

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

May 8, 2020

Admin. Proc. File No. 3-19787

In the Matter of Nano Magic, Inc. Petitioner.	MOTION TO EXPEDITE SCHEDULE FOR SUBMISSIONS IN 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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Nano Magic Inc. (“Nano Magic”), by and through undersigned counsel, pursuant to and consistent with 17 C.F.R. 201.550, Rule 550 of the Commission’s Rules of Practice, moves the Securities and Exchange Commission to expedite the schedule for written submissions in consideration of Nano Magic’s Sworn Petition to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 filed via e-mail with the Commission on May 6, 2020 at 3:13 P.M. EDT (“Petition”). The reason for this request to the Commission, as set forth below, is straight-forward, and fully consistent with the first two sentences of the Conclusion to Nano Magic’s Motion for Expedited Consideration filed on May 7, 2020 at 12:08 PM EDT. A ruling by the Commission in favor of Petitioner entered after expiration of the trading suspension would be a Pyrrhic victory for Nano Magic, because, for Nano Magic, the Petition is about the survivability and viability of the company, imperiled by a trading suspension that neither should have been sought nor issued.

Nano Magic appreciates greatly the Commission’s consideration in issuing its Order Requesting Additional Written Submissions. Exchange Act Rel. No. 88841 (May

8, 2020) (“Submissions Order”). Nano Magic further appreciates the language in the Submissions Order, at note 10, that, without expressing a view as to the merits of Nano Magic’s Petition, the Commission “may provide appropriate relief even if the trading suspension expires while the timely filed Rule 550 petition is still pending.” (Citations omitted). Respectfully, and mindful fully of the Commission’s pledge to “resolve[the Petition] with due regard for NMGX’s request for expedited consideration, consistent with the Commission’s other responsibilities,” (Submission Order at 3) the cases that the Commission cited in note 10 are inapposite. In both the *EFuel EFN Corp.* and *Bravo Enters.* (citations omitted) decisions, the Commission denied the petitions relating to fact patterns that do not present here. Nano Magic submits that “appropriate relief” in this narrow yet fully detailed factual narrative is termination of the suspension. That being the case, and without seeking parallel insights from the likes of Hobbes and Roman orators as in the Motion to Expedite Consideration, it is not possible to turn back the clock, where true relief and bona fide appropriate relief is terminating the trading suspension while it remains in effect.

By e-mail of this date at 1:09 p.m. (and corrected for a typographical error (highlighted) at 2:06 p.m.), undersigned counsel sent to the Commission’s Philadelphia Regional Office Division of Enforcement Staff (“Division Staff”) an e-mail “meet and confer” requesting and proposing a specific “more ‘aggressive’ timetable for submissions, a request that I make because of the emergency situation presented for this firm’s client and in the interest of fairness.” Exhibit A. This Motion addresses the requested timetable below, and provides explanation. The reason for the e-mail “meet and confer” was simplicity and the challenge of getting relevant stakeholders on the

telephone under current collective work precaution conditions. As of the filing of this Motion, the Division Staff has not responded.

Before addressing the proposed timetable, the timeline leading up to the instant trading suspension follows because of its relevance to quantum of information at issue and speed with which the Division Staff to date has found itself necessary to act. Arguments related to that timetable, including Exhibits, appear in the Petition and Motion for Expedited Consideration, so counsel does not repeat them here. The relevant timeline is as follows:

Tuesday, April 14, 2020: FINRA's Office of Fraud Detection and Market Intelligence ("FODMI") sent to Nano Magic an e-mail and letter with 14 questions.

Friday, April 17, 2020: Nano Magic's General Counsel sent a letter answering all 14 questions posed in FODMI's letter.

Thursday, April 23, 2020, Division Staff called the company and sent a follow-up e-mail requesting a telephone call that day or the following day.

Friday, April 24, 2020, Division Staff conducted a telephone interview of approximately 40 minutes in length with the President and CEO, Tom Berman (who swore to the Petition). Nano Magic's General Counsel was on the call.

Thursday, April 30, 2020, Commission entered the instant trading suspension "for the period from 9:30 a.m. EDT on May 1, 2020, through 11:59 p.m. on May 14, 2020." Exchange Act Rel. No. 34-88789.

In both the Petition and Motion for Expedited Consideration, counsel, from his perspective of having served on the Commission's Division of Enforcement Staff and participated in a submission to the Commission seeking (and ultimately ordering) trading suspensions, and 23 years of practice in this area thereafter, posited that the recommendation likely went to the Commission one or two days in advance of entry of the April 30, 2020 Order. Put differently, the Division Staff readily worked from Friday

afternoon April 24, 2020 in a manner that it enabled it to feel confident in its request for the trading suspension entered the following Thursday, April 30th.

With the Order published on Friday, May 1, 2020, and the retention of undersigned counsel late that afternoon, Nano Magic, with the assistance of counsel, submitted its Petition. Nano Magic worked vigorously to make comprehensive and accurate submissions as follows:

Wednesday, May 6, 2020, 3:13 p.m.: Nano Magic filed a 31-page detailed Sworn Petition to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934, with supporting exhibits.

Thursday, May 7, 2020, 12:08 p.m.: Nano Magic filed an eight-page Motion for Expedited Consideration of Sworn Petition to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934.

Moreover, in response to the Division Staff's request on Thursday, May 7, 2020, transmitted at 6:07 p.m. to execute a Stipulation and Notice of Parties' Agreement on Service of Papers, undersigned counsel did so and returned the electronically signed Stipulation just over one hour later, at 7:22 p.m.

By this Motion, Nano Magic respectfully requests that the Commission accelerate the timetable for responsive submissions as follows, along with reasons. Simply, as noted above, this timetable will enable the Commission to decide this matter, if it so chooses, prior to the expiration of the trading suspension on Thursday night, May 14, 2020, at 11:59 p.m. EDT. This proposed timetable is consistent with the meet and confer e-mail sent today at 1:09 p.m., and corrected for a (highlighted) typographical error and re-transmitted at 2:06 p.m. Exhibit A. The proposal is:

Filing of all information that was before the Commission at the time of the Trading Suspension's Order's issuance: Nano Magic proposes to move forward the deadline to

10:00 a.m. on Monday morning, May 11, 2020. The reason is that the Commission is asking that the Division Staff file the information that already “was before the Commission at the time of the Trading Suspension Order’s issuance.” Submissions Order at 1. To the Commission’s point, that information already is – and certainly should be – in the records of the Office of the Secretary and the Commission. Therefore, such a filing appears to be a formality of what already is before the Commission.

Division Staff’s substantive response to the Petition: Nano Magic proposes to move forward the deadline to 3:00 PM on Monday, May 11, 2020, instead of May 21, 2020. There is no dispute as to the law governing trading suspensions and the Commission having exercised its discretion based on the information then before the Commission. The Division Staff’s response should be addressing information known to the Staff at the time of its recommendation (and the Commission’s Order) that otherwise responds to the detail in the Petition. This is not about developing new information; or, put differently, not about attempting to develop evidence now that the Division Staff should have gathered prior to its Action Memorandum and recommendation. The Petition is sworn by a member of the Bar of the State of Michigan, the CEO, and all facts therein are verified or verifiable. In short, the answers already were before the Commission, with the possibility of some additional information already in the Division Staff’s files.

Nano Magic’s reply brief, if any: Nano Magic proposes to move forward the deadline to 11:00 AM on Tuesday, May 11, 2020, instead of May 28, 2020. The company is telling the Commission that it can reiterate overnight that everything in the Petition is accurate and true such that the Commission, when it considered the Division Staff’s

recommendation, refutes the information that formed the basis for ordering the trading suspension.

This proposed timetable, with the completion of all briefing by late Tuesday morning, May 12, 2020, would enable the Commission to issue a decision, whatever that decision may be, prior to the Thursday night, May 14, 2020, termination of the suspension, notwithstanding the language of footnote 10 in the Commission's Order. As argued previously, the harm to Nano Magic is the continuation of the trading suspension, with the most appropriate relief the termination of the suspension. Accordingly, the company, through counsel, respectfully requests this accelerated briefing schedule.

Dated: May 8, 2020,
Washington, DC



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Certificate of Service

On May 8, 2020, this Motion to Expedite Schedule for Submissions in Consideration of Sworn Petition to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 was delivered to the following parties and other persons entitled to notice in the manner set forth to the right of each served party:

Division of Enforcement (via e-mail)
Philadelphia Regional Office
Securities and Exchange Commission
Attn: Kingdon Kase, Esq., Assistant Regional Director (to kasek@sec.gov)
Attn: Cecilia Connor, Esq. (to connorce@sec.gov)
Attn: Christopher R. Kelly, Esq. (to kellycr@sec.gov)
Attn: Jennifer C. Barry, Esq. (to barryj@sec.gov)

Dated: May 8, 2020, Washington, DC



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Counsel to Nano Magic Inc.

Admin. Proc. File No. 3-19787 Exhibit (Nano Magic Inc.)

From: [Jacob S. Frenkel](mailto:jacob.s.frenkel@sec.gov)
To: [King Kase \(SEC-PRO\)](mailto:King.Kase@sec.gov); connorce@sec.gov
Cc: kellycr@sec.gov; [Barry Jennifer](mailto:Barry.Jennifer@sec.gov)
Subject: *** CORRECTED ***: Nano Magic, AP File No. 3-19787: E-mail Meet and Confer regarding written submissions schedule
Date: Friday, May 8, 2020 2:05:59 PM

Good afternoon, King and Cecilia,

I trust that the Staff has had an opportunity to view the Commission's Order issued today.

The purpose of this e-mail is to inquire as to whether the Staff would agree to a more "aggressive" timetable for submissions, a request that I make because of the emergency situation presented for this firm's client and in the interest of fairness.

The timetable that I propose is as follows:

- (1) Filing all information that was before the Commission at the time of the Trading Suspension's Order's issuance: 5:00 PM today (instead of May 14, 2020). The reason for "today" is the information already is (or should be) in the records of the Office of the Secretary and the Commission.
- (2) Division's substantive response to the Petition: 3:00 PM on Monday, May 11, 2020 (instead of May 21, 2020). There is no dispute as to the law and the Commission having exercised its discretion, and I imagine that we are in full agreement as to the law and governing legal precedent. The issue would be in the response to the factual narrative, and the facts in the sworn Petition are tailored to the bases for the trading suspension.
- (3) NMGX reply brief, if any: 11:00 AM on **Tuesday, May 12, 2020** (instead of May 28, 2020). The Company is eager to advance consideration and obtain a decision by the Commission (whatever that decision may be) prior to the termination of the suspension, notwithstanding the language of footnote 10 in the Commission's Order.

Thank you for your consideration.

Jacob

Jacob S. Frenkel

Member

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EXHIBIT A

Admin. Proc. File No. 3-19787 Exhibit (Nano Magic Inc.

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DICKINSON WRIGHT^{PC}

ARIZONA CALIFORNIA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
TENNESSEE TEXAS WASHINGTON D.C. TORONTO

Admitted to practice in Maryland and Louisiana. Not admitted to practice in the District of Columbia.

EXHIBIT A