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it's our business

newspad of the Employee Share Ownership Centre

EU body wants to punish unlisted companies

Only weeks after the European Commission announced a proposal for a blanket exemption from the onerous Prospectus Directive requirements for all companies wanting to give employees equity awards within member states, the EU Council of Ministers has revised the original proposals, punishing unlisted companies in the process.

In a bombshell revision of the Commission's earlier plans, the EU Council of Ministers has weighed in from on high, demanding that unlisted companies must continue to publish a costly and time-consuming prospectus when they want to award EU based (non UK) employees equity-based incentives. Only tiny awards would be exempt.

It was on September 24 that the EU Commission published its proposed amendments to the Prospectus Directive as part of a review and simplification process on which it has already consulted. The Commission proposed extending the employee share schemes exemption contained in the current Prospectus Directive to cover employee share schemes of companies not admitted to trading on an European Economic Area (EEA) regulated market. This would include **all** offers of securities to current and former employees and directors, irrespective of whether the issuer was publicly listed, private, within the EEA or outside of it.

But the Council of Ministers has issued a revised version of the Commission's original amending directive. The Council's proposed amendment is to limit the proposed extension of the existing exemption to companies with securities on a regulated market or listed on a market in a 'third country' (presumably one outside the EEA) which has equivalent standards to those applied in the EU (by reference to the standards set out under the Markets in Financial Instruments Directive (MiFID), the Market Abuse Directive (MAD) and the Transparency Directive). This further amendment will therefore affect private companies, companies not listed on a regulated market (eg AIM-listed companies), or companies listed on a market in a 'third country' that does not have the necessary equivalent standards.

These companies will be prevented from relying on the amended employee share schemes exemption. Where such companies are not be able to take advantage of the more general exemptions under the Prospectus Directive, they will have to produce a prospectus, which is often prohibitively expensive and time consuming.

The sudden change of heart within the EU hierarchy was branded as: "baffling and disheartening" by Centre member Guy Abbiss of City law firm Abbiss Cadres LLP.

In our October issue, *Newspad* said: "*The European Commission has finally bowed to corporate and*

From the Chairman

Our front page story in this issue - about internal sniping over plans to revise the Prospectus Directive (PD) - highlights all that is wrong with the institutions of the European Union today.

Key regulations which govern the economic behaviour of companies are too often stapled together by people who have no detailed private sector expertise in such matters and then kicked around by politicians, who may have other axes to grind. "Shambles" is too kind a word to accurately describe what finally emerges from this tortuous process. The Centre lobbied hard against the PD in its current form, because it disqualifies from exemption many foreign based multinational companies (especially from the US), whose shares are not quoted on European stock markets. Unlisted companies too are caught in the same thicket, with the result that many planned employee equity awards to overseas based employees have been cancelled because to issue the Prospectus would have been too expensive, bureaucratic and time-wasting.

Finally the EU Commission announced plans to widen the PD exemption to include all companies - large or small - wanting to award equity to employees working within member states, but then the EU's power broker, the Council of Ministers, decided to exclude all unlisted companies from the widened PD exemption.

At a time when employee salaries are either being slashed or frozen across Europe and at a time when occupational final salary pension schemes are disappearing into the history books, any legal, tax or regulatory obstacle to the spread of employee share ownership has to be rigorously examined and justified. For it is within the small business (SME) sector above all, that much more work needs to be done to spread Eso beyond the executive class into the office and work bench. There is no evidence that the faceless bureaucrats who advise the Council of Ministers have taken account of any of this and probably, we will be left in the dark as to their motives, as we have no democratic means of bringing them to the Bar.

Malcolm Hurlston

institutional pressure by proposing to exempt ***all*** *employee share ownership offerings within EU member states from the Prospectus Directive. The Commission's proposed amendments, once enacted, would heal a running sore suffered by non EU based foreign companies, who are required to issue expensive full prospectuses every time they want to make equity awards to employees in European subsidiaries, unless their shares are quoted on EU stock exchanges. Less well known is the fact that the same Prospectus hurdle applies to all unlisted companies, even those based in the EU, who want to make equity awards to employees in subsidiaries in other EU member states. They stand to gain exemption too."*

It seems that the Centre spoke too soon.

We smelt a rat when the Commission, without warning, suddenly refused to send an expert official - to explain its proposals regarding the Prospectus Directive - to our Global Employee Equity Forum in Davos on February 4 & 5.

Mr Abbiss added: "The narrowing of the proposed amendment to the exemption is disappointing and the reasons behind the Council's proposal are not clear. The Companies Act 2006 introduced an element of deregulation for private companies in the UK and it is therefore strange to see costly and potentially unnecessary burdens being proposed, particularly when the stance of the European Commission appears to be in tune with the UK approach to deregulation.

"It is not yet known whether the revised version of the amending directive proposed by the Council will be adopted in its current form or whether it will be subject to further change. Any proposed amendments would need to be adopted by both the European Commission and the European Parliament. This process may yet take months or even years."

Employee shareholders more trustworthy

Eso plan participants are likely to shop work-shy colleagues to managers, revealed a two-year study of employee share ownership in the UK by Computershare and The London School of Economics (LSE).

Researchers used a survey to discover that employee shareholders are less tolerant of under-performance by their colleagues than non-Eso participants, said *Human Resources* magazine, in which the results were published.

Some 82 percent of share-scheme participants said they would talk to a supervisor or take some form of other direct action if they saw someone not pulling their weight. This compared to just 49 percent of non-participants who said they would do the same thing. More than one third of non- participants said they would do nothing if they saw a colleague not doing their job properly, whereas when employee shareowners were asked the same question, this figure dropped to 28 percent.

More than 3,000 employees were surveyed - including both members and non-members of company share plans. Almost 1,000 of these were from the UK, while the rest were based in Ireland, Australia, South Africa and the US. It found share scheme participants were far more likely to describe their work as 'above average' (44 percent) compared with non-participants (35 percent).

Alex Bryson, research fellow at the LSE, compiled the data. "We know people tend to rate their own work highly, so we took the difference between how they said they rated themselves and a later question on how they rated co-workers. The difference between share scheme members and non-members rating their level of work was dramatic. We're not entirely saying its causal, but what we are saying is that it is statistically relevant - at 99 percent in fact - and notwithstanding control variables."

The research, which featured briefly in *newspad* last month, found that share scheme members are not only more loyal - staying longer with their employer - they work harder as well,

Stuart Crosby, CEO of Computershare, said: 'The industry has been crying out for robust data that finally lets boards and shareholders know whether the investment made in a share plan is, in fact, worthwhile.'

In addition to finding that those who belong to company share schemes stay with companies longer, share plan members say they take a greater interest in the finances of the company they work for. Nearly half - 45 percent - of share plan members reported looking at the financial performance of their organisation on a 'weekly or more often' basis, in contrast to barely one-in-six among non-members.

LSE researchers made the link between those who own shares and demonstrably lower levels of absence. It found 47 percent of share-owning staff had taken days off in the past six months, while this had risen to 54 percent for non-members.

Malcolm Hurlston, chairman of the Esop Centre, said the findings added new weight to anecdotal assumptions that share ownership breeds higher engagement and harder work. "There are very few ways organisations with multiple subdivisions can unite an entire workforce, but share price is one of them," he said. "Our view has been that workers belonging to share schemes tend to work smarter rather than harder, but this research seems to suggest the latter as well. PM Gordon Brown, clearly believed in the link, by launching new Share Incentive Plans (SIPs) and Enterprise Management Incentives (EMIs), so now is a good time to be re-examining it, and this research is a positive step in this direction."

While personal gain is the greatest motivational factor for buying shares, Government liked to think that staff who own shares in their employer take a direct interest in the performance of their company and work harder to improve its profits (and therefore their dividend). But until now there has never been strong evidence for this causal link.

Overall some 55 percent of those polled in the Computershare-LSE survey - those employees who own shares in their company- said they bought them consciously as an investment opportunity. With most people wanting to do whatever they can to protect their investment, the likelihood is that they will want to work better to ensure this happens. Most previous research came from the US:

*In 2007, the US Employee Ownership Foundation said 72 percent of companies it surveyed believed that creating employee stock ownership plans had led to better performance. But nine percent said there was no difference and 19 percent said they had worse performance that year – proving that the adoption of Esop is no universal panacea.

*A comprehensive study of Esop performance in private companies was conducted by Joseph R Blasi and Douglas L Kruse, professors at the School of Management and Labour Relations at Rutgers University. They paired 1,100 Esop companies with 1,100 comparable non-Esop companies and followed them for over a decade. The study found that Esops appear to increase sales per employee on average by about 2.3 percent p.a., above what would have been anticipated, without an Esop.

*Research conducted by Hamid Mehran, professor at the Kellogg Graduate School of Management, found the average rate of return on capital for Esop companies (aggregated over several years) was 2.7 percent higher than in non-Esop companies. It found 60 percent of Esop firms experienced share price increases upon announcement of the Esop programme, and 82 percent indicated the Esop had a positive impact on business results.

Eso-style share-out for ex Cazenove JV staff

Around 1500 present and former employees of the JPMorganCazenove Joint Venture are set to share more than £740m from JPMorgan's £1bn buy-out of its UK investment banking partner. Cazenove partners, past and present, will hit the jackpot – chairman David Mayhew is likely to make £18m from the deal.

Sources indicate that c £160m of the Cazenove equity is tied up in deferred share awards. The deal is expected to be approved by shareholders early in the New Year.

Cazenove ordinary shareholders will receive £5.35 per share, comprising £5.10 upon closing for the sale of their shares and a dividend of 25p per share this month. Institutional investors, including Aviva, Prudential and Standard Life, will share more than £100m from the sale.

New member: The leading independent financial advisory group **Collins Stewart** has joined the Esop Centre. Collins Stewart's activities span institutional and private client stock-broking, market making, corporate finance, fund management, the supply of on-line financial information and share plan support. It has 700 employees operating in offices in France, Guernsey, India, Isle of Man, Ireland, Singapore, Switzerland, the UK and the US. Its four main operating divisions are: Advisory, Corporate Broking, Securities and Wealth Management. Its business is transparent, well capitalised and focused on what it understands and can do well. Michael Smith (see below) heads-up the newly established corporate executive and employee trading desk. The business will focus on providing brokerage solutions to listed companies and their employees - covering option exercises and share trading. The desk will work directly with either corporate clients, their employee benefit trusts or their third party share plan administrator.

On the move

Anna Watch has taken over from Graeme Wheatley in corporate governance at **BT**.

Mike Smith has joined **Collins Stewart** where he is establishing an Esop focused desk and is naturally "very excited about the idea." Michael started his Esop career at SmithBarney, Citigroup and more recently ran the Esop desk at Credit Suisse. His contact details are: Michael Smith, Corporate Executive and Employee Trading Desk, Collins Stewart Wealth Management Tel: +44 (0) 20 7523 4553; blackberry: +44 (0) 7823 881 994 mob: +44 (0) 7900 995 496 – His office address is 88 Wood Street, London, EC2V MSmith@collinsstewart.com www.collinsstewartwealth.com

William Franklin has joined **David Pett & Co.** (http://www.davidpett.co.uk) where, as a chartered accountant, he will focus on advising on the financial and accounting aspects of Joint Share Ownership Plans (JSOPS) and all other forms of employee share plans as well as undertaking share valuations for tax purposes. The firm, based in Birmingham, provides leading edge advice on structuring all forms of remuneration, incentives and employee share schemes, and does so on the basis of City standards, but without London level fees!

Centre members meet HMRC

At the latest in a series of Centre meetings with HMRC, Claire Gough, head of share schemes, visited the Esop Centre at its new premises in Phoenix Yard. The meeting was led by Centre chairman Malcolm Hurlston, and members present were: Sarah Pickering of Alvarez & Marsal, Anne Croft of Linklaters, Damian Carnell of Towers Perrin, Neil Sharpe of Hewitt New Bridge Street, David Pett (by phone) and Centre deputy director, Anna Burgess. The Centre is campaigning hard for a series of legislative changes to improve the employee share scheme environment. Members might find some of the following points of interest

Mansworth v Jelley and Revenue Brief 60/09: Any fact-specific query on the application of Mansworth v Jelley should be addressed to the taxpayer's inspector. Any request for a post-transaction ruling should be sent to the HMRC office responsible for the taxpayer's affairs in accordance with Code of Practice 10. If, however, there is a general query that has not already been addressed in the Briefs, you should write to: CAR Capital Gains, Royal House, Princes Gate 2 - 6 Homer Road, Solihull B91 3WG

Tax treatment of clawbacks and employers NICs on third party benefit providers:
the contact for questions is David McDowell - david.mcdowell@hmrc.gsi.gov.uk
Section 419 deductions: the contact for questions is Lorraine Coster - lorraine.coster@hmrc.gsi.gov.uk

E Forums: The E forum operated by HMRC is called Shared Workspace, and is generally used by dispersed teams in HMRC that share casework with their customers (where use of email is constrained by confidentiality and data security requirements) or where there is a regular need to work on a single set of documents.

Use of FAQs: HMRC website has run a FAQs section in the past. In line with HMRC strategy, it is moving the content of answers to FAQs to the employment related securities manual, much of which has already been published. The parts relating to SIP and EMI should soon be published but until they go live, HMRC is retaining the current web pages. If the issue is of sufficiently wide interest or reasonably commonplace, the answers should be incorporated into the share schemes manual. If there are any as yet unincorporated issues from the log that members would like to see in the manual, let us know and we shall pass it on.

Revised IFRS2 in depth

In June the International Accounting Standards Board (IASB) issued a revised version of IFRS2 with new material on Cash-Settled Share-Based Payments and the ASB has followed suit with an amended FRS20. **William Franklin** of David Pett & Co. has examined the implications in depth. He says that the title is somewhat misleading as the amendments to IFRS2 extend beyond the issue of cash-settlement to cover the whole topic of accounting for share based payments within groups. The original standard ignored the fact that awards are often made to employees of subsidiaries and assumed that the same entity, which issued the shares, also employed the participants. The IASB subsequently issued in a piecemeal fashion guidance on group related issues but the revised standard does more than just consolidate these changes. Previously the standard setters were concerned to avoid situations where the accounting treatment for the same transaction might be different for different companies in the group eg the same transaction might be a cash-settled share based payment in one company in the group and an equity-settled share-based payment in another. Effectively a ‘push down’ approach was permitted whereby the treatment followed in the parent company could be applied throughout the group. However the revised standard requires each company to consider its accounting treatment by reference to its own circumstances. This means there will be occasions when the same transaction will have different treatments in a subsidiary and the parent company /group. The revised standard applies for accounting periods beginning on or after 1 January 2010.

CONFERENCES

DAVOS Feb 4 & 5: Credit Suisse will deliver a major presentation dealing with innovative corporate compensation strategy at the 11th Global Employee Equity Forum in the Steigenberger Belvedere Hotel, Davos Platz, on Thursday February 4 and Friday February 5. Credit Suisse, the global financial services company (private banking, investment banking and asset management), operates in more than 50 countries and employs 46,000 people. Its lead speaker in Davos will be Philip Halliday, based in New York, who is global head of equity compensation. He will be supported by fellow speakers Marcelo Victoria and by Claudia Campomori in the slot entitled: ‘Innovative Compensation Solutions for a Challenging Environment: A Case Study.’ The Centre's annual gathering in Davos takes place on the coat-tails of what is being billed as a crisis meeting of the World Economic Forum. The Centre event – entitled 'Employee Equity reward: Business As Usual?'- offers delegates an accommodation + conference package deal at the five-star Belvedere Hotel in the heart of Davos Platz. Other speakers include: Jean-Nicolas Caprasse of RiskMetrics Group; Grant Barbour of Bedell Group; Alan Judes of Strategic Remuneration; Sue Mellors, Head of Financial Services at Diageo; David Pett of David Pett & Co.; Paul Stoddart of HBOS Employee Equity Solutions; Mike Landon, MM & K, Malcolm Martin of Martin Remuneration Consulting (Australia); Kevin Lim of RBC Corporate Employee & Executive Services and Centre chairman Malcolm Hurlston.

The conference brochure is being co-sponsored by: **Appleby Global; HBOS Employee Equity Solutions** (now part of **Computershare Plan Managers**) **and by RBC Corporate Employee & Executive Services** (see website at: www.rbccees.com). Please visit the Centre website to review the Davos programme agenda details in full: www.hurlstons.com/esop and click onto ‘events’ and ‘news.’ Contact Fred Hackworth now by email: fhackworth@hurlstons.com with copy to esop@hurlstons.com if you wish to register a delegate(s) and/or to co-sponsor part of the conference.

Centre SME conference:
Centre chairman, **Malcolm Hurlston**, opened the Centre’s 2009 ‘Share Schemes for SMEs’ conference by describing the successful role of employee share

ownership in the privatisation of the Irish telecoms provider Eircom. He said that although the UK government was supportive of employee share ownership - with Gordon Brown's creation, Enterprise Management Incentive (EMI), playing a key role in the conference - the government seemed not to have realised the potential for employee equity in the pending financial shake-up of the Post Office. The minister for small businesses, Lord Davies of Abersoch, sent a letter of apology for being unable to address the conference, but wished participants a successful day. Centre practitioner firm **Travers Smith** kindly donated its London HQ meeting room as the venue, which helped attract a number of SME businesses keen to install Eso plans.

Colin Kendon, from Bird and Bird, gave an introduction to employee share schemes. He covered typical 'exit-only' plans, pre-exit plans, EBTs, corporate law issues and tax-efficient arrangements. **Robert Postlethwaite**, from Postlethwaite & Co. presented a case study of a fictitious company that wanted to create a tax efficient way of rewarding key staff for past and future contribution, without creating actual share ownership until exit. The company qualified for EMI, and echoing the theme running through the conference, Robert told delegates: "If your company qualifies for EMI, it is very likely that this is the scheme that will suit you." **Maoiliosa O'Culachain** from Global shares gave a practical account of how to operate a share scheme. He explained the importance of communication and keeping accurate records and data. Maoiliosa said that the keys to a successful share plan are involving the right people, allowing sufficient time and resources, and using experienced providers. **Mahesh Varia** from Travers Smith talked about the benefits of EMI options. "EMI is the Nirvana of the share scheme world, if you can qualify for it", he said. EMI was popular because "it is flexible, gives fantastic tax relief, is very simple to implement (if done properly), and relatively easy to administer." **David Craddock** from David Craddock Consultancy Services spoke about how to structure and design an L-TIP. He also provided delegates with some useful advice: the choice of scheme should be determined by the extent to which it assists in achieving the corporate objectives of the company; so determine the commercial structure and then apply the tax rules to maximise the tax efficiencies. **David Pett** from David Pett & Co. talked delegates through alternative structures for securing CGT treatment if a company does not qualify for EMIs, with a particular focus on joint share ownership plans (JSOPs). The relative advantages of a JSOP include shorter-form documentation and it does not require a new class of shares. **Guy Abbiss** from Abbiss Cadres explained how to optimise share-based incentives. He advised delegates: "Be clear what you are trying to do and relate it exactly to your business plan; make the arrangements attractive to employees; keep it simple; do not underestimate the commitment needed for these arrangements to work – they take time and money; and finally, communicate with your employees." **Ian Murphie** from MM & K gave a talk entitled "EMI – and you thought it was easy…" He used a number of case studies to illustrate mistakes that companies sometimes make when implementing EMI schemes. Ian said that a lot of the mistakes can be avoided, such as not being aware of disqualifying conditions. He emphasised the importance of communication, and told delegates "the devil's in the detail." **Sara Cohen** from Lewis Silkin talked about the uses and advantages of employee benefit trusts. She covered succession planning, using an EBT as a market maker, protecting the company and passing shares to employees. Sara explained tax considerations and how care must be taken to avoid potential traps for close companies. **Alan Judes** from Strategic Remuneration gave a presentation on how to use phantom share plans in SMEs. He used a case study to illustrate how a phantom plan was communicated to participants: it was crucial that the participants understood they were key members of the organisation and they would be rewarded for growing the business. **Catherine Gannon** from Gannons had compiled a checklist for cost-effective implementation of share plans for SMEs. The list included deciding what exactly they are giving away, whether they are eligible for tax relief, collation of the basic core details, considering the interests of current shareholders, implementation and share valuation.

Epitaph for final salary pensions

A string of UK public companies recently announced plans to close their final salary pension schemes in the near future to *existing* members. These include: chemical & metals company **Johnson Matthey,** computer services company **CSC**, media companies **ITN** and **Trinity Mirror**, struggling airline **BMI,** now owned by Lufthansa, **Tate & Lyle, Telent** (the remains of Marconi), **Vodafone** and even the **Institute of Chartered Accountants.** In Tate & Lyle's case, its final salary scheme could linger on until 2011, pending the outcome of consultations with members. Statistics from the Office for National Statistics (ONS) show that the number of employees in private sector-run final salary schemes fell to a record low of 2.6m last year, down from 2.7 m in 2007 and 3m the year before. Only 1.1m of the 2.6m were members of final salary schemes that were still open to new staff, but this year the number of schemes still open to new staff is thought to have more than halved. A report by PwC predicted earlier this year that 42 per cent of schemes still open to existing members would close within the next five years. By contrast, in the public sector, the number of employees with final salary pensions was last year more than double those in private sector versions, the ONS revealed.

France: New employee share plans have been launched in Axa, Cap Gemini, Lafarge and Rexel. **Germany:** Individual Eso participation tax benefits were raised from €135 to €360 on April 1 this year and could be raised above €2000 per employee by Angela Merkel's new government.

Darling defies Sarkozy over French blitz on The City

Chancellor Alistair Darling warned the EU's new French finance chief not to meddle with the City of London. As French President Nicolas Sarkozy gloated over impending curbs on The City, the Chancellor said that such moves would drive financial services out of Europe. M. Sarkozy's glee at the appointment of Michel Barnier as Commissioner for the Single Market took on an edge of menace when he said that unfettered City practices must end: "Do you know what it means for me to see for the first time in 50 years a French European commissioner in charge of the internal market, including financial services, including the City [of London]?" he said. "I want the world to see the victory of the European model, which has nothing to do with the excesses of financial capitalism," he added This implied threat was just what Downing Street had feared when Mr Barnier, an interventionist and ex-agriculture minister, was given the portfolio in the biggest ever defeat for British diplomacy within the EU. Mr Darling retaliated immediately, writing in *The Times*, that it would be a "recipe for confusion" if firms were supervised by the EU as well as national watchdogs and that the UK would not accept new laws that could lead to taxpayers picking up the bill for bailouts ordered by Brussels. He rejected claims that the economic crisis was the fault of the 'Anglo-Saxon' model, pointing out that French and German banks were among the biggest creditors of the failed US insurance giant AIG.

Bonus corner

Banks will be forced to reveal how many of their employees earn more than £1m a year under new laws expected to show that hundreds, perhaps thousands, of City bankers break through the seven figure reward package mark each year. But in introducing legislation to adopt the key recommendations of the City veteran Sir David Walker, the government will allow banks to keep the identity of high-end earners secret. Ministers had suggested the top 20 highest-paid employees should be named and shamed. Sir David, who had been reviewing corporate governance at banks since February, has disappointed those who believe the pay levels should be revealed for the current financial year, as he does not expect the ground-breaking changes to be implemented until 2011. He insisted that he was creating a more demanding regime than that currently in place in any other major jurisdiction. Asked how many UK based bank staff would be revealed as earning more than £1m, he said he suspected the number was between 500 and 2,000.

The Treasury had considered going farther and requiring banks to identify these individuals by name, but backed away from the move. Banks were pushing for wide bands, which would not give a detailed breakdown of pay. City Minister Lord Myners warned that the bands would have to be meaningful and ensure that the "full architecture is visible". In the event, senior banking employees will be bracketed in bands of £1m to £2.5m; £2.5m to £5m and in bands of £5m thereafter. Walker urged voluntary improvements to corporate governance and boardroom behaviour, rather than reform through regulation.

In general terms, the boards of banks and other finnace houses will be told either in legislation or by regulation to:

- Slash or eliminate cash-based bonus incentives in favour of either share options or deferred share awards
- Introduce measures to delay pay-outs of equity incentives for three years
- Tighten up performance triggers for executive incentive arrangements
- Instal corporate contractual powers to recall bonus pay-outs if the 'high performance' later proves to be fraudulent or founded on sand.

Chancellor Alistair Darling welcomed the report, which called for shareholders to adopt a new code of stewardship. He intends to call major investors to the Treasury to demand compliance.

The Financial Reporting Council too welcomed Sir David Walker's report on the governance of banks and other financial institutions. FRC chairman Sir Christopher Hogg said: "The Combined Code on Corporate Governance and its related guidance provide a framework for all listed companies. The FRC is undertaking its own review of the Code, and as part of that process proposes to adopt the recommendations in the Walker Report that it considers after consultation are appropriate for all companies. As Sir David notes in his report, banks and other major financial institutions differ from the majority of other listed companies, notably in the systemic nature of their activities and the complexity of their operations. Some of his recommendations are therefore specific to the financial sector and will be taken forward by the Government and the FSA."

The FRC will issue a report this month on its own review of the impact and effectiveness of the Combined Code, together with a draft revised Code, which will be subject to consultation. Subject to the outcome and the necessary changes to the Listing Rules, *the updated Code will apply to **all listed companies with a Premium Listing** for financial years beginning on or after 29 June 2010.*

In addition, the Government has asked the FRC to take responsibility for a stewardship code for institutional investors as recommended by Sir David Walker. The FRC has agreed, subject to consultation designed to ensure it can be operated effectively

The National Association of Pension Funds wrote to the chairmen of the UK's 350 biggest public companies to remind them of the "continued need for restraint" in setting executive remuneration levels. In addition, the Institutional Shareholders Committee has published a new code of responsibility for public companies to follow.
Commentators are starting to question how, if ever, shareholders can hold companies to account when hedge funds, sovereign wealth funds and foreign pension funds now collectively own almost 70 percent of the UK stock market.

Bankers who are not prepared to forgo controversial contracts that flout new rules on bonuses should get out of the mainstream industry, Lord Myners declared. In an interview with *The Times*, he said: "People who are not willing to subordinate their own egos to the stability of their companies or the financial system probably shouldn't carry out activities in deposit-taking banks."

The Queen's Speech outlined plans to forbid guaranteed bonuses and other 'sweetheart' reward deals. The Financial Services Bill will give the Financial Services Authority (FSA) the power to tear up bankers' contracts that do not sufficiently link risk and reward. Top of the list of contracts that the Government wants to end are multi-year guaranteed bonuses, which have an "asymmetric" relationship between risk and reward, Lord Myners said.

The Government wants to go further by enforcing changes to ongoing contracts in cases where bankers receive a share of profits with no adjustment for risk being taken. The legislation may affect between 5,000 and 10,000 highly paid bankers in London who take big financial bets as part of their jobs. In total, banks employ 428,000 people in the UK.

The new law is to be enacted before the next general election. It will not apply to 2009 pay, which is expected to be a bumper year with £6bn handed out in bankers' rewards, including cashed in equity, according to the Centre for Economics and Business Research. Although the law will not be retrospective, lawyers said that the crackdown would still trigger a flood of litigation over ongoing contracts and attempts to define what is constituted by inappropriate risk. The initiative will hand a significant burden to the FSA, which has not been significantly involved in pay issues until this year. It introduced a pay code for banks in August. The code required institutions to submit pay reports — some of which run to 300 pages — to the FSA by November 2. The new law is intended to add extra heft to the code.

Staff at the Student Loans Company received almost £2m in bonuses last year, official statistics revealed. The payouts, some of them five figure cash sums, were made while thousands of students were left waiting for grants and loans to arrive. The SLC said it operated a bonus scheme structure to reward hard-working staff. SLC admitted that almost £2m was paid in bonuses during 2008-09. Three executives received £21,000 bonuses, while two got payouts of £15,000. More than 1,600 of the SLC's 1,876 staff picked up bonuses.

The head of Goldman Sachs has apologised for the Wall Street titan's role in helping to create the financial crisis After being ridiculed for saying he was doing God's work, Lloyd Blankfein delivered a *mea culpa* to a conference in New York. "We participated in things that were clearly wrong and have reason to regret," Blankfein said. "We apologise." Goldman, the world's most succesful investment bank, was involved in many of the practices that led to the credit crunch – such as the creation of 'toxic' mortgage-backed securities. At the height of the crisis, Goldman took a $10bn capital injection from the US government, which it later repaid. Despite the economic downturn the company has been highly profitable this year, making $3bn in the last quarter. It has now set aside $16.7bn to pay staff bonuses, a figure that is expected to have grown to $23bn by the end of the year.

Goldman's rapid recovery has come at a time when millions of people have lost their jobs in the global downturn. Around 100 people gathered outside its New York offices to demand that it hand over its huge bonuses to help struggling homeowners avoid foreclosure*: "Who's got the money, money? They got the money, money- We got the bill!"* the crowd chanted. The pressure on Goldman intensified in July when Rolling Stone magazine concluded that GS had been at the heart of a series of economic crises. Faced with this criticism, Goldman announced that it is putting $500m aside to help 10,000 small US businesses. The donation (equal to three percent of its bonus pot) will be managed by a council led by Blankfein, Harvard Business School professor Michael Porter and legendary investor Warren Buffett. Blankfein admitted he regretted telling the *Sunday Times* that Goldman was simply doing "God's work", adding that he meant the comment as a joke.

Seasonal festive best wishes & happy new year to our members from Malcolm, Anna, Fred, Linda and Juliet.

Copy deadline: Your stories and other info intended for publication in the January issue of newspad should be emailed to: fhackworth@hurlstons.com by Thursday noon December 17. Thank you.