

10 JUNE 2020

Ms Melissa Lim  
Adviser, Listings Compliance [Sydney]  
Australian Securities Exchange Ltd**Magnis Energy Technologies Ltd [MNS] : ASX Query Letter**

Magnis Energy Technologies Ltd [the “Company”] refers to your letter dated 4 June 2020 titled “Magnis Energy Technologies Ltd [‘MNS’] : Query Letter” [“Letter”]. In response to the specific questions contained in your Letter, we can advise as follows:

1. The Company believes the chances of pre-issued European bond referred to in paragraph A and B as a potential source of funding for the NY Battery Plant as unlikely while intermittent conversations take place.
2. In the 2019 Annual Report it was stated that final debt finance documents were received however this required further changes and clarification before any progression on the offer could be made. At the present time no further progress on the offer has been made. We believe the chance of a resolution is slim but iM3NY remains in contact with the group intermittently with last contact made in February 2020.
3. [a] The Company has been in negotiations with prospective financiers for an extensive period of time and yes some of these prospects continue to be so, dating back some nine to twelve months, when mentioned in the 2019 Annual Report [released in September 2019].

We have been in due diligence with a number of groups with the three most advanced for 8 -18 months. On 15 May 2020 an update was made to the ASX titled “NY Battery Plant – Major milestones completed”. Negotiations reached a point where a non-binding term sheet from two interested parties [both with no executable facility] were received [not signed for clarity] and acknowledged and one Letter of Intent from a third interested party was signed. Feedback from potential lenders is that due diligence has been completed, however the COVID-19 pandemic has led to delays in receiving an outcome regarding final financing offers from each prospective financier and iM3NY are unable to provide a time frame as to when we will receive any completion on the matter.

[b] “NY Battery Plant – The Major Milestones” announcement made on 15 May 2020 focused on the completion of the detailed engineering of the plant, process optimisation, cost estimation and facility design works being completed on behalf of potential funders as raised in the previous paragraph. As these significant milestones were completed recently in behalf of potential financiers the Company felt it was important to update shareholders.

4. No
5. No agreement was signed by LIBCOIN and BHEL. The Company became aware that information was being published on an Indian government departmental website without the prior knowledge

of the two parties mentioned in LIBCOIN and BHEL regarding a potential Indian Gigafactory. The Company thought it would be best to make the market aware of the press release made by the Indian Federal Minister and hence marked it sensitive. It was released an hour before market open and the need to release was required.

The announcement purely pointed to the press release, and as there was no agreement signed and only a press release made by the Minister without the knowledge of any of the groups involved, there has been no need to provide any updates.

6. [b] Was the result of a further increase in loans funded to C4V.
7. The audit process was conducted in March 2020 for the half year accounts ending 31 December 2019 ["Accounts"], as your Letter states in paragraph L ii., the Group assessed the recoverability of the short-term loan to C4V. At the same time, the Group assessed its investment in C4V for indications of impairment. As outlined in Note 8 and Note 19 of the Accounts, the assessment resulted in a decrease in the fair value of C4V. In consideration of this assessment, the Group made the decision to provide against the loan in full.
8. No, as the transaction should be viewed in light of the overall investment in C4V. The Company remains confident that in the medium term C4V will gain significant benefit from its IP and that the impairment is a temporary conservative position.
9. The rationale behind this view is based on a number of factors:
  - a. The Company, effective 1 July 2010, adopted an accounting policy whereby all exploration and development expenditure is written off as incurred until such time as the Board decides that the project is to proceed. Expenditure falling within this classification on the Nachu Project in Tanzania, and therefore not recorded on the Balance Sheet has exceeded A\$25 million. This amount is part of the accumulated losses of A\$110 million.
  - b. As commented in the response to Point No.8 above, the Company still maintains its 10% shareholding in C4V and it is confident that the investment in C4V will provide long term value.
10. The Company confirms that, to the best of its knowledge, it is compliance with the ASX Listing Rules, including ASX Listing Rule 3.1.
11. The Company confirms the responses to the questions above have been authorised by the Board of Directors. In addition to this, you may note the Company has been updating Corporate Governance procedures. Policies and Charters have been added to the website and a Disclosure document is also in progress.

Yours Sincerely,



Frank Poullas  
**Executive Chairman**



4 June 2020

Reference: ODIN19089

Mr Douglas Richardson  
Company Secretary  
Magnis Energy Technologies Ltd  
Level 9  
Aurora Place  
88 Phillip Street  
SYDNEY NSW AUSTRALIA 2000

By email

Dear Mr Richardson

**Magnis Energy Technologies Ltd ('MNS'): Query Letter**

ASX refers to the following:

**New York Battery Plant**

- A. MNS's announcement titled "US\$52M Term Sheet Signed for New York Battery Plant"<sup>1</sup> released on the ASX Market Announcements Platform ('MAP') on 18 March 2019, which disclosed that:
- i. *"Magnis Energy Technologies Limited ("Magnis" or the "Company") is pleased to announce that Imperium3 New York has signed a Term Sheet for US\$52 Million in funding, via a pre-issued European bond used to fund renewable energy projects."*
  - ii. *"Final documentation is expected within 50 days with all other details marked as commercial in confidence."*
- B. MNS's announcement titled "Annual Report to shareholders", released on MAP on 30 September 2019, which disclosed that:
- i. *"In March this year, a Term Sheet for US\$52 million was signed by iM3NY for funding via a pre-issued European bond used to fund renewable energy projects. Final debt finance documents have since been received for the debt finance, however these required further changes and clarification before any progression on the offer could be made. At this present time, no further progress on this offer has been made."*
  - ii. *"During the past few months, financial institutions including large overseas investment banks have been conducting some due diligence on project funding for New York. iM3NY believes a number of these groups are in their final stages of review with potential of looking at a split of debt and equity into the New York project."*
- C. MNS's announcement titled "Increase in Ownership in the NY Lithium-ion Battery Plant" released on MAP on 16 March 2020, which disclosed that MNS had agreed to:
- i. purchase the shareholding of Boston Energy and Innovation Pty Limited ('BEI') in iM3NY for US\$350,000; and

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<sup>1</sup> ASX understands that Imperium3 New York LLC ('iM3NY') is a US-domiciled entity undertaking the development and construction of a lithium-ion battery production facility in New York, USA (the 'New York Battery Plant'). On 16 March 2020, MNS released an announcement on MAP disclosing that its shareholding in iM3NY will increase to 57.91% on a direct and indirect basis upon completion of an agreement to acquire the holding of Boston Energy and Innovation Pty Limited (see paragraph C).

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- ii. pay a further amount of US\$150,000 for the acquisition “on the condition that i3MNY successfully secures project finance or a joint venture agreement with an offtake partner for the iM3 New York Battery Plant, within a twelve month period.”
- D. MNS’s announcement titled “NY Battery Plant – Major Milestone Completed” released on MAP on 15 May 2020 (the ‘Due Diligence Announcement’), which MNS marked as “price-sensitive” when submitting to the ASX Market Announcement’s Office and which disclosed that:
- i. iM3NY had completed three major reports comprising “[d]etailed engineering of plant, process optimisation, cost estimation and facility design works ... at the request of three prospective project financiers as part of their due diligence process.”
- ii. The reports had been commissioned six months ago “to refine project works, schedules and costs for due diligence by prospective financiers”.
- iii. “The three prospective investors include a well-known global financial institution and a green investment fund. All three groups have provided iM3NY with non-binding agreements and a Letter of Intent (LOI) to showcase their serious interest.”
- iv. “Magnis Chairman, Frank Poullas, commented: “We are working hard towards closure of funding for the New York battery plant and with significant interest demonstrated from several parties, this process continues to be expedited. ... In recently completed due diligence programs, over 1,000 documents were compiled in a data room created for all stakeholders including prospective investors.”
- E. ASX listing rule 3.1, which provides:
- “Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity’s securities, the entity must immediately tell ASX that information.”*
- F. ASX listing rule 3.1A, which provides (relevantly):
- “Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*
- 3.1A.1 One or more of the following 5 situations applies: ...*
- The information concerns an incomplete proposal or negotiation;*
  - The information comprises matters of supposition or is insufficiently definite to warrant disclosure; ...*
- and*
- 3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*
- 3.1A.3 A reasonable person would not expect the information to be disclosed.”*
- G. ASX Guidance Note 8, which provides:
- “4.15 Guidelines on the contents of announcements under Listing Rule 3.1**
- Wherever possible, an announcement under Listing Rule 3.1 should contain sufficient detail for investors<sup>104</sup> or their professional advisers to understand its ramifications and to assess its impact on the price or value of the entity’s securities. ...*

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*The disclosure of the name of the counterparty/customer with whom an entity has entered into a market sensitive contact is often particularly significant. It allows the market to assess the standing and creditworthiness of the counterparty/customer. ...*

*In very limited circumstances, where ASX is satisfied that a counterparty/customer has strong and legitimate reasons for not wanting to be named in a market announcement (as may occur with some government agencies or entities in the defence or security industries), ASX may accept a description of the counterparty/customer that is sufficiently detailed to allow the market to assess the counterparty's standing and creditworthiness without the counterparty/customer being named. ...*

#### **4.22 Disclosure must be made even if it is contrary to contractual commitments**

*An entity must comply with its disclosure obligations under Listing Rule 3.1 and section 674, even where it is party to a confidentiality or non-disclosure agreement that might otherwise require it to keep information confidential.*

*Generally speaking, any entity entering into a confidentiality or non-disclosure agreement should insist upon an express carve-out for the disclosure of information that is required by law or under the rules of a stock exchange so as not to create a conflict with its disclosure obligations under section 674 and Listing Rule 3.1. However, even if such an express carve-out is not included, it is highly likely that one will be implied in any event, on the basis that a commercial contract cannot require a party to act in a manner contrary to the general law. ...*

#### **5.4 Incomplete proposals or negotiations**

*This category of information is excluded from disclosure because of the prejudice it could cause to an entity and its security holders if it was effectively required to develop its corporate proposals and conduct its commercial negotiations in public. It is also excluded because of the propensity of markets to overreact in the short term to information that an entity may be contemplating a market sensitive transaction, even where the likelihood of the transaction proceeding is low or unclear. ...*

#### **5.5 Matters of supposition or that are insufficiently definite to warrant disclosure**

*This category of information is excluded from disclosure because of its propensity to misinform or mislead the market. ...*

*Information about a matter will be "insufficiently definite to warrant disclosure" if:*

- *the information is so vague, embryonic or imprecise;*
- *the veracity of the information is so open to doubt; or*
- *the likelihood of the matter occurring, or its impact if it does occur, is so uncertain,*

*that a reasonable person would not expect it to be disclosed to the market. In some cases, information in this category may be so uncertain or indefinite that it is not in fact market sensitive and therefore not required to be disclosed under listing rule 3.1, regardless of whether it falls within the carve-outs from disclosure in listing rule 3.1A."*

#### **India LIB Gigafactory**

H. MNS's announcement titled "BHEL and LIBCOIN plan to build India's first gigafactory" released on MAP on 21 January 2019 (the 'Gigafactory Announcement'), which disclosed that (emphasis added):

- *"Magnis Energy Technologies Limited ("Magnis") wishes to draw attention to an announcement by The Government of India's Ministry of Heavy Industries and Public Enterprises, regarding BHEL being in dialogue with LIBCOIN on the building of India's first lithium-ion battery (LIB) Gigafactory beginning at 1GWh and scaling up to 30GWh."*

- *“LIBCOIN is a consortium made up of Magnis, Duggal Family Trust and Charge CCCV (“C4V”) and has a vision to build large LIB gigafactories globally with the focus being on the Indian market. **Magnis has a 20% non-dilutive stake in LIBCOIN.**”*

- I. MNS’s announcement titled “Quarterly Activities Report” released on MAP on 30 April 2019, which disclosed that (emphasis added):

*“Discussions are currently taking place with BHEL and other groups who are looking at supporting the creation of a lithium-ion cell manufacturing plant in India. With all discussions being ‘Commercial in Confidence’, **the Company will announce any developments as they come to hand.**”*

#### Investee loan

- J. MNS’s announcement titled “Quarterly Activities Report” released on MAP on 30 April 2019, which disclosed that (emphasis added):

*“The Company has a 10% interest in battery technology group C4V and has provided a short-term loan **of A\$1.2M to C4V that is expected to be repaid over the next two quarters.**”*

- K. MNS’s announcement titled “Quarterly Activities Report” released on MAP on 31 July 2019, which disclosed that (emphasis added):

*“The Company has a 10% interest in battery technology group C4V and has provided a shortterm [sic] loan **currently amounting to A\$1.3M to C4V that is expected to be repaid over the next two quarters.**”*

- L. MNS’s announcement titled “Half Year Accounts” released on MAP on 13 March 2020, which disclosed that:

i. The expected credit loss on the C4V loan was \$1,467,924.

ii. *“As at 31 December 2019, the Group assessed the recoverability of the short-term loan to strategic partner Charge CCCV LLC (“C4V”). At the same time, the Group assessed its investment in C4V for indicators of impairment. As outlined further in Note 8 and Note 19, the assessment has resulted in a decrease in the fair value of C4V in the amount of \$2,524,523. In consideration of this assessment the Group has made the decision to provide against the loan in full.*

*As at 31 December 2020 [sic], the short-term loan due from C4V was in default and attracts a 15% interest charge.”*

#### Request for Information

Having regard to the above, ASX asks MNS to respond separately to each of the following questions and requests for information:

1. Does MNS still consider the pre-issued European bond referred to in paragraphs A and B as a potential source of funding for the NY Battery Plant?
2. If the answer to question 1 is:
  - a. “yes”, please explain why; or
  - b. “no”, please identify the announcement in which MNS informed the market that the pre-issued European bond funding was no longer an option to fund the NY Battery Plant and, if MNS did not release an announcement, please explain the rationale behind this decision.
3. Noting that, in the Due Diligence Announcement (see paragraph D), MNS did not disclose the identity of the three potential financiers who requested that iM3NY produce the reports in question:

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- a. Are the parties described in MNS's last Annual Report as "[d]uring the past few months ... conducting some due diligence on project funding for New York" (see paragraph B.ii):
- i. the three prospective project financiers referred to in the Due Diligence Announcement; or
  - ii. other potential investors or providers of project finance?
- In either case, at what stage is their due diligence and is MNS still in negotiations with them for the provision of that project finance?
- b. On what basis did MNS conclude that:
- i. the information in the Due Diligence Announcement ought to be disclosed to the market, given that the confidential completion of conditions precedent to a non-binding, indicative offer would not ordinarily be required to be disclosed under listing rule 3.1 for the reasons set out in sections 5.4 and 5.5 of ASX Guidance Note 8 (see paragraph G);<sup>2</sup> and
  - ii. a step in due diligence undertaken to determine whether project finance should be provided for the development of the New York Battery Plant should be described to the market as "Major Milestones"?
4. Does MNS consider the information in the India Gigafactory Announcement (see paragraph H) to be information that a reasonable person would expect to have a material effect on the price or value of MNS' securities?
5. If the answer to question 4 is:
- a. "yes", please confirm whether the company has updated the market on this matter since the Quarterly Activities Report released on 30 April 2019 (see paragraph D) and if not, why not; or
  - b. "no", please explain why the company flagged the announcement as "price sensitive" to the ASX Market Announcements Office.
6. ASX notes that there was an increase in loans to C4V from \$1.2M on 30 April 2019 (see paragraph J) to \$1.3M on 31 July 2019 (see paragraph K). Further, ASX notes MNS' most recent Half Year Accounts (see paragraph L) indicate that the value of the credit loss to be \$1,467,924. Please confirm whether the credit loss:
- a. includes the 15% interest charge on the previously announced \$1.3M (see paragraph L.ii); or
  - b. was the result of a further increase in loaned funds to C4V.
7. When did MNS first become aware the loans to C4V were in default?
8. Does MNS consider the credit loss of \$1,467,924 to be information that a reasonable person would expect to have a material effect on the price or value of MNS' securities?
9. If the answer to question 8 is:
- a. "yes", please explain why an announcement was not released to the market detailing the events that led to the credit loss.
  - b. "no", please explain the rationale behind this view.
10. Please confirm that MNS is in compliance with the listing rules and, in particular, listing rule 3.1.

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<sup>2</sup> See also worked examples A and B in Guidance Note 8.



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11. Please confirm that MNS's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of MNS with delegated authority from the board to respond to ASX on disclosure matters.

#### **When and where to send your response**

This request is made under listing rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than 4:00 PM **AEST Wednesday, 10 June 2020**.

You should note that if the information requested by this letter is information required to be given to ASX under listing rule 3.1 and it does not fall within the exceptions mentioned in listing rule 3.1A, MNS's obligation is to disclose the information "immediately". This may require the information to be disclosed before the deadline set out in the previous paragraph and may require MNS to request a trading halt immediately.

If you wish to request a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted.

You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

ASX reserves the right to release a copy of this letter and your response on MAP under listing rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [ListingsComplianceSydney@asx.com.au](mailto:ListingsComplianceSydney@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

#### **Listing rules 3.1 and 3.1A**

In responding to this letter, you should have regard to MNS's obligations under listing rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. It should be noted that MNS's obligation to disclose information under listing rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

#### **Suspension**

If you are unable to respond to this letter by the time specified above ASX will likely suspend trading in MNS's securities under listing rule 17.3.

#### **Enquiries**

If you have any queries or concerns about any of the above, please contact me immediately.

Regards

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**Melissa Lim**  
Adviser, Listings Compliance (Sydney)