

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of**

**NANO MAGIC INC.**

**Administrative Proceeding**  
**File No. 3-19787**

**DIVISION OF ENFORCEMENT'S RESPONSE TO THE 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**

Respectfully submitted,  
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The Division of Enforcement (“Division”) hereby submits this brief in response to the Supplemental Filing of Petitioner Nano Magic Inc. (“NMGX”) 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 (the “Supplemental Filing”).

**NMGX’s Supplemental Filing has no Bearing on the Merits of the Trading Suspension**

The Commission’s Order Requesting Additional Written Submissions dated August 18, 2021, provides that “NMGX may make a supplemental filing addressing”: (1) “whether and how it has been prejudiced by the pendency of its petition given that the trading suspension has now expired and that the Commission has authority, when appropriate, to provide relief from the collateral consequences of an already-expired trading suspension” and (2) “any legal entitlement it has to an expedited decision outside the ordinary course of the Commission’s decisional processes.” Aug. 18, 2021, Order at 2. Accordingly, this briefing has no bearing on the appropriateness and merits of the underlying trading suspension, and is simply limited to the procedural issue of *when* the Commission is to render its decision.

**NMGX Fails to Demonstrate Prejudice**

Notwithstanding its conclusory claims of “[s]evere” and “grave prejudice,” NMGX fails to provide concrete or specific evidence of any such prejudice, let alone harm that cannot be remedied upon issuance of the Commission’s decision in this matter. NMGX Supp. Br. at 1-2.

First, and foremost, as the Commission noted in its August 18, 2021, Order, “the trading suspension has already expired.” Order at 1. In fact, it expired on May 14, 2020. There are steps NMGX may take to reinstitute the trading of its securities. And yet, in the sixteen months since the suspension expired, it appears from NMGX’s Supplemental Filing that the company

has not even tried to do so. At the very least, NMGX has not disclosed what steps, if any, it has taken in order to do so.

Second, and relatedly, NMGX's reliance on the purported expert opinions of Frank Childress to support its claim of prejudice is misplaced. Given that NMGX has not provided Mr. Childress with any information concerning what, if anything, it or any market makers have done to try to reinstitute the trading of NMGX securities, Mr. Childress's opinions relating to or relying on NMGX's "apparent attendant inability to secure a market maker to resume making a market in NMGX stock" is based on speculation. Childress Report at 4. Similarly, Mr. Childress's suggestion that companies are unable to resume trading following the termination of ten-day trading suspensions through the submission of a Form 211 is, quite simply, untrue.

Third, and most importantly, the Commission also noted in its August 18, 2021, Order that it "may . . . 'provide appropriate relief even if the suspension expired while the petition was pending.'" *Id.* (citing *Apotheca Biosciences Inc.*, Exchange Act Release No. 90779, 2020 WL 7632296, at \*1 (Dec. 22, 2020) (explaining that the Commission may "vacate an expired trading-suspension order in appropriate circumstances" or provide "relief with respect to the collateral consequences that might have arisen as a result of the trading suspension"). NMGX identifies no harm or prejudice that cannot be remedied at the time the Commission decides this matter.

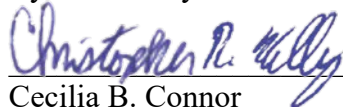
**NMGX Concedes there is no Legal Entitlement to an Expedited Decision**

As to the second issue, NMGX itself concedes that "[t]here is no legal entitlement" "to an expedited decision outside the ordinary course of the Commission's decisional processes." NMGX Supp. Br. at 5. And so, what NMGX seems to be asking the Commission to find is that NMGX has the right, as a matter of substantive due process, to have its petition to terminate decided within a proscribed period of time. But, as NMGX's own submission makes clear, it is not the responsibility of the Commission or the Judiciary to create this legal entitlement, but

rather Congress. *Id.* at 9 (“Congress will need to provide the legal entitlement.”); *id.* (“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.”) (citation omitted).

Because NMGX concedes it has no entitlement to a specialized expedited process, and has shown no specific and irreparable harm that has or will occur without such a departure from normal procedure, there is simply no reason to do so here.

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