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it's our business

newspad of the Employee Share Ownership Centre

Centre targets world share plans regulatory burden

During recent weeks, the Centre has put forward to national governments and the **Organisation for Economic Co-operation and Development (OECD)** plans to reduce the regulatory burden on all employee share plans.

The problems were highlighted at successive Centre events by Justin Cooper of Capita and Mike Pewton of Global Share Plans and many relate to the international impact of the Foreign Account Tax Compliance Act (FATCA), which was devised in the US to reduce tax avoidance. In response, Centre chairman Malcolm Hurlston CBE re-engaged with the OECD, itself a participant at previous Centre world events and which is currently working on a Common Reporting System.

After arranging a meeting with the OECD in Paris, at which the Chairman was accompanied by Graham Rowlands-Hempel of Linklaters and Mike Pewton of GlobalSharePlans (now part of Solium), the Centre accepted an invitation to join the FATCA Business Advisory Group of the OECD. Essentially an intergovernmental organisation attended by officials rather than politicians, the OECD has a tradition of working with the practical world through its Business and Industry Advisory Council which is guided by expert advisory groups.

On May 26 the OECD held a meeting with member states and the FATCA Business Advisory Group to steer international implementation of the Common Reporting Standard through agreement on a detailed commentary prepared by officials. Capita provided the Centre with a detailed assessment of the commentary and Graham Rowlands-Hempel prepared a draft exemption which would approximate the treatment of all employee share plans with that planned for broad based retirement plans.

The chairman delivered the papers to the OECD and to the leader of the Business Advisory Group in advance of the meeting, at which the Centre was represented by regular Centre conference speaker, Sami Toutounji, employee equity partner at the **Shearman & Sterling** Paris office.

Although the meeting was billed as final and the OECD is rushing to get its standard in place before member states go too far in contradictory directions, all sides recognise that it will be a work in progress also as circumstances change. Progress and next steps will be reviewed in Rome by the Centre's international committee with Justin Cooper and Malcolm Hurlston CBE present. Copies of the Centre's documents will be available on the website.

In addition to the Common Reporting Standard the Centre engaged with OECD on apportionment, a key topic for all members concerned with internationally mobile employees. Apportionment was agreed to have been expertly conceived but its implementation at national level needs close watching. Expert views have been expressed by Mike Pewton and Sami Toutounji: the Centre committed to seeing how it could help OECD by looking out for and reporting back any deviations. The work of OECD affects not only its members, who are broadly speaking the 34 richest countries in the world, but also most non-members who aim to follow OECD.

The OECD expressed warmth towards the development of employee share ownership worldwide and readiness to promote it within its existing programmes. After Rome the Centre will be looking for members who are ready to participate in this epochal programme.

From the Chairman

The shareholder spring may be moving to a winter of discontent. Fred Hackworth's assessment of where we are now (Executive equity pay-outs & golden hellos enrage shareholders, page 2) shows little change in the underlying attitudes of top pay recipients, the robber barons of the world economy. War for talent? The most obvious talent is for self-enrichment. The Centre will see the assessment is widely distributed. Shareholders are no longer meek however and we shall see many more battles to come. Employee shareholders need to have their voice too; they are the natural allies of other owners of companies rather than the patsies of myth-making top management. Patrick Neave of ABI will update us in Rome next week; but what more do you think could be done? Write to fhackworth@esopcentre.com

Malcolm Hurlston CBE

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Eaga Trust to promote Eso

A change of direction is expected at the **eaga Trust** as it moves to appoint a new general manager who will promote employee ownership in line with the Trust's mission as well as serve the many thousand direct beneficiaries. The eaga Trust grew out of the employee-owned home heating business developed by John Clough, which was floated and then acquired by Carillion in 2011. Since then the trust has diversified out of Carillion stock (no longer an exemplary employee ownership stock) and supported former company employees with a range of health and leisure services.

Now the plan is to take a larger role both financially in employee ownership and in advocating its merits. This will be among the tasks of the new general manager, while investment and portfolio management rest with the board. Ahead of the recruitment, the trust has strengthened its board with the recruitment of new directors including Maoiliosa O'Culachain, a Centre regular, and Ruth Wooffinden, who worked with Capital Strategies.

John Clough expressed his vision as a better way of providing meaningful and sustainable employment for people. Through employee engagement and ownership in the workplace, he believes that people who have a stake in their business will be more engaged, higher performing and ultimately successful…. and that they should share the rewards.

The trust is based in Newcastle, but the future scope will be national for an entrepreneurial general manager sympathetic to the ideals who will be backed by an active and ambitious board. At float the trust held over a third of eaga stock which became Carillion stock and this holding, now diversified, underpins the trust's activity.

Working with the Centre features in the new job description and the Centre welcomes the trust's new plans, which will supplement the advocacy of the sector as well as provide backing for new employee enterprises.

Executive equity pay-outs & golden hellos enrage shareholders

A new wave of shareholder activism exploded over the UK corporate scene last month after investors in some of the UK's best-known companies used their annual general meetings (agms) to protest over what they believe to be excessive equity reward in the boardroom.

Standard Chartered became the latest bank to face investors' wrath over executive total reward, as *41 percent* of its shareholders voted against its remuneration policy. Standard Chartered admitted that tough market conditions had continued into the first three months of 2014 with operating profits down by a "high single digit percentage."

This rebellion came just after **Barclays** faced a similar revolt at its agm with *34 percent* of investors failing to back its directors' remuneration report.

Rightly or wrongly, a significant percentage of shareholders in major FTSE100 companies feel that senior executives are 'troughing' again on the reward front, after being forced to exercise restraint for several years in the wake of the financial crash of 2008-9.

Then **HSBC** tried to head off dissent from its investor institutions, who had got wind of its plan to hand over a bonus of up to £2.25m to its chairman, Douglas Flint, which was due to be exposed at the agm in its pay policy report for the coming years. HSBC climbed down and told the institutions in advance of the agm that it would cap any bonus paid to Flint at £1m. The bank said any payment made to Flint would be a *one-off* to reflect his work on regulatory reforms. Nevertheless, *21 percent* of investors who voted still opposed HSBC's vote on its pay policy for the next three years, not enough to block its plans but enough to rattle shareholder cages. Pay is "wildly out of control", said John Farmer, a private shareholder, at HSBC's agm. "You are not as a bank delivering an impressive return. Please would you go away and rethink the issue totally." He rejected the bank's claim that staff would leave if they were not paid as much as at rivals. "If these people want to walk away, let them, and find someone else who will do the job for them," he said to applause from other investors. One shareholder noted that HSBC's top five executives earned an average £6m per year each. HSBC, Europe's biggest bank, defended its pay and changes to structure that mean more pay is now in shares and deferred for five years, and can be clawed back if problems are spotted at a later date. "We look very carefully outside at what's being paid. We pay way under what the American banks pay ... we have to be careful not to destroy the business from which you get profits and dividends," said Simon Robertson, chairman of HSBC's remuneration committee.

Dwarfing even these cases however, was the biggest shareholder revolt of the year so far, at the agm of engineering company **Kentz,** which is now being forced to tear up its pay plans for its senior executives after they were rejected by investors. It was the first time that investors have voted down a company's pay policy – which covers proposals for paying staff over the coming three years. The binding vote on future pay was introduced last October by Business Secretary, Vince Cable.

In almost all these cases, what is arousing shareholder anger is not the fixed element in top executives' annual reward packages – the base salary – but variable pay, especially the often huge equity incentive packages on offer, or already awarded, to the top brass.

Some long term incentive plans vesting this year were formulated between 2009-11 when stock markets were struggling to recover from the great financial crash. So the lucky corporate executives concerned are taking away lorry loads of cash, as share prices have rocketed since those bleak years. Equally, new share option or deferred share-based executive incentive plans are being criticised as being allegedly potentially too generous and/or too undemanding in performance terms.

A shoal of newly disclosed *golden hellos* – usually large deferred share awards to incoming executives joining FTSE 100 companies, to compensate them for the loss of unvested share awards when they left their previous employer - churned an already turbulent sea. *Golden hellos* are frowned upon by the **Association of British Insurers**.

Kentz shareholders rejected not only the pay policy but the remuneration report too, which covers bonuses and salaries paid out during the past year. Although this second vote is not binding it sends a clear signal to the company about investors' views on its pay deals. It was the first time that Jersey-based Kentz had put its pay policies to a vote - and the first time that any company on the London stock market had both reports rejected by shareholders. More than *51 percent* of shareholders voted against the remuneration policy, a level of dissent which rose to 57 percent when abstentions are included; *54 percent* voted against the remuneration report, rising to 58 percent including abstentions. "Our shareholders have spoken and their message is clear," the company said. "We will consult further with them to make sure we fully understand their concerns and will revert with a new remuneration policy – taking full account of those concerns – in due course. The remuneration committee has already begun consultations with our shareholders to determine how their concerns can be best addressed."

The votes on pay policies are being closely watched by companies and their remuneration advisers because the policies are binding. **Hiscox,** the Lloyds insurance broker, suffered a major rebellion against its future remuneration policy at its agm, when *42 percent* of investors voted against its pay policy. Curiously however, Hiscox's remuneration report – addressing the previous year's executive rewards – was approved with *97 percent* support.

Consumer goods giant **Reckitt Benckiser** suffered a major shareholder revolt too with more than *one in three* investors actively voting against the executives' remuneration report at the company's agm. A further one in five voted against the FTSE 100 company's forward-looking remuneration policy. A spokesman for Reckitt Benckiser said: "We continue to engage in dialogue with our shareholders so that we can either address their concerns or explain why we believe the policy is the right one."

At gold company **Centamin** – a focus of the 2012 shareholder spring revolt – *40 percent* of its shareholders failed to support the pay report.

Shareholders at Pfizer takeover target **AstraZeneca** revolted against reward proposals for top executives too, with more than *40 percent* of the pharma giant's investors refusing to support its remuneration plan at its agm.

National Express too was dealt a bloody nose over executive reward, as the transport heavyweight became the latest company to feel the brunt of what is shaping up to be a second *Shareholder Spring.* Almost *36 percent* of shareholders who voted at its agm failed to back the company's annual report on remuneration, amid concerns over an additional long–term incentive plan agreed with National Express ceo Dean Finch as part of a retention deal signed off in the summer of 2012. The group said in a statement: "We are pleased that both the votes on National Express's executive remuneration have been passed. The binding vote on the remuneration policy in particular passed with a significant margin. We do note however the vote on the Company's remuneration report. Following the meeting we will engage further with shareholders and the relevant governance bodies to discuss their concerns, and seek to address them in due course."

Online grocery business **Ocado** felt shareholders' ire, with *one in five* going against its remuneration report and almost *one in eight* voting against the remuneration policy. Ocado shareholders are concerned by the FTSE 250 group's five-year growth incentive plan, which could deliver shares currently worth £18m to ceo Tim Steiner if the company meets tough targets. These include boosting the shares from the current price of 311.3p to 1411p, which would put the company into the FTSE 100 and deliver an £80m-plus payout to Mr Steiner. Ocado stressed that to deliver such bonuses the company would have to outperform the FTSE 100 index by 20 percent a year.

Tullett Prebon faced angry shareholders after the City broker awarded ceo Terry Smith a £2.2m annual bonus amid falling revenues and profits. Shareholders speaking for more than *35 percent* of the votes cast at its agm opposed Tullett's remuneration report.

However, **ITV** ceo Adam Crozier bucked the trend when he saw off a shareholder revolt over executive pay after almost a quarter of investors failed to support his £8.4m payout last year.

About *23 percent* of investors either voted against accepting the broadcaster's remuneration report or decided to abstain at ITV's agm. Chairman Archie Norman, the former Tory minister, had been forced to defend Crozier's pay – which included the vesting of almost £4m of shares given as a *golden hello* when he joined from Royal Mail – as disgruntled investors aired their grievances at the meeting. Norman said Crozier's unusually large remuneration was because of a number of share schemes vesting, and that the transformation of what had been a financially-stressed ITV justified the payout level. Crozier's pay scheme was criticised by leading investor Royal London. It said it was concerned that Crozier – who was awarded £8.3m in 2013 – could earn up to £7.2m annually in future after a rise in his basic pay. Royal London said the sum was "too high" and voting agencies Manifest and Pirc, who advise shareholders on such issues, both criticised ITV pay policies.

More trouble over *golden hellos* brewed with the news that taxpayer-owned **Royal Bank of Scotland (RBS)** had given its new finance director almost £2m in shares on his first day in the job at the bailed out bank. Ewen Stevenson was awarded 584,506 shares, which will be released to him over three years to buy him out of pay deals he left behind at his previous employer, **Credit Suisse**. He is on an annual package worth £1.9m a year, made up of an £800,000 salary, £280,000 in pension contributions, £26,250 in benefits and £800,000 in 'allowances,' a vehicle used by banks to get round the EU bonus cap. The government has refused to allow RBS to pay bonuses of 200 percent of salary, subjecting the bank to the full EU cap that limits them to 100 percent of salary. This means that Stevenson could receive £3.8m if he meets all the targets for his bonuses. Recruited after Nathan Bostock quit to join the UK arm of the Spanish bank Santander, Stevenson took on the role as the bank battles to return to profitability after reporting more than £8bn in losses for 2013.

Standard Chartered hired a new finance director, naming the former finance director of **Vodafone,** Andrew Halford, to replace Richard Meddings. Halford will receive a *golden hello* worth £2.8m of shares to buy him out of outstanding pay deals from his previous employer, an £850,000 salary and allowances of £700,000.

One in three **BG Group** investors voted against the company's remuneration report after its new finance director too was handed a *golden hello* of shares which could be worth £4.3m. Simon Lowth took up his job last November after leaving the same position at AstraZeneca, and BG said it had compensated him for losing out on share options at his old firm. A spokesman for BG, which was once part of British Gas, said that Lowth would only obtain the value of the shares if various performance conditions were met over three years.

Tesco ceo Philip Clarke and other top managers missed out on their annual bonuses for a second year running after failing to reverse falling profit at Britain's largest grocer. Tesco said last year no bonuses would be paid unless profits grow. Trading profit fell six percent to £3.3 bn in the year ended February 22 as more Britons defected to budget retailers Aldi and Lidl, and international earnings sank. The fourth-quarter's 2.9 percent drop in UK same-store sales was the worst performance since 2001. However, Clarke and cfo Laurie McIlwee received an increase in their *total* remuneration as a result of higher pension contributions by the company. Clarke's reward rose to £1.63m from £1.28m last year, boosted by a £391,000 pension addition, the report showed. McIlwee's reward went to £1.54m from £1.37m.

Chance to partner the Centre in EU project

The Centre is looking for a partner on its EU workshop project who can offer hospitality and support for the event in central London **Friday November 28.** The Centre, which is the Commission's sole UK partner in this latest 'Pro Employee Financial Participation (Eso)' project will offer speaking slots to a number of Centre members and admission to this all-day seminar will be free of charge. This workshop will be chaired by Malcolm Hurlston, CBE. The conference room must be able to hold at least 50 people. Senior European Commission officials and delegates from the key EU member states are expected to attend, so there is considerable prestige to be gained from association with this event. The workshop agenda will cover many of the following topics:

- A summary of the different types of employee share ownership available in UK based companies
- UK examples of **economic democracy** – Are these entities local in focus, are there welfare agreements and what is the role in them of trade unions?
- **Case studies** of mixed enterprise ownership, particularly ex state sector mutuals
- The **effectiveness** of public health mutuals in terms of efficiencies, absenteeism, employee sense of well-being, lower staff turnover etc.
- Retaining **social values** in mixed ownership companies formed out of former state owned enterprises: Examples – Royal Mail and BT (the former British Telecom)
- Company **succession** using **employee share ownership** and its contribution to economic democracy
- **Employee-owned** companies (more than 50 percent employee owned) in the SME sector - how decision-making functions; role of the unions; example of direct industrial/commercial democracy?
- New UK approaches to lending to Small & Medium sized Enterprises (SMEs), social investment funds, crowd-funding etc, via: *Pooling more private capital for productive investments, e.g. through venture capital markets. *Exploring and developing innovative ways of securing additional private financing for social investment, e.g. through public-private partnerships. *The efficient re-allocation of capital within the economy in order to benefit communities and society, as well as to generate returns.

Those members who find this outline agenda to their liking should contact **Harry Atkinson** at Centre HQ Tel: **+44 20 7239 4971** or email address: hatkinson@hurlstons.com if they are prepared to offer the **venue** for November 28. In addition, Harry will give pointers on agenda issues.

International Director **Fred Hackworth** will handle ***solely*** the workshop agenda content and attendance requests, so contact him at email address fhackworth@hurlstons.com if you wish to speak at this event or suggest possible programme additions, or other format changes.

The selected Centre member who offers to host this seminal event will be offered a prime speaking slot.

Direct Line share schemes

The insurance company **Direct Line Group** has adopted several employee share ownership schemes following its part-flotation away from **RBS** in late 2012. The company, which owns brands like Churchill and Green Flag, as well as Direct Line, now operates a Buy-As-You-Earn (BAYE) plan under which employees can buy up to £125 worth of shares each month, with the Company matching one free share for every two purchased. The BAYE plan has a 17 percent participation rate at present. At the end of 2012 all staff were given the chance to receive £250 worth of free shares and more than 90 percent accepted them. In addition, almost 5,000 Direct Line employees participate in the annual incentive plan (AIP). The corporate performance measures for the AIP are consistent for all employees and executive directors (though the weightings attributable may differ), explained a company spokesman. Although the AIP pays out 100 percent in cash for employees below middle management level, for those at strategic leader status and above 40 percent of the pay-out is in deferred Direct Line shares which cannot be cashed in for at least three years. RBS has to sell off almost all its remaining stake (28.5 percent) in Direct Line before the end of this year and will do so through a placement with City institutions.

Game Retail, which plans a £400m flotation on the London Stock exchange, is offering its employees up to £3,600 worth of free shares as part of a staff incentive plan. Management will be allocated a four percent stake in the business after flotation, In addition, Game Retail, in a move reminiscent of **Saga**, will offer 18,000 reward programme customers £100 worth of *virtual* free shares. Ceo Martyn Gibbs explained that the loyalty shares could be used twice a year to pay for video games, though the value of the virtual shares would be pegged to the stock market value. The 35 percent free float is being organised by Game Retail owners **Elliott Advisors**, a US hedge fund, which bought the business out of administration a few years ago.

TSB

The partial flotation of **TSB** was scheduled for later this month (June) after the European Commission finally gave the green light for the sale. TSB owner **Lloyds Banking Group** completed its line-up of banking advisers for the stock exchange listing. It is believed that an initial 25 percent of TSB will be sold off as a first tranche. The Commission has extended until the end of 2015 the deadline by which Lloyds, which is now only 25 percent owned by taxpayers, must sell off TSB’s 631 branches. It emerged from an off-the-record briefing that part of the share sale IPO will be offered to employees, on a priority basis with an incentive attached, though details are yet to be confirmed.

Royal Mail share price hiccup

Business Secretary Vince Cable could be forgiven for feeling relieved when the **Royal Mail** (RM) share price tumbled by almost ten percent at one stage on the day the recently privatised postal service announced its annual results, after warning that it faced increasing competition. Cable has been hammered in the media for weeks on end by allegations that he sold off RM far too cheaply at 330p per share. While the post-results share price still stood at 525p as *newspad* went to press, the sudden mini-collapse in RM’s share price (from a recent peak of 615p) was a salutary message to both politicians and 143,000 ‘postie’ employee shareholders alike that being a shareholder is not necessarily a one-way ticket to wealth.

Top brass bonuses axed at M&S

Marks & Spencer axed £3m worth of bonuses for all its senior executives after profits fell for the third year in a row, down by almost four percent. Ceo Marc Bolland announced that he and his management team will forgo all bonuses because of the poor results. Disappointing non-food sales mean annual profits to the end of March were £623m, down from £665.2m a year earlier, M&S said. During his first three years in the job Bolland received about £7m in bonuses, but the bonus scheme for the 65,000 M&S store staff is likely to be unaffected as their award is separate and discretionary.

Bonuses slashed at Network Rail

Network Rail has cut the annual bonuses it pays to its senior executives from a potential 160 percent of their salary to a maximum of 20 percent. Directors’ salaries will not be increased to compensate for the cut in bonuses, the company added. Network Rail (NR) said bonuses will be deferred for three years and could even be eliminated if performance targets - particularly on safety - are not met. The reformed bonus scheme is intended to run for the next five years.

It follows the agreement of a new £38bn five year infrastructure plan agreed between NR and the government. The new bonus structure will be voted on by NR’s members - the equivalent of its shareholders - at the company’s agm in July. NR has up to now used a complex bonus structure for senior executives that could have seen them earn a maximum 160 percent of their salary in bonuses if performance targets were met. The bonuses are split into two: a long term element worth 100 percent of their annual salary and an annual element worth up to 60 percent of their salary. NR’s top five senior executives were last year awarded bonuses equivalent to 17 percent of their annual salaries. The executives could have received 60 percent of their salary, but missed punctuality targets meaning they lost out on the full amount. All five waived their annual bonuses in 2012 after a fierce political row. Mark Carne, who was appointed ceo of the rail infrastructure firm in September on a salary of £675,000, said he was confident of being able to attract and retain the best people despite the dramatic fall in bonus payments. NR chairman Richard Parry-Jones added: "We believe that at the start of a new five year programme, the time is right to reconsider the bonus structure for our executive directors. The potential to earn large bonuses is no longer sustainable in the environment in which this company operates."

Bonus cut after £55m fine

The chief executive of the City broking firm **ICAP** had his annual bonus slashed in the wake of its £55m fine for its role in the Libor rate-rigging scandal. Michael Spencer, a former Tory Party treasurer, was awarded a cash-and-shares bonus for last year worth £700,000, a cut of 75 percent on his payout for 2012. Some of the remuneration decisions were contained in a letter from Charles Gregson, ICAP's chairman, to the company's ten biggest shareholders and subsequently leaked to the media. Insiders said that ICAP's board had debated whether it was appropriate to award Mr Spencer a bonus for a year in which the company had been forced to pay substantial sums to financial regulators in the UK and US. Directors reached a consensus that paying a significantly-reduced bonus would reflect the seriousness with which the company viewed the regulatory breaches, but acknowledged Mr Spencer had had no knowledge of, or involvement in, those breaches. ICAP's regulatory settlement was announced last September, making it the fourth financial institution to be fined for its role in the Libor affair after Barclays, Royal Bank of Scotland and UBS. "The remuneration committee considered at length what impact the settlements with the [Commodity Futures Trading Commission in the US] and the [UK Financial Conduct Authority] should have on relevant senior management's compensation," the letter from Mr Gregson said. "The executive directors' bonus pool for the year has been impacted by lower-than-budgeted trading profit and further reduced by the full amount of the exceptional costs relating to the Libor settlement." Mr Spencer, who is one of the City's wealthiest men, has not had an increase in his base salary of £360,000 for 15 years and his bonus has been reduced by a greater proportion than those of his colleagues. The remuneration decisions disclosed in the letter include one-third reductions in the bonuses of two other senior ICAP executives, Iain Torrens and John Nixon.

CONFERENCES

ROME: June 5 & 6

Forty people, from seven countries, have registered for the Centre's 26th annual employee equity plans conference in Rome on **Thursday June 5** and **Friday June 6.** The conference hotel - the **Residenza di Ripetta** located in the centre of the 'eternal City' - is full, so late registrants are being dispersed to other central Rome hotels. Presentations - from Centre member firms **EY** and **White & Case** – completed the programme. **Ceri Ross** from EY will present the results of the firm's oven-fresh 2014 global share plan survey, which includes a report from the German Share Plan Institute, while **Nicholas Greenacre** from White & Case will discuss what can be done to restore plan promoters' confidence as the regulatory tide engulfs employee equity plans in Europe. Other speakers represent lead sponsor **Equiniti; Association of British Insurers; David Craddock Consultancy Services; ESOP Centre; European Trade Union Confederation; The HR Partners; KPMG; Lewis Silkin; Pearson; Pett, Franklin & Co; Strategic Remuneration** and **SunPower Corporation (US).** Check on the Centre website for any last minute updates to our Rome programme:
www.esopcentre.com/event/diary-date-rome-2014/.
The Centre thanks our Rome sponsor, **Equiniti**, which is helping to organise this event. *Equiniti provides award-winning executive, Sharesave & SIP plans and a wide variety of other employee benefits management services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan. Equiniti's clients vary in size, from 30 to more than 300,000 employees and span both FTSE 350 and overseas listed companies. Contact John Daughtrey, head of employee benefits business development, at:*
john.daughtrey@equiniti.com
website: www.equiniti.com
The conference e-brochure is co-sponsored by two Centre trustee members: **Appleby Global** and **Bedell Group**, both based in the Channel Islands.
The hotel, a historic converted C17th convent, is part of the Royal Demeure Luxury Hotel Group and is located a stone's throw from Spanish Steps, the River Tiber and Via del Corso, the ancient shopping street. The hotel website is at *http://tinyurl.com/nc9ksdv*
Your Rome contact is Centre international director Fred Hackworth. Email fhackworth@hurlstons.com with a copy to esop@esopcentre.com

DAVOS: February 5 & 6 2015

Potential speakers and conference sponsors are invited to contact international director Fred Hackworth to discuss the presentation slots available for the Centre's 16th Global Employee Equity Forum, which takes place at the Hotel Seehof in **Davos Dorf** on **Thursday February 5** and **Friday February 6** next year. After more than a dozen years, this pivotal Centre event is moving home from the Steigenberger Belvedere to the four star Hotel Seehof. The Seehof is superbly located - less than 100 metres from the Parsenne Funicular and ski lifts - and contains a Michelin starred restaurant. The Belvedere lifted its room charges dramatically for our conference last February and this convinced the Centre that our conference package prices would no longer be viable for 2015. The new deal obtained from the Seehof enables the Centre to reduce attendance fees next year, while maintaining the high standards of facilities and hospitality that members have come to expect from Davos. The smallest bedrooms we will offer at this event will be $25m^2$.

Conference package prices (per delegate) are:

Speakers:

Plan Issuers **GBP 575**; Practitioner **GBP 855**

Delegates, Centre members:

Plan Issuers **GBP 635**; Practitioner **GBP 975**

Delegates, non-members:

Plan Issuers **GBP 675**; Practitioner **GBP 1475**

**No sales tax is payable on these fees.*

The Davos 2015 package includes: two nights' accommodation (February 4 & 5) in the four-star Hotel Seehof; breakfasts and lunches; admission to all conference sessions + the annual cocktail party on Thursday evening; and a bound delegate handbook. There will be an optional pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. Talk to Fred about your Davos plans during our Rome conference, or send him an e-mail at fhackworth@hurlstons.com. The hotel website is *www.seehofdavos.ch*.

On the move

Centre member **Appleby** told *newspad* that it is the first offshore firm able to support China-based clients on the ground with their legal and fiduciary needs. This follows the award by Shanghai of a new licence to practise offshore. Appleby has had a representative office in Shanghai since 2012, delivering fiduciary and administrative services to Chinese clients. An Appleby spokesman said: "Being awarded this licence means our offshore legal services are immediately available to Chinese clients and this proximity is a key milestone in our strategic plan. China is a thriving market and one that we understand deeply since we have been advising clients on their Chinese inbound and outbound transactions from Hong Kong for almost 25 years."

Partner Malcolm Moller will lead the development of Appleby's business in China, supported in Shanghai by associate, Kate Li Kwong Wing, and fiduciary head of business development in China, Scott Reid, as well as by its Greater China team.

Global law firm **Linklaters LLP** has announced that Michael Kam has joined the US executive compensation and benefits practice as Senior Counsel within the US corporate group in New York.

Michael, formerly Partner at Weil, Gotshal & Manges, is well-established in the executive compensation space. He brings with him over 30 years' experience advising clients in all aspects of executive compensation and benefits, including corporate, securities and tax laws, stock exchange listing requirements and ERISA. Michael will serve as National Practice Head of the US executive compensation and ERISA group.

Jeff Norton, Linklaters' US Co-Managing Partner, said: "Michael is a great addition to our US law practice. His appointment is a further step in the development of Linklaters' global employment and incentives team, strengthening our reputation to meet clients' needs on all aspects of cross-border advisory and transactional matters."

Linklaters has built a global Incentives practice with experienced practitioners in 29 offices across 20 countries; its multi-jurisdictional reach allows it to advise over 200 companies on their global share plans and help them to launch plans in over 150 countries.

Bedell Cristin was named 'Offshore Law Firm of the Year' at the *Chambers Europe Awards for Excellence 2014*. It was the second such award within a year: last October the firm was named 'Offshore Law Firm of the Year' in the inaugural Legal 500 UK Awards 2013.

Centre member Field Fisher Waterhouse has changed its name. The law firm, which has more than 150 partners, is now called **Fieldfisher**. Just two months ago it absorbed Manchester based Heatons LLP. Fieldfisher's contact details are: Tel: +44 (0)20 7861 4000 Fax: +44 (0)20 7488 0084 Email: info@fieldfisher.com.

Newspad welcomes your employee share plan news stories. Contact us to highlight your or your clients' share plan maturities, share plan innovations, personnel changes and business development activities. We also welcome legal, regulatory and technical updates covering all-employee, discretionary and executive share plans. Please contact *newspad* editor Fred Hackworth at fhackworth@hurlstons.com to discuss your stories.

Ethical business

The Centre is reviewing how modern corporates define their business 'responsibilities,' particularly in terms of their focus - or lack thereof - on employee share ownership. An example is the latest **Old Mutual** *Responsible Business Report*, which highlights the evolution of the Group strategy to include responsible business (RB) and details the company's progress across the five pillars of the RB programme: customers, responsible investment, employees, communities and environmental management. The report builds on the company's 2013 RB report (*Investing in the Future*). Old Mutual decided to make its commitment to responsible business explicit after consulting with stakeholders over the past twelve months. The report underlines Old Mutual's belief that the nature of the services it provides customers means that it cannot conduct its business without thinking about the impact it has on society. However, the report misses the opportunity to connect employee share ownership with the company's wider social contribution.

Centre member **Computershare**, a leading financial services provider for the global securities industry, has announced that seven of its clients were winners in this year's Global Equity Organization (GEO) Awards, which celebrate excellence by recognising companies who have demonstrated leadership and dedication to employee stock plans. Computershare client successes included:

- **Amadeus IT Holding S.A** won the award for *Best Plan Effectiveness*
- **Kofax** won the award for *Most Creative Solution*
- **Merlin Entertainments** and **Nokia** received the award for the *Best Use of an Employer Share Plan in a Corporate Action*
- **Rio Tinto** took home two awards for *Best Plan Communication* and *Best Use of Video Communications*
- **Royal Dutch Shell** won the award for *Most Innovative and Creative Plan Design*
- **Siemens AG** won the award for *Best Plan Communication*

EIS listing trap exposed

A recent decision of the First-Tier Tribunal illustrates the possible pitfalls for those intending to qualify for, and retain the benefit of, relief under the enterprise investment scheme (EIS), said Centre member **Deloitte**. The case concerned the forfeiture of relief in relation to the EIS, and in particularly whether a 'change of control' and 'disposal' had occurred. The taxpayers subscribed for shares in a company which met all the EIS qualifications. However, it was decided that the business would benefit if it could obtain an AIM listing. A similar company with such a listing was identified and it made a share for share offer for the private company so as to preserve the listing. Clearances were received from HMRC confirming that the share exchange was made for bona fide commercial purposes and the 'transaction in securities' provisions did not apply. The shareholders of the private company ended up with 78 percent of the shares of the AIM listed group. However, the Tribunal concluded that, as a matter of law they had ceased to control the original company, and it followed that they lost their EIS relief. The Tribunal could see no purpose in the way in which the law had been framed, but it was unambiguous, so a purposive interpretation could not be applied. See http://deloi.tt/1koXcXY

The **European Court of Justice** (ECJ) ruled that the management and administration of defined contribution (DC) pension funds is exempt from VAT, said *Taxand UK*. DC schemes, whereby investors' retirement income depends on the performance of their investments, are increasingly familiar arrangements. The UK and other EU member states have generally treated these management and administrative services as being subject to VAT and will need to revisit their current VAT treatment of these services. Pension funds typically recover little of the VAT they incur due to the nature of their investment activities. So the opportunity for reclaiming VAT paid in the past, as well as no longer paying VAT on fund management and administrative services in the future, may well be significant. Even employers who are generally entitled to reclaim all the VAT they incur may benefit from this ruling if they operate DC pension funds for their employees since some of these services would have been supplied to the fund trustees (who have limited VAT recovery) rather than the employer itself. Fund managers will be at the forefront of dealing with these claims, having charged funds and other businesses VAT on services which are now ruled to be exempt. Depending on the member states' approach this is an issue that is likely to take several years to resolve particularly as there have been other recent developments in the EU VAT treatment of pensions. Last year, **Wheels Common Investment Fund Trustees** lost its argument at the ECJ that the management of defined benefits (DB) pension schemes should be exempt from VAT. DB schemes, such as final salary schemes, typically guarantee a certain level of income to investors during their retirement and are becoming much rarer than DC schemes. A further ECJ judgement in *PPG Holdings* said that VAT recovery rules in some member states may have led to employers recovering less VAT than they were entitled to.

Tobin Tax

The European Court of Justice has dismissed the UK's initial challenge to the Financial Transaction Tax (FTT or Tobin Tax), reports **Cameron McKenna**. The ECJ concluded that at the present time the UK can only challenge the decision of the Council of the European Union to authorise enhanced cooperation regarding the FTT. However, on the grounds it presented, the UK does not have a case against this decision. As there is no European law in place yet regarding the FTT, simply a proposal for it, a challenge against the FTT itself or elements of it is premature. The ECJ's ruling that the UK's challenge is premature will not prevent the UK later challenging any European legislation on the FTT eventually adopted by 11 member states under the enhanced co-operation procedure. It follows that the ECJ's judgment is not dismissing the UK's arguments in substance and these should be able to be argued by the UK once the FTT Directive has been adopted. The UK government will be hoping that the continuing threat of a challenge to the FTT will be taken into account by policymakers in designing the version of the tax to be adopted by the European Parliament.

On February 14 last year the European Commission published its detailed proposal for a radical and wide ranging Financial Transaction Tax. The scope of the proposed FTT would be broad and its impact on the City would be significant.

Many charity executives paid more than £60K

An audit of pay scales among charities in England and Wales found that 14,942 employees were paid more than £60,000 a year. Of these, more than 2,600 were paid over £100,000 a year, and 55 more than £250,000 a year in 2011, according to the review by the **National Council for Voluntary Organisations (NCVO).** The 40 page review urged charities to be more transparent about how much they are paying senior staff and who is benefiting, and warned that donors should "no longer have to dig around like detectives to unearth the financial facts to inform the choices of charities to support." It recommended that all charities publish the precise remuneration, job titles and the names of their highest-paid people. Currently, they only have to publish numbers of staff in pay bands without naming relevant staff. The requirement should be mandatory for charities with gross annual incomes of over £500,000, said the review. In addition, trustees should publish reports setting out the rationale for high salaries and explaining how these remuneration decisions "reflect the charity's ethos and values." This information should be give a prominent place on the charity's website. The report also recommended that trustees should consider connecting executives' pay with average pay levels for the charity in order to rein in high salaries. Charities should not normally pay executive bonuses to staff, after research last year found that some aid charities used such schemes to reward staff, it added. Martyn Lewis, the former BBC newsreader and chairman of the NCVO, said charities had to adhere to a higher standard when it came to staff remuneration.

France

Following the adoption and approval of the 2014 Finance Bill at the end of last year, French employers are now subject to a new 50 percent flat tax on compensation paid to employees in excess of €1m during calendar years 2013 and 2014, reported **Baker & McKenzie**. Compensation includes income derived from equity compensation awards (both qualified and non-qualified awards) granted by non-French issuers where the French employer bears the cost of such awards via recharge arrangements.

The new employer-paid tax is capped at five percent of the employer's turnover for the applicable calendar year and must be paid by April 20 of the following calendar year. In the case of French-qualified awards, the 50 percent tax applies at the time of grant (in addition to the 30 percent employer social taxes also due at the time of grant) based upon either:

The value of the award determined under IFRS valuation rules, or

A percentage of the value of the shares underlying the qualified awards.

Baker & McKenzie's Paris office has prepared additional information on the other types of remuneration included in the scope of the employer-paid tax and additional details related to the deductibility of the tax for French corporate tax purposes.

The 2014 French Finance Law adopted changes to the capital gains tax allowances for shares sold on or after January 1 2013. As revised, shares held for at least two years prior to disposition are eligible for a 50 percent tax allowance (previously the allowance was 20 percent) while shares held for at least eight years are eligible for a 65 percent tax allowance.

Top US executives paid more for bad results claim

The best talent in the world does not work solely for money: the evidence is overwhelmingly the opposite way, said veteran City editor **Anthony Hilton,** in an opinion piece in the *Evening Standard*. "If you employ people who work solely for money, they don't care enough about the business, their colleagues and the customers and you get bad results," said Hilton. "The academic evidence for this has been around for ten years, but has been largely ignored by business and investors for obvious reasons. Turkeys don't vote for Christmas — and most fund management groups are locked into the bonus culture almost as much as those they seek to police. Remuneration consultants ignore it too — otherwise they would not have anything to consult about, and that keeps the remuneration committees they advise largely in the dark.

"It is interesting that one of the few organisations which do highlight it is **Reputability,** but that firm comes at it from the perspective of risk management and the behavioural risks in the boardroom that excessive pay is likely to ignite. The original research into this, conducted for the **Federal Reserve Bank of Boston** by US psychologist and economics professor Dan Ariely, found in essence that big bonuses made executives freeze — like footballers do in penalty shoot-outs. They can score every time when it does not matter — they do it naturally and almost without having to think. But when it all depends on that one chance of putting the ball in the net, their minds get in the way. The decisions on how and where to kick the ball are no longer automatic, they try too hard and make a mess of it. Similarly, executives screw it up when the need to get it absolutely right will make a difference of millions to them personally," said Hilton.

"Most boards have conveniently ignored this research but it is getting harder to do so because there is a major study that really does nail the issue. US academics Michael Cooper and Hurseyin Gullen and P Raghavendra Rau of Cambridge looked at the link between executive pay and the actual performance of all companies listed on the New York Stock Exchange, Amex and Nasdaq every year from 1994 to 2011. As Anthony Fitzsimmons notes on the Reputability website, the results are stark. The top ten percent of ceos — those paid more than their peers in companies of similar size and type, and who typically get 80 percent of their money in performance incentives — earned negative returns of five percent over one year and minus nine percent over three years relative to those peers. So $21m of extra generosity in chief executive pay translated into a typical annual loss of $1.4bn in stock market valuation. There was no doubt about what causes this. The researchers looked closely at the components of pay to see how these correlated with performance. They found that for generously paid bosses, incentive pay was closely and negatively correlated not just with stock-market valuations but with the internal measure of management competence, namely the return on assets too. The presence of stock options was the key predictor. But in stark contrast, fixed pay was found not to correlate with share-price rises and falls.

"This finding is remarkable in itself but even more striking when you consider how much money American companies spend on share buybacks, which they use to shrink the equity base of the business so that the earnings per share look better and the share price improves. If the result is failure even despite these manipulative efforts, the underlying destruction of value must be gargantuan. If this is the result of paying people too much, there is still some debate about why things turn out like this. One theory is that overpaid executives are too hurried and try to buy success through acquisitions, rather than understanding and patiently nurturing the business organically. Another view, favoured by Fitzsimmons, is that highly paid ceos may have an inflated idea of their own abilities or wield too much power in the boardroom. These are risks boards must deal with because such characteristics regularly lead to trouble. A third opinion, argued by business author Margaret Heffernan, is that executive pay has become so distorted it is now all about status, not talent. The people who triumph are those with an inflated idea of their own ability, combined with the aggression and arrogance to demand quantities of money normal people find beyond comprehension. They want it because it is their entry ticket to the beauty parade of the monstrous ego," claimed Hilton.

Oz govt to reverse Labour Eso squeeze

The Abbott government has delayed plans to introduce a new regime for employee share schemes until later this year to avoid confusing its tough-love message in the May Budget. At least three cabinet ministers, including Treasurer Joe Hockey, Communications Minister Malcolm Turnbull and Small Business Minister Bruce Billson, are understood to be in favour of revoking Labour's 2009 changes, which were intended to stop executives minimising their tax but instead triggered an almost overnight collapse of employee share schemes in Australia. The new regime is now tipped to be part of Prime Minister Tony Abbott and Industry Minister Ian Macfarlane's national industry investment and competitiveness agenda, which will be released in the middle of the year.

Employee share schemes are promoted as encouraging start-ups, small businesses and technology companies. But even larger companies, such as **Telstra** and **Kentucky Fried Chicken (KFC)**, support an overhaul of the tax rules. KFC, a subsidiary of Yum! Brands and listed on the New York Stock Exchange, offers employee share ownership but finds it difficult to do so in Australia despite the incentive being common practice in most KFC offices around the world. Tony Lowing, KFC South Pacific managing director, said that Australia's current tax regime was challenging. "It is extremely complex and difficult to explain in simple terms," Lowing said. "A positive change would enable employers to promote the benefits of employee ownership and remove the unnecessary tax complexity and associated confusion for all our employees." KFC restaurant managers in company-owned restaurants can participate in the chain's employee share scheme based on their role in delivering a profit. "We want our KFC employees to act like owners and be fully engaged in our business," added Lowing. Labour leader Bill Shorten admitted that the previous Labour government's changes to the regime had created "a significant drag on innovation". Coalition backbenchers, led by Tony Smith, Victorian MP and chairman of the House of Representatives economics and finance policy committee, are lobbying the government to rework the employee share regime.

Labour's 2009 changes taxed employees on options they received from their employers immediately, rather than when they vested. Technology start-ups and investors complained this hurt the economy and stopped them from hiring talent through share options instead of high salaries. Yasser El-Ansary, ceo of the Australian Private Equity and Venture Capital Association, said the tax rules needed to encourage innovation by start-ups. The necessary measures would not be overly expensive and would stop the best talent and ideas in Australia leaving for more flexible funding arrangements overseas, he added.

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