

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

TMC the metals company Inc.

(Exact name of registrant as specified in its charter)

British Columbia, Canada
(State or other jurisdiction of
incorporation or organization)

Not Applicable
(I.R.S. Employer
Identification No.)

**595 Howe Street, 10th Floor
Vancouver, British Columbia
V6C 2T5
(574) 252-9333**

(Address, including Zip Code, of Principal Executive Offices)

TMC the metals company Inc. 2021 Employee Stock Purchase Plan
(Full Title of the Plans)

**Cogency Global Inc.
122 East 42nd Street, 18th Floor
New York, New York 10168
Telephone: (800) 221-0102**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Michael L. Fantozzi, Esq.
Daniel T. Kajunski, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Telephone: (617) 542-6000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐
Non-accelerated filer ☒

Accelerated filer ☐
Smaller reporting company ☒
Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

In accordance with the instructional Note to Part I of Form S-8 as promulgated by the Securities and Exchange Commission (the “Commission”), the information specified by Part I of Form S-8 has been omitted from this registration statement on Form S-8 for offers of common shares, without par value (“Common Shares”), of TMC the metals company Inc. (the “Registrant”) pursuant to the TMC the metals company Inc. 2021 Employee Stock Purchase Plan (the “Plan”). The documents containing the information specified in Part I will be delivered to the participants in the Plan covered by this registration statement as required by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the registrant with the Commission are incorporated herein by reference:

- (a) [The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Commission on March 25, 2022;](#)
- (b) [The Registrant’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2022, filed with the Commission on May 9, 2022;](#)
- (c) The Registrant’s Current Reports on Form 8-K or 8-K/A as filed with the Commission on [February 10, 2022](#) and [March 17, 2022](#);
- (d) [The portions of the Registration’s Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 14, 2022;](#) and
- (e) The description of the Registrant’s securities contained in the Registrant’s registration statement on [Form 8-A \(File No. 001-39281\), filed by the Registrant with the Commission under Section 12\(b\) of the Securities Exchange Act of 1934, as amended \(the “Exchange Act”\), on September 10, 2021](#), including any amendments or reports filed for the purpose of updating such description.

All reports and other documents filed by the registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such reports and documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

At the date hereof, Fasken Martineau DuMoulin LLP and the partners and associates of Fasken Martineau DuMoulin LLP, as a group beneficially own, directly or indirectly, less than one per cent of any outstanding securities of the Company.

Item 6. Indemnification of Directors and Officers.

Under the Business Corporations Act (British Columbia) (the “BCBCA”), a company may indemnify: (i) a current or former director or officer of that company; (ii) a current or former director or officer of another company if, at the time such individual held such office, such company was an affiliate of the company, or if such individual held such office at the company’s request; or (iii) an individual who, at the request of the company, held, or holds, an equivalent position in another entity (an “indemnifiable person”) against all judgments, penalties or fines, or amounts paid to settle a proceeding in which he or she is involved because of that person’s position as an indemnifiable person (an “eligible proceeding”) and the expenses actually and reasonably incurred in respect of an eligible proceeding, unless: (i) the individual did not act honestly and in good faith with a view to the best interests of such company or the other entity, as the case may be; or (ii) in the case of an eligible proceeding other than a civil proceeding, the individual did not have reasonable grounds for believing that the individual’s conduct in respect of which the proceeding was brought was lawful. A company cannot indemnify an indemnifiable person if it is prohibited from doing so under its articles. Subject to being prohibited to indemnify an indemnifiable person, a company must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by an indemnifiable person in respect of that proceeding if the indemnifiable person has not been reimbursed for those expenses and is wholly successful, on the merits or otherwise, in the outcome of the proceeding or is substantially successful on the merits in the outcome of the proceeding. Under the BCBCA, a company may also pay, as they are incurred in advance of the final disposition of an eligible proceeding, the expenses actually and reasonably incurred if the company received from the indemnifiable person a written undertaking that, if it is ultimately determined that the payment of expenses is prohibited.

Subject to the BCBCA, the Company’s Articles require the Company to indemnify a director or former director and his or her heirs and legal personal representatives against all eligible penalties to which such person is or may be liable, and the Company must after final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by such person in respect of that proceeding. Each director is deemed to have contracted with us on the terms of the indemnity contained in our Articles. In addition, our Articles specify that failure of a director or former director to comply with the provisions of the BCBCA or our Articles will not invalidate any indemnity to which he or she is entitled. Our Articles also allow for us to purchase and maintain insurance for the benefit of specified eligible parties.

We have entered into indemnity agreements with each of our directors and certain officers which provide for indemnification and advancements by the Company of certain expenses and costs relating to claims, suits or proceedings arising from each director’s and officer’s service to the Company, or, at the Company’s request, service to other entities, as officers or directors to the maximum extent permitted by applicable law and subject to the terms and conditions of such indemnity agreement.

We maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Filed Herewith	Incorporated by Reference herein from Form or Schedule	Filing Date	SEC File/Reg. Number
4.1	Notice of Articles of TMC the metals company Inc.		Form 8-K (Exhibit 3.1)	9/15/2021	001-39281
4.2	Articles of TMC the metals company Inc.		Form 8-K (Exhibit 3.2)	9/15/2021	001-39281
4.3	TMC the metals company Inc. Common Share Certificate		Form 8-K (Exhibit 4.1)	9/15/2021	001-39281
5.1	Opinion of Fasken Martineau DuMoulin LLP	X			
23.1	Consent of Ernst & Young LLP independent registered public accounting firm of TMC the metals company Inc. (formerly Sustainable Opportunities Acquisition Corp.)	X			
23.2	Consent of Fasken Martineau DuMoulin LLP (included in Exhibit 5.1)	X			
24.1	Power of Attorney (included on the signature page hereof)	X			
99.1+	TMC the metals company Inc. 2021 Employee Stock Purchase Plan	X			
107	Filing Fee Table	X			

+ Denotes management contract or compensatory plan or arrangement

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized in New York, New York on May 31, 2022.

TMC THE METALS COMPANY INC.

By: /s/ Craig Shesky
Craig Shesky
Chief Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints each of Gerard Barron and Craig Shesky, acting alone or together with another attorney-in-fact, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any or all further amendments (including post-effective amendments) to this registration statement (and any additional registration statement related hereto permitted by Rule 462(b) promulgated under the Securities Act (and all further amendments, including post-effective amendments, thereto)), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dated indicated.

Signature	Title	Date
<u>/s/ Gerard Barron</u> Gerard Barron	Chief Executive Officer and Chairman (Principal Executive Officer)	May 31, 2022
<u>/s/ Craig Shesky</u> Craig Shesky	Chief Financial Officer (Principal Financial and Accounting Officer)	May 31, 2022
<u>/s/ Gina Stryker</u> Gina Stryker	Director	May 31, 2022
<u>/s/ Christian Madsbjerg</u> Christian Madsbjerg	Director	May 31, 2022
<u>/s/ Andrew Hall</u> Andrew Hall	Director	May 31, 2022
<u>/s/ Kathleen McAllister</u> Kathleen McAllister	Director	May 31, 2022
<u>/s/ Sheila Khama</u> Sheila Khama	Director	May 31, 2022
<u>/s/ Andrei Karkar</u> Andrei Karkar	Director	May 31, 2022
<u>/s/ Amelia Kinahoi Siamomua</u> Amelia Kinahoi Siamomua	Director	May 31, 2022

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

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May 31, 2022
File No.: 328015.00001

TMC the metals company Inc.
595 Howe Street, 10th Floor
Vancouver, British Columbia
V6C 2T5

Dear Sirs/Mesdames:

Re: TMC the metals company Inc. – Registration Statement on Form S-8

We have acted as Canadian counsel to TMC the metals company Inc., a corporation continued under the laws of the Province of British Columbia (the “**Corporation**”), in connection with the filing of a registration statement on Form S-8 (as may be amended, the “**Registration Statement**”), with the Securities and Exchange Commission (the “**Commission**”) under the Securities Act of 1933, as amended (the “**Act**”). The Registration Statement relates to registering the issuance of an aggregate of 5,254,324 common shares without par value in the capital of the Corporation (the “**ESPP Shares**”) issuable upon exercise of the option awards (the “**ESPP Options**”) outstanding under and in accordance with the terms of the Employee Stock Purchase Plan of the Corporation (the “**ESPP**”).

A. Documents Reviewed and Reliance

As Canadian counsel to the Corporation, we have examined original executed or electronically delivered copies, which have been certified or otherwise identified to our satisfaction, of:

1. the Registration Statement; and
2. the ESPP.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we considered necessary or relevant for purposes of the opinions expressed below, including:

1. a certificate of good standing dated May 31, 2022 issued pursuant to the *Business Corporations Act* (British Columbia) relating to the Corporation; and
2. a certificate signed by the Chief Financial Officer of the Corporation dated as of the date hereof addressed to our firm, containing certain additional corporate information of a factual nature and attaching the constating documents of the Corporation, including the certificate of continuation, notice of articles and articles of the Corporation (the “**Constating Documents**”), and the resolutions of the directors of the Corporation authorizing and approving the ESPP, and the issuance of the ESPP Shares (the “**Officer’s Certificate**”).



As to various questions of fact material to the opinions provided herein, we have relied upon the Officer's Certificate.

B. Laws Addressed

We are qualified to practice law in the Province of British Columbia and our opinion herein is restricted to the laws of the Province of British Columbia and the federal laws of Canada applicable therein. We assume no obligation to update these opinions to take into account any changes in such laws or facts after the date hereof.

C. Assumptions

For the purposes of the opinions expressed herein, we have assumed, without independent investigation, the following:

1. with respect to all documents examined by us, the genuineness of all signatures, the authenticity, completeness and accuracy of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, conformed, telecopied, PDF or photocopied copies of originals and the legal capacity of individuals signing any documents;
2. the completeness, accuracy and currency of the indices and filing systems maintained at the public offices where we have searched or made relevant inquiries and of other documents and certificates supplied by public officials;
3. that the Officer's Certificate continues to be accurate on the date hereof;
4. that the minute books and corporate records of the Corporation made available to us are the original minute books and records of the Corporation and contain all of the articles and constating documents of the Corporation and any amendments thereto and all of the respective minutes, or copies thereof, of all proceedings of the shareholders and directors;
5. each of the ESPP and the ESPP Options constitutes a legal, valid and binding obligation of the Corporation and the other parties thereto, enforceable against each of the parties thereto in accordance with its terms and the execution and delivery thereof was duly authorized by the parties thereto; and
6. that if any obligation under any document is required to be performed in a jurisdiction outside of the Province of British Columbia, the performance of that obligation will not be illegal under the laws of that jurisdiction.



D. Reliance

For the purposes of expressing the opinions set forth herein, in connection with certain factual matters pertaining to this opinion, we have relied exclusively and without independent investigation upon the Officer's Certificate.

E. Opinions

Based upon and relying on the foregoing and the qualifications hereinafter expressed, we are of the opinion that the ESPP Shares, when issued in accordance with the terms of the ESPP, will be validly issued, fully paid and non-assessable common shares in the capital of the Corporation.

F. Qualifications

Whenever our opinion refers to securities of the Corporation, whether issued or to be issued, as being "fully-paid and non-assessable", such phrase means that the holders of such securities will not, after the issuance to them of such securities, be liable to pay further amounts to the Corporation in respect of the issue price payable for such securities, and no opinion is expressed as to the adequacy of any consideration received by the Corporation therefor or as to the actual receipt by the Corporation of any consideration for the issuance of such securities.

For greater certainty, a specific assumption, limitation or qualification in this opinion is not to be interpreted to restrict the generality of any other assumption, limitation or qualification expressed in general terms in this opinion that includes the subject matter of the specific assumption, limitation or qualification.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 or Section 11 of the Act or the rules and regulations of the Commission promulgated thereunder.

The opinions herein are given as at the date hereof and we disclaim any obligation or undertaking to advise any person of any change in law or fact that may come to our attention after the date hereof. Our opinions do not take into account any proposed rules, policies or legislative changes that may come into force following the date hereof.

Yours truly,
Fasken Martineau DuMoulin LLP



Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the TMC the metals company Inc. 2021 Employee Stock Purchase Plan of our report dated March 25, 2022, with respect to the consolidated financial statements of TMC the metals company Inc. (the “Company”) as at and for the years ended December 31, 2021 and December 31, 2020.

/s/ Ernst & Young LLP
Chartered Professional Accountants
Vancouver, Canada
May 31, 2022

TMC THE METALS COMPANY INC.

EMPLOYEE STOCK PURCHASE PLAN

The following constitute the provisions of the 2021 Employee Stock Purchase Plan (the “Plan”) of TMC the metals company Inc. (the “Company”).

1. Purpose. The purpose of the Plan is to provide Employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock of the Company. It is the intention of the Company to have the Plan qualify as an “Employee Stock Purchase Plan” under Section 423 of the Code. The provisions of the Plan shall, accordingly, be construed so as to extend and limit participation in a manner consistent with the requirements of that section of the Code.

2. Definitions.

(a) “Board” shall mean the Board of Directors of the Company, or a committee of the Board of Directors named by the Board to administer the Plan.

(b) “Code” shall mean the Internal Revenue Code of 1986, as amended, including any successor statute, regulation and guidance thereto.

(c) “Common Stock” shall mean the common shares of the Company.

(d) “Company” shall mean TMC the metals company Inc., a company existing under the laws of British Columbia, Canada.

(e) “Compensation” shall mean the regular rate of salary or wages received by the Employee from the Company or a Designated Subsidiary that is taxable income for federal income tax purposes or applicable tax law, including payments for overtime and shift premium, but excluding incentive compensation, incentive payments, bonuses, commissions, relocation, expense reimbursements, tuition or other reimbursements or compensation received from the Company or a Designated Subsidiary.

(f) “Continuous Status as an Employee” shall mean the absence of any interruption or termination of service as an Employee. Continuous Status as an Employee shall not be considered interrupted in the case of a leave of absence agreed to in writing by the Company, provided that such leave is for a period of not more than ninety (90) days or reemployment upon the expiration of such leave is guaranteed by contract or statute.

(g) “Contributions” shall mean all amounts credited to the account of a participant pursuant to the Plan.

(h) “Designated Subsidiaries” shall mean the Subsidiaries which have been designated by the Board from time to time in its sole discretion as eligible to participate in the Plan.

(i) “Employee” shall mean any person who is employed by the Company or one of its Designated Subsidiaries for tax purposes and who is customarily employed for at least twenty (20) hours per week and more than five (5) months in a calendar year by the Company or one of its Designated Subsidiaries.

(j) “Exercise Date” shall mean the last business day of each Purchase Period of the Plan.

(k) “Exercise Price” shall mean with respect to an Offering Period, an amount equal to 85% of the fair market value (as defined in Section 8(b)) of a share of Common Stock on the Offering Date or on the Exercise Date, whichever is lower.

(l) “Initial Offering Period” if any, shall mean the period to be established by the Board.

(m) “Offering Date” shall mean the first business day of each Offering Period of the Plan.

(n) “Offering Document” shall have the meaning given to such term in Section 4.

(o) “Offering Period” shall mean (a) the Initial Offering Period and (b) each twenty- four (24) month period commencing on each June 1st and December 1st to occur during the term of the Plan following the Initial Offering Period (or such other period or periods as determined by the Board in accordance with this Plan and set forth in an Offering Document).

(p) “Plan” shall mean this TMC the metals company, Inc. Employee Stock Purchase Plan.

(q) “Purchase Period” shall refer to one or more periods within an Offering Period, as designated in an applicable Offering Document; provided, however, that, if no Purchase Periods are designated by the Administrator in an applicable Offering Document, the Purchase Periods for each Offering Period shall be as set forth in Section 4.

(r) “Subsidiary” shall mean a corporation, domestic or foreign, of which not less than 50% of the voting shares are held by the Company or a Subsidiary, whether or not such corporation now exists or is hereafter organized or acquired by the Company or a Subsidiary.

3. Eligibility.

(a) Any person who has been continuously employed as an Employee for three (3) months as of the Offering Date of a given Offering Period shall be eligible to participate in such Offering Period under the Plan and further, subject to the requirements of Section 6(a) and the limitations imposed by Section 423(b) of the Code. All Employees granted options under the Plan with respect to any Offering Period will have the same rights and privileges except for any differences that may be permitted pursuant to Section 423. Notwithstanding the foregoing, the Board may provide in an Offering Document that an Employee shall not be eligible to participate in an Offering Period if such Employee is a citizen or resident of a foreign jurisdiction and (a) participation in the Plan by such Employee or acquiring securities under the Plan would be prohibited under the laws of such foreign jurisdiction and/or (b) participation by such Employee in compliance with the laws of such foreign jurisdiction would cause the Plan and/or Offering Period(s) thereunder or the right to purchase Common Stock thereunder to violate the requirements of Section 423 of the Code, as determined by the Board in its sole discretion; provided, that any such exclusion shall be applied in accordance with U.S. Treasury Regulation Section 1.423-2(e).

(b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own stock and/or hold outstanding options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any Subsidiary of the Company or (ii) which permits his or her rights to purchase stock under all employee stock purchase plans (described in Section 423 of the Code) of the Company and its Subsidiaries to accrue at a rate which exceeds \$25,000 of fair market value of such stock as defined in Section 8(b) (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. This limitation shall be applied in accordance with Section 423(b)(8) of the Code. In addition, the maximum number of shares of Common Stock that may be purchased by any participant during an Offering Period shall be 15,000 shares of Common Stock. Any option granted under the Plan shall be deemed to be modified to the extent necessary to satisfy this Section 3(b).

4. Offering Periods. The terms and conditions applicable to each Offering Period may be set forth in an “Offering Document” adopted by the Board, which Offering Document shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate and shall be incorporated by reference into and made part of the Plan. The Plan shall be implemented by a series of Offering Periods, with Purchase Periods within each Offering Period commencing on each June 1st and December 1st to occur during the Offering Period or the first business day thereafter (or at such other time or times as designated in an applicable Offering Document or as may be determined by the Board). The provisions of separate Offering Periods under the Plan need not be identical. The dates of the applicable Purchase Period(s) in each Offering Period may be (but are not required to be) identical, provided that the terms of participation are the same within any particular Offering Period except for any differences that may be permitted pursuant to Section 423.

5. Automatic Reset of Offering Periods. Notwithstanding anything in the Plan to the contrary, if the fair market value of a share of Common Stock on any Exercise Date that occurs during an Offering Period is less than the fair market value of a share of Common Stock on the Offering Date of the applicable Offering Period, then such Offering Period shall automatically terminate immediately after the purchase of Shares on such Exercise Date and a new subsequent Offering Period shall commence on the June 1st and December 1st next following such Exercise Date (an “Automatic Reset”).

6. Participation.

(a) An eligible Employee may become a participant in the Plan by completing an enrollment form provided by the Company and filing it with the Company or its designee at least fifteen (15) days prior to the applicable Offering Date, unless a later time for filing the enrollment form is set by the Board for all eligible Employees with respect to a given Offering Period and provided, however, that upon the termination of an Offering Period as a result of an Automatic Reset, each participant in such Offering Period shall automatically participate in the immediately following Offering Period on the same terms on which the participant participated in the terminated Offering Period pursuant to the participant's existing enrollment form (as may be subsequently modified or revoked in accordance with the Plan). The enrollment form and its submission may be electronic as directed by the Company. The enrollment form shall set forth the percentage of the participant's Compensation (which shall be not less than one percent (1%) and not more than fifteen percent (15%) to be paid as Contributions pursuant to the Plan.

(b) Payroll deductions shall commence with the first payroll following the Offering Date, unless a later time is set by the Board with respect to a given Offering Period, and shall end on the last payroll paid on or prior to the Exercise Date of the Offering Period to which the enrollment form is applicable, unless sooner terminated as provided in Section 11.

7. Method of Payment of Contributions.

(a) Each participant shall elect to have payroll deductions made on each payroll during the Offering Period in an amount not less than one percent (1%) and not more than fifteen percent (15%) of such participant's Compensation on each such payroll (or such other percentage as the Board may establish from time to time before an Offering Date). All payroll deductions made by a participant shall be credited to his or her account under the Plan. A participant may not make any additional payments into such account.

A participant may discontinue his or her participation in the Plan as provided in Section 11, or, on one occasion only during each Purchase Period, may decrease, but may not increase, the rate of his or her Contributions during the Purchase Period by completing and filing with the Company a new enrollment form authorizing a change in the deduction rate. The change in rate shall be effective as of the beginning of the next payroll period following the date of filing of the new enrollment form, if the enrollment form is submitted at least fifteen (15) days prior to such date, and, if not, as of the beginning of the next succeeding payroll period.

(b) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b), a participant's payroll deductions may be suspended at any time during an Offering Period.

8. Grant of Option.

(a) On the Offering Date of each Offering Period, each eligible Employee participating in such Offering Period shall be granted an option to purchase on each Exercise Date during such Offering Period a number of shares of the Common Stock determined by dividing such Employee's Contributions accumulated prior to such Exercise Date and retained in the participant's account as of the Exercise Date by the applicable Exercise Price; provided however, that such purchase shall be subject to the limitations set forth in Sections 3(b) and 13. The fair market value of a share of the Common Stock shall be determined as provided in Section 8(b).

(b) The fair market value of the Common Stock on a given date shall be (i) if the Common Stock is listed on a national securities exchange or traded in the over-the-counter market and sales prices are regularly reported for the Common Stock, the closing or last sale price of the Common Stock for such date (or, in the event that the Common Stock is not traded on such date, on the immediately preceding trading date), on the composite tape or other comparable reporting system; or (ii) if the Common Stock is not listed on a national securities exchange and such price is not regularly reported, the mean between the bid and asked prices per share of the Common Stock at the close of trading in the over-the-counter market.

9. Exercise of Option. Unless a participant withdraws from the Plan as provided in Section 11, his or her option for the purchase of shares will be exercised automatically on the applicable Exercise Date of the Offering Period, and the maximum number of full shares subject to the option will be purchased for him or her at the applicable Exercise Price with the accumulated Contributions in his or her account. If a fractional number of shares results, then such number shall be rounded down to the next whole number and any unapplied cash shall be carried forward to the next Exercise Date, unless the participant requests a cash payment. The shares purchased upon exercise of an option hereunder shall be deemed to be issued to the participant on the Exercise Date. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

10. Delivery. Upon the written request of a participant, certificates representing the shares purchased upon exercise of an option will be issued as promptly as practicable after the applicable Exercise Date to participants who wish to hold their shares in certificate form, except that the Board may determine that such shares shall be held for each participant's benefit by a broker designated by the Board. Any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full Share shall be retained in the participant's account for the subsequent Offering Period, subject to earlier withdrawal by the participant as provided in Section 11 below. Any other amounts left over in a participant's account after an Exercise Date shall be returned to the participant.

11. Withdrawal; Termination of Employment. A participant may withdraw all but not less than all the Contributions credited to his or her account under the Plan at any time prior to the Exercise Date of an Offering Period by giving written notice to the Company or its designee. All of the participant's Contributions credited to his or her account will be paid to him or her promptly after receipt of his or her notice of withdrawal and his or her option for the current period will be automatically terminated, and no further Contributions for the purchase of shares will be made during the Offering Period.

(a) Upon termination of the participant's Continuous Status as an Employee prior to the Exercise Date of the Offering Period for any reason, including retirement or death, the Contributions credited to his or her account will be returned to him or her or, in the case of his or her death, to the person or persons entitled thereto under Section 15, and his or her option will be automatically terminated.

(b) In the event an Employee fails to remain in Continuous Status as an Employee for at least 20 hours per week during the Offering Period in which the Employee is a participant, he or she will be deemed to have elected to withdraw from the Plan and the Contributions credited to his or her account will be returned to him or her and his or her option terminated.

A participant's withdrawal from an Offering Period will not have any effect upon his or her eligibility to participate in a succeeding offering or in any similar plan which may hereafter be adopted by the Company.

12. Interest. No interest shall accrue on the Contributions of a participant in the Plan.

13. Stock.

(a) The maximum number of shares of Common Stock which shall be made available for sale under the Plan shall be 3,000,000 shares, subject to adjustment upon changes in capitalization of the Company as provided in Section 19. In addition to the foregoing, subject to Section 19, on the first day of each calendar year beginning on and including January 1, 2022 and ending on and including January 1, 2031, the number of shares of Common Stock available for sale under the Plan shall be increased by that number of shares equal to the lesser of (a) one percent (1%) of the number of outstanding shares on the final day of the immediately preceding calendar year and (b) such smaller number of shares as determined by the Board. If the total number of shares which would otherwise be subject to options granted pursuant to Section 8(a) on the Offering Date of an Offering Period exceeds the number of shares then available under the Plan (after deduction of all shares for which options have been exercised), the Company shall make a pro rata allocation of the shares remaining available for option grants in as uniform a manner as shall be practicable and as it shall determine to be equitable. Any amounts remaining in an Employee's account not applied to the purchase of shares pursuant to this Section 13 shall be refunded on or promptly after the Exercise Date. In such event, the Company shall give written notice of such reduction of the number of shares subject to the option to each Employee affected thereby and shall similarly reduce the rate of Contributions, if necessary.

(b) The participant will have no interest or voting right in shares covered by his or her option until such option has been exercised.

14. Administration. The Board shall supervise and administer the Plan and shall have full power to adopt, amend and rescind any rules deemed desirable and appropriate for the administration of the Plan and not inconsistent with the Plan, to construe and interpret the Plan, to correct any defect or supply any omission or reconcile any inconsistency or ambiguity in the Plan and to make all other determinations necessary or advisable for the administration of the Plan, including without limitation, adopting subplans applicable to particular Designated Subsidiaries or locations, which subplans may be designed to be outside the scope of Section 423 of the Code.

15. Designation of Beneficiary. A participant may designate a beneficiary who is to receive any shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to the end of the Offering Period but prior to delivery to him or her of such shares and cash. In addition, a participant may designate a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to the Exercise Date of the Offering Period. If a participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective. Beneficiary designations shall be made either in writing or by electronic delivery as directed by the Company.

(a) Such designation of beneficiary may be changed by the participant (and his or her spouse, if any) at any time by submission of the required notice, which may be electronic. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

16. Transferability. Neither Contributions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds in accordance with Section 11.

17. Use of Funds. All Contributions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such Contributions.

18. Reports. Individual accounts will be maintained for each participant in the Plan. Statements of account will be given to participating Employees promptly following the Exercise Date, which statements will set forth the amounts of Contributions, the per share purchase price, the number of shares purchased and the remaining cash balance, if any.

19. Adjustments upon Changes in Capitalization. Subject to any required action by the stockholders of the Company, the number of shares of Common Stock covered by unexercised options under the Plan and the number of shares of Common Stock which have been authorized for issuance under the Plan but are not yet subject to options under Section 13(a) (collectively, the "Reserves"), the maximum number of shares of Common Stock that may be purchased by a participant in an Offering Period set forth in Section 3(b) as well as the price per share of Common Stock covered by each unexercised option under the Plan, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock. Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive.

In the event of the proposed dissolution or liquidation of the Company, an Offering Period then in progress will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Board. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger, consolidation or other capital reorganization of the Company with or into another corporation, each option outstanding under the Plan shall be assumed or an equivalent option shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Board determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, to shorten the Offering Period then in progress by setting a new Exercise Date (the "New Exercise Date"). If the Board shortens the Offering Period then in progress in lieu of assumption or substitution in the event of a merger or sale of assets, the Board shall notify each participant in writing, at least ten days prior to the New Exercise Date, that the Exercise Date for his or her option has been changed to the New Exercise Date and that his or her option will be exercised automatically on the New Exercise Date, unless prior to such date he or she has withdrawn from the Offering Period as provided in Section 11. For purposes of this section, an option granted under the Plan shall be deemed to be assumed if, following the sale of assets, merger or other reorganization, the option confers the right to purchase, for each share of Common Stock subject to the option immediately prior to the sale of assets, merger or other reorganization, the consideration (whether stock, cash or other securities or property) received in the sale of assets, merger or other reorganization by holders of Common Stock for each share of Common Stock held on the effective date of such transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, however, that if such consideration received in such transaction was not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Board may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the option to be solely common stock of the successor corporation or its parent equal in fair market value to the per share consideration received by holders of Common Stock in the sale of assets, merger or other reorganization.

The Board may, if it so determines in the exercise of its sole discretion, also make provision for adjusting the Reserves, as well as the price per share of Common Stock covered by each outstanding option, in the event that the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of shares of its outstanding Common Stock, and in the event of the Company being consolidated with or merged into any other corporation.

20. Amendment or Termination.

(a) The Board may at any time terminate or amend the Plan. Except as provided in Section 19, no such termination may affect options previously granted, nor may an amendment make any change in any option theretofore granted which adversely affects the rights of any participant provided that an Offering Period may be terminated by the Board on an Exercise Date or by the Board's setting a new Exercise Date with respect to an Offering Period then in progress if the Board determines that termination of the Offering Period is in the best interests of the Company or if continuation of the Offering Period would cause the Company to incur adverse accounting charges in the generally-accepted accounting rules applicable to the Plan. In addition, to the extent necessary to comply with Section 423 of the Code (or any successor rule or provision or any applicable law or regulation), the Company shall obtain stockholder approval in such a manner and to such a degree as so required.

(b) Without stockholder consent and without regard to whether any participant rights may be considered to have been adversely affected, the Board shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Board determines in its sole discretion advisable that are consistent with the Plan.

21. Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

22. Conditions upon Issuance of Shares. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the *Business Corporations Act (British Columbia)*, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

23. Information Regarding Disqualifying Dispositions. By electing to participate in the Plan, each participant agrees to provide any information about any transfer of shares of Common Stock acquired under the Plan that occurs within two years after the first business day of the Offering Period in which such shares were acquired as may be requested by the Company or any Subsidiaries in order to assist it in complying with the tax laws.

24. Right to Terminate Employment. Nothing in the Plan or in any agreement entered into pursuant to the Plan shall confer upon any Employee the right to continue in the employment of the Company or any Subsidiary, or affect any right which the Company or any Subsidiary may have to terminate the employment of such Employee.

25. Rights as a Stockholder. Neither the granting of an option nor a deduction from payroll shall constitute an Employee the owner of shares covered by an option. No Employee shall have any right as a stockholder unless and until an option has been exercised, and the shares underlying the option have been registered in the Company's share register.

26. Term of Plan. The Plan shall become effective upon approval by the Board, subject to approval of the Plan by the stockholders of the Company within 12 months following the date the Plan is first approved by the Board, and shall continue in effect through December 31, 2031, unless sooner terminated under Section 20.

27. Applicable Law. This Plan shall be governed in accordance with the laws of the State of Delaware, applied without giving effect to any conflict-of-law principles.

Calculation of Filing Fee Table

Form S-8
(Form Type)

TMC the metal company Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Shares without par value	457(c) and 457(h)	5,254,324(2)	\$1.38(3)	\$ 7,250,967.12	\$ 0.0000927	\$ 672.16
Total Offering Amounts					\$ 7,250,967.12		\$ 672.16
Total Fee Offsets							—
Net Fee Due							\$ 672.16

- (1) Represents common shares, without par value (“Common Shares”) that may be issued under the TMC the metals company Inc. 2021 Employee Stock Purchase Plan (the “Plan”). Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall also cover any additional Common Shares that become issuable under the Plan as a result of any stock dividend, stock split, recapitalization or similar transaction effected without the Registrant’s receipt of consideration which would increase the number of outstanding Common Shares.
- (2) Represents Common Shares that may be issued under the Plan, including the additional 2,254,324 Common Shares reserved as a result of the automatic increase in the number of shares reserved under the Plan on January 1, 2022.
- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) promulgated under the Securities Act on the basis of the average of the high and the low price of Registrant’s Common Shares as reported on the Nasdaq Stock Market LLC on May 23, 2022.