to, the Released Claims) by any Person.

15. No Admissions: Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or

any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken or submissions made pursuant to or in connection with the Stipulation and/or approval of the settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Litigation or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Persons or in any way referred to for any other reason as against any of the Released Persons, in any civil, criminal, administrative, or other action or proceeding (whether within the United States or not), other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be construed against any of the parties as an admission, concession, or presumption that the consideration to be given under the settlement represents the amount which could be or would have been recovered after trial; provided, however, that the parties and the Released Persons and their respective counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder and thereunder or otherwise to enforce the terms of the settlement.

16. Defendants and/or their respective Related Parties may file the Stipulation and/or this Final Judgment and Order of Dismissal with Prejudice from this action in any action that may be brought against them in order to support a defense or counterclaim based on the

principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. Retention of Jurisdiction: Without affecting the finality of this Final Judgment and Order of Dismissal with Prejudice in any way, this Court hereby retains continuing and exclusive jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) determination of applications for attorneys' fees and expenses in the Litigation; and (d) all parties hereto, including all Class Members, for the purpose of construing, enforcing, and administering the Stipulation.

18. Rule 11 Findings: The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

19. Modification of the Agreement of Settlement: Without further approval from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Class Members in connection with the settlement. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the settlement.

20. Termination of Settlement: If the settlement is terminated as provided in the Stipulation or the Effective Date does not occur, then this Final Judgment and Order of Dismissal with Prejudice shall be vacated, rendered null and void and be of no further force and effect,

except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Class Members and Defendants, and the parties shall revert to their respective positions in the Litigation as of August 5, 2018, as provided in the Stipulation.

21. Entry of Final Judgment: Any plan of allocation submitted by Lead Counsel or any order entered regarding the attorneys' fee and expense application shall in no way disturb or affect this Final Judgment and Order of Dismissal with Prejudice and shall be considered separate from this Final Judgment. Thus, there is no just reason to delay the entry of this Judgment as a final judgment in this Litigation. Accordingly, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Litigation.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE