

## NOTICE OF FILING

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MAGNIS ENERGY TECHNOLOGIES LIMITED ACN 115 111 763 & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 17  
Rule 8.05(1)(a)

## Amended Statement of Claim

(filed pursuant to the order of Justice Hespe made on 4 September 2024)

No. VID336 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

### MAGNIS ENERGY TECHNOLOGIES LIMITED (ACN 115 111 763) AND ANOTHER

Defendants

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## A. PARTIES

1 The Plaintiff (**ASIC**):

- (a) is a body corporate established by section 7 of the *Australian Securities Commission Act 1989* (Cth) and continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**); and
- (b) is entitled to sue in its corporate name by reason of section 8 of the ASIC Act.

2 The First Defendant, Magnis Energy Technologies Limited (**Magnis**), was incorporated on 4 July 2005 and is and was at all material times since 21 October 2005:

- (a) a public company registered under the provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) able to be sued;
- (c) a listed disclosing entity within the meaning of section 111AL of the Corporations Act;
- (d) pursuant to section 111AP of the Corporations Act, subject to the continuous disclosure requirements of sections 674, 674A, 675 and 675A of the Corporations Act;
- (e) subject to and bound by the Australian Securities Exchange (**ASX**) Listing Rules (**Listing Rules**).

3 The Second Defendant, Mr Frank Poullas (**Mr Poullas**):

- (a) is, and has since 9 September 2010 been, a director of Magnis;
- (b) is, and has since 29 August 2014 been, the Executive Chairman of Magnis;
- (c) was at all relevant times a member of Magnis' continuous disclosure committee and, from at least 2022, an *ex-officio* member of its audit and risk committee;
- (d) was a director of Imperium3 New York Inc (**IM3NY**) at all material times until 30 November 2023;

(e) was a director of Imperium3 New York LLC (**iM3NY LLC**) from about 16 April 2021 until 30 November 2023; and

(f) was a director of Charge CCCV LLC (**C4V**) from about 29 March 2018.

## **B. FACTUAL BACKGROUND**

### **B.1 Magnis' business**

4 Between 2017 and at least 2023, Magnis was in the business of the development and production of lithium-ion battery technology and materials.

5 During this period, Magnis:

(a) did not itself produce any goods or provide any services directly to customers, and, except through financing activities, derived revenue only from the activities of its subsidiaries or joint ventures in which it held an interest;

(b) held interests in, inter alia:

(i) iM3NY LLC, a company incorporated in the United States (which in turn held a 95.5% interest in its subsidiary, iM3NY);

#### **Particulars**

As at 31 December 2023, Magnis held a 62% equity interest and a 74% economic interest in iM3NY LLC.

(ii) C4V, which in turn held an equity interest in iM3NY LLC;

(iii) Magnis AAM LLC, a wholly owned subsidiary incorporated in the United States; and

(iv) Imperium3 Pty Ltd, a wholly owned subsidiary incorporated in Australia;

(c) invested (directly and indirectly) approximately \$99,500,000 in iM3NY to fund (in part) its development or operation of a lithium-ion battery manufacturing plant, using technology licensed from C4V, at Endicott, New York, United States of America (**iM3NY Facility**);

### Particulars

In about May 2017, Magnis signed a Joint Manufacturing Establishing Agreement for a 15 gigawatt hour (**GWh**) lithium-ion battery facility in New York State, United States of America and acquired an approximate 31% share in iM3NY.

Magnis' total investment in iM3NY made via equity or debt investment was as follows:

- (i) in 2018, totalling approximately \$4,000,000;
- (ii) in 2019, totalling approximately \$1,500,000;
- (iii) in 2020, totalling approximately \$30,500,000;
- (iv) in 2021, totalling approximately \$40,000,000;
- (v) in 2023, totalling approximately \$23,500,000.

The iM3NY Facility was established to commercialise C4V's patented Bio-Mineralised Lithium Mixed-Metal Phosphate (**BMLMP**) cathode technology to produce lithium-ion batteries.

- (d) from 30 June 2018 until 30 November 2023, filed consolidated financial accounts for the purposes of reporting to the ASX and ASIC which:
  - (i) included iM3NY LLC and iM3NY;
  - (ii) identified, in notes to those statements, valuation techniques or methods for the valuation of Magnis' direct and indirect investment in iM3NY; and
  - (iii) were subject, where applicable, to a directors' declaration of compliance with the requirements of the Corporations Act, signed by Mr Poullas for and on behalf of the Magnis board;

### Particulars

ASIC will refer to Magnis' filed consolidated financial accounts and financial statements within the stated period, including notes to those accounts or statements, and the directors' declaration contained in Magnis' Annual Reports for the period.

- (e) had at least two of its directors as directors of iM3NY LLC and iM3NY; and

## Particulars

Magnis appointed directors to the boards of iM3NY LLC and iM3NY were as follows:

Mr Frank Poullas, throughout the relevant period (iM3NY LLC from about 16 April 2021).

Ms Mona Dajani, from at least 27 January 2022 to about 26 July 2023.

Mr Giles Gunesekera, from about 26 July 2023 to 30 November 2023.

Ms Claire Bibby, from about 26 July 2023 to 30 November 2023.

(f) operated at a loss in each year.

6 As at 31 December 2023, Magnis had received no revenue from sales (other than for samples) of lithium-ion battery cells produced at the iM3NY Facility to customers. The only sale of batteries produced by iM3NY (other than for samples) was to a related party in the quarter ending 30 September 2023 totalling \$464,000, which was recognised in Magnis' accounts as an inter-company transaction.

## B.2 Magnis committees and policies

### *Audit Committee*

7 Between at least 2017 and 2023, Magnis maintained an audit (or audit and risk) committee that:

- (a) was chaired by a non-executive director;
- (b) Mr Poullas was a member or *ex-officio* member of;
- (c) had responsibilities that included reviewing and reporting to the Magnis board on periodic reports and financial statements, and compliance with applicable laws and regulations;
- (d) was required to perform an audit and oversight role to seek to ensure Magnis complied with the terms of its continuous disclosure policy; and
- (e) received independent auditor reports on Magnis' annual financial reports.

- 8 From at least the year ending 30 June 2019, members of the audit (or audit and risk) committee, including Mr Poullas, received, or were apprised by Magnis management personnel of the content of:
- (a) position papers in connection with the valuation techniques applied to Magnis' assets;
  - (b) "key audit matters" from time to time within independent auditor's reports in connection with Magnis' equity investment in C4V and its investment in iM3NY; [and](#)
  - (c) Magnis management's assessment of the fair valuation of C4V and/or iM3NY as provided to Magnis' auditors, including references to third party research reports, commissioned by Magnis.

### Particulars

ASIC refers to Magnis' Annual Reports from 2019 onwards, audit committee material, and letters from Magnis to its auditors dated 12 August 2022 and 16 August 2023 entitled "Management Position Paper - Management Assessment of The Carrying Value Of The Investment In [C4V] as at 30 June [2022/2023]...".

- 9 In about late 2021, and in 2022 and early 2023, Magnis commissioned Corporate Connect Research Pty Ltd (ABN 95 640 464 320) (**Corporate Connect**) to prepare, and Corporate Connect prepared, research reports that:
- (a) were received and considered by the board of Magnis, its management including Mr Poullas (including in draft), and were expressly referred to in valuation position papers brought to the attention of Magnis' audit committee;
  - (b) gave an opinion on Magnis' future (in 12 months) share price and its value, by reference to publicly available information and information or assistance from Magnis officers;
  - (c) in the case of the Corporate Connect Research Report dated 2 December 2021:
    - (i) Magnis published on its website;
    - (ii) Magnis shared with potential investors, and Mr Poullas sent to investment banks and others for the purpose of it being published and shared; and

- (iii) stated that:
  - (A) the main driver for its Magnis valuation was iM3NY, which accounted for 84.6% of Magnis' value; and
  - (B) growth represented over 90% of Magnis' stated value; [and](#)
- (d) referred to, and applied in its valuation, iM3NY being fully funded to 1.8GWh capacity and that the iM3NY Facility was expected to be in fully-automated production by mid-2022.

### Particulars

ASIC refers to Corporate Connect Research Reports dated 2 December 2021, 3 February 2022, 14 October 2023 and 2 March 2023, and to paragraph 8 above and its particulars.

Corporate Connect ~~were~~ [was](#) first engaged by Magnis on about 11 August 2021. This engagement is recorded in a letter of engagement signed by Mr Poullas on behalf of Magnis. A revised retainer agreement was entered into by Magnis on about 17 February 2023.

Mr Poullas was also involved in the process of preparing the Corporate Connect Research Reports and received drafts of certain reports prior to their publication.

Mr Poullas sent the Corporate Connect Research Report dated 2 December 2021 to representatives of at least Barrenjoey, IFM Investors and ICR Inc by separate emails all dated 2 December 2021. Mr Poullas also sent the Corporate Connect Research Reports dated 14 October 2023 and 2 March 2023 to Gleneagle Securities on 14 November 2023.

### *Continuous Disclosure*

- 10 Magnis had and maintained:
- (a) on and from 5 August 2020, a continuous disclosure policy approved by its board of directors; and
  - (b) ~~on and~~ from at least December 2021, a continuous disclosure committee.



### **Particulars**

The continuous disclosure policy was in writing, was published on Magnis' website and was approved by Magnis' board on 5 August 2020, and was amended on 21 December 2021 and 26 May 2022.

- 11 Since 21 December 2021, Magnis' continuous disclosure policy included terms that (among other things):
- (a) identified Magnis' obligation to immediately notify the market of market sensitive information;
  - (b) required continuous disclosure to be a standing item at all meetings of Magnis directors;
  - (c) required the continuous disclosure committee to determine whether any information reported to it was required to be disclosed;
  - (d) required the continuous disclosure committee to consult with Mr Poullas, as Executive Chairman, or in his absence, the chair of Magnis' audit and risk committee, in connection with information reported to the continuous disclosure committee, as appropriate;
  - (e) contemplated the appointment of "disclosure officers" responsible for providing information pertaining to operating subsidiaries or investee entities to the continuous disclosure committee;
  - (f) identified Mr Poullas (as chairman) as a person authorised to speak on behalf of Magnis to, amongst others, investors, analysts, shareholders and the media; and
  - (g) required the continuous disclosure committee to oversee Magnis' response to any query letter from the ASX.

### **Particulars**

ASIC refers in particular to paragraphs 1, 3, 5.3, 6, 11.1 and 11.7 of, and the Schedule to, Magnis' continuous disclosure policy but will refer more generally to its terms.

- 12 Mr Poullas was:
- (a) at all material times a member of Magnis' continuous disclosure committee (either on a formal or informal basis);

- (b) from December 2021 to at least December 2023:
- (i) Magnis' "disclosure officer" in respect of C4V and iM3NY for the purposes of, and pursuant to, clause 6 (Information Sharing Arrangements) of Magnis' continuous disclosure policy; and
  - (ii) responsible in that role to ensure that all information that he became aware of in his capacity as director of either iM3NY, iM3NY LLC or C4V that was or may potentially be material to the price or value of Magnis' securities was communicated to the Magnis continuous disclosure committee;
- (c) aware of the content of statements or representations made by Magnis and himself, from at least as and when made, contained in Magnis' market announcements, Quarterly and Annual Reports, and financial statements from time to time released by the ASX, including by reason of:
- (i) his positions and/or roles (without limitation, those referred to in [this paragraph and in](#) paragraphs 3 ~~and~~, 7 ~~above and this~~ ~~paragraph~~);
  - (ii) direct attribution of quotes or statements to him within such material; and
  - (iii) his identification as a point of investor contact or further information on Magnis ASX announcements until at least 2023; and
- (d) a participant, as a director and/or executive of Magnis, in each decision or resolution of the Magnis board not to make disclosure to the market of material information before it, or of which it was aware, or to defer their consideration, from time to time, including at each Magnis board meeting on and from at least 28 September 2022.

13 ~~On and f~~ Erom at least January 2021, Magnis:

- (a) used the ASX's online market announcements platform ~~"ASX online"~~ to lodge announcements to be released by the ASX from time to time;
- (b) save in respect of announcements automatically classified as market sensitive by default in accordance with ASX Guidance Note 14 *ASX Market Announcements Platform* as in place from time to time, was required when it lodged any such announcement to indicate its view whether the announcement contained information that was "market sensitive

information” (where “market sensitive information” was a short-hand expression referring to information of the type required to be disclosed under Listing Rule 3.1 (namely, information that a reasonable person would expect to have a material effect on the price or value of its securities)); and

- (c) by indicating in connection with announcements lodged by or for it from time to time that the announcements were “market sensitive” was of the opinion at the time of lodgment that information contained in those announcements was “market sensitive information” as referred to in (b).

#### **Particulars**

ASIC refers to ASX Guidance Note 14 *ASX Market Announcements Platform* as in place at relevant times, the terms of Magnis’ continuous disclosure policy and to Magnis’ correspondence to the ASX from time to time, including without limitation, a letter from Magnis to the ASX dated 12 July 2021 (and subsequently released by the ASX).

14 In the period 1 January 2021 to 31 December 2023:

- (a) Magnis marked at least 92 announcements it lodged with the ASX for release to the market as “market sensitive”; and
- (b) Mr Poullas, for Magnis, lodged 63 announcements with the ASX for release to the market, of which he marked 30 as “market sensitive”.

#### **Particulars**

ASIC refers to releases, reports or other statements which Mr Poullas marked as “market sensitive” when using “ASX online”, dated 5 January 2021, 18 February 2021, 1 March 2021, 5 March 2021, 19 April 2021, 28 April 2021, 4 June 2021, 5 July 2021, 3 August 2021, 4 August 2021, 30 August 2021, 1 October 2021, 22 October 2021, 28 October 2021, 18 November 2021, 23 November 2021, 29 November 2021, 20 December 2021, 29 December 2021, 30 December 2021, 31 December 2021, 27 January 2022, 31 January 2022, 5 May 2022, 31 March 2023, 17 May 2023, 26 May 2023, 2 June 2023, 3 July 2023 and 8 September 2023.

15 On and from at least 19 December 2022, Magnis had, and Magnis continuous disclosure committee members were aware of, a calendar of Magnis’ expected ASX announcements to the end of 2023 that:

- (a) indicated announcements on topics that were expected to be marked “price sensitive” when released (where “price sensitive” information had the same meaning under Magnis’ continuous disclosure policy as “market sensitive” information noted in paragraph 13 [above](#)); and
- (b) identified, in respect of iM3NY, prospective announcements, each marked “price-sensitive”, related to funding updates, cell certification approval, revenues, and battery cell production ramp-up progress (50%, 75% and 100%).

#### **Particulars**

Magnis’ ASX announcement calendar was sent on 19 December 2022 by Aran Nagendra of Magnis to each member of Magnis’ continuous disclosure committee.

ASIC also refers to the Schedule to Magnis’ continuous disclosure policy.

### **B.3 Magnis announcements in relation to iM3NY and the iM3NY Facility, 2017-2020**

16 From 2017 to 2020, Magnis lodged with the ASX for release or otherwise published announcements or reports addressing:

- (a) iM3NY’s entry into binding sales agreements for its future lithium-ion battery cell production;
- (b) iM3NY’s acquisition of battery manufacturing equipment, and its value;
- (c) C4V’s production of prototype lithium-ion batteries, and/or the quality and characteristics of these lithium-ion batteries;
- (d) the anticipated 2019 commencement of commercial cell production by iM3NY in New York, later stated to be gigawatt scale production commencing in 2021;
- (e) the commencement of preparatory design, process engineering and site preparation for what was to become the iM3NY Facility; and
- (f) the status of project funding for the iM3NY Facility.

#### **Particulars**

ASIC refers **without limitation** to Magnis ASX releases dated 15 November 2017, 23 February 2018, 20 July 2018, 2 October 2018 (market sensitive),

5 October 2018 (market sensitive), 18 March 2019, 15 May 2020 (market sensitive) and 6 October 2020 (market sensitive).

- 17 Within its Annual Reports released by the ASX between 2018 and 2020, Magnis stated:
- (a) (in 2018) that iM3NY personnel had confirmed that purchased manufacturing equipment could “easily and cost effectively be calibrated” for large manufacturing runs, and that the plant had a planned first year production of 1 GWh;
  - (b) (in 2019, in a statement made by Mr Poullas) that the iM3NY Facility formed part of Magnis’ quick cashflow strategy, with a lead-time to revenue of 20-24 months from commencement of an already commenced execution phase;
  - (c) (in 2020) that:
    - (i) (via a statement made by Mr Poullas) the iM3NY Facility was Magnis’ flagship project; and
    - (ii) funding of iM3NY was nearing completion, with first production expected in 2021 at gigawatt scale; and
  - (d) (in 2018, 2019 and 2020), within notes to its financial statements, the bases upon which valuation of Magnis’ interests in each of C4V and iM3NY was made.

#### **Particulars**

ASIC refers without limitation to Magnis’ 2018 Annual Report (at pages 9 and 59), 2019 Annual Report (page 3) and 2020 Annual Report (pages 3 and 9), and, in each, the notes to the financial statements.

#### **B.4 Magnis representations in relation to iM3NY, 2021 – 2023**

##### *Funding Representations*

- 18 On and from 19 April 2021, Magnis represented in material released by the ASX, including within announcements marked market sensitive by Magnis, that iM3NY was:
- (a) fully funded for gigawatt scale production of lithium-ion battery cells at the iM3NY Facility; or

- (b) further or alternatively, fully funded through to a capacity to produce at least 1 GWh of lithium-ion battery cells per year,

(together, the **Fully Funded Representations**).

### Particulars

The Fully Funded Representations were express and implied. In so far as they were express, they were made in (“(market sensitive)” denotes Magnis marking an announcement as such, where applicable):

- (i) Magnis ASX media releases – dated:
  - (A) 19 April 2021 (market sensitive) – “iM3NY ...is fully funded for Gigawatt scale production”; and
  - (B) 3 May 2021 (market sensitive) – “[r]ecently acquired equipment evaluated with annual production expanded to 1.8 GWh”. ... “[w]ith financing completed, the team in NY is focussed on meeting production milestones. We look forward to providing constant updates to our shareholders as we progress towards production”;
- (ii) Quarterly Report – released on 30 July 2021 (market sensitive) – “Magnis' New York battery plant, iM3NY received US\$85 million (A\$110 million) in funding and is now fully funded to begin commercial production of 1.8GWh making it one of the largest players in the US Lithium-ion battery cell manufacturing market”.
- (iii) Corporate Presentation – released on 6 October 2021 – iM3NY was “Fully Funded for 1.8GWh production”;
- (iv) Annual Report for the year ending 30 June 2021 (market sensitive):
  - (A) on page 3, in the Chairman’s Statement, that “[t]he iM3NY lithium-ion battery plant has taken some major steps towards production in the last 6 months. The project is fully funded for gigawatt hour production with semi-automated production expected this year. The plant has an annual capacity of 1.8GWh with production to begin next year”;
  - (B) on page 5, “[t]he New York battery plant is fully funded to begin commercial production of 1.8GWh”; and

- (C) on pages 67 and 71, within the “fair value measurement” note to Magnis’ financial statement, “[o]n 19 April 2021 Magnis announced that the iM3NY project is fully funded to 1.8GWh of annual production”;
- (v) Half Year Report for the period ending 31 December 2021:
  - (A) on page 29, within the “fair value measurement” note to Magnis’ financial statement, “[o]n 19 April 2021 Magnis announced that the iM3NY project is fully funded to 1.8GWh of annual production”;
- (vi) Annual Report for the year ending 30 June 2022 (market sensitive):
  - (A) on pages 79 and 83, within the “fair value measurement” note to Magnis’ financial statement, “[o]n 19 April 2021 Magnis announced that the iM3NY project is fully funded to 1.8GWh of annual production”;
- (vii) Annual Report for the year ending 30 June 2023 (market sensitive):
  - (A) on page 43, within the “fair value measurement” note to Magnis’ financial statement, “[o]n 19 April 2021 Magnis announced that the iM3NY project is fully funded to 1.8GWh of annual production”; and
- (viii) Statements made by Magnis officers to the media (see paragraph 19 below).

In so far as the Fully Funded Representations were implied, they were implied from a combination of:

- (ix) express statements made by Magnis as to iM3NY funding from time to time as particularised [at \(i\) to \(viii\)](#) above; and
- (x) statements made by Magnis in 2022 and 2023 that iM3NY was seeking funding for further expansion, or the next stage, of, annual lithium-ion battery production or capacity, **including** in:
  - (A) Magnis ASX media releases – dated 18 February 2022, 12 August 2022 (market sensitive), 1 December 2022, 3 January 2023, 17 March 2023 (market sensitive), 31 March 2023 (market sensitive);

- (B) Magnis Quarterly Reports – released 31 October 2022 (market sensitive), 27 January 2023 (market sensitive); and
- (C) Magnis 2022 Annual Report (market sensitive) – chairman’s statement (page 3).

19 On 22 September 2022, Mr Poullas, for and on behalf of Magnis, also made (and thereby repeated) the Fully Funded Representations in an interview with journalist Alan Kohler.

### Particulars

The interview was conducted by Mr Kohler and published online on the Intelligent Investor website (at URL <https://www.intelligentinvestor.com.au/investment-news/magnis-starts-production-of-us-made-batteries/151734>) on 22 September 2022.

The Fully Funded Representations were express:

*Mr Kohler: How much more cash is going to be required to get the plant – I mean, it’s up and running now, so the capital expenditure is already finished, is it?*

*Mr Poullas: That’s right. They’re fully funded, Alan, to ramp up to 1.8 gigawatt hours, so we’re not in the market to raise any more funds for the production as it stands. But in saying that, we have huge sort of growth plans where we’re aiming to go to an annual production rate of 38 gigawatt hours and in order to do so, it’s going to need greater amounts of funds. But for the 1.8 gigawatt hours of capacity that we currently have, it’s fully funded.*

20 At no time since 19 April 2021 has Magnis qualified, withdrawn or corrected the Fully Funded Representations, which were continuing representations.

21 On 31 March 2023, Magnis, within an announcement lodged with the ASX by Mr Poullas and marked by him as “market sensitive”:

- (a) stated that it had recently provided “bridging finance” to iM3NY LLC for the benefit of iM3NY as iM3NY progressed its long-term funding initiatives (advised by HSBC Americas) to increase annual plant capacity; and



### Particulars

ASIC refers to the express terms of a Magnis ASX announcement entitled “iM3NY Update” released on 31 March 2023.

- (b) represented in the circumstances that it had by that provision of finance funded an expansion – from 1 GWh – to the iM3NY Facility’s annual production capacity (the **Capacity Increase Funding Representation**).

### Particulars

The Capacity Increase Funding Representation is partly express and partly implied. In so far as it is express, it is contained in the statement in (a) above. In so far as it is implied, it is implied from the following matters:

- (i) the terms of the Magnis ASX announcement entitled “iM3NY Update” released on 31 March 2023 including Magnis, within the “About Magnis” section of that announcement, stating that iM3NY operated a gigawatt scale battery manufacturing plant;
- (ii) Magnis prior to that date having:
- (A) made and/or repeated the Fully Funded Representations;  
and
- (B) stated that iM3NY was seeking funding for further expansion, or the next stage of, annual lithium-ion battery production or capacity,
- and in relation to which ASIC refers to paragraphs 18 and 19 above, and their particulars; and
- (iii) Magnis prior to that date having announced [– in the ASX Announcement dated 3 May 2021 entitled "New York Battery Plant Annual Capacity Increase to 1.8GWh" –](#) that iM3NY had purchased equipment to produce up to 1.8 GWh of battery cells annually.

#### *iM3NY Facility production of battery cells*

- 22 From about 3 May 2021, Magnis lodged with the ASX, and the ASX released, announcements stating that iM3NY had entered “binding offtake agreements”, or received orders, for the sale of cells to be produced at the iM3NY Facility.

### Particulars

ASIC refers to Magnis ASX announcements dated 3 May 2021 (market sensitive), 4 August 2021 (market sensitive), 15 September 2021, 6 October 2021 and 17 February 2023.

- 23 On about 6 October 2021, Magnis, in response to a query letter from the ASX in connection with offtake agreement announcements dated 3 May 2021 and 15 September 2021, stated that annual iM3NY revenues from sales of produced batteries were projected (on an unaudited basis) to be \$80 million in 2022 and \$360 million in 2023.

### Particulars

ASIC refers to correspondence between the ASX and Magnis [dated 5 October 2021, which was](#) released by the ASX on about 6 October 2021.

- 24 Between 4 June 2021 and 22 July 2022, Magnis represented that:
- (a) iM3NY was expected in the future to commence “fully-automated” production of lithium-ion batteries at the iM3NY Facility;
  - (b) “fully-automated production” was a production stage that would follow commencement of manual and semi-automated production stages; and
  - (c) “fully-automated production” had at least the following characteristics:
    - (i) minimal manual handling or intervention in the production process; and
    - (ii) battery cell production commencing at, and increasing from, several thousand battery cells per month.

### Particulars

The representations were express and implied and made in:

- (i) Magnis ASX media releases – dated 4 June 2021 (market sensitive), 4 August 2021 (market sensitive), 20 October 2021 (market sensitive), 18 November 2021 (market sensitive), 22 December 2021, 29 December 2021 (market sensitive), 21 January 2022, 18 February 2022 (market sensitive), 18 March 2022, 26 April 2022, 26 May 2022, 22 June 2022, 22 July 2022;
- (ii) Magnis’ Quarterly Reports (market sensitive) – released 28 October 2021, 31 January 2022, 29 April 2022, 29 July 2022;

- (iii) Magnis' Corporate Presentation – released on 22 February 2022;
- (iv) Magnis' Half Year Report – released on 15 March 2022;
- (v) Magnis' 2021 Annual Report (market sensitive) – chairman's statement and page 9; and
- (vi) an article published on Magnis' website by Dr Jawahar Nerkar, Magnis' Director of Battery Technology on 13 April 2022, entitled "Li-ion battery cell manufacturing – a methodical approach".

25 On 29 December 2021, Magnis represented, by a release lodged with the ASX and marked "market sensitive" by Mr Poullas, that:

- (a) "semi-automated production" of lithium-ion battery cells had commenced at the iM3NY Facility; and
- (b) "fully-automated production" was expected to commence in the first half of 2022.

#### **Particulars**

The representations were express and made in an ASX announcement of that date entitled "Semi-Automated Production Begins at New York Lithium-ion Battery Plant".

26 By reason of the matters referred to in paragraphs 24 and 25, Magnis represented on and from 29 December 2021 until at least 22 July 2022, that the next production stage to commence at the iM3NY Facility was "fully-automated production".

#### **Particulars**

ASIC refers to and repeats the particulars to paragraph 24.

27 On 12 August 2022, Magnis:

- (a) submitted to the ASX, for release on 12 August 2022, an announcement that it marked "market sensitive" entitled "New York Lithium-ion Battery Plant Begins Commercial Production";
- (b) in so doing, represented that:
  - (i) commercial production of lithium-ion battery cells had commenced at the iM3NY Facility;

- (ii) fully-automated production of lithium-ion battery cells had commenced at the iM3NY Facility (**Fully-Automated Production Representation**);
- (iii) initial production of several thousand cells was expected in the next month, with the first few weeks of production tested for quality assurance;
- (iv) first revenues from the sale of battery cells produced at the iM3NY Facility were expected in late September 2022;
- (v) annual battery cell-manufacturing levels were expected to increase to 1 GWh by the end of 2023 and would continue to ramp-up to 1.8 GWh (or 15,000 cells per day), and then double-digit gigawatts over the rest of the decade; and
- (vi) in all the circumstances, the iM3NY Facility could from that time produce battery cells that were reasonably capable of being sold, at scale and without defect, for revenue (the **Production Capability Representation**).

#### Particulars

The representations were express and implied.

In so far as they were express, as to (b)(i), (b)(iii), (b)(iv) and (b)(v), the representation was made by the express terms of the 12 August 2022 announcement.

In so far as they were implied, as to (b)(ii) and (b)(vi), they were implied from the terms of the 12 August 2022 announcement (including statements as to the quality and manufacturing scalability of iM3NY battery cells under the sub-heading “Green Credentialed iM3NY Lithium-ion Cells”), together with previous announcements and statements made by Magnis ~~including, without limitation~~ (as to the Fully-Automated Production Representation) ~~see above~~ [referred to in](#) paragraphs 24 to 26 [above and their particulars](#), and (as to the Production Capability Representation) ~~see above~~ [referred to in](#) paragraphs 16(a) - 16(c), 17(a), 17(b) and 22 to 26 [above, and their particulars](#).

- 28 Magnis repeated the Production Capability Representation after 12 August 2022, by subsequently submitting to the ASX and the ASX releasing:
- (a) a corporate presentation on 19 September 2022, which relevantly stated that “Mass Production of Cells has commenced”;
  - (b) Magnis’ 2022 Annual Report on 17 October 2022 (at page 9), which relevantly stated:
    - (i) “[c]ommercial production commenced at iM3NY in August with an initial phase allocated for testing and quality assurance before production ramp up and sales start”; and
    - (ii) “[a]s soon as the cells pass the quality assurance stage, annual manufacturing levels are expected to increase to annual production levels of 1GWh by the end of 2023 and will continue to ramp up to 1.8GWh and then double-digit gigawatts over the rest of the decade. At Gigawatt scale production, iM3NY expect to produce around 15,000 cells per day”.
  - (c) an announcement entitled “iM3NY Update” dated 17 February 2023, which relevantly stated that:
    - (i) “As previously reported, commercial cell production at the plant commenced in August 2022”; and
    - (ii) “Production of cells continues with those cells being stockpiled on site to ensure delivery can occur in a timely manner...”; and
  - (d) a Quarterly Report on 28 April 2023, which relevantly stated that “[o]nce the independent certification has been completed, commercial quantities will be able to be shipped to customers”.
- 29 At no time since 12 August 2022 has Magnis qualified, withdrawn or corrected the Production Capability Representation or the Fully-Automated Production Representation, which were both continuing representations as and from the time each was made.
- 30 On 12 August 2022, Magnis also represented that iM3NY then operated a gigawatt-scale battery manufacturing plant at the iM3NY Facility (**Operates at Scale Representation**).

### Particulars

The Operates at Scale Representation was express, and was made in the “About Magnis” section of Magnis’ ASX announcement entitled “New York Lithium-ion Battery Plant Begins Commercial Production” which relevantly stated:

*Magnis Energy Technologies Ltd...is a vertically integrated lithium-ion battery technology and materials company with strategic assets, investments and partnerships in the electrification supply chain. The company’s US-based subsidiary Imperium3 New York, Inc...operates a Gigawatt scale Lithium-ion battery manufacturing project in Endicott, New York...*

- 31 The Operates at Scale Representation was repeated throughout 2022 and 2023 by Magnis in written publications lodged with and released by the ASX, and was a continuing representation.

### Particulars

ASIC refers to the “About Magnis” section of the Magnis announcements or reports ~~on and~~ from August 2022 up to and including 15 November 2023.

[The following ASX announcements and Quarterly Reports published by Magnis between August 2022 and 15 November 2023 repeated the Operates at Scale Representation:](#)

- (i) [ASX announcement dated 25 August 2022 entitled "Extra Fast Charging Battery Results — Only 3% Loss of Charge Retention After — 2600 Cycles";](#)
- (ii) [ASX announcement dated 1 September 2022 entitled "Investor Webinar Presentation";](#)
- (iii) [ASX announcement dated 15 September 2022 entitled "Nachi Graphite Project Update";](#)
- (iv) [ASX announcement dated 27 September 2022 entitled "Bankable Feasibility Study Update Confirms Strong Financial and Technical Viability for the Nachu Graphite Project";](#)
- (v) [ASX announcement dated 30 September 2022 entitled "Supplementary Information Regarding Nachu BFS Update Released 27.9.2022";](#)

- (vi) [ASX announcement dated 13 October 2022 entitled "Lithium-Ion Battery Anode Active Material Manufacturing Plant";](#)
- (vii) [Quarterly Report released 31 October 2022;](#)
- (viii) [ASX announcement dated 3 November 2022 entitled "Investor Webinar Presentation";](#)
- (ix) [ASX announcement dated 1 December 2022 entitled "Clarification to Media Article";](#)
- (x) [ASX announcement dated 19 December 2022 entitled "Advisers Appointed for Nachu Graphite Project";](#)
- (xi) [ASX announcement dated 22 December 2022 entitled "Magnis Advances its AAM Project in the US";](#)
- (xii) [ASX announcement dated 3 January 2023 entitled "New York Lithium-ion Battery Plant Update";](#)
- (xiii) [Quarterly Report released 27 January 2023;](#)
- (xiv) [ASX announcement dated 7 February 2023 entitled "Bell Potter Unearthed Conference";](#)
- (xv) [ASX announcement dated 17 February 2023 entitled "iM3NY Update";](#)
- (xvi) [ASX announcement dated 21 February 2023 entitled "Magnis Signs Offtake Agreement for North American Anode Active Material Production";](#)
- (xvii) [ASX announcement dated 17 March 2023 entitled "Magnis Receives Funding Proposal from US Fund";](#)
- (xviii) [ASX announcement dated 24 March 2023 entitled "Magnis Completes Funding from Investors";](#)
- (xix) [ASX announcement dated 31 March 2023 entitled "iM3NY Update";](#)
- (xx) [ASX announcement dated 3 April 2023 entitled "Magnis Awards Services Contract for Anode Active Materials Project to Worley";](#)
- (xxi) [ASX announcement dated 6 April 2023 entitled "Board and Officeholder Changes";](#)
- (xxii) [Quarterly Report released 28 April 2023;](#)

- (xxiii) [ASX announcement dated 17 May 2023 entitled "iM3NY Signs Joint Venture Agreement with Omega Seiki Mobility";](#)
- (xxiv) [ASX announcement dated 26 May 2023 entitled "Hoshi Daruwalla Appointed as Managing Director \(USA\)";](#)
- (xxv) [ASX announcement dated 2 June 2023 entitled "iM3NY Cell Certification Update";](#)
- (xxvi) [ASX announcement dated 6 June 2023 entitled "iM3NY Cell Certification Update";](#)
- (xxvii) [ASX announcement dated 8 June 2023 entitled "Exceptional Performance Achieved by Nachu Anode Materials Minus Purification";](#)
- (xxviii) [ASX announcement dated 14 June 2023 entitled "Magnis CEO Resigns";](#)
- (xxix) [ASX announcement dated 15 June 2023 entitled "iM3NY Batteries Receive Certification";](#)
- (xxx) [ASX announcement dated 30 June 2023 entitled "Letter of Intent Executed for AAM Facility";](#)
- (xxxi) [ASX announcement dated 3 July 2023 entitled "Magnis Increases Ownership in iM3NY";](#)
- (xxxii) [ASX announcement dated 17 July 2023 entitled "Magnis Raises \\$10 Million in Well Supported Placement";](#)
- (xxxiii) [Quarterly Report released 28 July 2023;](#)
- (xxxiv) [ASX announcement dated 31 July 2023 entitled Fabrizio Perilli Appointed as Non-Executive Director";](#)
- (xxxv) [ASX announcement dated 24 August 2023 entitled "ASIC Supplementary Submission to Senate Inquiry";](#)
- (xxxvi) [ASX announcement dated 8 September 2023 entitled "Magnis enters into Standby Equity Facility";](#)
- (xxxvii) [ASX announcement dated 6 October 2023 entitled "iM3NY Update";](#)
- (xxxviii) [ASX announcement dated 23 October 2023 entitled "Joint Company Secretary Appointment"; and](#)



(xxxix) [ASX announcement dated 15 November 2023 entitled "iM3NY Update"](#).

## **B.5 Information about iM3NY funding requirements and production**

32 In 2022 and 2023:

- (a) prior to iM3NY board meetings, Magnis officers, including Mr Poullas, received written information prepared by iM3NY about its operations and/or finances;

### **Particulars**

ASIC refers to written presentations variously styled "iM3NY Board Meeting" (or similar) provided by email to Mr Poullas and one or more other senior Magnis personnel from time to time in the period, [examples of which are referred to in paragraphs 33, 44\(c\) and 52 below and their particulars](#).

- (b) Mr Poullas attended iM3NY board meetings as a director of that entity as and when they occurred;
- (c) Mr David Taylor, Magnis' chief executive officer from around August 2022 to June 2023, attended iM3NY board meetings as an observer;
- (d) Messrs Poullas and Taylor, and Mr Hoshi Daruwalla (a Magnis director based in the United States and, from around 26 May 2023, Magnis' Managing Director USA), from time to time each visited the iM3NY Facility, and corresponded with iM3NY or C4V personnel;
- (e) Magnis directors were provided information about iM3NY's operations or performance by one or more of:
- (i) iM3NY board presentations or, from around July 2023, quarterly review presentations, as part of Magnis' board meeting materials;
  - (ii) written reports or correspondence prepared by Mr Taylor or Mr Daruwalla from time to time; and
  - (iii) oral reports by one or more of Messrs Poullas, Taylor or Daruwalla; and

### **Particulars**

[ASIC refers to iM3NY board presentations, written reports or correspondence prepared by Mr Taylor or Mr Daruwalla, and oral reports](#)

by one or more of Messrs Poullas, Taylor or Daruwalla in the period, examples of which are referred to in paragraphs 33, 36, 38, 42, 45, 46, 48, 64, 71 and 73 below.

- (f) by reason of their respective roles and performance of their duties, including those of Mr Poullas identified in paragraph 12 above, and Magnis policies including its continuous disclosure policy, information in relation to iM3NY or the iM3NY Facility known by Messrs Poullas, Taylor or Daruwalla, or of which any of them were “aware” (for the purposes of Listing Rule 19) was attributable to Magnis as its knowledge or awareness (as applicable).

#### *May to November 2022*

- 33 In May, June, July, August and September 2022, Magnis officers, including Mr Poullas, were informed by iM3NY that:
- (a) cell assembly modules or machinery planned to be installed at the iM3NY Facility to automate that part of the iM3NY Facility’s production process were delayed (by September 2022, until November 2022); and
- (b) a manual cell assembly process would be developed and/or used to support battery cell production until then.

#### **Particulars**

ASIC refers to written presentations styled “iM3NY Board Meeting” dated 17 May 2022, 22 June 2022, 19 July 2022, 16 August 2022 and 20 September 2022, and provided to Magnis management and/or directors from time to time.

- 34 On 8 August 2022, Mr Poullas prepared and circulated to other Magnis personnel a draft ASX announcement entitled “Fully Automated Production Begins at New York Lithium-ion Battery Plant”, in which it was stated that:
- (a) fully-automated production had begun at the iM3NY Facility;
- (b) production levels are planned to hit 1 GWh by April 2023 and continue to ramp up to 1.8GWh; and
- (c) Magnis looked forward to generating revenues and increasing the capacity of the iM3NY Facility.

35 On 9 August 2022, Mr Poullas and other Magnis officers were informed by Dr Jawahar Nerkar, Magnis' Director of Battery Technology that:

- (a) production at the iM3NY Facility should not be described as “fully-automated production” because there would still be aspects of manual handling;
- (b) plant production of 1.8 GWh would imply production at the iM3NY Facility of approximately 25,280 battery cells per day based on a 365-day production year; and
- (c) plant production of 1 GWh would imply production at the iM3NY Facility of more than 10,000 battery cells per day based on a 365-day production year.

#### **Particulars**

ASIC refers to an email from Dr Nerkar to Mr Poullas and others dated 9 August 2022.

36 On about 28 September 2022 (for the month of August 2022), and then again on 18 November 2022 (for the month of October 2022), Mr Taylor provided a CEO Report to the Magnis board, in which he stated that:

- (a) installation of the final automated cell assembly equipment at the iM3NY Facility had been delayed until at least November 2022 (28 September) then December 2022 (18 November), with its supply remaining a key risk to increasing production levels;
- (b) initial forecasts for production of cells had not been met due to technical issues with the cathode coating and drying machine, and (18 November) remained well below planned levels; and
- (c) fully-automated production had not yet been reached impacting planned production volumes.

#### **Particulars**

These reports are in writing and dated August 2022 and October 2022.

37 By 25 October 2022, iM3NY had informed Messrs Taylor and Poullas that:

- (a) iM3NY's 2023 operating plan delayed a previously planned increase in production volumes in 2023 into 2024; and

- (b) delivery of iM3NY's revised operating plan assumed an additional \$17 million of capital expenditure by iM3NY including to replace existing manufacturing equipment.

#### **Particulars**

ASIC refers to an iM3NY presentation pack dated October 2022 and correspondence between Mr Taylor and Mr Sharma of iM3NY on 25 October 2022.

- 38 On 18 November 2022, Mr Taylor informed the Magnis board that iM3NY battery cell certification had been delayed until December 2022, and that cells could not be shipped offshore to customers until certification had been received.

#### **Particulars**

ASIC refers to a CEO Report dated October 2022 provided to the Magnis board for its meeting on 18 November 2022.

#### *Magnis director strategy day – November 2022*

- 39 On about 25 November 2022, Mr Poullas, other Magnis directors and Mr Taylor attended a board strategy meeting at which:
- (a) the oversight of Magnis' investment in iM3NY was raised and discussed as an area of concern for the board; and
- (b) Magnis board members identified that they may be exposed to liability should there be a matter that detrimentally affected the market perception of the value of iM3NY.

#### **Particulars**

The board strategy meeting was held at the Australian Institute of Company Directors in Sydney and was attended by:

- (i) Frank Poullas, Executive Chairman;
- (ii) Peter Tsegas, Non-Executive Director;
- (iii) Mugunthan Siva, Non-Executive Director;
- (iv) Claire Bibby, Non-Executive Director;
- (v) Giles Gunesekera, Non-Executive Director;
- (vi) Hoshi Daruwalla, Non-Executive Director;

- (vii) [David Taylor, Chief Executive Officer;](#)
- (viii) [Duncan Glasgow, General Counsel and Company Secretary;](#)
- (ix) [Claire Mallinson, Facilitator \(external to Magnis\).](#)

40 On or shortly after 25 November 2022, Mr Poullas and Mr Taylor discussed the matters noted in paragraph 39 [above](#), and identified a lack of transparency by iM3NY in relation to its:

- (a) cell manufacturing progress; and
- (b) ability to earn revenue,

as matters of concern that may detrimentally affect the market's perception about the value of iM3NY.

#### *December 2022*

41 On 21 December 2022:

- (a) Mr Poullas and Mr Taylor received an iM3NY presentation pack that identified that iM3NY was:
  - (i) still having production challenges but was averaging production of more than 100 battery cells per day; and
  - (ii) not expected to earn revenue from battery cell sales until the middle of 2023;
- (b) Mr Taylor stated to Mr Poullas that iM3NY management needed to be changed if sales were not projected to occur until the middle of 2023; and
- (c) Magnis sought an iM3NY board meeting on Christmas Eve (AEDT), to address concerns held by Magnis, including those referred to in paragraphs 39 and 40 above.

#### **Particulars**

ASIC refers to email correspondence from iM3NY to Mr Poullas, Ms Dajani, Mr Taylor and others, and email correspondence from Mr Taylor to Mr Poullas, each on 21 December 2022, and a paper presented by Mr Taylor to the Magnis board with the subject "iM3NY – Business Performance Recovery Plan" dated 25 January 2023.

42 On about 23 December 2022, Mr Taylor circulated a CEO Report to the directors of Magnis for the month of November 2022, which stated:

- (a) cell production at the iM3NY Facility remained below forecast due to continuing issues with the cathode coating and drying line, and a request had been made to iM3NY management for an urgent rectification plan;
- (b) certification of cells had been further delayed until January 2023; and
- (c) an urgent iM3NY board meeting had been called to discuss the lack of progress on production and address governance issues.

43 On 24 December 2022, the board of iM3NY held an emergency meeting, attended by Mr Poullas and Mr Taylor as representatives of Magnis, at which it was agreed that Mr Taylor would travel to iM3NY to meet with iM3NY management and review operational and financial plans, and iM3NY reporting.

#### Particulars

The meeting was held by phone or videoconference, and the following individuals attended:

- (i) Shailesh Upreti, iM3NY Founder and Chairman;
- (ii) Mike Driscoll, iM3NY Director;
- (iii) Mr Poullas;
- (iv) Ms Dajani; and
- (v) Mr Taylor.

*January 2023*

44 In January 2023:

- (a) Mr Taylor travelled to New York and conducted a review of iM3NY's business, and its operational and financial plans;

#### Particulars

The scope and key findings of the review conducted by Mr Taylor are recorded in the paper with the subject description "iM3NY – Business Performance Recovery Plan" referred to in paragraph 45 below.

- (b) Mr Taylor, based upon information received from iM3NY, informed Mr Poullas and Ms Dajani on 13 January 2023 that:

- (i) iM3NY was forecast to be in a negative cash position from the end of February 2023;
- (ii) revenues from sale of battery cells were not forecast until October 2023; and
- (iii) projected 2023 revenues related to sales to a single customer, at a loss;

#### Particulars

Mr Poullas and Ms Dajani were informed of these matters by Mr Taylor in writing, by email from him dated 13 January 2023 attaching a cashflow analysis of iM3NY.

- (c) on 17 January 2023, iM3NY held a board meeting, attended by Mr Poullas and Mr Taylor, and by iM3NY's lender Atlas Credit Partners, at which:
  - (i) a board information pack entitled "iM3NY Board Meeting January 2023" was presented by iM3NY management; and
  - (ii) the key issue arising was that iM3NY required short-term funding, and would enter a negative cash position in at worst March and at best April 2023; and

#### Particulars

This board meeting was held via Zoom and attended by:

- (i) Mr Upreti;
  - (ii) Mr Driscoll;
  - (iii) Mr Taylor;
  - (iv) Ms Dajani;
  - (v) Chaitanya Sharma - iM3NY Chief Executive Officer;
  - (vi) Mayank Sharma - iM3NY Chief Financial Officer;
  - (vii) Andrew Sung, Principal - Head of Research at Atlas Credit Partners; and
  - (viii) Matt Laterza - Chief Operating Officer at Atlas Credit Partners.
- (d) on about 25 January 2023, Mr Taylor and Mr Poullas met by telephone with a representative of Atlas Credit Partners during which the lender indicated that an immediate cash injection needed to be made into iM3NY.

## Particulars

This phone call was attended by at least the following individuals:

- (i) Mr Sung of Atlas Credit Partners;
- (ii) Mr Upreti;
- (iii) Mr Poullas; and
- (iv) Mr Taylor.

45 By no later than 25 January 2023, Magnis directors received a paper prepared by Mr Taylor, upon his review of iM3NY's business referred to in paragraph 44(a) above, entitled "iM3NY Business Performance Recovery Plan", for decision at a board meeting on 25 January 2023, which:

- (a) identified review findings concerning iM3NY's operations, technology, engineering and finance;
- (b) as to iM3NY operations stated that:
  - (i) cell production was well below plan, with key equipment reliability, availability and performance key drivers, along with the need to train new team members;
  - (ii) cell assembly remained primarily a manual, high cost and slow process, and the supplier for the automated cell assembly equipment was unable to deliver; and
- (c) enclosed an iM3NY board pack for January 2023, as presented at the 17 January 2023 iM3NY board meeting, which identified that:
  - (i) capital expenditure of US\$33 million would be required to enable production in 2023 sufficient for 330 MWh of sales (equal to approximately 1.6 million cells), without which base level production was projected to be limited to 53 MWh;
  - (ii) iM3NY produced 46 battery cells in the first 2 weeks of January 2023;
  - (iii) iM3NY expected to be cash negative in March 2023; and
  - (iv) iM3NY projected a need for US\$60 million of further capital and operational expenditure in 2023 to achieve its originally planned production.



46 On 25 January 2023, a meeting of the directors of Magnis was held at which:

- (a) Mr Taylor's paper "iM3NY Business Performance Recovery Plan" was taken as read and Mr Taylor advised the board among other things that:
  - (i) iM3NY's cash position was not acceptable;
  - (ii) Magnis may be required to provide short term liquidity to iM3NY of up to USD\$20 million applying funds from an anticipated placement by Magnis; and
  - (iii) after the discussion at the urgent iM3NY board meeting on Christmas Eve it was ascertained that in order for the iM3NY Facility to achieve 1 GWh of plant output by the end of 2023 a further US\$60 million could be required;
- (b) Magnis directors considered and discussed iM3NY's business and status, and Mr Taylor and Mr Poullas answered questions posed;
- (c) Magnis agreed to provide additional funding to iM3NY, and that Mr Taylor would travel back to the iM3NY Facility for 3 weeks from 30 January 2023; and
- (d) Magnis directors decided not to make disclosure to the market of any matter before the board at the meeting, on the stated basis that whilst there were issues at iM3NY it was not at the point where disclosure was necessary unless Mr Taylor determined on his return that iM3NY or the iM3NY Facility's status was "more dire" at which time further consideration would occur.

#### **Particulars**

ASIC refers to the minutes of this meeting and the presentation given to the board of iM3NY.

*February 2023*

47 On about 5 February 2023, Magnis provided US\$3m emergency funding to iM3NY [LLC](#).

#### **Particulars**

[iM3NY requested US\\$3m on about 2 February 2023. The funding was a loan whose terms were referred to in a binding term sheet signed for Magnis on or before 27 March 2023.](#)

On 8 February 2023, the directors of Magnis held a special board meeting at which:

- (a) ~~tabled papers included~~ a memorandum entitled “Report of CEO on Risks of iM3NY” was tabled within which:
  - (i) recent discussion points amongst Magnis directors before the meeting were summarised, including:
    - (A) whether Magnis had a communication strategy to its shareholders about iM3NY’s current situation, given that situation would “overshadow the ‘promise of future success’ announcement coming” and may cause a “share price tumble”; and
    - (B) the importance of shareholder communication concerning iM3NY, given that Magnis had conveyed that “revenues will flow in soon”, and the “truth is pretty disarming”;
  - (ii) was a risk assessment for iM3NY prepared by Mr Taylor that noted, amongst other things, that:
    - (A) total iM3NY Facility cell production to date was approximately 1,600 cells, significantly below the plan presented by management;
    - (B) the key barrier to increased production levels at the iM3NY Facility was the performance of the cathode coating and drying line, which was running well below planned capacity, had reliability issues and was low yield;
    - (C) a problem existed at the iM3NY Facility with swelling of cells at the formation stage; and
    - (D) cell assembly at the iM3NY Facility remained semi-automated; and
  - (iii) an “iM3NY Funding Update” dated 2 February 2023, which indicated that:
    - (A) iM3NY would have a weekly cash balance of zero by 14 April 2023; and
    - (B) Magnis would provide short-term funding of US\$3 million in early February 2023 and US\$20-30 million in late February 2023;

- (b) Magnis directors discussed the tabled papers and iM3NY, were informed that iM3NY had only 900 cells available for sale, and agreed that Magnis would not put any further funds into iM3NY unless conditions, including changes to Magnis' participation in each of C4V and iM3NY LLC, were satisfied; and
- (c) Magnis directors decided not to make disclosure to the market of any matter before the board at the meeting, and:
  - (i) noted there was a narrative that would follow if a Magnis placement occurred to address why additional funds were sought; and
  - (ii) resolved that the continuous disclosure committee sign off on all disclosures to inform the market of developments about iM3NY in accordance with the continuous disclosure policy.

#### **Particulars**

ASIC refers to the minutes of this meeting and the papers given to the board of Magnis.

- 49 On 17 February 2023, Mr Poullas, for Magnis, lodged with the ASX an announcement entitled "iM3NY Update", which did not state that iM3NY had recently provided US\$3 million to or for the benefit of iM3NY, or the reason for it.
- 50 On about 21 February 2023, a meeting of the board of iM3NY was held, which was attended by Mr Poullas and other senior Magnis officers. At or before this meeting, a presentation was provided to the board. In relation to iM3NY's production activities, this presentation stated that:
  - (a) cell assembly was manual and there are "major issues due to cell swelling"; and
  - (b) 193 cells had been produced in January 2023.

#### **Particulars**

This report is in writing and dated February 2023 [and was provided to the board of iM3NY by email from Chaitanya Sharma dated 19 February 2023.](#)  
[The other senior Magnis officers who attended this meeting were Ms Dajani and Mr Taylor.](#)

March 2023

- 51 On about 10 March 2023, Magnis directors including Mr Poullas were informed by Mr Taylor that iM3NY would potentially be in default under its loan agreement in 3 weeks without further funding.

**Particulars**

The Magnis board of directors were informed of these matters orally at the meeting of the board of directors held on 10 March 2023.

- 52 On about 22 March 2023, a meeting of the board of iM3NY was held, attended by Mr Poullas and other senior Magnis officers. At or before this meeting, a presentation was provided to the iM3NY board, which identified that:
- (a) iM3NY was projected to be cash negative in April 2023, and projected revenue from battery sales was forecast to commence in August 2023;
  - (b) iM3NY had produced 600 battery cells in February 2023; and
  - (c) cell swelling was unresolved and approximately 30% of iM3NY's produced cells were unsellable.

**Particulars**

The meeting was held via Zoom. ~~This report~~ The presentation provided to the iM3NY board is in writing and dated March 2023.

- 53 On about 28 March 2023, Magnis provided a further US\$10m to iM3NY LLC, in order to avoid a liquidity default event occurring under iM3NY's loan agreement with Atlas Credit Partners.

**Particulars**

The funding was a loan whose terms were referred to in a binding term sheet signed for Magnis on or before 27 March 2023.

- 54 On about 29 March 2023, Mr Poullas stated to other Magnis directors that:
- (a) Magnis had provided a further US\$10 million of funding to iM3NY; and
  - (b) an ASX announcement needed to be made the next day to meet Magnis' continuous disclosure obligations.

### **Particulars**

ASIC refers to emails from Mr Poullas to Magnis directors on 29 March 2023.

- 55 On 29 March 2023, Magnis' continuous disclosure committee was provided with an updated draft ASX announcement by Magnis' company secretary, entitled "iM3NY Update" that described Magnis providing short-term funding to iM3NY, and its terms, and the status of iM3NY's financing.

### **Particulars**

This updated draft ASX announcement was provided to Magnis' continuous disclosure committee by email from Mr Glasgow to the email address "disclosurecommittee@magnis.com.au" dated 29 March 2023. At the relevant time, the members of that email group were Ms Bibby, Mr Glasgow, Mr Poullas and Ms Siva.

- 56 On 30 March 2023, Mr Taylor informed Magnis directors that:
- (a) financing proposals from external lenders to iM3NY required equity matching from iM3NY's shareholders, including Magnis;
  - (b) iM3NY had significant cash outflows projected in the following month and would be up against minimum cash requirements under its loan agreement with Atlas Credit Partners in April or early May, taking into account receipt of US\$10 million of funding from Magnis; and
  - (c) Magnis needed an immediate longer-term solution for iM3NY to limit any further risk or exposure to Magnis shareholders.

### **Particulars**

The Magnis board of directors were informed of these matters by email from Mr Taylor to Mr Poullas, Ms Bibby and Mr Glasgow, copied to the email address "director@magnis.com.au", dated 30 March 2023. At the relevant time, the members of that email group were Mr Tsegas, Ms Bibby, Mr Glasgow, Mr Poullas, Mr Daruwalla, Mr Gunsekera, Ms Dajani and Ms Siva.

April 2023

- 57 On about 6 April 2023, Magnis directors held a board meeting to discuss, among other things, iM3NY's production and its financial position, at which:
- (a) directors discussed multiple issues in relation to iM3NY including engineering, process and commercial viability, and Magnis' share price;
  - (b) concern was expressed by directors as to how iM3NY would address its continuing lack of liquidity even if the then projected sales volumes were met;
  - (c) directors noted the prospect of Magnis being required to provide further funding to iM3NY; and
  - (d) the board considered there was nothing from the meeting that required disclosure.

#### **Particulars**

ASIC refers to the minutes of this meeting.

- 58 On about 15 April 2023, Messrs Poullas, Taylor and Daruwalla of Magnis attended a meeting, with representatives of iM3NY and C4V, in person, to discuss iM3NY's financial position, delays in cell certification and cell swelling.

#### **Particulars**

The meeting was held in person in Endicott, New York and attended by the following individuals:

- (i) Mr Upreti, on behalf of both C4V and iM3NY;
- (ii) Mr Driscoll, on behalf of iM3NY;
- (iii) Mr Robert Dobbs, C4V Chief Operating Officer;
- (iv) Mr Clifford Olin, C4V Chief Business Development Officer;
- (v) Mr Daryl Wood, C4V Chief Financial Officer;
- (vi) Mr Poullas, on behalf of Magnis;
- (vii) Ms Dajani, on behalf of Magnis;
- (viii) Mr Daruwalla, on behalf of Magnis; and
- (ix) Mr Taylor, on behalf of Magnis.

59 On 17 April 2023, Messrs Poullas, Taylor and Daruwalla of Magnis attended a meeting with iM3NY management, in person, at which Magnis officers were informed by iM3NY personnel, including iM3NY's chief executive officer, that:

- (a) iM3NY's manufacturing process at the iM3NY Facility was not under control;
- (b) 95% of existing production was scrap, and no sellable cells had to that date been produced; and
- (c) produced cells contained uncontrollable moisture causing swelling/deformation and uncertainty as to cell safety, for which the root cause was unknown.

### Particulars

The meeting was held in person in Endicott, New York and was attended by the following individuals:

- (i) Mr Upreti, on behalf of both C4V and iM3NY;
- (ii) Mr Driscoll, on behalf of iM3NY;
- (iii) Chaitanya Sharma, iM3NY Chief Executive Officer;
- (iv) Mayank Sharma, iM3NY Chief Financial Officer;
- (v) Mark Rinaudo, Vice President of the iM3NY Gigafactory;
- (vi) Dr Rajesh Tripathi, iM3NY Director of Technology;
- (vii) Keith Hoge, iM3NY Director of Sales and Marketing;
- (viii) Mr Poullas, on behalf of Magnis;
- (ix) Mr Daruwalla, on behalf of Magnis; and
- (x) Mr Taylor, on behalf of Magnis.

60 On 21 April 2023, Magnis directors were informed by Mr Taylor that:

- (a) Magnis' finances were a high-risk area requiring urgent attention, and Magnis management recommended:
  - (i) suspending all non-essential capital and operating expenditure; and
  - (ii) divesting Magnis' interest in iM3NY; and

- (b) iM3NY's performance was a high-risk area requiring urgent attention, with cell swelling remaining the key production issue to be resolved at the iM3NY Facility.

#### Particulars

The Magnis board of directors were informed of these matters by Mr Taylor in writing. On 21 April 2023, Mr Taylor sent an email to the email address "director@magnis.com.au" attaching a paper with the subject "CEO Report". At the relevant time, the members of that email group were Mr Tsegas, Ms Bibby, Mr Glasgow, Mr Poullas, Mr Daruwalla, Mr Gunesekera and Ms Dejadi.

- 61 On 23 April 2023, Mr Daruwalla sent his notes of the 17 April 2023 meeting at iM3NY to all Magnis directors.

#### Particulars

Mr Daruwalla sent his notes of the 17 April 2023 meeting at iM3NY to the email address "director@magnis.com.au". At the relevant time, the members of that email group were Mr Tsegas, Ms Bibby, Mr Glasgow, Mr Poullas, Mr Daruwalla, Mr Gunesekera and Ms Dajani.

- 62 On 24 April 2023, Magnis directors held a board meeting without management at which the directors:

- (a) discussed matters raised by Messrs Taylor and Daruwalla referred to in paragraphs 60 and 61 above, and the undertaking of actions by Magnis personnel; and
- (b) considered that nothing from the meeting required disclosure to the market.

#### Particulars

The expression "a board meeting without management" in this paragraph means a meeting of the board of directors of Magnis to which only the directors were invited to attend.

The board meeting was held via teleconference attended by the following individuals:

- (i) Mr Poullas;
- (ii) Mr Tsegas;



- (iii) [Ms Siva;](#)
- (iv) [Ms Bibby;](#)
- (v) [Mr Gunesekera; and](#)
- (vi) [Mr Daruwalla.](#)

63 On 28 April 2023, Magnis lodged with the ASX, and the ASX released, a Quarterly Report that:

- (a) was authorised for release by Magnis' board at a board meeting on 28 April 2023;
- (b) identified Mr Poullas as the contact person for further information; and
- (c) within its operational update on the iM3NY Facility stated that once independent certification of battery cells has been completed, commercial quantities of battery cells would be able to be shipped to customers.

#### *May to December 2023*

64 In May 2023, Mr Taylor reported to the Magnis directors in a CEO Report that:

- (a) in respect of iM3NY, key major risks to Magnis remained funding, cell certification and cell swelling; and
- (b) as at the end of April 2023, Magnis' net asset position was -\$1.15 million, which required immediate attention through additional funding or debt reduction.

#### Particulars

This CEO Report was provided to the Magnis directors by email from Mr Glasgow to the email address "director@magnis.com.au" dated 28 May 2023. At the relevant time, the members of that email group were Mr Tsegas, Ms Bibby, Mr Glasgow, Mr Poullas, Mr Daruwalla, Mr Gunesekera and Ms Dajani. Mr Taylor presented this CEO Report to the Magnis directors at the meeting of the Magnis board held on 4 June 2023.

65 On about 15 June 2023:

- (a) iM3NY [LLC](#) requested a further US\$15 million in funding from Magnis (via Mr Poullas); and
- (b) iM3NY [LLC](#)'s request was provided to Magnis' directors.

### Particulars

On 15 June 2023, Mr Shailesh Upreti sent a draft term sheet to Mr Poullas for a further US\$15 million. ASIC refers also to email correspondence between Magnis directors on 15 June 2023.

66 Magnis advanced a further US\$2.8 million to iM3NY [LLC](#) in June 2023.

### Particulars

[This further funding provided to iM3NY LLC by Magnis is detailed in the resolution of the board of iM3NY LLC passed on about 23 August 2023 and the "iM3NY Quarterly Review Meeting" pack referred to in paragraph 68 below.](#)

67 On about 3 July 2023, Magnis:

- (a) increased its stake in iM3NY [LLC](#) to 73%;
- (b) entered into a new short-term debt financing facility to provide further financial support to iM3NY [or iM3NY LLC](#); and
- (c) announced to the market, within an announcement marked "market sensitive" and lodged by Mr Poullas:
  - (i) the above matters;
  - (ii) that it had converted "[b]ridging [f]inance announced on 31 March 2023 (and some other minor financial assistance provided by Magnis more recently)" into its increased equity holding; and
  - (iii) that the iM3NY Facility was likely to enter commercial field trial sales with current quarter production, and as a consequence Magnis had decided to receive equity rather than repayment of the financial assistance.

### Particulars

[ASIC refers to a Magnis ASX release entitled "Magnis Increases Ownership in iM3NY" dated 3 July 2023 as to each of the matters in \(a\), \(b\) and \(c\).](#)

[The terms of the financing facility are recorded in the resolution of the board of iM3NY LLC referred to in the particulars to paragraph 66 above.](#)

68 ~~It~~ [On 9](#) July 2023, iM3NY provided a "iM3NY Quarterly Review Meeting" pack to Magnis officers in which it identified that:

- (a) cell swelling remained a problem with no clear answer at the iM3NY Facility;
- (b) fixing cell swelling was a prerequisite to producing sellable cells;
- (c) the iM3NY Facility was producing less than an average target of 300 battery cells per day; and
- (d) the iM3NY Facility had an equipment gap to achieve 1 GWh production capacity, for which further expenditure was required.

#### Particulars

[The "iM3NY Quarterly Review Meeting" pack was provided to Mr Poullas and Mr Daruwalla by email from Chaitanya Sharma dated 9 July 2023.](#)

69 Prior to a meeting of the Magnis board on 25 July 2023, Magnis directors received a copy of a paper from New Electric Partners, commissioned by Magnis, that summarised iM3NY production problems, and expressed that a recent deterioration in market support for Magnis:

- (a) would be further exacerbated by any announcement regarding further issues with iM3NY; and
- (b) would materially increase the difficulty in Magnis raising further equity financing to support Magnis' capital needs over the ensuing year.

#### Particulars

[The paper from New Electric Partners is contained within the board papers for the 8 August 2023 meeting of the Magnis board.](#)

70 By no later than 8 August 2023, Magnis directors received a finance report prepared by its Chief Financial Officer that stated that:

- (a) although Magnis had secured a \$10 million share placement in July 2023, Magnis required more funding urgently as its available funding was critically low and iM3NY required more financial support; and
- (b) Mr Daruwalla and Mr Poullas were seeking to secure that funding.

#### Particulars

[This finance report was contained within the board papers for the 8 August 2023 meeting of the Magnis board, referred to in the particulars to](#)

[paragraph 69 above. The papers for that board meeting were sent to the Magnis directors by email from Mr Glasgow to the email address "director@magnis.com.au" dated 7 August 2023. At the relevant time, the members of that email group were Mr Tsegas, Ms Bibby, Mr Glasgow, Mr Poullas, Mr Daruwalla, Mr Gunesekera and Ms Dajani.](#)

71 On about ~~4~~9 August 2023, iM3NY provided an iM3NY board meeting presentation pack in which iM3NY stated:

- (a) it planned to produce 80-100 MWh of battery cells by the end of 2023;
- (b) cell assembly remained manual;
- (c) there was no progress to report on further fundraising;
- (d) cell swelling limited progression of sales opportunities, including provision of samples to prospective and contracted customers;
- (e) cell swelling remained an ongoing, unsolved problem; and
- (f) it required US\$17 million in cash for the following 13 weeks of operations.

#### Particulars

[This iM3NY board meeting presentation pack was provided to Mr Poullas, Mr Daruwalla and Ms Dajani by email from Chaitanya Sharma dated 9 August 2023.](#)

72 On about 24 August 2023, Mr Poullas and Mr Daruwalla spoke by telephone with a representative of Atlas Credit Partners and stated – as was the case – that:

- (a) iM3NY was being continuously infused with cash equity from Magnis to allow iM3NY to address production issues; and
- (b) iM3NY was not yet in commercial production or production scale, and increasing production was not an available option.

73 On 26 August 2023:

- (a) Mr Daruwalla sent his summary of the content of the call referred to in paragraph 72 to other Magnis directors;
- (b) Mr Daruwalla circulated to at least Ms Bibby (a director) of Magnis (and to which Ms Bibby responded) notes for a proposed discussion between Mr

Daruwalla and Mr Poullas for Magnis and Mr Upreti and Mr Driscoll for C4V among other things that stated:

- (i) more than 12,000 cells had then been made by iM3NY, of which there was no confidence for use even as production samples; and
- (ii) no root cause for production problems had been identified.

74 On 28 August 2023, Mr Behrens (Magnis Chief Financial Officer) and Mr Mike Osborne, a consultant to Magnis, met with representatives of iM3NY, including its Chief Executive Officer. In that meeting:

- (a) iM3NY's Chief Executive Officer stated that:
  - (i) the iM3NY Facility was likely 12 months from resolving technical challenges and 24 months until stable production; and
  - (ii) iM3NY required US\$60 million to fund its operations over the following 2 years, including a significant amount in 2024 to replace existing equipment; and
- (b) Mr Behrens of Magnis stated that the iM3NY Facility was nowhere near being able to produce batteries, counter to the press releases that Magnis had been putting out to "inventors" [sic: investors].

#### Particulars

The meeting was held in person at iM3NY's offices in Endicott, New York and attended by at least the following individuals:

- (i) Mr Jurgen Behrens, Magnis' Chief Financial Officer;
- (ii) Mr Mike Osborne, a consultant to Magnis; and
- (iii) Mr Chaitanya Sharma, on behalf of iM3NY.

75 After the meeting referred to in paragraph 74:

- (a) Mr Osborne, on 29 August 2023, provided notes of the meeting to Mr Daruwalla, commenting that the iM3NY Facility then produced no saleable cells as all were defective due to swelling; and
- (b) Mr Daruwalla in turn, on 30 August 2023, provided those notes and Mr Osborne's additional comments to other Magnis directors.

76 On 14 September 2023, Mr Chaitanya Sharma, the Chief Executive Officer of iM3NY, sent an "iM3NY Operations Plan for 2023" to Mr Daruwalla, Mr Poullas and

other Magnis and iM3NY representatives. The operations plan noted that iM3NY would require approximately a further US\$37 million capital expenditure funding to achieve 1 GWh production.

77 On ~~about 28~~25 September 2023, iM3NY provided a board pack to Magnis that noted that:

- (a) cell assembly remained manual;
- (b) cell production was to be increased to 40 cells per day; and
- (c) more funding was required.

#### Particulars

[This iM3NY board meeting presentation pack was provided to Mr Poullas and Mr Daruwalla by email from Chaitanya Sharma dated 25 September 2023.](#)

78 Between about 29 September 2023 and 3 October 2023, drafts of an announcement to the ASX concerning iM3NY were circulated by email amongst Magnis officers, including Mr Poullas, which:

- (a) identified a pause in lithium-ion battery cell-production for iM3NY to conduct ongoing testing on stockpiled cells;
- (b) stated that there could be no certainty that cell production would resume; and
- (c) stated that iM3NY was exploring use of a different chemical process in its battery production.

#### Particulars

[The drafts of the announcement were attached to email correspondence dated between 29 September 2023 and 3 October 2023 to which the following individuals were a party:](#)

- (i) [Mr Glasgow;](#)
- (ii) [Ms Bibby;](#)
- (iii) [Mr Poullas;](#)
- (iv) [Mr Daruwalla; and](#)
- (v) [Mr Gunesekera.](#)

79 On 6 October 2023, a Magnis ASX announcement entitled “iM3NY Update” was released that contained:

- (a) none of the information referred to in paragraph 78;
- (b) no statement that:
  - (i) the iM3NY Facility was not in commercial production or that as at September 2023 it was attempting to produce 40 cells per day; or
  - (ii) Magnis had funded iM3NY in 2023 to avoid iM3NY bankruptcy, or default under its loan arrangements;
- (c) a statement that sales had occurred in the preceding quarter; and
- (d) the Operates at Scale Representation.

## **C. MAGNIS CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **C.1 Further Funding Requirement Information**

80 On and from no later than 25 January 2023:

- (a) Magnis was aware that iM3NY would require up to US\$60 million further funding for the iM3NY Facility to achieve 1 GWh plant output or production rate by the end of 2023 or at all (the **Further Funding Requirement Information**);

#### **Particulars**

ASIC refers to ASX Listing Rule 19.12 and says that the Further Funding Requirement Information was information that officers of Magnis, including Mr Poullas, had, or ought reasonably to have, come into possession of in the course of the performance of their duties, including by reason of the matters, without limitation, referred to in paragraphs 11, 12, 32, [37](#) and 41 to 46 above.

- (b) the Further Funding Requirement Information was not generally available;

#### **Particulars**

The Further Funding Requirement Information was not generally available within the meaning of section 676 of the Corporations Act, and was not disclosed by Magnis in any announcement to the ASX.

- (c) the Further Funding Requirement Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis' shares, within the meaning of ASX Listing Rule 3.1;

#### **Particulars**

The Further Funding Requirement Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis' shares, in light of at least the following circumstances:

- (i) the likelihood, or actuality, of the Further Funding Requirement Information being disclosed, would indicate serious delays or problems with, and/or raising significant questions concerning, one or more of:
- (A) timely production at scale of saleable battery cells at the iM3NY Facility;
  - (B) the current and future commercialisation of the lithium-ion battery technology used at the iM3NY Facility;
  - (C) the value of iM3NY's manufacturing equipment;
  - (D) the timing of, or iM3NY's ability to earn at all, non de-minimis revenue from the sale of battery cells produced at the iM3NY Facility; and
  - (E) iM3NY's ability to comply with delivery obligations under offtake agreements announced by Magnis, and gain revenue under them in the amounts or by the times announced by Magnis;
- (ii) a significant proportion of Magnis' business value being constituted by the current or future value of iM3NY (ASIC refers to paragraph 9(c) above);
- (iii) Magnis was a company that earned no revenue, other than via its financing activities;
- (iv) the likelihood, or actuality, of Magnis being required to conduct, or conducting, debt or equity raisings to provide further support to iM3NY Facility production at a rate or output of less than 1 or 1.8 GWh;



- (v) prior Magnis publications, announcements or statements relating to iM3NY and/or the iM3NY Facility including:
  - (A) ~~on and~~ from 2017 on the then status of the iM3NY Facility and the importance of iM3NY and/or the iM3NY Facility to Magnis' revenue strategy, including in 2019 and 2020 as to the iM3NY Facility's funding arrangements (ASIC refers to paragraphs 16 to 17 above);
  - (B) the Fully Funded Representations (ASIC refers to paragraphs 18 to 21 above);
  - (C) statements concerning offtake agreements and the timing of revenue (ASIC refers to paragraphs 22 and 23 above); and
  - (D) Magnis' publication on its website of the Corporate Connect research report dated 2 December 2021 offering valuation and future price opinions having regard to the Fully Funded Representations, automation and projected production at and sales from the iM3NY Facility (ASIC refers to paragraph 9 above);
- (vi) Magnis referring, in a section of its 2021 and 2022 Annual Reports dealing with the "fair value measurement" of Magnis' assets, to the iM3NY Facility being fully funded to achieve at least 1 GWh production (ASIC refers to paragraph 18 above); and
- (vii) the inaccuracy of prior announcements by Magnis going to iM3NY and the iM3NY Facility, including as to production and revenue identified in paragraphs 27 and 28 above, and their particulars. These announcements are inaccurate in circumstances where neither production of several thousand saleable or defect-free saleable cells had occurred, nor had first revenues from sales of cells been achieved.
- (d) by reason of sub-paragraphs (a)-(c) above, ASX Listing Rule 3.1 required immediate disclosure to the ASX of the Further Funding Requirement Information; and
- (e) Magnis knew, or was alternatively reckless or negligent with respect to whether, the Further Funding Requirement Information comprised information that a reasonable person would expect, if it were generally

available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2)(d) of the Corporations Act (inclusive of section 677(2)).

### Particulars

Magnis' knowledge is to be inferred from the following facts or circumstances:

- (i) Magnis was a company that earned no revenue, other than via its financing activities;
- (ii) Magnis' awareness that a significant proportion of its business value was constituted by the current or future value of, and the amount and timing of revenue earned by, iM3NY, as Magnis' primary investment (ASIC refers to paragraphs 8 and 9 above);
- (iii) Magnis making, and the content of, prior announcements or statements relating to iM3NY and/or the iM3NY Facility **including**:
  - (A) ~~on and~~ from 2017, in relation to the then status of the iM3NY Facility and the importance of iM3NY and/or the iM3NY Facility to Magnis and its revenue strategy, including in 2019 and 2020 as to the iM3NY Facility's funding arrangements (ASIC refers to [Magnis ASX announcements dated 15 November 2017, 23 February 2018, 20 July 2018, 2 October 2018 \(market sensitive\), 5 October 2018 \(market sensitive\), 18 March 2019, 15 May 2020 \(market sensitive\) and 6 October 2020 \(market sensitive\); and Magnis' 2018 Annual Report \(at pages 9 and 59\), 2019 Annual Report \(page 3\) and 2020 Annual Report \(pages 3 and 9\), and, in each, the notes to the financial statements paragraphs 16 to 17 above](#));
  - (B) the Fully Funded Representations (ASIC refers to paragraphs 18 to 21 above); and
  - (C) statements concerning offtake agreements and the timing of expected revenue (ASIC refers to paragraphs 22 and 23 above);
- (iv) Magnis marking actual or prospective announcements as to iM3NY's current or future funding, production or sales as "market-

sensitive” or “price-sensitive” from time to time, ~~including being~~ [prospective announcements referred to in paragraph 15 above](#) ~~and without limitation~~ announcements made on 19 April 2021, 3 May 2021, 4 June 2021, 5 July 2021, 3 August 2021, 4 August 2021, 29 December 2021, 19 April 2022, 12 August 2022, 17 March 2023, 31 March 2023, and 10 November 2023;

- (v) Magnis:
  - (A) having stated (via Mr Poullas) on 22 September 2022 that iM3NY being fully funded for production of 1.8 GWh meant that Magnis would not need to raise funds in the market to support that production (ASIC refers to paragraph 19 above); and
  - (B) being aware on and from about 25 January 2023 that it would need to raise, or had raised, funds to provide ongoing financial support to iM3NY and its production at a rate below 1 or 1.8 GWh (ASIC refers to paragraphs 46, ~~and~~ 56, 57, 60, 64, and 70 above);
- (vi) Magnis referring, in a section of its 2021 and 2022 Annual Reports dealing with the “fair value measurement” of Magnis’ assets, to the iM3NY Facility being fully funded to achieve at least 1 GWh production (ASIC refers to paragraph 18 above);
- (vii) Magnis’ publication, distribution (including to potential investors) and use of Corporate Connect research reports dated 2 December 2021, 3 February 2022, 14 October 2022 and 2 March 2023 that identified Magnis’ value as based upon it being a growth stock, heavily reliant upon the value of iM3NY, and giving valuation and price opinions having regard to the Fully Funded Representations, automation and projected production at and sales from the iM3NY Facility (ASIC refers to paragraphs 8 and 9 above);
- (viii) Magnis’ receipt of a research report prepared by Evolution Capital Pty Ltd dated around October 2022 that valued Magnis by reference to iM3NY, in the 2023 financial year, having a battery cell production capacity of 1.8 GWh and utilisation and sales of 1.4 GWh;

- (ix) Magnis directors (including Mr Poullas), in about late November and December 2022, raising and discussing concerns with one another and with Magnis senior officers about adverse iM3NY updates having a detrimental effect on market perception of the value of iM3NY in circumstances where iM3NY was Magnis' principal asset (ASIC refers to paragraphs 39 and 40 above);
- (x) Magnis directors and its chief executive, by reason of statements made in internal reports such as CEO reports, iM3NY presentation packs, and other correspondence, being aware ~~on and~~ from about mid-January 2023 that iM3NY was producing a limited number of cells and without further or ongoing financial support iM3NY was facing bankruptcy or being under control of its lenders in the near-term (ASIC refers to paragraphs 32, and 44 to 74 above);
- (xi) discussions or correspondence between or amongst Magnis directors in 2023 to the effect that public disclosure of iM3NY's financial or operating situation may send Magnis' share price "crashing" or "tumbling" or "spook the market" ~~including, without limitation,~~ noted or referred to in an email from Mr Daruwalla to Ms Bibby and Mr Gunsekera dated 29 January 2023 with subject line "Note to David and Duncan subsequent to the IM3NY situation presentation to the board", correspondence recorded in board papers placed before Magnis' 8 February 2023 board meeting, and emails passing between Mr Nagendra, Mr Poullas, Mr Taylor, Ms Bibby, Mr Glasgow and others ~~and amongst Magnis board members~~ on 31 March 2023 with subject line "IM3NY Release";
- (xii) Magnis' deteriorating financial position in 2023 by reason of its provision of funds to iM3NY;
- (xiii) the existence, content and application of Magnis' continuous disclosure policy from time to time (ASIC refers to paragraphs 10 and 11 above) and Magnis' consideration of whether to make a disclosure to the market at each meeting of the Magnis board from time to time in 2023; and
- (xiv) Magnis continuing to imply in announcements from time to time ~~on and~~ from January 2023, despite operational and financial updates received from iM3NY or its own management, that iM3NY sought funding to expand its production from previously announced levels

and operated a gigawatt-scale battery manufacturing plant, in circumstances where this was misleading by reason of information known to Magnis ([namely, the Further Funding Requirement Information](#)).

Magnis' recklessness as to materiality of the Further Funding Requirement Information is to be inferred from the following:

- (i) the knowledge particulars referred to [at subparagraphs \(i\) to \(xiv\) directly](#) above; and
- (ii) the risk rating [or description](#) ascribed from time to time to iM3NY or iM3NY's business in [the following](#) reports or updates from Magnis' CEO to its board ~~on and~~ from January 2023:
  - (A) [Paper entitled "iM3NY Business Performance Recovery Plan" referred to in paragraph 46\(a\) above;](#)
  - (B) [Memorandum entitled "Report of CEO on Risks of iM3NY" referred to in paragraph 48\(a\) above; and](#)
  - (C) [CEO Report dated May 2023 referred to in paragraph 64 above.](#)

As to Magnis' negligence as to materiality of the Further Funding Requirement Information:

- (i) the value or price materiality of the Further Funding Requirement Information was reasonably foreseeable on and from at least 19 April 2021, being the date of Magnis first made the Fully Funded Representations, and ASIC also relies upon the particulars to ~~paragraphs~~ 80(c) above;
- (ii) Magnis was obliged (including by reason of it being a listed disclosing entity and by the terms of its continuous disclosure policy) to exercise reasonable care to consider the materiality of the Further Funding Requirement Information on and from becoming aware of it; and
- (iii) Magnis failed to exercise reasonable care in considering, or by failing to consider, the materiality of the Further Funding Requirement Information and whether to make disclosure of the same on and from 25 January 2023, having regard to:

- (A) each of the matters particularised in respect of knowledge [in subparagraphs \(i\) to \(xiv\) above](#), and [in respect of](#) recklessness [in subparagraphs \(i\) and \(ii\) directly](#) above;
- (B) its knowledge from time to time of iM3NY's operating and financial state; and
- (C) the issue of whether to make a disclosure to the market being a standing item at each meeting of the Magnis board in 2023.

81 On and from 25 January 2023 until the date of issue of these proceedings, Magnis:

- (a) did not notify the ASX of the Further Funding Requirement Information; and
- (b) thereby contravened section 674A(2) of the Corporations Act on each day of non-notification.

82 The contraventions referred to in paragraph 81 above:

- (a) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act; and/or
- (b) were "serious" within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

## C.2 No Fully-Automated Production Information

83 On and from 28 September 2022, or alternatively 25 January 2023:

- (a) Magnis was aware that the production process used by iM3NY to assemble cells at the iM3NY Facility was not fully-automated, and would not be in the near future (the **No Fully-Automated Production Information**);

### Particulars

ASIC refers to ASX Listing Rule 19.12 and says that the No Fully-Automated Production Information was information that officers of Magnis (including Mr Poullas) had, or ought reasonably to have, come into possession of in the course of the performance of their duties, including by reason of the matters, including particulars, stated in paragraphs 11, 12, 32, 33 and 36 to 45 [above](#).

- (b) the No Fully-Automated Production Information was not generally available;

### Particulars

The No Fully-Automated Production Information was not generally available within the meaning of section 676 of the Corporations Act, and was not disclosed by Magnis in any announcement to the ASX.

- (c) the No Fully-Automated Production Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis' shares, within the meaning of ASX Listing Rule 3.1;

### Particulars

ASIC refers to and repeats the particulars to paragraph 80(c), *mutatis mutandis* and, as to particular (v), refers also to prior Magnis announcements or statements going to iM3NY and the iM3NY Facility **including and**:

- (i) future commencement of a “fully-automated” production stage at the iM3NY Facility (ASIC refers to paragraphs 24 to 27 above);  
and
  - (ii) the making of the Production Capability Representation on and from 12 August 2022 (ASIC refers to paragraphs 27 to 29 above).
- (d) by reason of sub-paragraphs (a)-(c) above, ASX Listing Rule 3.1 required immediate disclosure to the ASX of the No Fully-Automated Production Information; and
  - (e) Magnis knew, or was alternatively reckless or negligent with respect to whether, the No Fully-Automated Production Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2)(d) of the Corporations Act (inclusive of section 677(2)).

### Particulars

As to Magnis' knowledge and recklessness, ASIC refers to and repeats the particulars to paragraph 80(e) above *mutatis mutandis*, including, as to particular (iii), Magnis prior announcements or statements concerning the utility or value of iM3NY manufacturing equipment, future commencement of a “fully-automated” production stage (ASIC refers to paragraphs 24 to 27 above), and the Fully-Automated Production Representation.

As to Magnis' negligence as to materiality of the No Fully-Automated Production Information:

- (i) the value or price materiality of the No Fully-Automated Production Information was reasonably foreseeable on and from at least the date on which Magnis first made representations about future automated production at the iM3NY Facility, and ASIC also relies upon the particulars to paragraph 83(c) above;
- (ii) Magnis was obliged (including by reason of it being a listed disclosing entity and by the terms of its continuous disclosure policy) to exercise reasonable care to consider the materiality of the No Fully-Automated Production Information on and from becoming aware of it; and
- (iii) Magnis failed to exercise reasonable care in considering, or by failing to consider, the materiality of the No Fully-Automated Production Information and whether to make disclosure of the same on and from 28 September 2022, and in the alternative 25 January 2023, having regard to:
  - (A) each of the matters particularised in respect of knowledge and recklessness above;
  - (B) its knowledge from time to time of iM3NY's operating and financial state; and
  - (C) the issue of whether to make a disclosure to the market being a standing item at each meeting of the Magnis board in 2022 and 2023.

84 On and from 28 September 2022, or alternatively 25 January 2023, until the date of issue of these proceedings, Magnis:

- (a) did not notify the ASX of the No Fully-Automated Production Information; and
- (b) thereby contravened section 674A(2) of the Corporations Act on each day of non-notification.



85 The contraventions referred to in paragraph 84 above:

- (a) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act; and/or
- (b) were “serious” within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

### **C.3 No Production at Scale Information**

86 On and from no later than 23 April 2023:

- (a) Magnis was aware that iM3NY:
  - (i) could not, or alternatively did not know whether it could:
    - (A) produce saleable cells at scale; or
    - (B) alternatively, produce defect-free saleable cells at scale; and
  - (ii) could not, or alternatively did not know whether it could, generate non *de-minimis* revenue from the sale of cells produced at the iM3NY Facility,

(individually or together, the **No Production at Scale Information**);

#### **Particulars**

ASIC refers to ASX Listing Rule 19.12 and says that the No Production at Scale Information was information that officers of Magnis (including Mr Poullas) had, or ought reasonably to have, come into possession of in the course of the performance of their duties, including by reason of the matters, including particulars, referred to in paragraphs 11, 12, 32 to 38 and 41 to 61 above.

- (b) the No Production at Scale Information was not generally available;

#### **Particulars**

The No Production at Scale Information was not generally available within the meaning of section 676 of the Corporations Act, and was not disclosed by Magnis in any announcement to the ASX.

- (c) the No Production at Scale Information was information that a reasonable person would expect, if it were generally available, to have a material effect

on the price or value of Magnis' shares, within the meaning of ASX Listing Rule 3.1;

### **Particulars**

ASIC refers to and repeats the particulars to paragraph 80(c) and 83(c), *mutatis mutandis* and, as to particular (v), refers also to Magnis making the Operates at Scale Representation on and from at least 12 August 2022 and representing that stockpiles of cells in commercial quantities awaited delivery under offtake agreements on certification being achieved (ASIC refers to paragraphs 27 to 29 above).

- (d) by reason of sub-paragraphs (a)-(c) above, ASX Listing Rule 3.1 required immediate disclosure to the ASX of the No Production at Scale Information;
- (e) Magnis knew, or was alternatively reckless or negligent with respect to whether, the No Production at Scale Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2)(d) of the Corporations Act (inclusive of section 677(2)).

### **Particulars**

As to Magnis' knowledge, and in the alternative, its recklessness, ASIC refers to and repeats the particulars of knowledge and recklessness to paragraph 83(e) above, *mutatis mutandis*.

As to Magnis' negligence as to materiality of the No Production at Scale Information:

- (i) the value or price materiality of the No Production at Scale Information was reasonably foreseeable on and from at least 12 August 2022, being the date of Magnis' Production Capability Representation and the Fully-Automated Production Representation, and ASIC also relies upon the particulars to paragraphs 86(c) above;
- (ii) Magnis was obliged (including by reason of it being a listed disclosing entity and by the terms of its continuous disclosure policy) to exercise reasonable care to consider the materiality of No Production at Scale Information on and from becoming aware of it; and

- (iii) Magnis failed to exercise reasonable care in considering, or by failing to consider, the materiality of the No Production at Scale Information and whether to make disclosure of the same on and from 23 April 2023, having regard to:
  - (A) each of the matters particularised in respect of knowledge and recklessness above;
  - (B) its knowledge from time to time of iM3NY's operating and financial state; and
  - (C) the issue of whether to make a disclosure to the market being a standing item at each meeting of the Magnis board in 2023.

87 On and from 23 April 2023 until the date of issue of these proceedings, Magnis:

- (a) did not notify the ASX of the No Production at Scale Information; and
- (b) thereby contravened section 674A(2) of the Corporations Act on each day of non-notification.

88 The contraventions referred to in paragraph 87 above:

- (a) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act; and/or
- (b) were "serious" within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

## **D. MISLEADING OR DECEPTIVE CONDUCT CONTRAVENTIONS**

### **D.1 Fully-Funded Representations**

89 By virtue of the matters identified in paragraphs 41 to 46 above, at least Mr Poullas, and other senior Magnis officers, knew by no later than 25 January 2023:

- (a) the Further Funding Requirement Information;
- (b) further or alternatively, that iM3NY:
  - (i) was producing battery cells at an annual rate significantly less than 1 GWh; and

- (ii) required funding to avoid a net cash balance of zero within 2-4 months.

90 By reason of:

- (a) submitting and the ASX releasing the announcements dated 27 January 2023, 17 March 2023 and 31 March 2023;
- (b) not qualifying, withdrawing or correcting those announcements following their release by the ASX; and
- (c) failing to disclose the matters referred to in paragraph 89 above,

### **Particulars**

Magnis was obliged to qualify, withdraw or correct the announcements referred to in subparagraph (a) above as the Further Funding Requirement Information and/or the information referred to in paragraph 89(b) above was information that the market and potential investors expected or were reasonably entitled to expect to be released to them in all the circumstances, because:

- (i) that information was materially different from, and inconsistent with, the statements made by Magnis in the announcements identified in subparagraph (a) above; and
- (ii) insofar as it related to the Further Funding Requirement Information, of the statements made by Magnis in relation to its intended approach to continuous disclosure as set out in its continuous disclosure policy referred to in paragraph 10 and its response to the ASX aware query dated 12 July 2021.

Magnis:

- (d) impliedly represented, on and from 27 January 2023, that iM3NY sought or received funding to expand its annual production capacity from 1 GWh; and
- (e) thereby impliedly repeated the Fully Funded Representations (ASIC refers to paragraphs 18 and 21 above).

91 By repeating the Fully Funded Representations in those circumstances, Magnis engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

- (b) further or alternatively, in trade or commerce, in relation to financial services, within the meaning of section 12DA(1) of the ASIC Act.

92 By reason of the matters set out in paragraphs 90(a) to 90(c) above, repeating the Fully Funded Representations was conduct that was misleading or deceptive, or likely to mislead or deceive.

93 In the circumstances outlined above, by making the Fully Funded Representations on and from 27 January 2023, Magnis engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) further or alternatively, section 12DA(1) of the ASIC Act.

## **D.2 Operates at Scale Representation**

94 By:

- (a) making the Operates at Scale Representation (see paragraphs 30 and 31 above) in ~~at least 12~~ [22](#) ASX announcements or reports released between 27 January 2023 and 6 October 2023;

### Particulars

Between 27 January 2023 and 6 October 2023, Magnis made the Operates at Scale Representation in the following ASX announcements or Quarterly Reports:

- (i) Quarterly Report dated 27 January 2023;
- (ii) ASX Announcement entitled "iM3NY Update" dated 17 February 2023;
- (iii) ASX Announcement entitled "Magnis Signs Offtake Agreement for North American Anode Active Material Productive" dated 21 February 2023;
- (iv) ASX Announcement entitled "Magnis Receives Funding Proposal from US Fund" dated 17 March 2023;
- (v) ASX Announcement entitled "Magnis Completes Funding from Investors" dated 24 March 2023;
- (vi) ASX Announcement entitled "iM3NY Update" dated 31 March 2023;

- (vii) [ASX Announcement entitled "Magnis Awards Services Contract for Anode Active Materials Project to Worley" dated 3 April 2023;](#)
- (viii) [Quarterly Report dated 28 April 2023;](#)
- (ix) [ASX Announcement entitled "iM3NY Signs Joint Venture Agreement with Omega Seiki Mobility" dated 17 May 2023;](#)
- (x) [ASX Announcement entitled "Hoshi Daruwalla Appointed as Managing Director \(USA\)" dated 26 May 2023;](#)
- (xi) [ASX Announcement entitled "iM3NY Cell Certification Update" dated 2 June 2023;](#)
- (xii) [ASX Announcement entitled "iM3NY Cell Certification Update" dated 6 June 2023;](#)
- (xiii) [ASX Announcement entitled "Exceptional Performance Achieved by Nachu Anode Materials Minus Purification" dated 8 June 2023;](#)
- (xiv) [ASX Announcement entitled "Magnis CEO Resigns" dated 14 June 2023;](#)
- (xv) [ASX Announcement entitled "iM3NY Batteries Receive Certification" dated 15 June 2023;](#)
- (xvi) [ASX Announcement entitled "Letter of Intent Executed for AAM Facility" dated 30 June 2023;](#)
- (xvii) [ASX Announcement entitled "Magnis Increases Ownership in iM3NY" dated 3 July 2023;](#)
- (xviii) [Quarterly Report dated 28 July 2023;](#)
- (xix) [ASX Announcement entitled "Fabrizio Perilli Appointed as Non-Executive Director" dated 31 July 2023;](#)
- (xx) [ASX Announcement entitled "ASIC Supplementary Submission to Senate Inquiry" dated 24 August 2023;](#)
- (xxi) [ASX Announcement entitled "Magnis enters into Standby Equity Facility" dated 8 September 2023; and](#)
- (xxii) [ASX Announcement entitled "iM3NY Update" dated 6 October 2023.](#)

(b) not qualifying, withdrawing or correcting those announcements following their release by the ASX; and

- (c) failing to disclose that iM3NY did not operate a gigawatt scale battery manufacturing plant or alternatively could only do so if iM3NY received up to US\$60 million further funding,

### **Particulars**

Magnis was obliged to qualify, withdraw or correct the announcements referred to in subparagraph (a) above as the information referred to in paragraph 94(c) above was information that the market and potential investors expected or were reasonably entitled to expect to be released to them in all the circumstances, because that information was materially different from, and inconsistent with, the statements made by Magnis in the announcements identified in subparagraph (a) above.

Magnis engaged in conduct:

- (d) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (e) further or alternatively, in trade or commerce, in relation to financial services, within the meaning of section 12DA(1) of the ASIC Act.

95 By reason of the matters set out in paragraphs 94(a) to 94(c) above, by making or repeating the Operates at Scale Representation Magnis engaged in conduct that was misleading or deceptive, or likely to mislead or deceive.

96 In the circumstances outlined above, by making the Operates at Scale Representation on and from at least 27 January 2023, Magnis engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) further or alternatively, section 12DA(1) of the ASIC Act.

### **D.3 Capacity Increase Funding Representation**

97 By:

- (a) making the Capacity Increase Funding Representation (see paragraph 21 above);
- (b) in circumstances where Magnis funded iM3NY in about March 2023 in order to permit it to continue in operation while producing battery cells at an annual capacity significantly less than 1 GWh; and

### **Particulars**

ASIC refers to paragraphs 21 and 51 to 56 above, and their particulars.

- (c) not qualifying, withdrawing or correcting the announcement dated 31 March 2023 following its release by the ASX,

Magnis engaged in conduct:

- (d) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (e) further or alternatively, in trade or commerce, in relation to financial services, within the meaning of section 12DA(1) of the ASIC Act.

98 By reason of the matters set out in paragraphs 97(a) to 97(c) above, Magnis engaged in conduct by making the Capacity Increase Funding Representation that was misleading or deceptive, or likely to mislead or deceive.

99 In the circumstances outlined above, by making the Capacity Increase Funding Representation on 31 March 2023, Magnis engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) further or alternatively, section 12DA(1) of the ASIC Act.

#### **D.4 Production Capability Representation**

100 By:

- (a) making the Production Capability Representation on and from 12 August 2022 (see paragraphs 27 to 28 above);
- (b) not qualifying, withdrawing or correcting the announcement dated 12 August 2022 following its release by the ASX; and
- (c) failing to disclose the No Production at Scale Information on and from 23 April 2023,

### **Particulars**

Magnis was obliged to qualify, withdraw or correct the announcements referred to in subparagraph (a) above as the No Production at Scale Information was information that the market and potential investors expected or were reasonably entitled to expect to be released to them in all the circumstances, because:



- (i) the No Production at Scale Information was materially different from, and inconsistent with, the statements made by Magnis in the announcements identified in subparagraph (a) above; and
- (ii) of the statements made by Magnis in relation to its intended approach to continuous disclosure as set out in its continuous disclosure policy referred to in paragraphs 10 and its response to the ASX aware query dated 12 July 2021.

Magnis engaged in conduct:

- (d) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (e) further or alternatively, in trade or commerce, in relation to financial services, within the meaning of section 12DA(1) of the ASIC Act.

101 By reason of the matters set out in paragraphs 100(a) to 100(c) above, Magnis engaged in conduct by making the Production Capability Representation that was misleading or deceptive, or likely to mislead or deceive.

102 In the circumstances outlined above, by making the Production Capability Representation on and from 23 April 2023, Magnis engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) further or alternatively, section 12DA(1) of the ASIC Act.

## **E. MR POUILLAS**

### **E.1 Knowing involvement in continuous disclosure contraventions**

#### *Further Funding Requirement Information*

103 On and from at least 25 January 2023, Mr Poullas knew:

- (a) the Further Funding Requirement Information (as defined in paragraph 80(a) above);

#### **Particulars**

Mr Poullas' knowledge arose ~~without limitation~~ from the matters identified in paragraphs 37 and 41 to 46 above, and their particulars. ASIC also

refers, for the period after 25 January 2023, to paragraphs 47 to 74 [above](#), and their particulars.

- (b) that the Further Funding Requirement Information was not generally available;

#### **Particulars**

Mr Poullas' knowledge is to be inferred from his position and responsibilities as a director and as Executive Chairman of Magnis, his knowledge and involvement in the making of Magnis' Fully Funded Representations before and after 25 January 2023 and in his drafting and/or approval, generally, of announcements released by Magnis to the ASX. [ASIC refers to all Magnis ASX announcements from December 2022, and Mr Poullas' positions, roles and actions in connection with such Magnis announcements, in that period, alleged in paragraph 12 above. ASIC also refers to facts alleged in paragraphs 21, 49, 54 and 55 above.](#)

- (c) that the Further Funding Requirement Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis' shares, within the meaning of ASX Listing Rule 3.1; and

#### **Particulars**

Mr Poullas' knowledge is to be inferred from:

- (i) his position, responsibilities and execution of duties, as a director and as Executive Chairman of Magnis, director of iM3NY, member of Magnis' continuous disclosure and audit committees and as Magnis' disclosure officer in respect of iM3NY;
- (ii) his knowledge of the contents of Magnis' continuous disclosure policy and its requirements (including by reason of his positions and roles noted above);
- (iii) his communications with Magnis shareholders and understanding that Magnis shareholders required regular updates in relation to iM3NY.

[In respect of Mr Poullas' communications with Magnis shareholders, ASIC refers to each Magnis announcement or report released by the ASX from 2017 onwards relating to iM3NY or the iM3NY Facility referred to in paragraphs 16, 17, 18, 21, 22, 24, 25,](#)

27, 28, 31, 34, 49, and 67 above in which Mr Poullas was listed as the contact point for information or for investors, or in which he made a statement.

Mr Poullas' understanding that Magnis shareholders required regular updates in relation to iM3NY is recorded in or inferred from:

- (A) an email from Mr Poullas to a Mr Pavris and others dated 19 October 2021 with subject line "Announcement";
  - (B) an email from Mr Poullas to Ms Bibby, Mr Glasgow and Mr Taylor dated 30 March 2023 with subject line "Re: Board Meeting"; and
  - (C) ASX announcements issued by Magnis in 2021 and 2022 entitled "iM3NY Update" (or similar);
- (iv) his knowledge of the content of Magnis' financial statements, including notes referring to the iM3NY Facility being fully funded to achieve at least 1 GWh production (ASIC refers to paragraphs 5(d), 7, 8, and 9 above);
- (v) his knowledge of the content, and/or Magnis' and his publication, distribution and use of:
- (A) Corporate Connect research reports dated 2 December 2021, 3 February 2022, 14 October 2022 and 3 March 2023 that identified Magnis' value as based upon it being a growth stock, and heavily reliant upon the value of iM3NY, and giving valuation and future price opinions having regard to funding, automation and projected production at and sales from the iM3NY Facility (ASIC refers to paragraphs 8 and 9 above); and
  - (B) a research report prepared by Evolution Capital Pty Ltd dated around October 2022 that valued Magnis by reference to iM3NY, in the 2023 financial year, having a battery cell production capacity of 1.8 GWh and utilisation and sales of 1.4 GWh;
- (vi) his participation in the drafting, approval or lodgment (including, from time to time, marking of the same as "market sensitive" when lodging with the ASX including by him), or otherwise the making, of:

- (A) Magnis' Fully Funded Representations before and after 25 January 2023 (~~including without limitation that~~ referred to in paragraphs [18 and 19](#) above); and
- (B) generally, announcements for release by Magnis to the ASX concerning iM3NY or the iM3NY Facility, including entry into offtake agreements, progress of production, anticipated revenue, and the importance of iM3NY or the iM3NY Facility to Magnis including as to its strategy for revenue ([ASIC refers to those announcements previously expressly identified within particulars to paragraphs 16, 17, 22, 23, 24, 25, 27\(a\), 28\(a\)-\(d\), 30 and 31 above](#));
- (vii) his participation in, and/or knowledge of discussions amongst Magnis directors and senior officers ~~on and~~ from November 2022 concerning the effects of adverse iM3NY updates on the market perception of the value of iM3NY (ASIC refers ~~without limitation~~ to paragraphs 39 and 40 above, [and discussions amongst Magnis directors occurring at or around the time of Magnis board meetings in the period January to March 2023 recorded or referred to in correspondence identified in subparagraph \(xi\) of the particulars to paragraph 80\(e\) above](#));
- (viii) his knowledge that Magnis, by reason of the Further Funding Requirement Information, and contrary to statements expressly made previously by Mr Poullas, would need to raise, or had raised, funds to provide ongoing financial support to iM3NY and its production at a rate below 1 or 1.8 GWh (ASIC refers to paragraphs 19, 46 and 56, 57, 60, 64, and 70 [above](#)); and
- (ix) discussions or correspondence between or amongst Magnis directors (including Mr Poullas) in 2023 to the effect that public disclosure of iM3NY's financial or operating situation may send Magnis' share price "crashing" or "tumbling" or "spook the market" ~~including, without limitation,~~ [noted or referred to in an email from Mr Daruwalla to Ms Bibby and Mr Gunsekera dated 29 January 2023 with subject line "Note to David and Duncan subsequent to the IM3NY situation presentation to the board"](#), correspondence recorded in board papers placed before Magnis' 8 February 2023 board meeting, and emails [passing](#) between [Mr Nagendra, Mr](#)

[Poullas, Mr Taylor, Ms Bibby, Mr Glasgow and others](#) ~~and amongst Magnis board members~~ on 31 March 2023 [with subject line "IM3NY Release"](#).

- (d) the facts and circumstances particularised to paragraph 80(e) above, and by reason of the same, or alternatively, that Magnis knew, or was alternatively reckless or negligent with respect to whether, the Further Funding Requirement Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2)(d) of the Corporations Act (inclusive of section 677(2)).<sup>†</sup>

### Particulars

Mr Poullas' knowledge of those facts and circumstances arises from, or is to be inferred by reason of, each of the matters particularised to subparagraph (c) above.

104 Mr Poullas was directly or indirectly knowingly concerned in Magnis' contravention of section 674A(2) of the Corporations Act as alleged in paragraph 81 above by engaging, in the premises, in the following acts or omissions:

- (a) receiving, as Magnis' iM3NY director and "disclosure officer", ~~on and~~ from January 2023, reports and updates in connection with, and from, iM3NY, including as to its funding requirements and status of its current and anticipated production, without taking steps to cause Magnis to make disclosure of the Further Funding Requirement Information to the market or the public ([ASIC refers to the reports and updates – in connection with, and from, iM3NY, including as to its funding requirements and status of its current and anticipated production – identified in paragraphs 44\(b\)-\(d\), 45 to 46, 48, 50, 52, 56 to 61, 64 to 65, 68 to 71, and 75 to 77 above](#));
- (b) authorising, approving or acquiescing in the provision of further funding to iM3NY by Magnis in at least February, March and June 2023 (ASIC refers to paragraphs 47, 51 to 54, and 65 to 66 above);
- (c) voting, or acquiescing, in meetings of the directors of the board of Magnis at which 'Continuous Disclosure' was a standing item, on and from 25 January 2023 that Magnis not make disclosure of information concerning iM3NY, or to defer consideration of the same; and

- (d) on or after 25 January 2023, preparing, approving or lodging announcements, reports or updates containing Fully Funded Representations or that did not disclose the Further Funding Requirement Information (ASIC refers [to those announcements, reports or updates - which Mr Poullas prepared, approved or lodged that contained Fully Funded Representations or that did not disclose the Further Funding Requirement Information – identified within the particulars](#), ~~without limitation~~, to paragraphs 14(b), 18, 21, 49 and 67 above).

105 By reason of paragraphs 103 and 104 above, Mr Poullas:

- (a) was involved, within the meaning of section 79 of the Corporations Act, in the contraventions of section 674A(2) of the Corporations Act by Magnis as alleged in paragraph 81 above; and
- (b) contravened section 674A(3) of the Corporations Act on each day Magnis contravened section 674A(2) of the Corporations Act in respect of the same conduct.

106 The contraventions by Mr Poullas referred to in paragraph 105 above:

- (a) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act; and/or
- (b) were “serious” within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

#### *No Fully-Automated Production Information*

107 On and from 28 September 2022 or alternatively 25 January 2023, Mr Poullas knew:

- (a) the No Fully-Automated Production Information (as defined in paragraph 83(a) above);

#### **Particulars**

Mr Poullas’ knowledge arose, ~~without limitation~~, from the matters identified in paragraphs 32, 33, 35, 36, 45 and 46 above, and their particulars. ASIC also refers, for the period after 25 January 2023, to paragraphs 48 to 74, and their particulars.

- (b) that the No Fully-Automated Production Information was not generally available;

### **Particulars**

Mr Poullas' knowledge is to be inferred from his position and responsibilities as a director and as Executive Chairman of Magnis, his knowledge and involvement in the making of Magnis' Fully-Automated Production Representation and in his drafting and/or approval, generally, of announcements released by Magnis to the ASX. [ASIC refers to all Magnis ASX announcements from 28 September 2022, and Mr Poullas' positions, roles and actions in connection with such Magnis announcements, in that period, alleged in paragraph 12 above. ASIC also refers to facts alleged in paragraphs 49, 63, 78 and 79.](#)

- (c) that the No Fully-Automated Production Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis' shares, within the meaning of ASX Listing Rule 3.1; and

### **Particulars**

As to Mr Poullas' knowledge, ASIC refers to and repeats the particulars to paragraph 103(c), *mutatis mutandis* and, as to particular (iii), refers also to Mr Poullas' participation in the drafting, approval or lodgment (including, from time to time, marking of the same as "market sensitive" when lodging with the ASX) of prior Magnis announcements, statements or publications concerning future commencement of a "fully-automated" production stage at the iM3NY Facility (ASIC refers to paragraphs 24 to 27 above).

- (d) the facts and circumstances particularised to paragraph 83(e), and by reason of the same, or alternatively, that Magnis knew, or was alternatively reckless or negligent with respect to whether, the No Fully-Automated Production Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2)(d) of the Corporations Act (inclusive of section 677(2)).

### **Particulars**

Mr Poullas' knowledge of those facts and circumstances arises from, or is to be inferred by reason of, each of the matters particularised to sub-paragraph (c) above.

- 108 Mr Poullas was directly or indirectly knowingly concerned in Magnis' contravention of section 674A(2) of the Corporations Act as alleged in paragraph 84 above by engaging, in the premises, in the following acts or omissions:
- (a) receiving on and from 28 September 2022, or in the alternative 25 January 2023, as Magnis' iM3NY director and "disclosure officer", reports and updates in connection with, and from, iM3NY, including as to its funding, equipment requirements and status of its current and anticipated production, without taking steps to cause Magnis to make disclosure of the No Fully-Automated Production Information to the market or the public ([ASIC refers to the reports and updates identified in paragraphs 37 to 43, 44\(b\)-\(d\), 45, 46\(a\), 48, 50, 52, 56 to 61, 64 to 65, 68 to 71, and 75 to 77 above](#));
  - (b) authorising, approving or acquiescing in the provision of further funding to iM3NY by Magnis in at least February, March and June 2023 (ASIC refers to paragraphs 47, 51 to 54, and 65 to 66 above);
  - (c) voting, or acquiescing, in meetings of the directors of the board of Magnis at which "Continuous Disclosure" was a standing item ~~on and~~ from September 2022 or in the alternative 25 January 2023, that Magnis not make disclosure of information concerning iM3NY, or to defer consideration of the same; and
  - (d) on and from 28 September 2022, or in the alternative 25 January 2023, preparing, approving or lodging announcements, reports or updates containing a Production Capability Representation or Operates at Scale Representation or that did not disclose the No Fully-Automated Production Information (ASIC refers ~~without limitation~~ to [the announcements identified in paragraphs 14\(b\), 28\(b\) to 28\(d\), and 31, 63, 67\(c\) and 79](#) above).

109 By reason of paragraphs 107 and 108 above, Mr Poullas:

- (a) was involved, within the meaning of section 79 of the Corporations Act, in the contraventions of section 674A(2) of the Corporations Act by Magnis as alleged in paragraph 84 above;
- (b) contravened section 674A(3) of the Corporation Act on each day Magnis contravened section 674A(2) of the Corporations Act in respect of the same conduct.



110 The contraventions referred to in paragraph 109 above:

- (a) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act; and/or
- (b) were “serious” within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

*No Production at Scale Information*

111 On and from at least 23 April 2023, Mr Poullas knew:

- (a) the No Production at Scale Information (as defined in paragraph 86(a) above);

**Particulars**

Mr Poullas’ knowledge arose, ~~without limitation,~~ from the matters identified in paragraphs 32 to 38 and 41 to 61 above, and their particulars. ASIC also refers, for the period after 23 April 2023, to paragraphs 64 to 76, and their particulars.

- (b) that the No Production at Scale Information was not generally available;

**Particulars**

Mr Poullas’ knowledge is to be inferred from his position and responsibilities as a director and as Executive Chairman of Magnis, his knowledge and involvement in the making of Magnis’ Fully-Automated Production Representation and Production Capability Representation and in his drafting and/or approval, generally, of announcements released by Magnis to the ASX. [ASIC refers to all Magnis ASX announcements from 8 February 2023, and Mr Poullas’ positions, roles and actions in connection with such Magnis announcements, in that period, alleged in paragraph 12 above. ASIC also refers to facts alleged in paragraphs 49, 63, 78 and 79 above.](#)

- (c) that the No Production at Scale Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis’ shares, within the meaning of ASX Listing Rule 3.1; and

### Particulars

As to Mr Poullas' knowledge, ASIC refers to and repeats the particulars to paragraph 103(c), *mutatis mutandis* and, as to particular (iii), refers also to Mr Poullas' participation in the drafting, approval or lodgment (including, from time to time, marking of the same as "market sensitive" when lodging with the ASX) of the Production Capability Representation on and from 12 August 2022 (ASIC refers to paragraphs 27 to 29 above).

- (d) the facts and circumstances particularised to paragraph 86(e), and by reason of the same, or alternatively, that Magnis knew, or was alternatively reckless or negligent with respect to whether, the No Production at Scale Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2)(d) of the Corporations Act (inclusive of section 677(2)).

### Particulars

Mr Poullas' knowledge of those facts and circumstances arises from, or is to be inferred by reason of, each of the matters particularised to subparagraph (c) above.

112 Mr Poullas was directly or indirectly knowingly concerned in Magnis' contravention of section 674A(2) of the Corporations Act as alleged in paragraph 87 above by engaging, in the premises, in the following acts or omissions:

- (a) receiving, as Magnis' iM3NY director and "disclosure officer", on and from 23 April 2023, reports and updates in connection with, and from, iM3NY, including as to its funding, equipment requirements, rate of production, production processes, and quality or saleability of battery cells, without taking steps to cause Magnis to make disclosure of the No Production at Scale Information to the market or the public ([ASIC refers to the reports identified in paragraphs 61, 64 to 65, 68 to 71, and 75 to 77 above](#));
- (b) authorising, approving or acquiescing in the provision of further funding to iM3NY by Magnis in at least February, March and June 2023 (ASIC refers to paragraphs 47, 51 to 54, and 65 to 66 above);
- (c) voting, or acquiescing, in meetings of the directors of the board of Magnis at which "Continuous Disclosure" was a standing item, on and from 23 April

2023, that Magnis not make disclosure of information concerning iM3NY, or to defer consideration of the same; and

- (d) on or after 23 April 2023, preparing, approving or lodging announcements, reports or updates containing at least one of the Fully-Automated Production Representation, Production Capability Representation or Operates at Scale Representation and that did not disclose the No Production at Scale Information ([ASIC refers to the announcements identified in paragraphs 14\(b\) 28\(b\) to 28\(d\), 31, 63, 67\(c\) and 79 above](#)).

113 By reason of paragraphs 111 and 112 above, Mr Poullas:

- (a) was involved, within the meaning of section 79 of the Corporations Act, in the contraventions of section 674A(2) of the Corporations Act by Magnis as alleged in paragraph 87 above; and
- (b) contravened section 674A(3) of the Corporations Act on each day Magnis contravened section 674A(2) of the Corporations Act in respect of the same conduct.

114 The contraventions referred to in paragraph 113 above:

- (a) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act; and/or
- (b) were “serious” within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

## **E.2 Primary liability for misleading or deceptive conduct contraventions**

115 Between at least 19 April 2021 and 31 March 2023, Mr Poullas:

- (a) contributed to the drafting of, or made (by comment made or quote attributed to him);
- (b) further or alternatively, approved the contents of;
- (c) further or alternatively, authorised the transmission to the ASX (for the purpose of release by the ASX of);
- (d) further or alternatively, directed the transmission to the ASX (for the purpose of release by the ASX of),

the Fully Funded Representations, Capacity Increase Funding Representation, Operates at Scale Representation and the Production Capability Representation.

### Particulars

ASIC refers to paragraphs 18 and 19 (Fully Funded Representations), 21 (Capacity Increase Funding Representation), 27 and 28 (Production Capability Representation), and 30 and 31 (Operates at Scale Representation), and particulars to the same. ASIC also refers, ~~without limitation,~~ to paragraphs [10, 12](#), 14(b), 21, [34 to 35](#), 49, ~~and 67(c), 78 and 79~~ above, ~~and will refer to various internal Magnis correspondence and policies.~~

116 Mr Poullas did not qualify, withdraw or correct, by corrective statement or otherwise (or cause Magnis to do the same):

- (a) the Fully Funded Representations, on and from 27 January 2023, despite being aware of the Further Funding Requirement Information on and from at least 25 January 2023 (ASIC refers to paragraph 80(a) above);
- (b) Operates at Scale Representation, on and from 27 January 2023, despite being aware of the Further Funding Requirement Information on and from at least 25 January 2023 (ASIC refers to paragraph 80(a) above);
- (c) the Capacity Increase Funding Representation, on and from 31 March 2023, despite being aware of the information referred to in paragraph 97(b) above; or
- (d) the Production Capability Representation, on and from 23 April 2023, despite being aware of the No Production at Scale Information (ASIC refers to paragraph 86(a) [above](#)).

117 By reason of the matters set out in paragraphs 115 and 116 above, Mr Poullas engaged personally in the conduct also engaged in by Magnis referred to in:

- (a) paragraph 90, in respect of the Fully Funded Representations;
- (b) paragraph 97, in respect of the Capacity Increase Funding Representation;
- (c) paragraph 94, in respect of the Operates at Scale Representation; and
- (d) paragraph 100, in respect of the Production Capability Representation.

in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and further or alternatively, in trade or commerce, in relation to financial services, within the meaning of section 12DA(1) of the ASIC Act.

118 By reason of the matters alleged in paragraph 117 above, Mr Poullas contravened section 1041H of the Corporations Act, further or alternatively, section 12DA of the ASIC Act on each occasion Magnis contravened those provisions as alleged in paragraphs 93, 96, 99 and 102 above.

### **E.3 Breach of director's duties**

119 At all relevant times, Mr Poullas has had a duty by virtue of section 180 of the Corporations Act, as a director of Magnis, to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director of a corporation in Magnis' circumstances; and
- (b) occupied the office held by, and had the same responsibilities within Magnis as, Mr Poullas.

120 Mr Poullas at all relevant times:

- (a) was engaged in his duties at Magnis on a full-time basis;
- (b) held the board and committee positions, or roles identified, in paragraphs 3, 7 and 12 above, with attendant duties and responsibilities, including the responsibilities pursuant to Magnis' continuous disclosure policy from time to time;
- (c) had responsibility for Magnis strategy and fund raising, and liaison with shareholders; and
- (d) was aware of the making and content of public announcements or publications made by Magnis from at least the time they were made.

121 In the premises, a reasonable person acting with care and diligence as a director of a corporation in the circumstances of Magnis as described in this statement of claim, with Mr Poullas' responsibilities, would have been aware:

- (a) in 2022 and 2023, that Magnis, as a company earning no revenue (other than via financing activities):

- (i) relied upon funds raised from investors or debt financiers for its operations, including investment into iM3NY;
  - (ii) had invested, by August 2022, significant amounts into iM3NY; and
  - (iii) would need to raise funds to provide, or in consequence of providing, further financial support to iM3NY while itself earning no revenue;
- (b) of the content and substance of public statements made by Magnis concerning iM3NY or the iM3NY Facility from time to time ~~including those~~ referred to in paragraphs 9(c), 16 and 17 above, and the Fully Funded Representations, Operates at Scale Representations, Capacity Increase Funding Representation, Fully-Automated Production Representation and the Production Capability Representation;

#### Particulars

ASIC refers to the public statements made by Magnis concerning iM3NY or the iM3NY Facility identified in: paragraphs 9(c), 16, 17, 18 and 19 and their particulars (Fully Funded Representations); paragraph 21 and its particulars (Capacity Increase Funding Representation); paragraphs 27 and 28 and their particulars (Production Capability Representation); and paragraphs 30 and 31 and their particulars (Operates at Scale Representation).

- (c) that by no later than September 2022, Magnis, via those statements (including those made via the ASX), had engendered or reinforced positive investor expectations concerning its subsidiary iM3NY's ability, via current and near-term future production and sale of battery cells produced at the iM3NY Facility, to produce, and then increase, revenue;

#### Particulars

The statements referred to in this paragraph are those referred to in paragraph 121(b) above made by no later than September 2022.

- (d) correspondingly, by September 2022, that Magnis, via those statements (including those made via the ASX), had engendered or reinforced positive investor expectations concerning Magnis' business and its current and future value, including the risks associated with Magnis' investment in iM3NY; and

### Particulars

The statements referred to in this paragraph are those referred to in paragraph 121(b) above made by no later than September 2022.

- (e) of the risk, ~~on and~~ from September 2022, in light of information becoming available to that person, that Magnis would:
- (i) make misleading statements, or fail to disclose material information concerning it, going to iM3NY's:
    - (A) battery cell production and sales; or
    - (B) ability to produce in the near-term, and then increase, revenue; and
  - (ii) correspondingly, contravene statutory disclosure obligations or prohibitions on misleading or deceptive conduct, and cause harm to the interests of Magnis including by exposing Magnis to action by shareholders or regulators and damages, costs and/or penalties.

### Particulars

The "information becoming available" was:

- (i) on and from around 28 September 2022, that the production process used by iM3NY was not fully-automated;
- (ii) on and from around 25 October 2022, that iM3NY's revised operating plan for 2023 delayed ramp-up of production and assumed an additional US\$17 million of capital expenditure by iM3NY including to replace existing manufacturing equipment;
- (iii) from around January 2023 that iM3NY did not operate a gigawatt scale battery manufacturing plant or alternatively could only do so if iM3NY received up to US\$60 million further funding;
- (iv) from around 5 February 2023, that Magnis funded iM3NY LLC in order to permit iM3NY to continue in operation while producing battery cells at an annual capacity significantly less than 1 GWh; and
- (v) on and from at least 23 April 2023, the No Production at Scale Information.

122 A reasonable person acting with care and diligence as a director of a corporation in the circumstances of Magnis as described in this [amended](#) statement of claim, with Mr Poullas' responsibilities and in receipt of the No Fully-Automated Production Information, the Further Funding Requirement Information, or the No Production at Scale Information (as applicable), would have exercised their powers and discharged their duties as a director (including voting or approval powers) such that:

- (a) Magnis did not make, and/or that it qualified, withdrew or corrected, the:
  - (i) Fully Funded Representations, on and from 27 January 2023;
  - (ii) Operates at Scale Representation, on and from 27 January 2023;
  - (iii) Capacity Increase Funding Representation, on 31 March 2023;  
and
  - (iv) Production Capability Representation, on and from 27 January 2023, or in the alternative 23 April 2023; and
- (b) Magnis disclosed to the market, the:
  - (i) Further Funding Requirement Information on and from 25 January 2023;
  - (ii) No Fully-Automated Production Information on and from 28 September 2022, or alternatively 25 January 2023; and/or
  - (iii) No Production at Scale Information on and from 23 April 2023.

123 In the premises, Mr Poullas:

- (a) engaged in conduct or omissions referred to in paragraphs 104, 108 and 112 above;
- (b) engaged in conduct referred to in paragraphs 115(a)-115(d) in respect of the Fully Funded Representations, Capacity Increase Funding Representation, Operates at Scale Representation and the Production Capability Representation referred to in sub-paragraphs 122(a)(i) to 122(a)(iv);
- (c) failed to recommend to the Magnis board or continuous disclosure committee that Magnis make disclosure to the ASX of the Further Funding Requirement Information, No Fully-Automated Production Information or No Production at Scale Information; and



- (d) failed on and from 28 September 2022 or in the alternative 25 January 2023, to request or recommend that, or otherwise cause Magnis to, qualify, withdraw or correct any existing announcement or document lodged with the ASX in connection with iM3NY or the iM3NY Facility.

124 By reason of the matters in paragraphs 119 to 123 above, on and from 28 September 2022 or in the alternative 25 January 2023, Mr Poullas:

- (a) failed to take all reasonable steps to:
  - (i) mitigate the risk that any announcement or other document approved for submission to the ASX in connection with iM3NY or the iM3NY Facility was inaccurate or misleading;
  - (ii) qualify, withdraw or correct any existing announcement or document lodged with the ASX in connection with iM3NY or the iM3NY Facility to mitigate the risk that any such announcement or document was inaccurate or misleading; and/or
  - (iii) mitigate the risk that material information concerning Magnis was not disclosed to the ASX;
- (b) caused or permitted Magnis to contravene section 674A(2) of the Corporations Act, as alleged in paragraphs 81, ~~84~~ and/or 87 above, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company;
- (c) caused or permitted Magnis to contravene section 1041H of the Corporations Act and/or section 12DA of the ASIC Act, as alleged in paragraphs 93, 96, 99 and/or 102 above, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company; and
- (d) further or alternatively, exposed Magnis to the risk of legal proceedings for contraventions of the Corporations Act and ASIC Act, legal costs and penalties,

and in so doing failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director of a corporation in Magnis' circumstances and occupied the office held by, and had the same responsibilities within Magnis as Mr Poullas, in contravention of section 180(1) of the Corporations Act.

- 125 The contraventions referred to in paragraph 124 above:
- (a) materially prejudiced the interests of Magnis within the meaning of section 1317G(1)(b)(i) of the Corporations Act;
  - (b) were “serious” within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

#### **E.4 Disqualification**

- 126 Mr Poullas was a director and the Executive Chairman of Magnis when it contravened:
- (a) section 674A(2) of the Corporations Act as alleged in paragraphs 81, [8484](#) and/or 87 above; and
  - (b) section 1041H of the Corporations Act as alleged in paragraphs 93, 96, 99 and/or 102 above.

127 On each of the occasions referred to in paragraph 126 when Magnis contravened sections 674A(2) and 1041H of the Corporations Act, Mr Poullas failed to take reasonable steps to prevent the contravention as set out in paragraphs 123 and 124 above.

- 128 By reason of:
- (a) the contraventions of the Corporations Act committed by Magnis while he was a director and the Executive Chairman of Magnis; and
  - (b) his failure to take reasonable steps to prevent the contraventions;
  - (c) further or alternatively, his contraventions of section 674A(3) of the Corporations Act while he was a director and the Executive Chairman of Magnis, as alleged in paragraphs 105, 109 and 113 above;
  - (d) further or alternatively, his contraventions of section 1041H of the Corporations Act while he was a director and the Executive Chairman of Magnis, as alleged in paragraph 118 above;
  - (e) further or alternatively, his contraventions of section 180(1) of the Corporations Act while he was a director and the Executive Chairman of Magnis, as alleged in paragraph 124 above,

Mr Poullas should be disqualified pursuant to section 206E of the Corporations Act from managing a corporation for a period that the Court considers appropriate.

129 Alternatively, by reason of his contraventions of section 180(1) of the Corporations Act as alleged in paragraph 124 above, Mr Poullas should be disqualified pursuant to section 206C of the Corporations Act from managing a corporation for a period that the Court considers appropriate.

**And the Plaintiff claims** the relief specific in the Amended Originating Process dated 13 September ~~5 July~~ 2024.



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Signed by Tom Jarvis  
Lawyer for the Plaintiff

This Amended Statement of Claim was prepared by Jason Pizer SC and Lynton Hogan, of counsel.

### Certificate of Lawyer

I Thomas Litchfield Jarvis certify to the Court that, in relation to the [Amended](#) Statement of Claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: [13 September](#) ~~5 July~~ 2024



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Signed by Tom Jarvis  
Lawyer for the Plaintiff