

H. W. LOCHNER, INC.

October 30, 2003

Financial Accounting Standards Board
401 Merritt 7
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Norwalk, CT 06856-5116

Gentlemen:

As the principal owner of a privately owned consulting engineering business, I am extremely concerned about the impacts of proposed FASB 150. I wish to submit my comments for your consideration, and request serious rethinking of these proposed rules.

Background

I have an engineering company that currently employs some 350 people. Several years ago I began transitioning the ownership of the company to its officers and employees, using both an Officers' Stock Purchase Plan' and an ESOP. These work well, but they work slowly. Our company's overall aim is to remain in private ownership, principally owned by the officers and employees. The two programs named above will allow us to do that without incurring major debt, but FASB 150 threatens our ability to do so.

ESOP

Congress established ESOP by law. Its intention was to foster a company's ability to remain private and be substantially owned by its employees. We've adopted an ESOP as one of the elements in our ownership transition program. Our ESOP program includes provisions that give the company 'right of first refusal' over any departing employee's stock, and gives employees assurance that their stock will be repurchased by the company or the ESOP. If the company is going to remain in its employees' hands, there must be provisions that allow these mechanisms to operate. We've structured our program so that annual company match payments can fund the repurchases and continuation of the ESOP as a viable employee ownership program. If we borrow money to facilitate ESOP purchases, that shows up as debt. But to reclassify any of the ongoing, annual ESOP match and stock repurchase process as debt would go counter to the provisions which Congress established for ESOP's, and counter to the objectives for which the ESOP law was developed. You gave us the ESOP program with one hand, don't kill it now with the other hand!

Officers Stock Program

The second element in our remaining a privately owned company is to have a significant amount of stock owned by the officers. They are not in a position to privately invest large amounts of money, so our annual bonus program, which is discretionary, significantly helps the officer's ability to buy stock. Similar to the ESOP, to keep the officers stock program alive, and to keep the firm in the hands of its employees and officers, we have stock agreements with each officer under which the company agrees to repurchase the stock of any officer who leaves the company. We do so using in effect a revolving process, whereby any stock purchased from departing officers is quickly resold to the remaining officers or to new officers on an ongoing basis. The mandatory redemption agreement is therefore a tool to be sure that the stock remains within the company's family of officers, and triggers the turnover of stock from old officers to new officers. So even though there is a mandatory repurchase obligation in the Officers' Stock Agreement, it does not trigger any direct liability on the company's books, and it does not impact the net worth of the company either. A reclassification of part or all of the stock our officers own to a liability would immediately and significantly weaken our balance sheet, even though the fundamentals of the business are no different. FASB 150 as proposed would be very damaging here, to us and I'm sure thousands of other private firms.

Principal Owners Stock Sales

As the principal owner, I also have a stock agreement with the company, since I am selling my shares over time to the officers and the ESOP. This is the source for their growing ownership. This agreement gives me the right to "put" the stock to the company, requiring the company to purchase my stock in certain events. I do not expect to utilize this provision. I sell stock annually to the ESOP and the officers, funded through the bonus and match processes described earlier. This provision is only in the agreement as a last resort, to protect my estate, or to protect the company from possible creditors of mine gaining ownership of the stock. It will likely never be used. So again, even though there is a mandatory purchase possibility, it seems to make no sense to set this up as a liability, since the real purchase process for my stock flows through the ESOP and the officers, not to the company. And it does so funded by annual operations, not incurring debt, and not impacting net worth. Again, FASB 150 needs to be modified to not penalize genuine, legitimate ownership transition processes in private companies.

Consequences

I'm sure you are hearing similar comments from thousands of privately owned companies like ours. The consequences of parts of any of these stock repurchase programs being classed as liabilities would be to significantly reduce the company's net worth and significantly increase its liabilities, and in some cases eliminating the company's apparent net worth altogether. Since we are privately owned, does this matter? Enormously! First, in order to obtain insurance to operate as a business, we must have viable financial statements.

Second, to obtain credit from the bank, we must have viable financial statements. Third, our principal clients are government agencies, and to qualify to do business with them we must have viable financial statements. And, we are audited and appraised every year. Any of these proposed reclassifications would also hurt our appraised value, thereby hurting our ESOP value and the employees' vested interests in it. We are proud of a steady and growing stock value. We repurchase stock from officers and employees at our appraised value, and the business continues. Why would it be more 'correct' to diminish that value, hurting the very people we're trying to benefit?

The triggering of any of the situations I've described in this letter as a liability would reduce or eliminate our financial viability and effectively put us out of business. This is a perfectly sound, ongoing business which I am trying to pass on to the officers and employees along with mechanisms that will allow them to continue owning an effective, profitable business, which is making a significant contribution to the health and welfare of life in the United States. We make a significant profit every year, our net worth increases every year, and we have no significant bank debt. Why on earth any responsible accounting organization would think it in anyone's best interest to impair the financial viability of businesses like ours totally escapes me.

I appreciate your listening to my views and my explanations. I will look forward to further contact with you as your deliberations continue and as my understanding of what you may be proposing grows.

Very truly yours,

H. W. LOCHNER, INC.

Harry W. Lochner, Jr.
Chairman