

BHP BILLITON PLC
Form 8-A12G
April 14, 2003

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-A

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES

PURSUANT TO SECTION 12(b) OR 12(g) OF THE

SECURITIES EXCHANGE ACT OF 1934

BHP Billiton Plc

(Exact Name of Registrant as Specified in its Charter)

England and Wales

(State of Incorporation or Organization)

Neathouse Place, Victoria, London

United Kingdom

(Address of Principal Executive Offices)

Not Applicable

(I.R.S. Employer Identification No.)

SW1V 1BH

(Zip Code)

If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), please check the following box. "

If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), please check the following box. x

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

Securities Act registration statement file number to which this form relates:

333-104383

Securities to be registered pursuant to Section 12(b) of the Act:

(None)

Securities to be registered pursuant to Section 12(g) of the Act:

American Depositary Shares, each of which represents two
BHP Billiton Plc

Ordinary Shares and which are evidenced by American
Depositary Receipts

BHP Billiton Plc Ordinary Shares, nominal value US\$0.50
each*

* Not for trading but only in connection with the registration of the American Depositary Shares representing such Ordinary Shares, pursuant to the requirements of the Securities and Exchange Commission

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. Description of Registrant's Securities to be Registered.

The description of the BHP Billiton Plc (the Registrant) Ordinary Shares (the Ordinary Shares) contained under the heading Description of BHP Billiton Limited's Constitution and BHP Billiton Plc's Articles of Association in the registration statement on Form F-1 (File No. 333-104383) of the Registrant (the Form F-1) is incorporated herein by reference. BHP Billiton Plc's American Depositary Receipts are described below.

DESCRIPTION OF AMERICAN DEPOSITARY RECEIPTS

American Depositary Receipts

JPMorgan Chase Bank as depositary will issue the ADSs pursuant to the Deposit Agreement. Each ADS will represent an ownership interest in two shares deposited with the custodian, as agent of the depositary, under the deposit agreement among ourselves, the depositary and yourself as an ADR holder (the Deposit Agreement). In the future, each ADS will also represent any securities, cash or other property deposited with the depositary but which they have not distributed directly to you. Unless specifically requested by you, all ADSs will be issued on the books of our depositary in book-entry form and a statement will be mailed to you which reflects your ownership interest in such ADSs. In our description, references to American Depositary Receipts or ADRs shall include the statements you will receive which reflects your ownership of ADSs.

The depositary's office is located at 60 Wall Street, New York, NY 10260.

You may hold ADSs either directly or indirectly through your broker or other financial institution. If you hold ADSs directly, by having an ADS registered in your name on the books of the depositary, you are an ADR holder. This description assumes you hold your ADSs directly. If you hold the ADSs through your broker or financial institution nominee, you must rely on the procedures of such broker or financial institution to assert the rights of an ADR holder described in this section. You should consult with your broker or financial institution to find out what those procedures are.

Because the depositary's nominee will actually be the registered owner of the shares, you must rely on it to exercise the rights of a shareholder on your behalf. The obligations of the depositary and its agents are set out in the deposit agreement. The deposit agreement and the ADSs are governed by New York law.

The following is a summary of the material terms of the Deposit Agreement. Because it is a summary, it does not contain all the information that may be important to you. For more complete information, you should read the entire Deposit Agreement and the form of ADR which contains the terms of your ADSs. You can read a copy of the Deposit Agreement which is available at the offices of the depositary during normal business hours on advance notice. You may also obtain a copy of the Deposit Agreement at the U.S. Securities and Exchange Commission's

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

(SEC) Public Reference Room which is located at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-732-0330.

Share Dividends and Other Distributions

How will I receive dividends and other distributions on the shares underlying my ADSs?

We may make various types of distributions with respect to our securities. The depositary has agreed to pay to you the cash dividends or other distributions it or the custodian receives on shares or other deposited securities, after deducting its expenses. You will receive these distributions in proportion to the number of underlying shares that your ADSs represent.

- 2 -

Except as stated below, to the extent the depositary is legally permitted it will deliver such distributions to ADR holders in proportion to their interests in the following manner:

- *Cash.* The depositary will distribute any U.S. dollars available to it resulting from a cash dividend or other cash distribution or the net proceeds of sales of any other distribution or portion thereof (to the extent applicable), on an averaged or other practicable basis, subject to (i) appropriate adjustments for taxes withheld, (ii) such distribution being impermissible or impracticable with respect to certain registered holders, and (iii) deduction of the depositary's expenses in (1) converting any foreign currency to U.S. dollars to the extent that it determines that such conversion may be made on a reasonable basis, (2) transferring foreign currency or U.S. dollars to the United States by such means as the Depositary may determine to the extent that it determines that such transfer may be made on a reasonable basis, (3) obtaining any approval or license of any governmental authority required for such conversion or transfer, which is obtainable at a reasonable cost and within a reasonable time and (4) making any sale by public or private means in any commercially reasonable manner. If exchange rates fluctuate during a time when the depositary cannot convert a foreign currency, you may lose some or all of the value of the distribution.
- *Shares.* In the case of a distribution in shares of the Registrant, the depositary will issue additional ADRs to evidence the number of ADSs representing such shares. Only whole ADSs will be issued. Any shares which would result in fractional ADSs will be sold and the net proceeds will be distributed to the ADR holders entitled thereto.
- *Rights to receive additional shares.* In the case of a distribution of rights to subscribe for additional shares or other rights, if we provide satisfactory evidence that the depositary may lawfully distribute such rights, the depositary may arrange for ADR holders to instruct the depositary as to the exercise of such rights. However, if we do not furnish such evidence or if the depositary determines it is not practical to distribute such rights, the depositary may:
 - sell such rights if practicable and distribute the net proceeds as cash; or
 - allow such rights to lapse, in which case ADR holders will receive nothing.

We have no obligation to file a registration statement under the U.S. Securities Act of 1933 (the "Securities Act") or to take any other action in order to make any rights available to ADR holders.

- *Other Distributions.* In the case of a distribution of securities or property other than those described above, the depositary may either (i) distribute such securities or property in any manner it deems equitable and practicable, (ii) to the extent the depositary deems distribution of such securities or property not to be equitable and practicable, sell such securities or property and distribute any net proceeds in the same way it distributes cash, or (iii) hold the distributed property in which case the ADSs will also represent the distributed property.

Any US dollars will be distributed by checks drawn on a bank in the United States for whole dollars and cents (fractional cents will be withheld without liability for interest and added to future cash distributions).

The depositary may choose any practical method of distribution for any specific ADR holder, including the distribution of foreign currency, securities or property, or it may retain such items, without paying interest on or investing them, on behalf of the ADR holder as deposited securities.

The depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any ADR holders.

There can be no assurances that the depositary will be able to convert any currency at a specified exchange rate or sell any property, rights, shares or other securities at a specified price, nor that any of such transactions can be completed within a specified time period.

Deposit, Withdrawal and Cancellation

How does the depositary issue ADSs?

The depositary will issue ADSs to or upon the order of those who deposit shares or evidence of rights to receive shares with the custodian.

Shares deposited in the future with the custodian must be accompanied by certain documents, including instruments showing that such shares have been properly transferred or endorsed to the person on whose behalf the deposit is being made.

The custodian will hold all deposited shares for the account of the depositary. ADR holders thus have no direct ownership interest in the shares and only have such rights as are contained in the Deposit Agreement. The custodian will also hold any additional securities, property and cash received on or in substitution for the deposited shares. The deposited shares and any such additional items are referred to as deposited securities.

Upon each deposit of shares, receipt of related delivery documentation and compliance with the other provisions of the Deposit Agreement, including the payment of the fees and charges of the depositary and any taxes or other fees or charges owing, the depositary will issue an ADR or ADRs in the name of the person entitled thereto evidencing the number of ADSs to which such person is entitled. Certificated ADRs will be delivered at the depositary's principal New York office or any other location that it may designate as its transfer office. ADRs issued in book-entry form will be reflected on a statement which will be mailed to the address set forth on the books of the depositary.

How do ADR holders cancel an ADS and obtain deposited securities?

When you turn in your ADSs at the depositary's office, the depositary will, upon payment of certain applicable fees, charges and taxes, and upon receipt of proper instructions, deliver the underlying shares to an account designated by you and maintained by us, in the case of shares in registered form, or transfer to an account of an accredited financial institution on your behalf in the case of shares in bearer form. At your risk, expense and request, the depositary may deliver deposited securities at such other place as you may request.

The depositary may only restrict the withdrawal of deposited securities in connection with:

- temporary delays caused by closing our transfer books or those of the depositary or the deposit of shares in connection with voting at a shareholders' meeting, or the payment of dividends;

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

- the failure of holders to pay fees, taxes and similar charges; or
- compliance with any U.S. or foreign laws or governmental regulations relating to the ADRs or to the withdrawal of deposited securities.

This right of withdrawal may not be limited by any other provision of the Deposit Agreement.

- 4 -

Voting Rights

How do I vote?

If you are an ADR holder and the depositary asks you to provide it with voting instructions, you may instruct the depositary how to exercise the voting rights for the shares which underlie your ADSs. After receiving voting materials from us, the depositary will notify the ADR holders of any shareholder meeting or solicitation of consents or proxies. This notice will describe how you may instruct the depositary to exercise the voting rights for the shares which underlie your ADSs. For instructions to be valid, the depositary must receive them on or before the date specified. The depositary will try, as far as is practical, subject to the provisions of and governing the underlying shares or other deposited securities, to vote or to have its agents vote the shares or other deposited securities as you instruct. The depositary will only vote or attempt to vote as you instruct. The depositary will not itself exercise any voting discretion. Furthermore, neither the depositary nor its agents are responsible for any failure to carry out any voting instructions, for the manner in which any vote is cast or for the effect of any vote.

There is no guarantee that you will receive voting materials in time to instruct the depositary to vote and it is possible that you, or persons who hold their ADSs through brokers, dealers or other third parties, will not have the opportunity to exercise a right to vote.

Record Dates

The depositary may fix record dates for the determination of the ADR holders who will be entitled:

- to receive a dividend, distribution or rights,
- to give instructions for the exercise of voting rights at a meeting of holders of ordinary shares or other deposited securities, or
- to receive any notice,

all subject to the provisions of the Deposit Agreement.

Reports and Other Communications

Will I be able to view the reports of the Registrant?

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

The depositary will make available for inspection by ADR holders any written communications from us which are both received by the custodian or its nominee as a holder of deposited securities and made generally available to the holders of deposited securities. We will furnish these communications in English when so required by any rules or regulations of the SEC.

Additionally, if we make any written communications generally available to holders of our shares, including the depositary or the custodian, and the depositary or the custodian actually receive those written communications, the depositary will mail copies of them, or, at its option, summaries of them to ADR holders.

Fees and Expenses

What fees and expenses will I be responsible for paying?

ADR holders will be charged a fee for each issuance of ADSs, including issuances resulting from distributions of shares, rights and other property, and for each surrender of ADSs in exchange for deposited securities. The fee in each case is US\$5.00 for each 100 ADSs (or any portion thereof) issued or surrendered.

The following additional charges shall be incurred by the ADR holders, by any party depositing or withdrawing shares or by any party surrendering ADRs or to whom ADRs are issued (including, without

limitation, issuance pursuant to a stock dividend or stock split declared by the Company or an exchange of stock regarding the ADRs or the deposited securities or a distribution of ADRs), whichever is applicable:

- to the extent not prohibited by the rules of any stock exchange or interdealer quotation system upon which the ADSs are traded, a fee of US\$1.50 per ADR or ADRs for transfers of certificated ADRs made;
- to the extent not prohibited by the rules of any stock exchange or interdealer quotation system upon which the ADSs are traded, a fee of US\$.02 or less per ADS (or portion thereof) for any Cash distribution made pursuant to the Deposit Agreement;
- stock transfer or other taxes and other governmental charges;
- cable, telex and facsimile transmission and delivery charges incurred at your request;
- transfer or registration fees for the registration of transfer of deposited securities on any applicable register in connection with the deposit or withdrawal of deposited securities;
- expenses of the depositary in connection with the conversion of foreign currency into U.S. dollars; and
- such fees and expenses as are incurred by the depositary in delivery of deposited securities or otherwise in connection with the depositary's or its custodian's compliance with applicable law, rule or regulation.

We will pay all other charges and expenses of the depositary and any agent of the depositary (except the custodian) pursuant to agreements from time to time between us and the depositary. The fees described above may be amended from time to time.

Payment of Taxes

ADR holders must pay any tax or other governmental charge payable by the custodian or the depositary on any ADS or ADR, deposited security or distribution. If an ADR holder owes any tax or other governmental charge, the depositary may (i) deduct the amount thereof from any cash distributions, or (ii) sell deposited securities and deduct the amount owing from the net proceeds of such sale. In either case the ADR holder remains liable for any shortfall. Additionally, if any tax or governmental charge is unpaid, the depositary may also refuse to effect any registration, registration of transfer, split-up or combination of deposited securities or withdrawal of deposited securities (except under limited circumstances mandated by securities regulations). If any tax or governmental charge is required to be withheld on any non-cash distribution, the depositary may sell the distributed property or securities to pay such taxes and distribute any remaining net proceeds to the ADR holders entitled thereto.

Reclassifications, Recapitalizations and Mergers

If we take certain actions that affect the deposited securities, including (i) any change in par value, split-up, consolidation, cancellation or other reclassification of deposited securities or (ii) any recapitalization, reorganization, merger, consolidation, liquidation, receivership, bankruptcy or

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

sale of all or substantially all of our assets, then the depositary may, after consultation with us if practicable, choose to:

- amend the form of ADR;
- distribute additional or amended ADRs;
- distribute cash, securities or other property it has received in connection with such actions;

- 6 -

- sell any securities or property received and distribute the proceeds as cash; or
- none of the above.

If the depositary does not choose any of the above options, any of the cash, securities or other property it receives will constitute part of the deposited securities and each ADS will then represent a proportionate interest in such property.

Amendment and Termination

How may the Deposit Agreement be amended?

We may agree with the depositary to amend the Deposit Agreement and the ADSs without your consent for any reason. ADR holders must be given at least 30 days notice of any amendment that imposes or increases any fees or charges (other than stock transfer or other taxes and other governmental charges, transfer or registration fees, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or affects any substantial existing right of ADR holders. If an ADR holder continues to hold an ADR or ADRs after being so notified, such ADR holder is deemed to agree to such amendment. Notwithstanding the foregoing, an amendment can become effective before notice is given if this is necessary to ensure compliance with a new law, rule or regulation.

No amendment will impair your right to surrender your ADSs and receive the underlying securities. If a governmental body adopts new laws or rules which require the Deposit Agreement or the ADS to be amended, we and the depositary may make the necessary amendments, which could take effect before you receive notice thereof.

How may the Deposit Agreement be terminated?

Upon the resignation or removal of the depositary or sixty days after such resignation, if we have not appointed a new depositary (other than the depositary) to act for us, the depositary may terminate the Deposit Agreement by giving the ADR holders at least 30 days prior notice, and it must do so at our request. After termination, the depositary's only responsibility will be (i) to deliver deposited securities to ADR holders who surrender their ADRs, and (ii) to hold or sell distributions received on deposited securities. As soon as practicable after the expiration of six months from the termination date, the depositary will sell the deposited securities which remain and hold the net proceeds of such sales, without liability for interest, in trust for the ADR holders who have not yet surrendered their ADRs. After making such sale, the depositary shall have no obligations except to account for such proceeds and other cash. The depositary will not be required to invest such proceeds or pay interest on them.

Limitations on Obligations and Liability to ADR holders

Limits on our obligations and the obligations of the depositary; limits on liability to ADR holders and holders of ADSs

The Deposit Agreement expressly limits the obligations and liability of the depositary, ourselves and our respective agents. Neither we nor the depositary nor any such agent will be liable if:

- present or future law, regulation, the provisions of or governing any deposited securities, act of God, war or other circumstance beyond its control shall prevent, delay or subject to any civil or criminal penalty any act which the Deposit Agreement or the ADRs provides shall be done or performed by it, or (ii) by reason of any exercise or failure to exercise any discretion given it in the Deposit Agreement or the ADRs;

- it exercises or fails to exercise discretion under the Deposit Agreement or the ADR;
- it performs its obligations without gross negligence or bad faith;
- it takes any action or inaction by it in reliance upon the advice of or information from legal counsel, accountants, any person presenting shares for deposit, any registered holder of ADRs, or any other person believed by it to be competent to give such advice or information; or
- it relies upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Neither the depositary nor its agents have any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any deposited securities or the ADRs. We and our agents shall only be obligated to appear in, prosecute or defend any action, suit or other proceeding in respect of any deposited securities or the ADRs, which in our opinion may involve us in expense or liability, if indemnity satisfactory to us against all expense (including fees and disbursements of counsel) and liability is furnished as often as we require.

The depositary will not be responsible for failing to carry out instructions to vote the deposited securities or for the manner in which the deposited securities are voted or the effect of the vote. In no event shall the depositary or any of its agents be liable for any indirect, special, punitive or consequential damages.

The depositary may own and deal in deposited securities and in ADSs.

Disclosure of Interest in ADSs

From time to time we may request you and other holders and beneficial owners of ADSs to provide information as to:

- the capacity in which you and other holders and beneficial owners own or owned ADSs;
- the identity of any other persons then or previously interested in such ADSs; and
- the nature of such interest and various other matters.

You agree to provide any information requested by us or the depositary pursuant to the Deposit Agreement. The depositary has agreed to use reasonable efforts to comply with written instructions received from us requesting that it forward any such requests to you and other holders and beneficial owners and to forward to us any responses to such requests to the extent permitted by applicable law.

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

Additionally, by being an ADR holder, you will be agreeing to provide such information as we may request in a disclosure notice given pursuant to the Great Britain Companies Act 1985 (the Companies Act) or our articles of association. By accepting or holding an ADR you are confirming that you understand that failure to comply with such disclosure notice may result in the imposition of sanctions against you, including, without limitation, the withdrawal of the voting rights of the shares underlying your ADRs and the imposition of restrictions on the rights to receive dividends on and to transfer such shares. In addition, by accepting or holding an ADR you will be agreeing to comply with the provisions of the Companies Act with regard to the notification to us of interests in shares, which currently provide, inter alia, that any ADR holder who is or becomes directly or indirectly interested (within the meaning of the Companies Act) in 3% or more of the outstanding shares, or is aware that another person for whom it holds such ADRs is so interested, must within two business days after becoming so interested or so aware (and thereafter in certain circumstances upon any change to the particulars previously notified) notify us as required by the Companies Act. After the relevant threshold is exceeded, similar notifications must be made in whole respect of whole percentage figure increases or decreases, rounded down to the nearest whole number.

Requirements for Depositary Actions

We, the depositary or the custodian may refuse to

- issue, register or transfer an ADR or ADRs;
- effect a split-up or combination of ADRs;
- deliver distributions on any such ADRs; or
- permit the withdrawal of deposited securities (unless the Deposit Agreement provides otherwise), until the following conditions have been met:
 - the holder has paid all taxes, governmental charges, and fees and expenses as required in the Deposit Agreement;
 - the holder has provided the depositary with any information it may deem necessary or proper, including, without limitation, proof of identity and the genuineness of any signature; and
 - the holder has complied with such regulations as the depositary may establish under the Deposit Agreement.

The depositary may also suspend the issuance of ADSs, the deposit of shares, the registration, transfer, split-up or combination of ADRs, or the withdrawal of deposited securities (unless the deposit agreement provides otherwise), if the register for ADRs or any deposited securities is closed or if we or the depositary decide it is advisable to do so.

Books of Depositary

The depositary or its agent will maintain a register for the registration, registration of transfer, combination and split-up of ADRs. You may inspect such records at such office during regular business hours, but solely for the purpose of communicating with other holders in the interest of business matters relating to the Deposit Agreement.

The depositary will maintain facilities to record and process the issuance, cancellation, combination, split-up and transfer of ADRs. These facilities may be closed from time to time, to the extent not prohibited by law.

Pre-release of ADSs

Edgar Filing: BHP BILLITON PLC - Form 8-A12G

The depositary may issue ADSs prior to the deposit with the custodian of shares (or rights to receive shares). This is called a pre-release of the ADS. A pre-release is closed out as soon as the underlying shares (or other ADSs) are delivered to the depositary. The depositary may pre-release ADSs only if:

- the depositary has received collateral for the full market value of the pre-released ADSs; and
- each recipient of pre-released ADSs agrees in writing that he or she
 - owns the underlying shares,
 - assigns all rights in such shares to the depositary,
 - holds such shares for the account of the depositary and
 - will deliver such shares to the custodian as soon as practicable, and promptly if the depositary so demands.

In general, the number of pre-released ADSs will not evidence more than 30% of all ADSs outstanding at any given time (excluding those evidenced by pre-released ADSs). However, the depositary may change or disregard such limit from time to time as it deems appropriate. The depositary may retain for its own account any earnings on collateral for pre-released ADSs and its charges for issuance thereof.

Item 2. Exhibits

- (1) Registration Statement on Form F-1 in the form filed by BHP Billiton Finance (USA) Limited, BHP Billiton Limited and the Registrant with the Securities and Exchange Commission (the Commission) on April 14, 2003 (File No. 333-104383) (incorporated herein by reference).
- (2) Registration Statement on Form F-6 (the Form F-6) in the form filed with the Commission on April 15, 2002 (File No. 333-86384) relating to the ADSs each representing two Ordinary Shares (incorporated herein by reference).
- (3) Articles of Association of the Registrant (included as Exhibit 3.2 to the Form F-1).
- (4) Form of Deposit Agreement among the Registrant, JPMorgan Chase Bank, as depositary, and holders from time to time of ADRs issued thereunder (included as Exhibit (a) to Item 3 of the Form F-6).
- (5) Specimen American Depositary Share (included in Exhibit 4).

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

BHP BILLITON PLC

Date: April 11, 2003

By: /s/ CHRISTOPHER LYNCH

Name: Christopher Lynch
Title: Chief Financial Officer

EXHIBIT INDEX

- (1) Registration Statement on Form F-1 in the form filed by BHP Billiton Finance (USA) Limited, BHP Billiton Limited and the Registrant with the Securities and Exchange Commission (the Commission) on April 14, 2003 (File No. 333-103483) (incorporated herein by reference).
- (2) Registration Statement on Form F-6 (the Form F-6) in the form filed with the Commission on April 15, 2002 (File No. 333-86384) relating to the ADSs each representing two Ordinary Shares (incorporated herein by reference).
- (3) Articles of Association of the Registrant (included as Exhibit 3.2 to the Form F-1).
- (4) Form of Deposit Agreement among the Registrant, JPMorgan Chase Bank, as depositary, and holders from time to time of ADRs issued thereunder (included as Exhibit (a) to Item 3 of the Form F-6).
- (5) Specimen American Depositary Share (included in Exhibit 4).