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### Headnote

An issuer wants to do a distribution outside British Columbia; the issuer cannot rely on BC Instrument 72-503 *Distribution of Securities outside British Columbia*; the issuer will comply with alternative conditions that achieve the same regulatory outcome as BCI 72-503 - The issuer has applied to list its equity securities on an exchange that, although not a “qualified market” as defined in BCI 72-503, has attributes comparable to a qualified market; the proceeds of the distribution will be held in escrow until the listing is completed; if the listing does not occur by a specified date, the distribution proceeds will be returned to the subscribers; the issuer will comply with all other conditions in BCI 72-503 relating to the distribution

### Exemption Order

#### Metals Finance Corporation

#### Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

### Background

- ¶ 1 Metals Finance Corporation (MFC) applied under sections 48 and 76 of the Act for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34 and 61 of the Act (the Registration and Prospectus Requirements).

### Representations

- ¶ 2 MFC represents that:
1. it is incorporated under the laws of British Columbia with its head office in British Columbia;
  2. its business is financing and developing metal recovery projects;
  3. its principal metal recovery projects are located outside Canada;
  4. its authorized capital consists of an unlimited number of common shares without par value, of which 31,215,576 shares are issued and outstanding as of September 28, 2007;
  5. it is not a reporting issuer in any jurisdiction of Canada;

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6. it is not an exchange issuer under the Act;
7. none of its securities are listed for trading on any exchange or quotation system in Canada, and MFC has no intention of so listing any of its securities;
8. MFC seeks to distribute common shares in Australia and list its common shares on the Australian Securities Exchange (the ASX) by way of an initial prospectus offering to be conducted entirely outside Canada (the Distribution);
9. the Distribution will involve MFC offering an estimated 30 million of its common shares (the Securities) for an estimated AUD \$0.50 per share;
10. the subscribers under the Distribution (the Subscribers) will not be residents of Canada;
11. there is no market in Canada through which the Securities may be sold to Canadian investors;
12. the allotment of Securities to the Subscribers will not proceed until after MFC receives permission for official quotation of its common shares on the ASX (the Listing);
13. BBY Limited (the Brokers) will hold the proceeds received from the Subscribers (the Proceeds) in escrow;
14. the Brokers will only release the Proceeds to MFC concurrently with the Listing and the allotment of the Securities; if the ASX does not grant permission for the Listing MFC will not allot the Securities unless it can rely on another exemption or otherwise comply with the applicable securities laws of British Columbia and Australia;
15. if MFC has not received permission for the Listing and is not able to rely on another exemption or otherwise comply with the applicable securities laws of British Columbia and Australia to allot the Securities by February 28, 2008, the Brokers will return the Proceeds to the Subscribers;
16. MFC wishes to rely on British Columbia Instrument 72-503 *Distribution of Securities outside British Columbia* (BCI 72-503) to exempt the Distribution from Sections 34 and 61 of the Act; however, the ASX is not a “qualified market” as defined in BCI 72-503;

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17. each Subscriber will be required to complete and submit a subscription agreement (Subscription Agreement), which will require the Subscriber to certify that it is not a resident of British Columbia;
18. MFC has no reason to believe that any of the Subscribers will be residents of British Columbia;
19. each Subscriber will be required to make the following acknowledgements, required by subsection 3(c) of BCI 72-503, in the Subscription Agreement:
  - (a) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Securities;
  - (b) there is no government or other insurance covering the Securities;
  - (c) there are risks associated with the purchase of the Securities;
  - (d) there are restrictions on the purchaser's ability to resell the Securities and it is the responsibility of the purchaser to find out what those restrictions are and to comply with them before selling the Securities; and
  - (e) the issuer has advised the purchaser that the issuer is relying on an exemption from the requirements to provide the purchaser with a prospectus and to sell securities through a person registered to sell securities under the *Securities Act* (British Columbia) and, as a consequence of acquiring securities pursuant to this exemption, certain protections, rights and remedies provided by the *Securities Act* (British Columbia), including statutory rights of rescission or damages, will not be available to the purchaser;
20. MFC will also be required by applicable Australian corporations and securities laws to issue an Australian prospectus that will also contain disclosure of the above referenced requirements of BCI 72-503;
21. MFC will file a report on the Distribution in the form required under Section 139 of the Securities Rules, on or before the 10th day after the Distribution;
22. the ASX has comprehensive listing rules that impose requirements analogous or comparable to the rules and requirements imposed by those markets defined as "qualified markets" in BCI 72-503; and

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23. the ASX has a supervisory function and enforcement powers analogous or comparable to the supervisory functions and enforcement powers of those markets defined as “qualified markets” in BCI 72-503.

### **Order**

¶ 3 Considering that it would not be prejudicial to the public interest, the Commission orders under sections 48 and 76 of the Act that the Registration and Prospectus Requirements do not apply to MFC in connection with the Distribution provided that MFC complies with paragraphs 12 to 15, 17 to 19 and 21 of this Order.

¶ 4 October 23, 2007

Martin Eady, C.A.  
Director, Corporate Finance  
British Columbia Securities Commission