

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

May 7, 2020

File No. 500-1

In the Matter of  Nano Magic, Inc.  Petitioner.	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
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Nano Magic Inc., 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 for expedited consideration of its 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").

Petitioner, the issuer and adversely affected party, filed timely the Petition during the period of the trading suspension that "terminat[es] at 11:59 p.m. EDT on May 14, 2020." The expiration of the trading suspension is six business days subsequent to the date of filing of the Petition and five business days hence from the filing of this Motion. Petitioner requests that the Commission act expeditiously to consider this Petition and resolve this Petition prior to the termination of the period of the trading suspension. The facts set forth in the sworn Petition address fully the "questions regarding the accuracy and adequacy of information in the marketplace," establish clearly why the trading

suspension is not necessary -- or at a minimum no longer is necessary -- based on the particularized and detailed facts provided, and the harm to the issuer attendant to the continuation of the trading suspension. In fact, Nano Magic submits that the sworn Petition provides the Commission with sufficient relevant and factual information to justify the Commission terminating the trading suspension expeditiously and summarily based entirely on the facts and narrative in the Petition.

### **Discussion**

On May 4, 2020, Chairman Clayton, in announcing that the Commission “is providing temporary, conditional relief for established smaller companies affected by COVID-19 that may look to meet their urgent funding needs through a Regulation Crowdfunding offering,” stated that “[i]n the current environment, many established small businesses are facing challenges accessing urgently needed capital in a timely and cost-effective manner.”<sup>1</sup> The timing of the Chairman’s statement, coincident with the period of the suspension of the trading of Nano Magic securities, is apropos to this Motion and this issuer. Nano Magic, a small business just emerging from an 18-month plus period of significant financial hardship, is faced with a trading suspension (substitute “current environment”) that directly puts in grave doubt the viability and future of the company in the eyes of the company’s shareholders and real customers. If the Commission can provide “urgent funding” as relief to small businesses, then the Commission certainly can provide “urgent” relief to an issuer that set forth in painstaking deliberate detail in its Petition why the two articulated bases for the trading suspension were misplaced.

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<sup>1</sup> <https://www.sec.gov/news/press-release/2020-101>.

The trading suspension is the harm to Nano Magic, particularly where, as here, the facts contradict the Commission’s articulated concerns. Thomas Hobbes, the 16<sup>th</sup> and 17<sup>th</sup> century political philosopher, wrote “where men build on false grounds, the more they build, the greater they ruin.”<sup>2</sup> Nano Magic believes that the Commission could not possibly have received information from what appears to have been a rather shallow inquiry with considerable speculation thrown in that can challenge the sworn facts now in front of the Commission. The Hobbes quote effectively highlights what occurred here. FINRA’s Office of Fraud Detection and Market Intelligence (“FODMI”) “built” on very incomplete (“false” in applying the Hobbes principle) grounds and forwarded that information to the Commission’s Division of Enforcement staff (or directly to the Philadelphia Regional Office’s Division of Enforcement Staff (“PRO”). Hobbes “the more they build” was the PRO’s 40-minute telephone interview of Nano Magic’s CEO. Further perpetuating what FODMI and the PRO built continues to present grave issues for the company’s reputation and survival. In other words, “the greater they ruin” is the continuation in place of the trading suspension.

Nano Magic has no doubt that, based on the information before the Commission last week, the Commission exercised its subjective judgment as authorized by statute and did what it then believed was justified to protect investors or the public interest. Now the Commission has more than sufficient facts – likely facts that may even disprove information previously presented – to recognize, by terminating the trading suspension,

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<sup>2</sup> Thomas Hobbes, *The Essential Leviathan, A Modernized Edition* (Nancy Stanlick, Ed.), Hackett Pub. (2016), quotation available for view at [https://books.google.com/books?id=kWv9DAAAQBAJ&pg=PA147&lpg=PA147&dq=hobbes+%22Where+men+build+on+false+grounds,+the+more+they+build,+the+greater+the+ruin%22&source=bl&ots=Fb0YT6Fk0b&sig=ACfU3U0R\\_B4LBmjuDEIjIG29DfgxB3IQ0A&hl=en&sa=X&ved=2ahUKewjPodWj9aDpAhWZoHIEHc63BkwQ6AEwAHoECAkQAQ#v=onepage&q=hobbes%20%22Where%20men%20build%22](https://books.google.com/books?id=kWv9DAAAQBAJ&pg=PA147&lpg=PA147&dq=hobbes+%22Where+men+build+on+false+grounds,+the+more+they+build,+the+greater+the+ruin%22&source=bl&ots=Fb0YT6Fk0b&sig=ACfU3U0R_B4LBmjuDEIjIG29DfgxB3IQ0A&hl=en&sa=X&ved=2ahUKewjPodWj9aDpAhWZoHIEHc63BkwQ6AEwAHoECAkQAQ#v=onepage&q=hobbes%20%22Where%20men%20build%22)

that there is adequate and accurate information in the marketplace on which investors can rely.

The intent here is not to restate the detailed narrative filed yesterday afternoon. The applicable rule, as noted, is Rule of Practice 550. The case law is clear as to the breadth of the Commission's discretion, which the issuer and its lawyer respect. Instead, the limited ask here is rooted in fairness. As pointed out in the Petition, undersigned counsel speculates that it is most unlikely that the Commission received a recommendation from the PRO Staff earlier than April 27, 2020 (and more likely on the 28<sup>th</sup> or 29<sup>th</sup>), given that the sole 40-minute narrow interview of the CEO occurred the preceding Friday. The Commission on April 30<sup>th</sup> issued the trading suspension. If the Commission were to apply the exact same elapsed time from receipt of the Petition to its decision here as it did to imposing the trading suspension in response to the Staff's recommendation, then this Petition can be – and should be – resolved prior to the expiration of the trading suspension. And, in this highly sensitized “COVID-19” and “coronavirus” messaging environment, the Petition presents the Commission with the unprecedented opportunity to send a powerful and meaningful message to the same small businesses contemplated in and consistent with the Chairman's May 4<sup>th</sup> statement. That message is: come in quickly, present the facts, and the Commission can say “resume.”

Reiterating briefly certain key points from the Petition, Nano Magic is a legitimate company, with published patents, manufacturing and production facilities; legitimate products with established track records; and real customers and prospective customers. The company has made seven filings with the Commission in 2020 and is

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days away from filing timely its 2019 Form 10-K. Nano Magic never was a shell company and is not the product of a reverse merger involving or with a shell company. There are no promoters, e-mail spammers, newsletters, touts or call rooms. The company never has published materially false and misleading information and does not message on message boards.

With respect to the “information in the marketplace claiming that the Company has a patent for a disinfectant that kills ‘coronavirus,’” Nano Magic trusts that it put to bed that issue in the Petition. Nowhere and at no time has the company ever made such a claim. Regarding message board communications, Nano Magic disavows knowledge of the source of such information in the marketplace. The company has a strict policy of not communicating on internet message boards and a policy of not communicating with persons seeking to obtain information from the company outside of the company’s public filings and official statements. The company’s General Counsel’s inquiry to each officer and director confirmed that each of them has not (1) published any information about the company on any internet message board; (2) responded to any message posted on an internet message board about the company; or (3) arranged or procured, directly or indirectly, for any person(s) or entity to publish or communicate information about the company on any internet message board or by any other electronic medium.

As to Nano Magic’s CEO’s statement in the April 7, 2020 press release, the plain language of the release reveals that nowhere did Nano Magic or its CEO say that the company was “involved in the fight against COVID-19.” The CEO did state that the company is “eager to join the Covid-19 fight,” a true statement addressed fully in the Petition. The company has been working diligently since February 2020 on multiple

tracks to expand the utility of its patented formula and its quality control parameters with a view towards manufacturing and procurement, with an initial emphasis on its proposed new PVP-I spray and towelette products and related supply chain. All of this work in connection with its PVP-I products was and is in-house at Nano Magic and moving forward on an extremely aggressive and accelerated timeline. The comments attributable to the CEO are verifiable, and the company substantiated them in the Petition.

Thus, the only unresolved matter associated with the trading suspension is the ongoing, immediate and irreparable harm to Nano Magic's reputation as the trading suspension continues. The company's hard work to becoming almost debt free and profitable through sales growth with current customers, anticipated partnerships with prospective customers and the support of current investors now is in jeopardy. The trading suspension hit at a critical point in the company's business timeline for product sales into big box retailers and their vigorous screening and qualification process for vetting suppliers. The first question becomes seeking an explanation about a trading suspension that is not justified. Nevertheless, these big box retailers, themselves public companies, give deference to the securities trading suspension, notwithstanding that it is not indicative of the existence of any securities law violation. And, as referenced in the Petition (p. 29), likely well known to the Agency's Division of Economic and Risk Analysis are the empirical studies that examined the impact of trading suspensions on equity markets and consistently revealed that trading suspensions in fact coincide with substantial devaluations of the suspended securities, as well as significant and prolonged negative abnormal returns are present in the post-trading suspension period.

The instant trading suspension brings to mind certain compelling reflections by Commissioner Hester Peirce in her speech of May 11, 2018 titled the “The Why Behind the No” at the 50th Annual Rocky Mountain Securities Conference.<sup>3</sup> Commissioner Peirce, in addressing the “danger of playing to the numbers,” stated that the broken-windows-era SEC ... was an arms race as our lawyers rushed to settle a case or sprint to the courthouse – or the administrative law judge – to file the next action.” The broader enforcement community’s extreme and understandable sensitivity to any mention of “COVID-19” and “coronavirus” can become an arms race to trading suspensions. Nano Magic did not deserve to be caught in the 2020 version of the arms race.

During her remarks, Commissioner Peirce also spoke on the topic of “Taking the High Road, Even if It Is the Hard Road.” That principle is very much in play here. The high road is to consider quickly and terminate this trading suspension; that also may be the hard road to the extent that the Commission never before has terminated a trading suspension, let alone during the period of the suspension. Further, consistent with Commissioner Peirce’s desire to “ensure that the Commission is known for taking a vigorous, but careful enforcement approach,” the Commission’s vigor here was its response to likely incomplete and possibly incorrect information; the careful approach and “due process” consideration warrants recognizing that the detailed factual information provided by the company now calls for a change of course and permitting a prompt resumption of trading. Commissioner Peirce added that “[f]ollowing due process principles is rarely costless, comfortable, or convenient for a regulator, but doing so speaks volumes of the agency’s integrity and helps to bolster the agency’s standing in the

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<sup>3</sup> <https://www.sec.gov/news/speech/peirce-why-behind-no-051118>

markets, the courts, and the minds of the American people.” Nano Magic prays that the Commission not only will speak volumes but also will shout out its integrity and bolster the perception of the Commission by recognizing that the quality and quantum of information submitted in the sworn Petition fully and fairly justifies terminating the instant trading suspension.

### **Conclusion**

A ruling by the Commission in favor of Petitioner entered after expiration of the trading suspension would be a Pyrrhic victory for Nano Magic. This is not about winning or losing; rather, the Petition is about the survivability and viability of the company, imperiled by a trading suspension that realistically neither should have been sought nor issued. Accordingly, if the Commission is not disposed, based on the detailed information in the Petition, to terminate summarily and promptly the trading suspension, then Nano Magic requests that the Commission grant this Motion for Expedited Consideration and hear the Petition with dispatch. In the words of Calgacus, made famous by the Roman author (of Agricola) Publius Tacitus, “[t]o ravage, to slaughter, to usurp under false titles, they call empire; and where they make a desert, they call it peace.”<sup>4</sup> The trading suspension continues to ravage Nano Magic; meanwhile simply permitting it to expire in the guise of “peace” well may leave Nano Magic a desert and desolate. That is why Nano Magic seeks expedited consideration and favorable resolution of the Petition.

Dated: May 7, 2020,  
Washington, DC

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<sup>4</sup> Available at <https://www.gutenberg.org/files/7524/7524-h/7524-h.htm> (**Error! Main Document Only.** THE LIFE OF CNAEUS JULIUS AGRICOLA AT CH. 30).

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**Certificate of Service**

On May 6, 2020, this 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 was delivered to the following parties and other persons entitled to notice in the manner set forth to the right of each served party:

Securities and Exchange Commission (via e-mail)  
c/o Hon. Vanessa A. Countryman, Secretary

Office of the General Counsel (via e-mail)  
Securities and Exchange Commission  
Attn: Robert Stebbins, Esq., General Counsel

Division of Enforcement (via e-mail)  
Securities and Exchange Commission  
Attn: Steven Peikin, Esq., Co-Director  
Stephanie Avakian, Esq., Co-Director

Philadelphia Regional Office (via e-mail)  
Securities and Exchange Commission  
Attn: Kelly L. Gibson, Esq., Regional Director  
Kingdon Kase, Esq., Assistant Regional Director

Dated: May 7, 2020, Washington, DC



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