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it's our business

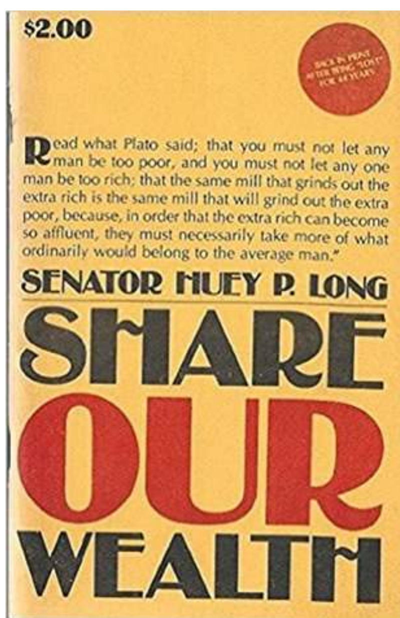
newspad of the Employee Share Ownership Centre

Chancellor heeds Centre request for EMI shake-up

Enterprise Management Incentive (EMI), the UK's must successful discretionary share option scheme, is set for a face-lift which should enable more SMEs and key employees to qualify for its considerable tax advantages.

Chancellor Rishi Sunak MP announced in his Budget that the Treasury was launching a review of EMI, to ensure that those companies can "*recruit and retain the best talent*" and to "*examine whether more companies should be able to access the scheme.*"

The new chancellor listened to at least one part of the Centre's pre-Budget appeal for a major shake-up in the operating rules of the UK's four tax-advantaged employee share schemes. The EMI review is not a bad outcome, considering that Mr Sunak had been in post for less than a month before delivering his first Budget.



The Centre proposals on EMI reform, submitted to the Treasury, were:

*Double the existing value limits on non-vested EMI share options to new levels of **£500,000** per individual over three years and **£6m** overall value of issued options outstanding in a company at any one time.

*Abolish or increase the current **£30m** Gross Assets Test for participating companies with a view to allowing EMI to supplement the CSOP (Company Share Option Plan) in larger quoted companies as well as continuing to operate in SME quoted and private sectors.

*Remove the existing requirement for the employee to make a *working time declaration*, as it is unnecessary and a trap for the unwary.

The biggest problem is that EMI, the unexpected baby of ex Labour chancellor Gordon Brown, is

From the chairman

As I write the FTSE100 stands at over 30 percent down on where it was only two months ago - January 17 - when it was at 7674. This is catastrophic for some but may none the less be a good moment for companies to launch new share plans, especially option based schemes like CSOP and well-judged executive rewards. After all, this is precisely what happened in the wake of the minor crisis of 2008-9 which followed the collapse of Lehman Brothers. Those companies brave enough to launch new all-employee equity plans in the following months enabled their employees, for the most part, to enjoy substantial rewards when the new plans matured three or five years later. Middle ranking employees were able to buy top of the range cars on the proceeds. Many executives who were awarded LTIPs after the crash found themselves showering in cash when their plans matured. Fortune favours the brave.

The comparable crisis to CV was the Great Depression. While Roosevelt hesitated to take all necessary measures Governor Long of Louisiana launched his Share Our Wealth programme with cash for citizens, like Chancellor Sunak who has torn up the rule book today. Within Share Our Wealth, employee share ownership - tagged Everyman a king - was the major component.

Governor Long was assassinated before he could challenge for the White House, but action at federal level followed later. His son, Senator Russell Long, introduced in Congress most of the legislation which defines the US Esop today.

Malcolm Hurlston CBE

almost 20 years old and, like the three other tax-approved Eso schemes, it is creaking at the seams. The Centre told the chancellor in its Budget submission that all these schemes were in need of rewiring.

HMRC's latest share plan statistics show that 11,320 UK small companies were operating EMI between 2016 and 2018 and it continues to be the plan of choice for companies looking for an employee option scheme offering huge flexibility and the best tax advantages. EMI is popular among SMEs because no Income Tax, nor NICs are levied when EMI share options are converted into shares, provided they are bought for at least the market price which applied at grant. EMI shares are subject to Capital Gains Tax (CGT) when sold, but the rate levied can be cut from 20 percent to just ten percent in cases where the EMI options are combined with Entrepreneurs Relief. In addition, employers can be selective about which employees they offer EMI options to.

Employers can deduct an amount equivalent to the gains made by employees exercising EMI options against their own profits chargeable to Corporation Tax, often securing significant tax relief with no equivalent cash outflow.

However, EMI has at least two, if not three, serious flaws:

*Its £30m Gross Assets Test is far too low a bar, as it has not been adjusted for inflation since 2002, so growing young high-tech companies are being shut out from using EMI. *Ditto its rule of not more than 250 employees, which disqualifies a rising number of fast-growing companies from using the tax-approved scheme.

*Its limit of a maximum £250,000 options value per individual needs to be raised in line with inflation and, according to some critics, the bar on certain occupations from using it is too restrictive. The barred businesses include: financial services, property development, legal services, nursing homes, shipbuilding and farming.

So Chancellor Sunak has plenty of room in which to tinker with the EMI rulebook. He could make it both easier for more SME companies to qualify for EMI share option grants and/or he could raise the grant option award limits on which the tax advantages can be claimed. The Treasury said: "This review will try to ensure the scheme provides support for high-growth companies to recruit and retain the best talent so they can scale up effectively and examine whether ***more*** companies should be able to access the scheme."

Share prices are low due to the coronavirus crisis and this should enable UK entrepreneurs to negotiate comparatively low valuations for start-ups with HMRC. That in turn could produce substantial gains for new high-tech SMEs who are brave enough to award EMI options in the months ahead, especially as qualifying companies can fix the vesting period for EMI options themselves. Although EMI yields substantial profits for many option holders, it is worth remembering that some EMI-backed start-ups have later collapsed, leaving the option holders with nothing. Furthermore, some EMI structures are exit-only, which means that option holders can only cash in if their company is either sold, or there is a major change in control.

*It was widely flagged beforehand that the chancellor would clamp down on **Entrepreneurs' Relief (ER),** which cost the Exchequer *£2.7bn* in forgone tax in the last financial year, and so he did. ER is being retained, but the lifetime allowance was reduced from £10m to £1m, which will prevent serial entrepreneurs from claiming it again and again. From now on, they will be limited to a maximum £100,000 lifetime CGT discount, instead of a gain of up to £1m, which was the case before the Budget. ER is designed to encourage people to start their own business by granting them a reduced rate of ten percent CGT, instead of the usual 20 percent rate. Chancellor Sunak described the current tax relief as '*expensive, ineffective and unfair*', with three quarters of the relief going to just 5,000 people. ER Relief was initially capped at £1m when the allowance was introduced 12 years ago, but was raised to £10m in the March 2011 Budget. Since it was introduced, the cost to taxpayers of the relief has risen from £427m in 2008-09 to £2.7bn. The chancellor said he had listened to representations for the tax break to be scrapped completely, but said risk-taking by entrepreneurs should be encouraged. He introduced significant anti-forestalling measures too. As a result, sellers relying on uncompleted contracts or ER elections on share for share exchanges may be hit by the reduction in the lifetime limit, depending on their precise circumstances. Anyone potentially within these rules should take advice as soon as possible. Specialist Centre members **Rm2 Partnership** and **Doyle Clayton** were supportive of the change: "Importantly, the chancellor chose not to abolish ER entirely," said Rm2. "Instead, with the current situation of a reduction of the lifetime limit to £1m, there is considerable scope for clients to use EMI to enable option holders to continue to benefit from ER. The new, reduced lifetime limit of £1m is still set at a generous level for the vast majority of EMI option holders, who (depending on their personal circumstances) are still likely to be able to claim ER." The reduction in the ER lifetime limit will mean that when considering succession

planning, business owners will have even more reason to consider Employee Ownership Trusts for a tax-efficient exit (given the new restriction relating to ER) as opposed to a third party sale or a private equity deal. This is because a sale to an EOT should provide vendors with complete relief from CGT.

The Institute for Fiscal Studies think tank claimed that Entrepreneurs' Relief had been misleadingly named: "In 2017–18 three-quarters of the cost of entrepreneurs' relief benefited just 5,000 individuals, with an average tax saving among that group of £350,000," it said. However, Mike Cherry, chairman of the Federation of Small Businesses, said: "Everyday entrepreneurs throughout the country who are about to retire will be left permanently poorer by this change." He argued that the majority who benefit from the tax scheme are "everyday entrepreneurs" who would lose on average £15,000 as a result of the charge. About 80 percent of SMEs are not affected by the ER cutback. The reforms will save £6bn over the next five years, said the Treasury. The chancellor will spend these funds on business tax relief for investing in buildings, employment and R & D. Most entrepreneurs who claim the tax break say they did not know about it when they started their company.

Tim Antos, ceo and co-founder of Kokoon, the internet-of-things-focused company, said: "The government's support for early-stage businesses through the Enterprise Investment Scheme (EIS), R&D tax credits and Entrepreneurs Relief is essential to businesses like ours. Without incentives like these, we and many success stories driving economic growth and employment in the UK would simply not exist. Rather than adjusting the tax relief schemes, the government could do considerably better with grants." Megumi Ikeda, partner at Hearst Ventures said**:** "I was excited to see what feels like a real endorsement of the innovation economy with a £22bn commitment to R&D, help with start-up loans and new funds for the British Business Bank, which backs some of the local venture capital funds. However, the dramatic scaling back of Entrepreneurs Relief is a pity. Most entrepreneurs don't actually get the windfall of tens and hundreds of millions that the headlines imply. Giving those people who have created jobs and income a bit of relief on capital gains should not be deemed a give-away. A fragile but vital element of the start-up ecosystem is having past entrepreneurs give their advice and early risk capital to new founders. We really need to embed this positive cycle if we are to begin to emulate Silicon Valley where it has been happening for decades."

Inevitably, many Centre members will feel that an opportunity to start root and branch reform of UK all-employee share ownership has been missed, despite the mitigating circumstances of the shock resignation of the previous chancellor, Sajid Javid MP.

Centre chairman Malcolm Hurlston CBE said: Frankly all the tax-advantaged share schemes are last century. The danger now is that short term moves, even right ones, endanger the future. Let's hope Sajid is asked to look at the long term and is ready to take it on."

The UK's biggest investment and pension funds are backing a campaign to promote employee share schemes. The Investment Association, the trade body for fund managers, has urged the government to set targets to boost the level of employee ownership of quoted companies. This would help to reverse a decline in the proportion of UK shares held by individuals — it was 28 percent in 1981, but has fallen to a mere 12 percent.

IR 35 loan charge reform postponed

The government announced a last-minute year-long postponement of the implementation of the Off-Payroll Tax (IR35) to the private sector, in light of the Covid-19 outbreak. The new off-payroll working rules were to have been extended to the private sector and would have required medium and large end-user clients to establish whether deemed employment status applied to their arrangements with relevant intermediaries (commonly personal service companies - PSCs) supplying the services of individual employees to them. Centre member **Bird & Bird** said that the postponement had come as shock, especially after the government had confirmed only days beforehand that the IR35 changes would still be introduced on April 6 this year.

The new rules say that if deemed employment status applies, responsibility for deducting tax and employee NICs under PAYE for individual employees generally lies with the fee-payer as the 'deemed employer.' The fee-payer is liable too for employer NICs and, if applicable, the apprenticeship levy. The controversial changes led to many corporations starting to institute a blanket ban of personal service companies (PSCs) rather than risk being financially liable for a tax bill should their contractors be deemed in scope of IR35.

Last December, the government announced a package of changes to the 2019 *disguised remuneration* loan charge in response to Sir Amyas Morse's independent review. Draft legislation was published in January and further draft legislation was published to refund some

voluntary payments made on or after March 16 2016 as part of a settlement with HMRC over 'loans' made in unprotected years. The legislation required HMRC to set up a scheme to administer refunds. HMRC published the draft scheme, which sets out the eligibility criteria for claiming a refund, the claims process and how refunds will be calculated.

The Centre takes an interest in this issue because most of the schemes used either one or even two employee benefit trusts (EBTs) to provide a vehicle for the loans to the 'employees.' Chris Hickey**,** UK ceo at Robert Walters**,** said**:** "Government's decision to postpone the implementation of the new Off-Payroll Tax (IR35) rules to the private sector (in light of the recent Covid-19 outbreak) will be welcomed by almost all employers, as many businesses will look to the contractor, temp and interim professional community during this period of upheaval. Accessibility to contractors will help plug any short-term skills gaps we may likely experience in the coming months, as well as ease pressure on industries experiencing a particularly high level of demand - such as e-commerce, telecommunications, healthcare & pharma, and supply chains. We anticipate a spike in contract/ interim hiring."

Employee shareholders targeted in US led scam

Newspad asks readers to pass on widely news of a US-based phone scam which targets elderly former UK employee share ownership participants. We are indebted to *The News, Portsmouth,* for exposing the New York based *Glenhaven Consulting Group* for allegedly trying to convince a retired BT employee that he could still sell his old employee shares, which he had already sold six years ago. In a series of unsolicited phone calls, the scammers told 75 year old David last December that he could make a huge profit on the BT shares, provided he sent them a *'registration and processing'* fee of £4,230. Somehow the finance company knew that Gosport based ex engineer David, while working for BT, had paid £124 a month into BT's five-year SAYE-Sharesave plan from 2009. By the time of his options' maturity, the share price had rocketed to 389p. The scammers insisted that they had a buyer lined up for David's BT shares, even though he had sold them all after the plan had matured, to buy a new car and fund a home extension.

'*You could have knocked me back with a feather,'* said David*, 'because they were very convincing. As I'd had shares in BT part of what they were claiming was true, yet their legal people were adamant I was still a shareholder and the money was mine for the asking. They were insistent they had a number of hedge fund clients anxious to snap up the shares at full market price to increase their holdings in BT.*

"I went on to explain I'd already sold the shares but they said their paperwork indicated they were still registered. Despite the fact I made it clear that I'd long since discarded my copy of the share certificates, they kept pushing the point they weren't needed. They claimed they were still registered and still worth nearly £4 a share, not the current £1.40-odd I'd checked out on the internet. The next thing I received from Glenhaven was an email containing a sale and purchase agreement urging me to get back to them promptly. They said I risked losing the opportunity as only the first 20 percent of shareholders who signed up would be accepted. Then just hours later they phoned me to say I was in danger of losing out unless I transferred £4,230 to them in registration and processing fees, 50 percent of which would be refunded on receipt along with the £49,436 due to me. What with the mounting pressure to turn the bogus offer into a done deal, I quickly smelt a rat and told them where to get off."

He fears that others targeted were likely to have participated in similar employee share schemes after the public utilities were nationalised. The *Portsmouth News* said: "*We found a number of warnings online from other people who'd been targeted in a similar way to him. We quickly resorted to our routine background business checks on the Glenhaven Consulting Group - not to be confused with a reputable business consultancy with almost the same name in Appleby Bridge, Lancashire*."

The Financial Conduct Authority (FCA) told the newspaper that Glenhaven Consulting Group wasn't regulated by them and the FCA website carries a warning to investors to this day to be wary of the firm, which is not authorised to do business in the UK. A spokesperson said: '*Some firms act without our authorisation and some knowingly run investment scams. Glenhaven Consulting Group is not authorised by us and is targeting people in the UK. Based upon information we hold, we believe it is carrying on regulated activities which require authorisation.'* When the newspaper tried to contact the firm's New York office by phone and email, all its efforts drew a blank. Phone messages remained unanswered and email requests for a comment about their contact with David were ignored. The business address appeared to be located in a block of residential apartments in New York. Fraud leaves UK consumers out of pocket by more than £10bn annually.

EVENTS

Employee share schemes and trustees – Jersey
This year's Esop Centre Jersey share schemes and trustees seminar, held in partnership with the **Society of Trust & Estate Practitioners** (**STEP**-Jersey branch), and set to take place at the **Pomme d'Or Hotel** in **St Helier** on Friday morning, **June 12** is now under active review. Given the hiatus in post Brexit negotiations, corporate governance, the international reach of trustees and the growth in employee ownership trusts, it has never been more important for those interested in Eso schemes and trusteeship to attend this annual seminar. Stay informed by hearing expert views and enjoying the continuing education which these Centre events offer. The programme includes updates on the loan charge, case law, and Esops. The seminar will conclude with a lunch for delegates and speakers. Experts include: Katherine Neal, Ogier; Graham Muir, CMS; David Pett, Temple Tax Chambers and David Craddock, David Craddock Consultancy Services. The seminar will be chaired by Malcolm Hurlston CBE, who founded the Esop Centre. Prices: Esop Centre/STEP members: £375, Non-members: £480. Book and pay before May 1 to choose one of the following early-bird discounts for this half-day event: 50 percent off a third delegate ten percent off total Only one early bird offer can be used for each organisation, whichever gives you the larger discount You can reserve your place by emailing events@esopcentre.com or call the Centre on +44 (0)20 7562 0586

The Centre is happy to be able to announce that its fourth annual share plans Symposium and *newspad* Awards presentation will take place on the revised date of Thursday October 15 (2020) at an impressive Central London location. Most of the programme will be as advertised on the Centre website for the original event, postponed from March 26, due to the coronavirus, but one or two topic slots will change. For all enquiries, contact Juliet at juliet_wigzell@zyen.com or call +44 (0) 20 7562 0586.

Webinar: New Centre member **Doyle Clayton,** the workplace law and advisory lawyer, is holding a webinar on **Tuesday April 7**, from 11am – noon. Its subject is: *Selling your company to its employees via* Employee Ownership Trusts (EOTs). Hosting will be Garry Karch, a popular Centre conference speaker, who so far has handled more than 150 US and UK employee ownership transactions. Register at https://tinyurl.com/vlph8wo or phone the events team on 0118 959 6839.

MOVERS AND SHAKERS

Vicki Allen (formerly *Vicki Aston*) has moved from Sanne Group to **Kleinwort Hambros.** She is now head of EBT and pension administration, SG Kleinwort Hambros Trust Co (CI) in Jersey. Contact info: Tel: +44 1534 815488. Email: vicki.allen@kleinworthambros.com.

Shervin Binesh, formerly performance & reward director at Intertrust Group, has started his new job as a director of **Sanne Group.**

John Daughtrey, formerly director of corporate services at Ocorian, has started a new role as head of propositions at **Pollen Technologies Ltd.**

Richard Grier is now associate director, business development, for stock plan services at **Fidelity International.**

Mark Vanderpump, formerly marketing development director at Global Shares, is now consultant to **Appleby Global Services** at **Northcotte Ltd.**

UK CORNER

Coronavirus hits executive reward
*The *Financial Times* told its readers that banks and other finance houses should suspend all capital distributions, including discretionary **bonuses** to top **executives**, until the global economy starts to recover. It was not alone. Pensions & Investment Research Consultants (PIRC) urged companies to restrict executive pay to basic salary for a year in response to the coronavirus crisis. In a letter to UK company secretaries, PIRC md Alan MacDougall said directors had a duty to respond to their companies' financial circumstances appropriately, taking specific account of the crisis and impacts on their workforce. MacDougall wrote: "PIRC urges all companies to review their approach to pay, and amounts to be paid to their executives, in the light of current events. Few, if any, executive reward schemes are likely to be appropriate for a company in current market

circumstances and the health emergency. *PIRC calls on companies to suspend payments to executives other than basic salary from April 1 until the end of your financial year."* He noted that, if companies deem it appropriate to cut dividends and reduce workforces, then "*it is difficult to understand how executive bonuses and long-term incentive plan awards - essentially based on last financial year - can be justified*". Restricting variable pay at board level would send a positive signal to the company and its employees about the "need for shared sacrifice in these difficult times," he added

*BA pilots will take a significant pay cut over the next few months, equating to roughly 50 percent, the *Financial Times* revealed. For April and May, BA pilots will suffer a 50 percent reduction in their basic salary, aggregated over three months. In addition, they will have to take two weeks unpaid leave. Pilots were told that their pay cuts were intended to address "*the immediate threat to the business in the face of Covid-19 and the unprecedented impact this is having on the airline."* Willie Walsh, ceo of IAG, the parent company of BA, is taking a 20 percent pay cut. Virgin Atlantic was among many other airlines to announce cuts in top executive pay as the Covid-19 crisis intensified. Ceo Shai Weiss will take a 20 percent pay cut from April until July, while other executives agreed to a 15 percent pay cut. Annual pay increases for the broad mass of Virgin Atlantic's workforce will be postponed until later this year.

*Anheuser-Busch InBev NV, the world's largest brewer, cut the ceo's bonus and forecast the steepest decline in quarterly profit in at least a decade as coronavirus eliminates bar-hopping. First-quarter earnings will drop about ten percent, the company predicted. AB InBev said last year too was disappointing. Ceo Carlos Brito's bonus was reduced after the biggest jump in raw material costs in a decade eroded profit growth. The Budweiser maker re-opened more than half of its 33 breweries in China, as the epidemic eased off there and has permission to restart the remainder of them, except for a facility in Wuhan, the epicentre of the disease outbreak. Brito told *Bloomberg* he had received a bonus in the first half, but not in the second as the company amended its usual practice of paying a bonus on an annual basis.

*Temasek Holdings is instituting a company-wide wage freeze and requesting that senior management accept voluntary pay reductions for as long as one year in light of the coronavirus crisis. The Singapore state-owned investment firm stopped all salary increases and promotion-related raises for the time being, *Bloomberg* reported. Temasek is making partial cuts to senior management annual bonuses and has asked them to lower their base salaries by five percent. The investment firm said it will contribute some of the money saved to staff-volunteer initiatives and will provide community support via measures that were not specified. Temasek is strongly invested in China, as 26 percent of its holdings were there as of last March. As a result, the news outlet said the Covid-19 outbreak has had an effect on its portfolio.

*Centre members Intertrust and ZEDRA imposed restrictions on non-essential travel. Many of Intertrust's Asia-based staff have already been working from home and it is implementing WHO safety measures in other jurisdictions as the need arises. ZEDRA encouraged employees to use video conferencing platforms such as Webex or Google Meet to keep in contact with partners.

*School exams provider Pearson cut its £350m share buy-back programme when it was about half way through it, due to the impact of coronavirus on its sales. **easyJet**
was criticised for paying out a £174m dividend, while asking the government for taxpayers' financial support at the same time. Dividend pay outs in March were cut by £4bn as more than a quarter of listed companies reduced their dividend guidance. Dividends were cut by Bellway, Biffa, IWG, Kingfisher, Morgan Sindall, Shell and many others - due to the coronavirus crisis, said City sources. This will dent the income of many employee shareholders, some of them retired. Retail giant Next scrapped its final dividend for 2019, but intends to declare a second interim dividend in June. Rentokil not only cancelled its dividend, but it axed all senior management incentives, including its long-term incentive plan (LTIP). Shoe shop chain Kurt Geiger kept its staff on full pay after closing 55 shops and ceo Neil Clifford waived his salary in order to cut costs. Executives at a few FTSE companies, including DFS and Stagecoach, agreed to basic pay cuts too. England rugby head coach Eddie Jones and other senior RFU executives agreed to take a pay cut of at least 25 percent as the game faced a revenue loss of up to £50m over the next 18 months. Ryanair ceo, Michael O'Leary, is taking a 50 percent pay cut this year.

Bizarre agm season looms: Companies will still be able to hold their agms this month but with only two directors attending, according to guidance issued by the Chartered Governance Institute and four leading City law firms. Shareholders will still be able to vote in advance, but they will not have

to the right to ask questions unless they attend in person. Two directors of the £100m AVI Japan Opportunity Trust held their agm last month in the car park of the Cobham motorway services station, due to the coronavirus lockdown in London. Other key company officers joined the discussion by video link. Doubts had emerged as to whether corporate agms would go ahead this spring (*for companies whose financial year ended on December 31*) without postponement or change into virtual format, in view of the risk of infection among shareholders who planned to attend. The London Stock Exchange is lobbying for companies to be allowed to hold remote agms during the coronavirus pandemic. It wants the government to make emergency amendments to the Companies Act to avoid disruption during the agm season, *Sky News* reported. The government has advised that the public practice "social distancing" by avoiding small and large gatherings. Agm attendees are often retired investors, placing them in one of the highest risk categories for coronavirus due to their age. However, many companies are not permitted to hold virtual meetings in place of in-person agms. Some companies advised shareholders to send their proxy votes on various resolutions asap, as the directors plan shorter meetings with some speeches via webcast. Even smaller quoted companies, whose agms often attract fewer than 20 shareholders and advisers, may have to arrange virtual shareholder meetings due to the newly imposed lockdown.

The rapidly changing corporate landscape was making this agm season a more uncertain time anyway, said Equiniti's *EQ Boardroom* bulletin. It is expecting more challenges from increasingly assertive investors and proxy advisers whose expectations are likely to be higher than the new codes and standards. Equiniti predicts much discussion about sustainability thanks to the Section 172 Statement requirement in the UK, and diversity thanks to the Boardroom Accountability Project 3.0 in the US.

Post Brexit talks: An even longer goodbye?

Speculation grew in both Westminster and Whitehall that the UK government would be forced to ask Brussels in June for an extension to the post Brexit relationship negotiations because of the deepening coronavirus pandemic. Key civil servants were moved out of the post Brexit unit to man the anti coronavirus trenches. Then came the news that the EU's chief Brexit negotiator, Michel Barnier, had tested positive and was in self-isolation, as were several members of his negotiating team. Then UK chief negotiator David Frost followed Barnier into self-isolation after showing "mild symptoms" of Covid-19 too, a No 10 spokesman told reporters.

Hitherto, PM BoJo had been adamant that the post Brexit transition process would end, regardless, on December 31 this year. However, increasingly, that looked like another pledge needing to be ripped up. As each round of face-to-face trade talks can involve 35 officials, or even more, on either side, the logistical perils are obvious to all. There was talk of conducting all future talks by video link, but that option seems to have been discarded as unfeasible. The next round of talks was scheduled for April 6 but that was almost certain to be cancelled, as was the fourth round scheduled for April 27. Were BoJo to ask the EU to extend the transition period, it would mean at least another year of delay beyond December 31 before the UK could stop following the Brussels rule-book (alignment) and another year of payments into the EU's coffers. If this proves to be the case, most share plan issuers and advisers who manage employee equity plans of UK subsidiaries *within* the EU would have more time in which to plan for potential changes in the structure of the EU plans they operate and the way in which they work.

*A first European Commission draft of the Future Relationship between the UK and the EU has emerged, reported lawyers *Herbert Smith Freehills*. The draft was sent to member states and the European Parliament for consultation and could be changed considerably. The UK government had announced that it would produce a draft in time for the next round of consultations. Both sides may be trying to set the agenda but it is unusual to see complete drafts at this stage. It is ambitious, providing for complete duty and quota free trade in goods. Even for services, it appears to go much further than WTO commitments since there is no schedule of sectors that are excluded from the national treatment (non-discrimination) obligation. It includes provisions on fisheries, data flows, capital movements, intellectual property, public procurement, transport, energy and raw materials, judicial and security cooperation, and for the continued participation of the UK in EU programmes. There are exception clauses, including safeguards and provision for trade defence measures but, although such comparisons are problematic, this would overall probably be the most far-reaching partnership agreement that the EU has ever proposed with a sovereign third country. However, the draft is a first step in a complex negotiation. There are many difficult issues on which the parties seem far apart. The EU proposes an overall framework with a common

governance structure, which would cover future supplementary agreements, whereas the UK seems to want a suite of separate agreements. The EU draft contains extensive 'level playing field' commitments on state aid, competition, taxation, social protection and the environment. The state aid provisions are likely to be unacceptable to the UK since they provide for dynamic alignment with EU rules and give the EU enforcement and intervention powers that are not available to the UK against the EU. Although the other level playing field provisions are apparently more even-handed, in that the disciplines are drafted so as to apply to both parties, in reality they are not since the substantive disciplines are those chosen for inclusion by the EU and the EU is deemed to comply with the procedural requirements.
*Until Covid-19 appeared on the scene, share scheme administrators worried over the fate of friction-free data transmission from the EU to the UK post transition and over the Prospectus Regulation, which ostensibly should make it easier for UK companies to avoid having to issue a prospectus every time they award shares or share options to employees in their European mainland subsidiaries, though Brussels would decide whether UK based applicants had the required equivalence status. BoJo is asking the EU for a Canada-style trade deal and said he would consider whether to walk away from talks and prepare for an "orderly" exit from the transition period, should the talks fail. Downing Street said it wanted regulatory freedom from the EU and would not accept any role for the ECJ in dispute resolution mechanisms. If there is no trade deal, the UK will revert to trading with the EU on WTO terms, with consequent bad temper on both sides, which would make concessions over financial services**,** including employee share scheme administration, even harder to achieve.

Pay troughing rife at academy trusts

*Barely one in five academy trusts warned over high levels of pay subsequently reduced salaries for their top bosses. The annual Schools Week analysis of ceo pay found 20 trusts where pay was hiked by £20,000 or more, with a single-school trust boss getting a £35,000 bonus. The findings suggest the government's crackdown on ceo pay isn't working. The number of ceos paid more than £200,000 has risen to 23, up from 21 in last year's analysis. Furthermore, nearly a quarter of trusts who have been warned multiple times over pay have hiked salaries. But there have been changes. The one-school Knole Academy Trust, for instance, appointed a new ceo on £125,000 less than the predecessor. Dr Mary Bousted, joint general secretary of the National Education Union, said the "*scandal of excessive ceo pay continues unabated*" and urged ministers to "take much firmer action". The government has previously said ministers have no power to intervene and are reliant on the "good will" of trusts to slash salaries. The Department for Education said it is reviewing accounts to inform this year's pay strategy. This will include "assessing commitments made by trusts in earlier rounds of high pay" and will take into account financial and educational performance. Since 2017, the Education and Skills Funding Agency has sent letters to academy trusts that have a staff member who is paid above £150,000, or multiple salaries of between £100,000 and £150,000, asking for justification, with evidence, for paying such high salaries from taxpayers' cash. The *Ambition Institute* survey covered 264 trusts. Of those, 124 (45 percent) saw pay rise for their highest-paid employee between 2017-18 and 2018-19. One-third (92) had seen no change, while just 18 percent (49) saw pay fall.

Coronavirus: trustee duties in EOTs

As economic disruption increases during the Covid -19 crisis, it is worth recapping the duties and responsibilities of trustees of EOTs, particularly those who have not previously acted as a director of a corporate trust, said **Rm2 Partnership**. Some key considerations are: Trustees are under a duty to exercise their votes in the *best interests of the beneficiaries* of the EOT i.e. the employees as a class. Case law shows that this means trustees of the EOT must act in the "*best financial interests" of all employees*. For example, this may mean a need to reduce or even to suspend the repayment of vendor deferred consideration and/or interest payments on the outstanding amounts. *To avoid a conflict of interest* - the economic uncertainty is likely to create a conflict between vendor and employee interests, and the EOT trustees must act in the interest of the latter group in accordance with the law. Tough decisions lie ahead for many businesses similar to those experienced during the financial crash of 2008. Trustees must remember that they are *bound by a duty of confidentiality* and they are not free to disclose to employees or other parties information obtained as a director of the EOT corporate trust. Directors of a EOT corporate trust company have a duty to *safeguard the trust's assets* (i.e. shares in the trading company) and to review the financial performance of the business (amongst other duties). Rm2 said: "The unprecedented situation unfolding at this time means that a director of the EOT corporate trust may find him/herself in a difficult position when a decision of the trustees of the EOT (e.g. voting on a shareholder resolution which could result in redundancies), which might be in the best interests of the beneficiaries as a class, but would

nevertheless result in hardship for him/herself or their colleagues. A director has a statutory duty to put the interests of the company ahead of his/her own"

CORONAVIRUS OVERSEAS

US Executive Compensation: The spectre of multiple stock option re-pricing applications is back on the horizon in corporate US for the first time since the 2008 financial crisis, warned **Doreen Lilienfeld**, global head of the governance and advisory group and head of compensation at leading US lawyers Shearman & Sterling.

Re-pricing stock options can pose particular challenges, given the potential for drastic spreads and the risk of outstanding options going underwater, said Centre conference speaker Doreen. "*After a long bull market, we may begin to see a resurgence in discussions about option re-pricing, which would revive issues last considered broadly during the 2008 financial crisis,"* she said. Calls for re-pricing of executive stock option programmes grow when the options' market value sinks way below the strike price. They then become 'underwater options.*'* Re-pricing requires shareholder approval under applicable listing rules, unless a company's equity compensation plans explicitly permit it, which is rare. Additionally, re-pricing is disliked by proxy advisory firms and institutional investors. Heated corporate governance rows lie in wait should the issue of executive incentive share option re-pricing rear its head in the UK again soon. Doreen pointed out that as share values decline, due to the Covid-19 pandemic, authorised share plan pools may deplete dramatically as grant sizes will necessarily increase as a consequence. Those companies that have not yet filed their proxy statements for this year's agm, should consider whether to include a proposal to amend equity plans to account for higher than expected burn rates. As the effects of Covid-19 unfold, later this year, an increase may occur in equity grants made contingent upon subsequent shareholder approval and shareholder EGMs to approve new plans, increases in authorised share pools and re-pricing of outstanding awards. Companies should review their equity plans if they have upcoming automatic grants—for example, shareholder approved formula director compensation grants—to confirm there are sufficient shares remaining to make these awards, she added.

As the outbreak runs parallel to the annual incentive award cycle of many companies, at issue is how they will address incentive setting and employee retention in this extraordinary environment, said Doreen. "*Companies that were*

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planning to make equity grants in the coming days or weeks may be considering delaying their annual grants, particularly if company practice has been to make grants based on the grant date fair value of the awards (as opposed to awards over a fixed number of shares). Before taking such an action, companies should review their prior SEC disclosures, grant policies and plan terms to determine whether there are any contractual restrictions on grant timing or whether they have made past public statements on grant timing policy.

Any plan amendments that impact awards to executive officers or directors may trigger Form 8-K reporting in the US. Even if no mandatory Form 8-K is triggered, companies may consider voluntarily disclosing grant timing changes. Delaying grants may be most appropriate in the case of multi-year performance awards and may ultimately preserve the number of shares available for grant over the life of the relevant equity plan. However, delaying grants may be de-motivating to employees at a time of uncertainty and increased commitment. Companies should carefully craft related employee communications to emphasise the importance of, and explain the reasoning behind, any changes in equity grant cadence. Some boards and compensation committees may choose to stay the course and not delay grants. Proceeding with typical annual grant timing could, when judged in hindsight, create the impression that management received an unjustified windfall, because equity grants were made when the company’s share price was artificially (and temporarily) low. Shifting the grant timing could alleviate some of that pressure, but it could exacerbate it given current uncertainties. An alternative to is to stagger the annual equity grant to be made over the year (i.e., semi-annually or quarterly) to reduce the effects of continuing market volatility and supply chain disruption.

Doreen added: “Related to the issue of grant timing, given the volatility of the market generally, companies that make grants based on the grant date fair value of the awards using a spot price (such as a daily closing price) may want to consider instead using a trailing average price to avoid anomalous pricing on an extreme up or down market day. Publicly traded companies should keep in mind that ‘fair market value’ for establishing stock option exercise or strike prices may not be determined by a trailing average of more than 30 consecutive trading days in order for the options to be exempt from Section 409A of the Internal Revenue Code. For equity awards other than stock options, we recommend companies think about using a longer period (for instance, 60

WHITE & CASE

or 90 days) when setting the trailing average. Companies considering this approach should ensure the governing plan documents allow for alternate valuation methodologies. Companies should consult with their auditors to understand the accounting impact of any proposed changes.”

To address the challenge of making grants when business operations and share prices are changing drastically from day to day, companies might consider more novel approaches to their award design for 2020. In addition to the timing and pricing considerations already mentioned, equity grant practice tweaks could include revisiting the mix of equity awards (percentage of full share awards vs. options), performance award minimum and maximum payout ranges and levels of discretionary authority for compensation committees and boards to adjust payouts at the end of vesting periods.

Companies may consider delaying setting long-term performance award targets until the market is somewhat less volatile, while proceeding with other incentive components. If companies choose to set long-term performance targets now, they may consider using relative as opposed to absolute performance metrics and providing the plan administrator with sufficient discretion to adjust awards when ultimately determining achievement levels. If the board or compensation committee is thinking of adjusting long-term incentives granted in prior years, consideration should be given to the plan terms regarding adjustments, whether they are grandfathered for Section 162(m) purposes, and the accounting and disclosure ramifications of any changes, which should be balanced against the overhang of the awards and their reduced retentive value. *In some cases, it may be more beneficial to terminate longer-term awards and replace them with new grants with more achievable long-term targets,* added Doreen.

Market volatility can pose a challenge to ordinary sell-to-cover transactions as awards vest and settle. For example, take a restricted stock unit that vests and settles on a Friday (when the employer’s stock closes at $10). The tax due is calculated based on the price on the settlement date, but the market sales to cover the withholding obligation do not occur until the trading day on Monday (at a time

when the stock drops to $7 in intraday trading). When such drastic market swings occur, the broker must sell significantly more shares to raise sufficient funds to settle the tax liability. In times of significant market volatility, companies might consider moving away from broker-assisted sell-to-cover programmes for tax withholding and instead use company net share settlement or withhold from other income of the award holder, if possible.

Employee messaging is particularly important in times of anxiety and uncertainty. Management should consider what information employees receive about operations, disruption and workplace policies, as well as compensation, with greater than typical sensitivity. Care should be taken in how that information is delivered, and employers should ensure that employees understand why any changes are being made and how their and the company's interests are being protected.

For companies that have not yet acted on their 2020 annual performance targets, boards and compensation committees should consider delaying until more is known about the impact of Covid-19. Boards and management may wish to maintain focus on business continuity and emergency preparedness, rather than trying to predict potential outcomes under incentive programs at this time. In addition to the changes on performance target adjustments noted above, the amendments to Section 162(m) allow for more flexibility in the timing of performance target setting. Previously, Section 162(m) required targets to be set within a certain period (for instance, annual targets had to be set by March 31 for calendar year companies) in order for the related compensation to qualify as "performance based," and therefore be deductible by the employer when paid. Nonetheless, compliance with plan terms, accounting impact and employee reactions should be kept in mind when determining how long to delay target setting.

*Sara Nelson, president of the US union the **Association of Flight Attendants**, is demanding a temporary ban on executive bonuses and stock buy-backs until the coronavirus crisis is over. Sara asked whether the imminent airline bailout of the US aviation industry would mostly benefit top executives and shareholders or concentrate on protecting the industry's most vulnerable employees. She said: "We must keep our tax dollars from padding the pockets of executives and shareholders." She is worried about how airline executives would spend taxpayer bailouts if left to their own devices. Over the past decade, the airlines have taken profits that could have gone into long-term investments and 'squandered' these earnings on stock buybacks, a legal form of stock manipulation that artificially inflates the value of company shares. The nation's largest carrier, American Airlines, had a negative free cash flow during this period and yet still spent $12.5bn on buybacks. A major reason why so many corporations have been on a buyback spree is because they inflate the value of executive stock-based reward. In 2018, the ceos of the five largest US airlines averaged almost $10m in total compensation. In 2018, the ratio between ceo and median employee pay at the five largest airlines ranged from 80:1 at Alaska Air to 195:1 at American. Were the ratio limited to 50:1, American Airlines' ceo Doug Parker's total reward in 2018 would have been just over $3m, instead of the $12m he actually received.

TRAVERS SMITH

*President Trump succeeded in winning a rescue package for US airlines who pleaded for help over their sudden huge losses. They will be eligible to receive federal loans and, if they are willing to give the government an option for an ownership stake, direct cash assistance under the Covid-19 rescue deal reached by lawmakers and the White House. The legislation included a $61bn lifeline for struggling US airlines, cargo carriers and contractors, with about half in loans and half in cash assistance to support salaries, benefits and other employee costs, according to the Bill text. The $2trillion US government bail out would prevent company officials (across the board) who made more than $425,000 last year from getting a pay rise until at least a year after the loan is repaid. Those who were paid more than $3m will only get half of the excess this year under an imposed formula. This limit applies to bonuses, stock awards and other benefits, rather than just salaries, which often make up only a small portion of executive compensation. It applies for two years to airline executives, as the travel industry receives special assistance in the legislation and for a year until after the loan is paid back to executives in other industries. Treasury secretary Steven Mnuchin would be empowered to require equity or other securities in return for the cash assistance to keep workers on the job, and other restrictions

would apply, including a limitation on reducing payrolls and on executive pay, according to draft text. Passenger carriers are eligible for up to $25bn in payroll support funds and cargo haulers $4bn, with a like amount of loans. Airline contractors providing ground staff such as caterers would be eligible for $3bn in employment support funds. The airlines promised not to reduce employment before August 31 if those grants were approved and promised to limit executive compensation and eliminate stock buy-backs and dividends for a time if they are granted at least $29bn in loans. Companies buy back their own shares for several reasons. Some have built up big cash piles that they don't want to sit on so spend the money buying back previously issued shares. This helps them reduce their costs as they have fewer shareholders to pay dividends to. Buying back stocks can push up the company's share price, which many investors use to measure a company's performance. American Airlines led the pack, buying back more than $12.5bn of its own shares from 2010 to 2019, according to *Bloomberg* statistics. United Airlines used 80 percent of its spare cash buying back its shares. The average S&P 500 Index company spent about 50 percent of its spare cash buying back its own shares during this period.

*Oz airline Qantas ceo Alan Joyce announced that he'd give up his salary for several months after the group announced capacity cuts equivalent to grounding 38 aircraft, due to the coronavirus crisis. The Qantas board said its members would take a significant drop in salary and bonuses. Joyce and chairman Richard Goyder will receive no salary; the board will take a 30 percent reduction in fees; and the group executive management will take a 30 percent pay cut. All non-essential recruitment and consultancy work will be frozen.

Thai Airways said senior executives would give up a quarter of their salaries for six months. Others followed with salary cuts or pay freezes, including El Al Israel Airlines, Singapore Airlines, Air New Zealand, Australia's Qantas Airways, UK-based Virgin Atlantic and Sweden's SAS. At Dallas-based Southwest Airlines, ceo Gary Kelly will take a temporary pay cut of ten percent. The concessions won't have a major impact at most firms. Salaries make up only a fraction of compensation packages for US executives at big public companies, with the rest coming as bonuses or equity awards. The virus has squeezed companies in many industries. Singapore's national postal service will cut and freeze pay for upper-level managers. Executive directors at Hong Kong-based jeweller Chow Tai Fook will take a 30 percent pay cut this month to

ride out the difficult times along with their employees. Australian travel agencies Helloworld Travel and Webjet will cut pay for their top executives by up to 30 percent, while other executives will take reductions. Senior leaders at two Singaporean companies that provide services like airport security and baggage handling -- Certis and Sats -- will absorb salary cuts of up to 15 percent, *Straits Times* reported.

COMPANIES

*Employee share ownership devotee, **Admiral**, the Cardiff based car insurer and owner of Confused.com is getting a new ceo, Milena Mondini de Focatiis, currently the firm's head of UK and European insurance. She will take over from David Stevens next year. Milena is ceo-designate and will join the board as an executive director. Stevens co-founded Admiral in 1991 and has been ceo since May 2016, when co-founder Henry Engelhardt, son of a Chicago meat packer and dedicated Esop supporter, stepped down. His parting present to 8,000 staff was free share awards worth £3,600 each from a bonus scheme linked to company performance. Ms Mondini de Focatiis will be one of a handful of female FTSE 100 ceos. Admiral has a female chair too, Annette Court, a former Zurich executive who took on the post in 2017. Admiral posted a group pre-tax profit of £522.6m, a ten percent increase from the company's 2018 result. In addition, the entire workforce will receive a one-off £500 bonus to reflect the group's strong performance.

***AMC**'s 14 top executives including ceo Adam Aron agreed to slash their cash salary and bonuses for three years in exchange for stock that will only vest if the price doubles or triples. Their payouts will be cut by 15 percent and other compensation will be tweaked too. Aron said that it's a $1.6m pay cut for him personally over three years but he and other managers believed strongly the shares were wrongly priced at current levels.

*Professional services firm **Aon** is set to merge with risk management, insurance brokerage and remuneration advisers **Willis Towers Watson,** a senior Centre member, in a *£47.6bn* deal that aims to combine and expand complementary

organisations to create a technology-enabled global platform. Upon completion, current Aon shareholders will own 63 percent and current Willis Towers Watson shareholders will own 37 percent of the combined company on a fully diluted basis. The deal is subject to regulatory and shareholder approvals and is scheduled for completion in the first half of next year. Aon incorporates founder member of the Centre New Bridge Street Consultants.

***BT** is set to cut its top executives' pension allowances and link their bonuses to sustainability targets, as part of an executive reward shake-up by the telecoms giant. BT has started the latest phase of a shareholder consultation including a proposal to slash ceo Philip Jansen's maximum remuneration package from £8.3m to £5.6m, *Sky News* reported. One investor said the bulk of the reduction would be accounted for by BT's decision to scrap its long-term incentive plan (LTIP) - which could pay out shares worth £4.4m to Mr Jansen each year - in favour of a restricted stock scheme that would award him £2.2m in shares annually. The 50 percent discount to the LTIP, which is designed to reflect the greater certainty of the awards being paid out, is apparently acceptable to most of BT's large investors following earlier discussions. In addition to the restricted share plan, BT plans to reduce Mr Jansen's maximum annual bonus from 240 percent of his salary to 200 percent. In addition, Jansen would face having his pension allowance reduced next year from 15 percent of his £1.1m salary to ten percent, bringing him in line with the company's average employee. Cfo Simon Lowth would have his pension allowance reduced from 30 percent to ten percent of his basic pay over three years. The executives would have 20 percent of their annual bonuses linked to factors including progress towards BT's target of reducing carbon emissions by 87 percent by 2030 and the number of the company's customers connected to new 5G networks. Another planned measure being debated is increasing Jansen and Lowth's minimum shareholding requirement to *five times* their salaries, according to *Sky News*. One leading shareholder welcomed the changes, saying they had been "carefully thought through" by its remuneration committee. BT's proposed cuts to executive pensions follow a series of investor revolts over remuneration at FTSE companies. A quarter of FTSE All-Share businesses were rebuked by at least 20 percent of their voting shareholders on a range of issues at their agms last year, according to data from industry body the Investment Association. BT shareholders are set to vote on the proposals at the company's agm in July.

*The insurer **Direct Line** will award £500 worth of free shares to all its 11,000 employees, despite reduced pre–tax profits of £510m last year, largely due to flooding and damage caused by storms.

*Centre member **Equiniti Group** reported a big rise in profit for 2019, resulting from a sharp drop in non-operating charges and steady revenue growth. The share registration and financial services provider announced the acquisition of employee share plans firm **Monidee**, also a Centre member, for an undisclosed sum. Amsterdam-based Monidee owns the tOption technology product. The acquisition will allow Equiniti to offer its clients global share purchase plan products. "We are delighted to welcome Monidee to the Equiniti group. This acquisition will allow us to answer current client demand and provides us with a leading proprietary platform to attract new international clients" said ceo Guy Wakeley. "Equiniti continues to be distinguished by our commitment to client relationships and technology investment, with the singular purpose of improving service for the 30m people who use our platforms." Equiniti reported a 64 percent rise in pre-tax profit to £39.8m from £24.3m the year before, as non-operating costs dropped to £5.5m from £20.8m.

***Goldman Sachs** ceo David Solomon received a 19 percent raise in 2019, a message likely to resonate poorly among traders and bankers who saw their own bonuses cut and who are facing a long period of economic uncertainty. Mr Solomon earned $24.7m in 2019, the bank said, including a $7.7m cash bonus and almost $15m in stock. His total reward was up from $20.7m the year before.

*Trust-owned **John Lewis Partnership (JLP)** paid an annual bonus of just two percent *(in cash)* to its 83,900 staff – the lowest level of bonus in 67 years – after pre-tax group profits fell almost 45 percent in the year ended January. The bonus equates to c. £360 for the average JLP employee.

***Monese,** a digital banking app for expats, is expecting to turn 30 employees into paper millionaires after its next fundraising, which will reportedly value the company at £1bn. In an interview with *Sifted*, ceo Norris Koppel said that Monese's staff equity scheme had already minted over 20 paper millionaires — with several more expected at the next round: "Everyone working at Monese has employee share options… It's about giving employees pride of ownership," said Koppel, adding that giving shares was a better way to motivate staff than fear. London-based Monese, which has had more than 2m downloads, is far from the only European fintech to have made early employees very affluent (at least on paper). **TransferWise** documented 33 paper-millionaires

after being valued at $3.5bn in 2019, according to *Sifted* calculations, and **Revolut** has already made at least three executives into *actual* millionaires after they cashed out last October.

*Money manager **Ninety One**, formerly known as *Investec Asset Management,* will move ahead with plans to launch an initial public offering this month despite market volatility, with a valuation of up to £2.17bn. The price range for the IPO on the London and Johannesburg stock exchanges was set at 190p to 235p per Ninety One share, the company said. That gives a valuation range of £1.75bn to £2.17bn. Once the firm is separated from its parent company **Investec Group**, ten percent of Ninety One's capital will be issued to new investors, while shareholders of Investec Group will retain a 55 percent stake in the money manager. Following the mid-March IPO, 15 percent of the combined total issued share capital of Ninety One will be retained by Investec Group. A further 20 percent stake will be retained by an employee share-ownership vehicle for *some* of the payroll. The vehicle, known as **Forty Two Point Two**, intends to purchase up to 46m of Ninety One shares in efforts to increase its stake in the company beyond 20 percent. Hendrik du Toit has a 1.92 percent stake which could be worth up to £41.7m after the float, while Kim McFarland, fd, would have a £27.1m holding at the top of the range. Forty Two Point Two, an employee share ownership vehicle that represents 40 senior managers and fund managers, led by Mr du Toit, already owns a fifth of Ninety One. That could rise to 24.8 percent as part of the share offer and be worth £538m at the top end of the range.

* Info technology group **Sopra Steria** carried out a shares transfer under its Share Incentive Plan (SIP) in the UK, the aim of which is to award free Sopra Steria shares to UK employees participating in the SIP in a ratio of *one free share per share subscribed for*.

WORLD NEWSPAD

***Wells Fargo**'s board cancelled the $15m stock bonus it gave to former ceo Tim Sloan last year, the company said in a proxy filing. Sloan received no severance from the company when he resigned in March 2019, the bank disclosed. Tasked with getting the bank back on track, he was criticised by regulators and politicians as not focused enough on fixing the problems within the bank. From 2002 to late 2016, Wells Fargo created millions of fake fee based accounts in consumers' names without their consent and other misconduct, designed to help executives meet bonus targets. The bank agreed to pay $3bn to resolve a government investigation into its sales practices, including the fake customer accounts. It admitted to having wrongly collected millions of dollars in fees, misused customer information and harmed the credit rating of customers. The settlement comes about four years after the scandal first erupted. It has forced out two ceos and led to hefty fines. Since 2018, Wells Fargo has been operating under an order from the US Federal Reserve that limits its growth. Former ceo John Stumpf agreed to pay $17.5m to settle charges, in a rare example of a bank executive being personally punished for failing to stop misconduct.

***Coca-Cola** will consider the wages it pays all its employees when setting executive salaries, aiming to bring them into closer alignment, the New York State Common Retirement Fund (NYSCRF) said. Following the agreement with the beverage giant, the fund, which is among the company's top 50 shareholders, withdrew a shareholder resolution against the company. Coca-Cola agreed to add language to its upcoming proxy statement that said the compensation approach used to set ceo and (named executive) pay would be the same one it uses to determine compensation for the broader workforce. The NYSCRF said ceo pay at the largest US companies had risen dramatically, while average wages, adjusted for inflation, "have made only meagre gains." The fund said some figures show the pay ratio between ceos and the typical employee has increased by nearly 1,400 percent. Shareholders have long grumbled over the tens of millions of dollars given to some Ceos and the complex formula used by corporate boards to calculate how much salary, bonuses and stock awards they are given. A *Wall Street Journal* story revealed that average compensation for ceos running S & P companies was $12.4m, up 6.6 percent from the previous year and the highest level since the Great Recession. The paper found that only two of the highest-paid ceos' employers ranked in the top 25 for shareholder returns in 2018. The argument for companies is that if shareholders are being rewarded through a rising stock price then executives should be rewarded as well. But the complaint by the NYSCRF is less about the level of pay and more that it is so much higher than what rank-and-file employees get; while ceo pay has soared, pay of other employees haven't come close to keeping pace.

*A US judge criticised **Pacific Gas & Electric**, saying its executives had put greed before safety and telling officials from the utility blamed for catastrophic California wildfires to plan to add at least 1,100 more tree trimmers to cut the risk of even more blazes: "*I am going to do everything I*

can to protect this state from more death and destruction from this convicted felon (PG&E)," said District Judge William Alsup. He delivered the harsh rebuke to the nation's largest utility during a court hearing to review whether PG&E had complied with the terms of a five-year criminal probation imposed after its natural gas lines blew up a San Francisco Bay Area neighbourhood, killing eight people in 2010. The utility was convicted of six felony counts of falsifying records and safety violations in 2016. Judge Alsup blasted PG&E for its '*abysmal*' track record since its probation began in January 2017. In that time, PG&E's aging power lines have been blamed for igniting a series of wildfires that killed almost 130 people and destroyed thousands of homes. The aftermath saddled PG&E with more than $50bn in potential liabilities, driving the San Francisco company into bankruptcy 13 months ago. The judge told PG&E that he believes the fires could have been prevented if it had upgraded and maintained its electrical system *instead of funnelling billions of dollars into shareholder dividends and executive bonuses.* "PG&E poses a threat to the safety of the people of Northern California because you are so far behind," Alsup said. PG&E lawyer Kevin Orsini assured the judge that the company had "fundamentally changed" since hiring a new ceo, Bill Johnson, and overhauling its board of directors last April. After scolding the utility for its alleged neglect, Alsup complimented its new management team for deliberately turning off power to as many as 2m people last autumn to prevent wildfires during hot, windy weather. Although the outages infuriated and inconvenienced people, the judge said he believed they may have prevented dozens more potentially deadly fires. He plans to order PG&E to expand its tree-trimming force from 5,400 contractors to 6,500 to help prevent vegetation from falling onto its power lines and igniting. State Governor Gavin Newsom has tried to pressure PG&E into taking more radical steps to change its culture and reduce its debt when it comes out of bankruptcy so it can afford to invest $40 bn into upgrading its electrical grid during the next decade.

*__Toys 'R' Us__ executives allegedly received $16m in bonuses before the troubled retailer filed for its 2017 bankruptcy. Before the children's toy retail chain filed for the bankruptcy protection, ceo David Brandon and others in senior management collected bonuses and boosted their compensation by 75 percent, the lawsuit filed by a group of creditors claimed. Brandon left with $2.8m, the suit claimed, when vendors were left with 20 cents to the dollar in the company's bankruptcy. The suit claimed a fraudulent scheme was created to cheat creditors out of billions, the *New York Post* reported. The plaintiffs seek $1.1bn for damages. They allege that Brandon had arranged for the bonuses that were approved by the chain's board of directors in the months leading up to the bankruptcy, and as losses were starting to mount. '*We have to be creative and design something that works for us*,' Brandon is alleged to have said in a July 2017 email, in a reference to executives' reward, which he boasted was superior to what their peers in the industry made at the time. The lawsuit accused Brandon of placing his loyalties with Bain Capital, rather than the retailer and revealed emails alleging that Brandon admitted he was given a break on fees for putting his personal money in Bain investment funds. Brandon, a director at Domino's, the pizza delivery and take-away chain, refused to comment. "At all times, the former directors and officers of Toys 'R' Us and members of management acted in the best interests of the company and its stakeholders," the directors' lawyer Bob Bodian said in a statement. "Because none of the named defendants has any financial exposure, this lawsuit is just a misguided effort to pressure insurance carriers to pay meritless claims. We will defend against this baseless lawsuit vigorously," Bodian added. Greg Dove of Dovel & Luner, representing the plaintiffs, said: "The toy makers want a public trial and for these executives to be confronted with what they did."

*The European Council adopted revised conclusions on the EU list of non-cooperative jurisdictions for tax purposes, reported centre member **Deloitte.** In addition to the eight jurisdictions that were already listed (American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu) the EU included: the British Overseas Territory Cayman Islands; Palau; Panama and Seychelles. These jurisdictions had not implemented the tax reforms to which they had committed by the agreed deadline, said the EC. See https://deloi.tt/2wwV4MZ

*The annual conference of the **Australian** Employee Ownership Association has been postponed due to the coronavirus crisis. The organisers are examining alternatives such as video conferencing.

*Analysts have called for **Woolworths** executives to resign after the supermarket giant revealed the cost of the staff underpayments scandal had risen to A$315m (£158m). Coupled with A$80m in interest payments and other costs, the total expense of the underpayment scandal accounts to almost A$400m, with four years of payroll investigations

still to come. This created a near eight percent drop in net profit and saw the company retroactively adjust its profit and loss statements for previous financial years. Investors weren't impressed. Executives ducked for cover during the company's conference call discussing its earnings. Bank of America analyst David Errington called for resignations and asked if it was possible to "drag back" money from previous management. "*You have had a systematic underpayment of staff to the magnitude of nearly half a billion dollars. You owe us as shareholders to explain how that happened,*" Mr Errington said. "*Are there going to be resignations from the board? Because this is half a billion dollars that you're expecting us to chew.*" Brad Banducci, Woolworths ceo, said shareholders had every right to be "frustrated and disappointed" with the company over its underpayment issues. "We have let our team down and shareholders down. We need to fix it, and there have to be consequences," he said. Mr Banducci told reporters additional cuts to executive bonuses were on the table for upper management following the increased figure, but would not specify an amount, saying the company was focused on re-mediating staff first. "We do expect there to be additional consequences for management...we do expect it to impact collectively the group executive team's short term bonuses," he said.

*The **Nigerian Stock Exchange** is moving towards demutualisation. Its members at a meeting in Lagos voted unanimously for the reregistration of the exchange as Nigerian Exchange Group plc and the establishment of a separate subsidiary company to be charged with the regulatory functions of the exchange post demutualisation. Furthermore, members reconvened for the egm to elect the board of directors of the de-mutualised Exchange and explore the implementation of an Esop.

France: Spectacles giant **EssilorLuxottica** launched a share buyback programme reflecting the group's confidence in value creation and its long-term prospects. It granted a mandate to an investment services provider for the purchase of up to three million EssilorLuxottica shares, depending on market conditions, over a period starting from March 17 until May 27 2020. The shares so acquired will be awarded or transferred to employees and corporate directors of EssilorLuxottica and affiliated companies, mainly in the context of profit-sharing plans, bonus and performance share awards, stock option plans, and the employee share ownership plan. **F*rench motorway concessions and construction giant **VINCI** bought back 700,000 of its own shares in March for €57m in order to cover its employee pension savings and share ownership plans.

*The **Reserve Bank of India (RBI)** aims to claw-back employee stock options (Esops) and bonuses issued to top management of troubled private lender Yes Bank. RBI wants to find out whether information about Yes Bank's problems was suppressed deliberately or under pressure, the *Business Standard* reported. It will sift through the top management at Yes Bank, currently more than 100 strong. The development sends strong signals that the regulator will keep keen eyes on pay-outs to the top management of private banks and that FY20 books would be "under intense scrutiny" and is a wake-up call for whistleblowers, the paper added. This would be the first case under RBI's November 2019 guidelines on the compensation of the banks' whole-time directors, ceos and control staff. The November circular stated that new rules would be set from April 1 2020, while previous 'slip-ups' would be subject to claw-backs or malus.

US: The Covid-19 crisis will have specific effects on Esops and the employee ownership world in general, warned the Oakland, California, based **National Center for Employee Ownership** (NCEO). It is creating and collecting free public resources to help companies navigate the shifting economic landscape. As a service to the employee ownership community, the NCEO staff and board invite those interested to attend free webinars that address Esop-specific implications of the crisis, legislation, and shelter-in-place orders in effect around the US, including: valuation, distributions, repurchase obligation, culture & communications and legislative takeaways. Many of the most pressing questions may already be answered in its Covid-19 Q&A and its Covid-19 resource page.

The Employee Share Ownership Centre is a membership organisation which lobbies, informs and researches on behalf of employee share ownership.