Vol 17 No 4 May 2007

it's our business

newspad of the Employee Share Ownership Centre

Obligatory online share plan reporting on the way

The employee share scheme industry may be forced to present all annual share plan returns online to HMRC within the next year or two, Centre member Clifford Chance has advised its clients.

While online filing of share scheme returns is not yet obligatory, it may well become so in the "near future," said the latest issue of Clifford Chance's Employee Benefits News bulletin.

The online filing facility for year-end share plan returns became available to companies last month and HMRC has wasted no time in informing companies and their advisers that all the necessary documents for the fiscal year 2006-7 can be downloaded its website.

Returns can now be submitted online for all the main approved employee share schemes, including SIP, Sharesave, CSOP and for employment-related securities in unapproved plans, where Form 42 is used.

The only exception involves the year-end return for Enterprise Management Incentives (EMI), for which online filing is not yet possible. Form 40, which covers EMI returns, will continue to be completed on paper and sent to the Small Companies Enterprise Centre.

HMRC said on its website that online filing of share plan returns is not obligatory, but it is certainly pushing share plan issuers in that direction. In contrast with previous year, HMRC will no longer be sending companies hard copies of these documents. Instead, it will simply issue a notice requiring companies to file their relevant share plan returns. In order to file returns online, companies will have to register with the PAYE online internet service.

HMRC has set up an online help desk for share schemes filings in order to meet customers' queries as usage of the online service builds up. The Frequently Asked Questions section says that online filing is not obligatory but states that companies are "encouraged" to use online filing. In the FAQs section of the website, HMRC states that online filing is secure, convenient and quick, cuts down on paper use, thus saving storage space and is less likely to result in mistakes or misinterpretations.

All online users will receive an electronic acknowledgement from HMRC informing them whether or not their filings have been successful in terms of the required information criteria. For approved schemes three months from the date of issue are allowed in which to submit the return. As these returns were not issued until April 10, plan issuers have until July 9 to submit their returns. But the deadlines are the same, irrespective of whether the filings were submitted online or by paper. A Form 42 return has to be submitted by July 6.

From the Chairman

If you want to get in the mood for Cannes - or have that wish you were coming feeling - I suggest you tune in to the local English language radio station www. rivieraradio.mc In addition to excellent music you can preview one of our star speakers, Henk Potts of Barclays, who has a regular morning slot. Aside from perceptive market commentary he ranges wide: how does Barclays compare with the World Bank?

We much regret the departure of Lord Browne from BP, a great advocate of esops. It is a pity the board could not have rejected his resignation and recognise everything he has achieved for Britain, the company and its employee shareholders.

Malcolm Hurlston

Shell Fire

The Local Authority Pension Fund Forum, whose members own more than one percent of Royal Dutch Shell, is urging its pension funds to vote against the firm's long-term incentive plan for directors at Shell's agm on May 15. LAPFF says the shares awarded under the plan take no account of non-financial factors, such as environmental performance and health and safety. The plan accounts for 54 percent of Shell directors' overall pay, while the company's sustainable development performance counts towards just 20 percent of directors' bonuses, and only five percent of overall packages.

Cannes

Fifty registrations have been received to date for the European Centre's 19th employee equity conference, which is now two months away; it takes place at the Majestic Hotel in Cannes on **Thursday July 5 and Friday July 6**.

continued overleaf

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The Cannes agenda highlights include a case study on the international Eso scheme launched by Lend Lease Corporation, delivered by co-speakers Alan Judes of Strategic Remuneration and Charles Cooper of BWCI Trust Co. In addition, US lawyer Jeff Mamorsky of Greenberg Traurig LLP, will give the latest news on Sarbanes-Oxley compliance, the new US disclosure rules for executive compensation and the backdated stock options scandal. For the first time, delegates will be attending from Dubai.

The Air France subsidiary City-Jet now operates daily direct flights from London City Airport to Nice, which may suit Centre members who work in the City. The package deal includes two nights half-board accommodation, delegate pack, entry to all conference sessions, plus cocktail party invitation. The programme and agenda can be found on the Centre website at www. hurlstons.com/esop Click onto 'events.' Register now and the Centre can reserve for you one of the few remaining unallocated rooms in the Majestic itself.

Final bidding for Lloyds TSB Registrars

Lloyds TSB Group is expecting final bids within the next fortnight for its share registration business, Lloyds TSB registrars, with Advent International, the worldwide private equity group, thought to be leading the chase. Link Market Services, the Australian share registrars, was still in the running, despite losing financial backing from Bain Capital, the private equity group. American Stock Transfer, a trade buyer, was in the frame too, backed by funding from Silverlake Partners, another US based private equity firm. Lloyds TSB Group is understood to have discussed the auction, which is being handled by Lehman Brothers, at a board meeting recently. Lloyds TSB registrars, the UK's largest share registrars business, provides share registration services for more than 800 companies and manages Eso schemes. Duke Street Capital, Douglas Hanson Apax Partners and Warburg Pincus dropped out earlier in the bidding process. High levels of LSE trading, fuelled by reductions in trading costs and improving technology, have improved the earnings profile of share registration businesses, making them more attractive to private equity investors.

Windfall hint for Saga staff shareholders

Saga, the travel and financial services group, is considering a flotation. The news came 30 months after the business was sold in a £1.35bn management buyout backed by private equity firm Charterhouse. A deal could trigger fresh windfalls for staff as Charterhouse set up an Eso at the time of its takeover. The business is 20 percent owned by management and staff, with the rest in the hands of Charterhouse. Saga chief executive Andrew Goodsell said the business had made "excellent progress" in the period since the management buyout. He added: "The management team and Charterhouse agree that this is an appropriate time to consider the best future ownership structure to allow the company to maximise its growth potential." The Folkestone based business has continued to add new services and now employs 3,854 staff, an increase of 28 percent since the takeover by Charterhouse. Saga came close to a flotation in 2004 after running a listing process in tandem with the auction before opting for a sale, so the preparatory work for a £2bn flotation is mostly in place. It has appointed Close Brothers to help it assess future ownership options.

More backdated options

Troubled video game publisher Take-Two Interactive Software Inc is under investigation by the Securities and Exchange Commission over its stock options granting practices, the company said in a regulatory filing. Take-Two is best known for its popular and bloody *Grand Theft Auto* series and for a shareholder revolt that ousted its ceo and most of its board. Cfo Karl Winters was one of the last to resign last month. The revolt followed poor results at a time when Take-Two's rivals performed strongly, as well as accounting troubles and controversy surrounding the violent and sexual content of *Grand Theft Auto*. Take-Two is one of 208 companies that have disclosed investigations into stock options backdating, in which options grants are issued retroactively to coincide with low points in the stock price, which usually increases the recipients' profit. Backdating is not necessarily illegal, but it must be disclosed to investors and accounted for properly.

In February, Ryan Brant, became the first ceo to be convicted of backdating stock options. He pleaded guilty in a New York state court to first-degree falsification of business records in a deal that allowed him to avoid prison. Take-Two disclosed that a large number of options grants were backdated during Brant's six-year tenure to August 2003. Some companies embroiled in the options backdating scandal, including software makers McAfee and Novell, could be vulnerable to takeover by activist investors because of a side-effect of long-standing laws. The new threat comes at a time when cash-rich hedge funds and private equity groups are scouring the market for targets. The *Financial Times* has found that 42 of these companies are at risk of being targeted by activists who could seek to remove their boards and gain control without launching a takeover bid. The threat stems from a combination of state laws and financial regulations. Under laws in Delaware, the state where most US companies are registered, if a company does not hold a shareholder meeting for 13 months, investors can ask a court to call one. At such meetings, a company can be banned from communicating with shareholders because the SEC prohibits a group from issuing proxy documents if it has not produced up-to-date financial statements. As a result, activist investors could propose removing directors, and the company would be unable to fully respond. Many companies involved in the options scandal have been unable to produce full results because they are still quantifying the financial effects of the scandal. Comverse Technology, which has not held a shareholder meeting for more than 13 months because of probes into options backdating, is under attack from Oliver Press Partners, a New York hedge fund, which wants seats on its board. Comverse has asked the SEC to waive the ban on shareholder communications if Oliver Press succeeds in calling a meeting. The SEC, which declined to comment, rarely grants such waivers. It has filed backdated options related fraud charges against two former Apple executives, but not against ceo Steve Jobs.

Koreans visit Eso Centre

The Centre hosted a visit from the Korean Centre for Employee Ownership, including delegates from LG Card, Korea Securities Finance Corporation, Kangwonland and Daewoo. The delegation visited Centre headquarters before attending presentations and Q & A sessions with HBOS Employee Equity Services and BT, where they learnt about developments in UK practice that have helped to improve the efficiency and effectiveness of Eso schemes in listed companies. At HBOS, Paul Stoddart, head of new business, explained the legal and political framework for UK employee schemes and Jane Brydon, from HR, explained the rationale behind HBOS' 'Total Reward Strategy,' showing how analysis of take-up had influenced the restructuring of their remuneration policies. Graeme Wheatley offered the visitors lunch and summarised the plan design and communication issues that BT had encountered. His colleague Kate Wingate explained the administration of the international plans.

US shareholders to vote on executive pay

A US House of Representatives committee wants to help draft new legislation, which would give shareholders of quoted companies the legal right to decide from 2009 on the remuneration levels of their senior executives. If passed, this legislation would bring the US into line with the UK and Australia, where executive remuneration reports have to be submitted for shareholder approval. The total salaries, including bonuses, of ceos and other executives in US quoted companies have soared during the past decade.

Lord Foster's EBT

The Centre's disquiet over allegations that super architect Lord Norman Foster bought out an employee share trust weeks before selling a stake in his practice to a strategic investor, has been reported by *The Sunday Telegraph*. The newspaper quoted Centre chairman Malcolm Hurlston who wondered whether Foster's employees had been allowed to enjoy their full rights as beneficiaries of a Jersey-based employee benefit trust. Foster allegedly bought back his employees' 49.6 percent stake, prior to a private equity deal that could net him several hundred million. Documents filed at Companies House show that the re-purchase – an unusual event - took place on January 8. Close Trustees Jersey are said to have taken independent advice about the valuation of the stake and employees have the option not to accept the proposed payout according to the newspaper. As *newspad* reported last month, questions that remain unanswered are: *to what extent Foster + Partners and the EBT trustee consulted the employees; whether employees' views were considered; how the valuation of the employees' stake was arrived at; whether a new Esot is being established and, if so, how many of the staff will benefit.*

The Centre has been contacted by F+P employees querying the EBT sale. One informant said that a special payment had appeared on his payslip marked as 'Bonus (EBT)' and that he had been told by senior staff that the payment was a bonus. The letter he received said that the bonus was a share in the proceeds of selling the EBT and stated: "*Should you not wish to accept this proposal, send the payslip and cheque to..* (trustees' address)."

Mr Hurlston said: "This informant feels that the nature of the payment was misrepresented to the employees and is concerned that there was little information about what has gone on, or is going on - for example, if an employee does not wish to accept the proposal and sends their cheque/payslip back then do they just lose that payout? This employee wanted to know if the trustees were obliged to give him details about how the sale & share price were arranged. He says that other employees who have contacted the trustees have simply been told to speak to their HR department - something that they may be somewhat reluctant to do."

Lord Foster is considering awarding F +P shares to senior managers, said the trade magazine *Building*. A company spokesman said the plan was to offer some senior employees shares in the business as a reward for their loyalty. *Building* claimed that Foster now owns 90 percent of the company equity. The balance is owned by the three senior partners, it added, but the article did not mention the fate of the EBT. The Jersey Financial Services Commission is taking an interest in the case as is the Society of Trust and Estates Practitioners.

Private equity under the cosh

Hedge funds and private equity groups were accused of "plundering" the Netherlands during a tense session of the Dutch parliament, as leading politicians called for new laws to curb their activities. It was the latest sign of a growing political backlash across Europe against the 'Anglo-Saxon' funds. Britain's CVC Capital Partners and the US groups Centaurus and Cerberus were among witnesses subjected to a day's grilling from hostile Dutch MPs of all parties. "This ransacking of our country is not welcome" said Elly Blanksma, a senior MP for the ruling Christian Democrats. "We need to get a grip on these hedge funds and find out what their intentions are." The panel suggested new laws to force buyers out of the shadows and curb boardroom coups. These include lowering the threshold at which shareholders must identify themselves from five percent to one percent, banning contracts for difference that allow funds to vote by borrowing shares, and lifting the threshold for moves to dissolve the board from 51 percent to two-thirds. Nout Wellink, the Central Bank chief, said private equity helps lubricate the economy and should be welcomed, but he suggested changes compelling shareholders to secure the Central Bank's backing when buying more than five percent of any company - down from the current ten percent threshold. The free-market supporting Dutch have been shocked by the moves of private equity funds to break up the Dutch conglomerate Stork, despite vehement protests by management and unions.

CONFERENCES

This year's **Centre-Institute of Directors** joint share schemes conference for SMEs will take place on **Tuesday October 9,** probably at **1 Whitehall SW1,** the premises of the old Liberal Club. A capacity limit of 100 delegates will apply and so book early to avoid disappointment. A possible innovation this year is an extended afternoon coffee break and networking session. Feedback from previous Centre-IoD conferences suggests that Eso plan case studies are the most popular presentations, so members who propose these as speaker topics will be given priority. Intending speakers should contact Joel Lewis at the Centre, Tel 020 7436 9936 and jlewis@hurlstons.com asap. This event, the 11th in the series, offers practitioners new client opportunities, so do not delay if you deal with smaller and mid-size companies and are an experienced speaker.

The next joint **Centre – Society of Trust & Estate Practitioners** share schemes conference, is scheduled to take place on **Friday November 9** at **Old Government House Hotel, St Peter Port, Guernsey.** Members have a good opportunity to familiarise themselves with the important Guernsey jurisdiction. Joel Lewis is liaising with STEP Guernsey on a programme of speakers and topics, to include plan case histories and technical issues. Members interested in speaking at this event should contact him either by phone 020 7436 9936 or by email: jlewis@hurlstons.com. The Centre will pay for overnight accommodation for speakers who are based on the mainland. (*If by November Guernsey has opted for independence from the UK, the Centre will handle visa applications on behalf of mainland delegates*).

COMPANIES

Union representatives at **Eiffage**, the French construction group, protested strongly against a decision by managers to veto the reimbursement of shares held by employees, as part of efforts to fend off a raid by the Spanish group Sacyr Vallehermoso, reported *Les Echos*. The unions said that employees had the right to sell their shares, if they so chose. Exceptionally, Eiffage employees collectively hold 22 percent of the equity.

The consortium of private equity companies, led by CVC, which stalked **J Sainsbury** planned to make shares available to all employees if it had pulled off the deal. It said it would have put in place a scheme allowing all 150,000 employees to own a stake in the supermarket. Currently about 40,000 Sainsbury staff own shares. But the Eso offer came too late to prevent the bid's collapse.

A £213m bonanza awaits 340 staff shareholders out of 350 in total at **New Star Asset Management** following a share placing. Chairman John Duffield 67, an Eso fan, will net a further £110m for himself. The company was floated on the London SE in Oct 2005. Receptionist Jo Shaw became a paper millionaire when she was allowed to sell 25 percent of her holding. Her shares at float were worth £1m with the share price than at £2.25 but now it has risen to £4.45. Staff and directors still own 35 percent of the company. At Jupiter, his last fund management company, which he set up, Mr Duffield made 250 staff millionaires compared to about 100 so far at New Star. His personal secretary at Jupiter, Angela Hudson, got £2.25m for her shares when the company was sold. Mr Duffield, who shuns the limelight, drives a Ford Mondeo and owns neither a computer nor a mobile phone.

Quadnetics Group plc, a leader in the design, integration and control of advanced CCTV and video surveillance systems, allotted 26,500 new ords to its group EBT at 360p each. The EBT holds 1.38m shares for the benefit of nominated employees and directors on terms, similar to a share option scheme, whereby the benefit of a rise in the company's share price over a three-year period accrues to the relevant employee or director, provided the company meets certain performance thresholds linked to the FTSE AIM all share Total Return Index. Contact: ceo Russ Singleton russ.singleton@quadnetics.com

Up to 27 **Sydbank** shares will be awarded to each employee under the Danish bank's Eso scheme. The shares were placed in trust and will remain there until 2015. The scheme involves 2,468 employees and the number of shares distributed was 59,188, for which the bank's expenses were almost DKK18m. This is the seventh consecutive year in which the bank has distributed employee shares.

Unilever is planning to close its final salary pension scheme to new joiners. At present 7,000 employees are in the scheme, paying five percent of their salaries in contributions every year. Around two-thirds of UK final salary pension schemes are now closed to new members.

Compliance woes

The cost of compliance with regulatory laws for UK companies reached £10.3bn last year, up from £8.7bn in 2005, said a recent report from the British Chambers of Commerce. "The UK's growing burden of red tape is unsustainable and economic success cannot be taken for granted. Unless this increase is curbed we risk significant damage to the competitiveness of UK companies," said a BCC spokesman.

The Centre urges members to enter its **European Awards 2007** competition. The winners will be announced during the Cannes conference and the closing date for entries is early June. Application forms can be downloaded from the Centre's website. The award categories are: 'Best Employee Share Ownership Plan' in companies with more or less than 1,500 employees respectively.

French golden goodbye rumpus

News that Noel Forgeard, former joint ceo of European Aeronautic Defence & Space Co, had obtained a severance package totalling €8.56m started a political rumpus in France on the eve of the presidential election. Forgeard, who left Airbus amid suggestions that he had profited from insider information when exercising stock options, was granted a €1.22m payment in lieu of his six-month notice period. In addition, he received a 'termination package' totalling €4.9m, representing 24 months of gross income. Finally, EADS will pay him €102,000 per month to prevent him working for a rival company for at least two years.

The Employee Share Ownership Centre is a members' organisation which lobbies, informs and researches on behalf of employee share ownership. It is operated by staff of Hurlstons Corporate Consultancy Ltd.