



U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of General Counsel
100 F Street, NE
Washington, D.C. 20549

Re: Letter of Complaint to the Securities and Exchange Commission Regarding The Metals Company (TMC, TMCWW) (CIK 0001798562)

July 18, 2024

Dear Commissioners,

We are writing to request that the Securities and Exchange Commission (the “SEC” or “Commission”) review recent filings by The Metals Company, Inc. (NASDAQ: TMC) (“TMC” or the “Company”) and, in particular, TMC’s Annual Report on Form 10-K for the fiscal year 2023, filed on March 25, 2024 (the “2023 Annual Report”), as we believe that the Company is seriously misleading investors, government officials and others through repeated material misrepresentations and omissions.

This letter includes sections covering general background regarding TMC (Section I), overly optimistic shareholder communications that do not account for current realities (Section II), our main concerns regarding misleading disclosures in the 2023 Annual Report (Section III), and requested remedy (Section IV). For convenience a table of contents is provided below.

I. Background Regarding TMC	2
A. SOAC / DeepGreen SPAC Transaction That Resulted in TMC’s Creation	2
B. TMC’s Fight to Stay Solvent and Listed on the NASDAQ	3
II. TMC Shareholder Communications Are Highly Optimistic, Often At Odds With Regulatory Disclosures	5
A. Shareholder Communications Regarding Financial Health	5
B. Shareholder Communications Regarding Sustainability and ESG Factors	6
III. Misleading Disclosures in SEC Filings	7
A. Burying Information About Rapidly Growing Global Opposition to Deep Seabed Mining	8
B. Misleading Description of Metals Needed for EV Batteries	9

C. <i>Misleading Description of Nickel, Cobalt and Manganese as “Critical” or “Essential” Battery Minerals</i>	10
D. <i>Misleading Description of Shift in Battery Technologies as a Theoretical Risk Rather than a Fact</i>	12
E. <i>Misleading Use of Copper Shortfall Chart to Suggest Need for TMC’s Proposed DSM Operations</i>	12
F. <i>TMC’s Use of Outdated Commodity Prices that Inflate Value and Revenue</i>	13
G. <i>Misleading Downplay of Difficulty To Obtain Permit to Mine in International Waters</i>	14
H. <i>Misleading Suggestion Regarding Processing of Nodules in the U.S.</i>	17
I. <i>Questionable Statement Regarding TMC’s Commitment to Locate Processing Facilities in Places with Renewable Power.</i>	19
J. <i>Omission of Information About TMC’s Partner Nauru</i>	20
K. <i>Omissions Regarding Harm to Indigenous Communities and Human Rights</i>	21
IV. Requested Remedy	22

I. Background Regarding TMC

A. SOAC / DeepGreen SPAC Transaction That Resulted in TMC’s Creation

On April 8, 2021, Sustainable Opportunities Acquisition Corp. (“SOAC”) filed a Registration Statement on Form S-4 (the “S-4 Registration Statement”) with the SEC. As a result of criticism from civil society¹ and SEC comments,² the amended Registration Statement acknowledged that impacts of TMC’s proposed deep seabed mining (“DSM”) activities on biodiversity and ecosystems in the ocean are unknown and may never be known, that preventing biodiversity loss and species extinctions from DSM may be impossible, that impacts from DSM may not be less than those of land-based mining, and that the regulations at the International Seabed Authority were unfinished, which would impact TMC’s timeline.³

¹ See e.g. June 21, 2021 and August 12, 2021 letters from Deep Sea Mining Campaign, Mining Watch Canada, and The Ocean Foundation; July 1, 2021 letter from Greenpeace, Deep Sea Conservation Coalition, and Global Witness; and July 22, 2021 letter from the Campaign for Accountability.

² See e.g. Letter from the SEC Division of Corporation Finance Office of Energy & Transportation to Scott Leonard, CEO, Sustainable Opportunities Acquisition Corp (June 16, 2021) <https://www.sec.gov/Archives/edgar/data/1798562/000000000021007463/filename1.pdf>, Letter from the SEC Division of Corporation Finance Office of Energy & Transportation to Scott Leonard, CEO, Sustainable Opportunities Acquisition Corp (July 9, 2021) <https://www.sec.gov/Archives/edgar/data/1798562/000000000021008527/filename1.pdf>, Letter from Scott Leonard, CEO, Sustainable Opportunities Acquisition Corp to SEC Division of Corporate Finance Office of Energy & Transportation (May 26, 2021) <https://www.sec.gov/Archives/edgar/data/1798562/000000000021010406/filename1.pdf>

³See Sustainable Opportunities Acquisition Corp (August 5, 2021) Amendment No. 4 to US Securities and Exchange Commission Form S-4 Registration Statement, No. 333-255118 https://www.sec.gov/Archives/edgar/data/1798562/000121390021040480/fs42021a5_sustainableopp.htm

Following required updates to the Registration Statement and the media attention around it,⁴ a significant amount of expected funding failed to materialize for the merged company.⁵ TMC's stock price fell steeply upon going public because much of the original potential investment failed to materialize. Private investment in public equity (PIPE) investors backed out, and many SOAC shareholders redeemed their warrants.⁶

B. TMC's Fight to Stay Solvent and Listed on the NASDAQ

Since going public, TMC has repeatedly struggled to maintain a stock price above \$1.00 and thus stay listed on NASDAQ.⁷ On December 5, 2022, TMC received a written notice from the Nasdaq Stock Market LLC ("Nasdaq") notifying the Company that the average closing price of the Company's common shares over the 30 consecutive trading days from October 21, 2022 through December 2, 2022 had fallen below \$1.00 per share, which is the minimum closing bid price required to maintain listing on the Nasdaq Stock Market under Nasdaq Listing Rule 5450(a)(1) (the "Minimum Bid Requirement"). On April 19, 2023, TMC received a second written notice from Nasdaq notifying the Company that the closing bid price of the Company's common shares over the 30 consecutive trading days from March 7, 2023, through April 18, 2023, had fallen below \$1.00 per share, in violation of the Minimum Bid Requirement.⁸ On both these occasions, capital infusions from existing or new shareholders appear to have propped up the stock price to allow TMC to once again trade over \$1.00 per share. Although the price is above \$1.00 as of the date of this letter,⁹ TMC's stock price dropped as low as \$0.81 in October 2023¹⁰, and there continues to be significant volatility.

⁴ See, e.g. Woody, T. (June 23, 2021). "A Mining Startup's Rush for Underwater Metals Comes With Deep Risks." Bloomberg. <https://www.bloomberg.com/news/articles/2021-06-24/a-mining-startup-s-rush-for-underwater-metals-comes-with-deep-risks>; Scheck, J., Brown, E., & Foldy, B. (June 24, 2021). "Environmental Investing Frenzy Stretches Meaning of 'Green.'" The Wall Street Journal. <https://www.wsj.com/articles/environmental-investing-frenzy-stretches-meaning-of-green-11624554045>; Lyons, K. (June 23, 2021). "Mining's new frontier: Pacific nations caught in the rush for deep-sea riches." The Guardian. <https://www.theguardian.com/world/2021/jun/23/minings-new-frontier-pacific-nations-caught-in-the-rush-for-deep-sea-riches>

⁵ Bryant, C. (September 2021) \$500 Million of SPAC Cash Vanishes Under the Sea <https://www.bloomberg.com/opinion/articles/2021-09-13/tmc-500-million-cash-shortfall-is-tale-of-spac-disappointment-greenwashing>

⁶ *Ibid.*

⁷ Dobush, B., Warner, M. (February 29, 2024) *Deep Sea Mining Isn't Worth the Risk*. The Ocean Foundation. p. 16. <https://oceanfdn.org/new-analysis-business-case-for-deep-sea-mining/>

⁸ Khan, Y. (May 2023) Shipping Giant Maersk Drops Deep Sea Mining Investment <https://www.wsj.com/articles/shipping-giant-maersk-drops-deep-sea-mining-investment-c226df39>; The Metals Company to the US Securities and Exchange Commission Form 8-K, 5 (December 2022) https://www.sec.gov/ix?doc=/Archives/edgar/data/0001798562/000110465922124759/tm2232041d2_8k.htm

⁹ The share price was \$1.33 at close of business 1 July 2024, Marketwatch (July 1, 2024) TMC, The Metals Company Inc. US NASDAQ <https://www.marketwatch.com/investing/stock/TMC>

¹⁰ *Ibid.*

TMC is currently embroiled in four litigation matters, including an ongoing class action lawsuit against TMC alleging that TMC and/or its personnel made false or misleading statements, and a 2023 lawsuit alleging breach of good faith.¹¹

TMC was the subject of scrutiny by the Commission as evidenced by disclosure in its public filing that it *“has received letters from the SEC notifying us of an investigation and requesting the voluntary production of documents and information regarding the Company’s March 31, 2020 acquisition of Tonga Offshore Mining Limited from Deep Sea Mining Finance Ltd. and the business combination, completed September 9, 2021, between DeepGreen Metals Inc. and Sustainable Opportunities Acquisition Corporation that led to the Company’s formation.”*¹² However, in May 2024, the Company announced that the investigation concluded with the SEC not intending to recommend an enforcement action against the Company.¹³

The highest interest rates in 23 years have dramatically raised the financing cost of the billions of dollars that TMC would need to build a new DSM industry, and capital and labor costs have surged from the earlier and now outdated estimates. In its securities filings, the Company has made no increases in the overall cost projection in their financial forecasts, despite high levels of inflation over the past several years. TMC also still assumes an unchanged 9% discount rate despite the increase in interest rates and changes in TMC’s credit rating trading rate.¹⁴ (TMC’s original 9% rate has been presumed to be based on the CCC Moody’s credit rating trading rate of 7.34% at the time with an additional +1.66% (very low) risk premium.¹⁵ At the time of this letter the CCC Moody’s credit rating trading rate was 13.95%.¹⁶)

There is significant doubt as to whether TMC has the cash in hand to reach the point of production (much less raise the billions necessary for production)¹⁷. TMC’s most recent annual accounts show a rapid decrease in cash reserves, with under \$6.8 million cash in hand at the end of 2023, while the cash used for operating expenses was \$15 million in the last 3 months of

¹¹ 2023 Annual Report, pp. 66-67; 102-103
<https://www.sec.gov/ix?doc=/Archives/edgar/data/0001798562/000110465924038505/tmc-20231231x10k.htm>.

¹² The Metals Company (TMC) (September 30, 2022) US Securities and Exchange Commission Form 10Q-A Amendment No. 1. <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001798562/000110465922118680/tmc-20220930x10q.htm>; see also 2023 Annual Report p. 102
<https://www.sec.gov/ix?doc=/Archives/edgar/data/0001798562/000110465924038505/tmc-20231231x10k.htm>.

¹³ The Metals Company (TMC) (May 24 2024) US Securities and Exchange Commission Form 8-K Item 8.01 https://www.sec.gov/ix?doc=/Archives/edgar/data/1798562/000110465924065355/tm2415663d1_8k.htm

¹⁴ The Metals Company (TMC) (May 13, 2024), First Quarter (Q1) 2024 Corporate Update <https://investors.metals.co/static-files/72b01677-af5e-44b3-9b44-c63f6a972755>.

¹⁵ Dobush, B., Warner, M. (February 29, 2024) *Deep Sea Mining Isn’t Worth the Risk*. The Ocean Foundation. p. 15. <https://oceanfdn.org/new-analysis-business-case-for-deep-sea-mining/>

¹⁶ Y Charts (July 10, 2024) US High Yield CCC Effective Yield https://ycharts.com/indicators/us_high_yield_ccc_effective_yield#:~:text=Basic%20Info.long%20term%20average%20of%2014.18%25.

¹⁷ TMC estimates operating costs at \$1.8 billion per annum. 2023 Annual Report, p. 88.

that year alone.¹⁸ Although TMC apparently has some opportunity to raise cash through loans and issuing new shares, Company officers have noted those options come with drawbacks.¹⁹ TMC estimates it needs \$100-150 million to get to the point of production, which they optimistically hope will be in early 2026.²⁰ TMC needs to advance to production rapidly, or give the impression it will, to stay solvent.

II. TMC Shareholder Communications Are Highly Optimistic, Often At Odds With Regulatory Disclosures

A. Shareholder Communications Regarding Financial Health

TMC does list cash concerns as a risk factor in the 2023 Annual Report.²¹ However, disclosure of cash concerns is paired with expressions of high confidence it will be able to proceed within a tight deadline, despite the fact that every year since 2020 TMC has disclosed that production is only just over two years away, with that start date continually receding into the distance.²²

TMC has presented information to investors that over the life of its core project (the NORI-D project) the Company would generate \$95 billion in total revenue.²³ However, in its Quarterly Report for the period ended September 30, 2023 filed with the SEC on November 9, 2023 (the "Q3 10-Q"), TMC stated that it sold 2% gross overriding royalty on revenue from the "NORI project area in the CCZ" and that the "fair value" of this 2% overriding royalty is \$14 million.²⁴ Based on this disclosure, the total (100%) fair value of TMC's expected revenue for its NORI project area based on the Q3 10-Q disclosure would seem to be \$700 million (as 2% of \$700 million is \$14 million). If the referenced "*NORI project area in the CCZ*" refers to NORI-D, it

¹⁸ The Metals Company (TMC) (March 25, 2024), Investor Update, March 2024, <https://investors.metals.co/static-files/5d3e95e5-9fe7-4e86-a783-291b3f8d1a12>

¹⁹ The Metals Company (TMC) (March 25, 2024), Edited Transcript, TMC Inc. Earnings Call, <https://investors.metals.co/static-files/c063e021-ed9a-464a-9b5b-6220ae29ec88>

²⁰ WaterTower Research (March 30, 2024) TMC the metals company, Inc. - The West vs. China: Metal Competition Driving Geopolitics of Seafloor Nodules, Update Note <https://www.watertowerresearch.com/companies/811>

²¹ "Our business is subject to significant risks, and we may never develop minerals in sufficient grade or quantities to justify commercial operations." and "Our business is capital intensive, and we will be required to raise additional funds in the future to accomplish our objectives. This additional financing may not be available on acceptable terms or at all." 2023 Annual Report, pp. 53, 64 & 113.

²² See for example the statement "we'll have (the EIS) completed by around the middle of 2022, and so we'll then lodge our application, and the regulator has 330 days to give us an answer, and hopefully we'll then be into business." Gerard Barron, interview with Crux Investors (October 2, 2020) "Deep Sea Mining Just Got Sexy." Timestamp 32:57. <https://www.youtube.com/watch?v=q9K7nTRygAE>; and then "With cash in bank of 113 million at closing, we expect to fully fund our operations through Q3 of 2023. This is a sufficient level of cash to reach the key milestones of submitting our application for an exploration contract to the ISA." Gerard Barron, (2021) Q2 2021 Investor Call (Transcript), p. 2, <https://investors.metals.co/static-files/5b1f32a4-58cf-4a68-be1e-c0e3489c3335>; "NORI-D Project Zero Production Start Expected 2H (second half of) 2024. Nodule collection and processing demonstrated at commercial scale." The Metals Company, (2022) Q2 2022 Corporate Update Presentation, slide 21, <https://investors.metals.co/static-files/f773c8a6-d098-49ef-8168-5373444f3871>

²³ The Metals Company (March 2021) AMC Consultants Technical Report Summary Table 19.4, page 314. <https://investors.metals.co/static-files/c8fd9b47-d8a1-41e9-a120-28f9ee144693>

²⁴ *Ibid.* p 13, 14

raises the question of whether TMC is inflating the expected value of the NORI-D project when communicating to investors in less monitored and regulated spaces, but not in its SEC disclosures.

B. Shareholder Communications Regarding Sustainability and ESG Factors

TMC's attempt to portray itself as a company whose CEO is "*on a mission to help wean humanity off fossil fuels*"²⁵ is undermined by its announcement in the Q3 10-Q that it has sold 2% of the future revenues of its core assets (the NORI-D project) in exchange for \$5 million in cash and 35% ownership in a company that deals in natural gas exploration and royalties in Colombia.²⁶ Through this transaction, TMC has bought into a company whose majority of revenue apparently is projected to come from significant investments in natural gas.²⁷ This company, Low Carbon Royalties, which has long-term ties to TMC executives,²⁸ has a portfolio that consists only of investments in TMC's NORI-D DSM project and two natural gas fields in Colombia.²⁹

It is increasingly apparent that there is no consensus that DSM would be less harmful or have a lower environmental impact, including on biodiversity or the climate, than terrestrial mining. TMC's annual filings disclose that DSM may not be less impactful to global biodiversity than terrestrial mining.³⁰ However, that disclosure is buried among rhetoric around comparisons to terrestrial mining and 'land ores,' including reliance on lifecycle assessments ("LCAs") commissioned by (and sometimes drafted by) TMC itself. In 2021, TMC disclosed that certain of its executive officers had drafted its first LCA after the SEC requested that TMC clarify that the LCA was a commissioned assessment.³¹ Furthermore, a report by Planet Tracker published on December 5, 2023, found that the TMC-commissioned climate LCA "*has several key limitations, which reduced the estimated CO2 emissions for polymetallic nodule production or increased the estimated emissions for terrestrially mined Metals*" and that the report "*excluded 95% of the*

²⁵ The Metals Company (n.d.) Our Team, Gerard Barron CEO and Chairman <https://metals.co/team/>; see also <https://safesummit.org/wp-content/uploads/speakers/SAFESUMMIT---2024-cleaned-new-refined.html>

²⁶ The Metals Company (November 2023) US Securities and Exchange Commission Form 10-Q. p. 13. <https://investors.metals.co/static-files/3bc697b9-4386-4a03-8ac5-c9417937c0ae>

²⁷ TMC has a 35% equity interest in Low Carbon Technologies The Metals Company (November 2023) US Securities and Exchange Commission Form 10-Q. p. 13. <https://investors.metals.co/static-files/3bc697b9-4386-4a03-8ac5-c9417937c0ae>

²⁸ Founder, Co-Chief Executive Officer and Chairman of Low Carbon Royalties, Brian Paes-Braga, is a member of TMC's Board of Directors. See: LinkedIn (n.d.) Brian Paes-Braga. Retrieved on July 10, 2024 from <https://www.linkedin.com/in/brianpaesbraga/>; Qureshi, A. (2019) Brian Paes-Braga, Director at DeepGreen Metals, Comments on Making Greener Metals. *Blue and Green Tomorrow*. <https://blueandgreentomorrow.com/news/brian-paes-braga-director-at-deepgreen-metals-comments-on-making-greener-metals/>.

²⁹ Low Carbon Royalties (November 2023) Corporate Presentation https://www.lowcarbonroyalties.com/wp-content/uploads/2023/11/Low_Carbon_Royalties_November23.pdf

³⁰ See, e.g. 2022 Annual Report p. 13.

³¹ Letter from Scott Leonard, CEO, Sustainable Opportunities Acquisition Corp to SEC Division of Corporate Finance Office of Energy & Transportation (July 14, 2021). <https://www.sec.gov/Archives/edgar/data/1798562/000121390021039155/filename1.htm>

production and associated climate impact of manganese [which] contributed to a significantly lower overall climate impact.”³²

That same Planet Tracker report found that *“the results of the three current studies comparing the cradle-to-gate (nodule-to-commodity) climate impact of deep sea and terrestrial mining vary hugely, estimating that polymetallic nodules could have a higher or lower climate impact than land ores.”³³* The European Academies Science Advisory Council (EASAC) evaluated claims that DSM is the *“lesser of two evils when compared with terrestrial mining”* and found those claims misleading: *“We discuss the validity of such claims and find them misleading, and note also that deep-sea mining lacks the mitigation and remedial measures available to terrestrial mining.”³⁴*

There is also little indication that DSM would replace terrestrial mining, and there is much evidence that it would not.³⁵ A study commissioned by the International Seabed Authority (ISA) found that DSM would not cause overproduction of minerals globally.³⁶ Rather, mining both the deep sea and on land could drive down mineral prices, reducing neither’s destructive practices and lowering prices.³⁷ The World Economic Forum found that DSM *“will not necessarily lead to mine closures or to planned new mines being abandoned. Nor would it selectively eliminate land-mining operations with the lowest environmental or social performance since pressure on land-based mines would correlate to their production costs rather than their sustainability attributes.”³⁸*

Despite this, on its investor calls, TMC continues to suggest that DSM will reduce the environmental impact of sourcing metals. For example, on TMC’s March 25, 2024 investor call, the Company stated that *“nodules hold significant potential to dramatically reduce the human and planetary costs of sourcing metals.”³⁹*

³² Emma Amadi, François Mosnier. (2023) *The Climate Myth of Deep Sea Mining*. Planet Tracker. p.20 <https://planet-tracker.org/wp-content/uploads/2023/12/The-Climate-Myth-of-Deep-Sea-Mining.pdf>

³³ Ibid. p. 3.

³⁴ European Academies Science Advisory Council (2023) Deep-Sea Mining: assessing evidence on future needs and environmental impacts, p. 3. https://easac.eu/fileadmin/user_upload/EASAC_Deep_Sea_Mining_Web_publication_.pdf

³⁵ Gilbert, N. (2023). Deep-sea mining could soon be approved—How bad is it? *Nature*, 619(7971), 684–684. <https://doi.org/10.1038/d41586-023-02290-5>

³⁶ Lapteva Anna, Chernova Alexandra, Khodina Marina, Mustafa Tatiana, Mustafina Farida, and Smolnikova Anastasiya from All-Russian Scientific-Research Institute of Mineral Resources Named after N.M. Fedorovsky (FSBI “VIMS”). (May 12, 2020) Study of the Potential Impacts of Polymetallic Nodules Production from the Area on the Economics of Developing Land-based Producers of those Metals which are Likely to be Most Seriously Affect, Report to the International Seabed Authority (advanced unedited version). International Seabed Authority. p 251. <https://www.isa.org/im/wp-content/uploads/2022/12/ISA-Technical-Study-32.pdf> (hereinafter ISA Metals Study)

³⁷ ISA Metals Study, para. 251 (re nickel); paras 296, 299 (re: cobalt)

³⁸ World Economic Forum (2022) Decision-Making on Deep-Sea Mineral Stewardship: A Supply Chain Perspective, Geneva: World Economic Forum, <https://www.weforum.org/publications/decision-making-on-deep-sea-mineral-stewardship-a-supply-chain-perspective>

³⁹ For unofficial transcript see: Seeking Alpha (March 25, 2024) The Metals Company Inc, Q4 2023 Earnings Call Transcript. <https://seekingalpha.com/article/4680357-tmc-metals-company-inc-tmc-q4-2023-earnings-call-transcript>

III. Misleading Disclosures in SEC Filings

Following is a summary of what we believe are false or misleading statements and material omissions in TMC's 2023 Annual Report that we believe merit investigation and remedial action:

A. Burying Information About Rapidly Growing Global Opposition to Deep Seabed Mining

TMC's disclosure in the risk factors of its 2023 Annual Report misstates that 21 countries have called for a ban, moratorium, or precautionary pause on DSM. In fact, at the end of 2023, 24 countries had called for a ban, moratorium, or precautionary pause. As of the date of this letter, 27 countries have called for a ban, moratorium, or precautionary pause. These countries include Canada, Mexico, the United Kingdom, France, Germany, Greece, Spain, Switzerland, Sweden, Finland, Ireland, Portugal, New Zealand, Chile, Brazil, Peru, Ecuador, Panama among others.⁴⁰

TMC has failed to adequately disclose the growing global private sector opposition to DSM. For example, there is no disclosure of these facts:

- In 2022, the United Nations Environment Programme Finance Initiative ("UNEP FI") released a report designed for banks, insurers, and investors on DSM's financial, biological, and other risks.⁴¹ The report concluded that there is no foreseeable way that financing DSM can be viewed as consistent with established sustainable finance principles due to the significant reputational, regulatory, and operational risks associated with plans to mine deep seabed minerals.⁴²
- In September 2023, the International Capital Market Association, a trade association for those participating in capital markets, released a guidance report on financing bonds for a sustainable blue economy, explicitly excluding non-renewable energy sources, including oil and gas and DSM.⁴³ The United Nations Conference on Trade and Development ("UNCTAD"), an international trade organization, has excluded DSM from its sustainable ocean economy classification scheme due to the high environmental risk of DSM.⁴⁴

⁴⁰ 2023 Annual Report p.47

⁴¹ United Nations Environment Programme Finance Initiative (2022) Harmful Marine Extractives: Understanding the risks & impacts of financing non-renewable extractive industries. Geneva <https://www.unepfi.org/publications/harmful-marine-extractives-deep-sea-mining/>

⁴² Dobush, B., Warner, M. (February 29, 2024) *Deep Sea Mining Isn't Worth the Risk*. The Ocean Foundation. p. 16. <https://oceanfdn.org/new-analysis-business-case-for-deep-sea-mining/>

⁴³ International Capital Market Association (ICMA) Group (September 2023) Bonds To Finance The Sustainable Blue Economy A Practitioner's Guide, p. 2. <https://www.icmagroup.org/assets/documents/Sustainable-finance/Bonds-to-Finance-the-Sustainable-Blue-Economy-a-Practitioners-Guide-September-2023.pdf>

⁴⁴ United Nations Conference on Trade and Development (UNCTAD) (2021) Towards A Harmonized International Trade Classification For The Development Of Sustainable Ocean-Based Economies https://unctad.org/system/files/official-document/ditcted2020d4_en.pdf

- The High-Level Panel for a Sustainable Blue Economy further supports this position.⁴⁵
- On April 22, 2024 [after TMC’s 2013 Annual Report], the IUCN published a report entitled “*Towards a Regenerative Blue Economy*” that clearly states that DSM should not be considered part of a regenerative blue economy because it is deemed too threatening to marine ecosystems.⁴⁶

In addition, financial, energy, automotive, and technology industries are speaking up against DSM. 47 companies have signed onto a business statement committing to not invest in DSM, to not allow DSM-mined minerals to enter their supply chains, and to not source minerals from the deep sea.⁴⁷ These companies include major corporations such as Google, Samsung, Philips, BMW, Rivian, Volkswagen, and Salesforce.⁴⁸ Each company’s signature commits it to support a moratorium, not source minerals from the deep seabed, exclude those minerals from its supply chain, and not finance DSM activities.⁴⁹ On top of this, 11 financial institutions, including major banks, asset managers, insurers, and public financiers, have adopted policies that exclude investing in or underwriting deep seabed mining.⁵⁰

Despite these widely disseminated facts, TMC’s 2023 Annual Report fails to adequately disclose this growing private sector opposition to DSM. The only mention is in passing in an introduction to TMC’s aforementioned life cycle analysis.⁵¹

B. Misleading Description of Metals Needed for EV Batteries

We believe that TMC’s 2023 Annual Report misrepresents and creates a false narrative about the metals needed for electric vehicle (EV) batteries. In its description of its business, TMC provides an illustration entitled “*Nodule composition vs. battery metal needs*,”⁵² which purports to compare metals found in nodules against the metals needed for EV batteries. However, rather than showing the metals needed for EV batteries generally, it shows the metals needed only for batteries with NMC811 chemistry. We find it misleading that TMC used NMC811 batteries, which represent only about 17% of the global EV battery market, rather than EV batteries

⁴⁵ High Level Panel for A Sustainable Ocean Economy (n.d.) Ocean solutions that benefit people, nature and the economy. Ocean Panel. Retrieved February 5, 2024, from

<https://oceanpanel.org/publication/ocean-solutions-that-benefit-people-nature-and-the-economy/>

⁴⁶ Le Gouvello, R., Simard, F. (April 22, 2024) Toward a Regenerative Blue Economy. ICUN <https://www.iucn.org/news/202404/new-iucn-report-shows-way-toward-regenerative-blue-economy>

⁴⁷ WWF (n.d.) Business Statement Supporting a Moratorium on Deep Sea Mining. Retrieved June 27, 2024 <https://www.stopdeepseabedmining.org/statement/>

⁴⁸ WWF (n.d.). Endorsers of the Business Statement Supporting a Moratorium on Deep Sea Mining. Retrieved June 27, 2024, from <https://www.stopdeepseabedmining.org/endorsers/>

⁴⁹ WWF (n.d.) Business Statement Supporting a Moratorium on Deep Sea Mining. Retrieved June 27, 2024 <https://www.stopdeepseabedmining.org/statement/>

⁵⁰ See: Deep Sea Mining Campaign (March 2024) Financial institutions who have published policies which explicitly exclude the provision of financial services for DSM activities https://dsm-campaign.org/wp-content/uploads/2024/03/240311_FI-DSM-policies_table.pdf

⁵¹ 2023 Annual Report p. 7.

⁵² *Ibid.* p. 5.

generally or another battery such as lithium iron phosphate (LFP), which represents 42% of the global battery market. All types of lithium nickel manganese cobalt (NMC) batteries are estimated to represent only about 35% of the global EV market.⁵³ It is not a coincidence that the batteries selected by TMC for its illustration of battery metal needs contain a high percentage of the metals found in the nodules that TMC seeks to mine: nickel, cobalt, and manganese. Contrary to TMC’s statement, nickel, cobalt, and manganese are not needed for EV batteries. LFP batteries, for example, do not need any nickel, cobalt or manganese.

If TMC used LFP batteries rather than NMC811 batteries in its illustration, it would indicate that EV batteries don’t need nickel, cobalt, or manganese. This would, of course, create a radically different impression. We are not suggesting that TMC use LFP batteries rather than NMC811 batteries in their illustration. Instead, we are using this to illustrate how these statements can mislead a reasonable investor.

Although TMC discloses that the composition of NMC811 batteries is used for their comparison, TMC’s use of the term “*battery metal needs*” in the chart's title creates a false impression and narrative about the metals needed for EV batteries.

TMC also uses this misleading information in much of its investor and public communications. For example, the following statement appears on TMC’s website:

“One billion EVs—the equivalent of the world’s entire passenger fleet—would require 56 million tons of nickel, 7 million tons of manganese, 7 million tons of cobalt, and 85 million tons of copper—exponentially more than destructive mines produce now.”⁵⁴

TMC bases this statement on the assumption that all these EVs use NMC811 batteries. But, as noted above, one billion EVs using LFP batteries would require zero tons of nickel, manganese, and cobalt. So, we find TMC’s statement seriously misleading.

C. Misleading Description of Nickel, Cobalt and Manganese as “Critical” or “Essential” Battery Minerals

Throughout its 2023 Annual Report, TMC describes nickel, cobalt, and manganese as “critical” battery metals. For example, TMC states in its 2023 Annual Report:

“Our resource definition work to date shows that nodules in our contract areas represent the world’s largest undeveloped resource of critical battery metals.” [Emphasis added]⁵⁵

“To manufacture battery cells, gigafactories will need critical battery metals like nickel, cobalt, manganese, and copper to meet rising battery demand.” [Emphasis added]⁵⁶

⁵³ 2023 Annual Report, p. 11.

⁵⁴ The Metals Company (n.d.) Products. Retrieved June 27, 2024 from <https://metals.co/products/>

⁵⁵ 2023 Annual Report. p. 2.

⁵⁶ *Ibid.* p 18

“There are four critical battery metals (nickel, copper, cobalt and manganese) in relatively high concentrations in polymetallic nodules...” [Emphasis added]⁵⁷

Similarly, TMC states on its website:

“The Metals Company is developing the world’s largest estimated resource of metals required for electric vehicles and low-carbon energy.” [Emphasis added],

“Polymetallic nodules contain rich concentrations of the base metals needed to make batteries and energy transition.” [Emphasis added],

“Polymetallic nodules, also called manganese nodules, contain four essential battery metals: cobalt, nickel, copper and manganese, in a single ore.” [Emphasis added]⁵⁸

We believe that TMC’s description of these metals as “critical,” “required,” or “essential” for batteries is false and misleading – because they are not. As noted above, LFP batteries, representing over 42% of the global EV battery market, do not need nickel, cobalt, or manganese.

We also believe that TMC’s constant references in its materials to shareholders stating that polymetallic nodules are an “*electric vehicle battery in a rock*”⁵⁹ is misleading. It is true that, as noted, some of the cathode materials in an NMC lithium-ion battery (namely nickel, cobalt, manganese and to an extent copper) are present in polymetallic nodules. However, the majority of a lithium-ion EV battery by volume is made up of lithium and graphite (leaving aside the various plastics, bindings and casings), which are not present in commercial quantities in polymetallic nodules.⁶⁰ Therefore, to describe a polymetallic nodule as an EV battery in a rock is clearly misleading, yet often repeated.

It is also worth stressing that TMC states on its website, “*EV manufacturers are moving towards increasingly nickel-rich chemistries.*”⁶¹ EV manufacturers, however, are moving away from nickel-rich chemistries. TMC is aware of this, as illustrated by the inclusion of a chart titled “Evolution of cathode chemistry across all passenger electric vehicle segments” (which interestingly is not discussed in the report),⁶² which shows the movement away from nickel-rich chemistries and towards chemistries that don’t use nickel, cobalt or manganese.

D. Misleading Description of Shift in Battery Technologies as a Theoretical Risk Rather than a Fact

⁵⁷ *Ibid.* p 19.

⁵⁸ The Metals Company (n.d). Nodules. Retrieved on July 8, 2024 from <https://metals.co/nodules/>

⁵⁹ *Ibid.* To note, the “EV battery in a rock” comment is made throughout TMC’s media and investor materials

⁶⁰ GAIA (2024) Info sheet: Understanding Basics of Electric Vehicle Batteries, <https://www.no-burn.org/wp-content/uploads/2024/06/01-Battery-Infosheet-Understanding-Basics-of-EV-Batteries.pdf>

⁶¹ The Metals Company (n.d.) Products. Retrieved June 27, 2024 from <https://metals.co/products/>

⁶² 2023 Annual Report. p. 11.

We believe that in its 2023 Annual Report, TMC misrepresents that the market shift to EV batteries that don't require, or use less of, the metals TMC wants to mine is merely a possibility when, in fact, the shift is already occurring. Investors should have been informed that there has already been a significant shift towards EV batteries that don't require, or use less of, the metals that TMC proposes to mine and that it is predicted that such shift will continue – which lessens the pressure to commence DSM and reduces the demand for TMC's metal products. We believe that this misrepresentation would lead a reasonable investor to conclude that TMC's proposed business is more necessary and potentially lucrative than in fact it is.

In the Risk Factors on page 49 of its 2023 Annual Report, TMC states:

Our ability to generate revenue will be diminished if we are unable to compete with substitutions for the minerals that we intend to process.

Technology changes rapidly in the industries and end markets that utilize our materials. If these industries shift to new technologies or products such as lithium iron phosphate (LFP) batteries that no longer require or use less of the metals that we intend to collect and process, or if suitable substitutes become available, it could result in a decline in demand for our metal products. If the demand for our metal products decreases, it will have a material adverse effect on our business and the results of our operations and financial condition.
[Emphasis added]

The growth of the LFP battery market over the last five years has been staggering. From around 5% of the global EV battery market in 2019, LFP batteries now represent over 42% of the global EV battery market. Some predict LFP batteries will soon represent over half of the global EV market.⁶³ This is an essential fact for investors to be aware of, and we believe describing this shift as merely a potential or theoretical risk is seriously misleading.

TMC investors should be informed that a major shift has already occurred and that if this shift continues, as widely forecast, it will have a material adverse effect on the prospects for approval of TMC's application for a DSM license (because it significantly diminishes the claimed need for DSM and shifts the global conversation) and reduces the demand for TMC's metal products.

E. Misleading Use of Copper Shortfall Chart to Suggest Need for TMC's Proposed DSM Operations

TMC inserted a chart on page 8 of its 2023 Annual Report showing a projected global shortfall of copper in 2024.⁶⁴ The implication of this is that it is important for TMC to commence DSM operations in the CCZ to help address this projected shortfall. However, we believe this presentation regarding a global copper shortfall is misleading because TMC's proposed DSM operations (and, for that matter, all proposed DSM operations in the CCZ collectively) would not have a significant impact on the global supply of copper.⁶⁵

⁶³ 2023 Annual Report. p. 11.

⁶⁴ 2023 Annual Report. p. 8.

The impact of inferences such as this should not be discounted. Although many people don't know much about the need for metals such as nickel, cobalt, and manganese; the need for copper for electrical wiring and other uses is widely understood. Consequently, any portrayal of TMC's proposed DSM operations as a potential solution to a projected global copper shortfall is often repeated and may influence investors – even though inaccurate.⁶⁶

F. TMC's Use of Outdated Commodity Prices that Inflate Value and Revenue

In its 2023 Annual Report, TMC used commodity prices from a 2020 report from its consultant, CRI International Limited, rather than more current, significantly lower commodity prices. This significantly inflates the claimed value of TMC's licenses, and the projected revenue TMC would achieve compared to current commodity prices.

For example, in its 2023 Annual Report, TMC used an assumed price of cobalt for its revenue models of \$46,333/ton.⁶⁷ The price of cobalt on the London Metal Exchange as of July 1, 2024 was \$26,510.⁶⁸ This is not a momentary drop. The price of cobalt on the London Metal Exchange has been less than \$34,000/ton for over a year.⁶⁹

There have been fundamental shifts in demand and supply since 2020 and major changes in commodity prices. Accordingly, we believe it is inappropriate for TMC to rely on – and provide valuations and financial projections to investors based on – such outdated information and that using such outdated data has led to misleading information in TMC's 2023 Annual Report.

The TMC financial model in its 2023 Annual Report seems to be based on a 2021 report entitled "Technical Report Summary - Initial Assessment of the NORI Property, Clarion-Clipperton Zone" (the "NORI Technical Report"). As noted in the NORI Technical Report, the cost estimates used in the NORI Technical Report for off-shore property, plant and equipment are based on estimates prepared for TMC in 2015,⁷⁰ which were then updated for price inflation to 2019.⁷¹ There has been massive inflation in offshore capital equipment and expenses over the past three years, which makes TMC's use of this outdated information highly questionable and likely inaccurate and misleading.

Several other assumptions in the NORI Technical Report seem outdated, which could lead to misleading conclusions and rise to the level of being a material omission. For example, the NORI Technical Report assumes the processing of nodules in China for TMC's "Project Zero"

⁶⁵ Next Generation EV Batteries Eliminate the Need for Deep Sea Mining, p. 4.

<https://www.blueclimateinitiative.org/sites/default/files/2023-10/whitepaper.pdf>

⁶⁶ References are made to supplying copper in main presentations, see: The Metals Company (n.d.) Investors. Retrieved June 27, 2024 from <https://investors.metals.co/>

⁶⁷ *Ibid.* p. 11, p. 80.

⁶⁸ London Metals Exchange (LME) LME Cobalt. Retrieved July 1, 2024 from <https://www.lme.com/Metals/EV/LME-Cobalt>

⁶⁹ *Ibid.*

⁷⁰ DeepGreen Metals Inc. (March 17, 2021) Technical Report Summary Initial Assessment of the NORI Property, Clarion-Clipperton Zone, Section 22.6. <https://metals.co/wp-content/uploads/2022/03/01.05-NORI-D-Initial-Assessment-US-SK-1300-by-AMC-March-2021.pdf>

⁷¹ *Ibid.*, Section 18.6.1.

and in Mexico for TMC’s “Project One.”⁷² Based on TMC’s latest statements, this does not seem to be the current plan. Presumably, there are differences in processing costs in China and Mexico compared to the U.S. - which is where TMC suggests it may process the nodules – and Japan, where TMC is planning to initiate its processing operations.

Relying on a three-year-old study from March 2021 (which itself is based on significantly older information) for financial forecasts made in a report filed in 2024 does not seem appropriate. It has likely led to misinformation in the 2023 Annual Report.

G. Misleading Downplay of Difficulty To Obtain Permit to Mine in International Waters

TMC can only start mining in international waters if it is permitted to do so by the ISA, as mandated by the United Nations Convention on the Law of the Sea (UNCLOS). There are many barriers to that happening and there is a real concern that TMC is exaggerating both how easy it will be to be granted a license and when the Company could start mining.

Regulations for DSM exploitation in international waters do not currently exist. A Consolidated Text of the mining exploitation regulations has been created. It is notable for its unconfirmed, provisional, and disputed text, with divergent views on fundamental concepts blocking consensus on critical issues.⁷³ Financial and liability questions remain unresolved, with many relevant provisions of the draft exploitation regulations still being negotiated.⁷⁴ Adopting regulations requires consensus in the Council, the executive body of the ISA; that consensus does not currently exist.⁷⁵ A peer-reviewed paper published in January 2024 found that 30 major issues in the ISA regulations remain outstanding and that the ISA internal target date to complete the regulations in the summer of 2025 is unrealistic.⁷⁶

Under the basic framework of the ISA regulations, TMC could not apply to mine (submit a plan of work) until the regulations are completed. However, TMC’s sponsoring state invoked a rule in section 1(15)(b) of the Annex to the 1994 Agreement relating to the implementation of Part XI of UNCLOS, known as the ‘two-year rule’ in June 2021. The rule effectively seeks to give a

⁷² *Ibid.*, Section 18.6.2.

⁷³ International Seabed Authority (2024) Consolidated Text and Associated documents, <https://www.isa.org.jm/session-29-council-part-1-2-2/>

⁷⁴ See, e.g., International Seabed Authority (2023) ISBA/28/C/IWG/ICE/CRP.3 Draft regulations on exploitation of mineral resources in the Area Part I, Part II (Regulation 5), Part V, Part VIII (Appendix II) https://www.isa.org.jm/wp-content/uploads/2023/10/ICE-Fourth_revised_text-1.pdf; ISBA/28/C/IWG/ICE/CRP.3 Draft regulations on exploitation of mineral resources in the Area Part XI: Regulations 96 to 105, https://www.isa.org.jm/wp-content/uploads/2023/10/ICE-Fourth_revised_text-1.pdf

⁷⁵ International Seabed Authority (1996) Rules of Procedure of the Council of the International Seabed Authority, Rule 58; UNCLOS Art. 162(o). <https://www.isa.org.jm/wp-content/uploads/2023/03/ISBAC12E.pdf>

⁷⁶ See, e.g. Pickens, C., Lily, H., Harrould-Kolieb, E., Blanchard, C., & Chakraborty, A. (2024). From what-if to what-now: Status of the deep-sea mining regulations and underlying drivers for outstanding issues. Marine Policy, 105967. <https://doi.org/10.1016/j.marpol.2023.105967>

deadline for the completion and adoption of the regulations. If that does not happen, it forces the ISA Council to consider a submission to mine by TMC. That two-year deadline came and went in June 2023, without the adoption of regulations.

In its communications to shareholders, TMC has claimed that this gives them certainty. For instance, Craig Chesky, TMC's chief financial officer, has stated "... we reserve our legal rights under UNCLOS to lodge an exploitation application before the Mining Code is adopted."⁷⁷ Moreover, Gerard Barron, TMC's chief executive officer, has stated "*there is a process in place that gives certainty to us, and so at the end of that two-year period, if the International Seabed Authority has not completed the adoption of the rules and regulations as they were directed to do, they are required to accept and provisionally approve a plan of work that is submitted to them.*"⁷⁸ Finally, Mr. Chesky stated that "[w]hether [the ISA] has finalized what the legal framework for deep-sea mining will look like or not, we'll file our permit application and force them to process it."⁷⁹

These statements lead a reasonable investor to think that the two-year rule gives the Company certainty regarding receiving the right to mine. TMC's 2023 Annual Report does disclose that "*there can be no assurance that the ISA will provisionally approve our plan of work for exploitation, within one year from submission thereof, or at all, or that such provisional approval would lead to the issuance of an exploitation contract with the ISA.*"⁸⁰ However, TMC fails to disclose the risks accurately, and even goes as far as to make contrary communications of confidence via its executive officers.⁸¹

The reality is that there are many obstacles to obtaining a license to operate in a timely fashion, or indeed at all. There is a genuine lack of clarity surrounding the process for making a decision under the two-year rule, given that it is the first time this treaty clause has been invoked. So, the wording of it will need to be debated and turned into a decision-making process.⁸² These contrary statements and failure to accurately and consistently disclose these risks create a

⁷⁷ Chesky, C. (2023) The Metals Company, Q1 2023 Conference Call, <https://investors.metals.co/news-events/events-and-presentations>

⁷⁸ Water Tower Research, TMC the metals company, Inc. (NASDAQ: TMC) CFO Craig Shesky and Head of Stakeholder Engagement Corey McLachlan (Feb. 1, 2023)

https://www.watertowerresearch.com/calendar_events/tmc-the-metals-company-inc-nasdaq-tmc-cfo-craig-shesky-and-head-of-stakeholder-engagement-corey-mclachlan

⁷⁹ The Northern Miner (2023) Metals Company Targets Late 2025 for Ocean Mining Launch https://www.linkedin.com/posts/the-northern-miner_navigating-the-deep-the-metals-company-eyes-activity-7112081654550048768-gSW9?utm_source=share&utm_medium=member_desktop

⁸⁰ 2023 Annual Report. pp. 48.

⁸¹ See, e.g. Silversteyn, D. (July 9, 2024) TMC The Metals Company Inc. Management Series Report. *Water Tower Research*. p.11.

https://watertower.worldflowconnect.net/open/18144/MS_TMC_06242024.pdf/bc77d905-fb48-4f4b-a06e-809db2b4774b

⁸² As this legal blog notes "Council must strive to find agreement on the yet outstanding interpretation issues concerning section 1(15)(c). Consensus seems to be, however, difficult to achieve and recourse to the Seabed Disputes Chamber of ITLOS seems also very likely." Maria Madalena das Neves (2023) "Deep-Sea Minerals Exploitation: The 2-Year Rule Deadline is Running Out, What Happens Next?", online: https://site.uit.no/nclos/wp-content/uploads/sites/179/2023/06/MMN_Deepsea-Minerals-Exploitation_NCLOS-Blog_27062023.pdf

smokescreen that prevents a reasonable investor from understanding these risks. As noted above, there will be problems with how certain license provisions would work if the regulations are not completed. Given the legal uncertainty and implementation difficulties, any approved license may also face a legal challenge.⁸³

Contrary to TMC's characterization in its public filings, many countries have indicated that they will not approve a plan of work to mine without finishing the regulations.⁸⁴ Most notably, the ISA Council has adopted two resolutions by consensus stating that no plans of work should be approved in the absence of regulations.⁸⁵ An independent report of the ISA Council's 2023 meeting noted that *"Through its decision on the two-year rule, the Council reiterated that commercial exploitation of mineral resources in the Area should not be carried out in the absence of RRP's [rules, regulations, and procedures including standards and guidelines⁸⁶ that are yet to be developed] relating to exploitation. This stance was repeatedly underscored by Council members throughout the meeting, and, as a participant noted, 'now seems deeply rooted' in delegates' minds."*⁸⁷ There is also an election for a new ISA Secretary General this year, and the challenging candidate's position is that *"no mining applications should be approved until that process is wrapped up."*⁸⁸

Increasingly, conversations at the ISA have been focused on the growing international calls for a moratorium, with - as noted above - 27 countries now supporting some form of ban, moratorium, or precautionary pause.⁸⁹ Any company attempting to "force" the ISA Member States to process its application to mine in the absence of completed regulations would likely be disappointed, but this is not the message that is reaching TMC's investors.

TMC needs to advance rapidly because of limited cash flow (as explained in Section II b). TMC's recent disclosure on its timeline states that it expects commercial mining to start in Q1 2026, and their financial projections are based on being a going concern to that point.⁹⁰ This timeline seems overly optimistic given the potential delays referred to above. Presumably TMC

⁸³ Pradeep A Singh, a Fellow at the Research Institute for Sustainability noted, "The risk of exposure to litigation is certainly much higher if the Authority decides to approve an application in the absence of regulations, as opposed to rejecting one." Down to Earth (2023), UN body can face litigation if seabed mining is approved before developing regulations: Paper, <https://www.downtoearth.org.in/news/world/un-body-can-face-litigation-if-seabed-mining-is-approved-before-developing-regulations-paper-90770>

⁸⁴ International Seabed Authority (2022) Meetings of the ISA Council Day 5 <https://mailchi.mp/86798eb744fc/27th-session-part-iii-bulletin-council-meetings-day-5>

⁸⁵ International Seabed Authority Council (2023) Decision of the Council of the International Seabed Authority

⁸⁶ The International Seabed Authority (n.d.) The Mining Code. Retrieved on July 10, 2024 from <https://www.isa.org.jm/the-mining-code/>

⁸⁷ Earth Negotiations Bulletin (2023) ISA summary report 10-28 July 2023 <https://enb.iisd.org/international-seabed-authority-isa-council-28-2-summary>

⁸⁸ Lipton, E. (July 4, 2024). Fight over seabed agency leadership turns nasty. The New York Times. <https://www.nytimes.com/2024/07/04/us/politics/seabed-agency-mining.html>

⁸⁹ See, e.g., Douglas KC, Z., Heather-Latu, T.B., Fisher, T., Jones, J. (February 10, 2023) In The Matter Of A Proposed Moratorium Or Precautionary Pause On Deep-Sea Mining Beyond National Jurisdiction. *Pew Charitable Trusts*. <https://www.pewtrusts.org/-/media/assets/2023/03/deep-sea-mining-moratorium.pdf>

⁹⁰ The Metals Company, (November 2023) Q3 2023 Corporate Update Presentation, slide 22, <https://investors.metals.co/static-files/1ca15611-8c2b-47c5-b178-b76bf6a94cf2>

believes this optimistic estimate is necessary to assure investors it has the resources to remain solvent through commencement of commercial mining operations.

To set that optimism in perspective, TMC has a history of pushing forward its estimates of when it will be ready for production. For example, in August 2023 TMC stated that it would be ready for production in Q4 2025,⁹¹ in March 2023 it was late 2024 or early 2025,⁹² while in October 2020 it was as early as mid-2023.⁹³ During the Company's Q1 2024 Earnings Call, TMC shifted its language subtly from talking about applying for a license after the July 2024 ISA meeting (with previous company presentations emphasizing that month) to applying "before the end of 2024".⁹⁴

These sorts of delays may not be that unusual in business, but TMC has a record of constantly ignoring or understating the risk of further delays and the risk that this poses to its survival as a business.

H. Misleading Suggestion Regarding Processing of Nodules in the U.S.

TMC has suggested that it will process and refine nodules in the U.S. This is attractive to those supportive of more U.S. jobs, less reliance on foreign sources of minerals, and a shorter supply chain. However, in the same documents that emphasize the benefits of U.S. processing, TMC has disclosed that it has, in fact, been working towards setting up nodule processing operations in Japan.⁹⁵

In its 2023 Annual Report, TMC states, "*If our nodules are to be processed and refined in the United States ("U.S."), we can also compress the current supply chain that some materials need to travel before reaching the U.S. of 50,000 miles down to 1,500 miles, while reducing dependency on China which dominates refining for battery metals such as nickel, cobalt and manganese.*"⁹⁶

Similarly, in its website video "The Critical Minerals Supply Chain", TMC states "*These polymetallic minerals can be selected [sic] and brought to American soils and processed by American companies. It's a path to make real progress to solving our supply chain problem by*

⁹¹ The Metals Company (Aug 1 2023) Press Release: TMC Announces Corporate Update on Expected Timeline, Application Costs and Production Capacity Following Part II of the 28th Session of the International Seabed Authority. <https://investors.metals.co/news-releases/news-release-details/tmc-announces-corporate-update-expected-timeline-application>

⁹² The Metals Company, Q4 2022 Corporate Update Presentation, slide 27, <https://investors.metals.co/static-files/182d47ff-4564-4558-8fdb-8ee0fe6740fd>

⁹³ Barron, G. (October 2, 2020) Interview with Crux Investors, "Deep Sea Mining Just Got Sexy." Timestamp 32:57. <https://www.youtube.com/watch?v=q9K7nTRygAE>

⁹⁴ From unofficial transcript see: Seeking Alpha (May 14, 2024) The Metals Company Inc, Q1 2024 Earnings Call Transcript. https://seekingalpha.com/article/4692997-tmc-metals-company-inc-tmc-q1-2024-earnings-call-transcript?mailingid=35368993&messageid=2800&serial=35368993.96&utm_campaign=rta-stock-article&utm_medium=email&utm_source=seeking_alpha&utm_term=35368993.96

⁹⁵ See, e.g. 2023 Annual Report. p. 20.

⁹⁶ *Ibid.* p 5.

making the battery materials at the heart of American cars at home...an opportunity to rebuild an entire industry from the ground up, restore manufacturing in the US, and create new jobs.”⁹⁷

Notwithstanding these statements about bringing these polymetallic nodules to “*American soil*” and processing by American companies, on November 13, 2023, TMC issued a press release stating that it had signed a binding memorandum of understanding (“MOU”) with Pacific Metals Co Ltd (“PAMCO”), a Japanese company, pursuant to which (a) PAMCO will work with TMC towards processing 1.3 million wet tons of polymetallic nodules per year at its Hachinohe smelting facility in Japan and (b) TMC provided PAMCO with the exclusive right to the first 1.3 million wet tons per annum of wet nodule processing.⁹⁸

Further, during the Company’s Q1 2024 Earnings Call, Gerard Barron, TMC’s chief executive officer, stated that he had been spending much time in Indonesia over the past six months, discussing processing options in that country.⁹⁹ Mr. Barron noted that Indonesia has developed processing facilities, and Chinese battery maker BYD plans to build cars in Indonesia.¹⁰⁰ TMC had also previously pursued a collaboration with Epsilon Carbon Pvt, LTD. to build a processing plant in India, but that work paused due to capital concerns.¹⁰¹ Therefore, we find the disclosure suggesting that TMC will process nodules in the US misleading.

Although TMC is trying to portray itself as an American company, trying to solve “*our*” supply chain problem and making battery materials at “*home*,” the truth is that, while registered with the SEC and listed on the NASDAQ, TMC is a foreign company, run by a foreign national, is headquartered and operated outside the U.S., established its first significant processing operations outside the U.S., and is currently working with a partner country (Nauru) that has recently shifted its allegiance in the Pacific away from U.S. allies.¹⁰²

Further, the United States has taken a precautionary approach to DSM in both national strategy documents and bilateral statements.¹⁰³ The U.S. has emphasized the need for improved science, tribal consultation, and engagement with Indigenous and impacted local communities.¹⁰⁴

⁹⁷ The Metals Company (2022) The Critical Minerals Supply Chain <https://vimeo.com/693667097>

⁹⁸ 2023 Annual Report, p. 20.

⁹⁹ From unofficial transcript see: Seeking Alpha (May 14, 2024) The Metals Company Inc, Q1 2024 Earnings Call Transcript. https://seekingalpha.com/article/4692997-tmc-metals-company-inc-tmc-q1-2024-earnings-call-transcript?mailingid=35368993&messageid=2800&serial=35368993.96&utm_campaign=rta-stock-article&utm_medium=email&utm_source=seeking_alpha&utm_term=35368993.96

¹⁰⁰ *Ibid.*

¹⁰¹ Dobush, B., Warner, M. (February 29, 2024) *Deep Sea Mining Isn’t Worth the Risk*. The Ocean Foundation. p. 15. <https://oceanfdn.org/new-analysis-business-case-for-deep-sea-mining/>

¹⁰² Al Jazeera (January 24, 2024) Nauru seals diplomatic ties with China after dumping Taiwan <https://www.aljazeera.com/news/2024/1/24/china-and-nauru-resume-diplomatic-ties>

¹⁰³ The White House (June 8, 2024) French-American Roadmap <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/08/french-american-roadmap/> “France and the United States remain actively engaged in ensuring effective protection of the marine environment from harmful effects which may arise from deep seabed mineral exploitation and reaffirm their commitment to taking a precautionary approach to potential mining of marine minerals”

¹⁰⁴ The White House (June 2024) National Strategy for a Sustainable Blue Economy <https://www.whitehouse.gov/wp-content/uploads/2024/06/National-Strategy-for-a-Sustainable-Ocean->

In short, TMC contradicts itself by characterizing itself as an American company and suggesting that it will process nodules in the U.S. while actually being a foreign company with foreign operations entering into agreements for processing operations abroad. TMC is also failing to disclose the U.S.'s often-stated precautionary position and the effect that position may have on the entry of seabed minerals into the country.

I. Questionable Statement Regarding TMC's Commitment to Locate Processing Facilities in Places with Renewable Power.

In an attempt to portray itself as an environmentally sensitive corporation, TMC states in its 2023 Annual Report that it has a “*commitment to locate its onshore processing facilities in places with access to renewable power.*” In the same report it also states that “*We are working on a plan for continuous reduction of emissions and aiming to develop operations with near zero emissions. When selecting the location of our onshore plant, one of our requirements is access to renewable energy as our metallurgical process will be the most energy-intensive step in our operations.*” [Emphasis added.] But based on TMC's disclosures and publicly available information about PAMCO's processing facilities at the Hachinohe smelting facility in Japan, it appears that the facility does not operate on renewable energy.

It is also notable that TMC's financial projections in its 2023 Annual Report are based on an assumption that TMC will base its pyrometallurgical plant in China and burn 946 million pounds of coal each year (for \$47.1 million per year), and \$26.6 million of natural gas and diesel each year.¹⁰⁵ TMC's planned heavy reliance on coal for its processing operations conflict with TMC's statements about use of renewable energy for its operations and the image it is projecting as an environmentally sensitive corporation. TMC is also talking about processing in Indonesia, a country that relies heavily on coal power.¹⁰⁶

This apparent discrepancy between TMC's claimed “commitment” and “requirement” to use renewable energy in its processing operations and what TMC is actually doing is important for several reasons, including the fact that TMC's commitment to use renewable energy feeds into its claims for how environmentally friendly its operations will be.

TMC may state that it never committed to using renewable energy, but rather stated that it only planned to locate processing facilities where there is “access” to renewable energy. If so, they may be technically correct, but then we believe that their statements in this regard appear seriously misleading.

Economy_Final.pdf

¹⁰⁵ DeepGreen Metals Inc. (March 17, 2021) Technical Report Summary Initial Assessment of the NORI Property, Clarion-Clipperton Zone, Table 18.17. <https://metals.co/wp-content/uploads/2022/03/01.05-NORI-D-Initial-Assessment-US-SK-1300-by-AMC-March-2021.pdf>

¹⁰⁶ Jong, H.N. (July 3, 2023) Indonesia's coal burning hits record high — and ‘green’ nickel is largely why. *Mongabay* <https://news.mongabay.com/2023/07/indonesias-coal-burning-hits-record-high-and-green-nickel-is-largely-why/>

J. Omission of Information About TMC's Partner Nauru

TMC's partner and sponsor for its proposed DSM operations is the Republic of Nauru. Nauru is a tiny island nation, largely destroyed by destructive phosphate mining, with a population of around 12,500. It is important for investors to have information about Nauru because Nauru is a critical partner of TMC, on which TMC is dependent for its application to the ISA for a DSM license. TMC seems to want to create the impression that investors, regulators, and others can rely on Nauru to supervise TMC's operations. TMC states in its 2023 Annual Report that TMC's subsidiary NORI "*intend[s] to operate in the CCZ under the effective supervision, regulation and sponsorship of the Republic of Nauru....*"

In light of the fact that TMC is trying to provide assurance that it will be operating under the "*supervision, regulation and sponsorship*" of a third party, it is important for TMC to disclose salient information about that third party. But TMC has failed to do so. Following is some of the more important information about Nauru that investors should have been made aware of. First, Nauru has a history of undertaking business endeavors that destroy its natural environment.¹⁰⁷ Second, Nauru recently severed diplomatic ties with Taiwan and established diplomatic ties with the People's Republic of China, challenging US interests in the Pacific.¹⁰⁸ This provides China, which is pushing hard to develop metal resources in the Pacific, a new ally in its efforts to pursue DSM in the Pacific. How this relationship between one of the largest countries in the world and one of the smallest will play out is yet to be seen. Still, this developing relationship between China and the country that, according to TMC, will be supervising and regulating TMC's operations is an important matter for investors, government officials, and others to be aware of.

K. Omissions Regarding Harm to Indigenous Communities and Human Rights

TMC's website (at least as of July 2024) states that nodule mining would involve "*no disruption to Indigenous communities.*"¹⁰⁹ TMC's 2023 Annual Report only mentions the word "*Indigenous*" once, and only in describing the impacts of land-based mining.¹¹⁰

This is concerning because, despite the remoteness of the proposed DSM locations, there is still a significant risk of infringement of human rights, including potential effects on human health and livelihoods from DSM-caused pollution and failure to respect Indigenous rights. These pose significant investment risks based on terrestrial examples, as a DSM company could be sued or publicly discredited for abuses, affecting stock prices. Future disruptions from protests, including protests at sea, remain a key risk.¹¹¹ Significant public opposition and potential human rights

¹⁰⁷ See, eg. Lu, C. (February 16, 2024) "*This Country Will Do Anything to Make a Buck.*" *Financial Review*. <https://www.afr.com/policy/foreign-affairs/this-country-will-do-anything-to-make-a-buck-20240212-p5f45p>

¹⁰⁸ Al Jazeera (January 24, 2024) Nauru seals diplomatic ties with China after dumping Taiwan <https://www.aljazeera.com/news/2024/1/24/china-and-nauru-resume-diplomatic-ties>

¹⁰⁹ The Metals Company (n.d.) Nodules. Retrieved on June 27, 2024 from <https://metals.co/nodules/>

¹¹⁰ 2023 Annual Report. p. 6.

¹¹¹ See, e.g. statement by The Ocean Foundation at the first part of the 29th session of the International Seabed Authority relating to the Greenpeace protest of NORI-D, as reported by Earth Negotiations

abuses by DSM companies could prevent projects from being permitted, mire DSM projects in complex litigation, and/or lead to legal actions claiming financial damages.¹¹²

Indigenous communities are clear that DSM is diametrically opposed to what they see as needed protection and stewardship of the ocean. As of September 2023, Indigenous leaders from 49 countries and 71 indigenous groups have called for a ban on DSM.¹¹³ The Pacific Blue Line is formed of communities who have called for a ban on DSM across the Pacific.¹¹⁴ More recently the Saami Council has firmly opposed Norway's plans to open the Arctic to DSM, urging meaningful dialogue with Indigenous peoples.¹¹⁵ Any DSM project would cause reputational risk to investors who choose to ignore the will and rights of Indigenous communities around the world.

DSM is increasingly discussed in the context of human rights, specifically regarding inter-generational equity and the rights of children. The United Nations High Commissioner for Human Rights published a briefing paper urging caution on DSM, as, “[u]ltimately, all life on earth is dependent upon healthy ocean ecosystems.”¹¹⁶ On March 15, 2024, the heads of the United Nations Working Group on Business and Human Rights, the Special Rapporteur on Toxics and Human Rights, and the Special Rapporteur on Human Rights and the Environment noted that the draft regulations for seabed mining do not include any mention of human rights, the UNGPs, or applicable international human rights framework and urging the precautionary principle be applied by the International Seabed Authority.¹¹⁷ They stated concern around “*the mounting scientific evidence and stakeholder disquietude that, if deep seabed mining becomes an industry, there will be irreversible human rights impacts, particularly related to the rights to a clean, healthy and sustainable environment, food, cultural rights and Indigenous Peoples’ rights, amongst others.*”

Bulletin. <https://enb.iisd.org/international-seabed-authority-isa-council-29-1-summary>

¹¹² See, e.g. Dobush, B., Warner, M. (February 29, 2024) *Deep Sea Mining Isn't Worth the Risk*. The Ocean Foundation. p. 16. <https://oceanfdn.org/new-analysis-business-case-for-deep-sea-mining/>

¹¹³ Blue Climate Initiative (2023) We Must Put A Stop To Deep Sea Mining <https://www.blueclimateinitiative.org/sites/default/files/2023-11/put-a-stop-to-deep-sea-mining.pdf>

¹¹⁴ Pacific Blue Line (2023) “Deep Sea Mining is Not Needed, Not Wanted, Not Consented! Statement. <https://www.pacificblueline.org/pacific-blue-line-statement>. See also: List of signatories to Pacific Blue Line (2023) “Deep Sea Mining is Not Needed, Not Wanted, Not Consented!

<https://www.pacificblueline.org/about>

¹¹⁵ Saami Council (June 26, 2024) The Saami Council's Statement on Deep Sea Mining.

<https://www.saamicouncil.net/news-archive/the-saami-councils-statement-on-deep-sea-mining>

¹¹⁶ UN Human Rights Office of the High Commissioner (n.d.) Key Human Rights Considerations On The Impact Of Seabed Mining. Retrieved on June 27, 2024 from <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/ohchr-seabed-mining-10-july.pdf>

¹¹⁷ United Nations Human Rights Special Procedures (March 15, 2024) Open Letter by the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the International Seabed Authority <https://www.ohchr.org/sites/default/files/documents/issues/business/activities/2024-03-15-open-letter-to-isa.pdf>

IV. Requested Remedy

In light of the above, we urge the SEC to review the accuracy and completeness of TMC's SEC filings, and in particular TMC's 2023 Annual Report, and require TMC to amend its SEC filings to correct all material misstatements and omissions. We also urge the SEC to admonish TMC to maintain consistency between TMC's SEC filings and TMC's website and other public statements and disclosures.

If you have any questions, please do not hesitate to contact any of us.

Sincerely,

Bobbi-Jo Dobush, Legal Officer and Deep Seabed Mining Lead, The Ocean Foundation
Stan Rowland, Chief Executive Officer, Blue Climate Initiative
Andy Whitmore, Finance Advocacy Officer, Deep Sea Mining Campaign