

30 October 2023

Angel He
Adviser
ASX Compliance

Dear Angel

Response to ASX Query letter

Magnis Energy Technologies Limited ACN 115 111 763 (ASX: MNS) (**Company**) refers to the query letter from ASX dated 26 October 2023 (**Query Letter**).

Adopting ASX's numbering for convenience, the Company provides the following responses to each of the questions set out in the Query Letter:

- 1 As you know, and because the Company consolidates its financial statements with those of its US-based subsidiary iM3NY¹, Hall Chadwick (the Company's statutory auditor) issued a qualified audit opinion in relation to the Full Year Statutory Accounts as a consequence of the qualified audit opinion issued by BDO (iM3NY's NY-based auditor) in relation to iM3NY's financial statements for the financial year ended 30 June 2023.

BDO's audit opinion in relation to iM3NY's financial statements was qualified because BDO could not, in the time available to it and on a timing to allow it to provide an unqualified audit opinion to the Company and Hall Chadwick before the Company's reporting deadline (i.e. as per Listing Rule 4.5), form a view to the required audit standard in relation to:

- (certain) equity transactions between the Magnis group and iM3NY;
 - Group Consolidation and Financial Reporting – including intercompany transactions or elimination entries (where applicable); and
 - tax implications arising out of these transactions,
- (together, the **Outstanding Matters**).

¹ Undefined capitalised words and terms used in this letter have the meanings given to them in the Query Letter.

On becoming aware of the potential delays in relation to the Outstanding Matters and in an attempt to seek to comply with Listing Rule 4.5 (i.e. in an attempt to give ASX its Full Year Statutory Accounts before the reporting deadline), the Company, Hall Chadwick and BDO agreed that BDO would instead complete its audit of iM3NY and issue a qualified opinion without giving any assurance in relation to the Outstanding Matters².

Accordingly, the provision of BDO's (qualified) audit opinion allowed Hall Chadwick to render its (qualified) audit opinion in respect of the Full Year Statutory Accounts.

The "original" Full Year Statutory Accounts were given to ASX on 3 October 2023.

2. As noted above, and given the technical requirements of the Australian Accounting Standards and the Australian Audit Standards, Hall Chadwick was unable to render an unqualified opinion in relation to the Full Year Statutory Accounts in the absence of an unqualified audit opinion from BDO in respect of iM3NY's financial statements. The reasons, the Company believes, for BDO's inability to gain the requisite level of confidence in relation to Outstanding Matters include:
- the requested information provided by officers of iM3NY to BDO was either not given to BDO in the timeframe required or was incomplete and/or inadequate from BDO's perspective;
 - the provision of late, incomplete and/or inadequate information prevented BDO from finalising its audit of the intragroup arrangements/requisite iM3NY accounting adjustments; and
 - the late, incomplete or inadequate information prevented BDO from finalising its audit of the expected impact of the intragroup arrangements/requisite iM3NY accounting adjustments would have on iM3NY from a tax perspective.

² Said differently, once the Company became aware that BDO would not be able to complete its audit (and render its audit opinion) on a timing that would allow Hall Chadwick to complete its audit (and render its audit opinion) before the reporting deadline on 29 September 2023, it was agreed between the parties that BDO and Hall Chadwick would instead complete their respective audits and provide their respective audit opinions to the extent they could (and even if it meant that each auditor would be unable to provide assurance in relation to the Outstanding Matters). This approach was regarded as acceptable by the Directors of the Company as it was not expected that the resolution of the Outstanding Matters would result in a material change to any aspect of the Full Year Statutory Accounts.

While the Company and its Directors take ultimate responsibility for the Full Year Statutory Accounts and indeed the late filing on ASX of those accounts, the Company does not believe that its actions contributed to BDO's inability to gain the requisite level of confidence in relation to the Outstanding Matters.

The Company is working with iM3NY to seek to ensure that all future audit requests from BDO are complied with by iM3NY and its officers and financial executives in a far more timely and satisfactory manner. Furthermore, in this regard, the Company intends procuring, to the maximum extent that it is able to, that all relevant iM3NY processes, procedures and accounting systems related to the retention of financial information and associated records that may be required in connection with future audits are improved and streamlined such that all senior executives of iM3NY (and not just those with primary responsibility for internal audit and accounting matters) are able to access this information and associated reports as requested and/or as required by iM3NY's auditor.

3. Following the provision to BDO (i.e. by officers of iM3NY) of all outstanding information sought by BDO in relation to the Outstanding Matters, BDO was able to issue an unqualified audit opinion, with an emphasis of matter relating to going concern, of iM3NY's consolidated financial statements. The issuance of BDO's opinion on 13 October 2023 (US) in relation to iM3NY's financial statements in turn allowed Hall Chadwick to issue an unqualified opinion in relation to the Company's annual financial statements for the year ended 30 June 2023. These annual financial statements were released on ASX on 30 October 2023.

Please note that there have not been any material changes between the contents of the Full Year Statutory Accounts given to ASX on 3 October 2023 and the financial statements lodged by the Company with ASX.

4. The Company's responses to ASX Queries 4.1 to 4.4 are set out below:
 - 4.1 (Strong Solutions) The Company confirms that \$223,300 in consulting fees (**Consulting Fees**) and \$220,492 in IT Services fees (**IT Services Fees**) were paid by the Company to Spectrum IT Pty Ltd ACN 151 372 771 (**Spectrum IT**) in FY23. The business name "Strong Solutions" (BN-98579447) was registered on 1 July 2011 and is held by Spectrum IT. The Company understands that the registration of this business name remains active.
 - 4.2 (Engagement agreement with Spectrum IT) The Company confirms that it will, as requested by ASX and in the form of a supplementary announcement to be lodged on MAP, disclose the material terms of the IT services agreement that it entered into with Spectrum IT on 5 March 2021 (**Spectrum IT Agreement**). For the avoidance of any further doubt, IT services are rendered to the Company by Spectrum IT "trading as" Strong Solutions.

- 4.3 (Increase in IT Services fees) While the Company paid Spectrum IT \$86,592 more in IT Services Fees in FY23 than it did in FY22, the Company considers that these additional fees were paid under and in accordance with (i.e. rather than in connection with a variation of) the existing terms of the Spectrum IT Agreement. This is essentially because the Spectrum IT Agreement makes provision for both a base fee to be paid for standard (i.e. “pre agreed”) IT services and for additional fees to be paid for additional services requested by the Company. For example, the Spectrum IT Agreement specifies that an additional fee of \$1,040 per day (excluding GST) is payable for “Onsite Level 1-3 support resources”. The Company further confirms that a significant proportion of the \$86,592 in “additional” IT Services Fees that were paid in FY23 were paid in connection with the provision Onsite Level 1-3 support resources.

A breakdown of the total IT Services Fees paid by the Company to Spectrum IT in FY23 is set out in Schedule 1 of this letter.

Further information in relation to the Spectrum IT Agreement is set out in the Company’s disclosure referred to in the Company’s response to ASX Query 4.2.

- 4.4 (Consulting fees paid to Spectrum IT) No professional services were rendered by Spectrum IT in consideration for the \$223,300 paid by the Company to Spectrum IT in consulting fees in FY23.

However, and by way of background, the Company has historically paid certain of its Executive Directors an additional \$1,000 per day for services rendered to the Company (and/or any of its subsidiaries) that are “above and beyond” those Director’s ordinary (i.e. contractually agreed) duties to the Company. This arrangement has been in place since at least 2010 and has been previously disclosed to ASX³.

In accordance with this previously disclosed (and historically agreed) arrangement, Mr Frank Poullas, the Company’s Executive Chairman, was entitled to be paid a total of \$223,300 (i.e. roughly equivalent to 223 days at \$1,000 per day for services rendered in FY23 that were “above and beyond” what was required of him pursuant to the consultancy agreement between himself and the Company (which agreement allows for the payment of \$120,000 in annual director/consulting fees + GST). However and while the above referred \$1,000 per day fee relates to services rendered by Mr Poullas rather than Spectrum IT, the fees are actually paid by the Company to Spectrum IT rather than to Mr Poullas directly. This is primarily for family and historical reasons. Accordingly, the Company confirms that the \$223,300 paid to Spectrum IT was not paid as part of, under, or in connection with the IT Services Agreement (but rather was paid to Strong Solutions in connection with the above referred “historical” arrangements).

For the avoidance of doubt, the \$223,300 was not paid under the above mentioned consultancy agreement between Mr Poullas and the Company either.

³ See <https://wcsecure.weblink.com.au/clients/magnisenergytech/headline.aspx?headlineid=21225862> for example.

5. The Company's responses to ASX Queries 5.1 to 5.2(e) are set out below:
- 5.1 The Company confirms that it exceeded its \$650,000 Non-Executive fee cap in FY23 by \$243,246.
A breakdown of the total payments made to Non-Executive Directors in FY23 is set out in Schedule 2 of this letter.
- 5.2 The Company confirms that it will provide a supplementary statement to be lodged on MAP which covers the matters referred to in ASX Query 5.2(a) to 5.2(e).
6. The Company considers that its financial condition is sufficient to warrant the continued quotation of its shares on the financial market provided by ASX and its (i.e. the Company's) continued listing on ASX under Listing Rule 12.2. The Company believes this for the following reasons:
- the Company is currently in advanced discussions with various parties in relation to the potential provision of additional debt funding;
 - the Company is confident that it will be able to raise sufficient additional equity capital if need be;
 - the Company no longer guarantees (and has not provided any surety in respect of) any of the debts/liabilities owed by iM3NY as per the announcement on 19 April 2022 - <https://wcsecure.weblink.com.au/clients/magnisenergytech/headline.aspx?headlineid=21369171>; and
 - the Company has significant assets which it believes it could monetise, subject to Listing Rule approval.
- In this regard, please note that:
- the Company will keep the market informed of any material developments in relation to any of the above noted initiatives in accordance with Listing Rule 3.1;
 - there can be no certainty that the Company will be able to raise further debt or equity capital on terms acceptable to the Company (or at all); and
 - there can be no certainty that the Company will be able to sell any of its material assets on terms acceptable to the Company (or at all).
7. Confirmed – the Company is in compliance with the Listing Rules, and in particular, Listing Rule 3.1.
8. Confirmed – the responses set out above have been authorised and approved by the Company's board of directors.

Schedule 1

Description	Detail	Amount
Server & Security Support services for Australia and Tanzania	Daily checks, helpdesk, cybersecurity monitoring, monthly reporting and server and infrastructure support	\$59,400
Production, Backup & DR Server Hosting (AWS and Azure)	Services provided for Australia and Tanzania, backup (including office 365 and remote desktop) for DR	\$43,010
Software	Adobe and MS Windows licenses. Veritas Cloud archive backup, Usecure Cybersecurity awareness subscription, MyCiso Cybersecurity strategy and remediation tool, Qualys Vulnerability and Threat management, Palo Alto Endpoint protection, Cisco Umbrella Cybersecurity gateway and Cisco Meraki for DR Site	\$36,359
Office Move	Building move support including hardware	\$10,086
IT Project	Web filtering, DR/BCP site, SharePoint, Cisco VPN, IT Program for Tanzania Operations, Phishing Campaign, Cybersecurity, Cisco VPN, email archiving for Tanzania	\$63,063
Hardware	Laptops, monitors and accessories	\$8,574
Total	N/A	<u>\$220,492</u>

Schedule 2

“Normal” Remuneration (A)

The Company paid a total of \$553,108 in “ordinary course” remuneration to its Directors in FY23.

This amount is comprised of:

- \$421,108 (**A1**) – which amount was paid its Non-Executive Directors (including Mr Hoshi Daruwalla before he became an Executive Director and Mr Mugunthan Siva who resigned from the Company’s board in April 2023); and
- \$132,000 – which amount was paid to Mr Frank Poullas directly under the consultancy agreement referred to in the Company’s response to ASX Query 4.4.

“Special Exertion” Fees (B)

The Company paid a total of \$472,138 in “special exertion” fees to (or to entities related to/associated with) its Non-Executive Directors in FY23. This amount is comprised of:

- \$117,092 to Ms Mona Dajani;
- \$56,000 to Claire Bibby Pty Ltd (an entity that is related to/associated with Ms Claire Bibby);
- \$65,800 to Global Impact Initiative Pty Ltd (an entity that is related to/associated with Mr Giles Gunsekera) (**Global Impact**); and
- \$233,246 to Yatha Enterprises LLC (an entity that is related to/associated with Mr Hoshi Daruwalla) (**Yatha**).

Further information in relation to the above referred amounts is set out in Schedule 2 of the Company’s Explanatory Statement issued in connection with its 2023 AGM.

Other Fees (C)

The Company paid a further \$150,021 to (or to entities related to/associated with) its Non-Executive Directors in FY23. This amount is comprised of:

- \$16,799 to Pillsbury Winthrop Shaw Pittman LLP (a law firm in which Mona Dajani is a partner);
- \$11,000 to Claire Bibby Pty Ltd (for work performed by and paid to an employee of/consultant to Claire Bibby Pty Ltd);
- \$87,455 to Global Impact (for work performed by and paid to employees of/consultants to Global Impact); and
- \$34,767 to Yatha (for worked performed by and paid to employees of/consultants to Yatha).

None of these particular amounts were received by any of the Directors directly.

Further information in relation to the above referred amounts is set out in Schedule 2 of the Company's Explanatory Statement issued in connection with its 2023 AGM.

Additional amounts (D)

As noted in the Company's response to ASX Query 4.1, the Company paid a total of \$443,792 to Spectrum IT in FY23 comprising of:

- (Consulting Fees) \$223,300 to Spectrum IT for services rendered by Frank Poullas; and
- (IT Services Fees) \$220,492 to Spectrum IT for IT services rendered by Spectrum IT.

Please see the Company's responses to ASX Queries 4.1, 4.3 and 4.4 for further information.

Totals

Accordingly, the Company paid the following total amounts in FY23:

- **\$1,619,059** (i.e. A + B + C + D) to all Directors/entities related to/associated with its Directors (and regardless of the provenance/purpose of those payments).
- **\$1,043,267** (i.e. A1 + B + C) to all of its NEDs/entities related to/associated with its NEDs (and regardless of the provenance/purpose of those payments).
- **\$893,246** (i.e. A1 + B) to all NEDs/entities related to/associated with its NEDs (noting that this figure excludes the payments that were not received by the NEDs themselves (i.e. the payments referred to as "C")).

Any differences between what is provided in this Schedule 2 and that which is set out in Note 24 of the Full Year Statutory Accounts are likely due to rounding and/or the inclusion/exclusion of GST/statutory benefits (some of which vary by jurisdiction). Nonetheless, the Company believes any discrepancies in this regard are immaterial.

Duncan W Glasgow
Group General Counsel & Company Secretary
Magnis Energy Technologies Ltd.
E:info@magnis.com.au



26 October 2023

Reference: 81334

Mr Duncan Glasgow
Group General Counsel & Company Secretary
Magnis Energy Technologies Ltd
Suite 11.01
1 Castlereagh Street
Sydney NSW 2000

By email only.

Dear Mr Glasgow

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

ASX refers to the following:

A. MNS's announcement titled "Full Year Statutory Accounts" lodged on the ASX Market Announcements Platform ('MAP') on 3 October 2023, which disclosed (relevantly):

i. A qualified audit report prepared by MNS's auditors, Hall Chadwick, and the basis for that qualification:

"At the date of this audit report, the auditor of the subsidiary iM3NY LLC has completed its audit with the exception of recorded equity transactions between it and Magnis Energy Technologies, principally being the accounting for convertible notes issued by iM3NY LLC, including the consequences for iM3NY LLC under the United States income tax law. The component auditor expects to provide its complete opinion when the advice it has sought on those consequences is received. As a result, the auditor of iM3NY LLC has not provided any assurance in respect of:

- *Equity transactions between the group and iM3NY LLC*
- *Group Consolidation and Financial Reporting- including intercompany transactions or elimination entries (where applicable)*
- *Tax implication arising out of these transactions*

In the group financial statements, the items potentially affected are the classification and value of converted notes, the apportionment of equity between parent entity interest and non-controlling interest as disclosed in Note 27 of the financial statements and unrecognised group tax losses as disclosed in Note 5 of the financial statements.

Consequently, we have been unable to obtain sufficient appropriate audit evidence in respect of these items and were unable to determine whether any adjustments to these amounts were necessary."

ii. On page 18, a table outlining the related party transactions conducted during FY2023; and

iii. On page 23, MNS's Statement of Financial Position.

B. MNS's email to ASX dated 5 October 2023 attaching an Audit Opinion Clearance letter from BDO USA, P.C., the auditors of iM3NY LLC, to Hall Chadwick. The Audit Opinion Clearance letter disclosed (relevantly):

“As requested in your group audit instructions dated July 10, 2023, we have audited, for purposes of your audit of the consolidated financial statements of Magnis Energy Technologies Ltd (the “group”), the accompanying special purpose financial information of iM3NY, LLC (the “component”) as of June 30, 2023 and for the year then ended. The special purpose financial information, which comprises the component reporting package has been prepared solely for the purposes of preparing the consolidated financial statements of the group.

In accordance with your group audit instructions, the scope of our audit procedures excludes the following areas that otherwise would be relevant in the context of an audit of special purpose financial information based on the component materiality specified in your instructions. Accordingly, we do not express an opinion or provide any other form of assurance with respect to the following (including any related income tax impact):

- *Equity transactions between the group and the component*
 - *Group Consolidation and Financial Reporting – including intercompany transactions or elimination entries (where applicable)*
 - *Income taxes*
- C. MNS’s email to ASX dated 18 October 2023 attaching MNS’s updated Annual Financial Report for the year ended 30 June 2023, which included an audit report that was not qualified.
- D. Listing Rule 3.1, which requires a listed entity to immediately give ASX 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.
- E. Listing Rule 3.16.4, which requires a listed entity to immediately give ASX the material terms of any employment, service or consultancy agreement it or a child entity enters into with:
- its CEO
 - any of its directors; or
 - any other person or entity who is a related party of its CEO or any of its directors,
- and of any material variation to such an agreement.
- F. Listing Rule 4.9, which states:
- If securities in an unlisted entity, or loans or advances to it, are included in a listed entity’s assets, the listed entity must give ASX the latest accounts of the unlisted entity if ASX asks.*
- G. Resolution 2 of MNS’s 2017 Notice of Annual General Meeting, lodged on MAP on 16 October 2017, which sought shareholder approval for the increase of non-executive directors’ fees from \$400,000 to \$650,000 (‘Fee Pool’) and the results of MNS’s 2017 Annual General Meeting, announced on 17 November 2017, which notes that Resolution 2 was passed on a show of hands.
- H. Listing Rule 10.17A, which states:
- The total amount of directors’ fees paid to the directors of an entity by the entity or any of its child entities must not exceed the total amount of directors’ fees approved by the holders of its ordinary securities under rule 10.17.*

Request for information

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

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1. Please explain the circumstances which led to the qualified audit opinion contained in the “Full Year Statutory Accounts” lodged on 3 October 2023.
 2. Please explain why Hall Chadwick was unable to obtain sufficient appropriate audit evidence to provide an unqualified audit opinion in the “Full Year Statutory Accounts” lodged on 3 October 2023. In your response, please expressly state the extent to which this was due to MNS, its subsidiaries, or officers not providing information to Hall Chadwick in the timeframe required, and the cause of that delay.
 3. Please explain the basis on which Hall Chadwick revised its audit opinion in the version of the Annual Financial Report provided to ASX on 18 October 2023, referred to in Paragraph C.
 4. On page 18 of the “Full Year Statutory Accounts” lodged on 3 October 2023, MNS discloses that payments totalling \$223,300 in ‘consulting fees’ and \$220,492 in ‘IT Services’ have been made to Strong Solutions Pty Ltd (‘Strong Solutions’). Strong Solutions is a related party of Frank Poullas, the Executive Chairman of MNS. In relation to those payments to Strong Solutions:
 - 4.1 ASX notes that Strong Solutions does not appear to be a registered company name. Please provide the full name of the company to which these payments were made to.
 - 4.2 MNS does not appear to have previously disclosed the material terms of its agreement with Strong Solutions. Please confirm that MNS will disclose the material terms of its agreement with Strong Solutions in a supplementary announcement to be lodged on MAP.
 - 4.3 Please explain the basis for MNS’s view that the significant increase of \$86,592 in ‘IT Services’ payments for FY2023 is not a material variation to the agreement.
 - 4.4 Please provide details of the services provided by Strong Solutions in consideration for the ‘consulting fees’ paid to it.
 5. In relation to payments to non-executive directors of MNS, MNS has breached Listing Rule 10.17A by exceeding the previously approved Fee Pool of \$650,000.
 - 5.1 Please confirm the total fees MNS has paid to its non-executive directors in excess of the Fee Pool. In answering this question, please also provide a breakdown of the total payments made to non-executive directors of MNS for FY2023.
 - 5.2 Please confirm that MNS will provide a supplementary announcement to be lodged on MAP, which includes the following:
 - (a) a statement that MNS has breached Listing Rule 10.17A and inclusion of the amount paid in excess of the Fee Pool;
 - (b) if MNS has paid fees in excess of the Fee Pool in previous years, state which years this has also occurred in and the amount that MNS has paid in excess of the Fee Pool;
 - (c) a statement explaining how MNS proposes to remedy the breach(es). If MNS is not proposing to remedy the breach(es), that fact must be stated;
 - (d) a statement outlining the arrangements MNS has in place to ensure that it is able to comply with Listing Rule 10.17A; and
 - (e) if the current arrangements are inadequate or not being enforced, the additional steps MNS intends to take to ensure compliance with Listing Rule 10.17A.
 6. Given MNS’s negative net asset position on page 23 of the “Full Year Statutory Accounts” lodged on 3 October 2023, does MNS consider that its financial condition is adequate to warrant the continued quotation of its securities and its continued listing under Listing Rule 12.2? In answering this question, please explain the basis for that view.

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7. Please confirm that MNS is complying with the Listing Rules and, in particular, Listing Rule 3.1.
 8. 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 **9.00 AM AEDT Tuesday, 31 October 2023**. 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.

Your response should be sent to me by e-mail at **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.

Release of correspondence between ASX and entity

ASX reserves the right to release all or any part of this letter, your reply and any other related correspondence between us to the market under Listing Rule 18.7A.

Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

ASX Compliance