

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Filer granted relief from the prospectus requirement to issue non-transferable share purchase warrants to certain First Nations under an Exploration Cooperation and Benefits Agreement – Filer cannot rely on section 2.3 or section 2.12 of National Instrument 45-106 *Prospectus and Registration Exemptions* - Relief granted subject to conditions.

## Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c.S-4, section 144

**Citation: Re Benchmark Metals Inc., 2021 ABASC 109**

**Date: 20210713**

In the Matter of  
the Securities Legislation of  
Alberta (the **Jurisdiction**)

and

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

and

In the Matter of  
Benchmark Metals Inc. (the **Filer**)

Decision

## Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the prospectus requirement contained in the Legislation (the **Prospectus Requirement**) in connection with the issuance of non-transferable share purchase warrants to certain First Nations (as defined below) under an Exploration Cooperation and Benefits Agreement (as defined below) (the **Exemption Sought**).

Under the Process for Exemptive Relief Application in Multiple Jurisdictions (for a passport application):

- (a) the Alberta Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia.

## Interpretation

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

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The head office of the Filer is located in Edmonton, Alberta.
2. The Filer is a reporting issuer in British Columbia and Alberta.
3. The common shares of the Filer are listed for trading on the TSX Venture Exchange (the **Exchange**).
4. The Filer was incorporated under the *Business Corporations Act* (British Columbia) on November 9, 2010.
5. The Filer is conducting exploration and development work on the Lawyers Gold-Silver project in British Columbia (the **Project**), which is located within the traditional lands of the Tsay Keh Dene Nation, Kwadacha Nation, and Takla Nation (the **First Nations**).
6. The Filer entered into an Exploration Cooperation and Benefits Agreement dated March 25, 2021, as amended (the **Benefits Agreement**) with the First Nations, with the view of mitigating any potential adverse effects of the Filer's exploration on the Project.
7. Among other things, the Benefits Agreement provides that the Filer will issue three (3) non-transferable share purchase warrants to acquire up to 100,000 common shares of the Filer each (the **Warrants**) to the legal entity identified by each of the First Nations, namely Tsay Keh Economic Development Corporation, Kwadacha Natural Resources Limited Partnership, and Takla Lake Limited Partnership, respectively, exercisable at the market price of the Filer's common shares on the Exchange at the time of issuance of the Warrants.
8. The issuance of the Warrants is subject to the approval of the Exchange and the Exchange has conditionally accepted the Benefits Agreement for filing on behalf of the Filer.
9. The Filer is unable to rely on section 2.3 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) for the distribution of the Warrants because none of the legal entities of the First Nations is an "accredited investor", as that term is defined under section 1.1 of NI 45-106, although the First Nations are similar in function to municipalities or agencies of government, listed in sections 1.1(g) and (h) of the definition of "accredited investor", acting on behalf of their members.
10. In addition, the Benefits Agreement is not for the Filer's acquisition, directly or indirectly, of a mining property or any interest therein under section 2.13 of NI 45-106, but the First Nations are granting the Filer certain unimpeded rights of access to the Project, and making certain covenants for future cooperation with respect to the Project, all as more particularly specified in the Benefits Agreement.

11. The parties have negotiated the Benefits Agreement at arm's length and as equals, and the First Nations were independently represented during the negotiations by their own financial advisors and legal counsel.
12. There is no exemption from Prospectus Requirement available to the Filer with respect to the distribution of the Warrants to the nominees of the First Nations.
13. It is in the public interest to permit the First Nations the opportunity to acquire, through their Warrants, equity participation in the Filer and indirectly in the Project.
14. The decision to exercise the Warrants or not will be entirely at the discretion of the First Nations, who will have access to all publicly filed documents forming the Filer's continuous public disclosure record on SEDAR under its profile.
15. The Filer will not be able to complete its obligations under the Benefits Agreement unless the Exemption Sought is granted.
16. The Filer is not in default of securities legislation in any jurisdiction of Canada.

#### **Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Warrants are non-transferable; and
- (b) the first trade in any common shares of the Filer issued upon exercise of the Warrants are subject to section 2.5 of National Instrument 45-102 *Resale of Securities*, and are "underlying securities" as defined therein.

#### **For the Commission:**

*"original signed by"*

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Tom Cotter  
Vice-Chair

*"original signed by"*

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Kari Horn  
Vice-Chair