

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

May 28, 2020

Admin. Proc. File No. 3-19787

<p>In the Matter of</p> <p>Nano Magic Inc.</p> <p>Petitioner.</p>	<p>CLOSING SUBMISSION IN SUPPORT OF TERMINATION OF TRADING SUSPENSION ISSUED PURSUANT TO SECTION 12(k)(1)(A) OF THE SECURITIES EXCHANGE ACT OF 1934 AND ORDER FOR RELIEF</p>
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Dated: May 28, 2020
Washington, DC

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TABLE OF CONTENTS

I. ALL AGREE THE STANDARD FOR THE COMMISSION’S DECISION IS THE INFORMATION BEFORE THE COMMISSION AT THE TIME OF THE TRADING SUSPENSION ORDER.3

II. THE FACTS WARRANT TERMINATING THE TRADING SUSPENSION.4

A. The Cherry-Picked Facts that the PRO Claims were Insufficient, upon Consideration of the Actual Facts at the Time of the Trading Suspension, to Support the Imposition of a Trading Suspension..... 5

B. Nano Magic Discussed and Disclosed Fully the Product over which the PRO Obsesses. 8

C. Nano Magic Did Not Make or Condone Message Board Posts, and Its Unfamiliarity with the Posts Defeats the PRO’s Preposterous and Circular Argument Criticizing the Company for Not Disavowing Expressly the Posts. 11

D. Mr. Berman Explained Truthfully and Contextually the Comment in Nano Magic’s April 7, 2020 Press Release Regarding ‘Joining the Fight Against COVID-19.’ 16

E. The PRO Admitted by Omission from its Three Declarations that the PRO Never Told the Commission about Nano Magic’s Response to FINRA, a Response that Truthfully Answered FINRA’s Questions. 18

F. The PRO’s Initial Interview of EPA Staff and Re-interview of Them Well After the Trading Suspension Order Failed to Capture and Neglected to Convey Important Details About the Meeting..... 21

G. Nano Magic’s Recent Capital Raise Commenced in August 2019 was with Friends and Family. 23

III. NANO MAGIC IS ENTITLED TO APPROPRIATE RELIEF FROM THE TRADING SUSPENSION ORDER.25

A. The Commission Should Declare the Trading Suspension Vacated Upon Nano Magic’s Filing of the Petition..... 26

B. The Commission Should Restore the Piggy-Back Exemption for Nano Magic. 26

C. The Commission Should Make a Finding that the Commission has Concluded Any Investigation of Nano Magic. 28

IV. CONCLUSION29

TABLE OF AUTHORITIES

Cases

Bravo Enters. Ltd., Exchange Act Release No. 75775,
2015 WL 5047983 (Aug. 7, 2015)..... 3, 25

Efuel EFN Corp., Exchange Act Release No. 86307
2019 WL 2903941 at *2 (July 5, 2019) 3, 24, 25

Immunotech Laboratories, Inc., Exchange Act Release No. 75790,
2015 WL 5081237, *7 (Aug. 28, 2015)..... 12, 19

John Doe v. 2TheMart.com Inc.,
140 F. Supp 2d 1088 (W.D. Wash., 2001)..... 15

Nano Magic Inc., Exchange Act Release No. 88841,
2020 WL 2310946 (May 8 2020) 1, 5

Constitution

U.S. CONST. amend. I.....5,15

Other Authorities

U.S. SEC. & EXCH. COMM’N, Enforcement Manual, Section 2.2.2.5:
Referrals from Self-Regulatory Organizations, at 12 (Nov. 28, 2017)
(<https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>) 20

Steven Peikin, Co-Director, Division of Enforcement, U.S. Sec. & Exch. Comm’n,
Keynote Address: Securities Enforcement Forum West 2020 (May 12, 2020) (available at
<http://www.securitiesdocket.com/2020/05/13/keynote-address-by-steven-peikin-securities-enforcement-forum-west-2020/>)25,27

Rules and Regulations

15 U.S.C. §78d-1(b) (2018) 28

17 C.F.R. § 201.550(b) 3

17 C.F.R. § 240.15c2-11 26

17 C.F.R. § 240.15c2-11(a)(5)..... 27

17 C.F.R. § 240.15c2-11(f)(3) 26

Structural Reorganization of Commission, 37 Fed. Reg. 16791 (Aug. 19, 1972).....28

“Which office do I go to to get my reputation back?” Those were the now famous and oft-quoted words of former Secretary of Labor Raymond Donovan 33 years ago upon his acquittal on all counts in a highly publicized organized crime criminal fraud case.¹ Since May 1, 2020, Nano Magic asks the same question. The Commission, having been misled as to all substantive facts about Nano Magic, erroneously issued a ten-day trading suspension that caused immediate reputational and business harm, not to mention what usually is fatal – a death sentence – to an OTC-market traded security from a Commission-ordered trading suspension. Nine trading days after the expiration of the trading suspension, Nano Magic’s stock has not yet resumed trading. The Commission now must decide whether it intended to impose a capital markets death sentence where the Commission was misled into believing there was justification for its Order.

The Commission is adamant that “it may provide appropriate relief even if the trading suspension expires while the timely filed Rule 550 petition is still pending.”² Had the Commission known the easily ascertainable facts set forth in the Sworn Petition of Tom Berman, the company’s Chief Executive Officer and a member of the Bar of the State of Michigan, to terminate the trading suspension, let alone the truth about the porous and grossly deficient inquiry by the Philadelphia Regional Office’s Division of Enforcement Staff (“PRO”) and the cherry-picked facts the PRO presented, then the Commission would not have – in fact no rational arbiter would have – entered the trading suspension. This submission is the request for appropriate relief and an invitation to act

¹ George Lardner, Jr., *Bronx Jury Acquits Donovan*, WASHINGTON POST (May 26, 1987), <https://www.washingtonpost.com/archive/politics/1987/05/26/bronx-jury-acquits-donovan/81055f23-08c3-496b-a5e6-9105956af4fa/>.

² *Nano Magic Inc., Exchange Act Release No. 88841 at 3, n. 10*, 2020 WL 2310946 at *2, n. 10 (May 8 2020) (citations omitted).

decisively and expeditiously as the Commission did once before, this time to restore to Nano Magic its market standing and reputation.

What the PRO did discredits the more typical and expected quality and thoughtful work of the Division of Enforcement (“Division”), which is the reason for the Division’s excellent reputation. In the 11 weeks before April 24, 2020, when the PRO contacted Mr. Berman and conducted its charade of an inquiry, the Commission had entered more than 25 trading suspensions at the request of five of the Commission’s six east coast offices. Notably absent from that list sporting a “zero” by its name was the PRO.³ Meanwhile, with the country adjusting to stay-at-home work orders and widespread administrative adjustments to that dynamic, the Commission’s and Division’s typically in-place reasonable guardrails were weakened just enough for the PRO to run through and over them.

The PRO, on a referral from FINRA’s jurisdictionally and authority deprived Office of Fraud Detection and Market Intelligence (“FINRA”) wannabe enforcers, sauntered into what some regulators view as the seedy world of the small cap market and painted a target on Nano Magic. Those holding this view make no distinction for legitimate hardworking entrepreneurs, like Nano Magic’s principals, who are not in business lines with the gravitas or sex appeal for their companies to be showered with money by venture capital funds like doubloons thrown from Mardi Gras floats. Staff with this mindset believe that small cap issuers should take numbers for regulatory elimination. From that perspective, the PRO made a call of approximately 40 minutes, read messages on a single internet message board and Twitter that the company neither

³ Since April 30th, the Commission has ordered seven additional trading suspensions, none of which credits the PRO.

followed nor knew of, cherry-picked from that information to fit a completely concocted false narrative about a non-existent “coordinated campaign to manipulate” the company’s stock, asked incomplete questions of the Environmental Protection Agency (“EPA”) and then imposed itself on an issuer, expecting that no one would notice or care. That would include putting one past the Commission, with misleading language, mischaracterized facts, logic-defying conclusions and innuendo, just enough to notch a trading suspension to its credit. The PRO was wrong. The Commission was misled and erred. Now, the Commission must right the PRO’s wrong for the unjustified Nano Magic trading suspension.

I. ALL AGREE THE STANDARD FOR THE COMMISSION’S DECISION IS THE INFORMATION BEFORE THE COMMISSION AT THE TIME OF THE TRADING SUSPENSION ORDER.

The information before the Commission when the trading suspension order issued is the sole and established basis for the Commission to determine whether there were grounds for the Commission to issue its order *ab initio*.⁴ Nano Magic has respected at all times the subjective discretion of the Commission,⁵ and took upon itself the responsibility to establish for the Commission that the information presented was not the entire story and was just flat-out wrong. That is why Nano Magic moved the Commission to compel production of the Action Memorandum, redacted to display only the facts, which under no circumstances are privileged,⁶ when the PRO, by its three declarations confirmed not

⁴ Rule of Practice 550(b), 17 C.F.R. § 201.550(b); *Efuel EFN Corp.*, Exchange Act Release No. 86307, 2019 WL 2903941 at *2 (July 5, 2019) (“*EFuel*”); *Bravo Enters. Ltd.*, Exchange Act Release No. 75775, 2015 WL 5047983 (Aug. 7, 2015) (“*Bravo*”).

⁵ Sworn Pet. to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 at 22-24 (May 6, 2020) (“*Petition*”).

⁶ Mot. to Compel Produc. of Information Before the Commission at Time of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 (May 18, 2020) (“*Motion to Compel*”). The Commission has not ruled on the Motion to Compel or ordered the Division to produce the Action Memorandum for facts only. Thus, this Closing Submission works only with facts represented by

only the need for production of the redacted Action Memorandum but also the transparently unreliable and untrustworthy claim that it had “filed **all** the information that was before the Commission at the time of the Trading Suspension Order’s Issuance.”

II. THE FACTS WARRANT TERMINATING THE TRADING SUSPENSION.

To minimize redundancy and to provide a consistent and recognizable standard of and measure to fact and credibility check the PRO’s assertions, this submission adopts the WASHINGTON POST’s Pinocchio Test.⁷ One Pinocchio represents some shading of the facts, selective telling of the truth and some omissions and exaggerations.⁸ Two Pinocchios represent significant omissions or exaggerations, the presence of some factual error, and creating a false and misleading impression by playing with words.⁹ Three Pinocchios represent significant factual errors or obvious contradictions, entering the realm of “mostly false,” and statements taken out of context as to be very misleading.¹⁰ Four Pinocchios represent “whoppers” for the gravity of their falsity and egregious misleading nature.¹¹ One of these Pinocchio categories applies to every set of factual assertions by the PRO intended to support its justification for the trading suspension.

The last category is the Geppetto Checkmark, awarded to statements and claims that contain “the truth, the whole truth, and nothing but the truth.”¹² The Commission is entitled to and deserves at all times from its staff the Geppetto Checkmark. The PRO receives none.

the PRO, not the facts in the Action Memorandum. Although not discussed below, Nano Magic considers the absence of a ruling on the Motion to Compel an issue preserved for appeal, should one be deemed necessary.

⁷ Glenn Kessler, *About The Fact Checker*, WASHINGTON POST (Jan. 1, 2017), <https://www.washingtonpost.com/politics/2019/01/07/about-fact-checker/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

There was no misinformation or misleading information in the marketplace. Instead, there was enthusiasm among investors – some of many years – in a thinly-traded OTC stock around a long-struggling company that refreshingly brought itself current with its 34-Act filings, uplisted to the OTCQB, had new management and directors, a new name, a new brand, quality patents, and marketable and sustainable products. The internet message board, a recognized forum for investors to exercise their First Amendment right to express opinions, as they do on Twitter and other media, is a repository of facts, enthusiasm, support, opinions and occasional hypotheses. There were no promoters, no promotions, no manipulations, no nonsense; simply caring about the facts rather than asking questions to fit an incorrect narrative would have revealed these fundamental truths about Nano Magic.

A. The Cherry-Picked Facts that the PRO Claims were Insufficient, upon Consideration of the Actual Facts at the Time of the Trading Suspension, to Support the Imposition of a Trading Suspension.

1. Four Pinocchios: The PRO contends it disclosed all the information that was before the Commission at the time of the Trading Suspension Order’s Issuance but did not do so.

The Commission’s Order Requesting Additional Written Submissions (“Submissions Order”)¹³ was clear. Nevertheless, the PRO’s Opposition added facts not before the Commission when the Commission entered the Order, facts that the PRO could have but did not seek to elicit in its telephone interview of Mr. Berman or in a request to the company, facts from a Form 10-K filed during the trading suspension and demonstrating the company’s diligence in keeping current its 34 Act periodic reports, and an incomplete post-trading suspension EPA staff second interview.

¹³ *Nano Magic Inc.*, Exchange Act Release No. 88841, 2020 WL 2310946 (May 8, 2020) (“Submissions Order”).

The Commission should disregard altogether as lacking in credibility the declarations by the PRO. If it only were possible to do so, a vigorous cross-examination of the PRO would reveal manipulated facts presented to and omitted material facts from the Commission. This position will become even more clear throughout the narrative below, including that representations in the declarations justify questioning altogether the reliability of the PRO's narrative in the Action Memorandum. For now, the Petition and this Closing Submission must suffice for the Commission now to assess whether the information before the Commission at the time of the trading suspension order's issuance was sufficient -- or as here even "accurate" -- to justify the trading suspension order.

2. Geppetto Checkmark: The truth is that the PRO including facts cognizably not available as of April 30, 2020 recognizes that the PRO did not file all the information before the Commission.

Best to begin with a true "whopper," most deserving of Four Pinocchios. The Commission ordered the PRO "file **all** the information that was before the Commission at the time of the Trading Suspension Order's issuance."¹⁴ In its first act of defiance, the PRO snubbed the Commission's order with a disingenuous justification that other Division Staff in other trading suspension did it that way, so the PRO could too.¹⁵ Regardless of whether anyone ever before called out other Division Staff for not adhering to an express Commission order; that happened here.

Rather than admit the disingenuousness and deceit in the lexicon, the PRO doubled down with its subjective judgment as to "substantive facts" as a substitute for the Commission's Order to "file all the information" before the Commission, and asserted

¹⁴ Submissions Order at 1.

¹⁵ "Moreover, the presentation of 'all substantive facts before the Commission' ... is consistent with Declarations accepted by the Commission in ... prior Rule 550 Petitions." Div. of Enforcement's Opp'n Br. To Mot. To Compel Produc. of Information Before Comm'n at 3 (May 19, 2020).

that “substantive facts” are “all the facts.” (PRO Decl. 2 at ¶4.) The PRO’s precise language was “the term ‘substantive facts before the Commission’ equates to all factual information related to the trading suspension that was before the Commission at the time of the Trading Suspension Order’s issuance.” *Id.* Applying normal daily use rather than the PRO’s twisted definition, the Commission used the adjective “all” to modify the word “information,” to mean “every individual component of” the facts that the PRO had put before the Commission.¹⁶ The PRO instead interpreted the word “all” to “equate” with the laundry detergent, “All,” and interpreted the order to begin further scrubbing the facts. The Commission only need compare the content of the PRO’s May 14th Information Before the Commission at the Time of the Trading Suspension and accompanying first declaration (“Information Statement”) to the PRO’s discussion in its Opposition Brief to the Petition (filed May 21) (“Petition Opposition”) to recognize a clear difference between the content of what purported to be before the Commission at the time of the trading suspension. One of two things happened. “All the information that was before the Commission” was not in the PRO’s Information Statement, rendering unreliable altogether the Information Statement given the second declaration (May 19) asserting that all information in fact was in the Information Statement. Or, the Information Statement did, in fact, recite “all the information that was before the Commission,” such that the PRO’s Opposition now argues facts that the PRO had not put in front of the Commission, a scramble to rectify and now bolster its deficient record.

The Commission also should find of considerable interest the three submissions in the other investigations that the PRO claimed licensed disregarding the Commission’s

¹⁶ See, e.g., All, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/all> (last visited May 27, 2020).

express submission requirement. Those three submissions, on their face, describe well-developed and clearly investigated facts that understandably, with or without a copy of the Action Memoranda in those matters, set forth scenarios that any objective truth-finder would acknowledge warranted a trading suspension, unlike the flimsy information gathered and presented to the Commission here. In the words of Senator Lloyd Bentsen in his 1988 vice-presidential debate with Senator Dan Quayle, after Senator Quayle claimed he had “as much experience in the Congress as Jack Kennedy did when he sought the presidency,” Senator Bentsen responded: “Senator, I served with Jack Kennedy. I knew Jack Kennedy, Jack Kennedy was a friend of mine. Senator, you are no Jack Kennedy.”¹⁷ Comparing the instant Information Submission to the other three cited by the PRO to justify a deliberately defective submission, “PRO, yours is no trading suspension information submission.”

B. Nano Magic Discussed and Disclosed Fully the Product over which the PRO Obsesses.

1. One Pinocchio: The PRO mischaracterizes the company’s statement that those familiar with the company’s products were interested in whether its surface product could be used as a surface disinfectant due to the popular concern about COVID-19.

The PRO fixates on the mischaracterized notion that “Mr. Berman’s acknowledgment that none of the company’s products contains any ingredient approved by the EPA for use against SARS-Co-V-2, the virus that causes COVID-19,” renders false or misleading the company’s April 7, 2020 press release (Petition Ex. B) or ties out to the message board and Twitter postings. Nowhere – nowhere – does Nano Magic or Mr. Berman claim that any of Nano Magic’s patents kill COVID-19 or even have been

¹⁷ Senator, You’re No Jack Kennedy, NPR.ORG (May 23, 2006, 11:36 AM) <https://www.npr.org/templates/story/story.php?storyId=5425248>.

tested in connection with COVID-19. All representations relate to the patents capabilities in killing “coronavirus,” a term that the PRO uses interchangeably – and wrongly so – with COVID-19. The PRO also ignores the reality that the only products available to consumers for use during the pandemic are sanitizers and disinfectants that could not have been tested against the COVID-19 coronavirus.

2. Geppetto Checkmark: The truth is that Nano Magic received numerous inquiries about the product the company described in its 10-K for the year-ended December 31, 2015 and whether the product might be suitable to battle COVID-19.

As early as Nano Magic’s Form 10-K for the year-ended December 31, 2015, Nano Magic discussed its patented product best known colloquially as “Halo.”¹⁸ The company’s disclosures for years detailed the company’s products in its Forms 10-K, “Item 1. Business,” expressly identifying and detailing the company’s “focus[] on creating products enabled by nanotechnology that tackle and solve big, global problems in growing markets. We have three primary areas of new product focus[, specifically] [h]ealth ... [s]afety ... [and s]ustainability.” *Id.* Nano Magic’s April 7, 2020 Press Release references its “roster of patents and trademarks for cleaning products and surface protectants powered by nanotechnology.” (Petition Ex. B). The 2015 10-K includes a robust discussion of those products and new products.

Moreover, had the PRO bothered to look at Nano Magic’s Forms 10-K for the each of the three years ended December 31, 2015, 2016 and 2017, and read no further

¹⁸ Nano Magic Inc., Annual Report (Form 10-K) (Mar. 30, 2016), <https://www.sec.gov/Archives/edgar/data/891417/000149315216008465/form10-k.htm> (“2015 10-K”).

than pages three and four, then the PRO would have found the following “Part I, Item 1. Business” disclosure:¹⁹

[Nano Magic] develops, commercializes and markets consumer and industrial products enabled by nanotechnology that solve everyday problems for customers in the optical, transportation, military, sports and safety industries. Our primary business is the formulation, marketing and sale of products enabled by nanotechnology including the ULTRA CLARITY brand eyeglass cleaner, CLARITY DEFOGIT brand defogging products and CLARITY ULTRASEAL nanocoating products for glass and ceramics. We also sell an environmentally friendly surface protector, fortifier, and cleaner.

Additionally, the 2016 10-K’s discussion of research and development costs reflects a decrease in costs by 61%, as compared to the prior year, attributable, to the costs incurred in 2015 for “development of the new surface cleaner and fortifier product as well as work done in 2015 for the development of gels, foamers and alcohol-free cleaners.”²⁰

Nano Magic has not yet determined whether it can offer the Halo product as a tool against COVID-19; meanwhile, its scientists are working diligently to make that determination.²¹ The current pandemic, nevertheless, has resulted in numerous direct inquiries to the company as to whether its products are effective in fighting COVID-19.²² Nano Magic’s testing to date in support of the patent applications filed in 2015 unequivocally indicates that Halo has some efficacy against the human coronavirus 229E, and the scientific literature provides compelling evidence that human coronavirus 229E

¹⁹ Nano Magic Inc., Annual Report (Form 10-K) (Mar. 29, 2017), <https://www.sec.gov/Archives/edgar/data/891417/000149315217002970/form10-k.htm> (“2016 10-K”); Nano Magic Inc., Annual Report (Form 10-K) (June 15, 2018), <https://www.sec.gov/Archives/edgar/data/891417/000149315218008774/form10-k.htm> (“2017 10-K”); Nano Magic Inc., Annual Report (Form 10-K) (Nov. 14, 2019), <https://www.sec.gov/Archives/edgar/data/891417/000149315219017070/form10-k.htm> (“2018 10-K”).

²⁰ 2016 10-K at 14.

²¹ See discussion, *infra*, about EPA labeling, and Exhibit C.

²² Examples of such written inquiries, separate entirely from countless verbal queries, are attached as Exhibit A.

may be an appropriate surrogate to test the efficacy of disinfectants, including against COVID-19.²³

The PRO's follow-up call with the EPA's staff two weeks after entry of the trading suspension, heralded in its Petition Opposition and all must agree impossible to have been before the Commission when the trading suspension issued, was a big "whiff," missing the point altogether. The question is not the ultimate efficacy of the Halo formula or an improved product formula that Nano Magic may bring to market. Nor is the issue what position the EPA may take with respect to the statutes the EPA enforces. The issue, as discussed more fully below, is whether, on April 7, 2020, Mr. Berman thought that Nano Magic could bring to market quickly a sanitizer or disinfectant, and he did.

C. Nano Magic Did Not Make or Condone Message Board Posts, and Its Unfamiliarity with the Posts Defeats the PRO's Preposterous and Circular Argument Criticizing the Company for Not Disavowing Expressly the Posts.

1. Three Pinocchios: The PRO contends that posts on InvestorsHub and Twitter were impermissible promotional activity, replete with misleading information, that caused the company's stock price to jump sharply, none of which the company disavowed.

The PRO advances a circular argument that management's avoiding the message boards and Twitter messages is irrelevant to the trading suspension analysis, yet wants to

²³ Chloe **Error! Main Document Only**.Geller et al., *Human Coronaviruses: Insights into Environmental Resistance and Its Influence on the Development of New Antiseptic Strategies*, VIRUSES (Nov. 2012) at 3044-3068, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3509683/>; *Guidance on SARS-CoV-2 Surrogate Selection*, ASTM, https://www.astm.org/COMMIT/GuidanceCOVID19SurrogateSel_April242020press.pdf (last visited May 27, 2020); Department of Health, 'Surrogate Viruses for Use in Disinfectant Efficacy Tests to Justify claims Against COVID-19' (Public Notice, 7 May 2020) (Austl.) <https://www.tga.gov.au/surrogate-viruses-use-disinfectant-efficacy-tests-justify-claims-against-covid-19>; U.S. ENVTL. PROT. AGENCY, *How Does the EPA Know That the Products on List N Work on SARS-CoV-2?*, <https://www.epa.gov/coronavirus/how-does-epa-know-products-list-n-work-sars-cov-2> (last updated Apr. 17, 2020). See *SARS-CoV2 Viral Culturing at CDC*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/php/grows-virus-cell-culture.html> (last reviewed May 20, 2020).

hold the company accountable for the content and stock price move. In fact, the PRO cites as precedent-worthy an easily distinguishable Commission opinion, one ironically involving Ebola virus treatments, rejecting a petition to terminate a trading suspension.²⁴ That company, Immunotech Laboratories, had not filed a periodic report for almost four years, was a pharmaceutical sector company that previously had been developing media products for the marketing and entertainment industries, and its trading volume increased 1,800%. Here, unlike the cited precedent, the PRO should have concluded that most statements involving Nano Magic were true, and others were legitimate and constitutionally protected opinions. Moreover, not one message board or Twitter citation advanced by the PRO uses the word “COVID-19;” nevertheless, the PRO asserts its opinion, not fact, in the Information Statement that “[t]he posts **implied** that the company’s product was capable of killing the virus that causes COVID-19.” (PRO Decl. 1 at ¶4) (emphasis added).

2. Geppetto Checkmark: The truth is that there was no internet message board or Twitter promotion. The InvestorsHub message board, created in 2005, has loyal company followers who discussed their enthusiasm around real forward-moving corporate developments.

The messages on the single InvestorsHub message board (“iHub”) and Twitter reflected enthusiasm and excitement about such positive developments and factors as Nano Magic having in place a new management team, uplisting from the Pink Sheets to the OTCQB on February 14, 2020 upon being current again in its 34 Act filings, retirement of corporate debt, established products, new directors, a new Chief Financial Officer, a new name that reflected its success with nanotechnologies and rebranding.

²⁴ *Immunotech Laboratories, Inc.*, Exchange Act Release No. 75790, 2015 WL 5081237, *7 (Aug. 28, 2015) (“*Immunotech*”).

These investors' hopes and long-standing beliefs in the company appeared finally to be bearing fruit. There were no promoters, no promotions, no manipulations, no e-mail blasts, no call rooms, no indicia of the conduct that typically gives rise to consideration of a trading suspension. iHub and Twitter were repositories of quality due diligence, expressions of excitement and support, and a collection of opinions and occasional hypotheses. Some of the active participants have been writing about the company for many years, likely matching the duration of their investments, and conveyed their opinions on iHub and Twitter.²⁵

A close examination of the approximately 380 separate postings on iHub during the period from February 24, 2020 to April 30, 2020, unlike the PRO's cherry-picked six comments as a contorted claim of "promotional activity," reveal the participants' due diligence and varied positive observations. Had the PRO looked merely four days earlier, then the PRO would have found the iHub post that likely set in motion the message board and Twitter excitement, a posting likely triggered by the uplisting to the OTCQB.²⁶ "T4kingoff", one of the message board moderators, in post #2945 on February 20, 2020, posted a link to a 21-page due diligence report about the company, detailing the management change, addition of prominent directors, company share structure and details about the company's current business excerpted from the public filings.²⁷ Two of the iHub posters whom the PRO called out, remain on iHub and still talk about staying in Nano Magic as investors, even after the trading suspension. Their words, not counsel's, include:

²⁵ Neither management nor counsel know the real identity of any of the persons posting messages.

²⁶ T4KingOff, Comment to BJ_Cooper post# 2945, INVESTORSHUB (Feb. 20, 2020, 10:32 PM), https://investorshub.advfn.com/boards/read_msg.aspx?message_id=153937626.

²⁷ <https://www.docdroid.net/n2zqjSb/penc-dd-pdf.pdf>.

The rise in price and volume here was from general excitement about the new hires added 2/14/2020, but again you [the PRO] make no mention of that because it doesn't fit your narrative. The patents NMGX has were just extra DD icing on the cake about what could possibly be happening here. People were investing in the team being assembled.

You don't get The former CEO of Fatheads, current CEO of Rocket Loans, and Dan Gilbert disciple , Todd Lunsford to an OTC company. It just doesn't happen often, and when it does , you freaking buy. And that's what I did and that's what others did.

Exhibit B. That is the behavior of believing investors, not promoters.

The hundreds of postings to iHub cover a variety of topics. In fact, a visitor to iHub first sees the management team due diligence before reviewing a post. Some quote from published patents issued to Nano Magic and include speculation about the potential applications for the patents. For every mention of the patents or the pandemic, there are two comments relating to the management team, their experience and background and their stock purchases.²⁸ During this period, the company filed a Form 8-K adding a new director and a new CFO, and filed to reflect its name change. Directors who received Board compensation in stock for attendance at meetings filed Forms 4. Section 16 reporting persons filed Forms 4 to reflect their indirect purchases in the ongoing private placement.²⁹

In the context of iHub and Twitter, the stock price merits mention as justified fully by the above-referenced corporate developments. Certainly, a stock's price moves positively when there is bona fide enthusiasm around a company. On May 21, 2020,

²⁸ During this period, approximately 34 iHub posts mentioned the patents and their potential applications, 10 mentioned the Bermans and their efforts revitalizing the company, 20 mentioned Todd Lunsford (new director) and/or Leandro Vera (new CFO), and 40 mentioned other members of the company's leadership team, management generally or stock purchases reflected in Forms 4 filings.

²⁹ Further discussion is below in the context of this friends and family capital raise, commenced in August 2019. Sales thereunder, dating back to August 2019, were at the same price, as reflected in the company's periodic filings. A prior friends and family capital raise from September 2018 enabled Nano Magic to pay off its revolving credit loan in January 2019.

“T4KingOff” reacted in post 3731 to the PRO’s characterization of the stock price move as “[t]he so called promotional activity... please, we averaged \$5k dollar volume for a few weeks???”³⁰ The PRO feigns concern about the potential “resulting harm suffered by NMGX investors buying company stock at inflated prices.” (Petition Opposition at 2). The long-time investors recognize that the only artifice here is the PRO’s artificially forced deflation of the stock price by virtue of the trading suspension. The PRO easily could have told the Commission that Nano Magic’s stock price, for example, in 2016, when the company had the same patents and products in the market, traded as high as \$5.00 per share, a price-point double the stock price’s highest closing price during the eight-week February through April 2020 timeframe.

The PRO’s suggestion that informed speculation on an internet message board – a recognized forum in which persons interested in an issuer exercise their First Amendment right to speak freely – is grounds for a trading suspension where there are no incorrect statements in any way attributable to the company is preposterous. The First Amendment protects the right to communicate anonymously on internet investor bulletin boards. *John Doe v. 2TheMart.com Inc.*, 140 F. Supp 2d 1088 (W.D. Wash., 2001). If the company, through management, had followed or engaged on the message board, then that could have implicated Regulation FD issues. Compliant officers and directors avoid online interactive chat sessions with members of the public, including on investor message boards, specifically to avoid giving rise to selective disclosure issues and the unintentional disclosure of material nonpublic information. Nevertheless, the PRO criticized and asserted as justification for the trading suspension the company not

³⁰ Exhibit B, T4KingOff, Comment to lucky,mydog post# 3731, InvestorsHub (May 21, 2020, 10:57 PM), https://investorshub.advfn.com/boards/read_msg.aspx?message_id=155791326.

disavowing the information in the marketplace. Notwithstanding, based on a recent assessment of the “information in the marketplace,” that none of the information at issue appears to be misleading, the company did issue a press release on May 6, 2020, cautioning investors only to rely on information released by the company and made known its policy that the company does not communicate on internet message boards. (Petition Ex. A).

D. Mr. Berman Explained Truthfully and Contextually the Comment in Nano Magic’s April 7, 2020 Press Release Regarding ‘Joining the Fight Against COVID-19.’

1. Three Pinocchios: The PRO contends that Nano Magic’s explanation for its statement regarding COVID-19 in the April 7, 2020 press release is “insufficient and misleading,” while mischaracterizing the release itself and disregarding the verifiability of every representation in the press release.

What is insufficient and misleading is the PRO’s narrative in the Petition Opposition, not Nano Magic’s press release of April 7, 2020. The company has in the market the exact products identified, and those products are coming under the new Nano Magic brand. The PRO makes hay over the company last issuing a press release 18 months earlier. A disciplined company like Nano Magic does not issue press releases for the sake of stirring the market. The company speaks through press releases when it has news to announce, as it did in April 2020. Of course, the company “made no subsequent claims regarding any COVID-19 related products or business activities” (PRO Decl. 1 ¶ 16) because it did not make such claims in the press release and had no such claims to make. There was nothing misleading about the April 7, 2020 press release.

2. Geppetto Checkmark: The truth is that on April 7, 2020 Nano Magic correctly described its products and was eager to join the fight against COVID-19, and Mr. Berman believed that the company could bring to market quickly a new disinfectant product.

Nano Magic addressed the veracity of the April 7, 2020 press release in the Petition. So, without being repetitive as to what actually is a credible sworn statement before the Commission, the company expands here on its belief as Mr. Berman articulated, that the company could bring to market quickly a new disinfectant product. At no point and nowhere does the company or Mr. Berman contend or represent that the new disinfectant product will become part of the holy grail pursuit for COVID-19 solutions.

Since February 2020, Nano Magic had been exploring the steps required to manufacture commercial quantities and bring to market the product identified internally as “Halo.” The attached Declaration of the company’s Chief Scientist, Dr. Patrice Metoyer, provides confirmation. Exhibit C. The day before the press release, Mr. Berman received a memorandum from the technical team explaining their understanding of the EPA’s expectations for permitting reregistration of povidone-iodine as a disinfectant. Seeking confirmation, Mr. Berman contacted the EPA to discuss the approach to bring the Halo product to market quickly. A discussion with representatives of the EPA first occurred on April 17, 2020, during which the Nano Magic team learned that the EPA would likely require more detail relating to the adequacy of the information concerning povidone-iodine. The discussion also reviewed the process and timetable for

registration, as well as the EPA’s work to create a streamlined process for COVID-19 applications.³¹

During the PRO’s approximately 40-minute telephone interview of April 24, 2020, Mr. Berman had the benefit of his April 17, 2020 EPA conference, the result of which caused him to recognize that povidone-iodine probably would not be the ingredient that would enable a faster-track to market for Halo. Mr. Berman’s understanding had evolved since the April 7, 2020 press release; however, nothing had changed with respect to the company having “accelerated the [company’s] development and commercialization efforts” to bring Halo to market. Nano Magic’s Chief Scientist confirms the company’s continuing exploration of how to bring to market quickly a product to join more directly the fight against COVID-19. (Exhibit C.) Furthermore, as reported in the 2019 10-K, Nano Magic has realized an increase in sales for its anti-fog product, which appears related to increased use of facemasks and shields during the COVID-19 pandemic.

E. The PRO Admitted by Omission from its Three Declarations that the PRO Never Told the Commission about Nano Magic’s Response to FINRA, a Response that Truthfully Answered FINRA’s Questions.

1. Three Pinocchios: The PRO contends that the company’s responses to FINRA were inaccurate despite the PRO not having placed the company’s response before the Commission.

The PRO’s criticism of Nano Magic’s response to FINRA is odd, given that, according to the PRO’s Information Statement, Nano Magic’s reply to FINRA was not before the Commission. The PRO’s Information Statement presumably stated the facts before the Commission as limited to: “On April 14, 2020, FINRA’s office of Fraud

³¹ The timing of the EPA conversation also is important in the context of the response to FINRA, delivered on the same day. Nano Magic responded to Question 11, about whether the company had products “specifically designed” or “obtained” pursuant to COVID-19 relief efforts, that it has a product “suited” to COVID-19 relief. That remains true and accurate. When the FINRA reply was written and sent, it was before the extended conversation with the EPA.

Detection and Market Intelligence sent written questions to the company in which FINRA inquired about the promotion of NGMX.” (Decl. 1 ¶17). The word “promotion” appeared in only two of the 14 questions, and the answer to both questions was “no.” Petition Ex. C and Ex. D. The Information Statement (by the PRO’s declaration) fails to mention anything further regarding the FINRA inquiry; so, the Commission apparently was NOT informed that FINRA requested the company reply by April 21, and that on April 17 – four days before FINRA’s artificial due date – Nano Magic’s General Counsel responded to each of FINRA’s questions.

Needless to say, if any of the content of Nano Magic’s response in fact was before the Commission, and more importantly the PRO relied on any of the response in its Action Memorandum, then the omission of such a material fact from the Information Statement renders entirely unreliable the Information Statement. And, if the PRO believed that any of Nano Magic’s answers were imprecise, then the PRO had the opportunity during its interview one week later of Mr. Berman to ask him to explain the answers given to FINRA. If the PRO had sought clarification of issues of concern during the interview, this proceeding would have been avoided entirely.

Noting the *Immunotech* precedent the PRO cited previously, there the Division’s Staff filed an “Affidavit stat[ing] that counsel for the Division reviewed referrals from [FINRA], which in turn summarize conversations between [] and FINRA staff.”³² The Commission proceeds to point out that the same “affidavit states that counsel for the Division reviewed corporate documents....”³³ If the PRO only had asked for and reviewed corporate documents, then that too would have prevented this proceeding.

³² *Immunotech* at *8.

³³ *Id.* at *9.

2. Geppetto Checkmark: The truth is Nano Magic's Timely Reply Letter to FINRA was Entirely Truthful.

Every representation in Nano Magic's written response to FINRA was truthful. The context for FINRA's letter, which may have been misleading, was a "routine review of trading activity." Petition Ex. C. The General Counsel addressed precisely each question. On April 7th, as today, and as discussed above and in the accompanying company's Chief Scientist's Declaration, Nano Magic has "a formula suited to COVID-19 relief and we have accelerated its development in light of the pandemic." Exhibit C.

The Division's Enforcement Manual provides that "[i]f the [domestic self-regulatory organization (such as FINRA)] discovers potentially violative conduct ... [but] determines that it does not have jurisdiction, [then] it will refer the potential violations to the SEC."³⁴ FINRA sent a letter; Nano Magic answered truthfully. There was no violative conduct to refer.

The PRO acknowledged that it only informed the Commission that "FINRA sent written questions to the company in which FINRA inquired about the promotion of NGMX."³⁵ The PRO's Information Statement, purportedly containing all facts before the Commission,³⁶ concedes that it never informed the Commission that the company had answered FINRA's questions and the content of Nano Magic's answers. Thus, the PRO deprived the Commission of considering the declarative facts under the signature of the company's General Counsel that the company was not aware of any promotion, the company had not funded a promotion and that no one from the company funded a

³⁴ U.S. SEC. & EXCH. COMM'N, Enforcement Manual, Section 2.2.2.5: Referrals from Self-Regulatory Organizations, at 12 (Nov. 28, 2017) (<https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>).

³⁵ PRO Decl. 1 ¶17.

³⁶ PRO Decl. 2 ¶4.

promotion.³⁷ It further follows, given the language of the Enforcement Manual that “[the SRO] will refer the potential violations to the SEC,” that FINRA speculated that there was a potential violation, a fact also precisely of which the PRO did not include in the Information Statement.

F. The PRO’s Initial Interview of EPA Staff and Re-interview of Them Well After the Trading Suspension Order Failed to Capture and Neglected to Convey Important Details About the Meeting.

1. Two Pinocchios: The PRO contends that its two telephone calls with the EPA, one of which post-dated the trading suspension, conflict with Mr. Berman’s explanation during his interview about how quickly Nano Magic may bring a new product to market. The PRO did not pursue with Mr. Berman the breadth of his call with the EPA, and the PRO to this day has not obtained or sought a complete understanding of the company’s call with the EPA.

In describing the facts before the Commission when the trading suspension was issued, the PRO attributes to the manager at the EPA’s Office of Pesticide, who also spoke with Mr. Berman, that povidone-iodine is not currently registered with the EPA, such that “any review of a product containing this ingredient would be a de novo review,” and “such a review is a lengthy, complex and costly process....” (PRO Decl. 1 ¶21) Missing from the PRO’s questioning of Mr. Berman apparently unhelpful to the PRO’s color-within-the-lines narrative was detail about how Nano Magic would look at options to pivot away from the lengthy and complex strategy. Nano Magic has a business strategy in mind; the PRO did not care to ask.

Prior to filing the Petition Opposition, the PRO again spoke with the EPA staff and desires to shoehorn its May 12, 2020 discussion as somehow relevant to the information before the Commission on April 30th. Scientific literature recognizes human coronavirus 229E as a surrogate to test the efficacy of disinfectants for use against the

³⁷ Petition, Ex. D at 2.

SARS coronavirus. Assuming, *arguendo*, the PRO communicates correctly what it learned in May from the EPA, at best there is a disagreement between scientific and materials experts regarding appropriate surrogates for testing. If that becomes the sole factual hook for a trading suspension, then the Commission would be sending a shot across the bow at every major pharmaceutical manufacturer using different protocols and surrogates to test for a COVID-19 vaccine.

2. Geppetto Checkmark: The truth is that the one and one-half hour telephone conversation held at 3:00 PM on April 17, 2020 between Mr. Berman and Dr. Metoyer and three members of the EPA's Office of Pesticide Programs Staff at least six topics and resulted in Nano Magic modifying its planned approach to bringing Halo to market.

The PRO never asked Mr. Berman about the details of the call with the EPA or the nature of any business adjustments as a result of the call. To do so would not have fit the neat narrative the PRO sought to construct. Even now the PRO does not have a complete picture of the April 17, 2020 discussion. The purpose of the call, from Nano Magic's perspective, was to discuss registering povidone-iodine for possible use in Halo, a surface cleaning product, to mitigate possible transmission of COVID-19. The Nano Magic with EPA call included company background, company products, available information about povidone-iodine, the reregistration process for povidone-iodine, likely registration process for Halo, EPA considerations to fast-track COVID-19 products, likely timelines, EPA process for package review, and fees. This breadth of topics is a one and one-half hour substantive call.

Nano Magic came into the call understanding that using povidone-iodine in Halo may enable access to a fast track process available for products that could be used against COVID-19. The company learned about limitations to the process, given the EPA's

obligation to assess the safety of products, even if data about COVID-19 efficacy existed. The conversation ended with Nano Magic informing the EPA that the company would revisit – not abandon – its short-term and long-term product to market strategy. Notwithstanding the technical requirements, Nano Magic still is evaluating its options, available data, and the cost of obtaining additional relevant data. Nano Magic promptly pivoted its efforts and began to explore alternative ways to come to market quicker to join the COVID-19 fight sooner, including with its surface and hand-sanitizing products and anti-fog solutions. Nothing that Nano Magic learned warranted rethinking any of the content of its April 7th press release because the release remained accurate.

G. Nano Magic’s Recent Capital Raise Commenced in August 2019 was with Friends and Family.

1. Three Pinocchios: The PRO acts as if the March 2020 completion of the friends and family capital raise reported in the 2019 10-K filed after the trading suspension was somehow hidden, when, in fact, simply reading prior filings would have revealed the information.

The PRO suggests something sinister in its characterization of “the discussion of the March 2020 capital raise” during the April 24, 2020 interview and accuses Mr. Berman of failing to disclose the investment by PEN Comeback 2, LLC and the roles that Mr. Berman and his father have with the manager of PEN Comeback 2. Moreover, the PRO creates innuendo around raising money to fuel the PRO’s false narrative about a “suspicious” promotional activity as part of a coordinated campaign. Those conclusions are unsupportable and misleading, mischaracterizing the investments altogether by tying the timing to the early 2020 excitement and news around the company.

2. Geppetto Checkmark: The truth is Nano Magic previously had disclosed four closings from the friends and family capital raise that had started in August 2019, the price was set in August 2019,

and the reported March 2020 capital infusions were the final wires for funds committed before February 21, 2020.

There was no “March 2020 capital raise” or “March 2020 private placement” as the PRO suggests. (Petition Opposition at 19). The March 2020 transactions disclosures represented wire transfer dates for funds committed weeks earlier. The investments were part of the 2019 friends and family capital raise round. The company previously disclosed four closings of the same offering in September 2019, two in October 2019 and one in December 2019. The company already had disclosed that PEN Comeback 2, LLC was the sole investor in three of those closings. All stock sales in the offering was at a price of \$0.65 per share, which was the stock price in August 2019 and as referenced in the 34 Act filings, and warrants to purchase additional shares at \$1.50 per share. The only reason that the February and March closings were not reported prior to Mr. Berman’s interview is no periodic reports had been due. The closings were, as the PRO notes, reported in the 2019 10-K. Nobody hid the fact of additional closings. The Section 16 reporting persons whose funds were part of those closings filed Forms 4 in February and March 2020 reporting their indirect purchases.³⁸ Approximately 85% of the company’s stock is restricted. All shares that Mr. Berman and his father control directly and indirectly, as with all shares held by other corporate insiders, are subject to Rule 144.³⁹

The logic of the PRO’s concern is mystifying. PEN Comeback 2, LLC, controlled by Section 16 reporting persons, acquired unregistered securities at prices set in August 2019 prior to commencement of the offering. Under Rule 144, there is a minimum 12-month holding period and other restrictions on any securities resale. There

³⁸ Participants on iHub noted these filings; however, the PRO appears unaware of them.

³⁹ 17 C.F.R. § 230.144.

is no connection between the timing of the wire transfers to fulfill the subscription commitment and iHub, the press release, corporate news or any other corporate event.

III. NANO MAGIC IS ENTITLED TO APPROPRIATE RELIEF FROM THE TRADING SUSPENSION ORDER.⁴⁰

The Commission makes clear that “it may provide appropriate relief even if the trading suspension expires while the timely filed Rule 550 petition is still pending.” Submissions Order at 3 (citing *EFuel* at *1 & nn. 7-9; *Bravo* at *6 & n.54, *11 & n. 72). The SEC’s Co-Director of the Division of Enforcement, during a speech on May 12, 2020, which coincidentally followed the instant Petition and delivered while the instant trading suspension still was in effect, noted “that the Commission may provide appropriate relief where the suspension expires while the petition is pending.”⁴¹ The Commission “may also provide relief with respect to the collateral consequences that might have arisen as a result of the trading suspension.” *EFuel* at *2 & n.9 (citing *Bravo* at *6 & n.54, *12 & n. 72). As Nano Magic and its shareholders are entitled to such relief, and where it appears the Commission never before actually has fashioned such relief, it is appropriate to consider not only negating the Pyrrhic effect of vacating the trading suspension but also making whole the company’s shareholders by enabling prompt restoration of the company’s market value extant prior to the ten-day suspension.

⁴⁰ If the Commission would find helpful oral argument, then Nano Magic is prepared to appear before the Commission to ensure that the response to every issue and concept raised by the PRO has been addressed fully to the Commission’s satisfaction.

⁴¹ Steven Peikin, Co-Director, Division of Enforcement, U.S. Sec. & Exch. Comm’n, Keynote Address: Securities Enforcement Forum West 2020 (May 12, 2020) (available at <http://www.securitiesdocket.com/2020/05/13/keynote-address-by-steven-peikin-securities-enforcement-forum-west-2020/>).

A. The Commission Should Declare the Trading Suspension Vacated Upon Nano Magic’s Filing of the Petition.

The Commission recognizes that it “may vacate an expired trading-suspension order in appropriate circumstances.” *Efuel* at *2 (citing *Bravo* at *6). Notwithstanding the Commission’s ability to provide relief from the collateral consequences of the Commission having imposed the trading suspension, Nano Magic nevertheless implored the Commission to expedite consideration of the Petition. Nano Magic, on the day following filing of the Petition and with five business days remaining on the trading suspension, filed a Motion for Expedited Consideration of its Sworn Petition. On the following day, on which the Commission issued its Submissions Order and with four business days remaining on the trading suspension, and after sending an e-mail “meet and confer” to the PRO proposing to compress the submissions schedule to which the PRO did not respond, Nano Magic filed a Motion to Expedite Schedule for Submissions in Consideration of [its] Sworn Petition.⁴² Nano Magic took every procedural step possible before the Commission and with deference to the Commission to seek resolution during the trading suspension’s pendency. The narrative in the Petition and this Closing Submission set forth compelling and appropriate circumstances for the Commission to vacate the trading suspension.

B. The Commission Should Restore the Piggy-Back Exemption for Nano Magic.

Rule 15c2-11 promulgated under the Exchange Act establishes requirements that broker-dealers must meet before publishing a quotation for OTC markets traded

⁴² Mot. to Expedite Schedule for Submissions in Consideration of Sworn Pet. to Terminate Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 (filed May 8, 2020) (“Motion to Expedite”). The PRO did not respond to the e-mail “meet and confer” and did not file an opposition to the Motion to Expedite. The Commission did not rule on the Motion to Expedite. Although not discussed in this submission, Nano Magic considers the absence of a ruling on the Motion to Expedite an issue preserved for appeal, should an appeal be deemed necessary.

securities.⁴³ Broker-dealers, typically using issuer-generated information, file Forms 211 with FINRA, which then sends the processed forms to OTC Markets, which in turn notifies the broker-dealers of the approval and opening of the market for the broker-dealers to trade the securities. After 30 days, other broker-dealers are free to make their own market without conducting a review of the issuer, a privilege known as the “piggyback exception.” Rule 15c2-11(f)(3).⁴⁴ Thereafter, trading in the stock may continue forever (as long as certain continuity of quotation publication requirements are satisfied). A Commission-ordered ten-day trading suspension, which interrupts the ability of broker-dealers to publish quotations, kills “piggyback exception” eligibility.

Division Co-Director Peikin, in his speech before the Securities Enforcement Forum West 2020, noted that the Commission “has the authority to provide relief from possible consequences arising from the trading suspension, such as the loss of piggy-back eligibility.” In the OTC market, restoration of piggyback eligibility is extremely important, because the exemption makes it easier for broker-dealers to quote and make markets in a security. Moreover, as discussed, Nano Magic is current with its 34 Act reports, thus ensuring full satisfaction of the information requirements broker-dealers must maintain pursuant to Rule 15c2-11(a)(5).⁴⁵ Accordingly, Nano Magic requests that the Commission declare restored the “piggyback exception,” and do so retroactive to April 30, 2020 to ensure no break in time, such that market-makers may resume making a market in Nano Magic securities without the requirement of submitting a Form 211.

⁴³ 17 C.F.R. § 240.15c2-11.

⁴⁴ 17 C.F.R. § 240.15c2-11(f)(3).

⁴⁵ 17 C.F.R. § 240.15c2-11(a)(5).

C. The Commission Should Make a Finding that the Commission has Concluded Any Investigation of Nano Magic.

The Commission has the authority to declare “terminated” any investigation, if there even was one of Nano Magic. In 1972, the Commission created the Division of Enforcement to carry out “[a]ll enforcement activities of the Commission.”⁴⁶ In creating the Division, the Commission also empowered the Division’s Director to “conduct [] all of the enforcement activities under each of the acts administered by the Commission and the investigations related thereto”⁴⁷ and further delegated certain authority to the Division’s Director.⁴⁸ Notwithstanding such delegation, the Commission “retain[s] a discretionary right to review the action of any such division of the Commission,”⁴⁹ no different than the Commission’s instant review of the trading suspension.

On September 27, 1972 the Commission articulated procedures that it believes are necessary and proper to attain, where practicable, procedures for terminating Division investigations.⁵⁰ The Commission wrote that it “is instructing its staff that in cases where such action appears appropriate, it may advise a person under inquiry that its formal investigation has been terminated...[T]his conclusion may be based upon various reasons, some which ... are clearly irrelevant to the merits of any subsequent action.”⁵¹ Above and beyond terminating the suspension, restoring the piggy-back exemption and any additional relief that the Commission believes is warranted, there is one way that the Commission can remove the cloud that the PRO’s action precipitated and the

⁴⁶ Structural Reorganization of Commission, 37 Fed. Reg. 16791 (Aug. 19, 1972).

⁴⁷ *Id.* at 16793.

⁴⁸ *Id.* at 16796.

⁴⁹ 15 U.S.C. §78d-1(b) (2018).

⁵⁰ Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations, Securities Act Release No. 5310, Exchange Act Release No. 9796, Investment Company Act Release No. 7390, Investment Advisors Act Release No. 336, Fed. Sec. L. Rep. (CCH) ¶ 79,010 (Sept. 27, 1972).

⁵¹ *Id.* at 3.

Commission created. That is by the Commission formally declaring terminated any investigation.⁵² That alone will give market-makers, the company's investors and the marketplace confidence that it can resume deferring to the company, not to speculation about what if anything may be next from the Commission, as to how to evaluate the company as a possible investment.

IV. CONCLUSION

This tragic and distrust-creating experience with the PRO calls to mind the famous colloquy in "A Few Good Men."⁵³ The heated courtroom interrogation was:

Col. Jessup: You want answers?

Lt. Kaffee: I want the truth!

Col. Jessup: You can't handle the truth!

Jack Nicholson, portraying Col. Jessup, then launches into a lecture about how sometimes things happen that the public does not need to know about, and, although the effects may seem bad (such as the death of a United States Marine in the movie), the benefits far outweigh the consequences. That is the exact attitude of the PRO towards Nano Magic and at issue in the trading suspension -- and the meritorious and timely Petition to terminate and rectify the consequences suspension. Just as Judge Rudolph permitted the questioning to continue and demanded that Col. Jessup answer, so too this

⁵² After filing the Petition, undersigned counsel asked the PRO whether there is a "Formal Order." The PRO declined to answer, stating only that the PRO will let counsel know "when it's appropriate." Among the first two questions qualified counsel ask the Division Staff are whether there is a "Formal Order" and to whom to address a request for a copy." Nowhere in any of its filings does the PRO acknowledge that there exists a "Formal Order." As a result, counsel does not refer to an extant investigation pursuant to a "Formal Order" involving Nano Magic.

⁵³ A FEW GOOD MEN (Columbia Pictures and Castle Rock Ent. 1992) (available at <https://www.youtube.com/watch?v=9FnO3igOkOk>).

Commission is entitled to know and deserves to hear the answers about the grave wrong that the PRO perpetrated against Nano Magic and its shareholders.

The PRO's obsession with the message board naturally gave rise to seeing what is there. Interestingly, one of the PRO's selected posters, "T4KingOff," expressed in a recent post the deleterious effect of the PRO's action, and by extension the Commission's erroneous decision. That is:

Very slanted , one-sided narrative. Will the SEC give NMGX a fair shake? Very doubtful. The so called promotional activity... please, we averaged \$5k dollar volume for a few weeks??? Comeon SEC you have actual scams going on all over the place with \$500k dollar volume+. GRNF , SPOM, and many more.

Exhibit B (spacing as in original). Another post calls out the PRO for its grave failure to ascertain the truth about the company:⁵⁴

[T]hey know that would blow up their narrative if they actually dug in.... Still staggers the brain ... promotion.... IDIOTS, that's because Todd Lunsford and Leo Vera joined up, a huge announcement, and they make no mention of that in there (sic) brief. That alone should tell you they don't give [omitted] about the truth."

Exhibit B. Nano Magic is before the Commission trusting the Commission cares about the truth.

In pandemic speak, the PRO came to the Commission like those standing in a latte line with their mouths uncovered thinking nothing bad will happen. In other words, the PRO sought a trading suspension with a level of arrogance and expectation that, if permitted to stand, could infect the integrity and perception of the line of future Commission trading suspensions. Even nine trading days after expiration of the trading suspension Nano Magic's stock has not resumed trading. That is a fatal blow. Now, in

⁵⁴ **Error! Main Document Only.**T4KingOff, Comment to BJ_Cooper post# 3761, InvestorsHub (May 27, 2020, 10:12 PM), https://investorshub.advfn.com/boards/read_msg.aspx?message_id=155885250.

considering Nano Magic's Petition and its multiple submissions, the image to consider is that of the Sistine Chapel with Adam's outstretched hand reaching toward the hand of the life-giving Creator to all faiths. The Commission has nearly taken all life from Nano Magic; now accept Nano Magic's hand and return the company to full life.

Dated: May 28, 2020
Washington, DC



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Statement of Filing by E-Mail

I hereby certify that on May 28, 2020, I caused a true and correct copy of the foregoing this Closing Submission in Support of Termination of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 to be filed via e-mail, in Administrative Proceeding File No. 3-19787, *In the Matter of Nano Magic Inc.*, with the Office of the Secretary of the United States Securities and Exchange Commission. This e-mail filing is pursuant to the SEC's Order of March 8, 2020, *In re Pending Administrative Proceedings*. I sent this filing to the e-mail address APFilings@sec.gov.

Dated: May 28, 2020, Washington, DC



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Certificate of Document Length

I hereby certify that on May 28, 2020, I used the “Word Count” function in Microsoft Word to determine the word count in this Closing Submission in Support of Termination of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 to confirm compliance with the 8000 word limitation set forth in the Order Requesting Additional Submissions. Excluding any declarations, affidavits, attachments, cover page, Table of Contents, Table of Authorities, Statement of Filing by E-mail, this Certificate of Document Length, the Certificate of Service, and counsel’s signature block, the word count is 7,996 words.

Dated: May 28, 2020, Washington, DC



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Certificate of Service

On May 28, 2020, I caused a true and correct copy of this foregoing Closing Submission in Support of Termination of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 to be 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 28, 2020, Washington, DC



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Very slanted , one sided narrative. Will

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T4KingOff 

Followed By	62
Posts	4,832
Boards Moderated	3
Alias Born	12/08/17

[T4KingOff](#) 

Thursday, 05/21/20 10:57:06 PM

Re: lucky,mydog [post# 3731](#)



Post # of 3762

Very slanted , one sided narrative. Will the SEC give NMGX a fair shake? Very doubtful. The so called promotional activity... please, we averaged \$5k dollar volume for a few weeks??? Comeon SEC you have actual scams going on all over the place with \$500k dollar volume+. GRNF , SPOM, and many more.

The rise in [price](#) and volume here was from general excitement about the new hires added 2/14/2020, but again you make no mention of that because it doesn't fit your narrative. The patents NMGX has were just extra DD icing on the cake about what could possibly be happening here. People were investing in the team being assembled.

You don't get The former CEO of Fatheads, current CEO of Rocket Loans, and Dan Gilbert disciple , Todd Lunsford to an OTC company. It just doesn't happen often, and when it does , you freaking buy. And that's what I did and that's what others did.


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Thursday, 02/20/20 10:32:54 PM

Re: BJ_Cooper [post# 2945](#)



Post # 2948 of 3762

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Wednesday, 05/27/20 10:12:13 PM

Re: BJ_Cooper [post# 3761](#)



Post # of 3762

Yep BJ, I think they know that would blow up their narrative if they actually dug in. They are just going to keep running with a false and misleading narrative. Still staggers the brain... "promotion began 2/14/2020 and volume and [price](#) went up".... IDIOTS, that's because Todd Lunsford and Leo Vera joined up, a huge announcement, and they make no mention of that in there brief. That alone should tell you they don't give a shit about the truth.

Cleaner formerly called Halo

BK

Bruce Kincaide <
bkincaide@ecos
-tx.com>

Fri 1/24/2020 1:44

PM

To: investor relations



I'm sure I won't get a response but being a stockholder for many years I have a question about your cleaning product formerly called Halo. Is this product dead? It just seems like with the virus situation in China this product would have a huge need.

Thank you for time,

Bruce Kincaide,VP



Electronic Computer Outlet Services, Inc.

Office - 832-243-5964

Cell - 832-687-0278

bkincaide@ecos-tx.com

Phil 2:3

Exhibit B

Exhibit B

srindner99 . <sr

[REDACTED]

il.com>

Sat 2/29/2020 3:16

PM

To: investor relations



Hello,

Has the company been selling their trigger sprayer product with the CoronaVirus hitting the US?

Thank you,

Scott

Exhibit B

Jerre Coyne Dawson <jerredawson@pen.com>



Fri 3/13/2020 1:59 PM

PM

To: investor relations

Cc: Thomas Dawson <tdawson17@pen.com>

Dear Folks—as longtime Pen shareholders—back to the beginning of time as SI Diamond Technology—the HALO product always seemed to us to be a potential winner—given the right circumstances. If any time happens to be “the right circumstances” that time is now. I don’t suppose you have any news that would be material to shareholders (and the public) to share?

Cheers

Exhibit B

Nano Magic's commercialization efforts of the Halo product. So, the technical team got to work to answer that question.

8. At no time was there any question about the antimicrobial efficacy of the product as a surface cleaner, because Halo had been tested successfully in November of 2013, see Halo Science Book, December 2015 (a confidential internal document that I would be willing to provide upon request). In fact, although not in commercial production, I personally use Halo at my home for surface cleaning and find Halo to be effective.
9. The technical team determined that, in order to make stronger claims for the product, we needed to explore whether we could add an active ingredient that was recognized by the EPA to have a disinfecting or sanitizing effect to reduce the time to market for Halo and to save the company expensive additional testing.
10. On March 9, 2020, the company reached out to a supplier to confirm the cost and time for processing a key ingredient in the Halo formulation.
11. Having considered a number of active ingredient alternatives as part of the company's scientific testing, the company elected to investigate the addition of Povidone-Iodine ("PVP-I") to the Halo formulation in order to embrace and include a known EPA-approved product to substantiate any claims about Halo's tested and already proven germ-fighting capabilities.
12. The choice of PVP-I was based, in part, on information published by the National Center for Biotechnology Information (part of the National Institute of Health). We understood that under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA): "The Agency has previously identified and required the submission of generic (i.e., active ingredient specific) data to support reregistration of products containing iodine."²
13. The company also understood that PVP-I also was an already-approved Food and Drug Administration ("FDA") antiseptic skin disinfectant.
14. On April 6, 2020, the Nano Magic technical team sent an e-mail to Mr. Berman to explain its understanding of the reregistration process for Halo with the EPA for PVP-I and provided a letter it found written by the EPA regarding the reregistration of PVP-I, including a copy of the linked 70 page white-paper "Reregistration Eligibility Decision for Iodine List C, Case 3080," dated July 27, 2006.³ When I searched online for the title, the title that came up was "Reregistration Eligibility Decision for Iodine and Iodophor Complexes." That is the same paper.
15. On April 7, 2020, the company reached out to the EPA to determine the appropriate next steps to commercialize the enhanced product with the PVP-I and to determine the appropriate labeling claims that could be made.
16. On April 17, 2020, Tom Berman and I participated in a telephone conference with representatives of the EPA. The EPA staff on the call included Susan Bartow, EPA/OPP/PRD; John Hebert, EPA/OPP/AD; and Eric Miederhoff, EPA/OPP/AD. The first of our many topics

² <https://pubchem.ncbi.nlm.nih.gov/compound/Povidone-iodine#section=Regulatory-Information>

³ That white-paper is available online at <https://archive.epa.gov/pesticides/reregistration/web/pdf/iodine-red.pdf>.

during the one and one-half hour telephone conversation was the re-registration process for PVP-I. The EPA staff raised concerns that past information about PVP-I would not be adequate, and, therefore, just adding PVP-I would not alone allow us to bring to market Halo quickly with the labelling that we desired. We then discussed the registration process and timing, in general, that would be required to register the Halo product. We then also discussed other ways that we could bring Halo to market faster based on the agency's efforts to streamline a process for COVID-19 applications. We also discussed the timeline for the streamlined process, packaging of required data for presentation to the EPA, and applicable fees.

17. At all times prior to our April 17, 2020 telephone conference with the EPA, the Nano Magic scientific and administrative teams believed that Halo is a product that could get to market quickly and would be beneficial to consumers, and, once on the market would be effective against viruses, bacteria and fungi.
18. On April 20, 2020, we received an independent third-party price quote from Microchem Laboratory for microbiological testing on our product. The intention of this testing is to confirm our belief that the concentration of PVP-I in our product would further contribute to its microbiological efficacy.
19. In addition, subsequent to our telephone conference with the EPA, we have talked at length with EPA consultants, obtained quotes to do tests in EPA certified labs, and we have also continued to explore opportunities to either purchase private label or develop what the EPA would consider a "me too" product that could be fast-tracked and approved to go-to-market in less than five months, or even as fast as 90-days or less pursuant to the EPA "List N" guidelines.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of May, 2020, in Brooklyn Heights, Ohio.



Patrice Metoyer, Ph.D.