UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19787

In the Matter of

NANO MAGIC INC.,

Respondent.

SUPPLEMENTAL FILING OF PETITIONER NANO MAGIC INC. ADDRESSING PREJUDICE AND TIMELINESS OF COMMISSION CONSIDERATION OF SWORN PETITION TO TERMINATE TRADING SUSPENSION ISSUED PURSUANT TO SECTION 12(K)(1)(A) OF THE SECURITIES EXCHANGE ACT OF 1934

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Date of filing: September 1, 2021

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MISCELLANEOUS AUTHORITIES

Nano Magic Inc. ("Nano Magic" or "NMGX"), by and through undersigned counsel, addresses herein the two limited issues for supplemental filing identified in the Commission's August 18, 2021 Order Requesting Additional Written Submissions of ("Aug. 2021 Order") – the prejudicial effect of the now-expired trading suspension 15 months after its imposition and legal entitlement to an expedited decision from the Commission.[1] The Commission's Aug. 2021 Order is a direct response to undersigned counsel's letter to the Secretary seeking to "ascertain formally the status of the Commissions consideration of the Petitions and Motions." Aug. 2021 Order at *1. (Letter attached at Ex. A.) As Nano Magic and the Staff of the Division of Enforcement's Philadelphia Regional Office ("Division" or "PRO") briefed fully and exhaustively the Petition and Motions, and the Commission made clear in its Aug. 2021 Order that briefing be "limited to addressing the issues set forth [in the Aug. 2021 Order],"[2] Nano Magic foregoes any background and context narrative, as the comprehensive record already before the Commission provides that information.

Nano Magic Continues to Suffer Severe Prejudice by the Commission's Failure to Resolve the Petition Despite the Expiration of the Trading Suspension.

The Commission openly acknowledges in previous opinions regarding trading suspensions, as well as in its May 2012 Investor Bulletin, the potential significant prejudice that

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[1] *Nano Magic Inc.*, Exchange Act Release No. 92703, 2021 WL 3666995 (Aug. 18, 2021) ("Aug. 2021 Order").

[2] *Id.* at *1. For clarity, reference to "Motions" relates to the two Motions that Nano Magic filed and on which the Commission has not ruled. The first, filed on May 8, 2020, was Nano Magic's Motion to Expedite Schedule for Submissions in Consideration of Sworn Petition to Terminate Trading Suspension Issued ("Motion to Expedite Schedule"). The Division did not file an Opposition and the Commission did not rule. The second, filed on May 18, 2020, was Petitioner's Motion to Compel Production of Information Before the Commission at the Time of Trading Suspension Issued ("Motion to Compel"). The Division filed its Opposition to the Motion to Compel on May 19, 2020, and Nano Magic filed its Reply Brief also on May 19, 2020. Nano Magic notes that the Aug. 2021 Order describes the Motion to Compel as a "motion to compel production of documents." In fact, while the Motion to Compel seeks production of the Action memorandum submitted to the Commission for its administrative consideration, the Motion to Compel sought all information before the Commission upon which the Commission relied in exercising its administrative authority. Aug. 2021 Order at *1. The Commission has not ruled on the Motion to Compel. https://www.sec.gov/litigation/apdocuments/ap-3-19787.xml.

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can result from a Commission-imposed trading suspension.[3] Given the subjectivity and associated broad discretion that the Commission exercises in its administrative non-factual and non-legal adjudicatory determination in imposing a trading suspension, Nano Magic retained an independent capital markets expert to assess and opine on the prejudice to Nano Magic resulting from the trading suspension. Attached hereto is the Expert Opinion of Frank Childress, a three-decade capital markets veteran with deep trading desk and market making experience and who served on the Commission's Equity Market Structure Advisory Committee (EMSAC) (Ex. B) ("Expert Report").

The succinct, explanatory and instructive Expert Report speaks for itself, confirming the grave prejudice to Nano Magic. The Expert Report reflects the "unfortunate and predictable daisy chain of events, beginning with the loss of the 'piggy-back' exemption and Caveat Emptor labeling, which, in [his] opinion, is devastating to an issuer," and in this case to Nano Magic. Expert Report at 7. Specifically, with respect to Nano Magic, Mr. Childress opined that:

(1) The prejudicial effect to date on NMGX is that the Commission's 10-day trading suspension, despite it having expired, has had the practical effect of being a 15-month plus trading suspension (as of September 1, 2021);

(2) Based on my experience as a manager and supervisor of a trading desk, a manager or supervisor of a trading desk likely would not accept the risk and challenges of filing a Form 211 in the current market environment for an issuer that lost its "piggy-back" eligibility resulting from a trading suspension;

(3) An issuer, such as NMGX, with securities eligible for trading only in the "grey sheets," would have no price discovery, no research following, nor any other capital markets sponsorship, and, therefore, would be subject to the prejudicial effect of eliminating NMGX's all-important ability to raise capital to grow its business;

[3] *E.g.*, *Apotheca Biosciences Inc.*, Exchange Act Release No. 90779, 2020 WL 7632296 (Dec. 22, 2020); *Bravo Enters. Ltd.*, Exchange Act Release No. 75775, 2015 WL 5047983 (Aug. 27, 2015); *Efuel EFN Corp.*, Exchange Act Release No. 86307, 2019 WL 2903941 (July 5, 2019); *Immunotech Labs., Inc.*, Exchange Act Release No. 75790, 2015 WL 5081237 (Aug. 26, 2015); "Investor Bulletin: Trading Suspensions," SEC Office of Investor Education and Advocacy (May 2012), available at https://www.sec.gov/files/tradingsuspensions.pdf.

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(4) Based on my review of the most recent 34 Act reports (annual report on Form 10-K and first quarter report on Form 10-Q) for NMGX, it is my opinion that NMGX appears to be current (as of the date of this Opinion) in its periodic reporting, is reporting revenue growth reflecting its viability as a corporation, offers product(s) in the retail goods markets reflecting its legitimacy, and, but for the uncertainty created by the unresolved imposed trading suspension, should be but is otherwise too great a risk to garner investment banking and research interest; and

(5) The Commission, by leaving unresolved NMGX's Petition, which in turn appears to have resulted in OTC Markets leaving in place the "Caveat Emptor" designation, essentially placed NMGX in an unending form of trading and regulatory purgatory.

Id. at 7-8.

Of note, the Commission's Aug. 2021 Order cited to *Apotheca Biosciences* for the proposition that the Commission may "provide appropriate relief even if the suspension expired while the petition was pending," as here.[4] In *Apotheca Biosciences*, the Commission specifically pointed out that "the trading suspension did not necessitate that the Company suspend operations; it temporarily suspended trading in the company's securities."[5] Not only did Nano Magic not suspend operations, but Nano Magic's current reports through the first quarter of 2021, as referenced in the Expert Report, also reflect compelling revenue growth and product distribution in big box retailers. Expert Report at 6. Notwithstanding Nano Magic's pressing forward its corporate operations with the Commission having tied a noose around Nano Magic's neck, Nano Magic's current stock price quote is $0.001. *Id.* at 6. The notion that the Commission advanced in *Apotheca Biosciences* that "current shareholders and prospective investors [nevertheless] may buy and sell Apotheca's shares" reflects a detachment from and disregard for the reality of the tenuous lifecycle of legitimate companies that are not yet sufficiently robust to be listed on an exchange. The Commission's trading suspension alone is the sole cause of the prejudice to Nano Magic, aptly-characterized in the Expert Report, as

[4] Aug. 2021 Order at *1, note 4.
[5] *Apotheca Biosciences*, 2020 WL 7632296, at *10.

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among securities relegated to trading only in the "grey sheets," with no price discovery, no research following, and no appetite for capital markets sponsorship.[6]

Finally, the Commission, by its own May 2012 investor education bulletin, projects for investors the prejudice that attaches to Commission-imposed trading suspensions.[7] The Commission highlights, *inter alia*, that a trading suspension "may raise serious questions and cast doubts about the company in the minds of investors," and those who do trade in the securities of a post-trading suspension securities of an issuer "will do so only at significantly lower prices."[8] The Commission's fatalistic projection for post-trading suspension securities pricing points out not only that the absence of a market to trade shares renders a security worthless, but investors also "may want to contact their financial or tax advisers to determine how to treat such a loss on their tax returns."[9] Notwithstanding Nano Magic's corporate viability, the company's trading price of one-tenth of one cent ($0.001) casts a spotlight on the harmful pricing effect of the misplaced trading suspension of Nano Magic. Moreover, the Commission also describes a broker-dealer's lack of "confidence" in an issuer, the securities trading of which the Commission suspended, as resulting potentially in a decision by "a broker-dealer [] not [to] publish a quote for the company's stock.[10] In reality, as reflected in the Childress Expert Report, the issue goes well beyond the possibility of not publishing a quotation to the true effect of

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[6] As noted in the Petition (at 29), and fully consistent with the opinion in the Expert Report, empirical, albeit old, studies examining the impact of trading suspensions on equity markets reveal that trading suspensions in fact coincide with substantial devaluations of the suspended securities, and significant and prolonged negative abnormal returns are present in the post-trading suspension period. Howe and Schlarbaum, "SEC Trading Suspensions: Empirical Evidence," 21 JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS 3 at 323-333, Cambridge Univ. Press (April 2009). *See* Ferris, Kumar and Wolfe, "The Effect of SEC Ordered Suspensions on Returns, Volatility, and Trading Volume," 27 THE FINANCIAL REVIEW 1 at 1-34 (1992).

[7] "Investor Bulletin: Trading Suspensions," SEC Office of Investor Education and Advocacy (May 2012), available at https://www.sec.gov/files/tradingsuspensions.pdf.

[8] *Id.*, at 3.

[9] *Id.*, at 3.

[10] *Id.*, at 2.

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broker-dealers black-balling and viewing as toxic the idea of filing a Form 211, as has been Nano Magic's experience.

Prejudice to Nano Magic from the Commission's trading suspension has been real and palpable and continues to manifest a punitive effect.

Fundamental Fairness Dictates that Nano Magic is Entitled to an Expedited Decision, Particularly Given that the Company Filed a Motion to Compress all Briefing and a Decision Into the 10-Day Trading Suspension Period.

The Commission's second briefing issue of whether there is any "legal entitlement [] to an expedited decision outside the ordinary course of the Commission's decisional processes" highlights a serious structural problem with the Commission's 10-day trading suspension authority. There is no legal entitlement, despite the fact that a trading suspension operates like a Temporary Restraining Order in federal court. What makes this case highly unusual is that the Commission's own briefing schedule, as set forth in its May 8, 2020 scheduling order, openly acknowledged "the detail provided in NMGX's petition and supporting exhibits, the apparent narrowness of the factual matters in dispute, and NMGX's request for expedited consideration."[11] May 8, 2020 was six calendar days before expiration of the trading suspension. Within four hours of the Commission issuing the scheduling order, Nano Magic filed a "Motion to Expedite Schedule for Submissions …" ("Motion to Expedite") proposing an alternative timetable that would have enabled the Commission to issue a decision prior to the 11:59 PM, May 14, 2020 expiration of the trading suspension. The Division did not oppose the Motion to Expedite. The Commission, to this day, did not rule on the timely-filed Motion.

The Commission's more than 15-month delay in deciding the instant Petition and the two Motions filed in the proceeding has operated as an end-around of the United States Supreme Court's unanimous decision in *SEC v. Sloan,* 436 U.S. 103 (1978). In *Sloan*, the SEC construed

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section 12(k) of the Exchange Act as permitting an indefinite series of trading suspensions, despite the express language of the Exchange Act providing that the Commission only had authority to suspend trading for "a period not exceeding 10 days." *SEC v. Sloan*, 436 U.S. 103, 111-12 (1978) (quoting 15 U.S.C. §78*l*(k) (1976 ed.)) The Supreme Court rejected the SEC's interpretation. "While perhaps not an impossible reading of the statute, we are persuaded it is not the most natural or logical one. The duration limitation rather appears on its face to be just that-a maximum time period for which trading can be suspended for any single set of circumstances." *Id.* at 112. This ruling protected both the Congressional mandate and the rights of the "issuer, its shareholders and investors." *Id.* Finally, the Court described the Commission's right to suspend trading summarily as "an awesome power with a potentially devastating impact on the issuer." *Id.*

Significantly, the Supreme Court in *Sloan* stated that "[o]n its face and in the context of this statutory pattern, § 12(k) is more properly viewed as a device to allow the Commission to take emergency action for 10 days while it prepares to deploy its other remedies, such as a temporary restraining order, a preliminary or permanent injunction, or a suspension or revocation of the registration of a security", and an interpretation to the contrary "would render unnecessary to a greater or lesser extent all of these other admittedly more cumbersome remedies which Congress has given to it." *Id.* at 114-15. The Court rejected the Commission's argument that "injunctions and temporary restraining orders are insufficient because they take time and evidence to obtain and because they can be obtained only against wrongdoers and not necessarily as a stopgap measure in order to suspend trading simply until more information can be disseminated into the marketplace." *Id.* at 115. The Supreme Court's reasoning was "Congress,

[11] *Nano Magic*, Exchange Act Release No. 88841, 2020 WL 2310946 at *2 (May 8, 2020).

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in weighing the public interest against the burden imposed upon private parties, has concluded that 10 days is sufficient for gathering necessary evidence."[12] *Id.*

The Supreme Court's allusion in *Sloan* to other remedies that the Commission can access, preliminary injunctive relief in particular, underscores the due process implications of what effectively has been the imposition of an indefinite trading suspension imposed on Nano Magic under Section 12(k). Indeed, Section 12(k) cannot be interpreted "to be a panacea for every type of problem which may beset the marketplace." *Id.* It is a fundamental precept of constitutional law that:

> [t]he right to a prior hearing has long been recognized . . . under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing appropriate to the nature of the case, and depending upon the importance of the interests involved and the nature of the subsequent proceedings (if any), the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect.

Fuentes v. Shevin, 407 U.S. 67, 82 (1972) (internal quotation marks and citations omitted). And, in the context of preliminary injunctive relief, "a temporary restraining order continued beyond the time permissible under Rule 65 must be treated as a preliminary injunction, and must conform to the standards applicable to preliminary injunctions." *Sampson v. Murray*, 415 U.S. 61, 86, 94 (1974). Finally, it is axiomatic that all litigants are entitled to "the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

The Commission's logical response to the end-around of *Sloan* argument is that investors could have traded Nano Magic stock and market makers could have filed a Form 211. That

[12] Notwithstanding this language, the Commission also should not lose sight of the PRO's attempt to surreptitiously slip into its Opposition to the Petition facts the PRO learned not only after the imposition of the trading suspension but also after Nano Magic filed the Petition and the Commission issued its scheduling order. Information obtained after the Commission imposed the trading suspension cannot possibly have constituted a component of "all the information that was before the Commission at the time of the Trading Suspension Order's issuance." 15 U.S.C. § 78l(k)(5). Most triers of fact would find such a blatant attempt to manipulate an official proceeding's record sanction-worthy.

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argument rings hollow in the real world of the small cap market. Using the long-standing test applied by the Division and the Commission of looking at the "economic substance of a transaction" in making an enforcement determination, here the Commission only need stare directly at the actual economic effect of the trading suspension. Call it what the Commission wishes, but the reality is September 1, 2021 effectively began the 15th month of the trading suspension and its punitive and prejudicial effects on Nano Magic.

The Commission should look to its own Rules of Practice governing SEC administrative law judges ("ALJs") to recognize the patent unfairness associated with the protracted delay in ruling on the Petition and Motions. The timetable for ALJs to issue an initial decision is within one of 30, 75 or 120 days after either post-hearing briefing or the completion of briefing if there is no hearing. 17 C.F.R. § 201.360(a)(2). The Commission's standard for determining when the initial decision is due is "after consideration of the nature, complexity and urgency of the subject matter, and with due regard for the public interest and the protection of investors." *Id.* In issuing the trading suspension, the Commission certainly acted with urgency as to "the subject matter," after having been misled into forming an "opinion that the public interest and the protection of investors require a suspension of trading."[13] In the language of the rule governing initial decisions by ALJs, there was no more urgent "subject matter" for Nano Magic's investors than resolving the trading suspension with the same level of expeditiousness with which the Commission acted to impose the trading suspension *ab initio*.[14] May 28, 2020 is the date on which full briefing was before the Commission. From May 28, 2020 to but not including September 1, 2021, 461 days have passed; that is one year, three months and four days. Or, in the lexicon of the Commission's expectation for ALJ initial decisions, that is more than 15 – 30

[13] *Nano Magic*, Exchange Act Release No. 88841, 2020 WL 2310946 at *1 (May 8, 2020).
[14] *See* Closing Submission at 30.

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days, more than six – 75 days, and almost four – 120 days. Sadly, the Commission abdicated its responsibility to the same investors the Commission claimed to protect.

Fundamental fairness, not a legal entitlement, is why the Commission's responsibility to decide the Petition and Motions long passed. Congress will need to provide the legal entitlement. Testimony before a House of Representatives Financial Services Committee Subcommittee hearing in September 2020, presented the issue of the need for a timeframe for the Commission to decide a disputed 10-day trading suspension:

> Beyond the[] undeniable vital areas of concern [around insider trading and stock option grants], I suggest to the committee, respectfully, that COVID-19 solutions-related capital markets activities also should invite scrutiny of several other issues....Second, is the SEC's 10-day trading suspension authority, which operates like a court-imposed temporary restraining order. However, it is not an enforcement action, but operates as an administrative arrow through the heart of legitimate small entrepreneurial public companies. For trading suspensions that issuers contest, the SEC takes months if not longer to resolve the challenge. Legislation should dictate a precise and narrow timeframe for making the decision.[15]

Finally, Nano Magic did everything possible from the outset to impress on the Commission the need for expeditious resolution of the trading suspension. The 10-day trading suspension became effective on Friday, May 1, 2020. On Wednesday, May 6, 2020 at 3:13 P.M. EDT, Nano Magic filed its Petition. On Thursday, May 7, 2020, Nano Magic filed a Motion for Expedited Consideration. Within four hours of the Commission issuing its scheduling order on May 8, 2020 for additional written submissions,[16] Nano Magic filed its Motion to Expedite Schedule. The Division did not file an opposition to Nano Magic's Motion to Expedite Schedule. Practically and procedurally, there was nothing more that Nano Magic could have done to impress on the Commission the gravity of the matter for Nano Magic and the urgent need for

[15] *Insider Trading and Stock Option Grants: An Examination of Corporate Integrity in the COVID-19 Pandemic, Before the Subcomm. on Investor Protection, Entrepreneurship, and Capital Markets of the House Comm. on Financial Services*, 116th Cong., 2nd Sess., 9-10 (Sept. 17, 2020) (statement of Jacob S. Frenkel, Chair,

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resolution given the misinformation and incomplete information that resulted in the trading suspension. The Commission did not rule on the Motion to Expedite Schedule, and Nano Magic has no way even of knowing whether the Commissioners actually saw the Motion in order to consider whether to adopt the unopposed proposed timetable for expeditious resolution.

Also unresolved is Nano Magic's Motion to Compel, which sought information highly relevant to the integrity of the PRO's Information Before the Commission at the Time of the Trading Suspension and the veracity of the Staff's Declaration accompanying that filing. Nano Magic's Motion to Compel sought information that, if granted, reasonably would have made even more compelling the arguments in Nano Magic's Closing Submission. Given that the record available to Nano Magic extant at the time of preparing and submitting the Closing Submission enabled Nano Magic to argue that the PRO omitted to convey to the Commission material exculpatory information,[17] it stands to reason that timely consideration of Nano Magic's Motion to Compel, if granted, could have provided Nano Magic with even more devastating repudiation of the PRO's contentions. In connection with the Motion to Compel, Nano Magic again conveyed urgency to the Commission. The Division filed its Opposition to the Motion to Compel on May 19, 2020, and Nano Magic filed its Reply Brief the same day. The Commission did not rule on the Motion to Compel, thereby depriving Nano Magic of access to what likely is material exculpatory evidence for the Commission's consideration.

In sum, the two Motions that the Commission has not decided -- one on the issue of rendering an expedited decision and the other challenging the integrity of the information pending before the Commission -- are very much relevant to the prejudicial effect of the

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Government Investigations and Securities Enforcement Practice, Dickinson Wright) viewed at https://www.govinfo.gov/content/pkg/CHRG-116hhrg43503/html/CHRG-116hhrg43503.htm.

[16] *Nano Magic*, Exchange Act Release No. 88841, 2020 WL 2310946 (May 8, 2020).

[17] Closing Submission at 18-23.

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Commission not giving expedited decisional consideration to the issues presented by and impacting directly Nano Magic. No federal court acting responsibly would have ignored such critical motions. Instead, the failure to decide these Motions and the Petition itself expeditiously, particularly in light of the compelling facts presented, has had the impact of hitting a "kill switch" for Nano Magic. The "kill switch" appears designed to drive the Company to a slow death to avoid making the rightful unprecedented decision to grant a Petition, set aside a trading suspension, restore the piggy-back exemption and provide other equitable relief. That same "kill switch" undermined an unopposed Motion for an expedited timeline that called for resolution prior to expiration of the trading suspension and prevented resolution of an issue never before considered regarding compelled production of a redacted action memorandum in a non-enforcement proceeding.[18]

Conclusion

The Commission's own vague and imprecise – yet threatening – language announcing the trading suspension underscores how the impact of the trading suspension on Rule 15c2-11 effectively turned a 10-day trading suspension of Nano Magic into a trading suspension of prejudicial infinite duration, conflicting directly with and acting as an end-around to the Supreme Court's decision in *Sloan*. The Commission's language announcing the trading suspension read:

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[18] Nano Magic's Motion sought, *inter alia*, a redacted copy of the Action Memorandum so that Nano Magic can view "all the information" before the Commission, redacted to provide only the facts before the Commission. The narrow request for a redacted copy is to comply fully with footnote 5 of the Commission's Order Requesting Additional Written Submissions and was to enable Nano Magic to address "the information that was before the Commission" in Nano Magic's final written submission of May 28, 2020. Rule of Practice 550(b) clearly provides that the Commission may resolve petitions to terminate a trading suspension "on the facts presented in the petition and *any other relevant facts known to the Commission.*" *Bravo Enters. Ltd.*, Exchange Act Release No. 75775, 2015 WL 5047982, at *20 (Aug. 7, 2015), citing Rule of Practice 550(b), 17 C.F.R. § 201.550(b). For purposes of this submission, Nano Magic acknowledges that the case law protects the non-discoverability of an action memorandum attendant to an enforcement action. *E.g., SEC v. Somers*, No. 3:11-cv-00165-H, 2013 WL 4045295, at *2 (W.D. Ky. Aug. 8, 2013) (holding that an SEC action memorandum and associated documents "are created in anticipation of litigation, and at the very least, the attorney work product privilege protects them"). As the Commission readily and consistently acknowledges, a trading suspension is not an enforcement action. U.S. SEC. & EXCH. COMM'N,

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> Further, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, **no quotation may be entered unless and until they have strictly complied with <u>all</u> of the provisions of the rule. If any broker or dealer has any questions as to whether or not it has complied with the rule it should <u>not</u> <u>enter</u> any quotation.... If any broker or dealer is uncertain as to what is required by Rule 15c2-11, it should <u>refrain</u> from entering quotations** relating to NMGX's securities **until such time** as it has familiarized itself with the rule and **is certain that <u>all</u> of its provisions have been met**. If any broker or dealer enters any quotation that is in violation of the rule, the Commission will consider the need for prompt enforcement action.[19] (emphasis added)

For a broker-dealer, without the benefit of the piggy-back exemption to resume making a market, that broker-dealer first must comply "'strictly" with "all" provisions of Rule 15c2-11 and should "refrain from making a market until that broker-dealer is "certain that" it has "met" <u>all</u> provisions of the Rule. The Commission then states that "it will consider the need for prompt enforcement action" against the broker-dealer, all while making it impossible for a market maker to assess reasonably what information is required to comply with Rule 15c2-11. Of course, consistent with the Expert Report, no broker-dealer would take such a risk in connection with a small cap issuer. The end result is the continuing punitive and prejudicial effect that Nano Magic has experienced as a result of the Commission-imposed 10-day trading suspension more than 15 months ago.

The Commission, more often than not, "exercise[s its] discretion to suspend trading carefully."[20] In the case of Nano Magic, not only did the PRO mislead the Commission, but the Commission also did not exercise carefully its "awesome" and powerful discretion, likely influenced by the Spring 2020 wave of COVID-19 solutions trading suspensions. Whether correct or incorrect, what triggered Counsel's letter for Nano Magic was the appearance that the unending delay may result in achieving the regulatory death sentence that the PRO sought to

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Information Regarding Trading Suspensions and COVID-19, https://www.sec.gov/files/information-regarding-trading-suspensions-covid-19_1.pdf.

[19] *Nano Magic Inc.*, Exchange Act Release No. 88789, 2020 WL 2097884 (April 30, 2020).

[20] *Apotheca Biosciences*, 2020 WL 7632296, at *2.

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achieve by inducing the Commission to impose a trading suspension where, as here, none was warranted. Not only do this Petition and the associated motions, as the Commission reflected expressly in its Aug. 2021 Order, "present significant merits and procedural issues, which the Commission is currently considering,"[21] but this case also presents an unprecedented test for the fairness and integrity of Commission decision-making. Never – never – before has the Commission set aside a substantive merits-based Petition to terminate a trading suspension and restored the piggyback exemption and provided other relief.[22]

It is unlikely that the Commission may again be presented with such compelling facts to do so, particularly given that manipulative or anomalous trading was not before the Commission and current and accurate issuer information also was not before the Commission. If the Commission, after deliberation, would decide not to grant the Petition, terminate the trading suspension, restore the piggy-back exemption and provide other equitable relief, then the Commission will send a clear message to the market that its language of being able to correct its prior error suspending trading is little more than a string of empty words, and a Commission trading suspension truly is nothing more than a veiled permanent punitive enforcement action. Or, in the words of Mr. Childress, a trading suspension ensures a lifetime placement in "trading and regulatory purgatory."

[*signature block on following page*]

[21] Aug. 2021 Order at *1.

[22] Counsel has found instances when the Commission has set aside trading suspensions where the Commission erroneously believed that an issuer was a delinquent filer but in fact had filed a Form 15. *E.g. Encore Clear Energy, Inc.* (Commission withdrew a trading suspension before its expiration where the Commission mistakenly suspended trading in a security that five years earlier had filed a Form 15 to terminate voluntarily the registration of its securities under section 12(g) of the Exchange Act.) 77 Fed. Reg. 74520 (Dec. 14, 2012), 2012 WL 6185728 (Dec. 12, 2012).

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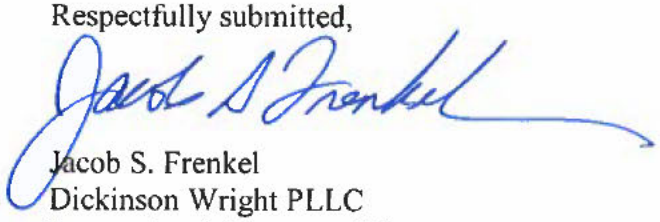
Respectfully submitted,



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Dated: September 1, 2021

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Statement of Electronic Filing and Certificate of Service

The undersigned filed with the Commission this Supplemental Filing Addressing Prejudice and Timeliness of Commission Consideration of Sworn Petition to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 electronically via eFap filing system and served or delivered courtesy copies to the following parties and other persons entitled to notice in the manner set forth to the right of each served party:

Securities and Exchange Commission
c/o Hon. Vanessa A. Countryman, Secretary (via e-mail)
100 F St., N.E.
Washington, DC 20549

Division of Enforcement
Philadelphia Regional Office
Securities and Exchange Commission
Attn: Jennifer Barry, Esq. (via e-mail)
Attn: Christopher Kelly, Esq. (via e-mail)
Attn: Kingdon Kase, Esq. (via e-mail)
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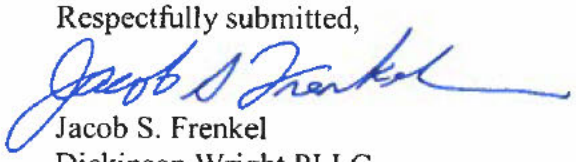
Dated: September 1, 2021

Respectfully submitted,



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UNITED STATES OF AMERICA
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NANO MAGIC INC.'s INDEX OF ATTACHMENTS

Exhibit	Description
A	Letter from Jacob S. Frenkel to Vanessa A. Countryman, Secretary, Securities and Exchange Commission (Aug. 6, 2021)
B	Expert Opinion of Frank Childress (Aug. 25, 2021)

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Exhibit A

NANO MAGIC EXHIBIT A

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August 6, 2021

via e-mail to countrymanv@sec.gov
and via e-mail to apfilings@sec.gov
Hon. Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F St., N.E.
Washington, DC 20549

Re: Trading Suspension of securities of Nano Magic, Inc. (NMGX)
Admin. Proc. File No.: 3-19787
Subject: Status of Matter Pending Before Commission

Dear Ms. Countryman:

On May 1, 2020, The Commission's 10-day trading suspension of the securities of Nano Magic, Inc. ("Nano Magic") became effective. On May 7, 2020, Nano Magic filed a Petition to Terminate Trading Suspension ("Petition"). On May 14, 2020, the trading suspension expired. As of May 27, 2020, and consistent with the Commission's Order of May 8, 2020 Requesting Additional Written Submissions, all briefing by Nano Magic and the Division of Enforcement was in the record and pending before the Commission for ruling. As of this date, into the 15th month of this matter being submitted fully, the Commission has not issued a ruling on the Petition or on two Motions (Expedite Schedule filed on May 8, 2020 and Compel Production filed May 18, 2020) that comprise the record.

This inquiry to the Commission, through the Secretary, is to ascertain formally the status of the Commission's consideration of the Petition and Motions. Should the Commission continue to decline to decide this matter, then Nano Magic may seek a Writ of Mandamus from the United States Court of Appeals for the District of Columbia Circuit.

Thank you for your attention to this inquiry.

Very truly yours,

Jacob S. Frenkel

Jacob S. Frenkel

c: Christopher Kelly, Esq. (to kellycr@sec.gov)
Jennifer Barry, Esq. (to barryj@sec.gov)
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Exhibit B

NANO MAGIC EXHIBIT B

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BEFORE THE SECURITIES AND EXCHANGE COMMISSION
Admin. Proc. File No. 3-19787

In the Matter of

NANO MAGIC INC.

EXPERT OPINION of FRANK CHILDRESS

This expert opinion is in response to the Commission's Order Requesting Additional Written Submissions dated August 18, 2021. My opinion relates to the limited issue identified by the Commission for supplemental briefing of whether and how Nano Magic Inc. (NMGX) has been prejudiced by the pendency of its petition given that the trading suspension has now expired.

In order to address the issue of how NMGX has been prejudiced by the pendency of the now expired trading suspension, NMGX, through its counsel, has retained the services of Frank Childress of Oyster Consulting, LLC. I am qualified to address this issue and provide an expert opinion by virtue of my following qualifications.

Qualifications

I have been involved in the securities industry since December of 1983, shortly after graduating from college with a Bachelor in Business Administration. My experience in the industry has been continuous and includes operations, fixed income and equity trading, as well as capital markets origination and products distribution.

I joined A.G. Edwards and Sons, in St. Louis, Missouri in 1983 in an operations role administering the transfer of IRAs and 401k rollovers. I was promoted in 1984 as a trader in the Fixed Income Department trading government bonds and mortgaged backed securities. By 1986, I had migrated to trading corporate bonds and ultimately to manage the A.G. Edwards Corporate Bond Trading Desk. As manager of the Corporate Bond Trading Desk, I was responsible for trading, the firm's positions in corporate bonds, and the firm's profit and loss (P&L). A critical aspect of managing the P&L was understanding corporate credits, their financial well-being, as well as their reputational history.

My career was exposed to the equity markets when I was elected as President of the St. Louis affiliate of the Security Traders Association (STA). Locally, the STA was a balanced organization representing both fixed income and equity traders; nationally, the STA was predominately an equity focused organization. Consequently, I became familiar with equity market structure issues and impacts to trading and public customers. This exposure and advocacy for the equity markets led to a career transition to assist in the management and supervisory structure of a rapidly growing equity trading desk during the internet boom of the late 1990s.

At AG Edwards, I transitioned to the management team of the Nasdaq Trading, where I led several management objectives including a wholesale review of policies and procedures, employee

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performance reviews, and significant hiring of the team that would lead the group for the next 20 plus years. Upon the retirement of the head of Nasdaq Trading, I was selected as Director of Nasdaq Trading to manage the group. The Nasdaq Trading Desk had two distinct businesses: (1) the management of retail order flow managed on an agency basis, and (2) a market making business servicing institutional clients and supporting A.G. Edwards' capital markets – investment banking and research – efforts. As head of Nasdaq Trading, I served on the firm's Commitment Committee and as chair of the firm's Best Execution Committee.

In 2007, Wachovia Bank announced it was acquiring A.G. Edwards and merging it with its broker-dealer affiliate Wachovia Securities, the retail-focused broker-dealer of the bank. Wachovia was subsequently acquired by Wells Fargo Bank, and the broker-dealer was ultimately re-branded as Wells Fargo Advisors (WFA). Through the transitions and consolidation, I was named as the Managing Director of the Equity Services Group, responsible for the trading of equities, options, and futures. I also was asked to manage the Capital Markets Services area responsible for all capital markets distribution of products introduced from Wells Fargo Securities – the institutional-capital markets broker-dealer of the bank, WFA's Product Committee, and WFA's Commitment Committee.

In this role, I also served as a member of the Product Committee and Commitment Committees and Chairman of the firm's Best Execution Committee. The Product Committee reviewed all products introduced to the firm from either Wells Fargo Securities, Wells Fargo Bank, or an external strategic partner. The Commitment Committee provided a due diligence review for initial public offerings (IPOs), follow-on and secondary offerings, private placements, Closed End Funds (CEFs), and other offerings, and determined whether these products were appropriate for retail investors. Essentially, for more than 20 years, I was involved directly or in a supervisory capacity in determining whether a broker-dealer should permit or authorize trading, dealing or making a market in various securities, and the standards and criteria to apply in the determination.

In March 2020, Wells Fargo went through a series of reorganizations, and I decided to leave the firm. When I completed my commitments and obligations, I began consulting with Oyster Consulting, LLC. Attached to this Opinion is my detailed Professional Experience *vitae*.

Professional Licenses - FINRA

I currently have a Series 7 - General Securities Representative, Series 24 – General Securities Principle, Series 55 – Equity Trader Qualification, Series 63 – Uniform Securities Agent State Law Exam.

Industry Experience and Leadership

I was the President of the Security Traders Association of St. Louis. The Security Traders Association is a national organization advocating for industry traders, market structure, and retail and institutional clients. While a member of STA, I helped establish the Retail Advisory Committee (RAC), advocating on behalf of retail investors.

As a senior leader within A.G. Edwards, I was selected to attend The Securities Industry Association Institute (SIA now the Securities Industry and Financial Markets Association - SIFMA) the leading industry executive education program (1998 -2001) at The Wharton School (University of

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Pennsylvania). This supports leadership and industry initiatives while providing a platform for promoting the highest levels of integrity, ethics, and professional excellence.

With A.G. Edwards, Wachovia, and Wells Fargo (2004 – 2011), I served on the SIFMA Markets and Trading Committee addressing regulatory and market structure issues.

I was nominated and served as a member (2012 – 2016), and ultimately President, of FINRA's Market Regulation Committee under the leadership of Tom Gira, Executive Vice President, Market Regulation and Transparency Services. The Market "Reg" Committee was composed of industry leaders in legal, compliance, and trading with FINRA's team to establish framework and review proposed and existing rules.

Speaking Engagements

In 2015, the Securities and Exchange Commission (SEC) established the Equity Market Structure Advisory Committee (EMSAC) to "provide the Commission with diverse perspectives on the structure and operations of the U.S. equities markets, as well as advice and recommendations on matters related to equity market structure." In February 2016, I was asked to serve on a panel to address Chairperson Mary Jo White, Director of Trading and Markets Steve Luparello, and the EMSAC regarding my perspectives on the current state of equity market structure as it relates to the retail investor.

Industry Designation

In early 2021, I completed the FINRA Dispute Resolution coursework and background check to qualify as FINRA Arbitrator.

Materials Reviewed

In connection with this matter, I have reviewed the following materials:

1. Sworn Petition to Terminate Trading Suspension, May 6, 2020
2. Nano Magic, Memo of Points and Authorities, May 18, 2020
3. Nano Magic, Closing Submission, May 28, 2020
4. Admin. Proc., Letter to Hon. Vanessa A. Countryman, Secretary, August 6, 2021
5. SEC Supplemental Briefing Order, August 18, 2021
6. Wall Street Journal, Risk & Compliance Journal, "Tech Company Cries Foul on Pandemic Trading Suspension," by Dylan Tokar, June 4, 2020
7. Amazon website: Amazon.com: Nano Magic Anti Fog Safety Cloths - 5 Pack : Health & Household
8. Lowe's website: lowes.com: Nano Magic Anti Fog 5-Pack Cloth Lens Cleaning Cloth
9. Walgreen's website: Nano Magic | Walgreens
10. OTC Markets website: OTC Markets | NMGX | Overview | OTC Markets
11. OTC Markets Financial link: OTC Markets | NMGX | Financials | OTC Markets
12. First Quarter (Q1) 2021 Form 10-Q: Nano Magic Holdings Inc. (otcmarkets.com)
13. Year-End 2020 Form 10-K: Nano Magic Holdings Inc. (Form: 10-K, Received: 05/28/2021 17:25:18) (otcmarkets.com)
14. Colonial Stock Transfer, 15c2-11 Submissions, "Red Flags": https://www.colonialstock.com/15c211.htm
15. OTC Markets, OTCQX and OTCQB: https://www.otcmarkets.com/corporate-services/get-started

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Summary of Analysis and Opinions

Over an extended career, I have seen a tremendous change in the dissemination of information. Information drives knowledge, and knowledge drives intelligent investing. My early days as a corporate bond trader exposed me to credit risk and event risk. I learned early on that nothing can be more damaging to an issuer than a reputational hit. As I discuss below, among the many effects of the trading suspension of NMGX is the reputational hit that NMGX suffered, as well as the apparent attendant inability to secure a market maker to resume making a market in NMGX stock.

The Securities and Exchange Commission (SEC) and its primary broker-dealer regulator, FINRA, have rules and safeguards dedicated to investor protection. For Over the Counter (OTC) securities, or securities not traded on a national exchange (NYSE, NASDAQ), the SEC enacted SEC Rule 15c2-11 (in 1971) to provide quoting rules for broker-dealers to provide safeguards for retail investors. Form 211 is a robust form providing information about a company that a broker-dealer must submit to initiate quotes on a stock not already quoted. The Form 211 requires financial and other relevant information that a broker-dealer must submit, and attest to its accuracy. The Rule provides a provision that allows for other broker-dealers to quote the stock once the initial broker-dealer files the Form 211. That provision is known as the "piggyback" exception. In the original Rule, there was no requirement for periodically updated financial information for the security to be continuously quoted. This piggyback exception was critical to the continuous quoting of a security, providing important price discovery for retail investors and the market at large.

In November 2020, the SEC adopted amendments to Rule 15c2-11 that require, among other things, that documents and information (including financial) be current and publicly available to continue to be quoted on a qualified interdealer quotation system (IDQS), for example OTC Markets. Issuers that cannot comply with the new rules will be relegated to a lower tier quoting system, for example the "Grey" or "Expert" markets. There are no market makers or publicly disseminated quotes for these securities. Many broker-dealers restrict purchases or impose other restrictions for trading in these securities. This amendment to Rule 15c2-11 goes into effect September 29, 2021.

FINRA rules prohibit issuers from being able to offer incentives for filing a Form 211 to prospective market makers. Interestingly, in at least one transfer agent's guidance on filing Form 211s, that transfer agent identifies "Trading Suspensions" as the # 1 "Red Flag" for brokers to "scrutinize issuer information." https://www.colonialstock.com/15c211.htm

From my experience as a manager of a market making desk and an "agency" execution desk for the benefit of (primarily) retail clients, the absence of an available "piggyback" exemption to enable a market maker to publish quotations and make a market for a security creates a significant if not practically insurmountable challenge for market makers. In my opinion, most firms would prefer not to submit at all a Form 211, attesting to the financials of the issuer. It follows from that disinclination that few if any firms would submit a Form 211 after an issuer has become the subject of a SEC trading suspension.

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Trading desks are conditioned to evaluate risk versus reward. The Form 211 is burdensome to complete and subjects the filing firm with undo risk and exposure to regulatory inquiry. In my current role as an independent consultant I review, opine, and make recommendations on trading policies and procedures. If asked, it would be my general guidance and advice for trading desk policy to exclude making markets in securities for which the Commission imposed a trading suspension, even if that suspension has expired, if the subject securities no longer have "piggyback" exemption eligibility. Additionally, a "Caveat Emptor" designation from OTC Markets, resulting from a trading suspension, in my opinion, is further reason for a trading desk not to make a market in a particular security.

Further reflecting on my experience as a trading desk manager, if there were to be a request from a trader, investment banker, or the firm's research department to consider making a market in a security that was the subject of a SEC-imposed trading suspension, then it would be my advice, in most instances, to recommend declining the request, even if the suspension has expired.

OTC Markets has several tiers that rank securities and risk, with its OTCQX being OTC Markets' highest tier signifying that the issuer adheres to high financial standards, follows best practices in corporate governance, demonstrates compliance with securities laws, and is current with its disclosures. OTCQB, the Venture Market, is OTC Markets' second highest tier, and represents entrepreneurial and development stage companies. On or around February 14, 2020, based on the publicly available documents reviewed, OTC Markets promoted and accepted NMGX to the OTCQB. That ascent for NMGX was a positive reputational reflection on the corporate developments and efforts at NMGX over the then preceding year to 18 months.

Tiers at OTC Markets decline as information from an issuer is less available or financial data is limited. The Pink Open Market identifies companies as Current Information, Limited Information, and No Information. At the bottom of OTC Markets' tier ranking system is "Caveat Emptor," which means "buyer beware." OTC Markets designates a security denominated as "Caveat Emptor" with a skull-and-crossbones symbol. In my opinion, "Caveat Emptor" is the death knell for trading for market makers, creating a trading purgatory for the issuer from which that issuer cannot emerge. The SEC's imposition of a 10-day trading suspension results in OTC Markets imposing the "Caveat Emptor" designation. Conversely, the "Caveat Emptor" designation operates as an automatic and sometimes permanent trading suspension. Because of the trading suspension, OTC Markets designated NMGX with "Caveat Emptor," and the company still bears that mark despite appearing to be current on its 34 Act filings (through 2021 Q1).

The SEC's recent amendments to Rule 15c2-11 build in some new and valuable safeguards for investor protection, including enhanced and continued information requirements. There are additional requirements for non-qualifying stocks migrated to the "Expert" market. In my opinion, while these are important safeguards, they create a much more challenging road for an issuer to return to a higher trading tier, especially for an issuer upon which the Commission imposed a Trading Suspension, regardless of whether the suspension expired or the initial suspension was justified.

Trading is critical for transparency, price discovery and capital markets relevance. A sound reputation for an issuer is critical for financial sponsorship both at the trading level and for capital

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markets sponsorship. Capital markets sponsorship can lead to capital raises and research firms or research arms of broker-dealer issuing research reports. It is highly unlikely that a firm would write a research report or participate in a capital raise for a security that does not trade actively, and it is my opinion that no credible investment banking firm will raise capital and no credible research firm will issue a research report for an issuer carrying the "Caveat Emptor" designation.

In my role as manager of the Equity Trading Desk at Wells Fargo Advisors, trading in "No Information" securities was limited to long sales. Securities in OTC Markets "No Information" tier were restricted. A financial advisor, advocating for a client, could make a formal request to purchase a firm restricted security. In my experience, many of these securities have negligible or no revenue nor a real product. Upon review of the OTC Markets "Financial" and "Disclosures" tabs for NMGX, it is evident that NMGX has released a year-end 2020 10K and, more recently, the first quarter 2021 10Q. The 2020 10K shows nearly a doubling of revenue ($4.759 million versus $2.436 million) over 2019. The first quarter 2021 10Q shows a nearly ten-fold increase ($2.182 million versus $241,717) demonstrating significant revenue growth. As for NMGX's products, a simple Google search quickly reveals its anti-fog eyeglass cloths on the "shelves" of big box, household name retailers like Amazon, Lowe's and Walgreens (with 4 out of 5 star customer satisfaction ratings). Rapid revenue growth and products on Amazon, Lowe's and Walgreens are not the typical characteristics we saw when we researched "No Information" stocks. If this was a reviewable security, then this information likely would trigger a deeper investigation. As a "Caveat Emptor" labeled security, it would be non-reviewable. It is also notable, and predictable, that on the "Research" tab of the OTC Markets page for NMGX it states: "No Research Reports are available for this company." From my experience, companies with rapid growth trajectories, current on their filings, could be attractive to an investment banking firm or potentially a research analyst. However, once again, the Trading Suspension and ensuing "Caveat Emptor" designation prohibit that capital markets interest or render unavailable or undesirable a traditional capital raise.

Additionally, given the accelerating revenue growth and the turning the corner on profitability as referenced above from the financial disclosures in NMGX's 2020 10K and first quarter 2021 10Q, it is logical and likely that the stock price would be higher today than at the time of the Trading Suspension, if NMGX were back on the OTCQB Venture Market or the OTCQX Market and had a market maker or market makers making a market in NMGX stock. From the publicly available informationthat I can ascertain, NMGX was trading in the $0.60 - $0.80 range in the weeks prior to being elevated to the OTCQB Venture Market. For the next six months NMGX traded primarily between $1 and $2 per share with a low close of $0.85 (6/28/20) and a high close of $2.40 per share (4/19/20). Currently NMGX is quoted at $0.001.

Impacts of a Trading Suspension are not limited to the issuer, as there also is an impact on the shareholders. The subsequent path to the "Grey" market or new "Expert" market leaves retail investors with no price discovery and, in many cases, with a broker that will no longer execute "buy" orders. It is my experience that many brokers and clearing firms have placed significant restrictions on "Limited" and "No" information securities. Consequently, investors that held shares prior to the Trading Suspension may have difficulty selling their shares.

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The Commission appears to have suspended trading, in part, based on what appears to be stock message board postings that the NMGX has a patent for a disinfectant that kills 'coronavirus'. Nowhere in any of the briefings before the Commission does it appear that there is an allegation that NMGX or a person associated with NMGX posted messages on the stock message board or about a patent for a disinfectant that kills 'coronavirus'. Additionally, NMGX's public filings reflect that NMGX holds multiple patents. The filings by NMGX in this Petition proceeding strongly deny that NMGX or any person associated with NMGX made any such posting to a stock message board. In my opinion, the absence of evidence or allegations that NMGX or a person associated with NMGX posted messages on a stock message board about NMGX, and the limited number and content of press releases issued by NMGX, reflects that NMGX and its officers and directors appear to adhere to best practices in its external communications protocols. My further opinion is that fact will reflect well in the consideration by a market maker whether to resume quoting and making a market in NMGX stock if the piggyback exemption is restored, and will be viewed favorably by an investment banker considering whether to assist NMGX with raising capital.

The Commission also appears to have suspended trading, in part, based on what appears to be an allegation that the CEO of NMGX made a statement in a press release regarding the Company's involvement in the fight against COVID-19. Stock message board postings that the NMGX has a patent for a disinfectant that kills 'coronavirus'. Nowhere in any of the briefings before the Commission does it appear that the CEO of NMGX actually made such a statement in a press release, but, instead, did say that NMGX is "eager to join the Covid-19 fight." In my opinion, if the piggyback exemption were restored for NMGX, a market maker or investment banker evaluating the allegations against NMGX would view a statement about a company with patented surface cleaning products being "eager to join the Covid-19 fight" as benign, when made, and will not view the CEO as being predisposed to make exaggerated statements about the CEO's company's products.

In my experience observing and reading SEC Orders suspending the trading of small cap securities, the majority of such Orders when made regarding companies with actual business operations and filing periodic reports under the 34 Act, regardless of timeliness, include allegations that are suggestive of a possible stock manipulation. My reading of the trading suspension of NMGX stock includes no such allegation. In my opinion, if the piggyback exemption were restored for NMGX, a market maker and an investment banker evaluating the allegations against NMGX would view favorably the absence of any allegation or perception that a manipulation of NMGX stock may have taken place.

Conclusion

Reputation for an issuer is everything; there is nothing more important. The impact and ramifications of a SEC-imposed trading suspension trigger an unfortunate and predictable daisy chain of events, beginning with the loss of the "piggyback" exemption and "Caveat Emptor" designation, which, in my opinion, is devastating to an issuer. It is my expert opinion that:

(1) The prejudicial effect to date on NMGX is that the Commission's 10-day trading suspension, despite it having expired, has had the practical effect of being a 15-month plus trading suspension (as of September 1, 2021);

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(2) Based on my experience as a manager and supervisor of a trading desk, a manager or supervisor of a trading desk likely would not accept the risk and challenges of filing a Form 211 in the current market environment for an issuer, such as NMGX, that lost its "piggyback" eligibility because of a SEC trading suspension;

(3) An issuer, such as NMGX, with securities eligible for trading only in the "grey sheets," would have no price discovery, no research following, nor any other capital markets sponsorship, and, therefore, would be subject to the prejudicial effect of eliminating NMGX's all-important ability to raise capital to grow its business;

(4) Based on my review of the most recent 34 Act reports (annual report on Form 10-K and first quarter report on Form 10-Q) for NMGX, it is my opinion that NMGX appears to be current (through 2021 Q1) in its periodic reporting, is reporting revenue growth reflecting its viability as a corporation, offers product(s) in the retail goods markets reflecting its legitimacy, and, but for the uncertainty created by the unresolved imposed trading suspension, should be but is otherwise too great a risk to garner investment banking and research interest; and

(5) The Commission, by leaving unresolved NMGX's Petition, which in turn appears to have resulted in OTC Markets leaving in place the "Caveat Emptor" designation, essentially placed NMGX in an unending form of trading and regulatory purgatory.

Frank Childress

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FRANK S. CHILDRESS
OYSTER CONSULTING, LLC
4128 Innslake Drive
Glen Allen, VA 23060

PROFESSIONAL EXPERIENCE

Wells Fargo Advisors (previously Wachovia Securities and A.G. Edwards) 2008 – 2020
Managing Director – Capital Markets Trading, Equity Services | Capital Markets Services
Managed team of 60 trading professionals responsible for the trading and execution of equities, options, and futures for retail brokerage platform with 14,000 financial advisors, 60 correspondent clearing firms, managed account execution, and online brokerage. Managed retail access to Capital Markets Products.

- Leadership: Chairman, Best Execution Committee. Other Committees: Senior Leadership Board, Product Committee, Equity Commitment Committee, Closed End Fund Committee
- Team responsible for execution of: 30 million orders, 12 billion shares, representing $500 billion in principal each year, generating $500 million in annual commissions
- Managed team development of best-in-class execution platform saving clients over $50 million per year
- Implemented "models" trading desk for the execution of separately managed accounts (SMAs) orders, streamlining the process and saving the Firm over $25 million per year in expenses paid to asset managers
- Assembled tremendous team to address market structure changes, implementing technology, regulatory and compliance initiatives, evolution of exchange traded products (ETPs), etc.
- Responsible for review and approval through the Firm's Commitment Committee for distribution of Capital Markets products to retail investors including: Initial Public Offerings (IPOs), Follow On Offerings, Closed End Funds, New Issue Fixed Income, Market Linked Investments, and Alternative Products

A.G. Edwards, Inc 1999 - 2008
Director of Nasdaq Trading

- Managed Nasdaq Trading Desk including agency and market making platforms for both retail and institutional clients. Supported growing investment banking efforts and middle market research initiative
- Dramatically changed culture, with several key additions, to improve service to financial advisors with a focus on providing opportunities for retail and institutional clients

Taxable Fixed Income Manager and Trader 1984 - 1998

- Managed Corporate Bond trading team focused on providing opportunities for retail and institutional clients. Concentrated on high level of service and high quality, appropriate offerings. Traded several taxable fixed income products including governments, mortgaged backed, zero coupon, corporates, and taxable munis.

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FRANK S. CHILDRESS
OYSTER CONSULTING, LLC
4128 Innslake Drive
Glen Allen, VA 23060

EDUCATION & QUALIFICATIONS

Education and Qualifications

- Bachelor of Business Administration (BBA), Roanoke College
- Securities Industry Institute, Executive Education, The Wharton School, University of Pennsylvania
- Graduate of leading industry program supporting leadership and industry initiatives while providing a platform for promoting the highest levels of integrity, ethics, and professional excellence
- Series 7, Series 24, Series 55, Series 63 | CRD #1237304

Professional Involvement:

- Securities and Exchange Commission (SEC), 2016
- Equity Market Structure Advisory Committee (EMSAC) – Panelist – Presented with other market experts to discuss the current state of the retail investor, execution quality, payment for order flow, and other market structure issues
- FINRA Market Regulation Committee, 2012 – 2016
- President, Member – Industry advisory group providing insight and guidance to FINRA leadership for regulatory proposals
- SIFMA Equity Markets and Trading Committee, 2004 – 2011
- Advocacy and coverage of regulatory and market structure issues for "sell side" broker/dealers
- Security Traders Association of St. Louis (STASL)
- President, Board Member – Local affiliate of the Security Traders Association (STA). Established the Retail Advisory
- Committee (RAC), industry professional advocates for retail investors

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