

SGXNET Announcement



AEM Holdings Ltd.
(Registration No. 200006417D)

RESPONSE TO QUERIES FROM THE SINGAPORE EXCHANGE REGULATION PTE. LTD. (“SGX”) IN RELATION TO THE RE-DESIGNATION OF NON-EXECUTIVE, NON-INDEPENDENT DIRECTOR TO INDEPENDENT DIRECTOR

The Board of Directors (“**Board**”) of AEM Holdings Ltd. (“**AEM**” or the “**Company**” and together with its subsidiaries, the “**Group**”) refers to the Company’s announcements dated 1 January 2022, entitled “Retirement of Independent Directors and change in composition of Board and Board Committees” and “Re-designation of Mr. Toh Ban Leng, James as Independent Director” with effect from 1 January 2022 (the “**Re-Designation**”), and wishes to provide the following responses to queries received from the SGX on 4 January 2022 and 6 January 2022.

SGX Query 1: Please provide the background for Mr James Toh’s appointment as a non-executive non-independent director in April 2018.

Company’s response:

Mr James Toh was appointed as a non-executive and non-independent director of the Company with effect from 5 April 2018, concurrent with the resignation of Mr Keith Toh (who is not related to Mr James Toh), who stepped down from the Board on the same date. Mr James Toh was then a substantial shareholder of the Company, holding 7.75% of AEM’s shares following the distribution in specie by Orion Phoenix of its shares in AEM. The Board had reviewed and considered the extensive industry experience and knowledge that Mr James Toh had and his familiarity with the Company as a director of Orion Phoenix since its investment in AEM.

SGX Query 2: Please provide an elaboration of the Board’s assessment of his independence.

Company’s response:

1. In the assessment of Mr James Toh as an independent director in the Re-Designation, the Nominating Committee of the Company (the “**NC**”) had considered the following factors:
 - (a) **Rule 210(5)(d) of the SGX-ST Listing Manual** states that a director will not be independent if (i) he is employed by the listed issuer or any of its related corporations for the current or any of the past three financial years; or (ii) he has an immediate family member who is employed or has been employed by the listed issuer or any of its related corporations for the past three financial years, and whose remuneration is determined by the remuneration committee of the listed issuer; or (iii) he has been a director on the Board for an aggregate period of more than 9 years and whose continued appointment as an independent director has not been sought and approved in separate resolutions by (i) all shareholders and (ii) all shareholders excluding shareholders who also serve as the directors or chief executive officer (and their associates).
 - (b) **Provision 2.1 of the Singapore Code of Corporate Governance 2018 (“2018 Code”)** provides that an “independent director” is one:
 - (i) who is independent in conduct, character and judgement; and
 - (ii) has no relationship with the Company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to

interfere, with the exercise of the director's independent business judgement in the best interests of the Company.

- (c) **Practice Guidance 2 of the 2018 Code** provides (inter alia) that the nominating committee and Board should consider the following circumstances in which a director should also be deemed to be non-independent:
- (i) A director who is or was, or whose immediate family member is or was, in the current or immediate past financial year, a substantial shareholder or a partner in (with 5% or more stake), or an executive officer of, or a director of, any organisation which provided to or received from the Company or any of its subsidiaries any significant payments or material services (which may include auditing, banking, consulting and legal services). As a guide, payments aggregated over any financial year in excess of S\$200,000 should generally be deemed significant irrespective of whether they constitute a significant portion of the revenue of the organisation in question.
 - (ii) A director who is or has been directly associated¹ with a substantial shareholder of the company, in the current or immediate past financial year.
2. The NC noted that Mr James Toh does not fall under any of the specific circumstances set out in Rule 210(5)(d) of the SGX-ST Listing Manual, in which a director should be deemed to be non-independent.
3. As regards Practice Guidance 2 of the 2018 Code, the NC noted that in both the current and immediate past financial year, the aggregate amount of payments received by Novo Tellus Capital Partners Pte Ltd ("**NTCP**") (of which Mr James Toh is a director and a minority shareholder holding 10% of the shares in NTCP) from the Group in each of these years did not and will not exceed S\$200,000. In respect of the financial year ended 31 December 2021, the aggregate amount of payments received by NTCP from the Group is approximately S\$100,000 and in respect of the financial year ending 31 December 2022, the aggregate amount of payments to be received by NTCP from the Group is expected to be less than S\$50,000.
4. The NC had considered the following business relationship which Mr James Toh has with Mr Loke Wai San, the Non-Executive Chairman and a Director of the Company. It was noted that Mr Loke Wai San is neither a substantial shareholder nor a person employed in an executive capacity by the Company.
- (a) As stated above, Mr James Toh is a director and minority shareholder (10%) of NTCP, in which Mr Loke Wai San is the founder and managing director, and has more than 30% shareholding interest. Mr James Toh is a non-executive director of NTCP.
 - (b) NTCP has entered into an investment advisory agreement with New Earth Group 2 Ltd ("**NEG 2**"), which is in turn the general partner of Novo Tellus PE Fund 2, L.P. ("**NTPEF 2**"), an exempted limited partnership incorporated under the laws of the Cayman Islands. Mr Loke Wai San has more than 30% shareholding interest in NEG 2 whilst Mr James Toh has less than 30% shareholding interest in NEG 2.
5. The NC also considered that Mr Tham Min Yew, a Non-Executive and Non-Independent Director on the board of the Company, is a director on the board of NTCP.
6. The NC considered the aforesaid business relationship and further considered the following:
- (i) Mr James Toh had ceased to be a substantial shareholder of the Company since 31 August 2021 and the NC noted his confirmation that he is not accustomed or under the obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of Mr Loke Wai San or Mr Tham Min Yew in relation to the corporate affairs of the Company;

¹ Under the Practice Guidance, a director is considered "directly associated" with a substantial shareholder when he is accustomed or under the obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder in relation to the corporate affairs of the company. A director will not be considered "directly associated" with a substantial shareholder by reason only of his or her appointment having been proposed by that substantial shareholder.

- (ii) Mr James Toh's Confirmation of Independence in accordance with the 2018 Code and the SGX-ST Listing Manual;
- (iii) having observed the conduct of Mr James Toh during deliberations and discussions at past Board meetings and Board committee meetings where he continued to present objective and constructive challenges to the assumptions and viewpoints presented by the management of the Company and the Board and the Board committee members respectively, the NC had assessed Mr James Toh to be independent in conduct and character and is satisfied that the existing business relationship between Mr Loke Wai San and Mr James Toh and between Mr Tham Min Yew and Mr James Toh, each as described above has not interfered with the exercise of Mr James Toh's independent business judgement in the best interests of the Company; and
- (iv) Mr James Toh has demonstrated strong independence in judgement and professionalism in the past, as well as displayed objectivity in his conduct in the discharge of his duties and responsibilities as a Director of the Company. Mr James Toh continues to provide valuable advice to the Board and Company with an independent view. This assessment has been made in accordance with Rule 210(5)(d) of the SGX-ST Listing Manual and the 2018 Code.

Despite the above, the NC believes that Mr James Toh has no relationship with the Company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgement in the best interests of the Company. Accordingly, the NC, having considered the above factors, had reviewed and considered Mr James Toh's capabilities, qualifications, experience and his commitment to the Company and was of the view that his redesignation as an independent director with effect from 1 January 2022 was appropriate for recommendation to the Board for approval.

The Board had considered the assessment and accepted the recommendation of the NC to re-designate Mr James Toh from Non-Executive, Non-Independent Director to Independent Director with effect from 1 January 2022.

SGX Query 3: Besides our queries dated 4 January 2022, we will appreciate it if the Board can also address the issue of Mr Toh's independence (as well as his suitability as the Lead Independent Director with reference to Provisions 2.1, 3.3 and 4.4 of the Corporate Governance Code 2018) and in particular, (a) disclose whether Novo Tellus is a shareholder of the Company and if so, its interest in the Company.

As at the date of this Announcement, Novo Tellus Capital Partners Pte Ltd is not a shareholder of the Company and has never held shares in the Company.

Orion Phoenix, a company incorporated in the Cayman Islands, was a shareholder holding shares in AEM. Novo Tellus PE Fund 1, L.P. ("NTPF1"), an exempted limited partnership organized under the laws of the Cayman Islands, is the sole member of Orion Phoenix. NTPF1 is managed by New Earth Group ("NEG"), the general partner for NTPF1, and therefore NEG had an interest in the securities that NTPF1 was interested in. Mr James Toh was accordingly deemed to be interested in the shares of AEM during the period where NTPF1 had an interest in the shares of AEM, by virtue of his greater than 20% ownership in NEG.

In March 2018, Orion Phoenix carried out a distribution in-specie ("DIS") of AEM shares to its limited partners, resulting in NTPF1's shareholding percentage in AEM falling from approximately 17% (just before the DIS) to approximately 4%. Thereafter, Orion Phoenix divested fully the balance approximately 4% shares in AEM in the second half of 2018 and accordingly, since the end of 2018, no longer holds any shares in AEM.

SGX Query 4: (b) Disclose its assessment as to whether Mr Toh's relationship with Novo Tellus and/or the Non-Executive Chairman could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgment in the best interest of the Company, and the basis for the assessment.

As stated above, the NC, having observed the conduct of Mr James Toh during deliberations and discussions at past Board meetings and Board committee meetings where he continued to present objective and constructive challenges to the assumptions and viewpoints presented by the management of the Company and the Board and the Board committee members respectively, had assessed Mr James Toh to

be independent in conduct and character and is satisfied that Mr Toh's existing business relationship with NTCP and/or Mr Loke Wai San, the Non-Executive Chairman, has not interfered with the exercise of Mr Toh's independent business judgement in the best interests of the Company.

The NC had further considered that:

- (i) Mr Loke Wai San is neither a substantial shareholder nor a person employed in an executive capacity by the Company;
- (ii) Mr Toh has confirmed that he is not accustomed or under the obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of Mr Loke Wai San in relation to the corporate affairs of the Company; and
- (iii) Mr Toh has demonstrated strong independence in judgement and professionalism in the past, as well as displayed objectivity in his conduct in the discharge of his duties and responsibilities as a Director of the Company, and that Mr Toh continues to provide valuable advice to the Board and Company with an independent view. This assessment has been made in accordance with Rule 210(5)(d) of the SGX-ST Listing Manual and the 2018 Code.

Accordingly, despite Mr Toh's existing business relationship with NTCP and/or Mr Loke Wai San, the NC believes that Mr James Toh has no relationship with the Company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgement in the best interests of the Company.

The NC wishes to re-iterate that its assessment has been made in accordance with Rule 210(5)(d) of the SGX-ST Listing Manual and the 2018 Code (as set out in the response to SGX Query 2 above).

SGX Query 5: (c) Disclose Mr Toh's relationships with the Company, its related corporations, its substantial shareholders or its officers, if any, which may affect his independence. If the Board is of the view that Mr Toh is independent notwithstanding the existence of such relationships, please disclose the basis for the Board's assessment.

Mr Toh's relationship with Mr Loke Wai San (the Non-Executive Chairman) and Mr Tham Min Yew (a Non-Executive and Non-Independent Director) has been disclosed in the response against SGX Query 2. Save for the above, Mr Toh has no other relationship with the Company, its related corporations, its substantial shareholders or its officers which may affect his independence.

As stated in the response against SGX Query 2 and SGX Query 4, the NC believes that, despite Mr Toh's existing business relationship with NTCP, Mr Loke Wai San and/or Mr Tham Min Yew, Mr Toh has no relationship with the Company, its related corporations, its substantial shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgement in the best interests of the Company, and hence his independence. The bases for the NC's assessment has been set out in the response against SGX Query 2 and SGX Query 4.

The NC also took into account the fact that of all the independent directors on the Board of the Company, Mr James Toh has served on the Board for the longest period of time and has intimate knowledge of the Company. He has also been the director most involved in Board committee work as compared to the other directors, having served on the Audit and Risk Management Committee and the Remuneration Committee of the Company since April 2018. On the basis of the above, the NC had assessed Mr Toh's suitability to be the lead independent director of the Company.

By Order of the Board

Chandran Nair
Chief Executive Officer
7 January 2022