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SEC Charges Australian Mining Company for FCPA Violations Arising from Its Hospitality Program at the 2008 Beijing Olympics

On May 20, 2015, the U.S. Securities and Exchange Commission (“SEC”) announced a \$25 million settlement with Australian mining company BHP Billiton (the “Company”) to resolve Foreign Corrupt Practices Act (“FCPA”) charges arising from the Company’s sponsorship of the 2008 Summer Olympics. The allegations concern a hospitality program offered to hundreds of guests worldwide—most of whom were not government officials—to attend the summer games in Beijing. Although there was no allegation that the program was created to influence any particular business opportunities or deals, the SEC charged that the Company failed to implement adequate anti-bribery controls to monitor the hospitality program.

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According to the charging documents, BHP Billiton was an official sponsor of the 2008 Summer Olympics and invited approximately 650 people across the globe to attend the games at its expense. Of these, only around a quarter of the invitees were government officials or employees of state-owned entities, primarily from African and Asian countries.

The SEC concluded that the Company did not adequately control for the significant corruption risks arising from the large event that—according to internal emails referenced in the SEC’s Order—was designed in part to “maximize the commercial investment made in the Games through assisting [BHP Billiton] to strengthen relationships with key local and global stakeholders, e.g.: Government Ministers, Suppliers and Customers.” These risks were heightened due to the lavish nature of the hospitality program, which involved three- or four-day packages valued at between \$12,000 and \$16,000 per person. Included were tickets to events, luxury accommodations, meals, sightseeing, and, in many cases, business-class airfare. In addition, BHP Billiton extended invitations to spouses and other guests of government officials.

While the Company had an anti-corruption policy, conducted generalized anti-corruption training to its employees, and had some controls specifically surrounding the Beijing Olympics hospitality program, the SEC charged that these controls were insufficient in light of the heightened risk. Moreover, the SEC found that the Company failed to appropriately implement the controls it had. For example, the Company required its business managers to complete an application for guests to participate in the hospitality program and, while the application inquired about the business relationship with the invitee, the Company failed to perform an independent ethics review of most of these applications nor did it train employees specifically on the application process with the result that many applications were inaccurate or incomplete. In a press release, Antonia Chion, Associate Director of the SEC’s Division of Enforcement, characterized the compliance program as a “check the box compliance approach of forms over substance.”

The SEC brought charges under Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. These provisions require issuers to make and keep accurate books and records and devise a system of accounting controls. According to the terms of the settlement, BHP Billiton does not admit or deny the SEC’s findings, but will pay a \$25 million penalty and report to the SEC on its anti-corruption compliance program for one year. The SEC’s

enforcement of this matter underscores the importance of establishing compliance controls that are appropriately tailored to the risks presented by each business or hospitality endeavor and the need to stay vigilant in the implementation of these controls.

If you have any questions, please contact your usual Ropes & Gray advisor.