

From: Mark Sletto [mailto:msletto@crowleyfleck.com]

Sent: Friday, May 24, 2013 4:36 PM

To: Director - FASB

Cc: Kristy L. Buckley; Sarah A. Loble

Subject: Accounting Standards Update (ASU) 2011-04

FASB Technical Director,

As an employee benefits attorney with over 20 years experience representing companies that maintain Employee Stock Ownership Plans (ESOPs), as well as representing the ESOPs themselves, I am fully in agreement with the attached NCEO/TEA/ESCA letter of 02/13/2013 advising against applying the expanded 2011-04 CPA valuation audit disclosures to ESOP plan and trust audits.

This expanded exposure of valuation financials and methods of determining fair market value would be acceptable if the information was only accessible to the intended user. However, in that the CPA audit report is a required attachment to the ESOP's annual IRS Form 5500 filing, and that filing is easily accessible on the Department of Labor (DOL) public website <https://www.efast.dol.gov/portal/app/disseminate?execution=e1s1>, anyone who is inclined regardless of purpose has access to the information as soon as the IRS Form 5500 and CPA audit report are electronically filed with the DOL.

By providing competitors and prospective buyers with this information, the information can be used to the detriment of ESOP's plan sponsor, resulting in reductions to the ESOP sponsor's stock value. In that the employer's stock is the primary investment of the ESOP, the retirement benefits of the ESOP participants are in turn reduced.

It is my opinion that the value of requiring this information to be disclosed is outweighed by the damage that the disclosure will have on the ESOP company and its participants' retirement benefits.

Please reconsider. Do not hesitate to contact me if you have questions or concerns.

Mark

MARK A SLETTO

431 FIRST AVE. WEST

KALISPELL, MT 59901 USA

VOICE 406.752.6644; DIRECT 406.751-3273; FAX 406.752.5108

MSLETTO@CROWLEYFLECK.COM

THIS ELECTRONIC MAIL TRANSMISSION MAY CONSTITUTE AN ATTORNEY-CLIENT COMMUNICATION THAT IS PRIVILEGED AT LAW. IT IS NOT INTENDED FOR TRANSMISSION TO, OR RECEIPT BY, ANY UNAUTHORIZED PERSONS. IF YOU HAVE RECEIVED THIS ELECTRONIC MAIL TRANSMISSION IN ERROR, PLEASE DELETE IT FROM YOUR SYSTEM WITHOUT COPYING IT, AND NOTIFY THE SENDER BY REPLY E-MAIL OR BY CALLING CROWLEY FLECK PLLP, 406-252-3441, SO THAT OUR ADDRESS RECORD CAN BE CORRECTED.

CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS IN CIRCULAR 230, PLEASE NOTE THAT, UNLESS OTHERWISE EXPRESSLY STATED IN THIS COMMUNICATION (AND IN ANY ATTACHMENTS) ANY TAX ADVICE GIVEN IN THIS COMMUNICATION (AND IN ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF (I) AVOIDING TAX PENALTIES OR (II) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED IN THIS MESSAGE.



February 13, 2013

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Impact of required disclosures under Accounting Standards Update (ASU) 2011-04 on private companies with ESOP ownership (“private ESOP companies”)

The National Center for Employee Ownership (NCEO) is a 501c3 membership organization that provides information and resources on employee ownership, with a focus on ESOPs. The ESOP Association (TEA) and the Employee-Owned S Corporations of America (ESCA) represent companies with employee stock ownership plans (ESOPs).

We estimate that there are currently more than 11,000 U.S. companies with ESOP ownership; the majority of them are privately held and a growing number are majority or wholly owned by the ESOP.

For almost 40 years, ESOPs have provided privately held companies with an ownership transition alternative that helps preserve company legacy, jobs, and communities. Numerous studies have shown that private ESOP companies, on average, create more jobs and are more successful than companies without some form of employee ownership. Further, studies have shown that employees of private ESOP companies, on average, have higher wages and retirement benefits than employees who work for private non-ESOP companies. We know of many examples where rank-and-file employees have accumulated significant retirement benefits that otherwise would have not been achievable.

We have recently become aware of a convergence of circumstances that we believe could negatively affect existing private ESOP companies and deter the creation of new ESOPs and other forms of employee ownership of private companies. We are concerned that recent decisions by FASB could cause companies to terminate ESOPs and discourage other companies from adopting them. Decades of research suggests that this would reduce job creation, damage retirement security, and weaken companies.

In the past few years, the Department of Labor (DOL) has made Form 5500s filed by plan sponsors available to the public via its website. The Form 5500 available online includes the entire Form 5500 filing, which encompasses the plan’s audited financial statements and related disclosures.

In May, 2011, ASU 2011-04 was issued, adding additional disclosure requirements with respect to Level 3 fair value measurements. This would include employer securities held by an ESOP as well as other types of employee benefit plans. As further explained below, these new disclosure requirements can give insight to the operations of the company, its financial condition, and the process and methodology for determining the fair value of the employer securities.

For fair value measurements categorized within Level 3 of the fair value hierarchy, ASU 2011-04 requires the disclosure of i) quantitative information about the unobservable inputs used in determining fair value and ii) the valuation process and methodologies used in determining fair value. Specifically, the Standard requires the disclosure to include quantitative information about the significant unobservable inputs used in the fair value measurement. To comply with these new requirements, we understand the nature of these disclosures could include items such as i) the weighted average cost of capital used in the discount cash flow method, ii) pricing multipliers applied (i.e., price to earnings, revenue multiples, etc.), iii) operating margins, iv) long-term revenue growth rates, and v) other sensitive information. This is consistent with the example in the implementation guidance and illustrations included within the Standard. Although these disclosures are required for each class of assets or liabilities, generally, the investment in the Sponsor's equity securities is the only Level 3 measurement in the financial statements of an ESOP and therefore there is only one asset within the class. Therefore, the information disclosed would be specific to the entity, and disclosing a range or weighted average does not appear to be an available option.

These disclosures would provide the public with information regarding private ESOP companies that otherwise would not be available. Collectively, these disclosures could allow readers to recreate a financial picture of the company. As you can imagine, in the hands of competitors, customers and suppliers, this information could be damaging to the company and ultimately its employee-owners. Even more threatening may be the ability of corporate raiders to precisely ascertain the financial condition of otherwise private companies, enabling them to launch takeovers which ultimately work to the detriment of employee-owners who could lose the opportunity to own their companies. We are also concerned about other unforeseen negative consequences as a result of making such information publicly available. Ultimately, we believe it is important to keep this type of information as it relates to private ESOP companies just that—private.

We believe the primary user of employee benefit plan financial statements is the DOL in fulfilling its regulatory responsibilities. The DOL has always had and will continue to have the ability to interact directly with company management to answer questions or to obtain additional information related to Level 3 fair value measurements. Plan participants may also be viewed as potential users of the plans financial statements. By law, they have historically had the ability to obtain copies of the plan financial statements but have rarely done so. However, by law, participants are not required to receive financial information regarding the company. Participants are also not entitled to receive information regarding the company valuation. We believe that the disclosure of this information provides little or no practical value to the primary users of the financial statements but may, in the long run, in fact harm existing and potential plan participants as discussed above because it may harm their companies and discourage the creation

of new plans. We therefore believe the cost outweighs the benefits associated with this disclosure.

We realize ASU 2011-04 was comprehensive, applying to all reporting entities required or permitted to measure the fair value of an asset or liability on a recurring basis. Given the broad scope of ASU 2011-04, we are doubtful that FASB was focused on disclosures of employer securities or that it received requests from users regarding the need for such information. Therefore, it is our hope and belief that FASB did not develop ASU 2011-04 with the intent of making said information publicly available, and that this is merely an unintended consequence.

On behalf of the thousands of private ESOP companies in the U.S. and the millions of employees currently enjoying the benefits of an ownership stake in those companies, we respectfully request FASB exempt employer securities held by ESOPs and other non-public employee benefit plans (benefit plans other than those required to file financial statements with the SEC on Form 11-K) from the quantitative and qualitative disclosures required for Level 2 and Level 3 fair value measurements required under ASC 820-10-50 as amended by ASU 2011-04 (specifically paragraphs 820-10-50-2-bbb, f and g). We also respectfully request FASB give immediate attention to this matter, as the disclosure requirements under ASU 2011-04 take effect for non-public entities for periods beginning on or after December 15, 2011 (calendar years ending December 31, 2012) and employee benefit plans generally must file their Form 5500s with the Department of Labor within seven months of their year end.

We sincerely appreciate the opportunity to share our concerns with FASB and welcome further dialogue to clarify any of our comments or views presented herein. If there are questions or comments, please contact Greg Klein, at 913-345-9664 or greg.klein@inlandtruck.com.

Respectfully submitted,



Victor N. Aspengren

NCEO Board of Directors Chair
1736 Franklin St., 8th Floor
Oakland, CA 94612

Vice President
Prairie Capital Advisors, Inc.
305 2nd Avenue SE,
Suite 363
Cedar Rapids, IA 53401

Mark R. Lomele

The ESOP Association
Board of Directors Chair
1726 M Street, NW, Suite 501
Washington, DC 20036

Senior Vice President and
Chief Financial Officer
Recology
50 California Street, 24th Floor
San Francisco, CA 94111

Greg Klein

Chairman, ESCA Board of Directors
805 15th Street NW, Suite 650
Washington, DC 20005

Vice President and
Chief Financial Officer
Inland Truck Parts Company
440 College Boulevard, Suite 145
Overland Park, KS 66211