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it's our business

newspad of the Employee Share Ownership Centre

Near sell-out for LondonDavos

Registrations are flowing in for the Centre's 17th global employee equity forum – transferred, exceptionally from Davos to London – which takes place at **White & Case**'s offices, in the heart of the City, on **Wednesday February 10.**

Forty people, including a healthy number of share plan issuers, had already registered before New Year's Day for this flagship all-day event, which has attracted sponsorship from long-standing Centre members – lawyers **White & Case LLP** and Channel Islands-based trustee, **Bedell Group.**

Only a dozen places remain to be taken up and so if you want to take part, register now to avoid disappointment. Davos 2017 will either return to Switzerland or move on to New York so this is a rare opportunity for the London-based.

Among the plan issuers who have registered are **Imagination Technologies**, **Prudential**, **RSA** and **Signet.** These and the other share plan issuers and advisers who register for this event will close the day at an *invitation only* reception, hosted by the Centre and by White & Case immediately after the conference ends.

LondonDavos will focus as usual on current threats and opportunities and their impact on latest reward strategies in companies which install broad-based and executive equity schemes around the world.

Among the programme highlights, **Tony Llewellyn** of high-tech company **Imagination Technologies** will deliver a case study about how it adjusts its employee equity schemes globally, to meet different needs and changing circumstances.

Euan Fergusson of sponsors **White & Case** will explain how company plan sponsors and their advisers are meeting the rising regulatory and compliance challenge and will discuss the voice of employee shareholders at company agms and egms.

David Ellis of **KPMG** will cast a critical eye on latest executive reward strategies: is there a case for abolishing Long-Term Incentive Plans (LTIPs) and do current performance indicators need adjusting.

Fred Whittlesey of Compensation Venture Group Inc joins us from Seattle to brief on US executive remuneration trends He sees an escalating battle among stakeholders.' He will highlight the impact of say-on-pay; looming ceo pay ratio disclosure fuelling 'income inequality' debate; corporate social responsibility triggering bottom-up changes. He asks whether TSR will capture CSR actions through Responsible Investing movement?

Other key issues to be discussed during the day include:

Corporate governance in overseas share and share option plans; Global foreign asset reporting; Top pay unit: open debate on the evolution of executive reward parameters: Are remuneration committees poodles? The gender pay gap; How to increase employee share scheme participation; Linking employee share long-term savings to pensions; New techniques in administration & communications; Trustee issues: FATCA & the Rangers FC EBT loans case; Accounting for share schemes – about to change again?

Delegates will hear expert speaker presentations from: **Bedell Group**; **Compensation Venture Group Inc.**; **David Craddock Consultancy Services**; the **Esop Centre**; **Howells Associates**; **Imagination Technologies**; **KPMG;**, **Linklaters**; **MM & K**; **Pett Franklin**; **Primondell**; **Solium** and **White & Case.**

Attendance fees:

Practitioner members £385, non-members £595, Plan issuers £195. (All prices are subject to standard UK VAT).

From the Chairman

Next week we shall know how our Esop index ended the year. It tracks the performance of FTSE companies with three percent plus employee ownership. At a time when the main indices have performed badly and hedge funds have been blown, the outcome will attract special interest. Irrespective of the performance of our index - and so far companies using Eso are well ahead of the game - the main lesson of the year may be our failure to ensure adequate advice for employee shareholders amid the volatility of share markets. Free robo advice at industry level has never been more needed.

Malcolm Hurlston CBE

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fhackworth@esopcentre.com with copy to the Centre at esop@esopcentre.com

This event offers six hours of credits under the Law Society's CPD programme.

White & Case is hosting the forum in its UK headquarters **5 Old Broad Street, London EC2**. A buffet lunch will be provided and there is a cocktail party at the end of day for delegates and guests.

Share plan tax changes coming this year

A raft of employee share plan tax changes – some of them backdated – is expected to come into force from the start of the new tax year in April. The government has tabled technical changes to streamline and simplify the tax rules for tax-advantaged and non-tax advantaged employee share plans alike.

Last month, HMRC issued a policy paper which, if implemented, would change the tax position for certain restricted stock units (RSUs) and conditional share awards currently taxed under the *general earnings* rules. A copy of the HMRC proposals can be viewed at http://tinyurl.com/zlud3xg reported Centre member **Deloitte**.

The most eye-catching proposal would allow employee-owned companies to incentivise key employees by awarding them share options under the tax-approved **Enterprise Management Incentive (EMI)** scheme. To be able to do so, such companies would have to be controlled by an **Employee Ownership Trust.** Although EMI was originally introduced by then Chancellor Gordon Brown in the year 2000 to incentivise 'key' employees, many eligible small firms these days use it to award stock options to many or most of their full-time employees. No income tax or National Insurance Contributions (NICs) are paid on the options when cashed in and individual Capital Gains Tax (CGT) liability can be reduced to only 10 percent if certain conditions are met.

Another proposal implies that some companies have been using re-structuring exercises to offer participation in tax-approved **Share Incentive Plans (SIPs)** to some staff on a selective basis – but not to others. This practice is to be outlawed.

Following an HMRC consultation with 'key stakeholders' last autumn, draft legislation will be introduced in the **Finance Bill 2016** to amend the Income Tax (Earnings & Pensions Act) in the following ways:

- For Restricted Stock Units (RSUs), the charge to tax will arise under the Chapter 5 rules that deal with **Employment Related Securities (ERS)** options, rather than earnings. This will affect ERS options from April 6 2016 irrespective of the date they were acquired.
- Following a corporate restructure, shares in a SIP will have to be offered to all employees on a similar basis. Preferential shares in a SIP will not be able to be awarded to particular employees only.
- Where, by the deadline, a company has failed to inform HMRC that a SIP, SAYE or CSOP scheme meets the legal requirements, it will no longer lose the tax advantages of the scheme where it satisfies HMRC that it has a reasonable excuse for this failure to notify. HMRC will be able to accept a reasonable excuse for notifications made on or after April 6 2016.
- A company controlled by an Employee Ownership Trust will now be able to operate an Enterprise Management Incentive (EMI). This measure will be backdated to October 1 2014.
- Following a company takeover, minority shareholders holding qualifying share options in an EMI will have the right for their share options to be acquired by the offer or without losing their tax advantage. This will be backdated to July 17 2013.
- There will no longer be a need for specific HMRC agreement to the methodology used by a company valuing share options in a CSOP by reference to a value at a time before the option was granted. Instead the law will provide HMRC guidance on the matter.

An amendment will increase the deadline for CGT purposes for employees to exercise EMI options following a disqualifying event from 40 to 90 days after the event.

An important change, planned to take effect from April 6 this year, seeks to remove RSUs and similar awards from the charge to general earnings. Instead, awards would be subject to the securities option legislation only. If enacted, this change is expected to have minimal impact where the employee is a UK resident throughout the vesting period and liable to UK tax and NICs on all their earnings. *However, the change could have a significant impact for employers and employees where an employee is internationally mobile.* While the income tax position is broadly the same for internationally mobile employees regardless of whether RSUs are taxed as general earnings or securities options, there is a substantial difference in the NICs position. There may be an impact too on non-UK domiciled employees who claim the remittance basis of taxation and on all employees who are liable to UK CGT when they dispose of their shares.

Although HMRC's intention is to apply these rules to all RSUs, the legislation as drafted would only apply to awards which confer a 'right to acquire securities'. If awards do not confer this right, the draft legislation does not change the previous position. In these circumstances, such awards would continue to be subject to income tax under the general earnings provisions. If, however, the RSUs do confer a right to acquire shares, NICs will instead be due on an apportioned basis, based on the amount of time during the earnings period for which the employee is insured for social security in the UK. This is regardless of the employee's social security position at award or vesting of the award.

Employers with internationally mobile employees may need to refresh their understanding of where the borderline falls between securities option and general earnings treatment, and further HMRC guidance may be necessary.

In the meantime, companies will need to review their plans and determine whether their RSU awards confer a right to acquire shares, and if they do, consider the impact of this change. Companies may want to:

- analyse whether the company's costs could increase due to the change in NIC treatment
- consider the personal tax impact from a CGT and remittance basis perspective
- communicate with employees impacted by any changes
- ensure that payroll teams are notified and can manage their withholding and reporting obligations, particularly where a NIC liability is due on an apportioned basis.

Ceo reward levels may demotivate employees

The upward momentum of chief executive (ceo) annual reward in the UK's largest companies does not clearly correlate to personal performance or business outcomes and is having a significant impact on the motivation levels of the wider workforce, claimed a new report. Bad feeling in the workplace has reached crisis point, according to research from the Chartered Institute of Personnel and Development (**CIPD)**, the professional body for HR and people development.

The CIPD employee survey**, '**The view from below: What employees really think about their ceo's pay packet,' revealed that many employees are now so hostile to perceived top dog reward levels that they adopt a 'The more you take, the less we give' attitude at their workplace. Its main highlights were:

- Seven in ten employees believe ceo pay in the UK is 'too' or 'far too' high.
- Six in ten employees say the high level of ceo pay in the UK de-motivates them at work.
- More than half (55 percent) of employees claim the high level of ceo pay in the UK is bad for firms' reputations.
- Forty-five percent believe their own ceo's pay is too high, with a further 30 percent saying they don't know and just four percent say their ceo's pay is too low.
- Only a third of employees agree their ceo is rewarded in line with their organisation's performance, with two-thirds saying they disagree or don't know.

The research, including a survey of employee attitudes on ceo pay, an in-depth literature review and focus groups and interviews with members of the finance, HR and investor communities, explored the behavioural factors that cause executive pay to spiral and the impact that this is having on the workforce.

The **Esop Centre** considers the usually large equity element within executive reward packages to be within its ambit and regularly comments on what it considers to be abuses, as well as best practice. Centre chairman, Malcolm Hurlston, said: " It looks…as if employees believe with Andrew Smithers that the main risk a ceo faces is not paying himself enough".

Charles Cotton, CIPD reward adviser**,** said**:** "The growing disparity between pay at the high and lower ends of the pay scale for today's workforce is leading to a real sense of unfairness which is impacting on employees' motivation at work. The message from employees to ceos is clear: '*the more you take, the less we'll give'*. At a time when average employees have seen their salary increase by just a few percentage points over the last several years, we need to take a serious look at the issue of top executive reward. It's crucial that ceo reward packages are simpler and more clearly aligned to both financial and non-financial performance measures. These should include how their leadership impacts on critical outcomes such as employee well-being and engagement, accountability for culture and behaviour, and workforce development, all of which are vital underpinnings of the long-term health of both people and business."

A second CIPD report, '*The power and pitfalls of executive reward: A behavioural perspective,'* explores some of the factors that have contributed to FTSE 100 ceo pay increasing to 183 times that of the average employee, compared to 47 times in 1998 (source: High Pay Centre, 2015). These challenges and how they can be addressed include:

- **A lack of transparency over ceo pay and how it relates to the wider workforce:** The CIPD recommends that the Government requires all listed companies to publish the pay ratio between the ceo and the pay of average full-time employees. This would help encourage accountability and prompt a greater focus on this issue among key stakeholder groups, such as investors, who can help to drive change and hold businesses and senior individuals to account.
- **Overly complex performance measures:** The report suggests that significant changes need to be made to how bonuses and long-term incentives are structured and why they are paid out. Both of these forms of variable reward tend to be overly complex and disproportionately focused on financial goals rather than being linked to other outcomes and stakeholders interests, including those of the employees. In addition, existing long-term incentives may not motivate because they are predominantly linked to financial measures, which are often affected by factors outside the control of ceos, such as the economic cycle.
- **One size doesn't fit all:** The report notes the upward influence of benchmarking comparisons across ceo peers. It recommends that remuneration committees need to set rewards that are appropriate for the organisation and the individual in question, rather than being driven by what a particular candidate desires or being swayed by what's perceived as *the going rate* in the market. Currently, many remuneration committees lack the knowledge, skills and influence to make this change.
- **Powerful personalities:** The CIPD recommends that organisations increase their focus on ensuring ceos bring a balanced leadership style, appropriate to the culture and context of the organisation. The report said that leaders tend to have more overly confident and assertive behaviour profiles, which

makes them adept at negotiating higher pay and reward packages. However, the real driver in these cases is more about status and recognition than it is about the need for absolute amounts of money. Reward packages should therefore encourage individuals to strive for industry recognition or impact on wider societal goals, rather than simply having the biggest pay packet amongst industry peers.

- **Too much focus on the top:** The research suggests there should be less focus on disproportionately rewarding the performance of key individuals given that, where ceos promote shared or distributed leadership, there is likely to be better overall team performance. Mr Cotton added**:** ”It's time to fundamentally rethink ceo pay. Too often, high reward levels are explained by the power and personality of the ceo, the make-up of the remuneration committee and the need to compare favourably to existing market rates, rather than clear measures of individual and sustainable and balanced organisational performance.

“There are rarely any ramifications for poor performance. As a result, reward has just continued on an upward trajectory and as many businesses seek to restore trust from their employees, customers, and communities, it's time to address the issues and challenge the direction of travel. Without the right checks and balances, businesses will struggle to break the cycle and this will continue to have an impact on workforce morale and employee engagement.”

When asked what could be done to address ‘excessive’ ceo reward, seven in ten employees wanted to see greater pay transparency and more than half wanted reward to be published for all levels. When asked which measures would best improve the link between the pay of ceos to that of employees and their organisation's success, the top ranking suggestions rated by employees were: ‘publish the ratio between ceo pay and the pay of the typical employee’ (51 percent), ‘limit the size of ceo bonuses and incentives’ (51 percent) and ‘require ceos to pay back bonuses and incentives if the company's performance declines’ (62 percent). www.cipd.co.uk

* Ceos in search of higher pay should aim to run large companies outside their home country, according to new research into European companies, reported the *Financial Times.* Foreign ceos, particularly at the largest companies, are paid nearly half as much again as ceos who are the same nationality as the company they head. Belgium's **Vlerick Business School** found that at continental European companies, ‘remco’ chairs from the US and UK — who head the board committees that decide on executive compensation — paid their ceos more, compared with chairs from other countries. Vlerick's Remuneration Research Centre looked at listed groups in Belgium, France, Germany, the Netherlands and the UK. Foreign ceos of companies with assets of more than €5bn received median total compensation of €5m in 2014, compared to the median of €3.45m paid to their home-grown counterparts. Xavier Baeten, professor of management practice, said that the report identified an ‘Anglo-Saxon’ impact on pay across Europe, which could reinforce concerns that more extravagant pay practices were spreading from the US via the UK. In the US and UK, overall ceo pay is higher than in continental Europe, and the proportion taken in bonuses and other variable compensation is generally greater. “The danger is that ceos [rewarded] in the Anglo-Saxon way are too focused on the short-term financials,” Professor Baeten said. “You can forget steering someone by any other performance indicator than those linked to the bonus.” According to the Vlerick study, five of the ten best-paid ceos in the 669 companies were UK FTSE 100 companies in 2014, mainly thanks to the prevalence of long-term incentives at British companies. Two of the top ten were from Germany, two from the Netherlands and one from France. When the scale of compensation is adjusted to compare only ceos' fixed salaries, the UK came third after Germany and the Netherlands.

Draconian moves against tax-avoidance schemes

Chancellor George Osborne published an HMRC policy paper which introduced measures to deal with those who either seek to ‘disguise’ their taxable earnings or structure their affairs in such a way as to minimise the employment taxes they pay, said lawyers *Burges Salmon.* The first will be a frontal attack on individuals who use tax avoidance schemes. HMRC will act against those using “disguised remuneration schemes” and there will be rules to close down new schemes designed to avoid tax on earnings. Among Mr Osborne's targets are some special schemes – including the Rangers FC example (*see below*) - designed to reduce tax bills on large-scale executive equity based reward packages or on incentive payments to sports stars. These rules could apply from last November 25, effectively stopping new schemes before they have even started.

The Finance Bill 2016 will introduce penalties of a 60 percent surcharge on the tax due which will be charged where tax avoidance schemes are successfully tackled by HMRC under the existing anti-tax avoidance rules and serial tax avoiders will be named and shamed. Furthermore, new criminal offences will be introduced in the Finance Bill for tax evasion and for companies who facilitate it. These penalties will affect anyone who fails to declare offshore tax. Holiday home owners and people who inherit overseas bank accounts, and fail to declare the interest or dividend earnings, are among those who are likely to be caught by the ending of a disclosure facility on December 31. The ending of the Liechtenstein Disclosure Facility in 2015 meant that HMRC will be able to impose penalty surcharges of *at least* 30 percent of the tax due, whereas there is now no minimum penalty, and it can *look back* 20 years as opposed to 16 as now. Since the amnesty opened in 2009, around £1.6bn has been collected from Britons voluntarily coming forward to settle unpaid tax bills, which experts argue they would otherwise have not done.

The Government is concerned too that the employment status of workers should be correctly recognised. Those who are self-employed or operate through small or personal companies have more opportunities, potentially, to reduce their tax bills than employees.

Automatic information-sharing between banks across the world means HMRC will soon be able to catch evaders almost anywhere. More than 90 jurisdictions will begin to share the financial details of British residents, including bank accounts, property and trusts, which HMRC can use to impose criminal sanctions and penalties on tax evaders. Adverts placed in the national newspapers, listing the countries that will share data, warn people with undeclared offshore wealth to "***come to us before we come to you".*** The new campaign is part of a drive to claw back an estimated offshore 'tax gap' of £565m to the public purse.

David Gauke, Financial Secretary to the **Treasury,** said that HMRC would put a stop to "hiding money in another country at the expense of honest taxpayers." He added: "Under our new regime the small minority who evade tax offshore, facilitate or turn a blind eye to offshore tax evasion will face tougher sanctions." If people have a tax liability that's related to offshore income or capital gains it will automatically be deemed to be a criminal offence under rules planned for 2016 and confirmed in the Autumn Statement. Previously, only 'deliberate' non-disclosures could be deemed a criminal act.

From January 2017, countries including France and Spain will begin sharing detailed information on the exact bank balances and savings interest received by UK residents Crucially, the data will be shared as far back as January 2016. Switzerland has pledged to end its commitment to banking secrecy by incorporating common reporting standards by 2018. China has pledged to share information with UK tax investigators. HMRC's advanced computer systems will be able to produce lists of individuals it considers as high-risk within a matter of seconds, according to experts.

Ranger FC loans ruling 2

The recent Scottish Court of Session ruling on November 4 on the tax payable on payments made into employee benefits trusts (EBTs) operated by the Murray Group of Companies (including Rangers Football Club) will, if unchallenged, have potentially significant financial consequences for those employers who have used EBTs. HMRC is poised to send out Accelerated Payment Notices (APNs) to many companies who used similar trust-based employee reward schemes – *see previous Newspad issue* – now that it has the favourable court ruling under its belt. This issue will be discussed by the trustee panel at the Centre's 17th Global Employee Equity Forum, to be held at White & Case, in the City, on **Wednesday, February 10**. (*see front page story)*

The Court overturned the previous decisions of the First-tier and Upper Tribunals and held that arrangements whereby payments are made to employees and their families through the use of trust schemes were no longer exempt from taxation and that the participants of such schemes would be liable to HMRC tax bills for such payments The Court ruled that income tax is a tax on earnings from employment and that even if the payments were made to third parties rather than to the employees themselves, the payments were still made as a result of the employees' work. It stated: "If the law were otherwise, an employee could readily avoid tax by redirecting income to family members to meet outgoings that he would normally pay." The Court added that it was irrelevant that the payments were first made into a trust or that the trustees had discretion as to how to apply such payments. "The fact is that the payments were made as remuneration for the employee's services." It said that payments made into the trust and the sub-trusts "amounted to a mere redirection of income and thus constituted emoluments or earnings" and were therefore taxable. In addition, it held that the payments were made at the time of payment to the trustee of the discretionary trust. Therefore, the employer who made the payment would be obliged to deduct the tax under the PAYE system at that point. HMRC issued tax assessments over payments made into the EBTs by some employers and launched a programme to allow compromise on those assessments by July 30 last year. ***However, many tax assessments remain to be concluded.*** A further appeal on the substantive issues was being considered. Share schemes expert **David Pett,** of Centre member **Pett, Franklin & Co.**, is not alone in believing that there are substantive grounds for an appeal. An appeal could be lodged too on ancillary technical points regarding the jurisdiction of the Court of Session which may, if made, delay the final ruling. Until that time, those businesses who have used EBTs and who have open assessments with HMRC for unpaid PAYE and NICs are likely to see HMRC becoming more active with enforcement steps for recovery, warned lawyers *Pitmans.*

New member

The Centre is pleased to welcome into membership **The United Kingdom Shareholders' Association (UKSA),** which was founded in 1992, spurred by the scandal of excessive pay awarded to utility company directors following privatisation. In time UKSA has developed a wider brief, and its fundamental purpose now is to promote the interests of individual shareholders and investors within the UK by all possible means. It relies on membership subscriptions for finance and on the voluntary efforts of its members for the bulk of its activities. Thus UKSA is a campaigning organisation, with particular concern for the rights (or lack of them) of private shareholders, but also pressing on other corporate accounting, reporting and governance issues where the individual is being disadvantaged. It has a strong social and participative element, the precise activities depending on the arrangements of each local branch or region. Particularly popular are the private small-group visits to quoted companies to hear presentations from senior management and take the opportunity to question them directly. UKSA's chairman, **John Hunter**, was guest of honour at the Centre's annual Awards reception and dinner at the Reform Club last October. UKSA shares with the Esop Centre a passionate belief in the virtues of share ownership. Our organisations are complementary: the Centre focuses on the motivational power of employee ownership; UKSA promotes the social and economic benefits of giving a voice to individual investors, through the perspective that individuals bring to the determination of what public companies should be doing. There is much that we can learn from each other. For further information, contact UKSA via its website www.uksa.org.uk or phone 01689 855774.

Appleby Fiduciary completes MBO

Offshore legal, fiduciary and administration service provider **Appleby** announced the completion of the management buyout (MBO) of its fiduciary business, backed by London-based private equity firm **Bridgepoint**. The **Appleby Fiduciary Business (AFB)** MBO was finally completed on December 31, last year for an undisclosed sum, which may have been around £240m - £250m, according to media speculation.

AFB provides trust and corporate services, administering more than 10,000 structures for 6,000 clients from nine locations. AFB creates holding companies and special purpose vehicles and counts some of the largest multinationals and wealthiest individuals among its clients. It has a strong position in niche markets such as employee benefit trusts in Jersey, the insurance market in Bermuda and collateral loan obligations in the Cayman Islands.

Bridgepoint's move is not the first by private equity firms in the trusts arena – last year, **Vistra Group** was sold to **Baring Private Equity (Asia)** for an undisclosed sum, while in 2014, **Electra Partners**, a UK buyout firm, purchased the fiduciary services arm (now called **Elian**) of the Jersey-based law firm **Ogier**, which like Appleby, is a Centre member.

Last March, another Centre trustee member, **Sanne Group,** raised £141.6m through a London IPO. In so doing, **Inflexion Private Equity** reduced its holding in the Group to 11 percent, with the directors and senior management owning a collective 23.5 percent stake. They are smiling, because Sanne's shares, initially listed at 200p each, were trading at 368p as this issue went to *press*, an 84 percent increase in less than a year.

Farah Ballands ceo, Appleby Fiduciary Business, said: "This is a significant milestone for us and the start of an exciting journey. With Bridgepoint's expertise and support, we look forward to building on our success and investing in new infrastructure to further develop our service offering to fulfil our clients' needs. We have a solid foundation on which to build our new fiduciary brand, which we expect to launch in the first quarter of this year. We will continue to deliver high levels of client care as a priority and I will continue to lead the team, but as ceo of the new group, supported by the existing management team. Client service teams will remain unchanged, as will our contact details," added Farah, who can be contacted at:
fballands@applebyglobal.com.

Appleby first announced the impending MBO of its fiduciary business (AFB) last July, but completion of the transaction was subject to standard regulatory and legal approvals. Bridgepoint believes the global market for trust, corporate and fund services will grow at seven percent a year, driven by increases in private wealth, foreign direct investment/trade flows and increasing regulation.

More Eso awards

Asda, BT and **Holiday Extras** were among the companies recognised for their outstanding employee share plans at the 2015 *ifs*Proshare Awards. Asda was recognised for its effective use of technology, while BT won top prize for the most effective communication in a company with 50,001+ employees and was highly commended for its overall performance in fostering employee share ownership. Meanwhile, Holiday Extras was recognised for its effective communication in a smaller company with less than 5,000 employees. The awards recognised the individual contributions of two share plan professionals. **Pam Roffe**, manager of share plans at **Royal Dutch Shell**, was named employee share plans champion of the year, and **Janet Cooper**, partner director and trustee of **Tapestry Compliance**, won a special award for her services to employee share ownership.

Prospectus Directive amendments

The European Commission's proposals for amending the controversial Prospectus Directive (PD) were published on November 30 and EU parliamentary examination of them is under way, reported Centre member **Clifford Chance**. The topic guide, *EU legislative process explained*, which can be found on the Clifford Chance Financial Markets Toolkit, highlights the stages, but change is now not far off, it predicted. "The Prospectus Directive project is being expedited and we can expect fast turnarounds," said Clifford Chance. The PD, as amended, will be repealed in full and replaced by the Draft New Regulation, which will take direct effect and will not need to be implemented by Member States. Once finalised, the regulation will enter into force 20 days after publication in the Official Journal of the EU.

The PD sets out the requirements for the drawing up, approval and distribution of the form of prospectus to be published when shares are being offered to the public or admitted to trading on a regulated market. Where a prospectus is required under the PD, it cannot be published until it has been approved by the competent authority. Once a prospectus has been approved and published, the issuer may then raise

finance across the EU. Normally, quoted companies who launch share or share option schemes for employees are exempted from the prospectus process, but some privately-owned companies and others can be caught by the PD rule.
The Commission launched its action plan last September, setting out the building blocks for putting the Capital Markets Union in place by 2019. One of the first building blocks is the modernisation of the prospectus regime. Prospectuses are now unwieldy 'liability management' tools. Summaries are confusing. Risk factors are too generic. SMEs are still not accessing capital markets, despite proportionate disclosure. The wholesale disclosure regime and public offer of exemptions for €100,000 denominations encouraged large denominations, thus having "unintended consequences" of reducing liquidity and the number of retail investors.
The E-Commission's note said: "… Three years after Directive 2010/73/EU was applied, statistical data and stakeholders' feedback suggest that the diagnosis made during the previous review is still very much valid today. Indeed, it seems that the trends identified back then have continued, arguably because the remedies proposed by the amending Directive either did not produce the expected results (the prospectus summary) or were not ambitious enough (the proportionate disclosure regimes), or because Directive 2010/73/EU did not contain measures to address them… The revision of the PD pursues a simple goal: provide all types of issuers with disclosure rules which are tailored to their specific needs, while making the prospectus a more relevant tool of informing potential investors. In consequence, the proposal puts special emphasis on four groups of issuers: (1) issuers already listed on a regulated market or an SME growth market, which want to raise additional capital by means of a secondary issuance, (2) SMEs, (3) frequent issuers of all types of securities and (4) issuers of non-equity securities. It intends to further incentivise the use of the cross-border 'passport' for approved prospectuses, which was introduced by the Prospectus Directive. The proposed measures should (i) reduce the administrative burden of drawing up of prospectus for all issuers, in particular for SMEs, frequent issuers of securities and secondary issuances; (ii) make the prospectus a more relevant disclosure tool for potential investors, especially in SMEs; and (iii) achieve more convergence between the EU prospectus and other EU disclosure rules.
An 'approved prospectus' is still needed for public offer or admission to trading on an EU regulated market.
The proposed new PD: The home member state concept remains and choices stay the same; the passporting concept remains and so does translation of summary requirement; prospectus supplements and investor withdrawal rights remain; proportionate disclosure regime to be replaced by specific disclosure regime for secondary issuances and SMEs; prospectuses still have a 12 month life span; tripartite prospectuses and base prospectuses are still available For base prospectuses, the problem of offers which span the end of the 12 month period has been addressed
Content: Summaries are now to be shortened: six pages, maximum, but with leniency where there is a range of securities in the prospectus. A new format, with four sections, is prescribed. To enhance clarity and readability, for base prospectuses, issue-specific summaries only will be required.
General disclosure requirements: "Prospectuses should be easily analysable, succinct and comprehensible." The distinction between wholesale and retail disclosure will be removed. The €100,000 minimum denomination (wholesale) exemption from the public offer regime prospectus requirement is removed. There are other exemptions, including *employee share offers* and admission to trading exemptions. There will be broader scope for issuers to opt in with a 'voluntary prospectus.' A lighter disclosure regime will be introduced for SMEs and certain secondary issuance by issuers with existing securities admitted to trading. A concept of a *universal registration document* (or 'shelf') for frequent issuers will be introduced, to enable faster access to markets.

CONFERENCES

The 2016 E**sop Centre Jersey conference** will be held at the Royal Yacht Hotel in St Helier on **Friday April 15**. Organised in conjunction with the **Society of Trust & Estate Practitioners (STEP) Jersey**, this annual half day event is an industry-leading networking and learning opportunity for all those interested in share schemes and employee benefit trusteeship.
Attendance will qualify for 3.5 hours CPD credit with the Law Society. Confirmed speakers are: **David Craddock**, David Craddock Consultancy Services – *ESOP share valuation;* **David Pett**, Pett Franklin – *JSOPs and their increasing popularity;* **Graham Muir**, Nabarro – *the huge increase in employee shareholder shares;* **Michael Landon**, MM&K and **Rosemary Marr**, STEP Jersey and Moore Stephens – *leadership, management, staff retention and ESOPs.* The trustee panel, featuring **Helen Hatton** of Sator Regulatory Consulting and **Nancy Chien** of Bedell Group, will discuss the attitudes of practitioners towards the administration of legacy schemes.
Delegate Prices:
ESOP Centre / STEP members: £325
Non-members: £450
Book before February 14 to take advantage of our ***three for two*** early bird offer. The cheapest ticket is free. To register your interest in attending, please email the names and contact details of all delegates to esop@esopcentre.com or call 020 7239 4971.

VIENNA:
Centre annual conference June 2 & 3 2016
Attractive co-sponsorship opportunities are on offer for the Centre's 28th annual European employee share schemes conference, which takes place in Vienna on **Thursday/Friday June 2 & 3** this year. Various

levels of co-sponsorship can be purchased, including whole event sponsorship (£4,000) – entitling the purchaser to full branding rights & free seats – and separate sponsorship offers for the conference cocktail party (£1,500) and our Vienna e-brochure (£600), plus repeat mentions in both *newspad* and on the Centre website until August.

The elegant five-star **Steigenberger Herrenhof Hotel,** in central **Vienna,** will host this showpiece event, which will feature presentation topics from Austrian & German companies, organisations and advisers, as well as the UK and the US. To date, we have outline speaker commitments from **Baker & McKenzie**, **MM & K**, **Pett Franklin**, **Strategic Remuneration**, **Voestalpine** and **ButcherJoseph**, the US based investment bank. In addition, several Centre trustee members are offering their support for this popular event.

Programme-wise, two exceptional case studies are already in place:

Maintaining Employee Ownership While Achieving Growth, which features a US employee-owned company whose objectives are to maintain its employee-owned status while positioning itself for continued international expansion. Highlights include corporate restructuring considerations, designing management incentives, and improvements to its balance sheet. This double-header will be delivered by Keith Butcher, managing partner, ButcherJoseph & Co., assisted by the ceo of the US-based company. *Bundled employee shareholder rights at* Voestalpine, which is an Austrian metals company, is the second case study. More than 24,000 employee shareholders are involved in a structure which gives them voting rights in a collective voice via a foundation.

An informal delegates' dinner will be held in Vienna on the evening before the conference begins.

The 100 year old Herrenhof Hotel is situated in **Herrengasse,** near the Kohlmarkt and Golden Quarter in the old city centre, is classified by UNESCO as part of a World Cultural Heritage site and is a few minutes walk away from major historic landmarks, such as the Hofburg Palace, Café Central, the Spanish Riding School, the Sisi Museum, the state opera house, Burgtheater (Imperial Court Theatre) and the gothic St Stephen's Cathedral.

If you plan to either co-sponsor, speak or attend as a delegate, at the Centre's Vienna conference, please send an e-mail **without delay** to Centre international director Fred Hackworth. Email fhackworth@esopcentre.com, with copy to esop@esopcentre.com as getting more rooms at a similar price will be difficult, once our prebooked allocation is exhausted.

On the move

Daniel Helen has joined the Centre, replacing **Jacob Boult** who left to resume higher education. Centre chairman Malcolm Hurlston said: "Daniel has come through our selection process and received outstanding references. Last summer he completed a Masters at Oxford and is active as a trustee of the Tolkien Society. To strengthen the transition **Louisa Clark,** who joined for work experience and became pro-tem executive, will remain at the Centre until the end of January."

Chancellor of the Exchequer, George Osborne, announced that his next **Budget** will be unveiled on Wednesday **March 16** 2016.

Martyn Drake, ex director of share plan managers at Centre member **Computershare** (where he worked for 16 years), is now interim executive director at **Madra Consultants**. Martyn told newspad: "I have moved on to take advantage of new opportunities." His email contact address is mwd137@gmail.com.

David Kilmartin is now business development director, shareholder solutions, at **Capita Asset Services.**

Long-time **Credit Suisse** contact **Marcelo Victoria** has moved from the employee equity front to take up new responsibilities within the giant Swiss bank. **Adem Ferati**, who has attended several Centre international conferences, takes Marcelo's place as our main point of contact. His e-address is: adem.ferati@credit-suisse.com

Banking pay cash allowances outlawed

EU regulators have drawn the line between fixed and variable pay: the bonus cap will be allowed no exemptions above a small threshold level and cash allowances will be closely scrutinised to clamp down on attempts to get round the rule. The **European Banking Authority (EBA)** issued its final guidelines on senior employee remuneration. While the standard-setter for EU banking supervision gave leeway to smaller banks through a few exemptions, it makes it clear that the ban on bonuses of more than twice fixed pay will be enforced. The guidelines ensure "that institutions calculate correctly and consistently the so-called bonus cap by setting out specific criteria for mapping all remuneration components into either fixed or variable pay and detailing how specific remuneration elements such as allowances, sign-on bonuses, retention bonuses and severance pay are to be recognised," said the EBA. This ruling will force the big City banks and finance houses to rethink their remuneration policies for senior staff. Critics claim that banking base pay is set to soar if employers can only award bonuses of up to 100 percent of base pay without specific shareholder approval from now on.

In an effort to clarify EU bonus requirements put in place after the financial crisis, the EBA clarified that limited exemptions could be introduced under specific criteria, but only for payouts in instruments and for small, "non-complex" institutions. For example, an employee receiving a bonus of £3,000 in a small bank shouldn't be subject to strict deferral rules, the EBA added.

The regulator's stance on cash allowances, which depend on seniority and are known as role-based pay, is detailed in the final guidelines. The EBA leaves little room for interpretation, or for banks to use allowances to bolster total compensation above the cap: "Remuneration is either fixed or variable; there is no third category. The effectiveness of risk alignment would be significantly weakened if institutions made excessive use of allowances." Finance houses need to be able to justify the use of any variable remuneration element, including allowances, retention bonuses, guaranteed variable remuneration and severance payments, the EBA said.

US Eso employee participants still rising

There were almost 6,800 US Esops at the end of 2013, with 10.6m ***active**** plan employee participants and $1.23trn in plan assets, said the California-based **National Center for Employee Ownership (NCEO).** It recorded a slight increase in the number of active participants and the value of plan assets has been going up too. While 2,079 fewer individual Esop plans were filed in 2013 compared to 2002, a decade previously, the *total* number of participants increased from 10.2 to 13.9 m over the same period. Currently employed workers covered by an Esop (active participants) had increased from 7.9 m in 2002 to 10.6m. In addition, there were 2,528 'Esop-like plans registered in the US, almost all of which were profit-sharing plans, added NCEO. Esop-like plans include profit sharing plans invested primarily in company stock and stock bonus plans that include substantial holdings of company stock. Public companies represent eight percent of ESOPs and around 79 percent of plan participants.

Since 2002, the US General Social Survey has asked respondents if they get stock options at work, which revealed that the percentage of all private sector workers receiving options fell from 12.3 percent in 2002 to 7.2 percent in 2014; equivalent to 8.5m employees, compared to 13.4m in 2002. "New shareholder approval rules, growing concern with dilution, and new accounting rules are the primary culprits," said NCEO. "Unfortunately, the GSS data does not tell us how many people get restricted stock and similar equity grants, although we know that with changes in accounting rules for stock options in 2006, many companies shifted to these awards."

Most of these statistics are in the newly updated Statistical Profile of Employee Ownership online, and more tables will be published in the NCEO's January-February members' newsletter, the Employee Ownership Report.

**Active participants include any employees currently in work covered by a plan and who are earning or retaining credited service under a plan. This category includes any non-vested former employees who have not yet incurred a break in service. Active participants include individuals who are eligible to elect to have the employer make payments to a Section 401(k) plan.*

Bonus corner

WHSmith ceo, Steve Clarke, earned a 56 percent increase in his annual reward after the retailer enjoyed its best sales since 2002. Clarke's pay increased to £3.97m mainly because of a long-term share bonus that paid him £2.6m. His total pay included a £485,000 basic salary, £14,000 in benefits such as a company car allowance and a £783,000 annual cash bonus. Clarke's bumper pay package is nearly double that of M&S boss, Marc Bolland, who earned £2.1m after securing his first bonus in two years, and is way ahead of Mike Coupe's at Sainsbury's, who received £1.5m last year. Clarke received the maximum annual bonus, worth 160 percent of salary, after WHSmith's pre-tax profit hit £123m to beat a target of £119m with one percent sales rise. The retailer benefited from the adult colouring book craze, the publication of Fifty Shades of Grey author EL James's new book Grey and a rise in air travel that has brought more customers through the doors of its airport outlets.

The separate long-term bonus was calculated on payouts to shareholders, earnings per share and the performance of WHSmith's share price over the last three years. Clarke was able to cash in the maximum possible under the scheme: giving him shares - equivalent to double his 2012 salary - which have tripled in value since they were first set aside. The retail boss's potential payout for this year could be £3.6m if he hits all targets. That includes a basic salary of £550,000, 12 percent up on last year. He could earn a long-term bonus of shares with a face value of 350 percent of his base salary when they were first set aside.

US share buy-backs aid bonus cheats

When health insurer **Humana Inc.** reported worse-than-expected quarterly earnings in late 2014 – including a 21 percent drop in net income – it softened the blow by immediately telling investors it would make a $500m share repurchase. In addition to soothing shareholders, the surprise buyback benefited the company's senior executives. It added around two cents to the company's annual earnings per share, allowing Humana to surpass its $7.50 EPS target by a single cent and unlocking higher pay for top managers under terms of the company's compensation agreement. Thanks to Humana hitting that target, ceo Bruce Broussard earned a $1.68m bonus for 2014. Most publicly traded U.S. companies reward top managers for hitting performance targets, meant to tie the interests of managers and shareholders together. At many big companies, those interests are deemed to be best aligned by linking executive performance to earnings per share, along with measures derived from the company's stock price. However, these metrics may not be solely a reflection of a company's operating performance. They are often influenced through stock repurchases, said *Reuters*. In addition to cutting the number of a company's shares outstanding, and thus lifting EPS, buybacks also increase demand for the shares, usually providing a lift to the share price, which affects other performance markers.

As corporate America engages in an unprecedented buyback binge, soaring ceo pay tied to short-term performance measures like EPS is prompting criticism that executives are using stock repurchases to enrich themselves at the expense of long-term corporate health, capital investment and employment. A Reuters analysis of the companies in the Standard & Poor's 500 Index found that 255 of those companies reward executives in part by using EPS, while another 28 use other per-share metrics that can be influenced by share buybacks. In addition, 303 also use total shareholder return, essentially a company's share price appreciation plus dividends and 169 companies use both EPS and total shareholder return to help determine pay.

EPS and share-price metrics underpin much of the compensation of some of the highest-paid ceos, including those at **Walt Disney, Viacom, 21st Century Fox, Target Corp** and **Cisco Systems**. Very few S&P 500 companies disclose in their proxies whether they exclude the impact of buybacks on per-share metrics that determine executive pay. Humana would not say whether it adjusted targets to account for its buyback last year. In a statement to Reuters, the company said it sets annual per-share targets for executives that take into account the company's "capital allocation strategy," which includes buybacks, dividends, acquisitions and investments. Experts said Humana would not have reached the target without the $500m buyback.

Share buybacks by U.S. non-financial companies reached a record $520bn in the most recent reporting year. A Reuters analysis of 3,300 non-financial companies found that together, buybacks and dividends have surpassed total capital expenditure and are more than double research and development spending. Companies buy back their shares for various reasons. They do it when they believe their shares are undervalued, or to make use of cash or cheap debt financing when business conditions don't justify capital or R&D spending. They do it to meet the expectations of increasingly demanding investors. Lately, the sheer volume of buybacks has prompted complaints among academics, politicians and investors that massive stock repurchases are stifling innovation and hurting US competitiveness -- and contributing to widening income inequality by rewarding executives with ever higher pay, often divorced from a company's underlying performance.

The introduction of performance targets has been a driver of surging executive pay, helping to widen the gap between the richest and the rest of the US. Median ceo pay among companies in the S&P 500 increased to a record $10.3m last year, up from $8.6m in 2010, according to data firm Equilar.

US ceos last year were paid 303 times what employees in their industries earned, compared to a ratio of 59 times in 1989, according to the Washington-based **Economic Policy Institute.** Today, the bulk of ceo compensation comes from cash and stock awards, much of it tied to performance metrics. Last year, base salary accounted for just *eight percent* of ceo pay for S&P 500 companies, while cash and stock incentives made up more than 45 percent, according to proxy advisory firm **Institutional Shareholder Services**. At **Xerox Corp.**, revenue, net income and spending on research and development all declined last year, but the printer and copier maker's EPS target of $1.12 was unchanged from the prior year, and managers hit it exactly after $1.1 bn in share repurchases.

In 1992, Congress changed the tax code to curb rising executive pay and encourage performance-based compensation, but it hasn't worked. Instead, the shift is widely blamed for soaring executive pay and a heavier emphasis on short-term results. Companies started tying performance pay to "short-term metrics, and suddenly all the things we don't want to happen start happening," said Lynn Stout, a professor of corporate and business law at Cornell Law School in New York. "Despite 20 years of trying, we have still failed to come up with an objective performance metric that can't be gamed." Shareholder expectations have changed, too. The individuals and other smaller, mostly passive investors who dominated equity markets during the post war decades have given way to large institutional investors, who tend to want higher returns, sooner, than their predecessors. The average time investors held a particular share has fallen from around eight years in 1960 to a year and a half now, according to New York Stock Exchange data.

Companies like to use EPS as a performance metric because it is the primary focus of financial analysts when assessing the value of a stock and of investors when evaluating their return on investment, but it is not an appropriate target, as it's too easy to manipulate, many now say.

Company ownership and control:
Overseas Territories

Junior Foreign Office minister, James Duddridge MP, had a message for trustees on the company ownership register issue, following the joint ministerial council meeting of the UK and the Overseas Territories on December 1 & 2. He confirmed that "on the high priority issue of company transparency, the Territories agreed to hold company beneficial ownership information in central registers or similarly effective systems and to work with UK law enforcement authorities to develop timely, safe and secure information exchange processes for the purposes of law enforcement."

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