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it's our business

newspad of the Employee Share Ownership Centre

Labour government-in-waiting plans compulsory Eso in larger companies

The next Labour government would legislate to **force** up to 7,000 UK private sector companies to create a permanent employee share pool in their businesses. Compulsory employee ownership in all larger companies could result in up to 10.6m employees each being given up to £500 worth of dividends each year, in plans outlined by **shadow chancellor John McDonnell** at Labour's annual conference.

Under the scheme, every private sector company with 250 or more employees would be required to create an "***inclusive ownership fund***" **(IOF)** making employees part-owners of their companies.

The legislation would *require larger private sector companies to transfer at least one percent of their ownership into an IOF each year, up to a maximum of* ***ten percent*** of *its equity. Smaller companies would be able to set up an IOF on a voluntary basis.*

Labour calculates that, collectively, employees covered by the scheme would receive about **£4bn a year** in share dividends by the end of Jeremy Corbyn's first term in government. Meanwhile, any additional income from dividends would go to a national fund to pay for public services and welfare, which would effectively be a new levy on private sector business worth an estimated **£2.1bn** a year.

Foreign-owned companies would not be covered by the scheme. In addition, many privately owned companies do not pay dividends and legally it would be difficult to force them to do so. The *Financial Times* wondered out loud whether this might encourage some UK registered companies to de-list from the London Stock Exchange and perhaps re-list in Frankfurt or wherever.

Were such an IOF to appear on the statute book, trustee companies and employee ownership lawyers could expect a wave of new business as companies currently without employee share plans would have to pay for the expertise to set up the required trustee mechanism.

Nevertheless, such a move by an incoming Labour government would break a 35 year consensus in the UK that employee share ownership should ***never*** *be imposed on companies and their employees.* Up until now the cross-party view has been that governments should encourage, but not force, companies and their employees to adopt all-employee share ownership. The former Tory/Lib-Dem Coalition government backed away from making Eso compulsory in small companies, preferring to tell employees they have the right to ***ask*** their employers to install Esos in their businesses, though owners could still say '*no.*'

Mr McDonnell promised to introduce new legislation to make the scheme mandatory as he called for workers to be given a greater "say in the management and direction of their company." He said: *"Employee ownership increases a company's productivity and encourages long-term decision making. The shares will be held and managed collectively by the workers. The shareholding will give workers the same rights as other shareholders to have a say over the direction of their company, and dividend payments will be made directly to the workers from the fund."*

As the IOFs built up over the years ahead, they would become powerful '***poison pills'*** (in City parlance) –

From the chairman

The first knowall prime minister was perhaps Harold Wilson who could produce minute and nerdish detail in the House at will. What a contrast with Donald Trump who, a non-drinker like Jeremy Corbyn, also eschews detail.

There has been a pretend consensus among the UK's political parties over the years although in reality the same words meant different things. McDonnell has exposed the fragility in his bid to rival Thatcher (the 'milk snatcher' now rivalled by the dividend snatcher.)

By contrast in the US ....whoever would have thought they were ahead us?...Democrats and Republicans produced a joint measure to bring forward esops and Donald Trump found legislative space to bring it to reality.

As a further step in the small business sector the US has a Small Business Administration with the aim of supporting small business, again bipartisan and pursuing efficient measures rather than hand-outs. New SBA guarantees are now helping banks lend for employee ownership. In the UK all we have is the new minted Small Business Commissioner whose remit is currently limited to prompt payment.

Across the pond there is always something to learn from each other, sometimes from unexpected quarters.

Malcolm Hurlston CBE

making it far more difficult for predator companies to take over other companies in the future, as the IOF employee share pools could not be sold on.

Labour calculates that 40 percent of the private sector workforce – would initially be covered by the scheme. Dividend payouts would be made at a *flat rate* to all employees. The funds would be held and managed collectively and their shares could not be sold or traded. Employees' fund representatives would have voting rights in companies' decision-making processes in the same way as other shareholders.

The share plan industry expects that Labour's IOF would sit side by side with existing all-employee share schemes in those companies which have installed them. *However, there are fears that companies angered by the compulsory feature of the McDonnell plan could retaliate by winding down established all-employee share schemes within their businesses.*

Such a scheme, once implemented, structurally would be a long way away from the conventional share plans used by Centre members. Mr McDonnell appears to have borrowed some of his proposed key Eso plan features from the **Employee Ownership Trust (EOT)**:

*Employees would ***not*** be permitted to cash in their individual fractions of the company share ownership pool

*Instead, the employee shares would be held in a trust, and elected trustees would sit on important committees in the business. Their purpose would be to allow employee shareholders to influence the direction of the organisation and its day-to-day behaviour.

*Each employee ownership fund would build up over time, giving the employees, collectively through rising share ownership, an increasing say in key decisions on how their companies were run and managed.

Taking a step beyond employee ownership, Mr McDonnell told the conference: "*Workers, who create the wealth of a company, should share in its ownership and, yes, in the returns that it makes. It's not just the workers of a company that create the profits it generates. It's the collective investment that we as a society make that enables entrepreneurs to build and grow their businesses, maintaining the roads and investing in the infrastructure we rely upon, educating the workforce, caring for them when they're sick and investing in the research and development that enables technological innovation. So we believe it's right that we all share in the benefits that investment produces."*

The director general of the **Confederation of British Industry**, Carolyn Fairbairn, said Labour's plan would cause investment to "flee" the country. She told BBC Radio 4's Today programme: "*Take steps like this and we will set the clock back, investment will flee our country and, whatever Labour say about this, the outcome will be one that reduces pay in people's pockets."* Stephen Martin, director-general of the **Institute of Directors**, said Labour's policy could cause far-reaching damage to the UK economy. "To effectively force companies to transfer ten percent of company ownership from existing shareholders to employees is far too draconian," he added. "It could have a negative effect on business investment and business formation in the UK, and undermine the functioning of UK capital markets."

Mr McDonnell dismissed the criticisms. He told BBC1's Breakfast: *"If you look at other economies, like Germany, where there's been much more worker involvement, it's been the reverse. You get more investment, you get longer-term decision making, and you have a growing economy. This is nothing unusual. This happens in other countries, and it's proved to be successful. I think it's an idea that's been argued for years."*

The shadow chancellor's staff said the creation of the funds would go some way to redressing growing inequalities after a decade when average pay has not increased in real terms.

The concept of compulsory financial participation by employees in their companies in Europe was introduced by **General Charles de Gaulle** after the end of the Second World War. When he became President of France—with the support of René Capitant and others on the Gaullist left—he acted swiftly to force all companies employing at least 50 workers to introduce profit-sharing schemes for the benefit of their employees.

Meanwhile, some aspects of Labour's IOF scheme seem yet to be resolved, namely:

*How would a Labour government stop the legislation from being gamed by many companies, who could shed labour to get below the 250 employee mark to avoid having to set up an IOF? Others could refuse to take on extra staff if that would take them over the line.

*Would companies who already had significant all-employee share plans in their businesses be required to contribute *less* than one percent of their equity annually into the IOF? Otherwise, legal control problems could arise, vis-à-vis their mems & arts, in companies like Royal Mail, where employees already own 12 percent of the equity.

*How would a Labour government facilitate the task of getting larger privately-held companies valued for the purpose of implementing pooled employee share ownership in their businesses?

*If private business owners later wanted to exit, then would the participants in the pooled IOF be given first option to buy the company by instalments?

The roots of Labour's plan were put forward by the party's 37 Co-operative party MPs. At present, collective ownership has only a toehold in the UK where the co-operative movement has a largely retail base. In total, co-ops account for roughly two percent of UK GDP compared with about seven percent in Italy and Germany. The scheme was among those recommended by think-tank the **New Economics Foundation (NEF),** which recommended an inclusive share fund in its document '*Co-ops Unleashed*'.

Centre steering committee member **Nigel Mason,** director of **RM2** played a role too in the germination of Labour's plans by co-authoring a report by the ***IPPR Commission on Economic Justice*** *entitled "Capital Gains" available at: https://lnkd.in/ditksUB. Nigel said in his LinkedIn commentary: "Good to see the Labour Party commit to massive expansion of employee trust ownership in larger firms. John McDonnell references (and slightly alters!) my recommendations."* The IPPR report called for the establishment of a Citizens' Wealth Fund, which would own shares in companies, land and other assets on behalf of the public as a whole. It would thereby manage existing public assets and transform a part of national private and corporate wealth into shared public wealth. The Fund could be capitalised by a combination of capital receipts from the sale of public assets, revenues from a 'scrip tax' on corporate stocks, and the hypothecation of wealth taxes. The Fund's investment mandate would be set by Parliament but it would be managed by an independent board on behalf of the public. The Fund would act to spread wealth by paying out a universal citizen's dividend to all or particular groups of the population, and by investing in the provision of universal basic services. It said that the expansion of employee ownership trusts could be encouraged by reforms, including stronger tax incentives for the transfer of business ownership and for external investment and measures to build individual capital stakes for employees.

Centre chairman, Malcolm Hurlston, who brought the esop to the UK in 1986 on behalf of Unity Trust, a financial institution co-owned by trades unions and the Co-op, said: "There is certainly a need for some compulsion in bringing share ownership to the many rather than the few. What is regrettable is the absence of the all-party approach which is a feature of the United States. In the end we need less politics and more common sense."

Centre member **Clifford Chance** warned the proposal would "change the landscape" for foreign businesses planning to invest in the UK – with returns being eventually ten percent less under the policy. Investors, who currently have majority control but would slip below the 50 percent threshold if diluted by ten percent, would be particularly impacted. The global legal group believes McDonnell's compulsory Eso policy could be in breach of **World Trade Organization** rules as well the **European Convention on Human Rights** and could spark legal challenges from shareholders, if a Labour government implemented the plan, according to a report in *City AM.*

Reader feedback:

From Centre member **Dominic Jacquesson,** director of talent at venture capital company **Index Ventures**: "*I was disappointed about the tone of September's **newspad** lead article, describing Enterprise Management Incentive (EMI) grants as an 'El Dorado' for SME executives... The EMI scheme has been a vital element of establishing the UK as Europe's pre-eminent venture capital and tech start-up hub. The large majority of UK start-ups issue EMI options to all employees, not just those at the top. Average employees accept 15-20 percent lower cash salaries than they could get elsewhere, largely on the basis of receiving (high-risk/illiquid) stock options. For executives, the cash-salary gap is way bigger – e.g - cfo or general counsel in a scaling tech company might be on £150k salary when they could comfortably secure £250k in a bigger company. This state might persist for several years before an exit, so EMI options are in no way accurately depicted as 'money for nothing.' More than 90 percent of start-ups fail - and more like 96 percent at 'seed' stage, which is the largest group by volume. In other words, issuing stock options through EMI, is about rewarding talent for the considerable risk that individuals take when they join a start-up, rather than seeing them emigrate to Silicon Valley or sticking with safe, but less innovative, roles within corporates.*

September's newspad lead article on the success of EMI raises the possibility of government intervention to limit its cost to the taxpayer. Any policy based on tax relief should surely be judged as much by the value it creates to the wider economy as by its cost."

Centre member **Nigel Mason**, director of employee share ownership finance company the **RM2 Partnership** commented *"When EMI was introduced in 2000, it was deliberately permissive so as to allow companies the chance to tailor their equity incentives to suit their circumstances. HM Treasury was persuaded - rightly, I believe - that tax relief is only given in practice when an EMI company is successful, such as on a sale or IPO, when there are many other tax collecting opportunities, whether through payroll, VAT or corporation tax. Since 2000, only 22 percent of recipients of EMI options have exercised them, so the average gain per employee should really be spread over the total population of EMI participants to get a fairer picture.*

The wider economic benefit of EMI was thoroughly researched for HMRC by Ipsos Mori (June 2018) and their conclusions were emphatically positive: EMI is succeeding in its principal purpose of fuelling growth in the UK's entrepreneurial SME sector. We need a vibrant SME sector now more than ever, so long may EMI's success continue."

Editor's note: The Centre and *newspad* applaud the outstanding success of the tax-approved EMI, in whose creation Nigel Mason played a leading role. Our article did point out that those incentivised in Exit -only EMIs are sometimes kept waiting for years before a change of control occurs and that, as Dominic rightly says, some EMI backed companies fail, leaving worthless options. So it is only right that risk-takers should profit handsomely, as some have done, from their rejection of easier business alternatives.

We merely wanted to draw readers' attention in our article to the statistical fact that, EMI is a victim of its own success in that participants in successful start-ups are already getting collectively 30 percent of the total Income Tax and NICs relief, even though they constitute about one percent of UK employee shareholders by number. In response, Centre members are therefore entitled to say either: '*So what*?' or '*What could or should the government do to share the limited amount of tax and NICs relief available more equitably?*

EVENTS

Guernsey seminar – November 30

This year's Guernsey seminar in partnership with the Guernsey branch of the **Society of Trust & Estate Practitioners (STEP),** will take place at the **Old Government House Hotel, St Peter Port**, on **Friday, November 30.**

Presentations under the heading of *Leading the way – the Channel Islands as a global hub of ESOT specialism* will include: Taking the ESOT to emerging markets – challenges and opportunities; JSOPs – the role of the Trustee: An outline of current issues and the future of JSOPs; "Information overload – now what?" focusing on tax avoidance/ evasion; The application of the 'disguised remuneration' and 'outstanding loan' legislation to employees' trusts.

Given recent developments, such as the introduction of the UK Trusts Register and the growth in the establishment of employee ownership trusts (not to mention Brexit), it has never been more important for those interested in employee share schemes and trusteeship to stay informed with expert views and enjoy the continuing education which our Institute seminars offer.

The seminar will conclude with a networking lunch.

Expert speakers include: **Elaine Graham, Zedra; Alison MacKrill, STEP/Appleby; Graham Muir, CMS; Paul Malin, Haines Watts; David Pett, Temple Tax Chambers; David Craddock, David Craddock Consultancy Services** and **Charlotte Fleck, Pett Franklin**. The seminar will be chaired by **Malcolm Hurlston,** who founded the Esop Centre.

Attendance prices: Esop Centre/STEP members: **£375,** Non-members: **£480**

Book and pay before October 19 to qualify for one of the following early-bird discounts for this unique half-day event: **50 percent off a third delegate or ten percent off your total booking price.** *Only one early bird offer can be used for each organisation, whichever gives the larger discount*.

To book email events@esopcentre.com or call the admin team on 020 7239 4971

Rush for Centre Symposium speaker slots

Speaker slots are being taken up rapidly for the third **British Isles share schemes Symposium,** which takes place on **Thursday, March 7 2019.** To date, agreed speaker topic commitments have been received from: **Colin Kendon** at **Bird & Bird**; **David Craddock** at his eponymously named **Consultancy Services**; **William Franklin** at **Pett Franklin**; **Sue Wilson** and **Elizabeth Bowdler** at **PwC**; **Nigel Mason** at the **RM2 Partnership** and from **Elissavet Grout** at sponsor **Travers Smith.**

Nevertheless, there is still time for other member advisers/practitioners and or their share plan sponsor clients to book their speaker slots too. Consult the Centre website to see what is available from our topic list, or propose your own presentation subject.

Co-sponsorship packages are available: contact the Centre.

The full-day event is being hosted by senior legal member **Travers Smith** at its London offices in Snow Hill EC1.

Centre chairman**, Malcolm Hurlston** will welcome delegates and introduce the programme, which includes talks and debates on:

- employee equity plan case histories with focus on both large and SME UK companies
- regulatory & compliance issues; GDPR and Mifid II
- Is it right that EMI is producing massive *El Dorado* almost tax-free rewards for key employees in SMEs? How best can the government improve EMI? Exit-only EMIs
- Alternatives for SMEs who cannot qualify for EMI tax-approved options
- Employee Ownership Trusts - What kind of businesses are using EOT and why? Are EOTs really employee share plans?
- Hybrid EOTs: the new way to structure MBOs & employee ownership
- Latest developments in international share plans
- Employee share plans in volatile markets
- Interactive share plan communications – what works best?
- The likely impacts of Brexit on employee share schemes
- How to re-energise other tax-approved share plans - the Company Share Option Plan (CSOP); SAYE-Sharesave and the Share Incentive Plan (SIP).
- Executive equity reward packages: new design parameters, performance share plans & shareholder activism
- Employee equity trustee concerns

Speaker slots cost Centre members **£240** each, compared to a **£395** admission charge for member practitioner (service provider) delegates. Non-member service provider delegates will pay **£595** for admission. Speakers and delegates from *plan issuer companies* will be admitted free of charge.

If you are a Centre member wanting to make a ***topic presentation*** *and/or a* ***share plan case study***, **make your speaker bid now**, in order to avoid disappointment. Please email Fred Hackworth at fhackworth@esopcentre.com or call the team on +44 (0)207 239 4971.

Partner **Mahesh Varia,** who is head of Incentives and Remuneration at **Travers Smith**, is helping to draw up the programme. Travers Smith is a member of the '*Silver Circle'* of leading UK law firms. This symposium will include a buffet lunch and finish with an informal drinks reception on site in the late afternoon.

MOVERS AND SHAKERS

New member: The Centre welcomes service provider **Capdesk** into membership. Capdesk is a platform that helps unlisted companies manage equity through highly specialist equity plans software. It says it is passionate about progressive finance, advanced technology and solving tough human problems. Capdesk's website says: *"We believe that democratising capital creation through spreading wealth is beneficial for society as a whole. It has positive effects for personal health, happiness and education; and for companies' innovation and competitiveness. Therefore, it is our goal to make it as easy and inexpensive as possible for private unlisted companies to spread their wealth, whether that be through shares, options, warrants or other employee incentive schemes or equity types. Managing company equity should be easy and cheap to do correctly, not a costly distraction from the actual business."* The Centre looks forward to working with Capdesk, whose main Centre contact will be ceo **Christian Gabriel**; email: christian@capdesk.com, phone: 07397852375.

newspad awards 2018

The Centre's is receiving early nominations for the *newspad* 2018 Awards, for the best employee equity plans, either already operating, or about to launch. This annual competition presents an opportunity for members, share plan advisers and their clients to show off their best all-employee equity plans to the worldwide readership of newspad.

Award certificates, kudos and publicity await the winners, *so do ensure that you, and/or colleagues, submit at least one entry for a newspad award this year.*

This year's categories for which you can submit entries are:

- Best all-employee international share plan (companies with more than 5,000 employees)
- Best UK centred all-employee share plan (companies with fewer than 5,000 employees)
- Best employee financial education programme
- Best share plan communications
- Best use of video communication
- Best use of technology in employee share plans
- The most creative solutions to employee cultural, jurisdictional or social diversity issues when launching international all-employee share plans
- Laurie Brennan award for astounding achievement

You can enter share plans in more than one category.

Entries involving employee share plans in non-member companies will be accepted directly or through advisers, but advisers must be Esop Centre members in order to submit entries.

Entries involving executive/managerial equity reward schemes will be accepted, provided at least 250 executives/managers participate in the shares or share option arrangements.

For details how to enter see: www.esopcentre.com/awards. The process is simple.

The judges of the 2018 *newspad* awards will be: **Damian Carnell,** director at Willis Towers Watson, specialist in executive reward and employee share plans; **Anna Watch**, head of executive share plans (governance & compliance) at member firm BT, **Robert Head,** director of Neo Reward and formerly head of global share plans at Pearson with **Malcolm Hurlston** chairing.

Winners and commentary will be published in a special edition of *newspad* and the awards will be presented in the new year.

On the move

A note to confirm that **Francis O'Mahony** retired from **BT** at the end of July**,** where he was head of employee share plans and share registration. Francis had worked at BT for 15 years. Before that he worked for Mercer as a senior consultant and at HMRC, where he had various responsibilities on the Eso front.

UK CORNER

Vote down Unilever London HQ exit, employee shareholders urged

Unilever's employee shareholders are being urged to mobilise in London on October 26 to defeat the multinational's plan to rationalise its dual UK/Dutch share structure and move its HQ to the Netherlands.

Centre member **The UK Shareholder Association (UKSA) and ShareSoc** say they are very doubtful whether the proposed changes will be in the best interests of most private shareholders. Unilever's plans will result in their plc shares being taken over by NV shares, which will be listed in Holland and no longer on the FTSE100.

For Unilever's proposal to pass, it needs approval from **75 percent** of the UK plc's voted shares, and 50 percent of the Dutch NV's, according to *Reuters*. In addition, it needs to be endorsed by *a majority of shareholders*. It is this second hurdle which offers objectors their best chance of success. Each shareholder, including those with only a handful of Unilever shares, will have equal weighting with the

City institutions in the second count. **Aviva** and **M&G** said they intended to vote against the proposed changes. Other asset managers are concerned too and the UK plc vote might be close.

ShareSoc and UKSA both dislike Unilever's proposals. They said: 1. The Unilever dual listing model has worked for decades. The dual listing model works for **Royal Dutch Shell** and **BHP Billiton**, neither of whom feel the need to change it. 2. There are potential tax consequences if Holland changes its withholding tax rules. 3. There will be a loss of transparency for UK shareholders in that there will be no opportunity to quiz directors at a UK agm. 4. We are losing a £113bn market cap (plc £50bn is market cap, the rest is Dutch) to the Dutch in a nil premium takeover. 5. Removal from FTSE 100 index will mean many funds will have to divest. Reduction in demand for Unilever shares is almost certain to reduce the Unilever share price in the short/medium term.

Centre chairman Malcolm Hurlston CBE said: I have consulted our own experts who help me advise employee shareholders. We fully endorse the UKSA/ ShareSoc line. This is a moment of truth for employee share ownership.

UKSA and Sharesoc added: "There are reasons favouring the move, but we believe that they are not strong: 1. Better takeover protection will enable Unilever to manage better for the longer term, but Unilever has stated explicitly that takeover protection has not been a consideration in their deliberations. 2. Simplification of the structure. The benefits have not been quantified. However there will be costs associated with the move. The cost/benefit and payback period appear unclear and unproven. 3. We believe it would be better if the HQ were to remain in Britain. Most of the asset managers owning Unilever shares are based in the UK. Unilever's proposal to move its head office to the Netherlands would set a bad precedent based on flimsy evidence of commercial benefits post-Brexit. The London Stock Exchange seems to be indifferent to the loss of Unilever. This is regrettable and a surprising position - LSE shareholders must be very worried about the lost income, particularly if others follow suit – **vote now!** We believe that the proposed changes will not be in the interests of most private shareholders; how you vote is up to you, but do consider the issues carefully and make sure you exercise your vote."

Unilever's chairman, Marijn Dekkers, said: "We are currently restricted in the ways we can make changes to our portfolio of brands and businesses. For example, we considered de-merging our spreads business when we sold it last year but found that we were very restricted because of the complexities of having two sets of shares. Similarly, our dual-share structure restricts our ability to make major acquisitions using our equity, when compared with other companies that we compete against. Simplifying Unilever will strengthen our governance. It will for the first time give each shareholder an equal voice over our future, based on a "one share, one vote" principle. In addition, the board's proposals commit the company to not having protective devices – which have been used by some other listed companies in the Netherlands – and to put our directors up for re-election every year. As a board and management team, we have held more than 200 meetings with our shareholders over the past six months and it's clear that our proposals have huge support." It said that two of its three main operating divisions would remain headquartered in London, so it was "untrue" to claim that the company was quitting the UK.

Cliff Weight a director of **ShareSoc** and non executive director of Centre member, the remuneration consultancy **MM & K,** said: "The move cannot be good news for UK employees of Unilever. They are going to see their career opportunities reduced and future investment is more likely to be in Holland than UK. So, *UK employees* should vote against the proposals, in respect of shares they own privately and/ or through their employee share schemes participation. "The Lever Trust owns six percent of Unilever. Employees and ex employees should write to the Trust, asking it to vote against the proposals. If the Unilever UK Pension fund owns Unilever shares, they should ask its trustees to vote against the proposals. They should ask their friends to write to their pension fund trustees, asking them to vote against the proposals. *This move is potentially the tip of the iceberg, so it is in the interests of all employees in the UK to see it stopped. There needs to be mass communication to the trade unions and the Labour Party to make sure we do not lose one of our crown jewels*. "The High Court must approve this as well as 75 percent of shareholders. Hence mobilising the individual and small shareholder vote is important**,"** added Mr Weight.

John Hunter of UKSA told *newspad:* "Typically, only six percent of retail shareholders vote their shares, which is due to a mixture of the difficulties of the nominee system, the clunkiness of some broker platforms and general apathy as often the retail vote makes no difference. This time, the retail vote could be crucial, so retail shareholders should make the effort and vote."

Royal Mail

Around 130,000 Royal Mail employee shareholders were very unlucky indeed to see their employer's share price collapse just a fortnight before they could sell or retain up to **613** of their free Share Incentive Plan (SIP) shares. The price fell by 18 percent in one day and then fell by a further nine percent during the next day after Royal Mail's new boss issued a profits warning. From the middle of this month they can sell the first tranche of their maturing SIP shares without incurring and Income Tax or NICs charges.

Given that many RM employee shareholders have got a maximum **913** free shares in their SIP, how is it that they can only sell – if they so wish - two-thirds of their holdings this month? ***The number of shares they can sell tax free – 613 – later this month seems curious and with good reason***. Originally, in October 2013, Whitehall calculated, based on a maximum privatisation share price offer of 330p per share, that the eligible full-time employees were due to receive immediately **725** free shares each and part-timers a smaller number of shares on a pro-rata basis. However, such was the surge in the share price once normal market trading began - from 330p to an average 540p per share within a few days - that ministerial assumptions on the timing of the promised ten percent employee equity share out had to be redrawn.

This is because *at that time* employee participants in the tax approved SIP then allowed only a maximum investment of **£3000** worth of free employee shares per year. The huge leap in RM's share price would have put the value of postal employees' free shares almost £1,000 above the annual tax-approved limit.

As a result, they had to wait six months longer, until the start of the next financial year in April 2014, before they could receive into their individual SIP accounts the delayed balance of their free share allocation - the 'missing' **112** shares each. So if RM employee shareholders want to sell those shares off too, they will have to pay Income Tax and NICs on the total receipts – unless they hang on until next April before selling any of them.

This embarrassing foul-up over the Eso scheme limits, unchanged since 1991, led to changes in **April 2014,** when the savings limit for **SAYE-Sharesave** schemes doubled from £250 to **£500 a month** and the maximum value of shares an employee could acquire with tax advantages through **SIP**s rose by £300 a year to **£1,800** for partnership shares and to **£3,600** a year for free shares.

Thereafter, more free share awards were made to qualifying employees in 2014, 2015 and 2016, explained Royal Mail. "Full time *colleagues* eligible for all four awards have received **913** Free Shares. Furthermore, the 2014 and 2015 awards included surplus shares in the SIP, which were reallocated to loyal employees after some colleagues had left Royal Mail." Guidance will be available to RM employees by writing to aes@esopinstitute.com.

John Lewis & Partners is reviewing the future of its final-salary pension scheme after pre-tax profits in the six months to July 28 declined 99 percent to just £1.2m. JLP warned that full year profits would be substantially lower than last year. John Lewis, which is owned by a trust which benefits employees

(partners), made more than 1,800 people redundant in the year to the end of June, nearly three times the level in the previous year, as it cut costs amid a profits slump. The scale of the cutbacks emerged in an update to employees in the staff magazine. However, JLP, which owns a string of department stores and the Waitrose supermarket chain, said it had created new jobs too, including hiring 600 staff when it opened its new Westfield store in White City, London. In addition, it had increased its in-house design and buying teams for own-label goods. In total there are now more than 700 fewer employees across the group than a year ago – 83,000 staff in total. The group is cutting costs at its head office, halting investment in new stores, reviewing its pension arrangements and reining in marketing spending. The annual staff bonus, which has fallen for four successive years, looks like being even smaller next year.

Disguised remuneration & EBTs

HMRC published Spotlight 44 on disguised remuneration schemes affected by the loan charge, said *Slaughter & May*. HMRC's guidance covers how to settle use of a disguised remuneration scheme before the loan charge arises (which will be on April 5 2019). On August 1 this year, HMRC published a webinar on disguised remuneration settlement calculations, which may have been useful for those seeking settlement before the end of last month. HMRC has made it clear that, despite what some promoters or agents may be advising, *any disguised remuneration scheme with amounts still outstanding will fall within the scope of the loan charge; the loan charge has broad application.* Therefore, those planning to restructure loans may find that HMRC challenge those arrangements. HMRC stated that the only way to avoid the loan charge is to settle before the charge takes effect, and to repay all loans in full. It may be beneficial for those with outstanding loans to seek settlement with HMRC. This is because, if a loan is outstanding when the charge takes affect, the individual whose loan it is will have to pay income tax on the value of the loan in the tax year 2018/19. Therefore, that individual will only benefit from this year's personal allowance and may end up paying more tax than if they had settled. Furthermore, the guidance suggests that HMRC are willing to work out repayment plans for those seeking to settle. Generally, the exclusions in the legislation should prevent awards made under most share schemes being caught by the loan charge. ***However, some arrangements that involve employees acquiring shares from Employee Benefit Trusts on deferred payment terms may be caught. These types of schemes were common in private companies (****where the intention was to allow employees to acquire shares on a capital rather than income basis****).***

Staff windfall from Funding Circle flotation

Three friends are in line for a combined windfall of £70m after revealing plans for a £1.5bn float of **Funding Circle**, the peer-to-peer lending business they founded eight years ago. Funding Circle, which allows small firms to tap into a pool of money provided by thousands of investors, aims to raise £300m in a stock market floatation. The firm secured backing from **Heartland**, the investment vehicle of the Danish billionaire Anders Holch Povlsen. The ceo, Samir Desai, said he and his two co-founders were inspired by tough lending conditions amid the credit crunch. "In 2008 we were seeing small businesses struggling to get access to finance," said Desai, whose 7.6 percent stake is worth around £100m. "It's a small part of what banks do, but actually quite a big thing for society. We wanted to bring together disaffected parties and get a better deal for all." Funding Circle offers loans of up to £1m to firms that want to raise capital quickly or have been rejected by a bank. Its model, which relies on sophisticated data analytics, has resulted in the issue of £5bn of loans since 2010 by matching 50,000 businesses directly with 80,000 investors. Desai and his co-founders, James Meekings and Andrew Mullinger, all aged 35, own 17 percent of the company between them. They will share a windfall of around a quarter of the wealth crystallised by the float. Funding Circle staff, ***all of whom have a stake in the business,*** will have the option to either retain their shares or sell 25 percent of their holding. However, the IPO float price was scaled back from £1.8bn amid continuing Brexit uncertainty in the City. The largest shareholder is the venture capital group and Centre member **Index Ventures**, with 20 percent. British investors such as **Carphone Warehouse** founder Charles Dunstone and the venture capitalist Jon Moulton are on the share register. The company said it would use the £300m it hoped to raise to fund expansion into new countries and to boost trust with borrowers, lenders and regulators. Funding Circle said that revenues have been boosted as the company occupied the space vacated by banks cautious to lend amid Brexit economic uncertainty. With the offer of new shares, as well as the sale of existing shares by current investors, Funding Circle expects 25 percent of its stock to be publicly tradable after the float.

Lies, damned lies & statistics….

A union-backed group claimed that the gap between ceo total reward and worker pay surged to 312-to-1 last year. However, official government data show the gap is a fraction of that, said an article in *Investor's Business Daily*. The latest annual report from the **Economic Policy Institute (EPI)** claimed that in 2017 the average ceo of the 350 largest firms in the US received $18.9m in compensation, a 17.6 percent increase over 2016. The typical employees' compensation remained flat, rising a mere 0.3 percent. Economist **Mark Perry** has pointed out that these ratios use two completely different sets of numbers. On the one hand, they measure the total compensation — salary, bonuses, stocks and options — for only about 300 or so ceos at the biggest companies. That's roughly the top 0.1 percent of all ceos in the US. Then they compare that to the average hourly wages paid to all rank-and-file workers nationwide.

"A more accurate comparison would be of S&P 500 ceo compensation to the average pay of employees of those same companies," Perry notes. Nor do those pay ratios account for the fact that ceos put in far more hours than the typical rank-and-file employee. Perry says that when you do a more honest pay comparison, the ratio is more like **50 to 1.** That's still big, but nowhere near the eye-popping figures the media is reporting. What happens if you look at the wages of all the nearly 300,000 US ceos, at firms big and small? Instead of tens of millions of dollars, average ceo pay across the board is $196,050 a year, according to BLS data. That works out to a ceo:worker pay ratio of about **4:1**." While average pay for *all* ceos climbed 40 percent from 2005 to 2017, so did average hourly wages for non-supervisory workers, BLS data shows. The EPI says that examining the reward of just the top ceos makes sense because their companies employ so many people and "set the standards for pay in the executive pay market." Perry called such comparisons "statistical legerdemain," said *Investor's Business Daily.*

Sin-bin full after more executive troughing

Senior executives increasingly face the wrath of angry shareholders as directors suffered 237 revolts by their investors in the first six months of 2018. There are now 120 companies on the public register (the 'sin bin') of firms which have suffered an adverse vote against directors by at least **20 percent** of voting investors. This represents a 25 percent jump in rebellions compared with the same period of 2017 and a nine percent rise in the number of companies facing annoyed shareholders, said the **Investment Association**, which tracks shareholder votes.

Though objections to remuneration resolutions fell year on year from 68 in 2017 to 61, dissatisfaction with specific directors climbed. At least 20 percent of shareholders voted against re-elections in 66 cases. Five directors at mining company Petropavlovsk – suffered votes against their re-election by more than 50 percent of voting shareholders.

The IA's Andrew Ninian said rebellions against directors tend to be motivated either by concerns over that individual's performance or by worries that they are on too many boards and so cannot devote enough time to oversee the business. "What we are asking is that at the time of the company's agm they acknowledge they have had a high vote against them and they are going to do something about it. Some companies at that point say 'we have heard from investors about the key issues', but not every company says that," he said. "The second thing we are asking is that within six months the company puts out further statements to say what they have done since the vote, what have they heard from shareholders and what are they going to do as a result." Not all companies are listening. There were *29 repeat offenders* who appeared on the register this year and in 2017 for the same topic in each year. Of those, 14 were reward-related.

ER is "expensive, regressive and ineffective"

The chancellor is being urged to use his autumn Budget to scrap billions of pounds in tax relief for entrepreneurs, labelled by some critics as allegedly the 'worst tax break' in the UK, helping mainly already wealthy individuals. The **Resolution Foundation** *think tank* called on Mr Hammond to abolish **Entrepreneurs' Relief (ER**), generating annual savings of around **£2.7bn** that could be spent instead on the NHS. While the government has promised to finance a £20bn-a-year injection of extra cash into the NHS by 2023-24, other departments are clamouring for funds after almost a decade of austerity.

ER, first introduced by Labour under Gordon Brown a decade ago and then aggressively expanded by the Conservatives, is designed to encourage people to start small businesses. The policy allows people selling their firm to pay half the normal rate of capital gains tax, up to a lifetime limit of £10m. *ER is highly relevant to part owners of SMEs who acquired a lot of shares through an EMI stock option based scheme and who then planned to sell their shares. Instead of paying CGT at 20 percent above the exemption limit, qualifying for ER allows them to pay only ten percent CGT on their gains.*

There have been warnings that reducing entrepreneurs' relief could put investors off backing young companies. However, the Resolution Foundation (RF) said the scheme was '*expensive, regressive and ineffective*.' Initially designed to cost around £200m a year, the expansion of the tax break introduced by the then chancellor, George Osborne, during the coalition years, coupled with greater-than-expected use, has meant taxpayer spending on the relief has ballooned by ***ten times*** to more than **£2bn.** The RF said this was more than the entire annual budget for the intelligence services and enough to give £100 to every household in the country annually. The think tank said 52,000 individuals benefited from the tax break in 2015-16, but the financial gain was concentrated among a few very wealthy individuals, with 6,000 claiming more than £1m each. About 82 percent of the beneficiaries were men with an average age of 57. The cumulative cost in the past decade of the tax break has been about *£22bn* without – allegedly - serious evaluation of its effectiveness. Yet most entrepreneurs claiming the relief say they were unaware of it when they started their company. Adam Corlett, a senior economic analyst at RF, said: "As the Treasury wrestles with how to raise revenues to fund the prime minister's pledge of £20bn for the NHS, they should start by scrapping this expensive, regressive and ineffective tax relief."

Brexit:

***Panasonic** is moving its European headquarters from the UK to Amsterdam this month as Brexit approaches. The aim is to avoid potential tax issues linked to the UK's decision to leave the EU, said Panasonic Europe's ceo Laurent Abadie. Panasonic's decision was driven by a fear that Japan could start considering the UK a tax haven if it cuts corporate tax rates to attract business, Mr Abadie told the *Nikkei Asian Review* newspaper. If Panasonic ends up paying less tax in the UK, that could render it liable for a bigger tax bill in Japan. **Nomura, Sumitomo, Mitsui** and **Daiwa** have already said they will no longer maintain their EU headquarters in London.

*The UK government published a Technical Notice giving guidance to the banking, insurance and financial services sector on the cliff-edge scenario, where the UK leaves the EU in March 2019 without an agreement. The Notice was short on new announcements but drew together in one place the main steps that the UK government and regulators would take to protect EEA firms operating within the UK and UK customers of EEA firms if passporting rights ceased abruptly. The measures included a commitment that EU firms and market infrastructures would, subject to making notifications, be able to continue to operate within the UK for up to three years after March 2019 under temporary arrangements. The validity of contracts already running between UK customers and EEA firms would be recognised. "These steps are to be welcomed and represent a sensible, pragmatic approach to protect market participants," said Mark Simpson of *Baker McKenzie*. 'They stand in stark contrast to the EU's failure (to date) to propose equivalent measures to protect EEA customers and EEA operations of UK firms.' The EU approach has been to suggest that UK firms need to obtain new regulatory licences by March 2019, and there is uncertainty as to the validity of contracts concluded with UK firms during the UK's period of EU membership. Whilst the City has been taking steps to ready itself for such an outcome, it is unclear whether this can be fully achieved in the time available. There are limits to what the UK can achieve unilaterally and in the absence of reciprocal measures from the EU there is likely to be disruption. But the UK's measures will go some way to mitigate the risks on the UK side. The government accepts that for payments, there may well be an impact from exit, with the cost of cross-border **card payments** likely to increase and such payments no longer covered by the surcharging ban.

*The UK is still the favoured European destination this year for companies seeking to raise money from the markets. Overall European initial public offerings (IPOs) raised €9.3bn in the second quarter, according to **PwC,** a sharp fall of 43 percent on the year. This was caused by a seven percent drop in the number of flotations, and those which did take place were smaller on average than those in the same period of 2017. By contrast, the London Stock Exchange was the leading IPO venue of the second quarter with 25 floats raising £2.5bn – up from 24 deals totalling £2bn a year earlier. That included two of the top five European IPOs in the three-month period. Czech-based **Avast** raised £692m, making it London's biggest ever tech float. "Other UK technology IPOs included the AIM IPOs of gaming companies, **Codemasters Group** and **Team 17**, and software companies, **i-nexus** and **Maestrano**, which together with Avast, resulted in £1bn+ being raised for the sector, confirming the UK's position as a leading centre for technology companies," said PwC's capital markets director. Africa-focused Vivo Energy came to London to raise £603m.

Consultation on corporate governance:
In March 2018, a consultation document *'Insolvency and Corporate Governance'* was issued by the **Department for Business, Energy & Industrial Strategy (BEIS)** and the Insolvency Service. *See https://deloi.tt/2PijkXj* The Government has published its response document. It intends inter alia to: *take forward measures to ensure greater accountability of directors in group companies when selling subsidiaries in distress;

*legislate to enhance existing recovery powers of insolvency practitioners in relation to value extraction schemes; *legislate to give the Insolvency Service powers to investigate directors of dissolved companies when they are suspected of having acted in breach of their legal obligations; *explore the strength of the case for a comprehensive review of the company law aspects of dividends; *strengthen transparency requirements around complex group structures; **enhance the role of 'shareholder stewardship'* and *bring forward proposals to improve boardroom effectiveness. On enforcing directors' duties, the government believes that existing enforcement powers are effective. Regulations have been laid which will require all large companies to explain in their annual report how directors have had regard to the matters set out in section 172(1) of the Companies Act 2006 (duty to have regard to employee and other interests). The government will assess the impact of that reform before considering further action. See https://deloi.tt/2MXrpTO.

EMPLOYEE OWNERSHIP

Scotland wants to become a world leader in employee -owned businesses. The creation of *'Scotland for EO'*, backed by £75,000 of Scottish government cash, was confirmed by Scottish first minister Nicola Sturgeon. The new leadership group aims to increase the number of employee and worker-owned businesses from around 100 to 500 by 2030. Ms Sturgeon has visited the Auchrannie Resort, the hotel and leisure group which **formed an Employee Ownership Trust** in January. Linda Johnston, co-founder and managing director of the picturesque Auchrannie Resort which looks up towards Arran Island's famous peak Goat Fell, said: "We first started looking at employee ownership as a means of protecting the ethos of the company.'' She said it has given each team running the resort the chance to 'play an active' part in the leadership of the resort. "What each of them does will affect the future of the business and that this is directly linked to their own success,'' she said. The first minister said: "All the evidence tells us that employee ownership delivers benefits to business performance, the people who work in them and the places in which they are located. This has certainly been the experience of the Auchrannie team in Arran. Scotland for EO will help to make this into a real option for businesses across Scotland." The group will be co-chaired by Jamie Hepburn, minister for Business, Fair Work and Skills. Recently, Perth-based oil and gas drilling specialists **Merlin ERD** furthered its development as an employee-owned business by introducing an employee share scheme. In July 12 staff at glazing specialist **Balhousie Glazing**, based in Perth, took over the reins at the company, which was founded in 1993 by Malcolm Sweeney and Drew Hay.

COMPANIES

*The new ceo of **Boohoo** is in line for a £50m bonus if shares in the online fashion retailer rise by 180 percent over the next five years. The fast-growing company has poached John Lyttle from **Primark,** where he was chief operating officer, and said its major shareholders had signed off on the incentive package. The left-leaning **High Pay Centre**, which monitors executive remuneration, said it was hard to justify rewards on such a scale. Under the bonus scheme, Lyttle will get £50m on top of an annual salary and a bonus worth up to £1.5m, if the company's share price increases by 180 percent. The incentive plan will not pay out anything until the company's market value rises by at least 60 percent, Boohoo said. The clock started ticking on the award timeframe immediately, even though Lyttle will not take up the post until March. News of his appointment saw Boohoo shares rise by two percent. Luke Hildyard, a director of the High Pay Centre, said: "There has been widespread anger at executive pay awards that typically run to about £4m or £5m, so potential payments in the tens of millions are particularly controversial. Companies who have used similar pay structures in the past, including **Persimmon, Melrose** and **GVC Holdings**, have attracted a lot of criticism from policymakers and investors.

"There's a lot of research that suggests huge pay awards don't really incentivise or motivate executives; executives are not necessarily the most important drivers of company performance and the vast differences in pay between business leaders and their workers negatively affects organisational morale."

*A £29m bonus, awarded to Avril Palmer-Baunack, who runs **British Car Auctions**, owner of **We Buy Any Car**, the car-buying website known for its catchy jingles, was criticised by investment advisers *Glass Lewis* at the company's agm. The sum, 59 times her normal salary, is the result of an incentive plan drawn up four years ago. It is thought to be one of the largest -ever annual pay packets handed to a female company boss. At the recent agm,15.5 percent of the proxy votes were cast against BCA's remuneration report for the year ended April 1 2018 and the holders of a further 9.6 percent of the voting shares abstained.

***Capgemini** launched its fifth Esop and the implementation of a share buyback designed to neutralise its dilution for the existing shareholders. The new plan was offered to 98 percent of the employees and is part of the group's policy to associate all employees with its development and performance. The employee shareholding resulting from previous Esops represents around 4.5 percent of Capgemini's share capital. This fifth Esop will be implemented through a capital increase reserved for the Capgemini employees for a maximum of 2,500,000 shares (i.e. about 1.5 percent of outstanding shares), with settlement-delivery no later than December 18. As in 2017, the directors of Capgemini authorised a dedicated share buyback envelope with the objective of cancellation in order to neutralise the dilutive effect of this capital increase. Consequently, Capgemini entered into a share repurchase agreement with an investment service provider which is the financial institution structuring the Esop.

***Michelin** announced the launch of a new employee share ownership plan enabling employees of the Michelin group worldwide to subscribe to a capital increase reserved to employees on preferential terms. The subscription period will close on October 4. The subscription price of **€82.31** per share is equal to the recent trading reference price minus a 20 percent discount. The maximum 600,000 Michelin shares offer is reserved for employees of at least three months' standing who are members of the Michelin Group savings plan, to involve them more closely to the growth and development of the group. The shares are being bought directly by the employees, except in Hungary where they are being purchased through the FCPE Bib Invest Relais 2018. This FCPE (*Fonds Commun de Placement d'Entreprise = special investment funds reserved for employee shareholders*) is expected to be merged into the FCPE Bib Invest after the completion of the capital increase. Employees who acquire shares directly may exercise their voting rights individually at Michelin's shareholder meetings. The voting rights attached to the shares acquired via the FCPE Bib Invest Relais 2018 will be exercised by the FCPE's Supervisory Board. Subscribers must hold their shares or FCPE units for a *lock-up period of five years*, from the date of the capital increase, which is expected to be on November 15 2018, except in the case of an early release. The admission of the new shares to trading on the Euronext Paris market is expected to take place on November 15.

*Swiss drugmaker **Novartis** revealed that its employees only get a bonus if they meet or exceed expectations for ethical behaviour - as it seeks to address past shortcomings that have damaged its reputation. Ceo Vas Narasimhan has made strengthening the Swiss drugmaker's ethics culture a priority after costly bribery scandals or legal settlements in South Korea, China and the US. Employees now receive a one, two or a three score on their values and behaviour. Receiving a two, which Novartis said denotes meeting expectations, or a three, for role model behaviour, would make them eligible for a bonus of up to 35 percent of their total compensation. "Unless the sales representative scores a two or a three, they will not be eligible for their variable compensation," said Samir Shah, Novartis's head of investor relations. "That's how we've tried to make sure we've got the right balance between pay for performance and having the right behaviour," he added. Shah, who said the standard applies in all countries where Novartis does business, did not immediately know how many employees will be ineligible for bonuses at their next appraisals in October or November. Novartis said additional action may be taken where an employee falls short on their ethics score, or they could be dismissed.

Redrow** chairman Steve Morgan reignited his criticism of fellow builder house **Persimmon**'s bonus scheme, branding it a "disgrace***" that has allowed critics to accuse house builders of being too greedy. Morgan said the controversy had led to accusations that the government's *Help to Buy* initiative was being used by firms to ramp up profits and increase directors' bonuses. Earlier this year, Persimmon was forced to cut the bonuses it handed out to its top executives after coming under fierce criticism from shareholders, politicians and rival firms. Under the long-term incentive plan, which it drew up in 2012, Persimmon ceo Jeff Fairburn was in line for a £110m bonus, cfo Mike Killoran was set for a £78m payout and group md Dave Jenkinson was due to get £40m. Morgan, who had already criticised the bonuses earlier this year, used his presentation of Redrow's annual results to condemn Perismmon's bonus scheme in even stronger language calling it *"a disgrace that has left a cloud over the industry"*. He added: "The reality is that the vast majority of house builders' bonuses are normal and perfectly acceptable." He said critics were using the furore to demand that the government's *Help to Buy* scheme, introduced in 2013 and which has since been extended to 2021, be scrapped. Lib Dem leader Vince Cable told the magazine *Building* earlier this year that bosses at Persimmon were *"basically pocketing large amounts of money gifted by the taxpayer to executives, which underlined the stupidity of Help to Buy"*.

***Stagecoach** was criticised by shareholders for making it easier for senior executives to be paid bonuses after it was stripped of the East Coast rail franchise by the government. Shareholder advisory group **Glass Lewis** urged investors to vote against ceo Martin Griffiths' pay plan at the train and bus operator's agm, but only ten percent of them did so, although another 17 percent of shareholders abstained. Glass Lewis accused Stagecoach of failing to explain why it lowered the profit targets for Griffiths to get a long-term performance bonus of up to £1m. Rival adviser **ISS** provided only qualified support for Stagecoach's remuneration report. The re-election of Sir Brian Souter, the Stagecoach co-founder, as chairman was red-flagged by the proxy duo and by fellow adviser **PIRC**, who told shareholders to vote against Mr Souter's re-appointment. Glass Lewis and ISS gave qualified support, however, on the basis that an independent deputy chairman is in place. But, ISS wrote: "Investors may expect the company to disclose in more substantive detail as to why it considers this arrangement to continue to be in the best interests of shareholders." Glass Lewis "strongly believed" a fully independent chairman should be sought. Stagecoach has lost two major rail franchises since the previous target was set in June 2016. The company came under fire earlier this year after Transport secretary Chris Grayling took away the East Coast mainline franchise. The line from London to Edinburgh was supposed to have been operated from 2015 to 2023 by the **Virgin Trains** East Coast franchise – which is 90 percent owned by Stagecoach and 10 percent by Richard Branson's Virgin. Grayling said the firms had overestimated how profitable it would be. Last year, Stagecoach lost its South West Trains franchise to a consortium including **FirstGroup**. It ran the service since its privatisation in 1996. Griffiths agreed with his board that he should receive no bonus for the 2017-18 fiscal year, in part because of the East Coast fiasco. His total pay for the year was £987,000, but moving the goalposts on his bonus targets will make it easier for him to get one in future. Under new rules, Griffiths and finance boss Ross Patterson need to pull in earnings of 24.4p to 25.7p per share to get bonuses, down from between 28.9p and 31.9p. Glass Lewis questioned the lack of an explanation to shareholders on why the target has been cut. A Stagecoach spokesman said its pay policy was backed by 95 percent of investors at last year's agm and noted that another shareholder advisory group, ISS, had recommended that investors back the board. '*Challenging long-term incentive payment targets are set every year, taking into account the nature and scale of the business, internal forecasts and market consensus,'* the spokesman added. 'It is only proper that these targets will change from year to year.'

***TSB**'s outgoing boss Paul Pester is still in line for payments and bonuses of almost £1.7m, despite standing down following criticism of his handling of a bungled IT switch that left thousands of customers unable to access their accounts for days on end. Mr Pester, who was singled out for harsh criticism by MPs on the Treasury select committee, left his job abruptly. He will get a £1.2m severance payment and a bonus of up to £480,000, which was fixed prior to TSB's takeover by Spanish bank **Sabadell** in 2015. Other variable compensation will be frozen subject to investigations. TSB said Mr Pester would be paid "*in line with the bank's remuneration policy*."

*On August 13, **Vinci** bought back 124,955 of its own shares at €83.6 each for a total price of €10.45m to cover costs involved in its pension savings plan and its Esop, revealed its disclosure to the NASDAQ market.

WORLD NEWSPAD

***Australia**: The **Employee Ownership Australia 2018 Award Winners** were:

- **OFX Ltd ~** Best new employee share plan
- **Redgum Cleaning Cooperative ~** Best SME/ succession plan
- **Ricegrowers (SunRice) ~** Most effective & innovative communications
- **Northern Star Resource ~** Fostering long-term ownership - fewer than 1,000 employees
- **Computershare ~** Fostering long-term share ownership - more than 1,000 employees (*take-up rate of 64 percent among 1600 Computershare staff*)
- **Ricegrowers (SunRice)** ~ People's choice award

More info on the award winners can be found on the eoa's website.

***National Australia Bank (NAB)** is slashing executive pay and has introduced a new remuneration framework to sharpen its "customer focus", following scandals unearthed at an inquiry into misconduct in the country's financial sector, said the *Financial Times*. Australia's fourth-largest bank is replacing short-term and long-term bonuses for executives with a single variable reward based on performance. Some 40 percent of this will be paid in cash at the end of the financial year with the remainder paid in shares that will be deferred for at least four years. Under the new framework Andrew Thorburn, NAB's ceo, will have his total target pay for 2018 reduced by 11 percent, or about A$1m, from 2017 while overall executive pay will be cut by 15 percent, the bank said. "The NAB board is determined to drive customer focus at every level of the organisation. This lens needs to be considered alongside financial metrics when assessing executive performance if we are to deliver long-term, sustainable performance for shareholders," said NAB chairman Ken Henry. "Where NAB falls short of customer, shareholder and community expectations, the new framework provides the board with the ability to hold leaders accountable." The new pay framework, which will apply to the current 2018 financial year and beyond, follows criticism of bankers' pay by Australia's prudential regulator **APRA**, which said that executives were insulated from consequences and that Australia was out of step with best practice. New rules due to take effect in 2019 will force the country's lenders to *defer a portion of performance-based variable awards to banking executives for at least four years*. The concern expressed in Australia is shared by regulators overseas including the UK's **Financial Reporting Council,** which is reviewing executive bonus structures to promote more long-term decision making. It comes amid a wider debate about excessive executive remuneration, with a survey by Australian pension funds finding that the pay of chief executives in 2017 hit a record even as workers' pay stagnated. "There is a big push . . . to replace long-term incentives with these types of annual variable award structures," said Martin Lawrence, director at **Ownership Matters**, a proxy firm. "However, some shareholders view these changes with cynicism as the companies which tend to adopt them are ones where long-term incentives have often not been paid out over several years due to poor financial performance." Mr Lawrence said NAB's changes would give the board more control over pay, allowing for variable rewards to be forfeited, further deterred or clawed back under certain circumstances. A first test is due in November, when the board announces 2018 pay levels against the backdrop of the royal commission inquiry into financial misconduct.

***South Africa:** No agreement was reached during mediation between Solidarity and **Sasol** over an extraordinary new employee share ownership plan which aims to exclude *white* participants. According to Solidarity ceo Dr Dirk Hermann, the mediation was deferred to get more clarity on the final Mining Charter's wording. Meanwhile, Solidarity's work-to-rule over eligibility to participate in Sasol's new Eso scheme continues. According to Sasol's latest reports its maintenance project is already about 96 hours behind schedule. Solidarity called a day of protest involving all 180,000 of its members after the High Court backed its application for all its members to go on a lawful strike in a show of solidarity with the Sasol workers.

The **Commission for Conciliation, Mediation and Arbitration (CCMA)** became involved in the dispute under section 150 of the Labour Relations Act. According to Hermann, it is not just in the interest of Sasol but of South Africa that the dispute is resolved. "*South Africa should not settle for simplistic solutions such as racial exclusion for complex problems*," Hermann said.

The final version of the Mining Charter is now before Cabinet for approval. According to this charter, all workers, irrespective of race, must be part of employee share ownership plans. Sasol owns coal mines and must therefore comply with the Mining Charter.

"Through its Khanyisa Plan, Sasol wishes to contravene the agreement reached between these parties. The point of departure during the charter negotiations was that workers are workers and that they should not be divided on the basis of race. What Sasol is doing now is the complete opposite, namely to cause major racial tension and division," Hermann warned.

Solidarity members at Sasol in Mpumalanga voted overwhelmingly in favour of a strike to protest against the company's exclusion of white employees from an employee share ownership plan, the trade union said. The shutdown is a detailed maintenance operation which takes years to map out but is carried out in just three weeks.

Sasol spokeswoman Matebello Motloung told AFP that the new share scheme was not part of employees' basic remuneration and was intended to empower members of previously disadvantaged communities. "It primarily focuses on the inclusion of black employees and public shareholders," she said. "Our intention is to create meaningful financial benefits for 230,000 black public shareholders and qualifying employees, and to achieve 25 percent direct and indirect black ownership." The ruling African National Congress (ANC) party said: "We are deeply concerned about the racist overtones of this strike, which seeks to reverse the gains of our democracy. In characterising the Sasol initiative as racial exclusion is at best malicious -- and at worst dishonest." The government introduced policies in 2003 to economically empower black South Africans.

US**: Ten years after the failure of ***Lehman Brothers, and eight years after the passage of Dodd-Frank, *five of 12 mandatory executive compensation rules remain to be approved,* said journalist Francine McKenna in *Market Watch*. Many people had boarded the reform train after the 2008 financial crisis, but big business, and in particular the biggest banks, slammed the brakes on reforms that threatened to stop incentivising excessive risk, she said. Almost all of the mandatory provisions of the law had been finalised by the **Securities and Exchange Commission (SEC)** by the end of 2015, five years after the passage of the Dodd–Frank Wall Street Reform and Consumer Protection Act in 2010. The executive compensation-related provisions of the Dodd-Frank Act were "designed to address shareholder rights and executive compensation practices" according to the text of the law. *But ten years after the failure of Lehman Brothers, and eight years after the passage of the reform law, five out of 12 mandatory executive compensation rules remain to be approved by the SEC*:

- A rule that requires public companies to disclose whether any employee or member of the board of directors of the issuer can use financial instruments to hedge or offset any decrease in the market value of equity securities granted was proposed in February 2015, but has not yet been finalised. A report by the Senate Committee on Banking, Housing, and Urban Affairs published in 2010 says implementation of the executive hedging rule would allow shareholders to know if executive officers are able "to effectively avoid compensation restrictions that they hold stock long-term, so that they will receive their compensation even in the case that their firm does not perform."
- In July 2015 the SEC proposed the Dodd-Frank version of a bonus claw-back rule. This took the 2002 Sarbanes-Oxley claw-back rule a few steps further, extending it to all executives, not just the ceo and cfo, and dropping the Sarbox requirement for misconduct before clawing back compensation. The Dodd-Frank law mandated the SEC to adopt the rule that directs stock exchanges to prohibit companies from listing their shares if they do not create and disclose a policy for claw-backs of excess incentive-based compensation for all current or former executive officers after financial statements are restated for any reason.
- A pay-versus-performance disclosure rule proposed by the SEC in April 2015 that goes hand-in-hand with the pay ratio disclosure rule finalised in August 2015 is still pending. The pay-versus-performance disclosure rule is intended to give shareholders the ability to assess companies' executive compensation relative to their financial performance. Companies would be required to provide a clear description of the relationship between executive compensation actually paid to the its most senior executives and the cumulative total shareholder return of the company. They would disclose the relationship between the company's TSR and that of a peer group chosen by the company over each of the registrant's five most recently completed fiscal years.

In July last year, *The Wall Street Journal* reported that the SEC, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp. had excluded any mention of bank incentive restrictions in their updated regulatory agendas, including longer deferment periods for equity incentives. The Dodd-Frank rule that would curb excessive incentive bonuses at banks is intended to prohibit a broad range of financial services firms from ever again offering any type of incentive compensation that would incentivise a financial services firm to take inappropriate risks and expose it, and taxpayers, to material financial loss.

The Financial Crisis Inquiry Commission, the bipartisan effort empowered by Congress to investigate the causes of the financial crisis, wrote in its final report, "*Compensation systems – designed in an environment of cheap money, intense competition, and light regulations – too often rewarded the quick deal, the short-term gain – without proper consideration of long term consequences.*"

Less than a year before the 2008 failure of Lehman Brothers sent the global economy reeling, the investment bank approved nearly **$700m** in pay to 50 of its highest-paid employees, the *Los Angeles Times* reported in 2012, based on its review of internal documents that were exposed during the bankruptcy case.

The SEC ***did*** adopt seven other Dodd-Frank compensation-related rules, four of which concern stock exchange listing standards regarding the independence of compensation advisers. The pay ratio rule requires a public company to disclose the ratio of the compensation of its ceo to the median compensation of its employees. An additional rule regarding shareholder approval of executive compensation and "golden parachute" compensation arrangements was adopted too. The new rule requires say-on-pay votes at least once every three years and a frequency vote at least once every six years that gives shareholders a say in how often they would like to be presented with the say-on-pay vote. Finally, another rule requires more disclosure regarding the backgrounds and qualifications of directors and director nominees and how the board is organised as well as requiring faster reporting of board vote results.

Equity Compensation Trends*, an annual **Equilar publication, examines equity compensation design and granting practices of Equilar 500 companies over the last five fiscal years. The report revealed that the average option grant by company decreased by **23.5 percent** from 2013 to 2017, while the average stock grant fell by **13.9 percent** over that same period.

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