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it's our business

newspad of the Employee Share Ownership Centre

Centre and regulator seek answers over unwound EBT

Super architect Lord Norman Foster has bought out an employee share trust just weeks before selling a stake in his practice to a strategic investor, which could net him hundreds of millions of pounds, according to the *The Sunday Telegraph*. Foster, who designed the famous 'Gherkin' in the City of London and the Thames Millennium Bridge, has bought back his employees' 49.6 percent stake. Documents filed at Companies House show that the re-purchase took place on January 8 this year, though this is an unusual course of action.

The trustees, Close Trustees Jersey, took independent advice about the valuation of the stake and employees have the option not to accept the proposed payout, said the newspaper.

The questions which remain unanswered are:

*to what extent the company and the EBT trustee consulted Lord Foster's employees

*whether their views were considered before this transaction took place

*how the valuation of the employees' stake was reached

*whether a new Esot is being established and, if so, how many of the staff will benefit

Employees were allegedly surprised to receive news of the pay-out as many rank-and file staff had not been aware of the trust's existence, according to media speculation. However, details of the trust, the Foster + Partners Employee Benefit Trust, which was established several years ago, were presumably included in the annual accounts.

Employees are being offered a proportion of their annual salary: anyone employed for more than a year would receive about ten percent of his/her salary, while the rest would get a smaller amount, claimed the newspaper report. Foster + Partners employs more than 600 architects and designers and the total payout will be several million pounds. Foster has declined to comment. However, it is thought he would not be able to proceed with the prospective stake sale unless he unwound the trust. Private equity backers normally want at least 20 percent of the equity before they agree to come on board and had the trust been left in place, Foster would have been forced to surrender his majority control over the business.

Centre chairman Malcolm Hurlston told newspad: "Some members of the Esop Centre have expressed their concern that the story in *The Sunday Telegraph* may not give the full picture of employees enjoying their rights as beneficiaries under a Jersey trust. We understand that the Jersey Financial Services regulator is taking an interest in the case. From the point of view of clarity and action, it is fortunate that Jersey is involved."

In the event of a deal being agreed, it is believed Foster would remain at the practice for up to five years. His continued involvement is likely to be key to its valuation for any strategic investor. In the last accounts filed for the year ended April 2005, the company revealed pre-tax profits of £2.5m on turnover of £44.5m.

Sir Norman was told by his advisers that he needs more capital to help fund an international expansion plan which would see up to 30 offices established worldwide. They identified a shortlist of potential investors, including 3i, the UK private equity group. Bankers say the business is worth up to £500m. In 2005, the company generated 12 percent of its turnover from the US and 9 percent from China, but the bulk came still from the UK. Foster's work dominates the skylines of cities around the world - from the Gherkin to the Reichstag in Berlin to the Hong Kong and Shanghai Bank (HSBC) building in Hong Kong. The helicopter-flying multi-millionaire was knighted in 1990.

From the Chairman

Tax relief for employee share ownership will top £1 bn in 2006/7 according to figures released with the budget which include both income tax and NI concessions. A £1.07 billion hand-out marks a fine exit for a Chancellor committed to the principle: over half the relief relates to the measures he introduced himself.

Still, a new Chancellor will soon be asking are we getting value for money for these concessions? What is the impact on productivity and equality? And these are questions the share scheme movement will need to ask itself first:

Are we working with the grain of the legislation to produce results for the UK? Or is it just a framework for flannel?

The figures were: SIP - £470m; CSOP - £250m; Sharesave - £230m; EMI - £120m. The total was up 13 percent on the previous year.

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European Awards:
The Centre urges members to enter its European Awards 2007 competition. The winners will be announced during the Centre's Cannes conference (see inside) and the closing date for entries is May 21. You can download an application form from the Centre's website. The two annual award categories are: 'Best Employee Share Ownership Plan' in companies with either more than, or less than, 1,500 employees respectively.

Bidding war for LloydsTSB Registrars hots up
Link cash machine network, backed by Bain Capital, a US buy-out giant, is one of the contenders to snap up Lloyds TSB's £600m share-registration and administration business, according to latest media speculation. A Link bid is on a short list of trade and private-equity suitors for Lloyds TSB Registrars, in a sale process being run by Lehman Brothers on behalf of Britain's fifth-largest bank, said *The Sunday Times*. Others in the running are thought to include Duke Street Capital and Warburg Pincus. According to the *Financial Times* however, American Stock Transfer, backed by private equity company Silver Lake Partners, and Australia's Link Market Services, backed by Pacific Equity Partners, are the leading contenders.
Lloyds TSB Registrars acts as registrar for more than 800 companies, including 60 percent of FTSE 100 companies. Clients include Pearson, the owner of the FT and Reed Elsevier. Its activities include registering the sale and purchase of shares; issuing share certificates, and dividend and interest payments; dealing with shareholder inquiries; and managing corporate activities such as takeovers, de-mergers and rights issues. It manages employee share schemes, such as SAYE Sharesave and other share incentives.
The decision to sell, reported in last month's *newspad*, came after Lloyds TSB chief executive Eric Daniels decided that the share-registration business was no longer a core part of the group. Its largest competitor is HBOS's Employee Equity Solutions (EES), which administers employee share schemes for more than 350 companies. Last year, HBOS EES bought Mourant Equity Compensation Solutions from Jersey law firm Mourant.

Budget blues
Eso was almost ignored in the Budget, despite members' concerns on several fronts, but HMRC did announce closure of an alleged tax avoidance 'loophole' involving employee benefit trusts. From now on, employers cannot sidestep the existing EBT anti-avoidance provisions by declaring a trust over assets that they already control. HMRC confirmed that any other action which has the effect of creating or enhancing the value of employee benefit contributions would be subject to the same anti-avoidance provisions. The effect of the measure is to prevent an employer from obtaining a deduction for tax purposes in respect of any such contributions until they are paid to employees in a form on which income tax and NIC are due.

On the move
Centre member **Postlethwaite & Co**, business solicitors, reports a new appointment. Managing partner Robert Postlethwaite said: "I have recently been joined by a new lawyer, Judith Harris, who now assists with employee share schemes. Judith's appointment will help us further develop our Eso service, ensuring that help is available whenever it is needed, excellent speed of response and capacity to assist with all sizes of assignment." Judith, a law graduate from Manchester University, has worked previously as a corporate and commercial lawyer. Robert added: "Regarding the SME market, there are many EMIs and where this is not feasible, restricted and nil paid shares are often also popular. We are experiencing little demand for all-employee arrangements, although some companies are keen to spread their grants of EMI options to the majority of their employees."

Centre warns Chancellor of takeover threats to ESO
Centre chairman Malcolm Hurlston has written to Chancellor Gordon Brown, to warn him of the growing threat to ESO posed by takeovers of UK based companies by foreign owned companies or by private equity consortia.
"I am writing to warn you of a disturbing new trend in British business that is affecting the impact of the employee share schemes which you have introduced in the interests of national productivity," said Mr Hurlston, on behalf of Centre members. "In recent months, many companies have been bought out by private equity consortia or foreign owned business empires and their share schemes have been terminated in consequence. Most recently Scottish Power, purchased by Iberdrola, has announced its intention to close Esops to new participants. According to the ONS, £75 billion of UK business was acquired by foreign parents in 2006 and carried with this were the interests of many thousands of employees, through participation in Sharesave and SIPs.
"This is of course a great concern to our members, and to the many working people whose potential enhanced participation in the success of their business has been compromised as a result. Your practical and active support of employee share ownership initiatives in the past has been of great benefit to countless UK businesses and staff. However, if the current trend of strangling ESO schemes following a buyout were to continue, much of the progress that has been made will be wiped out. Our members would now welcome a clear statement of support. Legislative adjustment may help in the case of private equity and we shall forward proposals. But new foreign owners – US owners excepted – need strong encouragement to respect the UK tradition of giving employees a share in the business," wrote Mr Hurlston.

The private equity threat
Will the Alliance-Boots Eso schemes be the next to be scrapped if giant US buy-out firm KKR succeeds with its private equity takeover bid, already once rejected, for the high street drugs retailer? Victory by Kohlberg, Kravis, Roberts & Co may give Boots the dubious honour of being the first FTSE 100 company to fall to a private equity buy out. Alliance Boots was formed last year by the £7bn merger of Boots and chemist group Alliance Unichem. KKR is the world's biggest private equity firm and took part in the £23bn buyout of US utility TXU Energy. KKR is also considering a private equity bid for supermarket giant Sainsburys, in which case more all-employee share schemes may be at risk.

The next FTSE 100 company to come under the hammer could be Cadbury Schweppes, which is splitting into two sections, either one of which could be vulnerable to foreign takeover.

The Treasury Select Committee is to hold an enquiry into the operations of private equity consortia, amid allegations of asset-stripping, tax dodging, short-termism and lack of accountability. Robert Peston BBC Business Editor said: "For years now, money pouring into private equity for purchase of British businesses has far outstripped new money going into UK listed businesses. According to the Financial Services Authority, UK equity market cap shrank by a net £47bn in the first half of 2006 and has not grown since the last quarter of 2004" The private equity industry now owns 15 percent of British business.

Even if employees do get shares in the on-going private equity backed business they may not be able to look forward to a secure retirement. When things go wrong, the new owners put through rights issues and dilute employees out of sight. A major Eso shake-up is on the cards at both George Wimpey and Taylor Woodrow, whose boards agreed to merge to create the UK's biggest housebuilder, though the intervention of a third party was not ruled out.

Blackberry options stain

Research in Motion's chairman resigned after a stock option probe found irregularities that will force the Blackberry maker to restate all its financial statements from 2004 to 2007. Jim Balsillie said he had voluntarily stepped down as chairman of the Ontario-based company, after an internal audit found errors in stock option awards over the past decade. He will however retain his roles as co-ceo and director of the firm that makes the wireless e-mail device. The pre-tax impact of these errors will be to increase RIM's stock-based compensation and decrease operating income by US$253m. The announcement came amidst heightened public concern regarding backdated stock option granting practices by listed companies. A RIM special committee reviewed 3,231 grants made in the decade ending August 2006 to more than 2,000 employees and directors. All these grants were made by or under the authority of Balsillie and RIM's board, and the mistakes "mostly benefited senior management," said the committee. "In many instances hindsight was used to select grant dates with favourable pricing on grants, resulting in grantees receiving an in-the-money benefit that was not recorded in the financial statements as stock-based compensation." Under US accounting rules, all options granted prior to February 27, 2002, were accounted for incorrectly, the company admitted. From February 28, 2002 to August 2006, incorrect measurement dates for accounting purposes have been identified for 321 option grants with rights to acquire 4.6m ords. The audit committee found no evidence of intentional misconduct by Balsillie or others, but urged that the chairman and ceo roles be separated to prevent future abuse. Balsillie and Lazaridis also paid RIM $4.2 m each to help pay for the costs of their mistakes. All RIM's senior managers will repay profits they made from exercised options, which were improperly priced.

Commission puts ESO on the back burner

Employee share ownership, or financial participation – as it is called on the continent - has been quietly downgraded by Eurocrats from key issue status to little more than an afterthought following a departmental reshuffle, *newspad* can exclusively reveal. Responsibility for the Eso/FP portfolio has been shifted into a new unit set up by the European Commission specifically to formulate a response to the employment upheaval caused by the wave of takeovers now engulfing the corporate world in Europe. The man who gave the order to put Eso on the back burner is Employment, Social Affairs & Equal Opportunities Commissioner Vladimir Spidla, a former Czech prime minister, who once worked at a job centre before advancing his political career. The news came to light when Jean-Francois Lebrun, the Luxembourgeois head of the former self-standing Eso/FP unit, wrote to the Centre to explain why he could not address the European Centre's annual conference in Cannes *(see below)*. Mr Lebrun admitted: "Responsibility for the FP/ ESO portfolio inside the Employment, Social Affairs & Equal Opportunities (working conditions, adaptation to change section) directorate has been moved into new special F3 unit, headed by myself, – specially created to deal with restructuring & working conditions. Faced with the fact that restructuring is affecting European markets at a pace not seen before, Commissioner Spidla has asked the Unit F3 to concentrate its resources on one of the Commission's political priorities, namely anticipating and accompanying restructuring in order to facilitate adaptation to change. Nevertheless the Commission will continue to promote a greater knowledge of financial participation within the EU and I congratulate the European Centre on its initiative in holding such a conference in Cannes," added Mr Lebrun

*A case study on the international Eso scheme launched by Lend Lease Corporation, the property group operating in four continents, is highlight of the **European Centre's** 19th annual employee equity conference in Cannes on **Thursday July 5 and Friday July 6**. Co-speakers Alan Judes of Strategic Remuneration and Charles Cooper of BWCI Trust Co. will tackle LLC's motives for setting up Eso scheme, the provision of advice and logistics, why shares and not options were used, tax efficiency for all employees, participation rates, the work of the trustee, administration in different jurisdictions and what happened when the company wanted to merge with a unit trust using a share stapling technique. Another highlight will be top US lawyer Jeff Mamorsky of Greenberg Traurig LLP, who will give delegates the latest news on Sarbanes-Oxley compliance, the new US disclosure rules for executive compensation and of recent developments in the backdated stock options scandal. The Centre has already booked more than 40 delegates into the prestigious conference hotel, the Majestic, on the Cannes seafront. The Air France subsidiary City-Jet has launched daily direct flights from London City Airport to Nice. The speaker companies are: Barclays Wealth, Bedell Group (trustees), BWCI Trust Co Ltd, Capita Share Plan Services, Cyril Sweett Ltd, Freehills (Australia), Global Shares, Greenberg Traurig LLP, HBOS Employee Equity Solutions, Hewitt Bacon & Woodrow, Strategic Remuneration, Shearman

& Sterling, Watson Wyatt and White & Case. The Centre's package deal includes **two nights accommodation** (single room on July 4 & July 5) in the Majestic Hotel, with breakfasts, lunches, delegate pack, all the conference sessions, plus cocktail party invitation. The programme can be found on the Centre website at www.hurlstons.com/esop and click onto **'events.'**

Posties will share added value, minister tells Centre

Postal Services minister Jim Fitzpatrick has assured Centre chairman Malcolm Hurlston that the government intends to create a mechanism to allow postal workers to share in the extra value they create through their work for the Royal Mail. But the minister confirmed that the government had decided against introducing a conventional employee share scheme, ostensibly for reasons of cost, though critics claim that the government was running scared of a showdown with the CWU, the posties' trade union, which is anti-Eso.

Mr Fitzpatrick told Mr Hurlston in a personal letter: "We have agreed with Royal Mail management a reward scheme that allows the employees to share in the value they help to create in the business as it improves its performance over the next five years. Employees can receive a maximum of £5,300 over this period. The scheme aligns employee, management and shareholder interests in making all parties committed to the successful performance of the business. We fully support the company's efforts in delivering the reform programme that it needs to carry out and we recognise that there are a number of difficult changes that need to be made to the way the business operates. It is now down to the company's management and staff to make the changes necessary to give the company a sound platform on which to build for long-term success." Mr Hurlston told *newspad:* "It looks as though the government may introduce a form of phantom shares in the Royal Mail.

Expense accounting glitch: Some companies have found themselves adversely affected by a little known provision of the share based payment regime contained in International Accounting Standard (IAS) 12, reports *Pinsent Masons*. As a result of IAS 12 if a company benefits from corporation tax relief under FA 2003 Schedule 23 (corporation tax relief for employee share acquisitions), say as a result of employees exercising share options, the relief that can be reflected in the company's profit after tax is restricted to the amount of the share based payment expense previously charged in respect of those options. The actual amount of tax relief from HMRC is not restricted, but it does mean that if that tax relief exceeds the share based payment expense (which it may well do if the company has been successful and the option holders have made sizeable gains) then the company can only take the benefit of that tax relief through its P & L account up to the amount of the share based payment expense. Any relief in excess of this has to be taken directly to shareholder funds. This treatment can lead to some paradoxical results. For example, a company might, as a result of the corporation tax relief on options, have to pay no corporation tax to HMRC but nonetheless have to reduce its reported profit by a notional tax expense with a corresponding credit to shareholder funds. It is hard to see how this treatment improves the relevance or credibility of financial statements. By restricting the benefit of Schedule 23 that companies can show in their reported profits, IAS 12 somewhat undermines the intentions of the Chancellor in giving the tax relief in the first place. It also adds to the administrative burden of companies as they have to match the corporation tax relief with the related options and share based payment expenses in order to calculate notional tax charges.

Lloyds TSB Group unveiled a £252m payout to 62,000 staff under free share and matching share schemes, as well as a cash bonus. Lloyds TSB said the annual free share scheme for staff was valued at £40m, equivalent to three percent of annual salary, up to £3,000 per person. The plan includes £11m of matching shares for staff investing in the bank's Shareplan, which allows employees to buy up to £125 a month from their gross salary, with the bank matching the contribution up to a value of £30 each month. Since Shareplan was launched in 2003, the bank has awarded employees shares worth £279m. In addition, £36m of shares given to staff under its 2004 annual free share scheme will be released from their compulsory holding period this month.

COMPANIES

Close Brothers Group plc announced that Bedell Trustees, trustee of the Close Brothers Group ESOT acquired 286,736 ords in the company on 23rd March at an average price of £10.41 each. These will be used to satisfy options and awards to employees, including directors, under the terms of the company's Eso schemes. Following this acquisition, the trustee holds 1,989,093 shares, said company secretary Robin Sellers. Dutch banking group **ING** has issued 5.2m ords to fulfil obligations arising from its employee share plans. ING employees have been granted conditional shares, which become unconditional after three years, provided the employee remains at ING. Of the newly issued shares ING bought back 4m at last year's opening price of €30.48 for the delta hedge book, which is used to hedge employee options, from employees who wished to sell their shares immediately. The hedge book holds 54m (depository receipts for) ord shares, representing 2.4 percent of the shares outstanding. **InterContinental Hotels'** chief executive, Andrew Cosslett, saw his pay packet almost double to £1.27m last year and is sitting on share options worth about £7m over three years.

The Employee Share Ownership Centre is a members' organisation which lobbies, informs and researches on behalf of employee share ownership. It is operated by staff of Hurlstons Corporate Consultancy Ltd.