



October 28, 2003

Mr. Robert Herz  
Chairman, Financial Accounting Standards Board  
401 Merritt 7, P.O. Box 5116  
Norwalk, CT 06856-5116

Letter of Comment No: 30A  
File Reference: 1100-LEU  
Date Received: 10/28/03

Dear Chairman Herz:

On behalf of Associated Builders and Contractors (ABC) and its more than 23,000 construction and construction-related member firms, I would like to express additional concerns regarding a recent decision of the Financial Accounting Standards Board (FASB). As our letter dated October 1 stated, ABC's membership, which is mostly comprised of small, closely held businesses, believes that the Statement of Financial Accounting Standards No. 150 (FAS 150) will have a severe, negative impact upon the business operations of a vast number of non-public, non-SEC registered construction firms. FAS 150, as proposed, will have a damaging effect on the equity of businesses, especially contractors, with a corresponding and potentially devastating effect on the economy as a whole. We urge the Financial Accounting Standards Board to reconsider its decision to make FAS 150 applicable to non-public construction firms.

We have reviewed in detail many of the comment letters and points raised by construction related organizations and other effected stakeholders concerning FASB's Liability and Equity Board Meeting of August 23, 2003. Based upon our knowledge of the construction industry and the concerns raised by our members, we believe that the Board's response failed to provide any basis for its determination not to exempt nonpublic entities. FASB commented that the August comment letters that were received from shareholders on FAS 150, and its mandatorily redeemable stock issues, did not raise any issues not already previously considered by the Board. In addition, your response letters stated that "the board tentatively decided to give further time to apply those provisions." On October 1, the Board did just that, delaying implementation of FAS 150 by one year, until December 15, 2004.

We cannot express to you in more clear and concise terms that the provisions of FAS 150 related to mandatorily redeemable stock will have a serious negative economic effect to the U.S. construction industry. The U.S. construction industry is made up of very few public companies, even though the construction industry makes up a significant portion of the U.S. GDP. Our general membership consists of small employers who do not need further time to apply the provisions of FAS 150. **Rather, they should be exempted from them.**

FAS 150 requires that issuers classify as liabilities any financial instrument issued in the form of shares that is "mandatorily redeemable." A financial instrument is "mandatorily redeemable" if it requires the issuer to redeem it by transferring its assets at a specified or determinable date upon an event that is certain to occur. Among such events are the death or termination of employment of an individual shareholder of the entity. A vast majority of ABC companies are organized under buy-sell agreements.

The stated "reasons for issuing this statement" in the Summary to FAS 150 could be achieved simply through disclosure provisions, not through recognition and measurement. Many ABC members have inquired as to the possible ways around the implementation of FAS 150. After speaking with several members who are CPAs and whose practices focus on the construction industry, there are two alternatives:

- Ignore FAS 150, and the opinion on the contractor's financials will include an "except for" provision; and
- Revise entity documents so that FAS 150 is not applicable on the issue of "mandatorily redeemable equity."

Regarding the first alternative, we believe that the issuance of FAS 150 will be a powerful incentive for private entities, and their stakeholders, to accept "except for" opinions.

Private entity documents that will be affected by the applicability of FAS 150 include those not limited to loan agreement covenants, bonding and surety agreements, buy-sell agreements, and life insurance contracts. Theoretically, such documents could possibly be changed so that any buy-sell arrangements would be covered by obligations and transactions outside of the entity, thereby avoiding the provisions of FAS 150. If these documents were changed, would FASB's stated purpose of the issuance of the Statement still be met? Would the reader of the financial statements of an entity that changed its documents be less informed now than the reader of an entity that did not?

It is vitally important that we address the unnecessary costs of implementing FAS 150 on small businesses. Such costs could include annual appraisals, the revisions of loan documents, revisions of surety agreements, revisions of buy-sell agreements, and the costs to move buy-sell agreements outside the entity, in addition to all of the legal and other fees inherent in accomplishing such tasks. Other costs may potentially exist, such as the bankruptcy fees of many construction companies that will not be able to maintain their cash flows or contracts because of the termination of their banking and surety relationships. It is hard to believe FASB would move forward with this proposed rule if such repercussions could occur.

The detrimental effect that FAS 150 will have on the balance sheet and income statement of non-public contractors and construction related firms could create an unfair competitive advantage for public entities. Sureties, contracting agencies and owners of projects will naturally look more favorably upon companies that report equity than those with no equity and no income on a year-to-year basis.

ABC respectfully requests that the FASB rule that non-public, non-SEC companies be exempt from FAS 150. The proposed accounting issues provided under FAS 150 are unfair and unrealistic and ultimately will have substantial, detrimental effects on non-public, non-SEC businesses. This ruling would create negative bonding restrictions, financing issues, and it represents an unfair business practice affecting the construction industry.

Thank you for this opportunity to submit comments on behalf of non-public, non-SEC construction companies.

Sincerely,



M. Kirk Pickernel, CAE  
President and CEO

CC: Suzanne Bielstein, Director, Financial Accounting Standards Board  
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