

Citation: 2021 BCSECCOM 381

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 45-102, s.3.1 *Resale of Securities*

Resale Relief - An issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents - The issuer meets all the conditions of section 2.14 of National Instrument 45-102 *Resale of Securities* except that residents of Canada own more than 10% of the securities of the class; the issuer's securities are listed on an exchange outside of Canada; there is no market for the issuer's securities in Canada; the issuer has established that, despite being organized under BC corporate law and having a nominal head office in BC, it has minimal connection to Canada in that none of its operations are conducted in Canada, none of its directors are resident in Canada and few of its officers are resident in Canada; the issuer will provide Canadian securityholders with the same continuous disclosure materials that are provided to foreign shareholders

Permitted Transfer Relief - An issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents - First trades will occur within a limited group of permitted transferees, such as family members of individual security holders, their holding companies and family trusts established for their benefit, or for limited purposes, such as corporate restructuring or compensation purposes, for non-individual security holders; there is no market for the securities and none is expected to develop

Applicable Legislative Provisions

National Instrument 45-102, s.3.1 *Resale of Securities*
1996 Securities Act s. 76 Prospectus Requirements

September 7, 2021

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
TMC the metals company Inc.
(TMC)

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from DeepGreen Metals Inc. (DeepGreen) and Sustainable Opportunities Acquisition Corp. (SOAC and together with DeepGreen, the Filers) on behalf of TMC for a decision under the securities legislation of the Jurisdictions (the Legislation) that the prospectus requirement contained in the Legislation does not apply to:

- (a) the first trade of the Canadian Shares and Canadian Underlying Shares (each as defined below) on a market outside Canada (Resale Relief),
- (b) a Permitted Transfer (as defined below) of Canadian Special Shares (Permitted Transfer Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have given notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

¶ 3 This decision is based on the following facts represented by the Filers:

SOAC

1. SOAC is a blank check company incorporated on December 18, 2019 as a Cayman Islands exempted company for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities;

2. the principal executive office of SOAC is located at 1601 Bryan Street, Suite 4141, Dallas, Texas, USA, 75201;
3. SOAC is a registrant with the SEC and is subject to the requirements of the 1934 Act and the rules and regulations of the New York Stock Exchange (the NYSE); SOAC is in compliance with the requirements of the 1934 Act and is in good standing with the rules of the NYSE;
4. SOAC is not a reporting issuer in any jurisdiction of Canada and SOAC has no present intention of becoming a reporting issuer in any jurisdiction of Canada; SOAC is not in default of securities legislation in any jurisdiction;
5. the authorized capital of SOAC currently consists of:
 - (a) 300,000,000 Class A ordinary shares, par value US\$0.0001 per share (Class A Shares), 30,000,000 of which were issued and outstanding as of August 12, 2021, and 28,419,721 of which are subject to possible redemption in connection with the Business Combination (public shares);
 - (b) 30,000,000 Class B ordinary shares, par value US\$0.0001 per share (the Class B Shares), 7,500,000 of which were issued and outstanding as of August 12, 2021; and
 - (c) 1,000,000 preferred shares, par value US\$0.0001 per share (the Preferred Shares), none of which are issued and outstanding as of August 12, 2021;
6. SOAC currently has 9,500,000 private placement warrants, 1,500,000 working capital warrants, and 15,000,000 redeemable public warrants outstanding, each currently exercisable into Class A Shares;
7. on May 8, 2020, SOAC consummated an initial public offering of 30,000,000 units (the SOAC Units) at an offering price of US\$10.00 per unit, with each unit representing one Class A Share and one-half of one warrant to acquire one Class A Share;
8. the Class A Shares are listed and posted for trading on the NYSE under the symbol “SOAC”; the SOAC Units, and redeemable public warrants are also listed on the NYSE under the symbols “SOAC.U,” and “SOAC.WS”, respectively; other than the foregoing, none of SOAC’s securities are listed or quoted on any exchange or market and none are quoted on an exchange or market in Canada;
9. pursuant to SOAC’s amended and restated memorandum and articles of association, a holder of SOAC’s public shares (a public shareholder) may request that SOAC redeem all or a portion of such public shares for cash if the Business Combination is consummated; holders of units must elect to separate the units into the underlying public shares and warrants prior to exercising redemption rights with respect to the public shares; public shareholders (other than those who have agreed not to do so by executing that certain sponsor letter agreement with Sustainable Opportunities Holdings LLC, DeepGreen and others) who hold public shares on or before the date that is two business days before the extraordinary general meeting of SOAC may elect to redeem their public shares whether or not they are holders as of the record date, and whether or not they vote in favour of the Business Combination or any

of the other proposals set forth in SOAC's proxy statement/prospectus dated August 12, 2021 (the Prospectus); if the Business Combination is consummated, and if a public shareholder properly exercises its right to redeem, TMC will redeem such public shares for a per-share price, payable in cash, equal to the pro rata portion of the trust account established at the consummation of SOAC's initial public offering, calculated as of two business days prior to the consummation of the Business Combination; the redemption will take place following the Continuance (as defined below) and, accordingly, it is TMC Common Shares that will be redeemed immediately after consummation of the Business Combination;

10. notwithstanding the foregoing, a public shareholder, together with any affiliate of such public shareholder or any other person with whom such public shareholder is acting in concert or as a "group" (within the meaning of section 13(d)(3) of the 1934 Act), will be restricted from redeeming its public shares with respect to more than an aggregate of 15% of the public shares; accordingly, if a public shareholder, alone or acting in concert or as a group, seeks to redeem more than 15% of the public shares, then any such shares in excess of that 15% limit would not be redeemed for cash;
11. the holders of the private placement warrants, working capital warrants and redeemable public warrants do not have the right to redeem such warrants in connection with the Business Combination; TMC (not the holders) may have the right to elect to redeem such warrants in accordance with the terms and conditions of such warrants following the Business Combination;

DeepGreen

12. DeepGreen is a private company existing under the laws of British Columbia and engaged in developing battery metals from seafloor polymetallic nodules; DeepGreen has exploration rights to three polymetallic nodule contract areas across the Pacific Ocean's Clarion Clipperton Zone, backed by the Nauru, Kiribati, and Tonga governments;
13. DeepGreen has no significant operations in Canada; DeepGreen's operations in Canada are currently limited to the activities carried out by the Head of Onshore Development and Processing and the Head of Social Performance and Stakeholder Relations, which include managing metallurgy and processing of nodules in partnership with DeepGreen's external consultants, managing relations with stakeholders including various governments and the International Seabed Authority and related compliance, and outreach to DeepGreen's stakeholder communities and other industry competitors;
14. DeepGreen's head and principal executive office is located at 595 Howe Street, 10th Floor, Vancouver, British Columbia, V6C 2T5, being the location of its British Columbia legal counsel; there is no central location from which all of the executive officers of DeepGreen operate, so it does not have a traditional head office environment;
15. the authorized capital of DeepGreen consists of:
 - (a) an unlimited number of common shares (DeepGreen Common Shares), 172,919,849 of which were issued and outstanding as of August 25, 2021; and

- (b) an unlimited number of class B preferred shares (DeepGreen Preferred Shares), 440,000 of which are issued and outstanding as of August 25, 2021;
- 16. as at August 25, 2021, there were 21,908,768 options to purchase DeepGreen Common Shares outstanding;
- 17. on March 4, 2021, DeepGreen issued a warrant to Allseas Group S.A. to purchase between 5,000,000 and 10,000,000 DeepGreen Common Shares, which shall vest upon certain milestones into such number of shares that is based on the formula described therein, and which shall be assumed by TMC and shall become a warrant to purchase TMC Common Shares upon the consummation of the Business Combination, in accordance with its terms;
- 18. DeepGreen is not a reporting issuer in any jurisdiction of Canada; DeepGreen is not in default of securities legislation in any jurisdiction;

NewCo Sub

- 19. NewCo Sub is an unlimited liability company existing under the laws of British Columbia and a wholly-owned subsidiary of SOAC that was incorporated for purposes of consummating certain transactions contemplated by the Business Combination Agreement (as defined below);
- 20. NewCo Sub is not a reporting issuer in any jurisdiction of Canada; NewCo Sub is not in default of securities legislation in any jurisdiction;

The Business Combination

- 21. on March 4, 2021, SOAC entered into a business combination agreement with NewCo Sub and DeepGreen (as the same may be amended, supplemented or otherwise modified from time to time, the Business Combination Agreement) pursuant to which the parties have agreed to complete the Business Combination;
- 22. prior to the Effective Time (as defined below), SOAC will migrate and be continued from the Cayman Islands to British Columbia under Part 9, Division 8 of the *Business Corporations Act* (British Columbia) (the BCBCA) and Part XII of the Cayman Islands Companies Act, and will thereafter exist as a company existing under the laws of British Columbia (the Continuance);
- 23. in connection with the Continuance,
 - (a) the identifying name of the Class A Shares and Class B Shares will be changed to common shares of TMC (the TMC Common Shares) and the Class A Shares and Class B Shares will be changed from shares with par value to shares without par value;
 - (b) the rights and restrictions attached to the renamed Class A Shares and Class B Shares will be deleted and such shares will have the rights and restrictions attached to the TMC Common Shares, to be described in the articles and notice of articles of TMC;

- (c) the number of authorized TMC Common Shares will be unlimited;
 - (d) each issued and outstanding whole warrant to purchase Class A Shares will automatically represent the right to purchase one TMC Common Share at an exercise price of US\$11.50 per share in accordance with their terms;
 - (e) the notice of articles and articles of TMC will become the governing documents of SOAC;
 - (f) the TMC Special Shares (as defined below) and the Vesting Sponsor Shares (as defined in the Business Combination Agreement) shall be created and authorized; and
 - (g) SOAC's name will change to "TMC the metals company Inc.";
24. the parties to the Business Combination determined to complete the Continuance under the BCBCA in order to provide an opportunity to the shareholders of DeepGreen for tax deferred reorganization treatment on the share exchange under the Business Combination and to eliminate the need for a complex exchangeable share structure;
 25. prior to the Effective Time, all DeepGreen Preferred Shares will automatically be converted into DeepGreen Common Shares;
 26. not later than immediately prior to the Effective Time, all convertible debentures of DeepGreen will, by election of the holders thereof or automatically in accordance with their terms, be converted into DeepGreen Common Shares; the holders of the convertible debentures are not Canadian residents;
 27. immediately prior to the Effective Time, Sustainable Opportunities Holdings LLC, a Delaware limited liability company, will exchange 741,000 TMC Common Shares for 500,000 Class I Special Shares in the capital of TMC and 741,000 Class J Special Shares in the capital of TMC, each of which is automatically convertible into TMC Common Shares on a one-for-one basis (unless adjusted), if certain TMC Common Share price thresholds are met;
 28. pursuant to the Business Combination Agreement,
 - (a) SOAC will acquire all of the issued and outstanding DeepGreen Common Shares;
 - (b) the shareholders and the optionholders of DeepGreen will be entitled to receive, in exchange for their DeepGreen Common Shares and options to purchase DeepGreen Common Shares (as applicable), an aggregate of: (i) 230,600,000 TMC Common Shares, assuming an adjusted equity value (as defined in the Business Combination Agreement) immediately prior to the Effective Time of approximately US\$2.3 billion, (ii) 5,000,000 Class A Special Shares, (iii) 10,000,000 Class B Special Shares, (iv) 10,000,000 Class C Special Shares, (v) 20,000,000 Class D Special Shares, (vi) 20,000,000 Class E Special Shares, (vii) 20,000,000 Class F Special Shares, (viii) 25,000,000 Class G Special Shares, and (ix) 25,000,000 Class H Special Shares, in each case, in the capital of TMC (collectively, (ii) – (ix) are the TMC Special Shares), or, as applicable, options to

purchase such TMC Common Shares and TMC Special Shares upon the exercise of such options (TMC Options, together with the TMC Special Shares, the TMC Convertible Securities); each TMC Special Share is automatically convertible into TMC Common Shares on a one for one basis (unless adjusted as described therein) and on a class basis, with each class of TMC Special Shares converting based on a particular trading price or valuation of the TMC Common Shares, ranging from US\$12.00 to US\$200.00 per TMC Common Shares, as further described in the Prospectus ;

(c) DeepGreen will become a wholly-owned subsidiary of TMC; and

(d) DeepGreen and NewCo Sub will amalgamate to continue as one unlimited liability company existing under the laws of British Columbia (the Share Exchange and Amalgamation); the time that the Share Exchange and Amalgamation becomes effective is referred to as the Effective Time;

29. the TMC Convertible Securities are exercisable for or convertible into TMC Common Shares (TMC Underlying Shares) in accordance with their terms;
30. substantially concurrent with the closing of the Business Combination, SOAC intends to complete a private placement of an aggregate of 33,030,000 TMC Common Shares at a price of US\$10.00 per share, for aggregate gross proceeds of US\$330,300,000 (the PIPE Financing); the TMC Common Shares to be distributed under the PIPE Financing will not be registered under the 1933 Act, in reliance upon the exemption provided in Section 4(a)(2) of the 1933 Act; there is one Canadian investor under the PIPE Financing that has subscribed for 5,000 TMC Common Shares;
31. the PIPE Financing was conducted by global investment banks primarily in the United States and Europe;
32. in order for all of the TMC Special Shares to convert into TMC Common Shares, the TMC Common Shares would need to be trading at a price that is greater than or equal to US\$200.00 over the course of any 20 trading days within any 30 trading day period, or a transaction would need to occur resulting in a Change of Control (as defined in the Prospectus) with a valuation of the TMC Common Shares that is greater than or equal to US\$200.00 per TMC Common Share; for this reason, the Filers do not expect that all of the TMC Special Shares would be converted within the next 12 months;
33. under the proposed terms of the TMC Special Shares (the Share Terms), the TMC Special Shares may only be transferred in very limited circumstances and with the prior approval of the board of directors (a Permitted Transfer); a Permitted Transfer is, in respect of a proposed trade by a holder of TMC Special Shares: (i) in the case of an individual, by gift to a member of one of the individual's immediate family, to a trust, the beneficiaries of which are members of the individual's immediate family or an affiliate of such individual, in each case for estate planning purposes; (ii) in the case of an individual, by virtue of laws of descent and distribution upon death of the individual; (iii) in the case of an individual, pursuant to a qualified domestic relations order; (iv) by virtue of the holder's organizational documents upon liquidation or dissolution of the holder; or (v) a trade made for nominal consideration to

the officers or directors of such holder, the members or partners of such holder, any affiliates of such holder or any employee of such affiliate;

34. TMC will distribute the securities pursuant to the Share Exchange and Amalgamation under section 2.11 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106); securities distributed under section 2.11 are subject to a seasoning period under section 2.6 of National Instrument 45-102 *Resale of Securities* (NI 45-102);
35. TMC will distribute the TMC Common Shares pursuant to the PIPE Financing to the Canadian investor under section 2.3 of NI 45-106; securities distributed under section 2.3 of NI 45-106 are subject to a restricted period under section 2.5 of NI 45-102;
36. it is anticipated that, upon completion of the Business Combination and the PIPE Financing,
 - (i) DeepGreen's shareholders immediately prior to the Effective Time (the Existing DeepGreen Shareholders) and the holders of options to purchase DeepGreen Common Shares (assuming the exercise of such options but excluding the TMC Special Shares and any TMC Common Shares thereunder) will collectively own approximately 76.7% of the outstanding TMC Common Shares, and
 - (ii) SOAC's shareholders immediately prior to the Effective Time (the Existing SOAC Shareholders) will own approximately 23.3% of the outstanding TMC Common Shares, in each case, assuming that none of SOAC's outstanding public shares are redeemed in connection with the Business Combination, or approximately 85.3% and 14.7%, respectively, assuming that all of SOAC's outstanding public shares are redeemed in connection with the Business Combination;
37. it is further anticipated that upon completion of the Business Combination and the PIPE Financing, and based on the number of Existing DeepGreen Shareholders and Existing SOAC Shareholders as at August 23, 2021 and March 23, 2021, respectively, a total of 745 Canadian residents (the Canadian Owners) may hold, or be entitled to hold, a total number of TMC Common Shares (the Canadian Shares), TMC Special Shares (the Canadian Special Shares) and TMC Underlying Shares (the Canadian Underlying Shares) that is slightly greater than 10% of the total number of issued and outstanding TMC Common Shares, TMC Special Shares, and TMC Underlying Shares, respectively, given that upon completion of the Business Combination, Canadian Owners:
 - (a) may hold in the aggregate (in each case based on an assumed adjusted equity value of approximately US\$2.3 billion and assuming no redemptions of the Class A Shares):
 - (i) 29,790,400 TMC Common Shares, representing approximately 10.89% of the total number of issued and outstanding TMC Common Shares;
 - (ii) such number and class of TMC Special Shares as will be set forth in the allocation schedule as defined in the Business Combination Agreement no later than five business days prior to the completion of the Business Combination, which number is expected to represent approximately 9.23% of the total number of issued and outstanding TMC Special Shares on a class by class basis;
 - (b) are expected to represent approximately:

- (i) 9.82% of the total number of owners directly or indirectly of TMC Common Shares; and
 - (ii) 25.88% of the total number of owners directly or indirectly of TMC Special Shares;
- 38. neither the exact number of Canadian Shares, Canadian Special Shares or Canadian Underlying Shares to be issued, nor the exact number of Canadian Owners on completion of the Business Combination can be determined at this time, as the Class A Shares will continue to trade on the NYSE prior to the Effective Time, DeepGreen may grant stock options consistent with past practice, and holders of Class A Shares may exercise the redemption right;
- 39. assuming (i) no redemptions of the Class A Shares; (ii) 230,600,000 TMC Common Shares are issued to the holders of DeepGreen Common Shares and the holders of the DeepGreen Options (assuming exercise of such options but excluding the TMC Special Shares and any TMC Common Shares thereunder), which would be the number of TMC Common Shares issued to these holders if the adjusted equity value immediately prior to the Effective Date was approximately US\$2.3 billion; (iii) 33,030,000 TMC Common Shares are issued in the PIPE Financing; (iv) no public warrants or private placement warrants to purchase TMC Common Shares that will be outstanding immediately following Closing are exercised; (v) the Allseas Warrant exercisable for TMC Common Shares upon consummation of the Business Combination is not exercised; and (vi) no TMC Special Shares are converted to TMC Common Shares, there will be 301,130,000 TMC Common Shares issued and outstanding immediately following the consummation of the Business Combination;
- 40. as of the Effective Time, TMC will not be a reporting issuer in any jurisdiction in Canada, and the TMC Common Shares are expected to be listed on the NASDAQ only;
- 41. as of the Effective Time, it is expected that TMC will have eight directors and five executive officers, all of whom are expected to be located outside of Canada in such jurisdictions as Australia, the United Arab Emirates, the United States, the United Kingdom and Botswana; it is further expected that 22 of TMC's 25 employees and consultants will be located outside of Canada;
- 42. the business and operations of TMC after the Business Combination will be that of DeepGreen and will substantially be carried on outside of Canada;
- 43. section 2.14(1) of NI 45-102 provides an exemption from the prospectus requirement for the first trade of a security of an issuer distributed under an exemption from the prospectus requirement provided that:
 - (a) the issuer of the security:
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

- (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10% of the outstanding securities of the class or series, and
 - (ii) did not represent in number more than 10% of the total number of owners directly or indirectly of securities of the class or series

(collectively the Ownership Cap); and

- (c) the trade is made

- (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada;

44. section 2.14(2) of NI 45-102 provides an exemption from the prospectus requirement for the first trade of an underlying security of an issuer distributed under an exemption from the prospectus requirement provided that:

- (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
- (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
- (c) the conditions in paragraph 2.14(1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and
- (d) the condition in paragraph 2.14(1)(c) is satisfied;

45. while the exemptions under section 2.14(1) and 2.14(2) of NI 45-102 are not available in Ontario or Alberta, similar exemptions are available in Ontario and Alberta under subsections 2.7(1) and 2.7(2) of OSC Rule 72-503 *Distributions Outside Canada* and subsections 10(1) and 10(2) of ASC Rule 72-501 *Distributions to Purchasers Outside Alberta*, respectively (collectively with the exemptions under Section 2.14 of NI 45-102, the First Trade Exemptions);

46. in the absence of an order granting the Resale Relief or a First Trade Exemption being available, the first trades in Canadian Shares, Canadian Special Shares, and Canadian

Underlying Shares, will be deemed to be a distribution pursuant to NI 45-102, unless, among other things, TMC is and has been a reporting issuer for four months immediately preceding the trade in a jurisdiction of Canada;

47. the first trades of the Canadian Shares, the Canadian Special Shares and the Canadian Underlying Shares will be deemed to be a distribution under NI 45-102 since TMC will not be a reporting issuer in any jurisdiction in Canada at the Effective Time and it has no intention to become a reporting issuer in any jurisdiction in Canada;
48. the First Trade Exemptions will not be available if the Canadian Owners own more than 10% of the outstanding TMC Common Shares or TMC Special Shares, as applicable, or represent more than 10% of the total number of owners of TMC Common Shares or TMC Special Shares, as applicable, upon completion of the Business Combination;
49. the Canadian Owners would have been entitled to rely on section 2.15 of NI 45-102 (or the equivalent provisions in Alberta and Ontario) but for the fact that TMC will be organized under the laws of British Columbia and will have its principal executive office in Vancouver, British Columbia;
50. no market for the TMC Common Shares or TMC Special Shares is expected to exist in Canada on completion of the Business Combination and none is expected to develop; there is no current contemplation that Canada would be an area of focus for TMC from a capital markets perspective; SOAC does not have a significant presence in Canada nor does it intend to increase its presence in Canada; it does not currently propose to seek a listing on a Canadian stock exchange; in addition, as TMC will be a SEC registrant, it is expected that public offerings will be conducted in the United States and not in Canada;
51. it is intended that (i) any resale of the Canadian Shares or the Canadian Underlying Shares by Canadian Owners will be effected through the facilities of the NASDAQ or any other exchange or market outside of Canada on which TMC Common Shares may be quoted or listed at the time that the trade occurs or to a person or company outside of Canada, in accordance with the rules and regulations of such foreign market, and (ii) any transfer of the Canadian Special Shares by Canadian Owners be effected in very limited circumstances pursuant to a Permitted Transfer;
52. following the Business Combination, TMC's head office and principal executive office is expected to be located in Vancouver, British Columbia, however, this location was chosen merely for administrative purposes as it is where DeepGreen's Canadian legal counsel is located and where TMC's registered records office will be located, in compliance with the requirements of the BCBCA that companies governed by the BCBCA have a records office in British Columbia;
53. TMC will disclose in its public disclosure, including the Form 8-K to be filed with the SEC following the completion of the Business Combination, that it does not have a physical office in Vancouver, British Columbia, its directors and executive officers work remotely in various countries around the world, and the Vancouver, British Columbia address disclosed as its

principal executive office is given because it is TMC's records office required under the BCBCA;

54. TMC will not have a material connection to Canada on the basis that:

- (a) DeepGreen does not have material operations in Canada, no exploration is undertaken in Canadian waters, and the business of DeepGreen and its subsidiaries prior to the consummation of the Business Combination will be the business of TMC following the consummation of the Business Combination;
- (b) none of TMC's anticipated eight directors or five executive officers, and only three of its 25 employees or contractors, are expected to be located in Canada as of the Effective Time; and
- (c) SOAC is not continuing from the Cayman Islands to British Columbia for business or operational reasons or to increase its connection to Canada, but for unrelated tax planning purposes; and

55. the Canadian Owners will receive the same level of disclosure as other shareholders of TMC given that:

- (a) TMC will be an SEC registrant and will be subject to the requirements of the 1934 Act and the rules and regulations of the NASDAQ;
- (b) in accordance with the current requirements of the NASDAQ, Canadian Owners will receive copies of all shareholder materials provided to all other holders of TMC Common Shares and information about TMC will be available publicly through the SEC's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR); and
- (c) Canadian Owners would receive substantially the same continuous disclosure materials from TMC that an SEC issuer would be required to provide to Canadian shareholders under National Instrument 51-102 *Continuous Disclosure Obligations*.

Decision

¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that:

- (a) the Resale Relief is granted provided that:
 - (i) at the date of the trade, TMC is not a reporting issuer in any jurisdiction of Canada;
 - (ii) the trade of the Canadian Shares or Canadian Underlying Shares is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada;

- (iii) the trade is not a control distribution, as defined in NI 45-102;
 - (iv) no unusual effort is made to prepare the market or to create a demand for the Canadian Shares or Canadian Underlying Shares that are the subject of the trade;
 - (v) no extraordinary commission or consideration is paid to a person or company in respect of the trade;
 - (vi) if the selling security holder is an insider or officer of TMC, the selling security holder has no reasonable grounds to believe that TMC is in default of securities legislation; and
- (b) the Permitted Transfer Relief is granted provided that the trade of the Canadian Special Shares is made pursuant to a Permitted Transfer.

Gordon Johnson
Vice Chair
British Columbia Securities Commission