

FOR RELEASE: 30 October 2023

ASX:  
MNS

OTCQX:  
MNSEF

FSE:  
U1P

## Breach of Listing Rule 10.17A

Magnis Energy Technologies Ltd (“**Magnis**”, or the “**Company**”) (**ASX: MNS; OTCQX: MNSEF; FSE: U1P**) provides this announcement at the request of ASX for the purposes of disclosing the Company’s breach of Listing Rule 10.17A.

### Breach of Listing Rule 10.17A

In FY23, the Company paid a total of \$1,619,059 to (or to entities associated with) its Directors. This figure of \$1,619,059 is comprised of \$575,792 which was paid to (or to entities associated with) Mr Frank Poullas (the Company’s Executive Chairman) and \$1,043,267 which was paid to (or to entities associated with) the Company’s Non-Executive Directors (including Mr Hoshi Daruwalla before he became the Company’s Managing Director) in each case for services rendered in FY23.

Of the \$1,043,267 in directors’ fees that was paid by the Company to its Non-Executive Directors in FY23, \$421,108 was paid to the Non-Executive Directors pursuant to and in accordance with their standard form engagement agreements, \$472,138 was paid to them in the form of “special exertion” fees and the balance (i.e. of \$150,021) was paid to entities associated with these Directors for services performed by employees or contractors of those associated entities.

In paying directors’ fees, a listed company is required to comply with, amongst other things:

- Listing Rule 10.17A (which limits the aggregate amount payable to the listed company’s non-executive directors to the sum approved by shareholders for this purpose); and
- Chapter 2E of the Corporations Act (which requires shareholder approval for related party payments unless a relevant exception from that requirement is available).

Listing Rule 10.17A only allows a listed company to exceed the shareholder approved cap (which, in the case of the Company, is \$650,000) where the relevant payments to the non-executive directors in excess of the cap were genuine special exertion fees and the payment of any such fees is made in accordance with the listed company’s constitution.

Unfortunately, and while the \$472,138 paid to the Non-Executive Directors are regarded by the Company to constitute genuine special exertion fees, the payment of such fees was not technically “made in accordance with” the Company’s constitution (**Constitution**) as the Constitution (and contrary to the Company’s mistaken belief in this regard) does not include fairly customary provisions which would have otherwise permitted the payment of such fees.

As a result, the Company has breached Listing Rule 10.17A in FY23 by exceeding the \$650,000 cap approved by Shareholders by \$243,246 (noting that the \$150,021 referred to above was not actually received by the relevant Directors and therefore has been excluded from the calculation of the “excess”/“offending” amount). The Company regards this as an unfortunate and disappointing oversight and will ensure that such an oversight does not occur again in the future.

Despite the breach of Listing Rule 10.17A, the Company is confident that it has not breached any of the related party financial benefit provisions in Chapter 2E of the Corporations Act. This is because the Board believes the exception from the requirement to obtain approval for the payment of financial benefits to its Directors is available to the Company<sup>1</sup>. This is because the Board regards the fees paid to the Directors to be equivalent to or less than the amount the Company would have been required to pay similarly qualified third-party consultants.

Furthermore, the Company has taken steps to ensure that such an oversight doesn't re-occur again including by seeking Shareholder approval of the excess/offending payments at the upcoming annual general meeting and to modify the Constitution to the extent necessary to permit the Company to pay genuine special exertion fees in the future. If Shareholders do not approve the relevant resolution in relation to the excess payments, the relevant Non-Executive Directors will be required to repay the excess amount within 3 months of the date of the AGM.

### **Additional Disclosures Required by ASX**

As required by ASX's query letter dated 26 October 2023 (**Query Letter**), the Company provides the following additional information/makes the following additional statements:

- The Company has breached Listing Rule 10.17A in FY23 by exceeding its \$650,000 payment cap by \$243,246.
- The Company has not breached Listing Rule 10.17A in any previous financial year.
- The Company is proposing to remedy the breach of Listing Rule 10.17A by seeking Shareholder approval of the excess payments and by seeking appropriate amendments to the Constitution. As noted above, if the relevant resolution is not approved by Shareholders, the "excess" will need to be repaid to the Company.
- The Company will seek to ensure that no future breaches of Listing Rule 10.17 occur by requesting that its auditor test the Company's compliance with Listing Rule 10.17A on an annual basis.
- Following the above-mentioned AGM, the Company believes that its governance arrangements and associated safeguards will be sufficient to ensure that the Company will not breach Listing Rule 10.17A again in the future.

For further detail in relation to the Company's breach of Listing Rule 10.17A and the proposed resolution referred to above, please also see the Company's notice of meeting and explanatory statement for its upcoming AGM (a copy of which will be sent to Shareholders in accordance with the Corporations Act) and the Company's response dated 30 October 2023 to ASX's Query Letter dated 26 October 2023 (a copy of which was given to ASX on 30 October 2023).

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<sup>1</sup> Section 210 of the Corporations Act 2001 (Cth) (**Corporations Act**) allows a financial benefit to be given to a related party such as a director without shareholder approval if the financial benefit is on terms that (a) would be reasonable in the circumstances if the company and the director were dealing at arm's length terms or (b) are less favourable to the director than the terms referred to in paragraph (a).

## About Magnis

Magnis Energy Technologies Ltd (ASX: MNS; OTCQX: MNSEF; FSE: U1P) is a vertically integrated lithium-ion battery technology and materials company in the Lithium-ion battery supply chain. The company's US based subsidiary Imperium3 New York, Inc ("**IM3NY**") operates a Gigawatt scale Lithium-ion battery manufacturing plant in Endicott, New York. Magnis together with their US based technology partner, C4V LLC has produced high-performance active anode materials for lithium-ion batteries utilising Magnis' high purity graphite feedstock from their Nachu Graphite project in Tanzania. The company's vision is to enable, support and accelerate the mass adoption of Electric Mobility and Renewable Energy Storage critical for the green energy transition.

This announcement has been authorised for release by the Board of Magnis Energy Technologies Ltd (ACN 115 111 763).

## FOR FURTHER INFORMATION

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