

# it's our business

## newspad of the Employee Share Ownership Centre

### Dubai bank seeks Centre help for Gulf region's first major ESOP

The Emirates National Bank of Dubai plans to launch what is thought to be the Gulf region's first major employee share ownership plan later this year, it was revealed at the Centre's ninth annual global employee equity forum in Davos.

Centre chairman Malcolm Hurlston will visit Dubai in March to crystallise discussions aimed at promoting a joint Centre-Emirates National Bank of Dubai conference on employee share schemes to take place in the Gulf state in September.

The Centre will now invite members, particularly from those practitioners or companies with experience of operating in the Middle East, to put forward speaker proposals for the conference, which up to 200 delegates are expected to attend.

Emirates NDB is Dubai's super-bank, which came into existence last Autumn, following the merger of Emirates Bank and the National Bank of Dubai. The new bank was created at the request of Dubai's ruler Sheikh Mohammed bin Rashid al-Maktoum. Ahmed al-Tayer, formerly Emirates Bank chairman, is chairman of the new entity, and Rick Pudner is chief executive officer.

News of the Gulf ESOP was brought to Davos by two delegates representing the merged bank - director Julie Azharian, head of business development and Nazneen Noor, manager of corporate executive and employee services.

Its first Eso plan will involve the issue of deferred stock, rather than options, to a wide range of employees, said Julie. Employee participants will also be hooked up to a pension fund and employee holdings will be ring-fenced in an independent trust.

Emirates NDB hopes that by introducing employee equity it will stimulate the "talent pool." Explosive economic growth in the UAE territories has induced a struggle between the region's biggest finance and commercial organisations to attract and retain the best performers.

Hitherto, employee equity participation in the Gulf region has been restricted to small numbers of senior executive expats of largely European origin, but Emirates NDB plans a much broader participation base, comprising initially several hundred employees.

The bank has been working on the Eso project for 18

#### *From the Chairman*

*If "exhibitionistic self-enrichment" was the buzzword in Davos this month (former Dutch PM Wim Kok's description of the ceo feeding frenzy), the tag of the week has been Buffet's "poetic justice" description of the fate which has befallen banks who "brewed this toxic Kool-Aid" and "found themselves drinking a lot of it in the end." None of this much helps the banks and others who are surveying the world wreckage of share prices. Ideally it provides the opportunity for a new beginning. In the UK one is sorely needed....share schemes got not more than a "mensch" in the Chancellor's cgt rejig speech and that is the straw which we now clutch. No mensch would have been dire indeed and it is not impossible that refreshed and targeted schemes will emerge.*

*Malcolm Hurlston*

months and has already attracted two local clients who want to install employee share ownership into their businesses too, said Ms Azharian. Administration of the plan, rumoured to be in the hands of Standard Bank, will be web-based and paperless, she added. It is believed that Centre member RBC is involved in providing trustee services.

The UAE has a population of five million and occupies 83,600 sq km along the south-eastern tip of the Arabian Peninsula, bordered by Qatar, Saudi Arabia and Oman. The capital and the largest city in the federation is Abu Dhabi. UAE has one of the most diverse populations in the Middle East. The high living standards and economic opportunities in the UAE are among the best in the region and so it is no accident that broad-based Eso is starting there first.

#### **CGT TAPER RELIEF DITCHED**

Thousands of employee shareholders face higher tax bills from April, when they sell their shares, after Chancellor Alistair Darling confirmed his plan to scrap taper relief on Capital Gains Tax. Current rules allow participants in approved share schemes to pay only 10 percent CGT if they have held an asset for more than two years, but that incentive will end for the vast majority of employee shareholders after April 5. Instead, the potential CGT burden facing ordinary employee shareholders will

**The ESOP Centre Ltd, 2 Ridgmount Street, London WC1E 7AA**  
**tel: 020 7436 9936 fax: 020 7580 0016 e-mail: esop@hurlstons.com**  
**www.hurlstons.com/esop**

effectively rise by 80 percent in the new tax year on any gain above the annual £9,200 exemption limit. Basic rate tax-payers who have held employee shares for two years effectively pay just five percent tax but they will be forced to pay an additional 13 percentage points in tax from April (18 percent in total), once the annual CGT limit is exhausted.

The 10 percent CGT rate will live on but only for directors and senior employees who hold a five percent or more equity stake in the company and only up to a lifetime limit of £1m worth of gains before the new 18 percent 'standard' CGT rate kicks in.

Nevertheless, the Chancellor's gesture will please some who hold share options in the government's hugely popular Enterprise Management Incentives scheme. Key employees (at director level) often hold five percent or more of the equity in very small companies that cannot afford to pay them large salaries. Thus someone awarded £100,000 worth of EMI options in a company capitalised at £1.9m would qualify under the new five percent rule.

By announcing this lifeline, the Chancellor took on board Centre chairman Malcolm Hurlston's warning to him in a letter last Autumn after the plan to axe taper relief was first announced: "The level of non-salary incentive available to both founding directors and key staff in SMEs will be badly dented by the 80 percent jump in the level of CGT levied on their gains - from 10 percent (after taper relief) to 18 percent. While there is every reason to believe this impact is an unintended consequence of hurried changes to the CGT regime, experts say the chance that a key incentive for retaining and attracting staff will be limited is a worrying development," Mr Hurlston wrote.

The Chancellor implied in the same Commons statement that approved Eso schemes will not suffer any further cutbacks in tax relief. His precise words were: "We have also retained a number of tax advantaged share schemes which include, Save As You Earn Schemes, Company Share Options Plans and Enterprise Management Incentives." The Centre infers from this that the EMI scheme is safe, despite the on-going HMRC probe into its effectiveness and value for taxpayers' money.

Mr Darling added: "The reformed regime, and the new entrepreneurs' relief, will come into effect in April. The entrepreneurs' relief will provide a special 10 percent tax rate for the first £1 million of qualifying gains. Gains made on different occasions will qualify for the 10 percent rate up to a cumulative lifetime total of £1m of gains. Gains in excess of this will be taxed at 18 percent. The special 10 percent rate will be available on the disposal of all or part of a trading business carried on by an individual either alone or in partnership. It will also be available to individuals disposing of shares in a trading company, provided that the individual is an officer or employee of the company and takes a minimum five percent stake in the business. This measure will benefit the owners of small businesses when they choose to sell their business. It will also benefit business angels and

other business investors who take a five percent or greater stake in the company concerned. I estimate that the proposal will have a (taxpayer) cost of around £200m a year. I am determined that we do as much as possible to encourage entrepreneurship in the UK and, in future Budgets will seek to do more. I will therefore keep the £1m lifetime limit for the entrepreneurs' relief under review."

Almost 6,000 key staff exercised EMI options in the 2005/6 tax year. Around 27,000 employees were granted options in more than 2,500 companies in the same tax year, with an average options value of £16,000 per person. The taper relief clock on CGT started ticking as soon as these options were awarded to the employees, rather than when the shares vest two or three years later.

**Centre STEP conf in Jersey 2008:** Centre associate director Joel Lewis wants prospective speakers to contact him about the Centre's next joint share schemes conference with the Jersey branch of the Society of Trust & Estate Practitioners, scheduled to take place on the island in later April or early May. The audience will be primarily trustees, but the agenda will cover a wide range of Eso issues, including plan administration techniques and the merits of different employee share schemes, as well as the latest legal developments affecting share schemes and trustee work. The Centre seeks member practitioners from the UK mainland to help firm up the agenda. Joel's email address is: [jlewis@hurlstons.com](mailto:jlewis@hurlstons.com) or phone him at + 44 (0) 20 7436 9936.

**Cannes: June 5 & 6:** The first three new delegates who register for the European Centre's 20th anniversary international share conference at the Majestic Hotel in Cannes on Thursday June 5 and Friday June 6 can still qualify for sea-view rooms at no extra cost, provided they honour their half-board accommodation & conference package deal invoices within six weeks of issue. Sea view rooms at no extra cost will be awarded on similar terms to the first two additional speakers who have their presentation topics confirmed by Fred Hackworth at [fhackworth@hurlstons.com](mailto:fhackworth@hurlstons.com). Details of prospective speakers, slot titles and admission fees can be studied on the Centre website at: [www.hurlstons.com/esop](http://www.hurlstons.com/esop) and click onto the 'events' tab.

#### **DISASTER AT SOCIETE GENERALE**

The Association of Employee Shareholders at Societe Generale lodged a formal complaint about rogue trader Jerome Kervier, who is accused of losing the bank £3.7bn. Employees own seven percent of the equity at Soc Gen and are concerned about the implications of the headlong plunge in the share price from €150 last May to €80 after the gigantic loss was made public. To win compensation however, they would have to prove negligence, which is no easy task. But Kervier claimed his superiors knew he was making unauthorised bets. In the wake of the current disaster, Kervier's manager and three other colleagues have been sacked. Meanwhile the French financial markets regulator is probing the sale on Jan 9 of €86m SG shares by Robert Day the bank's

company sec. Moreover the Robert A Day foundation and the Kelly Day Foundation sold €8.6m worth of SocGen shares and €1m worth on Jan 18 – the day when Kerviel’s £3.7bn loss was made public. For thousands of its 120,000 staff in 77 countries there is the extra worry about whether maturing in-house incentive schemes - which pay out more often in restricted shares and/or share options, rather than cash - will yield anything at all this year.

#### **D11 DETONATOR THREATENS SAYE SCHEMES**

The adverse impact of the global credit crunch on share prices has waterlogged many SAYE-Sharesave schemes and a nail-biting time is guaranteed even for those whose shares are still trading at above the option strike price.

Plan sponsors will not be best pleased by the thought that should some of their employee Sharesave participants start scheme-hopping late this year, then they will face a punitive double expensing accounting charge as a result of the D11 interpretation by the IFRIC committee of the International Accounting Standards Board.

For plan sponsors the key issue is whether stock markets will recover before employee shareholders’ time limits (for deciding whether or not to cash in maturing options) expire. The situation at HBOS is fairly typical: since share prices in the banking sector have fallen almost 30 percent in the past few months, the 2006 and 2007 options are now underwater, with the next offer potentially being cheaper than the 2005 price if the share price doesn’t recover. Based on the current share price of £7.30p, then deducting the 20 percent discount, the new SAYE option contract price should be around £5.90 later this year. But when employee SAYE participants compare this price to the other strike prices in recent years: 2005 - £6.90, 2006 - £7.90 and 2007- £8.44, they will be tempted to jump horses for the new scheme’s £5.90p strike price. Employees will ask themselves: *What is the point of ploughing my monthly Eso savings into a scheme which looks unlikely ever to be ‘in the money’ when it matures?* Paul Stoddart, new business manager at HBOS Employee Equity Solutions, said: “Remember D11 - I said it was a time bomb waiting to explode when stock prices headed south! Many SAYE plans must be under water now, so the detonator will soon be ticking.”

On a positive note, 14,000 HBOS employees gained up to £4,000 each as a result of participating in Sharesave plan, which matured last month, giving a total payout of £12m.

#### **IFRS2 TO BE REVISED**

The International Accounting Standards Board (IASB) has announced that it expects to issue a revised IFRS2 in the first quarter of 2008 with changes relating to vesting conditions and cancellations of share options and awards. The IASB also announced that it was setting up a study group to consider other IFRS2 issues and the potential for greater convergence between the international and US Standards. This group is expected to report to the IASB with its preliminary thinking in June/July 2008, said Pinsent Masons.

On 13 December the IASB published for public comment

an exposure draft of proposed amendments to IFRS2 (Share-based Payment) and IFRIC11 (Group and Treasury Share Transactions). The proposals respond to requests for guidance on how a group entity that receives goods or services from its suppliers (including employees) should account for the following arrangements: the entity’s suppliers will receive cash payments that are linked to the price of the equity instruments of the entity or of its parent company. Under either arrangement, the entity’s parent has an obligation to make the required cash payments to the entity’s suppliers. The entity itself does not have any obligation to make such payments. The proposed amendments to IFRS2 clarifies that it applies to arrangements such as those described above even if the entity that receives goods or services from its suppliers has no obligation to make the required share-based cash payments. The proposed amendment to IFRIC11 specifies that the entity should measure the goods or services in accordance with the requirements for cash-settled share-based payment transactions.

#### **NEW MEMBER**

The Centre welcomes into membership **Sanne Group**, an independent group, owned by its management, which provides trustee and corporate services. Established more than 20 years ago, it has extensive experience administering a wide variety of structures for a diverse client base. Sanne is based in Jersey and is licensed and regulated by the Jersey Financial Services Commission in the conduct of trust company and fund administration business. To deliver the range of services and expertise that its clients expect, Sanne is structured as four specialist divisions: human capital solutions, private wealth, fund administration and corporate and securitisation services. The human capital solutions division provides administrative services and operational support for both equity and non-equity plans. The equity team has considerable experience in share plans ranging from both bespoke unapproved plans to large-scale, all-employee approved schemes. Sanne is committed to satisfying its clients’ expectations and has built its reputation and developed a strong and successful brand, through this culture. Each client has an allocated multi-skilled service team led by experienced, qualified directors. Sanne’s director led, hands-on service means its clients have access at all times to a dedicated director. Its approach relieves employers of the administrative burden of operating incentive plans and gives employers and employees confidence that their plans are well-run and their assets are secure. For further information please contact **Victoria Goode** or **Colum Spillane** on 01534 722787 or visit the website at [www.sannegroup.com](http://www.sannegroup.com)

#### **ON THE MOVE**

**Alan Olivey** reached 60 in October and so he decided to call it a day with **RBC** at the end of last month. Alan writes: “I had five great years at Abacus/RBC and prior to that a 30 year career at **Ernst & Young** where, as a partner, I led the share plans practice until my retirement from the firm in 2002. As you will recall, I also did a

short stint on the ESOP Centre Management Committee.”

**John Loveless** has retired from **SG Hambros Trust Co**, where he was latterly MD and **Timothy W Hewlett** is the new Centre member contact.

**Justin Reynolds** has joined **Sodali** after three years at **ISS/RiskMetrics Group**. He was at formerly at Mourant and has worked in corporate governance, remuneration and shareholder voting throughout Europe and Asia for 12 years. “With a Company’s shareholder meeting being the moment when investors’ support for management is measured - and increasingly this cannot be taken for granted - a well planned and executed strategy around the AGM/EGM is increasingly needed by listed companies in Europe,” said Justin, a past speaker at Centre conferences. Sodali is a corporate governance and shareholder response consultancy with five offices.

**Xstrata plc** announced on January 17 that application was made to the UK Listing Authority and the LSE for a listing of six million new ordinary shares of US\$0.50 each allotted to K.B. (C.I.) Nominees Ltd for the purposes of the Xstrata ESOT. The shares rank pari passu with the existing issued shares of the company. Each share carries voting rights and the company does not hold any treasury shares.

#### DAVOS SPEECHES SUMMARY

Is banking too important to be left to the bankers? – Centre chairman **Malcolm Hurlston** asked delegates rhetorically as he opened the ninth employee equity forum in the Belle Epoch Steigenberger Belvedere Hotel in Davos Platz. Superficially, the credit crunch crisis appeared to a “bloodless crime,” he said. “But once people start feeling the pain it will be different and a lot of the blame can be laid at the door of the banks.”

Furthermore, the back-dated stock options scandal in the US had proved that the Eso industry was adept at shooting itself in the foot. What were all those HR people thinking of when they willingly changed the dates of executive option grants in order fraudulently to bump up the ‘bonus’ earnings of their bosses?

The paradox for Eso was that the lower share prices went, the greater the uplift potential for companies to launch successful new share schemes. Mr Hurlston praised Sarkozy for having promised stock option plans for all French private sector employees, while UK Prime Minister Gordon Brown seemed to have lost interest in Eso.

**Paul Stoddart of HBOS and Dilpreet Chatha of Ernst & Young** delivered an impressive case history of a plan put in by Dimension Data, an SA company started up by three men in a Joburg garage, but now employing 10,000 people in 30 countries. Its 180 percent rise in eps last year meant big bonuses all round for the executives. DD had stopped using stock option plans in 2005, so the HBOS/E & Y multi-disciplinary plan admin partnership involved a Share Appreciation Plan, with an LTIP as the icing on the cake. However, DD’s dual listing had led to complex tax and exchange control issues, such as how to get the money out. The plan had a three-year vest, a three-year

exercise period and was priced in sterling. There had been high employee expectations and high participation rates. The plan installation was preceded by a three-day workshop in SA to combine the expertise of the three camps. Data collection for online delivery had been a big challenge as the systems relied on the honesty of the data – problematical when some participants stumbled over the paper definition of where their ‘home country’ was.

**Karen Cooper of Osborne Clarke and Kevin Lim of RBC CEES** discussed how employee benefit trusts could be best used in private company buy-outs. Founding shareholders wanted to lock in key employees en route to a successful exit. They wanted a scheme which fell into the CGT regime and not income tax and there was often a cash v shares v options decision to make. Ratchets and restricted shares were still popular and on exit the strategy was to skew the value towards those who had created the business. As always, valuation of such companies was difficult if no exit was on the horizon. Lots of private companies needed help over equity incentive packages because most had not thought previously about giving shares to employees. Advisers needed to spell out trustees’ responsibilities if companies wanted EBTs set up, because some had stuffed EBTs full of shares, only to find that they couldn’t get them back unless employees were perceived to benefit directly. EBTs had many attractions for private companies but HMRC was sniffing around, looking at their tax raising potential.

**Mahesh Varia of Travers Smith** examined the role of private equity in Eso and concluded that broad-based employee share schemes were a lost opportunity for a host of reasons, especially the HMRC bar on using approved share schemes, since most private equity firms were controlled by another company. “This is massively unfair,” said Mr Varia. Mr Hurlston intervened to say that the Centre had presented a paper to the Treasury, prepared for the Centre by Clifford Chance, requesting a level playing field for private equity in Eso. Reactions were awaited. The most common type of incentive arrangements Mahesh devised for clients was the share purchase plan. In it the shares were held by a nominee, usually an EBT, because private equity didn’t want 2,000 employees directly involved in the running of the company. The shares were cheapest at the time of the deal, which was the time to offer them to employees. Dividends were rarely paid because surplus cash was used to pay off bank debt and leavers had to sell their shares.

**David Pett of Pinsent Masons** spoke about sharing ownership in Switzerland and the UK. He had set up an Executive Shared Ownership Plan (ExSOP) for senior management in a privately owned company, which had its HQ in Switzerland. Both HMRC and the Swiss tax authorities had accepted that it was not a tax avoidance scheme. It should only be used where EMI was not applicable, he added. ExSOPS were joint ownership on unequal terms and usually used two trusts, which made them easy to wind up. When shares were sold, employees received amounts equal to the growth in value above a

threshold amount, less a carrying cost of five percent per annum. HMRC would agree in advance the market value of the unlisted company for employers and employees, provided it had more than 60 employees, said Mr Pett. There had been an upsurge in share purchases on deferred payment terms. The 'loans' were left outstanding until the shares were sold or an employee left the company. On the accounting charge front, Pinsent Masons had hired a university math professor (who was a world expert in his field) who had produced a report which could "blow a hole" in Sir David Tweedie's controversial IFRS2 accounting standard, he added.

**Jeff Mamorsky of Greenberg Traurig** focused on the unprecedented wave of litigation facing US companies caught up in the back-dated stock options scandal, or the sub-prime mortgages credit disaster and/or the sudden plummet of US stock prices generally. Banks had written off \$45bn of sub-prime mortgage losses, following their take-up of securitized "poisoned debt," said Jeff. But the Organisation for Economic Co-operation & Development estimated that total sub-prime losses would reach at least \$300bn. The Class Action law suits alleged breach of fiduciary duty by companies, directors and advisers in that, for example, they had failed to recover losses on company stock held in employee stock accounts. A key legal test in the 'stock drop' cases was whether directors/senior managers and advisers had exercised proper management control over the assets of stock plan participants. As many plan assets were at risk, it was alleged that these companies had a disclosure obligation which they had failed to meet. But this *had* been a classic 'Morton's Fork' because if the companies had disclosed their potential future losses to plan participants, then the market would have trashed their stock prices even more. Some cases had been settled out of court with compensation ranging from \$15m to \$100m being paid out by the accused companies, he said. More than 140 Stock Exchange Commission investigations were still in progress over options back-dating, with the threat of prison sentences facing some officers in corporate finance and HR.

**Eugene Weultjes of Greenberg Traurig** talked about the influence of corporate governance on stock option plans in Holland and Belgium and analysed the tax treatment of option awards in both jurisdictions. Award conditions had toughened up after a Dutch PM had criticized the "exhibitionistic enrichment" of top managers through stock options. Now option rights granted to board members had strings attached – they had to be held for three years, the exercise price could not be below fair market value and none of the plan rules could be changed. Meanwhile, in Belgium the rules governing the taxation of stock options were "very confusing" said Mr Weultjes. The new tax treatment law adopted by Belgium looked very similar to the one Holland had discarded, he added.

**Ed Buckland of Bedell Group** tackled the changing landscape of the offshore trustee. Jersey trust law had been extensively amended in recent years in the context of increased regulation. The initiative by the Society of

Trust & Estate Practitioners (STEP) to make the transfer of trusteeship easier, when a trustee retired or died, had proved a great boon for the offshore trust industry he said. The Trusts (Amendment 4) Jersey Law of 2006 was a case in point. It restricted the application of foreign laws and judgments, confirmed unlimited time periods for trusts (eg 'Dynasty' trusts much loved by the Americans), allowed sole trustees and increased the powers of delegation by trustees.

**Michael Sterchi of KPMG** examined the history of a non-listed Swiss company, which had subsidiaries in the US, China and Japan, before and after Initial Public Offer. Pre IPO option awards had been exercised on a compulsory basis, even though there had been no market in which to sell the shares and there was no Fair Market Value available. Shareholder rights were strictly enforced in Switzerland and it was impossible to limit voting and dividend rights. When the IPO eventually took place, the initial stock price was three times higher than the standard valuation, revealed Mr Sterchi. The good news was that there were no specific rules for employee shares and options under Swiss GAAP accounting rules.

**Michael Castello-Vogt of RiskMetrics Group** spoke about the impact of corporate governance on executive reward indicators. Shareholders and regulators were increasing the pressure on companies over executive remuneration policy in three main areas – encouraging greater transparency over remuneration policy; giving shareholders advisory benchmarks and ensuring pay for performance. Companies should be forced to explain their non-compliance, he said. Even the US had stepped up executive compensation disclosure rules. Almost 50 percent of investors now believe that social and environmental factors should be considered when establishing executive pay rules. Many companies include non-financial factors – eg customer satisfaction, safety, new product development and environmental performance - as measures of executive performance, said Mr Castello-Vogt. The RiskMetrics subsidiary ISS Governance Services was assessing company practices over sustainability factors, such as climate change, ethics, labour and human rights. The European Commission was imposing heavy fines on energy and utility companies for breaches of environmental and climate change regulations and this too was impacting on executive reward policy, he added.

**Peter Mossop of Capita Fiduciary Group** examined the duties and responsibilities of trustees, who may find themselves under the spotlight – as with Close Trustees Limited in the Foster & Partners case (see previous newspads). Trustees had not only to act in the best interest of the trust beneficiaries, but amongst other things also had to disclose any conflict of interest and to exercise due diligence, care and attention, he said. The trustee had to act independently of the company which had set up the trust and which commonly paid the trustee for its services. But the trustee was often not obliged to justify its actions to the beneficiaries and this was important in the Foster case said Peter, as beneficiaries had been

## it's our business

seeking further explanation of the transaction in question. "The client relationship here is clearly under some stress and this case does not reflect well on the Employee Benefit Trust industry. It is making the papers for all the wrong reasons, despite the fact that the Trustee may well have acted entirely appropriately throughout" he admitted. We understand the Jersey Financial Services Commission is still investigating the case, even though the trustee concerned had said it had acted in an appropriate manner; it had taken external advice about the value of the trust's assets. According to press reports, some employees felt the company could have made more of an effort to communicate with the workforce about its decision to wind up the trust while one article said "Employees were surprised to receive a pay-out, some said they didn't even know the trust existed". Mossop went on to say that "The industry is very keen to understand the detailed circumstances of the Foster case, and the outcome of any formal enquiries along with any resulting implications."

**Barbara Seta of UBS** said that more than 50 percent of all UBS employees worldwide were participants in one employee equity plan or another. "We do believe in Eso," she said. Participation was commitment because employees had to buy their shares at market value. Equity based awards helped ensure that there was strong accountability for the long-term implications of decisions and actions taken. UBS used Eso to encourage employer-employee partnership, responsible and trusted relationships and to strengthen the link with all shareholders, she said. UBS had different equity plan bolts for different objectives – short-term, mid-term and long term. Stock option grants were reserved for high performers, whilst shares and restricted stock were offered to the broad mass of employees. UBS had been preparing for the current situation in which some of its option awards were underwater. Its advice was to increase the practice of deferred stock awards, keep option awards at the same level, look at new plan designs, such as stock settlement and toughen up forfeiture rules.

**Alan Judes of Strategic Remuneration** examined performance targets in executive remuneration. The company had to state clearly what its remuneration policy was and had to measure the effectiveness of its equity plans regularly as well as instigate proper financial reporting. It was a good idea to talk to shareholders, to tell them why the company had structured equity reward schemes in a certain fashion. EPS and TSR were slowly losing sway to other performance indicators, some non-financial, he said. Targets were getting more demanding – in the old days, there was vesting at the 25th percentile of peer group comparators using TSR in LTIPs, but now you didn't get anything unless your performance had reached at least the 50th percentile, he explained. But there was an "enormous difference" between the UK and the US in

this respect, because the US was generally only just beginning to impose strict performance targets on equity reward plans for senior executives. In the UK, companies like Aviva were anticipating shareholder questions about executive reward by, for example, inserting Q & A material about its remuneration policy in documents such as the annual report circulated before the AGM. However, increasing 'corporate governance' pressure had inspired a backlash among some company chiefs – Paul Myners, chairman of the Guardian Media Group, recently criticized the "open-toed sandal brigade" among corporate governance experts for their "obsession" with pay and board structures. Terry Smith, chairman of Collins Stewart, said that some investors' CG concerns were "tosh" and their demands for more and more paperwork before AGMs was akin to: "Swampy does corporate governance."

**Michael McKersie of the Association of British Insurers** wondered whether the ABI should start using 'gold tops' instead of 'red tops' to highlight excessive leniency in executive remuneration design, because gold tops on milk bottles used to represent high fat content. Asked whether he thought excessive reward should be clawed back by companies, Michael said that no-one had yet found a way of making claw-back workable. The biggest danger was that of ratcheting – and some "horror" numbers had emerged, such as performance bonuses reaching five or six times the level of annual salaries in a few cases. One reason for the large rises in executive reward was that the proportion of annual GDP accruing to capital creation was rising, while that relating to labour was falling. However the average corporate rate of return had fallen back towards its long-term average of 5.2 percent and that might have a sobering effect, he implied. The current "dislocation" in financial markets might have long-term effects which were not yet understood – was Goldilocks\* finally dead? He asked. *\*the long-held assumption that the world economy would continue growing in a benign manner.*

**Fred Hackworth of the European Centre** questioned whether codes of conduct were enough to curb the worst excesses of executive reward. However, his suggestion that certain developments – such as shareholder votes against remuneration reports and that remuneration committee chairman should be totally independent – should be legally enforceable by regulators was not supported by delegates. He cited the case of camera company Jessops, which had awarded its chairman a £500,000 bonus for having helped arrange emergency funding for Jessops despite a succession of profit-warnings and a 90 percent fall in its share price.

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