



NANOPHASE TECHNOLOGIES CORPORATION

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SEC Advisory Committee on
Smaller Public Companies

Re: File no. 265-23

Ladies and Gentlemen:

We are writing this letter in support of the work done thus far by the SEC's Advisory Committee on Smaller Public Companies ("ACSPC").

Nanophase Technologies (NDQ: "NANX") is a small public company (\$140M mkt. cap.) based in Romeoville, Illinois. We had less than \$7M in 2005 revenue, we currently have 55 employees, we have yet to become cash flow positive, and we have been a publicly traded company since 1997. Essentially, we are a cutting edge nanomaterials company in the process of moving from the technology- and market-development stage to the stage where we will achieve stand-alone financial viability. We currently have long-term partnerships with global marquee companies such as BASF, Rohm & Haas, Altana AG, and Alfa Aesar.

We have raised \$30+M in the pre-public equity markets and \$50+M in the public equity market. It has been a difficult road, and a road that we fear will be limited for future companies with our profile. Many of America's most resilient and best-performing technology companies arose from similar circumstances.

As an "accelerated filer," Nanophase Technologies has now entered its third calendar year of Section 404 compliance. Our auditing costs for year one (12/31/04 audit) of full

Sarbanes-Oxley compliance were \$339K. Similar costs for year two (the recent 12/31/05 audit) were \$238K. We spent an additional \$70K and \$55K on external Section 404 support for 2004 and 2005, respectively. These combined expenditures amounted to 8% and 4% of our total revenue for 2004 and 2005, respectively. We also consumed more than 1000 internal man-hours in 2004 supporting section 404. We have consumed 6-700 hours internally this past year as well. To put this workload in perspective, we have a CFO, an Accounting Manager, and a Staff Accountant, *in total*, to support this type of compliance work, all other GAAP reporting, state and local tax reporting, US Department of Commerce reporting, Department of Labor reporting, all operational accounting, cost accounting, pricing, investor relations support, contract review, etc. The added SOX-404 reporting load diminishes our capacity to focus on building and improving the business.

Nanophase Technologies has now completed two Section 404 audits with *no material weaknesses*. We like to note this because letters like this one are one of the few places this discussion becomes relevant. In a series of shareholder disclosures, including several well-attended investor conference calls, there has been *no* shareholder response. No shareholders were concerned about our controls in advance of the 2004 audit, and *not a single shareholder* has commented positively on the stellar outcome of our two Section 404 audits thus far. Their silence is a stunning rebuke to the intent of not only Section 404, but the entire Sarbanes-Oxley act of 2002. Our shareholders would be better served by a reduced reporting load and lessened audit requirements.

We recommend that the ACSPC adopt an unconditional exemption from the requirements discussed regarding the assessment of internal controls. Any gray areas (i.e., the “unless and until a framework is developed” language currently proposed) will not allow the auditing profession the latitude to limit their reviews and expectations of controls and documentation. We would also like to see the standards governing company size be expanded to include revenue and employee levels, along with market capitalization. Small companies with high market capitalization levels would profit most by being allowed to focus capital on building their businesses versus documenting transparent transaction flow.

We would be happy to discuss this issue further with you. Our Chairman, Donald Perkins, and I gave testimony this past August to the ACSPC Chicago committee and felt that all in attendance agreed with our point of view.

Sincerely,

Jess Jankowski
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