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it's our business

newspad of the Employee Share Ownership Centre

IASB UK rejects share scheme standard revision pleas

There was disappointment in the share schemes accounting world after the **International Accounting Standards Board** UK branch decided to put the vexed issue of the IFRS2 Share-Based Payment standard back into Pandora's Box and to lock it for the foreseeable future.

The IASB UK Board decided after a public meeting not to carry out any more research on the topic, not to publish any formal summaries and not to seek any further feedback from 'stakeholders.'

Two senior Centre members criticised the IASB UK board's decision:

Chartered accountant **William Franklin** of **Pett Franklin** said that IFRS2 was riddled with errors and inconsistencies and unfairly penalised smaller companies. "The IASB (UK) refusal to review IFRS2 or engage beyond a narrow range of accounting insiders - when they admit that many more technical queries are being raised over IFRS2 than other standard - is a missed opportunity," he said.

The key elements to essential reform of IFRS2 were: Exemption for all employee share schemes from the standard; unquoted companies should be automatically excluded and a limit to expense in the consolidated accounts of quoted companies should be fixed, added Mr Franklin.

Damian Carnell, a chartered accountant who works at **Willis Towers Watson**, said: "IFRS 2 and share based payment expensing has always been controversial. The standard assumes that the dilution impact on EPS must be converted into an income statement expense; but the real world dilution impact on EPS remains in place – in effect double counting the expense of the share plan when using new issue shares.

"This double counting can be seen even more clearly if a company chooses to hedge by using existing shares held in an ESOP trust, for example. The cost of the hedge - which is the true cost of running the share plan - is an income expense and this is on top of the mandated IFRS 2 income statement expense for the operation of the share plan awards."

Mr Carnell, who was a special adviser to the IASB on the IFRS2 project, added: "IFRS2 requires an expense for transactions that will never involve a liability cash outflow – it is strongly theoretical and many believe it runs counter to fundamental accounting principles.

"That said, IFRS 2 is politically supported by some investors and politicians in the plainly incorrect belief that this expense recognition will help restrain the rise in executive pay. So don't hold your breath waiting for the standard to be changed or withdrawn anytime soon."

The IASB UK Board said in a statement: "Last November, the Board considered a report summarising the staff's research on application issues arising from IFRS 2 Share-based Payment. The objective of this research project was twofold: to identify whether it is IFRS 2 that is causing perceived complexity in accounting for share-based payment arrangements, and if it is, to identify the most common areas of complexity; and to analyse why IFRS 2 has attracted many interpretation requests.

"On May 17, the Board received an update on feedback

From the Chairman

The last time I asked members what they prized most about the Centre, the clear answer was newspad. Since then we have made newspad available to a wider audience and freed it from the space constraints of print. this month we are taking a step towards clearer presentation, separating out the content areas, and preparing for closer integration with our website which is in course of renewal. Now is a good time to let me know, whether you are a member or a reader, what you think of newspad, how it can inform and entertain you better and how we can best make it available to more of your friends and colleagues worldwide. All responses will go into a prize draw for lunch with me in London at Hereford Road (in Hereford Road). Reply to esop@esopcentre.com

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obtained since November 2015. That feedback was obtained during meetings with the Global Preparers Forum and Accounting Standards Advisory Form and in the responses to the Agenda Consultation 2015. The Board decided: *not to perform any further research on this topic; *that there is no need to seek feedback from stakeholders on that decision or on the staff's findings and that *there is no need to publish a formal research paper or discussion paper summarising the research performed in this project.

The staff will consider how best to make the work performed visible and retrievable. All 14 Board members agreed with these decisions."

Mr Franklin told delegates at the Centre's Davos-in-London conference last February: "Smaller companies are often the most badly hit by the impact of the share-based payments standard because they tend to be less liquid and have higher volatilities. The last 15 years has seen a shift from share options to share awards in big companies, in some cases because of the accounting costs.

"It is ironic that all Eso plans are covered by the UK standard, but most all-employee plans were singled out for exemption by the US version," he added.

The Centre plans to draw the attention. of the Department of Business to the barriers created At a time when expanding employee ownership is high on the agenda said Centre chairman, Malcolm Hurlston CBE, the IASB needs to get its head out of the sand.

CENTRE CONFERENCES**:**

1) Vienna: June 2 & 3

The Centre's 28th annual European conference will be held in the five-star Steigenberger Herrenhof Hotel in **Vienna** on **Thursday/Friday, June 2 & 3**.

An issuers' panel comprising **Mark Higgins**, head of share plans at **Xerox HR Services**, ex share plan manager at **Vodafone**, **Claudia Yanez**, director, executive & equity compensation at **SunPower** and **Robert Head**, reward consultant and former director, executive reward and global share plans at **Pearson,** will review plans from the sponsoring companies' perspective - the purpose and objectives of all-employee plans, articulating the business case for Eso and all-employee versus discretionary plans; strategy; plan design; performance measures and periods; communications and behaviour of senior executives. In a second panel session, Channel Islands based trustees interpret the wave of private equity backed MBOs announced by Estera (Appleby), Elian, Sanne (IPO) and Bedell Trust. This panel is led by **Claire Drummond**, of **Bedell Trust & Patrick Jones**, of **Estera**, formerly Appleby Fiduciaries.

The conference is preceded by an informal delegates' dinner on June 1 at the famous Café Central.

Attendance qualifies delegates for 11 hours of credits under the Law Society's CPD programme.

Presentations will be made by **Willis Towers Watson**; **Pett Franklin; Solium**; **Strategic Remuneration**; **SunPower Corporation**; **Tapestry Compliance**; **Voestalpine**, the giant Austrian metals company**; White & Case; Lewis Silkin** and **ButcherJoseph**, the US Esop investment bank. **Dr Barbara Kolm**, Director of the **Austrian Economics Center**, will moderate a panel discussion on Eso in Austria and Germany.

Three major case studies are programmed:

Maintaining Employee Ownership While Achieving Growth,* featuring the employee-owned development company, **DAI Global, which seeks continued international expansion. This study will be delivered by Keith Butcher, managing partner, ButcherJoseph and DAI's ceo Dr Jim Boomgard and company secretary Helle Weeke.

How* **SunPower, a California-based energy company, *which employs 6,300 people worldwide, introduced performance-based executive equity rewards.* Claudia Yanez explains how SunPower operates its broad-based and executive equity incentives.

Bundled employee shareholder rights at* **Voestalpine. More than 24,000 employee shareholders own voting rights as a collective voice, via a foundation. Max Stelzer, member of the executive board which administers the company's Eso foundation, explains how this works in practice.

The conference e-brochure is sponsored by **Estera,** formerly Appleby Fiduciaries and by **Bedell Trust,** both Centre Channel Islands based trustee members for many years. Last minute ticket applications to Fred Hackworth, e: fhackworth@esopcentre.com cc: esop@esopcentre.com or call +44 (0)20 7239 4971.

2) Employee share schemes for SMEs:
Friday September 16

This year's employee share schemes for SMEs conference, jointly organised by the Centre and the **Institute of Directors**, will be held in London at the IoD's Pall Mall headquarters on **Friday September 16**. The one-day event is designed for owners, company directors, finance managers and HR managers who are considering whether to install an employee scheme in their business or who want to develop existing employee share ownership.

Speakers include **David Pett** of **Pett Franklin**, **Mark Gearing** of **Fieldfisher**, **Robert Postlethwaite** of **Postlethwaite Solicitors**, **David Craddock** of **David Craddock Consultancy Services**, **Colin Kendon** of **Bird & Bird**, **Nigel Mason** of **the RM2 Partnership**, and **Graham Muir** of **Nabarro**. Tickets for Centre and IoD members are £385 + VAT each, non- members £485 + VAT. Tickets must be purchased from the IoD directly. Visit the website or call +44 (0)20 7766 8919. For more information, contact Daniel Helen at dhelen@esopcentre.com or call 020 7239 4971.

3) Guernsey share schemes and trustees:
Friday October 7

The annual Guernsey share schemes and trustees conference, organised jointly by the Centre and the **Society of Trust & Estate Practitioners (STEP) Guernsey**, will be held at the St Pierre Park Hotel

in St Peter Port on the morning of **Friday October 7**, 2016. Save the date.

4) British Isles Employee Equity Symposium

The Centre will hold its inaugural British Isles symposium on employee share schemes and trusteeship in London in late November.

The programme will include a session on the Crown Dependencies of Jersey and Guernsey and their worldwide role in employee equity.

This event will be built around the black-tie **Awards Dinner**, which takes place on Tuesday evening, **November 22**, at the Reform Club in Pall Mall.

The symposium will be attractively priced for issuer companies and provide a forum for industry specialists to keep up to speed on the latest legal, regulatory and market trends; do business; discuss share plan strategies and network.

Preliminary agenda items include: case studies in quoted companies; the shake-up of executive equity reward; corporate governance & compliance for both companies and their advisers; competition in plan administration; global employee communications; the relevance of US Esop transactions to the UK industry; the rights of employee shareholders; what the latest plan surveys are telling us and accounting challenges for global employee equity plans.

There will be a special session on all-employee share and share option plans in volatile markets and what plan sponsors should do about underwater share options and reputational risk.

In addition, there will be stand-out delegate debates on: financial education and share ownership, the long-term future of all-employee share ownership and the links between employee equity plans and pensions.

There are planned spotlights on: the spread Employee Ownership Trusts; the resilience of ‘Shares for Rights’ / Employee Shareholder Status; the uses and abuses of Employee Benefit Trusts and tax issues internationally viewed.

Members are encouraged to put forward their own ideas for topics. As this is to be a symposium, the Centre will encourage members to submit short papers on key issues for discussion during the sessions.

If you want a speaking slot and/or a sponsorship opportunity apply now, as demand for places will be high.

Prospective delegates need to register early to secure a seat. For logistical info, you will be able shortly to visit our website description of the symposium at www.esopcentre.com. Co-sponsorship packages are available. Contact esop@esopcentre.com

Next high table dinners

Occasionally places are available at members’ high table dinners which are held at the RAF Club on Piccadilly. The next guests are Peter Kenyon, influential chair of the City of London Labour Party, on June 29 and on July 18 hot author Danny Dorling whose *Inequality and the 1%* created a wide stir. If you would like to be listed for a spare place email to esop@esopcentre. Places cost £140 + VAT and guests are limited to 11.

COMPANIES

HMRC wants to appeal in Rangers EBT case

HMRC is seeking permission to appeal to the Court of Session (Scotland) against the Upper Tribunal’s decision in the Murray Group Holdings case on the funding and operation of an Employees’ Remuneration Trust established by the Murray Group for the benefit of its employees and their families, including Rangers Football Club, reported Centre member **Deloitte**. This case hangs on whether ‘loans payments’ to key employees, including players, were liable to tax and NICs, or not. The present owners of Rangers FC are not involved in this case.

Co-op brings back the divi

The **Co-operative Group** unveiled plans to bring back an annual ‘divi’ pay-out for its millions of members by 2018. The group suspended the dividend in 2014 when it posted huge losses. A major rebranding involves reviving its 1960s blue clover logo. Meantime, the Co-op will hand back £100m a year in other benefits to its eight million members. Co-op ceo Richard Pennycook said: “This is what the Co-op is all about. Big business is often accused of taking money out of communities - we are putting it back in as we champion a better way of doing business for our members and their communities. Our intention is to return to paying a dividend again, but we want to make rewards for members who trade with the Co-op more meaningful and community-focused too.”

Pennycook agreed to take a 60 percent cut in his pay package after the company said the rescue of the business had finished and the rebuild “well under way,” but a *Guardian* analysis of the Co-op’s annual report revealed that Pennycook is still in line for total rewards of just over £3m this year. A planned cut in basic salary from £1.25m to £750,000 does not take effect until July, halfway through the company’s financial year. Reductions in potential bonuses for Pennycook do not begin until 2017.

From this autumn, Co-op members will be credited with five percent of the value of their purchases of Co-op own brand services, including food and funeral care. The Co-operative Bank will not be included. A further one percent will be given to members for donations to good causes. The clover leaf logo was phased out in the 1980s but will be gradually restored over the next few years. Mr Pennycook said last month the business was back “in calmer waters” after it reported a £23m profit. That compares to a £2.5bn loss in 2013 when crystal meth and other problems emerged at its bank, which it has since mostly sold off. The Co-op has 3,750 outlets, including food stores and funeral homes, in the UK and annual sales of about £10bn.

EXECUTIVE REWARD

Deutsche Bank which, though based in Frankfurt, is listed on the LSE and employs around 8,000 people in the UK, became the latest behemoth to fall at the hands of angry investors, as Shareholder Spring Two gathered pace.

A hefty 52 percent of Deutsche Bank's investors, including many City institutions, voted down the Bank's new executive compensation plan because they thought it gave the Board too much scope to over -reward top staff.

Investors at the Bank's agm were incensed by the plan's extra bonus component for Deutsche Bank's four divisional heads. While the rejection wasn't binding, supervisory board chairman Paul Achleitner said that the company would consider providing more information about the pay system in light of the objections.

One-third of Deutsche Bank's worldwide workforce of 101,000 is about to be purged following its near €7bn net loss last year - after booking huge re-structuring and litigation costs. The bank's shares have declined by almost a half since joint ceo John Cryan succeeded Anshu Jain last July, while the dividend is on hold. The changes to the pay structure are part of the ceo's overhaul of Deutsche Bank's leadership by promoting the heads of its businesses to the management board to provide greater accountability.

On "the new remuneration system, we disagree," Hans-Christoph Hirt, co-head of **Hermes EOS**, which represents more than 40 institutional investors in the bank, said in a Bloomberg TV interview. "We think it's the wrong time, it's too much discretion." Deutsche Bank said in March that management board pay would be capped at a collective €9.85m for 2016. Bonuses depend on the company's performance, plus progress it makes in restructuring and other metrics.

Three more major UK companies suffered damaging investor revolts over executive reward at their agms. The latest rebukes came at bookmaker **Ladbrokes**, consumer goods company **Reckitt Benckiser** and construction firm **Carillion**.

At the Ladbrokes agm, 42 percent of investors voted against the company's remuneration report.

At Reckitt, known for products such as Dettol, Nurofen and Durex, almost one in four shareholders opposed the group's pay policy that covers the next three years, and abstentions took the protest vote to 29 percent. Almost 18 percent at the agm voted against the remuneration report for the past year, which included a £23m pay package for the ceo, Rakesh Kapoor, who is thought to be the second-best paid FTSE 100 boss after **WPP**'s Sir Martin Sorrell, who was handed a £70m pay package last year. Aside from its pay row, Reckitt is embroiled in a humidifier steriliser scandal that has claimed around 100 lives and injured hundreds more in South Korea. Kapoor issued a personal apology at the company's agm, just days after the company publicly accepted responsibility for its role in the controversy for the first time.

Cliff Weight from individual shareholder group **ShareSoc** said Reckitt had performed well in terms of shareholder returns since 2002 but even so, Kapoor's pay package was "indefensibly high" at £23m for 2015, and £56m since his appointment in 2011. Weight said a reasonable remuneration would be "less than half this amount". He drew applause from other shareholders when he said: "It is difficult to have a cost-conscious culture when you are paid excessively yourself." A representative from responsible investment charity **ShareAction** urged Reckitt to follow other big companies such as **Unilever** in paying its staff the UK living wage as set by the Living Wage Foundation. Deborah Gilshan, from the **Railways Pension Scheme**, was applauded when she voiced "significant concerns" about the quality of board governance at the company and executive pay. She criticised Reckitt's head of the remuneration committee, Judith Sprieser, who has been on the board for 12 years. She said her pension fund had met Reckitt's chairman, Adrian Bellamy, to discuss its concerns. "It is a pity that the remuneration committee under Ms Sprieser's leadership has failed to address these concerns," she claimed.

At construction firm Carillion, 46 percent of shareholders failed to back its remuneration report, including abstentions.

The ructions faced by this trio at the hands of angry shareholders, followed huge rebellions at oil giant **BP**, pharma producer **Shire** and **Weir Group,** where 72.4 percent of participating shareholders voted down the board's plan to award non-performance shares to its top management team. Weir was forced back to the drawing board by the humiliating large vote at its agm against its reward policy.

Standard Chartered was criticised by institutional investor **Royal London Life** for offering its new executive team long-term share awards worth twice their 2015 salaries, despite recording a £1bn loss last year.

After the first Shareholder Spring of 2012, the government introduced changes in 2013 that gave shareholders a binding vote every three years on the pay policies of companies in addition to an advisory vote every year.

Despite the changes, some investors think the system is still broken. Executive pay has more than tripled in the past 18 years while the FTSE is trading roughly at the same levels, according to an April 21 report by **Nigel Wilson**, ceo of **Legal & General**, for the **Investment Association**. "The current approach to executive pay in UK listed companies is not fit for purpose," Wilson wrote. It "has resulted in poor alignment of interests between executives, shareholders and the company."

Existing rules effectively give investors a warning

system for remuneration committees to respond the following year. Many companies have three-year pay policies that expire this year, which means shareholders will get binding votes on pay policies at a large number of companies in spring 2017, setting them up for a summer of heated talks with board directors. “This is about using a stick before the negotiations start,” said Sarah Wilson, ceo at shareholder advisory group **Manifest**.

The ceo of **Ladbrokes**, Jim Mullen, who took over in April last year, was paid £567,000 for the nine months he was in the role, and his predecessor, Richard Glynn, received a big pay-off.

Shareholders at the hedge fund **Man Group** attacked the firm’s executive pay for the second year running. Around 37 percent of the investors who participated cast their vote against Man Group’s remuneration report, which gave ceo Manny Roman nearly $5.4m in pay and perks, up from $5.1m. Mr Roman was awarded 83 percent of his maximum bonus, which was not tied to profits, but based on targets such as integrating newly-acquired parts of the business, cutting costs and re-jigging the firm’s reporting framework.

*Despite the company losing billions, and the exhaust emissions scandal, **Volkswagen**’s executive board pocketed more money in 2015 than in the previous year. The nine board members received €63.2m collectively, up from the €54m they were paid in 2014. Top remuneration is signed off by the supervisory board, in which representatives of the works council, the IG Metall union and the Social Democratic Party-led state government have a majority. Their pay has risen even though board members are responsible for the exhaust emissions scandal, which threatens thousand of jobs, and despite VW finishing the year with losses of €1.6bn. The losses are the result of a provision of €16bn for costs arising from the scandal. In 2014, the most successful year for the company, VW made a record profit of €12.7bn. The salaries of the board members have risen without regard to the negative impact of their actions, although the variable element of their remuneration is supposedly linked to the profitability of the company, critics complained. The VW boss Martin Winterkorn, who was forced to resign last September as a result of the manipulation of exhaust emissions results, received €7.3 m for his last nine months in office. Moreover, he will receive pension allocations worth nearly €30m. For many years, Winterkorn was Germany’s top-earning manager. His successor Matthias Müller received around €4.2m. Before becoming VW ceo, he had headed the company’s Porsche division for five years. The new Volkswagen brand boss Herbert Diess received €7.1m for just half a year’s work (he moved to VW from BMW in July 2015). This includes a ‘transfer premium’ of €5m. Doing even better was Andreas Renschler, who moved from Daimler to VW in February 2015, where he is now responsible for heavy goods vehicles. He received a golden hello of €11.5m, giving him an annual income of almost €15m. Renschler is the best-paid board member in the VW group.

PRA consultation on remuneration requirements

The PRA requested feedback on a draft supervisory statement which sets out the PRA’s expectations regarding Article 275 of the Commission Delegated Regulation (EU) 2015/35, particularly the requirements concerning the identification of key staff and deferral of variable remuneration. The draft supervisory statement is intended to support compliance with Article 275 and is designed to help ensure that the PRA meets its statutory objectives of ensuring safety and soundness of the firms it regulates and securing protection for policyholders. The consultation (closing on June 2) is relevant to all UK insurance and reinsurance firms and groups within the scope of Solvency II including the Society of Lloyd’s and managing agents.

EBA’s remuneration practices benchmarking report

The EBA is required, under the terms of CRD IV, to benchmark remuneration trends at the European Union level and to publish aggregated data on high earners earning €1m or more per year. The competent authorities are responsible for collecting the relevant information from credit institutions and investment firms and for submitting it to the EBA. The EBA has now analysed the data provided to it from across the EU for the year 2014 and compared it to the 2013 data.

Unearned bonuses for managers

*Managers are still being rewarded with bonuses despite not meeting their performance objectives, according to the *2016 National Management Salary Survey* from **CMI (Chartered Management Institute)** and **XpertHR**. The analysis of remuneration data for 105,000 managers and 425 organisations found that 23 percent - more than one in five managers - who fell short of performance expectations in the last year still received bonus pay-outs on top of their basic salary. The average underperforming manager who took home a bonus received an additional £4,270, or 12 percent of their basic pay, on average, taking their total remuneration packages to £40,067. In total, 57 percent of managers received a bonus over the last 12 months, compared to 54 percent in the previous year. CMI ceo Ann Francke said the findings reveal a costly problem for business that too many employers are failing to address. “Pay and performance issues in the UK extend well beyond ceo level,” she said. “*The truth is that bonuses continue to remain divorced from performance in too many organisations. Fixing the problem means setting clear targets, aligning bonus pay with performance, and being prepared to have difficult conversations*

with under-performers who don't measure up."

The problem of rewarding managers for failure is even more acute at more senior levels, as 43 percent of senior managers who fell short of expectations still banked a bonus in the last 12 months. Meanwhile, C-suite executives continue to earn a substantially larger part of their pay in bonuses compared to managers. On average, bonuses account for 38 percent of ceos' and directors' remuneration – equivalent to £55,969. Across the wider management population, bonuses represent just 17 percent of pay packages, but there's been an increase in the average size of bonuses for this group to £11,413 from £8,836 in 2015. XpertHR director Mark Crail said: "Employers have reined in a lot of poorly focused executive perks since this survey began back in the early 1970s. Subsidies for school fees and chauffeur-driven cars are not commonplace these days, but the bonus is as significant a part of many managers' incomes as it ever was. Employers have come a long way in aligning pay and performance, but as our research shows, there is still some distance to go to get it right."

*Company executives have never had it so good, wrote Anthony Hilton in the *Evening Standard*. "Their salaries have soared so much that even the leaders of the fund-management industry are going public with their concerns. This is in itself a remarkable development. Fund managers are not exactly underpaid themselves. If even they think executive pay is over the top you can be sure it is.

"*To judge from how it has been reported they have two concerns. The primary one is that executive pay has virtually trebled in the past decade while share prices have barely moved so they wonder what they have been paying for; second, the more socially aware among them worry that the unfairness of the system is destroying public trust in business."*

According to economist **Andrew Smithers**, published most recently in an article in *World Economics*, poorly designed managerial incentives have a poisonous effect on executive behaviour and economic performance. His conclusions, backed up by statistical analysis going back over many years, are:

First, managerial incentive systems which are heavily focused on bonuses increase inequality while lowering investment in the business, undermining work ethics and doing damage overall to welfare.

Second, the economic slowdown in many of the world's leading economies is not the inevitable aftermath of the financial crisis as many choose to believe. Instead it is the result of demographic changes — the growing proportion of retired people coupled with a slump in productivity which is the measure of value added per hour worked. The slump in productivity can only be reversed by a major increase in investment.

Third, modern management remuneration systems provide strong incentives to change short-term corporate behaviour in ways that are not in the long-term interests of the economy. In particular, the desire to hit a bonus target encourages aggressive pricing as a device to maintain or enhance short-term profits and discourages investment and measures to improve productivity because in the short term these may hit profits.

Fourth, Smithers says that recognising this problem — understanding how the bonus culture is part of the problem facing Britain, not part of the solution — is an essential first step towards sorting things out and putting in place policies which will stimulate genuine and sustainable growth. If bonuses have to be kept, then they need to be much better crafted and linked almost exclusively to measured improvements in productivity. At the same time the Government should create tax incentives to reinforce positive changes in behaviour and penalise those who are slow to change.

ON THE MOVE

The event of the month was the pulsating reception held in Searcys on the 39th floor of the **Gherkin** by Centre member **Estera –** to celebrate its name change from Appleby (Fiduciaries) following a successful MBO last December. Estera ceo **Farah Ballands** did the honours in a short but well-judged welcome address to the assembled throng, in the absence of Jersey office director **Patrick Jones**, who was fog-bound for six hours at Jersey Airport.

Almost as badly hit by flight problems was Centre international director **Fred Hackworth**, who only just made it to the reception after sprinting upstairs at Nice Airport to get one of the few tickets left for the mid-afternoon Gatwick flight, after his scheduled morning flight was cancelled. The Centre team was led by chairman **Malcolm Hurlston,** accompanied by **Daniel Helen** and **Juliet Wigzell**. Among the many Centre members present were **Michael Smith**, head of the corporate and executive trading desk at **Canaccord Genuity**; **Mark Vanderpump** of **Equiniti**; **Rob Collard** of **Macfarlanes**; **Matthew Ward** (*see below*) of **New Bridge Street (Aon Hewitt)** and **Lynette Jacobs** with **Graeme Standen**, both of **Pinsent Masons.**

***Neil Sharpe**, formerly head of equity incentive plan implementation, at **New Bridge Street (NBS)**, has joined **Linklaters**.

*NBS associate partner, **Matthew Ward** of **Aon Hewitt**, now heads up the share schemes desk and helps implement executive / employee share plans and compensation packages (e.g. drafting the rules for new LTIPs and all-employee plans such as Sharesaves and SIPs), bonus plans, performance metrics and shareholder documentation). Matthew advises too on regulatory compliance with global plans and UK best practice expectations for share plan design. The team supports large private

companies, particularly those heading towards an IPO.

*Mark Higgins, formerly share plans manager at **Vodafone**, is now head of share plans at **Xerox HR Services**. His new co-ordinates are: landline: +44 (0) 20 7429 1126 m +44 (0) 7515 919 637 and e: mark.higgins@xerox.com

*Following **Elian**'s acquisition of SFM Europe and the continued growth of its London based business, it has moved to new offices at 35 Great St Helen's London EC3A 6AP. For clients for whom it provides a registered office, details are being updated as necessary. Elian's contact details will stay the same, said Neil Townson, md, Elian t: +44 20 7160 5017 e: neil.townson@elian.com

REGULATION

Register of those with significant control

Since April 6 this year, UK private companies and limited liability partnerships (LLPs) are obliged to create a register of People with Significant Control (PSC) which will be available to the public (except for specific personal information such as residential addresses). The purpose is to create greater transparency in the ownership and control of UK companies, said Centre member **Postlethwaite**, the employee ownership lawyers. The PSC register will have to be included in the company's annual return filed at Companies House, from the end of this month.

A PSC is, broadly, a person who:

- directly or indirectly owns 25 percent of the shares
- directly or indirectly holds more than 25 percent of the voting rights
- directly or indirectly holds the right to appoint or remove the majority of directors
- otherwise exercises or has the right to exercise significant influence or control, or
- exercises or has the right to exercise significant influence or control over a trust or firm which would satisfy the above conditions.

A private company (or LLP) must take reasonable steps to identify its PSCs. Failure to do so will constitute a criminal offence. If a company does not have the information which it needs in relation to its PSCs, it must send notices to those who it suspects may be, or may know the identity of, its PSCs. Failure to respond will constitute a criminal offence. The company should consider the imposition of restrictions on shares or other rights held by any party which fails to respond. If a company does not have a Person with Significant Control, it will be necessary to make a statement to this effect in its Annual Return. Further information is available from www.gov.uk.

Ownership info

HM Treasury published a list of countries that have committed to the initiative to automatically exchange information on the beneficial ownership of companies, reported Centre member **Deloitte**. Those on the list include Jersey and the Isle of Man, as are the Cayman Islands, but not as yet Guernsey. The next stage will be development of a global standard for this exchange. You can see the list at: http://deloi.tt/1W2nzqI

EU targets opaque company ownership

The **EU** commissioner in charge of corporate transparency said it was unacceptable that the wealthy can hide their money abroad to avoid paying tax, as Brussels stepped up its campaign against the aggressive avoidance revealed by the *Panama Papers* scandal**. Vera Jourova** said she was exploring ways to toughen existing rules aimed at forcing trusts and companies to disclose their true owners, reported the *FT.* These rules require nations to set up registers disclosing 'beneficial ownership.' The existing legislation includes carve-outs for trusts from important parts of the rules — meaning that, in some cases, they are not required to register their true ownership at all.

"We have to look at the accessibility of the beneficial ownership registers and a look at the rules for trusts," said Ms Jourova, EU Justice Commissioner. "We need to further increase transparency." She added: "No ordinary citizen who works hard every day and pays taxes can understand why there are still ways for some people to hide their money from tax authorities. We cannot tolerate this — it is a question of fairness and justice in the EU."

The former Czech government minister was speaking ahead of a meeting of EU finance ministers in Amsterdam, where tax avoidance will be discussed. Brussels' plans could spark protests in London and Berlin. The carve-outs for trusts were a big concession won by the UK during work on the 2015 law, while Berlin then pushed to thwart demands for the information on companies to be made fully available publicly.

However, the leak of millions of documents from a Panamanian law firm, showing how it helped thousands of individuals to hide money offshore, has left governments reeling from criticism that they have not done more to tackle tax evasion.

PM David Cameron came under intense scrutiny after it was revealed his father had been a director of an offshore fund advised by the law firm, Mossack Fonseca. It later emerged he personally intervened in 2013 to stave off more ambitious EU transparency rules for trusts.

At present, trusts only have to register if they are deemed to generate "tax consequences" — wording criticised at the time by the Austrian government as "too broad and highly prone to circumvention and evasion". While countries have until the middle of 2017 to set up their central registers, Brussels is now calling for the work to be completed by the end of the year.

The rules on how these registers can be accessed have come in for criticism from tax campaigners as being open to interpretation. While they will be fully accessible to tax authorities, members of the public only have a right to examine them if they can demonstrate a 'legitimate interest,' for example, if they are an investigative journalist.

The fallout from the data leak revealing widespread use of offshore financial centres by the very rich is spreading. Even though these rules do not apply to trusts — a concession won by the UK which argued that the role of trusts in managing issues around, for instance, inheritance would mean public access would allow unwarranted intrusion into families' privacy.

While the UK, along with Denmark, the Netherlands and Slovenia, is committed to making information on companies fully public, Germany has indicated that public access will be limited to "relevant specialist non-governmental organisations and specialist journalists". In addition to toughening the transparency rules for shell companies and trusts, Ms Jourova said she would reinforce other EU rules to tackle money laundering, including having better co-ordination of asset freezes across the bloc. "I will propose to make cross-border confiscation and freezing of these assets more effective so criminals can no longer hide their assets abroad," she said.

UK defiant on bonus cap

The **Prudential Regulation Authority (PRA)** and the **Financial Conduct Authority (FCA)** notified the **European Banking Authority (EBA)** that they will comply with all aspects of the EBA's *Guidelines on Sound Remuneration Policies*, issued on December 21 2015, except for a guideline stating that the bonus cap introduced under the new Capital Requirements Directive (CRD IV) must be applied to all institutions subject to that directive and may not be ignored on the basis of proportionality.

The bonus cap was introduced in the remuneration restrictions included in CRD IV, which came into effect on January 1 2014 and applies to all EU banks and credit institutions and to certain MiFID investment firms (categorised as IFPRU Firms under the FCA rules). The new bonus cap requires CRD IV institutions to restrict any award of variable remuneration (i.e. a bonus) to a maximum of no more than 100 percent of the employee's fixed remuneration (e.g. salary). This limit may be increased to a maximum of 200 percent with the approval of the institution's shareholders.

However, in their guidance on the application of proportionality under their CRD IV remuneration codes, both the PRA and FCA asserted that the bonus cap could be ditched on the basis of proportionality in certain cases, said lawyers **Dechert**. What the EBA said on this point in its December 2015 guidelines was contrary to the PRA and FCA view. However, under the EU regulation establishing the EBA, guidelines of this sort are only issued to national regulators on a "comply or explain" basis. Specifically, within two months of the issue of an EBA guideline, each national regulator is required to "confirm whether it complies or intends to comply with that guideline … [and in the event that a national regulator] does not comply or does not intend to comply, it shall inform the [EBA], stating its reasons." On the basis of their notice, the PRA and FCA may continue to 'dis-apply' the CRD IV bonus cap on the basis of proportionality, notwithstanding the position taken by the EBA.

Impact of Market Abuse Regulation on share plans

The **Financial Conduct Authority (FCA)** published a policy statement, including amendments to the FCA handbook, reflecting the pending implementation of the EU Market Abuse Regulation, which comes into force on **July 3**. Listed companies, including those on AIM, should consider now the implications of MAR on the operation of their employee share schemes, said **Rob Collard** of Centre member **Macfarlanes**.

The main points to note from an employee share scheme perspective are:

- The Model Code is being abolished.
- Persons Discharging Managerial Responsibilities (PDMRs) will be prohibited from dealing within a shortened 30 day closed period prior to certain announcements.
- There will be no requirement for PDMRs to seek clearance from the company for permission to deal, unless the company is in a closed period.
- There will no longer be a requirement on issuers to prevent PDMRs from dealing at a time, outside a closed period, when the company is aware that there is inside information regarding its shares. However, an individual who deals when in possession of such information would still potentially commit market abuse under the rules which are amended by MAR or insider dealing.
- The prohibition on dealing in closed periods contains what looks like a broad exception for transactions made under, or related to, employee share schemes, subject to issuer consent. The detailed exceptions currently contained in the Model Code are effectively replaced by a non-exhaustive provision which allows an issuer to permit certain dealings in closed periods. For example, an issuer may:
  - grant awards in accordance with a scheme which has already been approved and which does not contain discretion to vary the timing
  - permit the exercise of options which would otherwise lapse during the closed period, provided the option holder has given irrevocable notice of the decision to exercise at least four months before the lapse date
  - consent to the acquisition of shares connected with the existing terms of 'an employee saving scheme' or

- consent to transfers where the beneficial interest in the shares does not change (provided the transfer does not result in a change in the share price).
- The prohibition in the Listing Rules on an issuer company dealing in a closed (or prohibited) period is removed. Regarding grants to non-PDMRs therefore, there is no longer a requirement (previously contained in the Model Code) to show that the grant could not reasonably be made at another time and that failure to make it would be likely to indicate the company was in a prohibited period. However a company proposing to grant awards in those situations will still need to consider best practice, market perception and of course the rules on market abuse.
- The rules for reporting transactions entered into by PDMRs have changed too:
  - PDMRs and their 'closely associated persons' must notify the issuer of their dealings within three business days rather than four
  - they must inform the FCA
  - there is a new format for reporting the information
  - the issuer will now have three days from the date of the transaction to notify the public. Issuers are likely to want to ensure their internal rules require PDMRs to notify them well within this period
  - there is a new £5,000 *de minimis*, below which dealings need not be notified.
- Companies need to:
- Consider what changes they should make to their existing dealing code to reflect the new regime. Generally speaking the new regime is more permissive, but certain useful exemptions have gone (for example the carve-outs for dealings in all -employee schemes).
- Companies may wish to retain requirements, such as the need to obtain clearance in order to ensure compliance with good practice.
- Ensure they have an up-to-date list of PDMRs and their 'closely associated persons' and that they tell their PDMRs about these changes (as is expressly required by MAR).
- Review their procedures for reporting transactions in shares to ensure they are consistent with the new requirements.
- Consider whether the rules of any share schemes should be updated to reflect these changes.

WORLD NEWSPAD

Irish plan to boost Eso tax incentives

The **Irish Department of Finance** (DoF) is seeking business views on how employee share schemes should be taxed, as part of its plan to boost start-ups, reported *The Irish Times*. One element of the government's plan to aid small business is a commitment to explore how to change the current system of taxing the gains on shares given by employers to their staff. The DoF began a detailed review of the issue by seeking submissions from all interested parties on how to come up with an efficient way of taxing employee shares.

The move follows a consultation last year on how to use the tax system to incentivise entrepreneurs. One of the issues highlighted was the fact start-ups, particularly those in technology, give shares to employees to encourage skilled staff to stay with the business. However, as employees are taxed at the higher 41 percent rate when they exercise share options and are then liable for capital gains at 33 percent if the stocks' value increases, the Republic's system undermines this incentive.

The **Irish Tax Institute**, which welcomed the department's move, pointed out that one of the key issues is that when workers exercise their options to take up shares, they are taxed on what is gain on paper rather than in actual cash. "Share options are taxed at an individual's marginal rate of tax, making it uncompetitive when compared to countries whose marginal rate is lower and/or paid a higher entry point," it said

There are only two Revenue-approved schemes for share options in the Republic and these are subject to many conditions and the relief does not apply to social insurance and the USC.

Brian Keegan, director of taxation at the **Institute of Chartered Accountants**, noted that many of the schemes tried in the Republic over the past 25 years have run into a number of difficulties. At the same time, government efforts to broaden the tax net during the recession meant it closed off many of the concessions that were available.

"It is now almost impossible to derive any benefit from employee share ownership," Mr Keegan said. He said there is a problem too with underwater options– shares whose value has fallen below the price at which they were awarded.

Magyar Telekom, **Hungary**'s leading telecom group, is launching an employee share ownership programme under which each eligible individual will be entitled to receive 100,00 Forints worth (£242) of MTel shares. MTel said the its board of directors decided to launch a remuneration policy based Esop programme via which Magyar Telekom shares will be distributed to the vast majority of the employees of Magyar Telekom and T-Systems Hungary. This programme will be in addition to MTel's regular remuneration package. The award of shares is contingent on MTel's actual internal operating free cash flow of MT-Hungary segment of the year ending December 31 2016, exceeding that of the year 2015. Each eligible individual will be entitled to receive shares in the value of HUF 100,000 calculated on the un-weighted

average share price of 20 trading days prior to June 30 2016, along with any entitlement to the dividends attached to such shares and with no lock-up restrictions. In July 2016, MTel will purchase a maximum of 1.6 million of Magyar Telekom shares in the open market. In order to distribute the purchased shares, an Esop will be established by the company in the autumn of this year. Upon the confirmation of the improvement of the operating free cash flow of MT-Hungary segment by the directors in late February 2017, the Esop is expected to distribute the shares among 7,500 employees next April. Magyar Telekom said it expects this initiative "to increase further employee engagement through a strengthening of the ownership culture."

Canada: Beau's Brewery is celebrating its tenth birthday by selling the company to its employees starting this month. When Steve Beauchesne and his father Tim launched the Vankleek Hill, Ontario, brewery in 2006, there were 86 breweries across Canada. Today there are more than 500, according to *Beer Canada.* Some of those breweries that have started out as independent have been snapped up by mega-brewers like Toronto's Mill Street Brewery which was bought by Labatt (which is part of beer giant **Anheuser-Busch InBev**), but Beau's wants to keep its independence. "Our success during this time is strongly rooted in the support of our employees and fans, who have always believed in our promise," said Beauchesne, announcing the Esop. "By handing the reins over to our employees we are saying this changes everything – we look forward to our expansion and success across Canada, with the help of our new company stewards." Employees will be able to spend up to two percent of their salary on shares, with between four and five percent of the business being sold the first year. They'll be entitled to any dividends declared by the company's board, which could be lucrative with the company boasting growth at a compounded rate of 45 percent year-over-year.

Camille Jensen, vice-president of ESOP Builders, a Toronto-based company that develops employee share plans, says the move will help with transition later down the road, if Beauchesne is looking to step away from the company he's built. "What is really great in the Beau's example is the owners knew their values and were able to match their values to their ideal succession option, selling to the employees," says Jensen. "Values and legacy are two very important parts of succession planning but are often missed in traditional exit plans." She points out that while succession planning is one of the core benefits, Esops can be an asset to employee culture. "[Beau's] really wants to engage, recruit and retain talent so by offering ownership that's a competitive advantage that other companies just don't have and it's a lucrative one," says Jensen. "You're going to see increased engagement which results in increased productivity, profitability – happier employees and employee-owned companies tend to be more resilient."

WestJet airline has one of the most lucrative employee share plans in Canada. Once employees have passed a three month probationary period, they're entitled to contribute up to 20 percent of their salary towards the employee share purchase plan, with the company matching dollar per dollar. "WestJet is probably the most well known but there's also PCL construction and (consulting, design and construction firm) Golder Associates, which has more than 9,000 employees and is [one] hundred per cent employee owned," says Jensen adding that there's no one-size-fits-all model.

Mountain Equipment Co-op, on the other hand extends ownership beyond employees to customers themselves. Customers buy a $5 membership subscription share, with each member having the right to vote on how MEC is governed.

However, pulling off a successful employee sharing plan or co-op is not without its challenges. "It's about good communication and trust between the owners and employees – you just want to make sure that all of that is there," says Jensen. But putting a employee ownership plan in place can pay dividends – both financially and culturally. "It keeps businesses locally rooted," she says. "You're helping on the individual basis, a lot of people build wealth in a way that they normally wouldn't be able to do by owning shares in the company they work for."

Denmark

On May 12 2016, the Danish Parliament re-introduced new rules governing employee share schemes. The new provision to be included in the Danish Tax Assessment Act (*ligningsloven*) will affect agreements on the granting of shares signed after July 1 2016. A review of the Bill passed by the Danish Parliament on May 12 2016, reveals that it is a revival of the previous provision of s. 7H of the Tax Assessment Act governing individual employee shares, said lawyers **Bech-Bruun**.

From now on, companies will be able to grant their employees employee shares (shares, RSUs, PSUs, purchase rights and subscription rights) at no cost or at a favourable price without the employees having to pay income tax on the value at the grant date. Instead, the employees become liable to pay tax when they sell their shares. The proceeds from the sale will be taxed as equity income. The company is at liberty to decide whether the shares should be granted to all of its employees or only to certain employees. Neither the employer company nor the consolidated company may deduct expenses incurred for granting the shares. The company granting the shares will be required to report the granting and exercising of purchase and subscription rights and any acquisition of shares from the company to the income register.

According to the Bill, a number of criteria must be met in order for the new rules on employee share schemes to be applicable:

- The employee and the employer company must agree on the granting of shares being subject to the new law
- The value of the granted shares may never exceed ten percent of the employee's annual salary at the time of signing the agreement
- The shares must be granted by the employer company or a consolidated company as part of an employment relationship, for which reason board members cannot qualify as eligible grantees
- Shares granted under employee share schemes must not make up a special class of shares
- Finally, purchase and subscription rights cannot be assigned to any third party.

NZ start-ups love Esops

New Zealand (NZ) start-ups are enthusiastic about implementing Esops - according to a survey undertaken by the New Zealand Venture Investment Fund and the Angel Association. The survey was sent to the ceos of 98 Angel-backed companies in NZVIF's portfolio to gauge their interest in and uptake of Esops. Fifty companies responded, two-thirds of whom have been operating for between two to five years and a quarter between six and ten years. Of the 50 responses, almost 90 percent of the companies had an Esop in place for their employees, among which 58 percent are software companies and 12 percent are technology hardware companies.

NZVIF investment director Chris Twiss said the reason that many start-ups offer employee share ownership plans is that it gives them a greater ability to employ key employees and directors whom they might not otherwise be able to afford or attract.

In addition, share ownership plans can provide a financial incentive to employees to reach predetermined goals and in time, if the company is successful, enjoy the upside monetary benefits of an ownership stake, Mr Twiss said.

"Esops are useful in the way they align the interests of employees and owners in the success of a start-up. Early stage companies are high risk investments and many fail. In order to attract employees, start-ups need to be able to offer something different, such as the prospect of a share in the upside should the company go on to be successful. Clearly NZ start-ups see the benefits of Esops - 88 percent of companies in this survey currently use an Esop plan of some form. Ninety-six percent of the ceos who responded said that they would implement Esop plans in future organisations, which suggest the plans are working well and seen as a really important part of a start-up's armoury."

NZ Angel Association chairman Marcel van den Assum said that the major benefits of an Esop to a company, as cited by the ceos, were better staff loyalty, an increased ability to hire high quality people into the business, and better alignment between the employees and the business. Other key results from the survey included: almost half the companies created an Esop after the first 12 months of operation; about two-thirds of the companies with Esops adopted a basic share option plan, rather than other Esop types such as 'borrow to buy' plans or the use of special classes of shares; the most frequent Esop allocation is in the range of 6-10 percent of a company's total share register, followed by the 11-15 percent range. Forty-five percent of companies received a positive reception from employees to their Esop plan while 14 percent indicated further information was required to better explain the nature of the proposed plan. *Source - Voxy.co.nz*

South Africa Airways to launch Eso?

SAA chairman Dudu Myeni wants to set up an employee share scheme at the financially troubled airline. Sharing a podium with President Jacob Zuma during his visit to the company's Kempton Park offices, Myeni said if the airline was ever sold, employees should have a stake in it. She said if the company stayed in government hands, an employee share scheme should be set up "to benefit the people who work for the airline." Myeni made the comments against the backdrop of apparent tensions between the airline's employees and management, with allegations of racism and lack of transformation. Instead of pronouncing on further financial support for the airline, Finance Minister Pravin Gordhan earlier this year said he and Public Enterprises Minister Lynne Brown had agreed to explore a possible merger of SAA and SA Express under a strengthened board, "with a view to engaging with a potential minority equity partner".

But Zuma ruled out the sale of the airline, saying: "We have taken no decision to sell this company. The day we decide so, we will provide reasons why SAA should be sold. It has not crossed our mind." He said the airline would never be sold. Zuma's comments pour cold water on any expectations of at least partial privatisation of the airline. "We are going to work hard to support SAA so that it can take off," he said, adding that the airline could still be turned around.

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