

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94818 / April 28, 2022

Admin. Proc. File No. 3-19787

In the Matter of
NANO MAGIC INC.

ORDER DENYING MOTION TO COMPEL

On April 30, 2020, we issued an order pursuant to Section 12(k) of the Securities Exchange Act of 1934 suspending trading in the securities of Nano Magic Inc. (“NMGX”) for the period from 9:30 a.m. EDT on May 1, 2020, through 11:59 p.m. EDT on May 14, 2020.¹ On May 6, 2020, NMGX filed a petition to terminate the trading suspension. In accordance with Rule of Practice 550(b), we requested additional written submissions on May 8, 2020.² Among other things, we ordered the Division of Enforcement to “file all the information that was before the Commission at the time of the Trading Suspension Order’s issuance.”³ Our order also provided that the “Division need not disclose privileged legal analysis or sensitive information about the staff’s investigative methods.”⁴

The Division responded by filing an Information Statement and Declaration “setting forth the substantive facts before the Commission at the time it issued the order suspending trading.” Nano Magic asserts that the Division’s response is incomplete to the extent that it recites the “*substantive* facts” before the Commission instead of “*all* the information” that was before the Commission. Nano Magic thus has filed a motion to compel the Division to produce a copy of the action memorandum it submitted to the Commission in connection with the trading suspension order, “redacted such that only the facts presented to the Commission are provided.”

The Division opposes Nano Magic’s motion. It maintains that the Declaration sets forth “all factual information related to the trading suspension that was before the Commission.” It

¹ *Nano Magic Inc.*, Exchange Act Release No. 88789, 2020 WL 2097884 (April 30, 2020).

² 17 C.F.R. § 201.550(b); *Nano Magic Inc.*, Exchange Act Release No. 88841, 2020 WL 2310946 (May 8, 2020).

³ *Nano Magic Inc.*, 2020 WL 2310946, at *1.

⁴ *Id.* at *1 n.5.

further asserts that the “term ‘substantive facts before the Commission’ equates to all factual information related to the trading suspension that was before the Commission.”

The instant dispute is a narrow one: Nano Magic argues only that it is entitled to a redacted, “facts-only” copy of the action memorandum and disclaims an interest in the memorandum’s other contents. It emphasizes that it is “not requesting opinions, legal analysis, theories or investigative methodology” and that it is “not seeking disclosure of the Staff’s privileged analysis, sensitive information about the staff’s investigation methods, or information the disclosure of which would otherwise violate applicable federal law or regulation.”

Consistent with our May 8, 2020, order, we have compared the unredacted action memorandum with the Information Statement and the Declaration. Having done so, we have determined that the Information Statement and the Declaration set forth nearly all the factual information that was before us when we suspended trading in Nano Magic’s securities. Our review indicates, however, that the following factual information was also before the Commission in the action memorandum:

- NMGX had opportunities to correct the confusion created by the promotional activity, following both its correspondence with FINRA regarding the issue and an April 24, 2020 conversation with Commission staff, but NMGX did not issue a clarifying statement after either of those interactions.
- In the staff’s April 24, 2020 conversation with NMGX CEO Tom Berman, Berman did not state whether NMGX was relying on Regulation D with respect to its June 2019 and March 2020 private capital raises.
- According to NMGX’s Form 10-K, filed with the Commission on November 14, 2019, Ronald Berman (a NMGX Director since May 1996 and the father of NMGX’s CEO, Tom Berman) beneficially owns 10.2% of NMGX’s common stock.
- During the period March 2 through March 30, 2020, which coincides with the suspicious promotional activity, two trading accounts held by Ronald Berman sold 1,310 NMGX shares, recognizing trading profits of \$3,367.

We find that, collectively, this information, paired with the information included in the Information Statement and Declaration, fully and fairly set forth all of the factual information that was before us when we suspended trading in Nano Magic’s securities. Because the information set forth above, along with the information included in the Information Statement and Declaration, is precisely the information that would be contained in a redacted version of the action memorandum, we find it unnecessary to provide Nano Magic with a redacted copy of the Division’s action memorandum. Production of a redacted version of the action memorandum would provide Nano Magic no information beyond what it has already received. For these reasons, we DENY Nano Magic’s motion to compel.

By May 19, 2022, the parties may, but need not, file supplemental briefs, of not more than 2,000 words, addressing any matter directly implicated by the resolution of Nano Magic's motion as set forth herein.

By the Commission.

Vanessa A. Countryman
Secretary