

C L I F F O R D
C H A N C E



newspad summit

CLIFFORD CHANCE, PARIS

JUNE 15–16 2017

@EsopCentre
#EsopParis17

Fred Hackworth

newspad, editor

Welcome and introduction

Michel Bon

FONDACT, chairman

Current trends in employee share ownership (*la participation financière des employés*) in France



CURRENT TRENDS IN EMPLOYEE SHARE OWNERSHIP IN FRANCE

MICHEL BON, CHAIRMAN OF FONDACT (*)

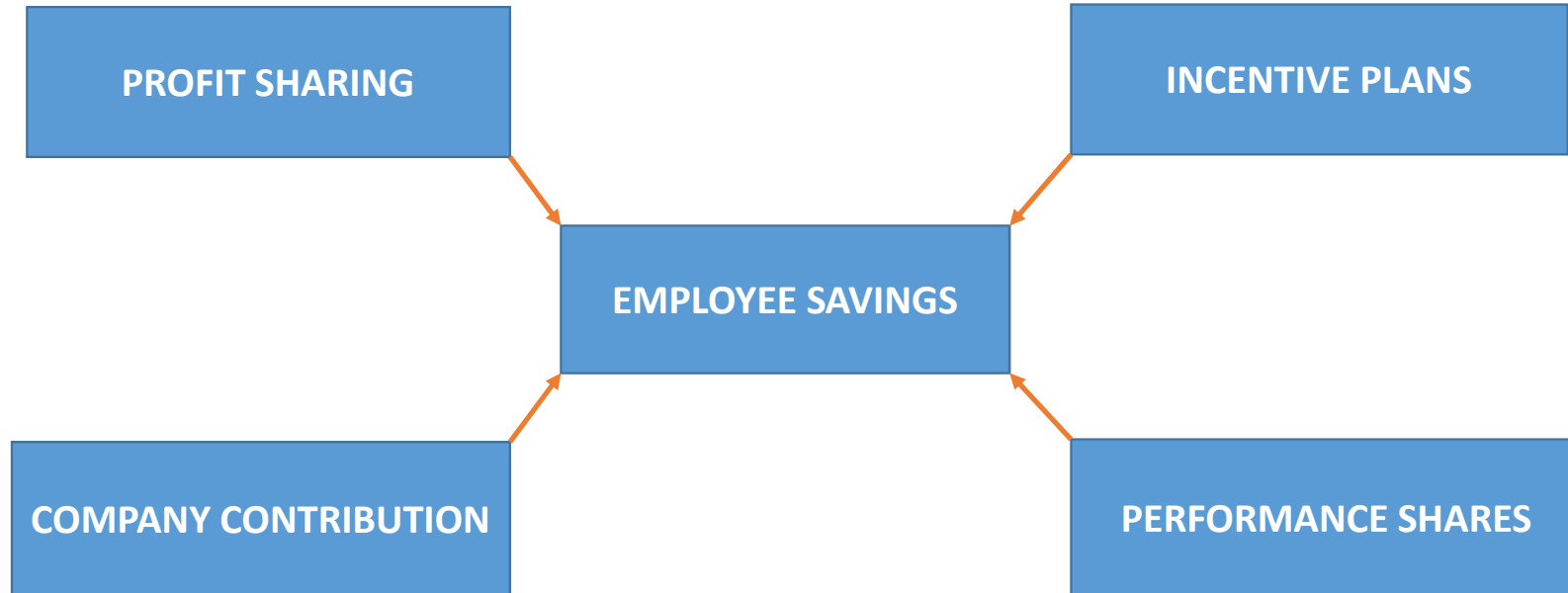
CONTACT : 01 46 22 00 02

E-mail : contact@fondact.org

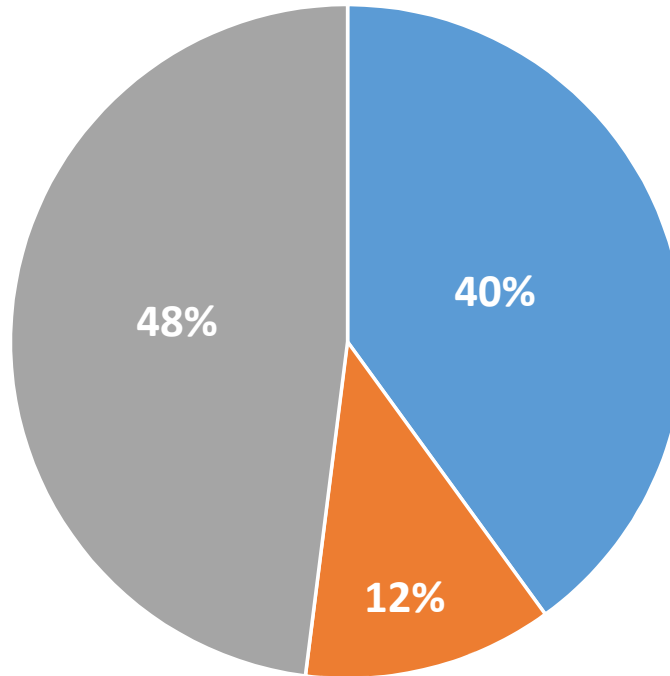
www.fondact.org

() A French organisation which supports participative management & profit sharing in all its forms*

SOURCES OF FUNDS



BREAKDOWN OF SOURCES IN 2014

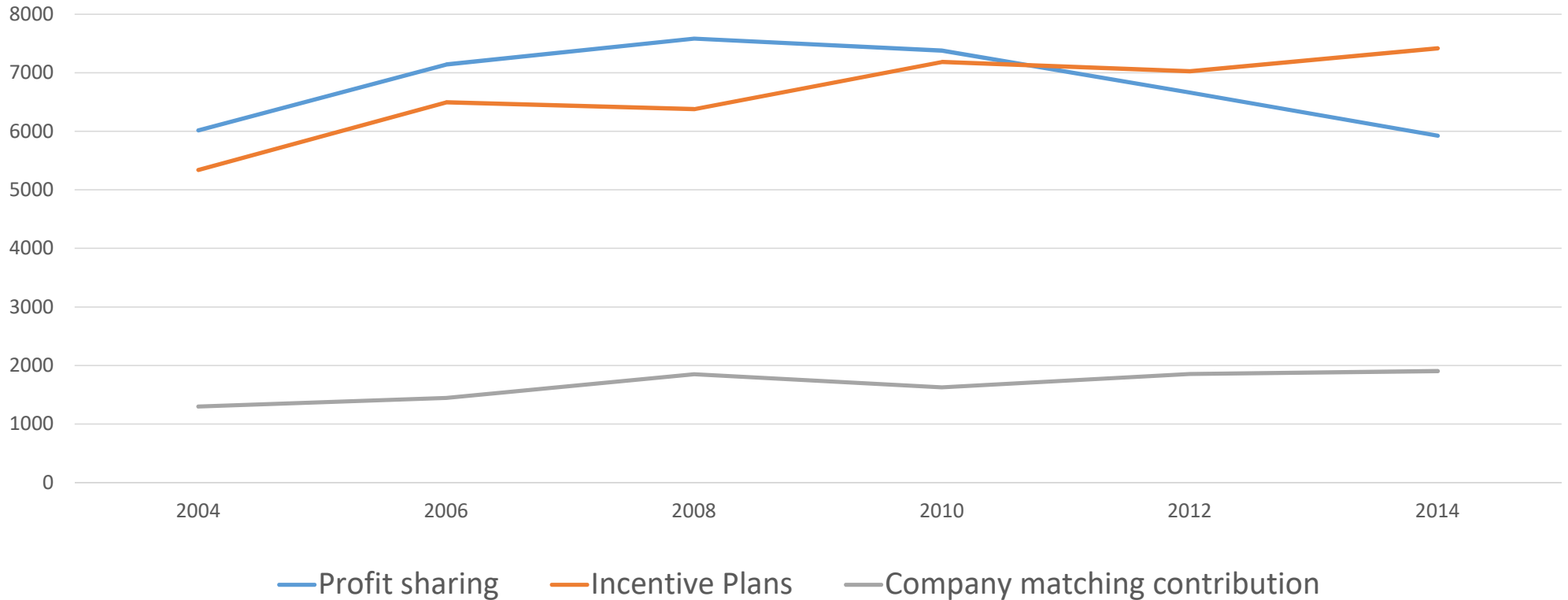


■ Profit sharing ■ Company matching contribution ■ Incentive plans



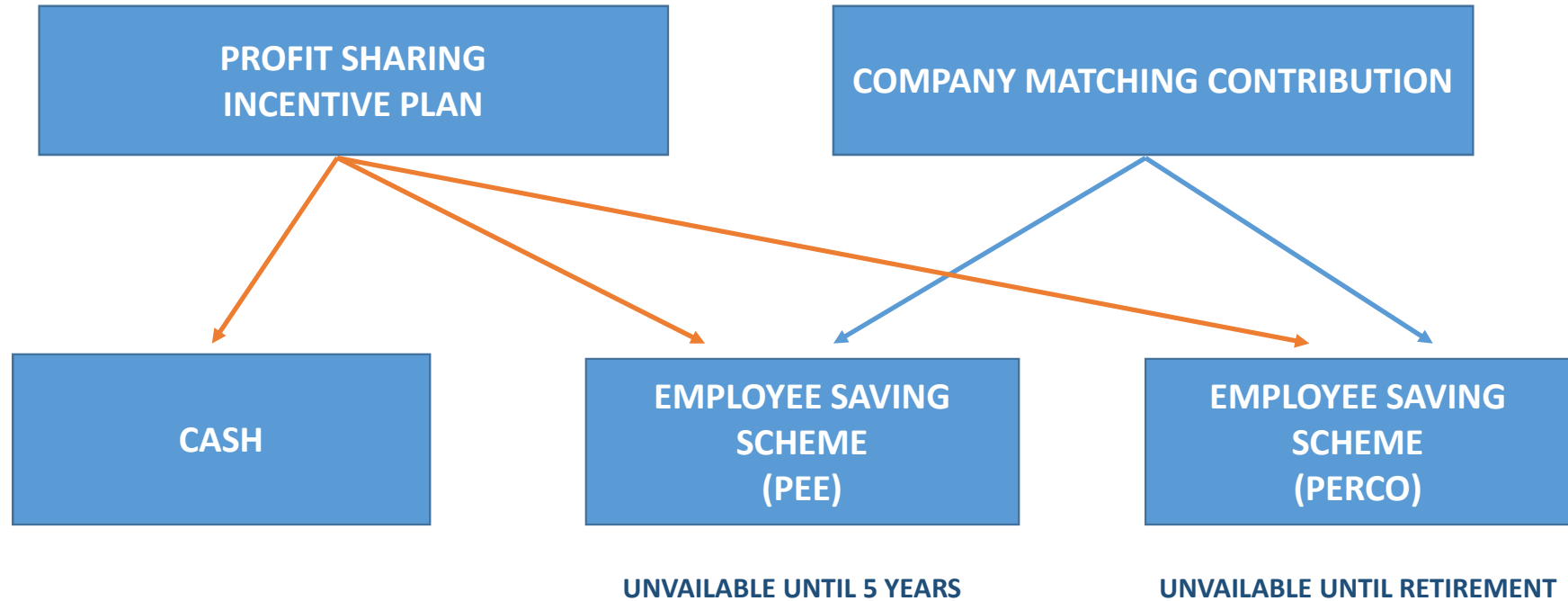
FLOW'S EVOLUTION

millions of Euros





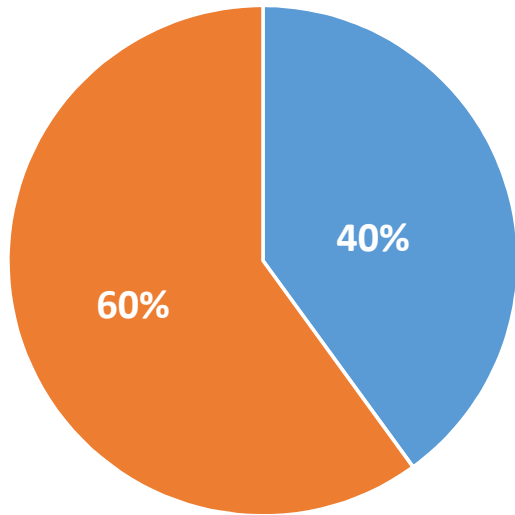
CASH OR COMPANY SAVING PLANS





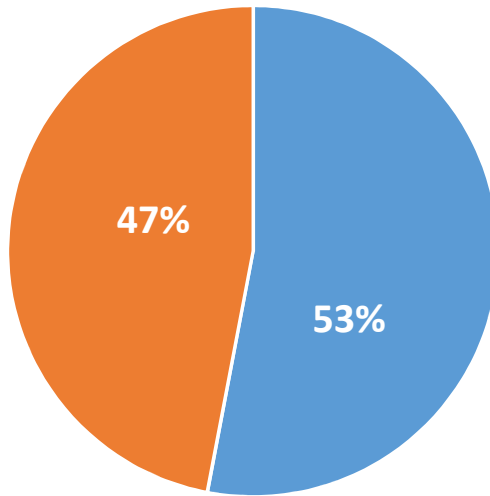
CASH OR SAVE BREAKDOWN 2014

PROFIT SHARING



■ CASH ■ SAVING

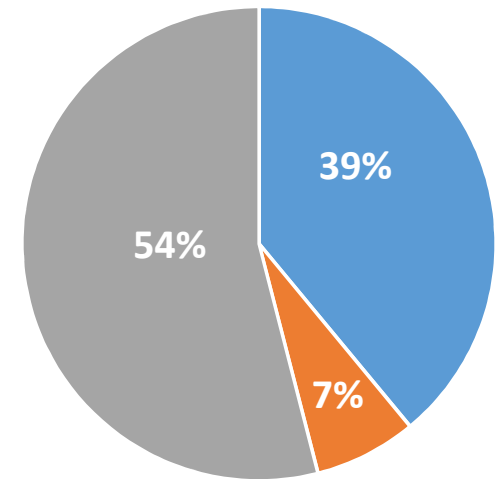
INCENTIVE PLANS



■ CASH ■ SAVING

COMPANY SAVING SCHEMES

Asset Breakdown December 2016

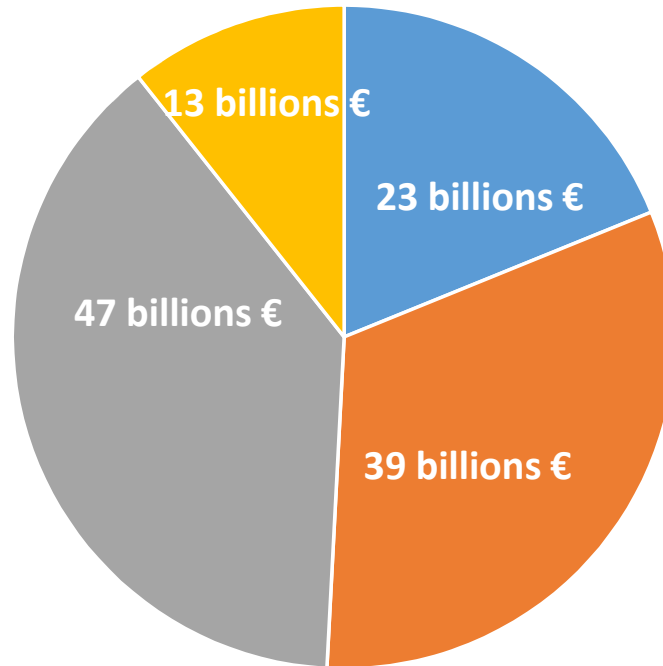


■ Employee Share Ownership Funds
■ SRI Funds
■ Diversified Funds



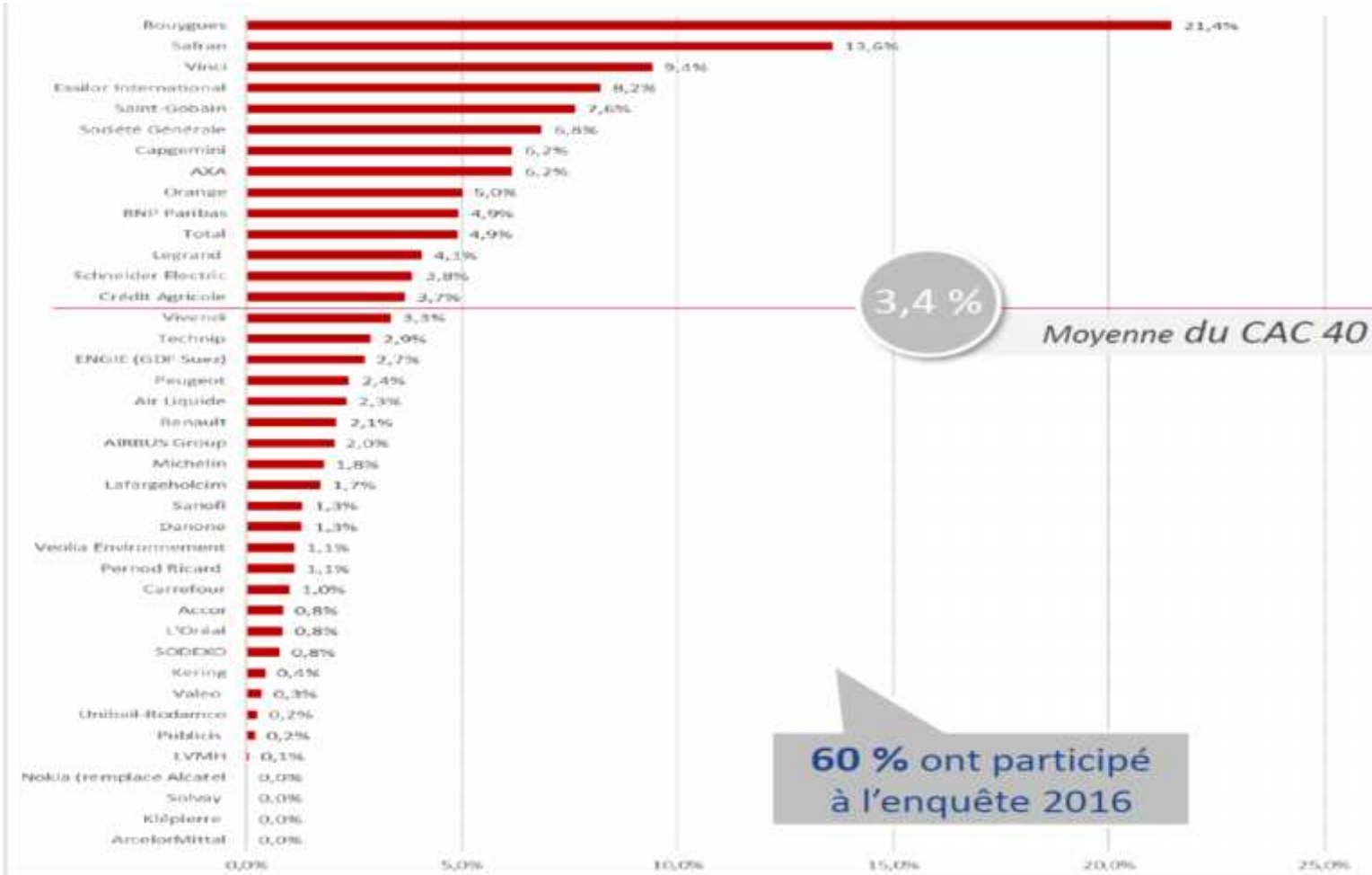
COMPANY SAVING PLAN AND RETIREMENT SAVING PLAN

Assets Under Management December 2016



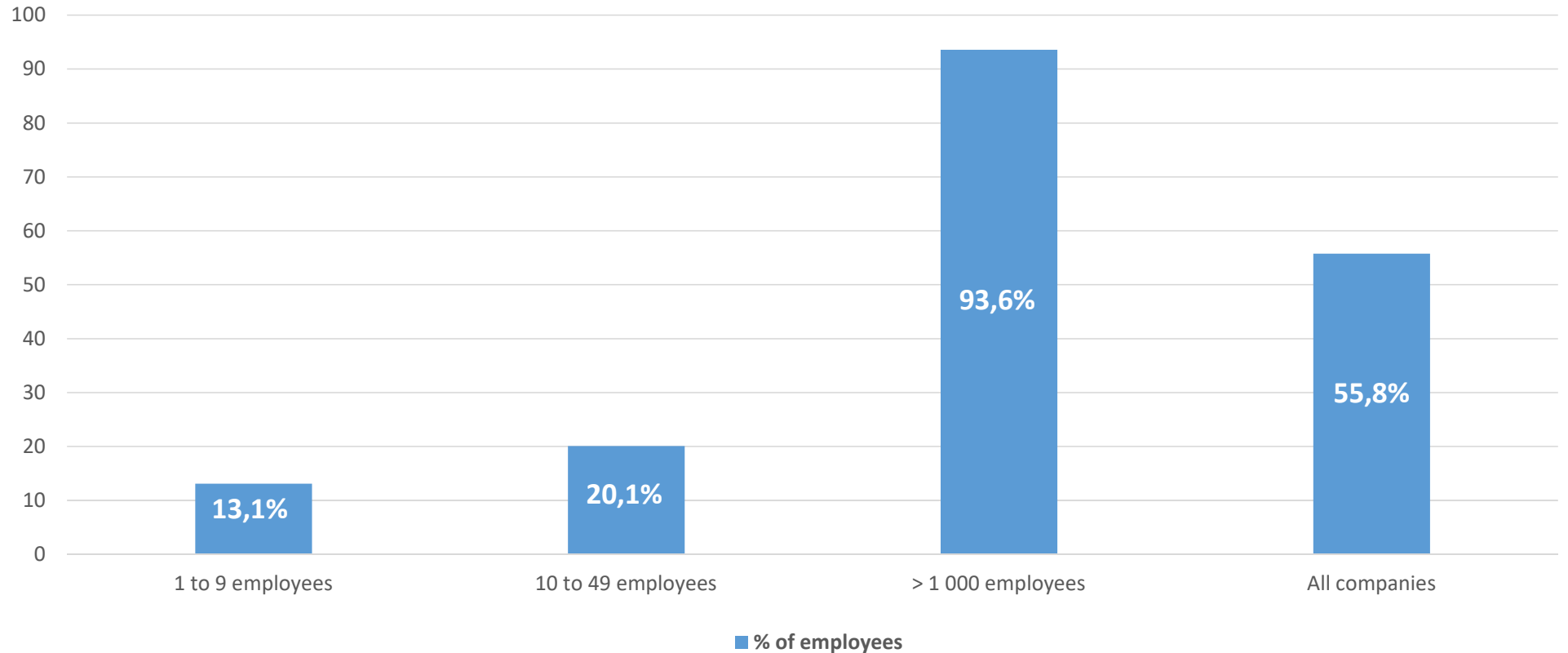
■ Money Market Funds ■ Diversified Funds ■ Company's Shares ■ Diversified Shares

CAC 40 : % OF SHARE CAPITAL HELD BY EMPLOYEE SHAREHOLDERS (2015/12/31)



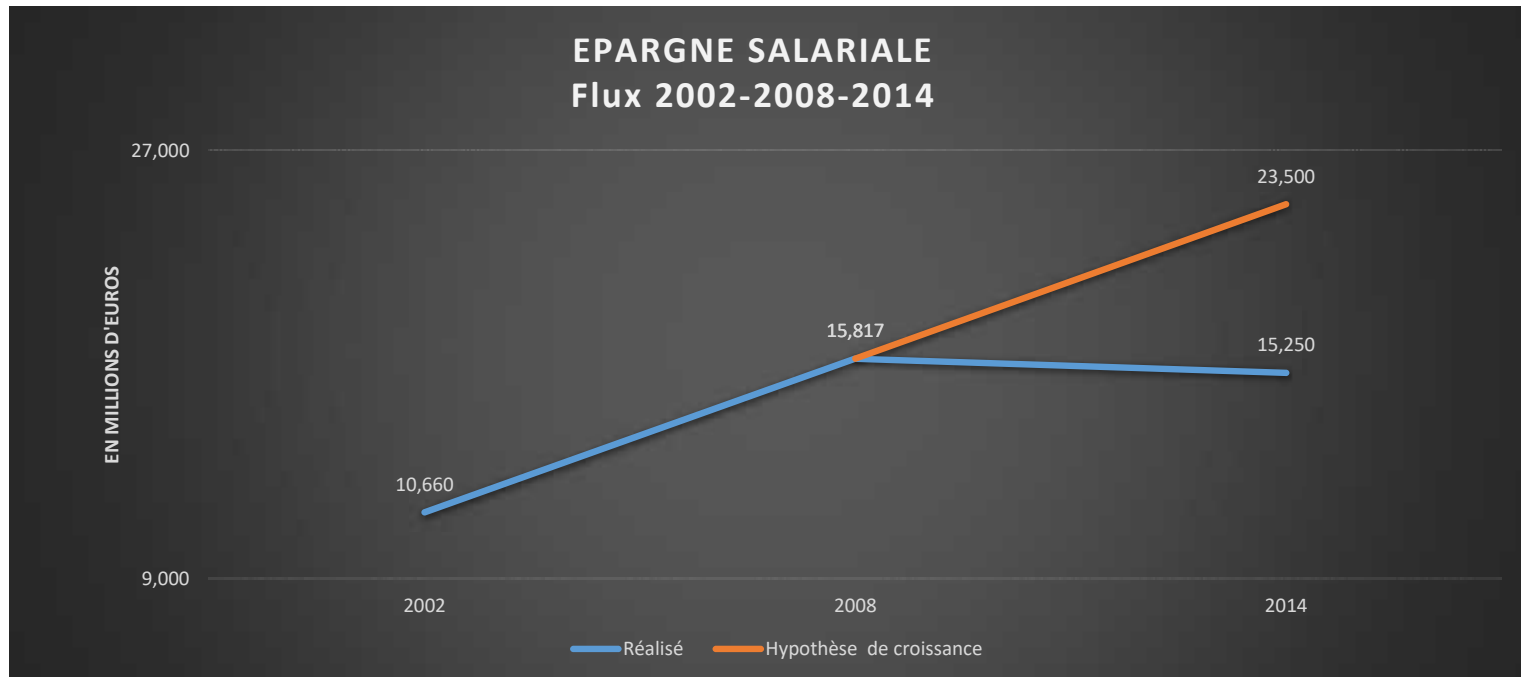


BENEFICIARIES OF COMPANY PROFIT SHARING PLANS BY SIZE OF COMPANIES

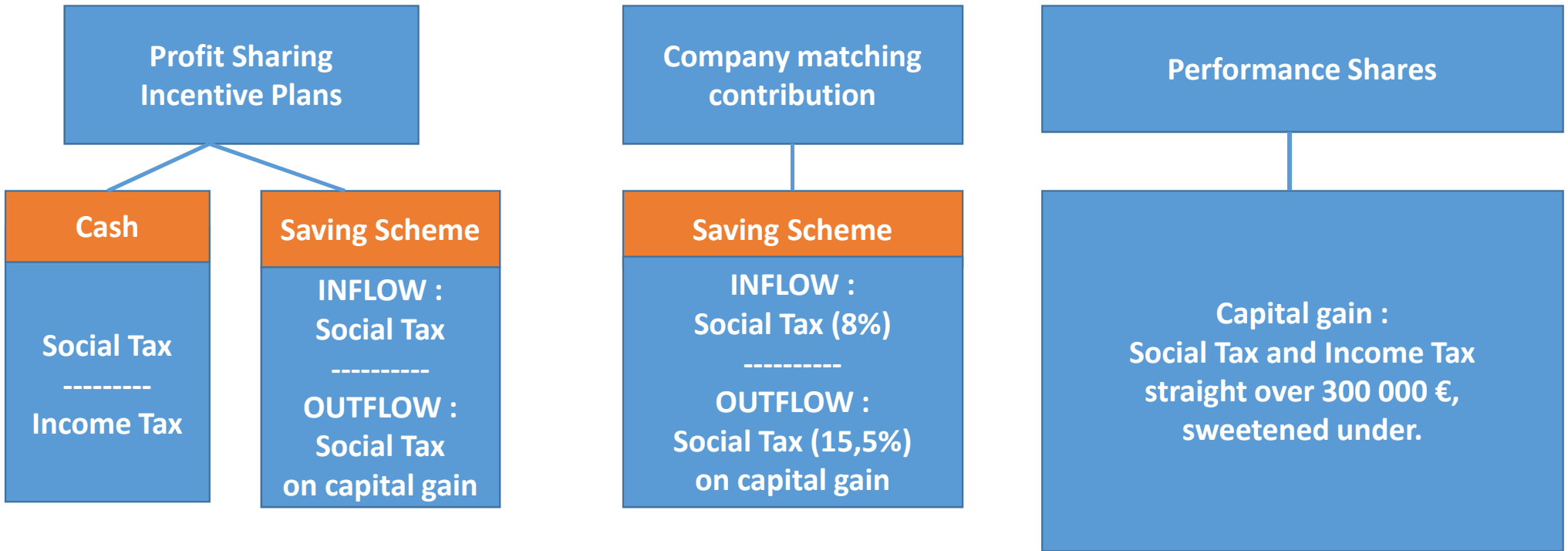


TAXES

A new company tax of 20% ("forfait social") stopped the growth of company saving schemes



TAXES PAID BY EMPLOYEES



- **Extend company saving scheme to more employees**
 - **small companies less than 50 employees = 5 million employees**
 - **Public services = more than 5 million employees**

- **Simplify company saving scheme mechanism**

- **Reduce Tax**
 - **remove the social package**

Sonia Gilbert

Clifford Chance, partner

Making French share plans work outside France



French share plans outside France

15 June 2017

Sonia Gilbert

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Making French share plans work outside France

1. Common plan structures
2. Challenges
3. Case study
4. Tips for success



Common plan structures in France

- ❖ Classic plan: Shares bought at a discount + lock up
- ❖ Leveraged/multiple plan: Right to “upside” on shares bought at a discount + bank leverage + lock up
- ❖ Free share plan: Receive shares for free after vesting period + lock up

Plans tax efficient in France and structures familiar to French employers and employees...



Common challenges when extending plans globally

- ❖ Legal, regulatory and tax analysis can be complex (but does not have to be)
- ❖ Not normally tax beneficial treatment
- ❖ Structures different from many other countries
- ❖ Plan communications: “I don’t understand so I am not joining....”

French companies spend time and money on plans but employee “take up” outside France can be low.....



Case study: UK share incentive plans

- ❖ UK tax favourable plan
- ❖ Some similarities with classic plan: Buy shares + shares held by 3rd party + lock up + leaver rules
- ❖ Discount on classic plan replicated with free “matching” shares

Different plan structure but...well understood in UK by employers and employees, tax benefits in UK and increased employee “take up”



Tips for success

- ❖ Think about risk appetite
- ❖ Decide on plan philosophy upfront: “one size fits all” vs locally tailored plans vs mixture
- ❖ Accept plans will not be easy to operate in all countries
- ❖ Educate local “champions” about the plans
- ❖ Think carefully about documentation and information for employees

Communications + local enthusiasm are key for success...



Tips for success: “one version of the truth”

- ❖ Consider training for local teams: key plan terms + dos and don'ts when asked questions
- ❖ Consider translation of documents (some countries required)
- ❖ Use legal translators
- ❖ No amendment of documents once agreed/translated

Consistent messaging of plans is important...



Tips for success: Communications

- ❖ **Best communications are**
 - ❖ *Jargon free*
 - ❖ *Short and easy to “digest”*
 - ❖ *Eye catching*

- ❖ **Legal aspects to consider**
 - ❖ *Deal with “necessary” jargon*
 - ❖ *Risks – “this plan is a win win!”*
 - ❖ *Some plans are an investment – regulatory issues*
 - ❖ *“Release events” may need some explaining*



Any questions?

- ❖ Now.....
- ❖ Or later..... (sonia.gilbert@cliffordchance.com or +44 207 006 2041)



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162708-3-427

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Anne Lemercier

Clifford Chance, partner

Participation of French employee shareholders in the corporate governance of companies



**C L I F F O R D
C H A N C E**

FRENCH EMPLOYEE SHAREHOLDERS IN CORPORATE GOVERNANCE

ANNE LEMERCIER, CLIFFORD CHANCE
EMPLOYEE SHARE OWNERSHIP CENTRE
JUNE 15 2017

FRENCH EMPLOYEE SHAREHOLDERS IN CORPORATE GOVERNANCE

Introduction

Part I – Employee shareholders are real shareholders

Part II – Employee shareholders on boards

I- EMPLOYEE SHAREHOLDERS ARE REAL SHAREHOLDERS

French employee shareholders benefit from the same political rights as other shareholders (equal treatment).

➤ **Participation in the shareholders' meeting :**

- ✓ Proposition of resolutions to be submitted to the shareholders' meeting
- ✓ Attending the shareholders' meeting
- ✓ Asking questions
- ✓ Voting
 - Under French law, it is not mandatory for employee shareholders to benefit from voting rights. It is possible to create a specific category of shares without any voting rights reserved for employees.
 - In practice, employee shares without any voting rights are not common. They are sometimes used by non listed companies.

➤ **Information :**

- ✓ Continuous information
- ✓ Specific information in relation to the shareholders' meeting

I- EMPLOYEE SHAREHOLDERS ARE REAL SHAREHOLDERS

Focus on the exercise of voting rights

Two ways of exercising voting rights :

- **Directly by the employee shareholders, when they hold the shares directly**
- **When the shares are held through a French FCPE (fond commun de placement d'entreprise) :**
 - ✓ The employee shareholders exercise their voting rights directly (each employee has voting rights corresponding to the number of shares owned by him through the FCPE)
 - OR
 - ✓ The supervisory board (*Conseil de Surveillance*) of the FCPE exercises the voting rights for all the shares held through the FCPE

I- EMPLOYEE SHAREHOLDERS ARE REAL SHAREHOLDERS

Focus on the exercise of voting rights

➤ **Direct and individual exercise of voting rights by the employee shareholders :**

✓ **Advantages :**

- each employee shareholder may effectively act as a shareholder and vote individually

✓ **Disadvantages :**

- Difficult to organise, especially for companies with many employee shareholders
- In practice, employees are not used to voting at the shareholders meeting
- Risk : non-exercised voting rights (= negative vote)

I- EMPLOYEE SHAREHOLDERS ARE REAL SHAREHOLDERS

Focus on the exercise of voting rights

➤ Exercise of voting rights by the supervisory board of the FCPE

✓ **Composition of the FCPE :**

- Determined by the rules of the FCPE
- A maximum of half of the members of the supervisory board may be representatives of the employer
- The other members should be employee shareholders' representatives, appointed by the unions or the works council, or elected by the employee shareholders

✓ **Decisions from the supervisory board :** taken by the majority of its members. The president is always a representative of the employee shareholders and has deciding vote.

✓ **Advantages :**

- All the voting rights are collectively exercised.
- The supervisory board of the FCPE decides whether or not to contribute all the shares held through the FCPE in the case of a public takeover bid

✓ **Disadvantages :**

- The employee shareholders give away their individual voting rights (to the benefit of the FCPE supervisory board)
- Risk of conflict of interest

II- EMPLOYEE SHAREHOLDERS ON BOARDS

Legal framework

- **Under French law (since 2006), obligation for listed companies, in which 3% of the share capital is owned by the employees, to have at least one director appointed from amongst the employee shareholders**
- Exemption from this obligation for companies having at least one director representing the employees
- Since 2013, obligation for French companies that have more than 5,000 employees in France (or 10,000 worldwide) to have at least one director representing the employees
- **Needs clarification and harmonisation between these different obligations**

II- EMPLOYEE SHAREHOLDERS ON BOARDS

Effective participation in the governance of companies?

- For the time being, reserved for major French listed companies
- But the general trend seems favourable to the involvement of employee shareholders, with less reluctance from the management of French companies
- More participation of directors representing employee shareholders and employees in board committees (compensation, audit, strategy, ...)

II- EMPLOYEE SHAREHOLDERS ON BOARDS

Consequences of the representation of employee shareholders in corporate governance

- Are the criticisms against the role employee shareholders may play in corporate governance justified?
- Expected developments in France?

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Solium survey review

David Lee, product management director, Solium

Jacqueline Vidales, project manager, Sodexo

Bastien Martins da Torre, corporate solutions director, Solium

Liberté, égalité, fraternité — what the French corporate issuer wants



“Liberté, égalité, fraternité” - what the French corporate issuer wants
a Solium survey review JUNE 2017 | PARIS

Solium

Speakers



David Lee
Director Product Europe
Solium



Jacqueline Vidales
Project Manager
Sodexo



Bastien Martins da Torre
Director Corporate Europe
Solium

1 about Solium

2 survey results

3 review of top 3 results

4 market trends in France & Europe

5 Sodexo return of experience



about Solium

Solium

Solium

decomplexify global share plans
management with global service
expertise and SaaS technology



global platform, global service

- 1,2 million participants
- 5 participants support call centers worldwide
- 10 supported languages (French, Chinese, German...)
- 3,500 companies using our platform Shareworks

SHAREWORKS LANGUAGES

Over 80 Currencies supported
Adding Japanese, Suomi (Finland), Bahasa (Malaysia)



survey results

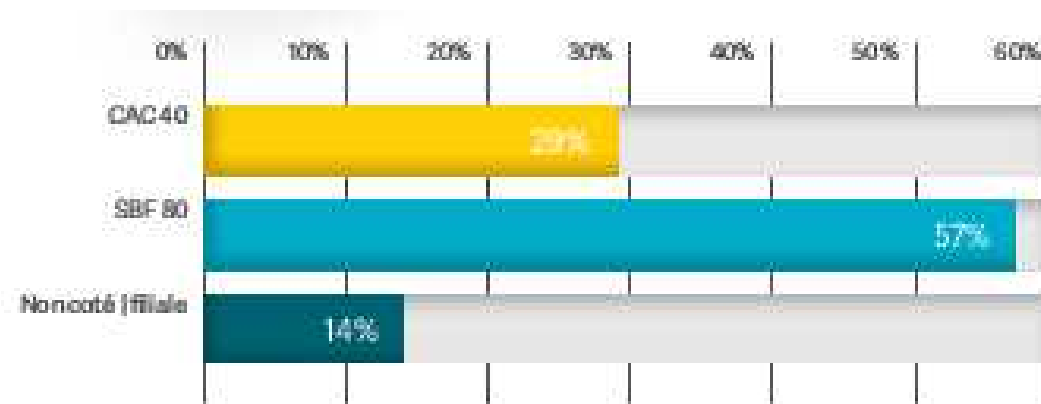
survey results

- Time Period:



- Survey based on a panel of **308** professionals regarding share plans conducted in France (mainly SBF 120 = CAC 40 + SBF 80)

- C&B
- HR
- Finance
- Legal



survey results

1. Participant Experience

26.7%

2. Highly configurable and automated

19.5%

3. Truly international and technology driven

17.1%



share plan administration success criteria

1. Participant Experience

deliver the service starting from the beneficiary needs, free from old legacy systems constraints

2. Highly configurable and automated

we use technology to reduce the risk of errors, ensure compliance & facilitate daily basis operations

3. Truly international and technology driven

the customers we serve are global companies and benefit from One Technology with Service model

review of top 3 challenges



current challenges

1. Participant Experience

- not free to exercise, trade
- not free to run my own report / statement
- lack of self-service

2. Share Plan Admin

- unequal Rights and Permissions
- unequal workflow priority

3. Financial Reporting

- no shared reporting tool for HR and Finance
- no admin tool between a) Countries b) Dimensions

participant experience

- Free Up the Participant Experience

SHAREWORKS

VIEWING AS: Francis Pitts

Home SAYE Share Purchase and Holdings Stock Options and Awards Tax Documents Documents My Profile

Employee Grant Mobility Report

Main

Home

View Statement

Employee Grant Mobility Report

FAQ's / Help

Notification Board

You have 14 messages

16-Jan-2017

Shareworks Notification - You have changed your login password

16-Jan-2017

Shareworks Notification - You have changed your login password

* Proration Rule: Prorated based on number of days between grant date and vest date

Vest Date: 02-Mar-2015 to 30-Apr-2017

Output Format: Web Page

* indicates required parameter

Run Report

Euroman - Employee Grant Mobility Report (report run on 02-May-2017)

Employee Number	Plan Name	Grant Name	Employee Grant Number	Vest Date	Jurisdiction	Effective Date	Number of Days Spent in Jurisdiction	Percentage of Time Spent in Jurisdiction
515	2012 Omnibus Plan	2012 Options (Mar 1, 2012)	47	01-Mar-2016	Undefined Location	01-Mar-2012	349	24%
515	2012 Omnibus Plan	2012 Options (Mar 1, 2012)	47	01-Mar-2016	United States, Connecticut	13-Feb-2013	532	36%
515	2012 Omnibus Plan	2012 Options (Mar 1, 2012)	47	01-Mar-2016	Spain	30-Jul-2014	561	40%
515	2012 Omnibus Plan	2013 Options (Mar 1, 2013)	146	01-Mar-2016	United States, Connecticut	13-Feb-2013	518	47%
515	2012 Omnibus Plan	2013 Options (Mar 1, 2013)	146	01-Mar-2016	Spain	30-Jul-2014	561	53%
515	2012 Omnibus Plan	2013 Options (Mar 1, 2013)	146	01-Mar-2017	United States, Connecticut	13-Feb-2013	516	35%
515	2012 Omnibus Plan	2013 Options (Mar 1, 2013)	146	01-Mar-2017	Spain	30-Jul-2014	886	61%
515	2012 Omnibus Plan	2013 Options (Mar 1, 2013)	146	01-Mar-2017	United Kingdom	01-Jan-2017	60	4%
515	2012 Omnibus Plan	2014 Options (Mar 1, 2014)	245	01-Mar-2016	United States, Connecticut	13-Feb-2013	151	21%
515	2012 Omnibus Plan	2014 Options (Mar 1, 2014)	245	01-Mar-2016	Spain	30-Jul-2014	681	76%

Statement

Main

[Home](#)[View Statement](#)[Employee Grant
Mobility Report](#)[FAQ's / Help](#)

Notification Board

You have **14**
notifications

16-Jan-2017
Shareworks
Notification - You
have changed your
login password

16-Jan-2017
Shareworks
Notification - You
have changed your
login password

Date Selection

To run the statement for all available history leave the start and end date blank.

Start Date

End Date

Period Quick Select

Product Selection

- SAVE
- Share Purchase and Holdings
- Stock Options and Awards

View As

Web Page PDF

Statement Type

Simplified Full

Submit

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Fax: 460 315 2016
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Calgary, AB T2P 1A2

Francois Piton
1 Luve Road
Milan
Italy

Statement of Account
Statement Period: 01-Jan-
2012 to 02-May-2017
Account Number: IT5-
024088-46
Company: Eurocan

Price History Over Statement Period

	01-Jan-2012	02-May-2017	% Change
Eurocan	€17.726 EUR	€21.74 EUR	23%

Exchange Rates

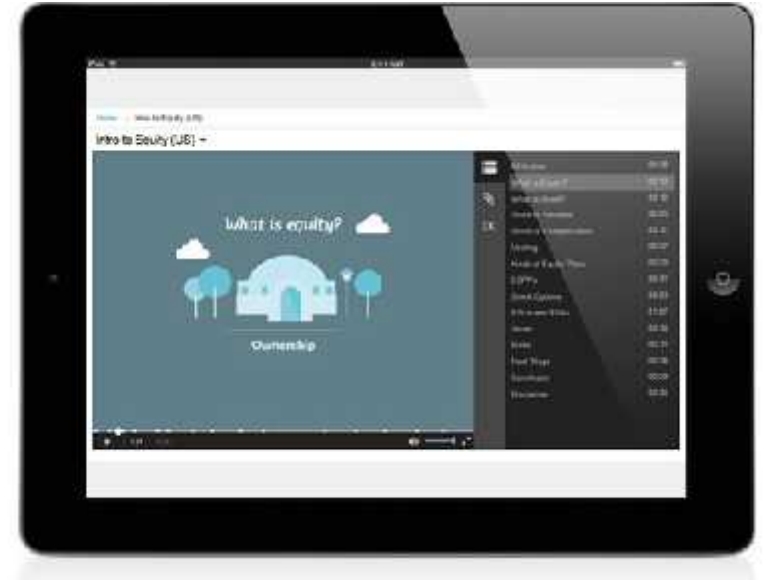
1.00 Euro = 9.484047 Hong Kong Dollars
1.00 US Dollar = 7.782101 Hong Kong Dollars

Account Summary

	Total Value	Available Value	Future Available Value Remainder of 2017	2018
Cash Settled Rights	\$173,325.03 USD	\$0.00 USD	\$173,325.03 USD	
LTIP	\$390,073.56 USD	\$97,518.39 USD		

participant experience

- Multi-Lingual, Multi-Platform
- Intuitive
- Online, On device
- Self Service
 - Enrolment,
 - Address Changes
 - Trading, Share and Funds Transfer
 - Statements and Tax Reporting



simplify share plan administration

- Simplify the life of C&B - Highly configurable and automated
- Ease of Use and Access
 - Employee
 - Stakeholder
 - Reporting
- Improved Workflows
 - Data
 - Insiders



market trends in France & Europe

truly international and technology driven

- SaaS solutions
- 24/7 Availability, Real-Time Updates
- Multi-Lingual, Multi Platform
- Adaptable to Local needs
- Security and Permissioning
 - Fully auditable
- Multi Dimensional Reporting - Regional, Business Entity, Cost Centre, Operating Company etc



trends

- Evolving Performance Metrics
- Typical TSR, ROCE or EPS measurements
- Free Cash Flow (FCF)
- MCSI





trends

- Social Responsibility
 - Sustainability Metrics e.g. Roadmap RSE
 - Heineken issued 2017 Annual Report with Sustainability Report first time ever
 - B Corporation certifications
 - More Common in Private Companies, Manufacturing e.g. Patagonia
 - Unilever, Danone and Banco Colombia spearheading Public Certifications



valuation challenges

- Equity and Cash settled awards
- Calculation of:
 - Expected Life or Expected Term of the option
 - Forfeiture Rate
- Performance Conditions
- Mobility
- Deferred Tax Asset
- EPS and Disclosure Reporting

Sodexo return of experience



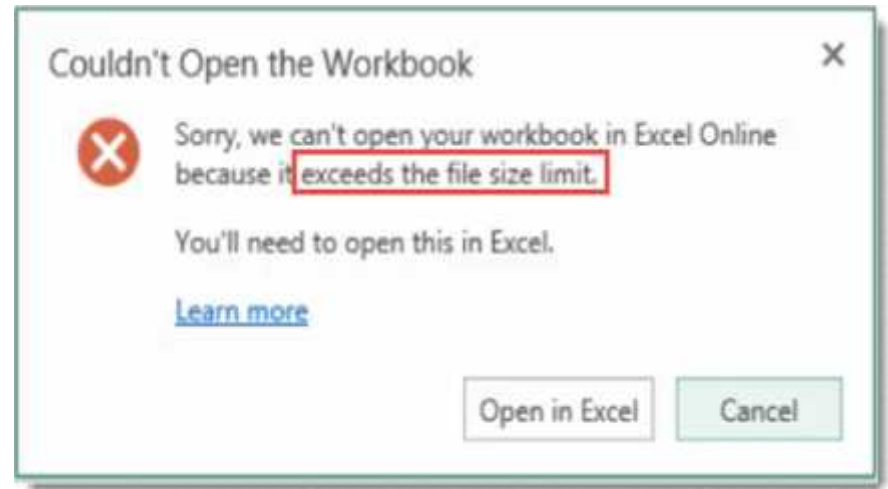
case study - Sodexo

- Pain Points
 - Lack of integration between admin and reporting
 - Inability to allocate costs effectively
- Reasons for Choice
- Benefits

financial reporting



- Excel Limitations
 - Version Control, Data Integrity, Maintenance, Security, Scalability, Query Limitations
- Increased Audit Pressure
- Reporting Complexities
 - Performance Awards
 - Liability Accounting
 - Mark to Market



financial reporting stakeholders



Conclusion

1. **FREE** the participant experience
2. **EQUAL** share plan administration
3. **SHARE** works for financial reporting



Questions?



Contact information



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Lunch

NEWSPAD SUMMIT: PARIS 2017

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Panel

David Hildebrandt, president, IAFP

Jean-Michel Content, secretary general, IAFP

Kevin P O'Kelly, executive committee, IAFP

Employee financial participation and the millennial generation



Newspad Summit Paris 2017
June 15-16
Clifford Chance Paris



“Back to the Future”

**Applying the Basic Principles of
Employee Stock Ownership
To
Today’s Millennial Workforce**

by

David Hildebrandt, President IAFP

Jean-Michel Content, Secretary General IAFP

Kevin P O’Kelly, Executive Committee IAFP

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The Dow Jones Business and Financial Weekly Vol. XCIII No. 17

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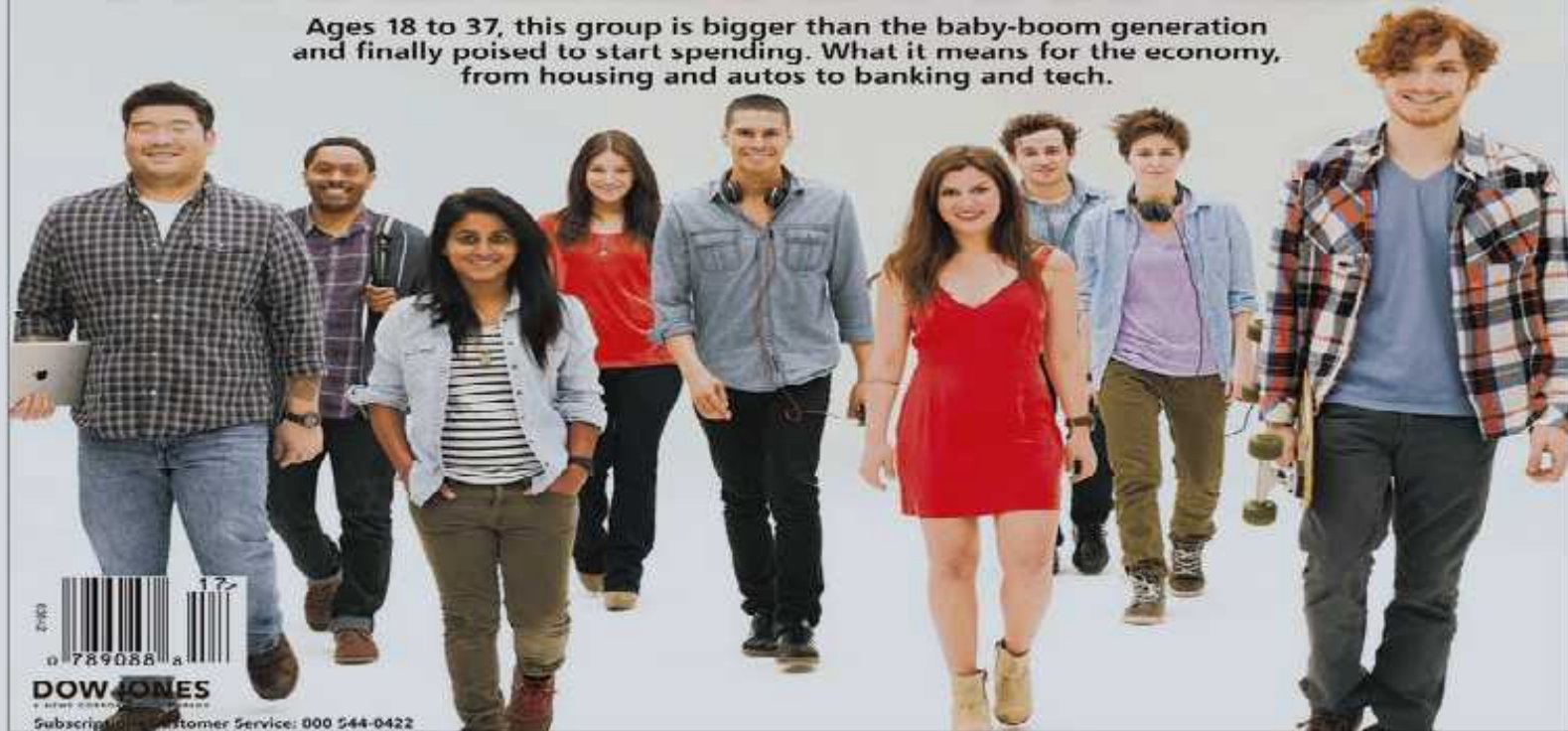
April 29, 2013

\$5.00

Special Ad Section Page M31

HERE COME THE MILLENNIALS

Ages 18 to 37, this group is bigger than the baby-boom generation and finally poised to start spending. What it means for the economy, from housing and autos to banking and tech.



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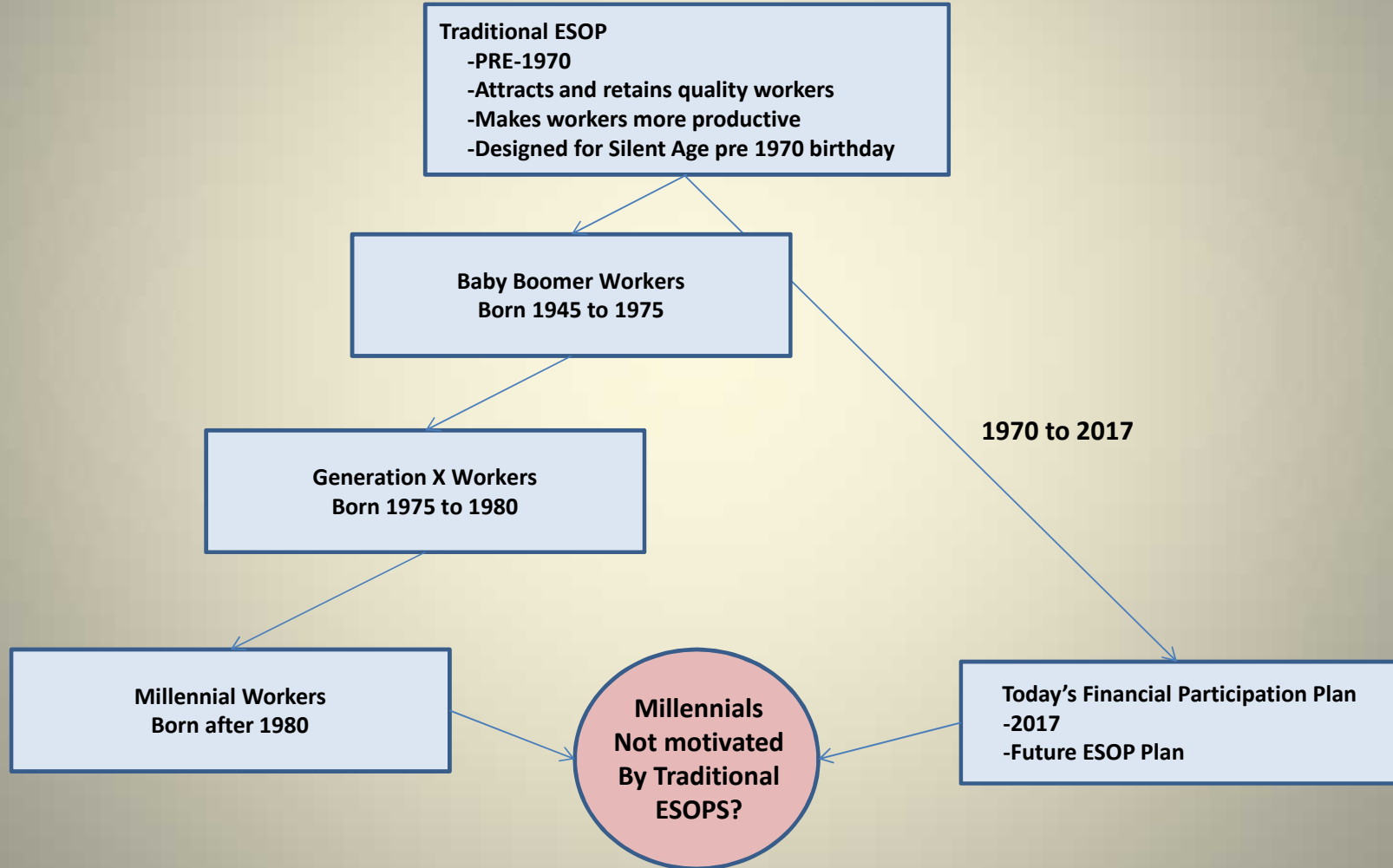
BACK TO BASICS

A successful Employee Stock Ownership Plan

- ATTRACTS AND RETAINS QUALITY WORKERS**
- INCREASES WORKER SATISFACTION**
- INCREASES WORKER PRODUCTIVITY**
- INCREASES ENTERPRISE COMPETITIVENESS ON A LOCAL, NATIONAL AND GLOBAL BASIS**
- PROVIDES SUCCESSION PLANNING FOR CURRENT OWNERS**

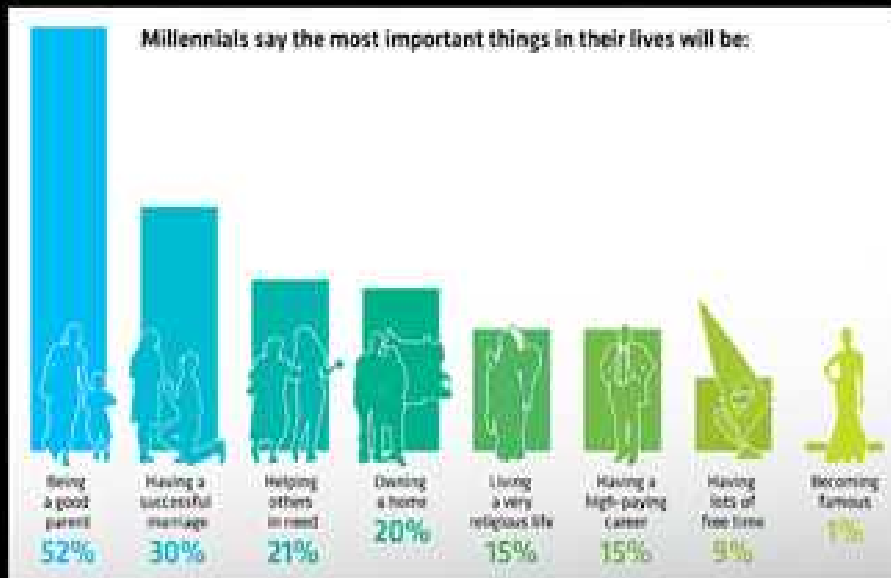
IN SUM, A SUCCESSFUL EMPLOYEE STOCK OWNERSHIP PLAN IS GOOD FOR THE WORKER, GOOD FOR THE EMPLOYER, GOOD FOR THE ENTERPRISE, AND GOOD FOR THE NATIONAL AND INTERNATIONAL ECONOMY

ESOPS Then and Now



WHO ARE THE MILLENNIALS?

THE DEMOGRAPHICS

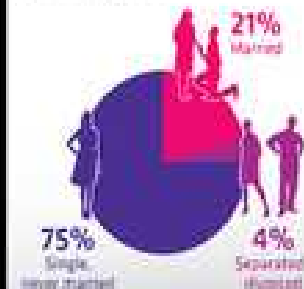


Other names for Millennials:

- Generation Y**
Refers to the generation to succeed Generation X.
- The Echo Boomers**
Refers to the fact that many Millennials are children of Baby Boomers.
- The Net Generation**
Refers to the internet being a part of their lives that they grew up with and take for granted.
- The Boomerang Generation**
Refers to the tendency for many Millennials to move back in with their parents after going away to college.
- The Peter Pan Generation**
Refers to delaying the rites of passage into adulthood longer than most generations before them.

Marital status

(Millennials ages 18-28)



Top 5 things that make Millennials unique:

(According to Millennials)



Educational attainment

(% of Millennials ages 18-28)





**“Applying the Basic Principles of
Employee Stock Ownership
To
Today’s Millennial Workforce**



RESEARCH SHOWS THAT THE “MILLENNIAL EMPLOYEE:

- 1. Does not work in the traditional long term employment model, but changes jobs frequently for upward mobility.**
- 2. Does not necessarily plan to retire at 65 in the traditional sense.**
- 3. Is more interested in investment certainty than in market volatility in retirement and savings.**
- 4. Values portability of savings programs.**
- 5. Buys education, goods and financial services on-line rather than face to face.**
- 6. Trusts the internet more than parents, politicians and employers.**
- 7. Would rather work for a socially conscious employer than have a high salary.**

Priorities in Life

Millennial Generation

1. 52%- Being a good parent.
2. 30%-Having a good marriage.
3. 21%-Helping others in need.
4. 20%-Owning a home.
5. 15%-Living a religious life.
6. 15%-Having a high paid career.
7. 9%-Having lots of free time.
8. 1%-Being famous

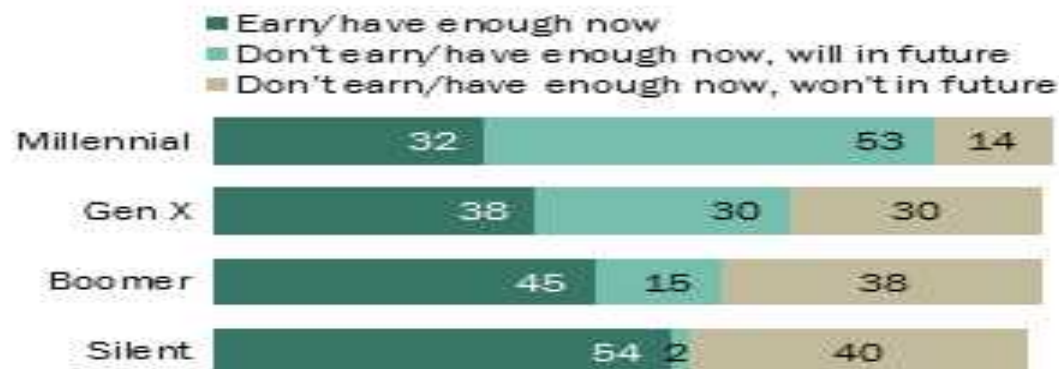
Millennials Will Shape the Social and Economic Structure of the US in the Next Decade

- 1. More than one in three Americans by 2020 will be Millennials.**
- 2. More than 75% of US Workforce by 2025.**
- 3. 89% prefer to buy from companies which support social issues.**
- 4. 87.5% do not think that “money is the best measure of success.”**
- 5. Favorite employers are Google, Apple, Facebook, US State Department and Disney**
- 6. 63% want their employer to contribute to social causes.**
- 7. 64% would rather make \$40,000 and work for a job they love, than \$100,000 elsewhere.**
- 8. Only 19% think “most people can be trusted.” (40% for other age groups)**
- 9. 83% do not like big companies.**
- 10. The average 21 year old has 52% of savings in cash. (23% for other age groups)**
- 11. 75% on social Media site, 40% have a tattoo, 20% have 6 or more.**
- 12. 90% say they now have or soon will have enough money (37% unemployed)**

**www.brookings.edu Eleven facts about Millennials;
Pew Research Center, www.pewsocialtrends.org 2010**

Millennials Upbeat about Their Financial Future

% saying they ... to lead the kind of life they want



Note: Based on all adults regardless of employment status, N=1,821. Those who are employed were asked if they currently or will "earn enough money" and those who are not employed were asked if they currently or will "have enough income." "Don't know/Refused" responses not shown.

Source: Pew Research survey, Feb. 14-23, 2014.

PEW RESEARCH CENTER

How will Millennials learn about the benefits of an ESOP?



Newspad Summit Paris 2017
June 15-16
Clifford Chance Paris



THE SUCCESSFUL MILLENNIAL ESOP MUST TAKE INTO CONSIDERATION THE FOLLOWING THREE ELEMENTS:

- 1. “BACK TO BASICS”**-THE PLAN DESIGN MUST PROVIDE MOTIVATION TO ATTRACT AND RETAIN QUALITY MILLENNIAL EMPLOYEES,KEEP THEM SATISFIED, INCREASE THEIR PRODUCTIVITY AND USE THE INTERNET TO COMMUNICATE THESE PRINCIPLES TO THE MILLENNIAL EMPLOYEES.
- 2. “TAX INCENTIVES”**-INCORPORATING AVAILABLE TAX INCENTIVES IN THE PLAN DESIGN CAN LEVERAGE AND MULTIPLY THE “BASIC” PRINCIPLES OF FINANCIAL PARTICIPATION,” BUT CANNOT REPLACE THE BASIC PRICIPLES.
- 3. “MILLENNIAL EMPLOYEE”**-THE FUTURE SUCCESSFUL ESOP WILL RECOGNIZE THAT THE “MILLENNIAL GERNERATION OF EMPLOYEES (THOSE GENERALLY NOW BETWEEN THE AGES OF 19 AND 39), ARE VERY DIFFERENT FROM PRIOR GENERATIONS OF EMPLOYEES, AND MAY (ARE) NOT BE MOTIVATED BY THE SAME FINANCIAL PARTICIPATION PLAN FEATURES AS PRIOR GENERATIONS.

ESOP

Predictions for the Future

OVER THE NEXT TEN YEARS-

- 1. Millennial ESOPs will be designed to motivate the Millennial Generation to greater satisfaction and productivity .**
- 2. ESOPs will become more focused on the participants' desire to have input on the employer's social issues.**
- 3. Diversification of ESOP interests into more fixed income alternatives will become more prevalent.**
- 4. Portability of ESOP accounts will become easier and more prevalent.**
- 5. Employer contributions to charity and social causes based on worker productivity will become prevalent.**
- 6. The traditional definition of an employee, and employer/employee relationship will start to change into a more task or project specific term.**
- 7. Communication with employees will be done on social media, not in print or face to face meetings.**
- 8. (You fill in a prediction!)**

What Generation Are You?

Do you sleep with your cell phone?

Millennial ages 18-29= 83%

Gen X ages 30-45=68%

Boomer ages 46-64=50%

Silent age 65+= 20%



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David is a charter member of the American Bar Association's College of Employee Benefits Counsel, and is an internationally experienced speaker and expert on public and private sector retirement, savings, wealth accumulation and retirement plans. David a US lawyer admitted in the District of Columbia, several states and Federal Courts, and the US Supreme Court. David is also a US Certified Public Accountant.



<http://aipf-association.fr/en/iafp-the-edito>

Hannah Needle

Tapestry Compliance, senior associate

Global plans in a fast-changing global workplace



Global plans

in a fast-changing workplace



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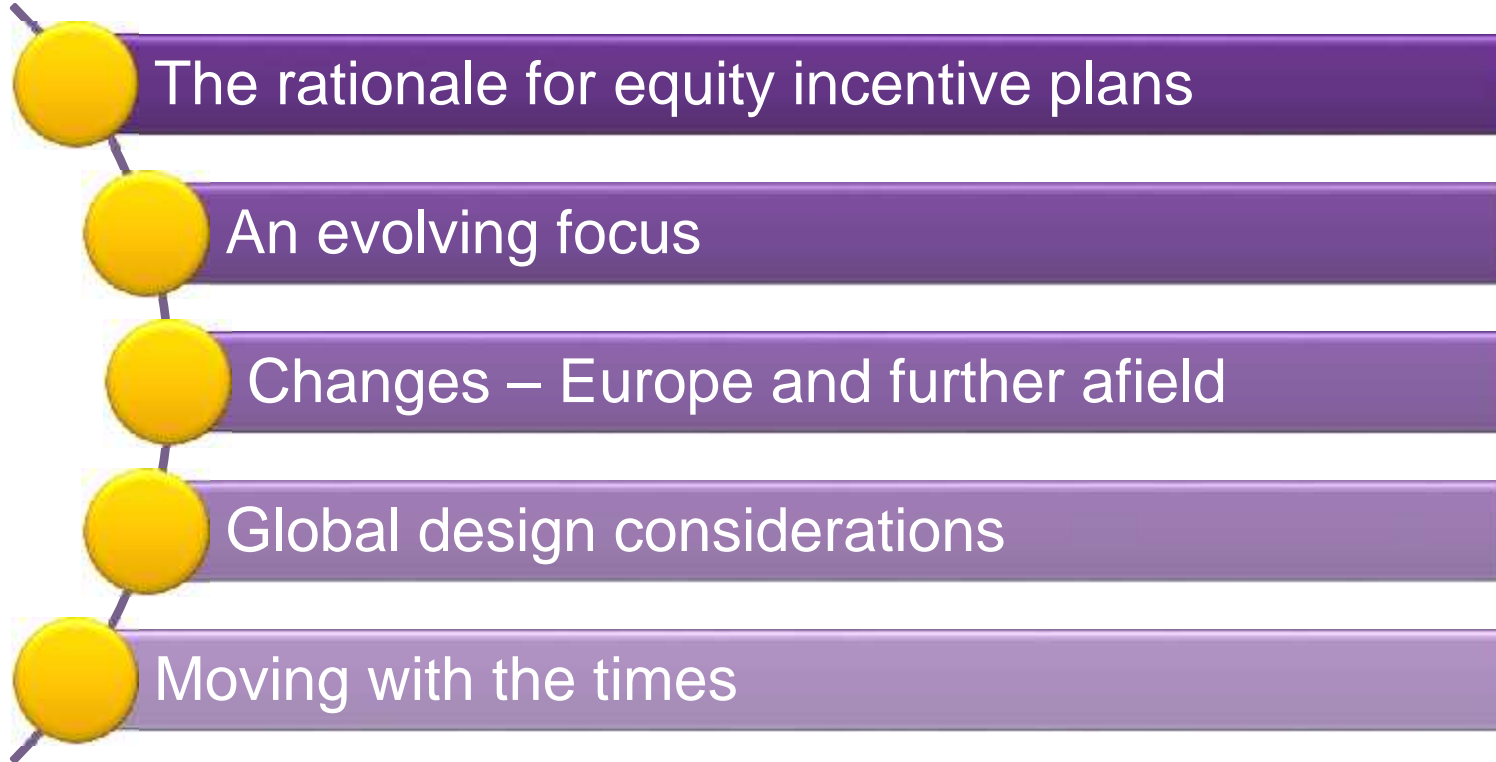
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About Tapestry

- ❖ Boutique firm
- ❖ Global reach
- ❖ Market leading
- ❖ Advice 'On Tap'
- ❖ Award-winning



Today's topics & theme

- 
- The rationale for equity incentive plans
 - An evolving focus
 - Changes – Europe and further afield
 - Global design considerations
 - Moving with the times

Rationale and Personnel

Rationale

- ❖ Increase productivity
- ❖ Attract and Retain
- ❖ Risk management

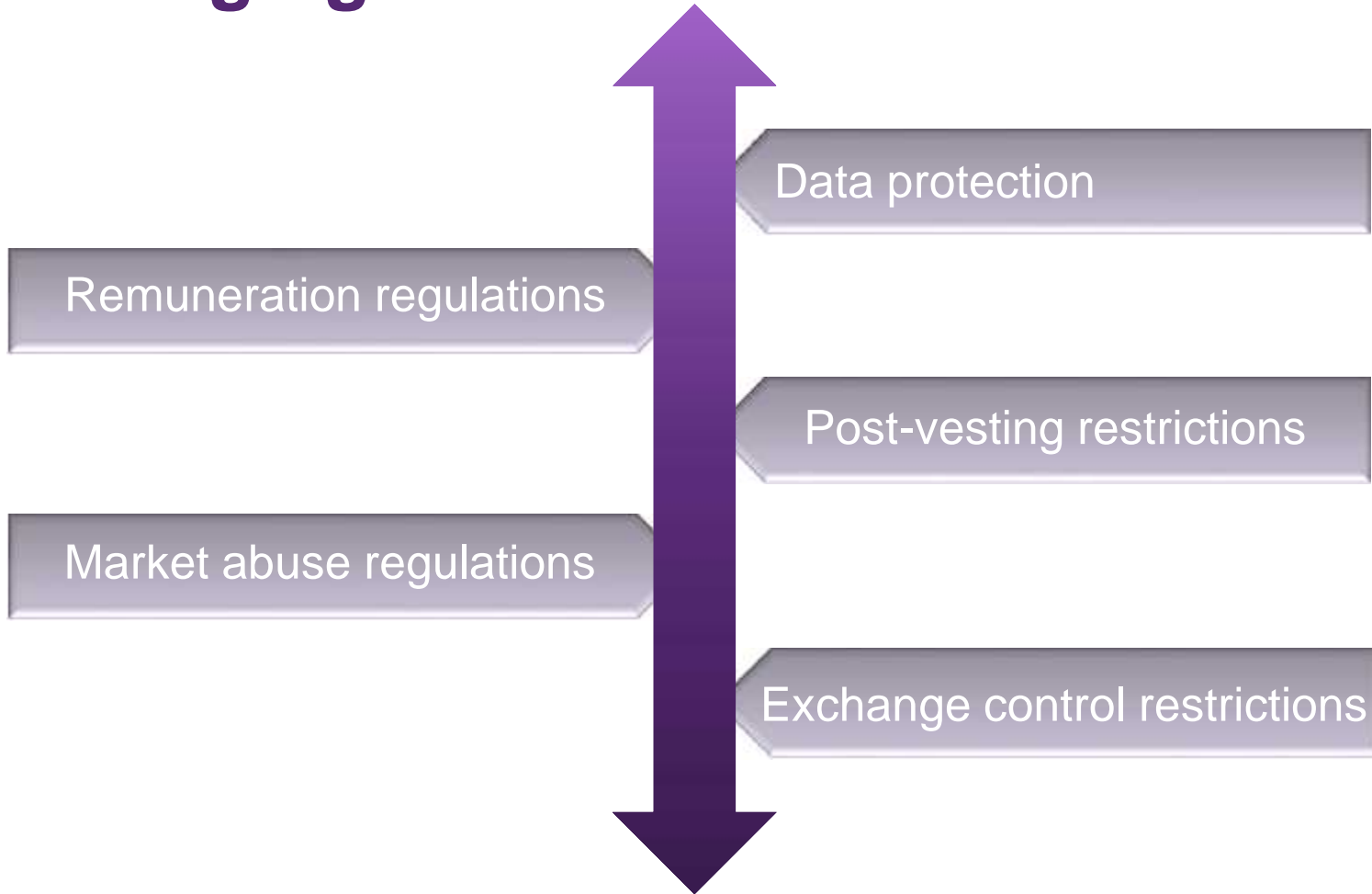


Personnel

- ❖ Internal
- ❖ External



Changing Focus



UK update



- ❖ Executive pay
 - Shareholder dissent
 - Corporate governance review
 - End of LTIPs?
- ❖ Gender pay gap reporting
- ❖ Abolition of tax-advantaged “employee shareholder status”
- ❖ General election – impact?



France and Germany update

❖ France – “Macron awards”



- 2015 - improved tax treatment for share awards
- 2017 Finance Act - reversed some advantages
- New president – impact?

❖ Germany



- Mandatory clawback for banks
- Expanded to all companies?
- General election – impact?



EU-wide update



❖ MiFID II & MiFIR

- Increased investor protection

❖ Prospectus Regulation

- Expansion of share plan exemption

❖ Data Protection Regulation

- Stricter consent provisions



USA update

- Trump effect?
- Dodd-Frank review
- Carried interest loophole?
- Data protection – EU/US



Clawback in action – Wells Fargo:

- Banking scandal - 10 years+
- \$180m+ malus/clawback

Global update – gender pay reporting

- ❖ Australia
- ❖ Belgium
- ❖ Germany
- ❖ Iceland
- ❖ Sweden
- ❖ Switzerland
- ❖ USA



Global update – tax rates



Country		Rate
Chile	😊	• Top marginal tax rate down to 35%
Brazil	😞	• Capital gains tax up to 22.5%
Luxembourg	😞	• Top marginal tax rate up to 42%
Norway	😐	• Top ordinary tax rates down to 24% • CGT and dividends tax up to 29.76%
South Africa	😞	• New top tax rate of 45% • Capital gains tax increased to 18% • Dividend rate increased to 20%

Design Decisions



❖ Attractive and affordable?

Choices

- ❖ Purchase + match
- ❖ Discounted options
- ❖ Free shares
- ❖ Tax-advantaged

Considerations

- ❖ Changing laws
- ❖ Global consistency
- ❖ Risk
- ❖ Costs

Moving with the times

Keep up to date with legal and tax changes

Impact of changing governments/leaders?

Review data protection and clawback policies

Consider gender pay reporting obligations

Be flexible!

Questions?



Richard Nelson

Cytec Solutions

Market Abuse Regulations 12 months on



Market Abuse Regulations

Richard Nelson

Managing Director



Agenda

Market Abuse Regulations 12 months on

- Headline Changes
- Practical implications
- How companies in the UK have adopted MAR compliance
- Insider list statistics
- How are other EU member states reacting to MAR?

The Market Abuse Regulation (MAR)

Established a new, common regulatory framework on market abuse, as well as measures to prevent market abuse to ensure the integrity of the EU financial markets and enhance investor protection and confidence in those markets.

MAR – Headline changes

- More trading venues subject to the market abuse regime (all issuers in regulated markets and Multilateral Trading Facilities (MTFs))
- More “behaviours” subject to the market abuse regime
- New procedures in relation to market soundings
- Issuer notification obligations if disclosure of inside information delayed
- PDMR Dealings and Disclosure regime
 - Closed periods
 - Notification timelines / format
 - Thresholds
- A standard, EU-wide format for insider lists

Considerations

Disclosure

- Do you re-write your Disclosure Policies?
- Do your board understand it?
- Do you have a Disclosure Committee?
- Who's on it?
- How are you dealing with year end?
- Under what circumstances do you delay disclosure?
- Do you have a market soundings policy that does more than say '*you need to speak to your broker*'?

Training

- How do you educate your Board?
- What about insider education?

Insider Lists

- How do you maintain them?
- Who to add?

PDMR's

- Number of PDMR's and identity
- PDMR / PCA notification

Share Dealing

- Adopted ICSA/GC 100 Code or home grown?
- Clearance always required (even in open period)?
- Extension of closed period beyond MAR?

Basic principle of MAR – control of insider information

Observations:

- New policies have been adopted (disclosure, share dealing etc)
- Processes and procedures for monitoring and reporting in place
- UK companies interpreted new rules but would welcome further guidance
- Perhaps greater focus on compliance rather than prevention?
- MAR – maybe not the administrative burden expected – tweaking rather than radical change

How have companies reacted:

- Focus on reducing number of MAR insiders and restricting access to price sensitive information
- Increase in the use of confidential projects – with dealing restrictions
- Continued requirement to seek permission to deal (not just PDMR's)
- Use of extended closed periods are common
- Mixed interpretation of 'Permanent Insiders' (All information, at all times)
- Confusion regarding delayed disclosure (out of hours disclosure)
- Education of insiders is now a high priority (PDMR's and Insiders)

The UK Regulator & EU:

- Companies known to have received requests from the UK regulator in 2016
 - Both given 48 hours to provide an initial response
 - 5 business days for evidence of process followed
- Other EU countries seem to be behind UK on MAR compliance
- France seem to be leading the EU charge

Insidertrack User Statistics

Clients sample – 80

FTSE100 – 30

Outside FTSE100 - 50



Permanent List



Permanent List

	Combined	FTSE100	Other
Companies with a permanent List -	64% (51)	60% (18)	66% (33)
Ave. No. of people on permanent List -	5	5	5





Project Lists

Project Lists

	Combined	FSTE100	Other
Average number of price sensitive lists per company -	2.1	2.5	1.9
Average number of confidential projects per company -	3.1	4	2.7
Average number of people on a MAR price sensitive project -	22	15	25
Average number of people on a confidential list -	24	14	27



Insiders Data





Insiders Data

	Combined	FSTE100	Other
Companies that have price sensitive projects <i>without</i> all personal data required under MAR-	32% (26)	33% (14)	24% (12)
Clients that record National Identity numbers -	52% (42)	67% (14)	56% (28)





Response Times



Response Times

Ave. response to acknowledging responsibilities -		4 days
Acknowledgement chase frequency -	23%	1 day
	17%	2 days
	10%	3 days
	50%	7+ days





Closed Periods



Closed Periods

Clients who ask for closed period dates
to be acknowledged -

16% (13)

Most frequent closed period notifications -

Day before



External Organisations

External Organisations

	Combined	FTSE100	Other
Ave. number of external organisations p/company -	16	13	19



Market Abuse Regulations

Richard Nelson

Managing Director



C L I F F O R D
C H A N C E



Refreshments break

NEWSPAD SUMMIT: PARIS 2017

@EsopCentre
#EsopParis17

Rob Collard

Macfarlanes, partner

Gender pay reporting and other employment updates

MACFARLANES

GENDER PAY REPORTING

ROB COLLARD

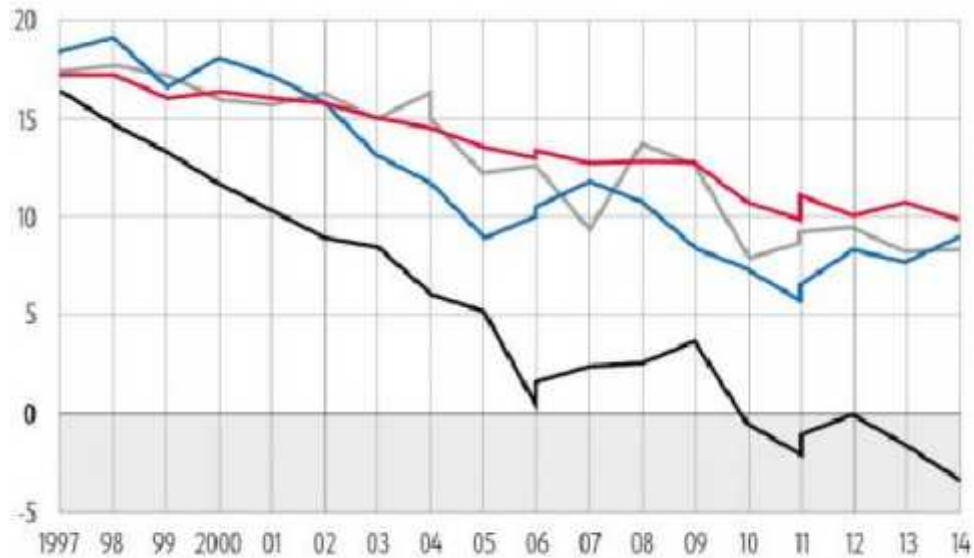
15/06/2017

THE STATISTICS

UNBALANCED THE UK'S GENDER WAGES GAP

GENDER PAY GAP FOR MEDIAN FULL-TIME HOURLY EARNINGS
%, EXCLUDING OVERTIME

● ENGLAND ● SCOTLAND ● WALES ● NORTHERN IRELAND



SOURCE: ONS

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NEW REPORTING REGIME

- **UK introduced new gender pay gap reporting regime with effect from 6 April 2017**
- **First report to be published by 4 April 2018**
- **Employers must publish gender pay gap information on their own website and must retain the information online for three years**
- **Employers must also upload the information to a government-sponsored website**
- **A written statement confirming that the gender pay gap information is accurate must accompany the required information. This must be signed by a director, designated member, partner or the most senior employee**

ENFORCEMENT

- **The regulations themselves do not contain any enforcement mechanism, sanctions for failure to comply or sanctions for publishing misleading or inaccurate reports.**
- **Instead the government is proposing to:**
 - run checks to assess non-compliance;
 - produce sector based tables of employers' reported gender pay gaps;
 - highlight and identify employers publishing full information; and
 - name and shame those employers who have not complied.

WHO DOES IT APPLY TO?

- **Who must publish? Individual entities with more than 250 employees on 5 April must report the following 4 April.**
 - Includes companies, partnerships, LLPs etc.
 - Group companies do not aggregate employees across subsidiaries but may need to produce numerous reports for different entities
 - If senior executives are employed by a different entity with fewer than 250 employees – no reporting obligation re their pay
 - Non-UK employees?

WHAT DO YOU INCLUDE?

- **Information to be included in gender pay report**
 - average hourly pay gap (mean and median)
 - average bonus gap
 - proportion of men and women receiving bonus
 - number of men and women in each quartile pay band

RELEVANT EMPLOYEES

- **What is a relevant employee?**
 - employees
 - apprentices
 - casual workers (including zero hour contracts)
 - certain self-employed contractors
- **But not:**
 - partners/LLP members
 - agency workers
 - secondees

FULL-PAY RELEVANT EMPLOYEES

- **Relevant employees who were not, during the relevant pay period, on reduced/nil pay due to:**
 - annual leave;
 - maternity/paternity, adoption, parental leave;
 - sick leave;
 - special leave
- **But part-time employees are full-pay relevant employees!**

WHAT IS PAY?

- Gross pay before deductions for tax, social security, pension contributions etc.

Included in "Pay"	Excluded from "Pay"
<ul style="list-style-type: none">• basic pay• allowances (including car allowances paid through the payroll, location allowance, recruitment and retention allowances on call and standby allowances, clothing, first aider or fire warden allowances)• pay for piecework• pay for leave• shift premium pay	<ul style="list-style-type: none">• pay for a different pay period• overtime pay• redundancy or termination pay• pay in lieu of leave• remuneration paid other than in money (such as benefits in kind or securities)• expenses wholly and necessarily incurred for business purposes e.g. repayment of a taxi fare• salary sacrifice schemes• interest free loans e.g. a season ticket loan

WHAT IS BONUS PAY?

- **Bonus is defined as any remuneration that:**
 - is in the form of money, vouchers, securities, securities options or interests in securities
 - relates to profit sharing, productivity, performance, incentive or commission
- **Bonus pay does not include ordinary pay, overtime pay or remuneration referable to redundancy or termination of employment**
- **Includes share plan awards**
- **Timing?**
- **Value?**

EXAMPLES

- **John and Janet are each paid £100 per month. In the April 2017 pay month John gets paid a £600 annual bonus and Janet gets £1,200. They both work the same hours.**
 - Hourly pay calculation looks at the amount paid in that month including bonus payments. The bonus is pro-rated to reflect the bonus period. So hourly pay gap is -33% (£150 minus £200, divided by £150).
 - The bonus pay calculation looks at bonus pay within the 12 months before 5 April. So this year's bonus won't be included. But they got the same bonus in April last year. Bonus pay gap is -100% (£600 minus £1,200, divided by £600).
 - What if their bonuses were paid in May instead? Won't be included in hourly pay calculation. So the hourly pay gap would be zero. But their bonus pay gap would still be -100%.

WHAT ABOUT SHARE PLAN AWARDS?

- **John was also granted market price options in April over £1,000 of shares. How does that affect the calculations?**
 - It obviously doesn't. You look at the time of exercise.
- **In April 2017, John exercises the options which he was previously granted and makes a £3,600 gain.**
 - Exercised in April pay month so included in hourly pay calculation.
 - Pro-rated over three year performance period
 - So hourly pay gap is 20% (£250 minus £200, divided by £250)
 - He exercised them on 4 April so also impacts the bonus pay gap. Bonus pay gap is now 71% (£4,200 minus £1,200, divided by £4,200)
 - Despite the fact Janet was granted twice as many options, she just chose not to exercise them this year...

WHAT ABOUT TAX FAVOURED SHARE PLAN AWARDS?

- **CSOP options**
- **EMI options**
- **SAYE**
 - savings
 - exercise
- **SIP**
 - free shares
 - matching shares
 - partnership shares
 - dividend shares

HOW TO DEAL WITH THIS?

- **Ignore the rules and make calculations on a more common sense basis?**
- **Add commentary and more common sense calculations to the disclosures?**
- **Don't pay bonuses during the April pay month?**
- **Don't permit option exercises during April pay month?**
- **Move to RSUs which vest automatically on expiry of performance period?**
- **Structure out of the rules?**
- **Just decide you don't care and make sure that your pay processes are actually fair?**

MACFARLANES

GENDER PAY REPORTING

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Stephen Woodhouse

Pett Franklin, partner

International equity plans: changing times

PETT, FRANKLIN & CO. LLP

HELPING SHARE GROWTH



TAX, INCENTIVES AND
EMPLOYEE SHARE PLANS

International Equity Plans

Changing Times

Stephen Woodhouse, *Partner*

www.pettfranklin.com

Overview



1. Why bother with equity plans?
2. Reviewing the impact of changing political & economic circumstances on international equity plans
3. **Brexit** - how will this impact on plans within and outside the UK?

Overview



4. **Executive Pay** - the ‘fat cat’ debate and its effect on the structure of equity plans
5. **Financial Crisis Echoes** - increasing regulation & requirements for deferral
6. **Malus & Clawback**
7. **Tax Incentives** - theory and practice across countries

1. Why bother with equity plans?

- Long History
- Starting in US



1. Why bother with equity plans?



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TAX, INCENTIVES AND
EMPLOYEE SHARE PLANS

1. Why bother with equity plans?

- Buy out of Peninsula Newspapers, Inc. in the US driven by Louis Kelso
- Theory of employee ownership - facilitate:
 - Employees sharing in wages of capital - i.e. return on capital tends to be higher than return for time spent and skills delivered
 - Alignment of employee and shareholder interests
 - Management of cash costs
 - Management of long term risks
- As a result, employee share plans have wide political and fiscal support

2. The Impact of Changing Political and Economic Circumstances on International Equity Plans



Post-Financial Crisis

- Increased regulation
- Increased disclosure
- Scrutiny of executive pay
- Risk of adverse publicity
- Increased shareholder engagement
- Movement towards no reward for failure
- Desire for alignment of interests

3. Brexit - how will this impact on plans within and outside the UK?

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TAX, INCENTIVES AND
EMPLOYEE SHARE PLANS



3. Brexit - how will this impact on plans within and outside the UK?



“...Income, you know, results from only two things.

It can result from capital and it can result from labour. If the worker begins getting his income from both sources at once, he has a real stake in increasing production and increasing output.

One such plan is based on financing future expansion in such a way as to create stock ownership for employees. It does not reduce the holdings of the present owners, nor does it require the employees to divert their own savings into stock purchases...”

3. Brexit - how will this impact on plans within and outside the UK?



Incentivisation Reasons

- Recruitment
- Retention
- Motivation

Participatory Reasons

- “Skin in the game”
- Identification with long-term objectives

Opportunistic Reasons

- Availability of tax reliefs & exemptions
- Reduces cost to company

3. Brexit - how will this impact on plans within and outside the UK?



Unlikely to dilute
ingrained concepts e.g.
malus & clawback

Potential for greater
flexibility e.g.
employment law

Potential withdrawal of
state aid for EMI

4. Executive Pay - the 'fat cat' debate and its effect on the structure of equity plans



LTIPs to be phased out by the start of 2018 and no renewal of existing plans

Deferred Stock to replace LTIPs as best practice for incentivising long-term decision making

**BEIS Corporate
Governance Report**

Employee Representation on Remuneration Committees

Publication of pay ratios between CEO and Senior Executives and all UK employees

5. Financial Crisis Echoes - increasing regulation and requirements for deferral

- Market Abuse Regulation
- Large and Medium-Sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)
- CRD IV
- FCA Remuneration Code
- UK Corporate Governance Code
- Investment Association Principles of Remuneration

6. Malus & Clawback

- **Malus** = *before* awards or remuneration have vested or been paid.
- **Clawback** = *after* award or remuneration have vested or been paid.
- All premium listed UK companies required to implement or explain why they do not consider it appropriate under UK Corporate Governance Code.
- Problematic in international share plans e.g. recovery of value likely may be unenforceable against participants in France.

7. Tax Incentives - theory and practice across countries

➤ France:

- Loi Macron (the “Macron Law”) implemented a more favourable free shares regime (*‘allocations gratuites’*) for plans adopted after 7 August 2015.
- Employer social security contribution of 20% tax rate due on vesting (*formerly 30%*).
- No tax and no social security contribution required on grant by employee (*formerly 10%*).
- Election of Emmanuel Macron = favourable outlook for share schemes.

7. Tax Incentives - theory and practice across countries

- UK & France are “leaders in employee ownership” (*Loris Guerney, Université de Lorraine*).
- UK leading the way with structures such as EOTs:
 - 51%+ shares transferred to an EBT for the long-term benefit of employees
 - CGT & IHT relief on certain disposals to an EOT
 - Income tax relief for bonuses up to £3,600 per individual per annum

7. Tax Incentives - theory and practice across countries



➤ Sweden:

- Proposals to amend taxation of restricted shares and introduce a qualified regime for stock options with effect from 1 January 2018.
- Shares with restrictions < 2 years = UMV taxable at grant.
- CGT treatment of growth between grant and sale.

7. Tax Incentives - theory and practice across countries

➤ Sweden:

- New “Qualified Stock Option Plan”
- Qualified stock options not subject to income tax at exercise
- Underlying shares subject to CGT at sale
- Granting company must meet following conditions: -
 - No. of employees must not exceed 50;
 - Net annual sales must not exceed SEK 80 million;
 - Company must not have carried on business for > 7 years; and
 - Certain industries excluded (e.g. finance, law, insurance).

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HELPING *SHARE* GROWTH



TAX, INCENTIVES AND
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HELPING SHARE GROWTH



TAX, INCENTIVES AND
EMPLOYEE SHARE PLANS

Marco Cilento

European Trade Union Confederation, adviser

The progress of employee financial participation in
Europe



The progress of EFP (employee share ownership) in Europe

Outline of Marco Cilento's speech at the *newspad* Summit Paris 2017

1. In the post-crisis Europe, the theoretical framework for the development of worker participation should evolve. Participation exists, financial participation is more frequent, and yet it is not common practice. Nevertheless, the idea that a participative economy is stronger, more profitable, more sustainable is widely shared.

2. The world is getting worse; but it is likely that individuals are positioning themselves within society in a novel manner, might they be workers, investors or entrepreneurs. Are not pension funds key players in the financial world? Are not enterprises called to ensure the social aim of those economic activities previously warranted by the State? Is not investment influenced by the social stability of the environment where production takes place?

3. The risk for participation is to turn selective, and accessible only to those who can afford it: high-value-added workers, in the most innovative sectors, in those grey areas between employment and self-employment, etc. Participation can turn into luxury, an elitist condition – quite the opposite reason leading to it originally being placed at the heart of the European social model.

4. However, industrial democracy, within a social market economy, is a historical condition of the paradigm around which European industrial relations have developed through the 70s, 80s and 90s. It is in the 1975 Green Book for the European lawmaker to weld the notion of enterprise to that of participation and to advocate the European Company status.

5. Thus, vocabulary evolves to represent new features of industrial democracy. Today the notion of participation expands to encompass company welfare. In a context of strongly strained welfare state, collective bargaining takes onto itself the building of services. A collective tool to shape services for individual use.

6. There is a necessity for the collective dimension to prevail. Between the atomisation of representation on the one hand (reaching the exaltation of individual participation), and the weak governance of a single market with a single currency on the other, industrial relations cannot but go through renewal not to succumb.

7. It is because social partners are aware of the new challenges and of the new needs of people and businesses. The true strength of autonomy resides in the capacity to redraft the rules in labour relation, within labour relations. New frontiers should be explored: digitisation can reinstate production cycles, profit-sharing can mitigate inequality, social innovation can pair with technology innovation. There is a gap that social partners should fill in if they still want to be part of the governance within and outside the enterprise.

8. Touching upon the collective interest of employees, and touching upon the human resource functions of undertakings, employee financial participation can be fully considered a component of industrial relations in Europe, even though today presents different degrees of development in national contexts.

9. EFP has always been studied and encouraged. The scientific elaboration has been massive but it dwelled in a microeconomic dimension rather than investigating its macro relevance. Being meant as a fact of the person or of the individual company rather than

a fact of the economy or of the society, scientific interest for EFP practices did not become a driver for policies, new legislation or incentives at European level.

10. In the EU, EFP was recently considered a component of good corporate governance in the Action Plan for on Company law and corporate governance (2012). France is the only country in Europe with a solid legislation that recognises a wider interest of the society to support and regulate EFP. In other countries, EFP belonged to the sphere of private interests of companies and/or their employees, also in UK (the second country where EFP is systemic) EFP stays in the commercial or private law. The European Parliament promoted EFP in 2014.

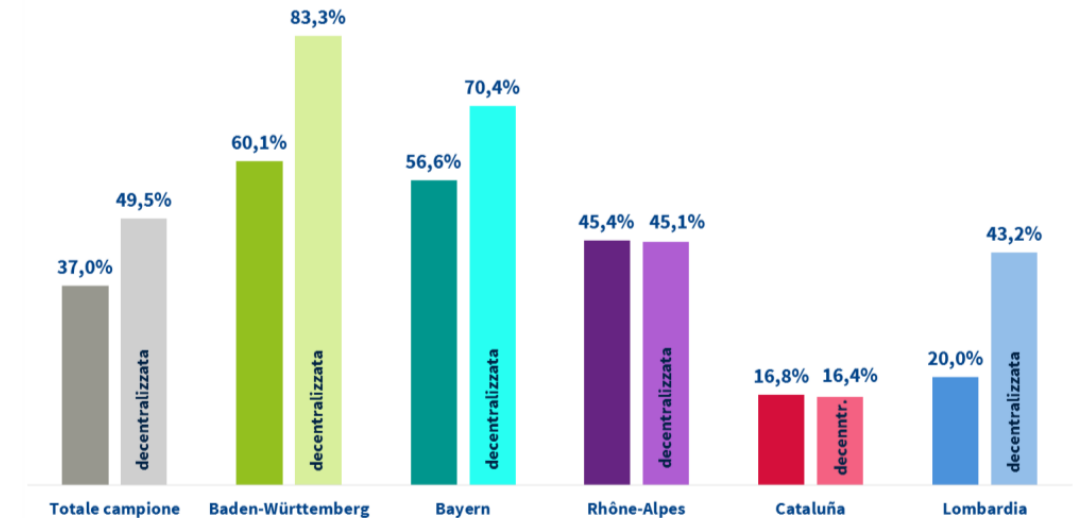
11. Despite that programmatic effort, EFP never appears in the toolbox of the decision makers at European level. What is lacking today in Europe is a knowledge of the size and the systemic effects that EFP schemes may have on the economy and in the society. This is at odds with the fact that the use of these instruments are increasing especially in the aftermath of the economic crisis. It is also at odds with the fact that many EFP tools would suit the objectives (economic governance of the EU) to build flexible economies while enhancing social resilience.

12. And indeed, exactly it is in the wider context of the objectives of fiscal stability, flexible and performing economies, and social resilience that EFP tools may deliver its added value for both business and employees. EFP suits the SGP, the EU 2020 strategy, the Social Pillar. Some examples:

- Number of employees covered by gain and profit-sharing schemes are on the increase everywhere (from Germany to Italy). The process is driven by a trend that sees collective bargaining moving part of wage formation at company level (see recent Reports on Industrial Relations in Europe).
- Employee share ownership, after a period of declining trends due to the poor performance of shares and securities are on the surge again, driven also by the re-start of privatisations processes.

- In SMEs, during the last years we have witnessed a soaring numbers of employees-buy-out practices where employees and managers were confronted with the need to preserve jobs against the strong turbulences of the markets.

Figura 3.7 – Imprese che adottano politiche di remunerazione basata su performance (% di imprese sul totale e % di imprese sul totale imprese a gestione decentralizzata, 2013)



Fonte: Indagine Benchmark, Assolombarda Confindustria Milano Monza e Brianza

Figure 1 Enterprises using performance-based remuneration schemes (centralised vs. decentralised management)

13. In PROEFP report 2015 and 2017 was also said that EFP supports European Semester policies:

- EFP instruments can fight inequalities especially wealth inequalities

- EFP instruments make societies more dynamic encouraging investments in skills and boosting social mobility
- EFP encourages equity capital formation and mobility, having positive effects on the European capital market
- In the post crisis periods, industrial relations have to get concentrated on new societal challenges and EFP can provide innovative tools to address such changes
- EFP also showed to provide tools to achieve a tax shift from labour to other tax basis

14. In Europe, policy makers cannot count on information structured in a way that they can comprehend the macro or systemic effects (actual or potential) of EFP and therefore they lack of the analytic instruments to include EFP in their policy designing. Despite the enlightening opinions of the European Parliament (2014) and of the EESC (2013), EFP is not investigated neither in the Industrial Relations Report of the European Commission nor in the employment guidelines of EMCO, nor it is considered at any extent in the European Semester outputs. Together with other micro-factors explained in past PROEFP reports, this information gap can be removed to enrich the range of tools available to decision makers in Europe being them either institutions or social partners.

15. Macroeconomic impact of EFP can be vaguely estimated but it is not quantified yet in scientific terms. Practices can offer hints of how EFP can impact the objectives set in the most recent Annual Growth Surveys setting every year the broad economic guidelines for the EU:

- while Finland had to go through a confrontational dialogue between government, employers and trade unions to save 1.5% on cost of labour, profit and gain sharing schemes may ensure a 5/6% flexibility on global annual remuneration of the workforce (according to the more frequent practices, in most of cases regulated by law, collective agreements or subject to employee participation procedures).
- the Semester cycle 2017 has the merit to elaborate on different aspects of inequalities in Europe putting emphasis on wealth and educational inequalities. PROEFP reports explains how EFP instruments mitigate inequalities.
- a final example comes from the need to modernise industrial relations to meet the

societal challenges of the new millennium. The PROEFP report 2017 investigates on what is left of employee participation in the aftermath of the economic crisis. It emerges that EFP helps companies prepare their staff to the new challenges (especially awarding skills and stabilisation of the employee relationship) and that if it needs social-minded companies, democratisation of capital is a way to build patient long-term sighted investors.

16. To include EFP in the toolbox of the policy makers at European level, the starting point is to build a definition and the one we have proposed is the following one.

17. Based on PROEFP research reports (published on the website www.proefp.eu), employee financial participation (EFP) can be defined as the stake that employees have in the equity capital or other securities of the undertaking they are employed in or the yields that such capital or such securities generate.

18. The stake is collective as the concept of employee financial participation includes instruments that involve a multitude of employees, and which are strategic for the functioning of the undertaking. That is why EFP falls under the domain of HR managers and industrial relations. It owns the specific feature of connecting different company functions. That is why almost half of the private companies in Europe use one of the instruments falling in the EFP practices (see Report for DG Market 2014, The Promotion of Employee Ownership and Participation).

19. The definition of employee financial participation covers the following instruments: profit and gain sharing schemes, employee share-ownership schemes, company-based saving plans, a combination of thee instruments. Occupational pension funds and occupational welfare schemes are not included in the definition unless they are fed or result in one of those instruments.

Louise Jenkins

FTI Consulting, managing director

UK tax treatment of internationally mobile employees

Internationally mobile employees & share based payments

Louise Jenkins
FTI Consulting

15th June 2017

Presented to newspad summit: Paris 2017

FTI Consulting – Who are we?





IME's – What is the issue?

New legislation introduced in the Finance Act 2014 – came into effect from beginning of April 2015

Major changes on how IME's are taxed in the UK on their share based pay. Complex apportionment rules apply if one or more of the following conditions are met:

- The employee is UK resident and claims the remittance basis during any part of the 'relevant period'; or

- The employee was not UK resident for some part of the 'relevant period'; or

- The employee was subject to 'split tax year' treatment during the 'relevant period'

The portion of the income which relates to overseas duties will be taxed on the remittance basis where these rules applies (ie income is not subject to UK tax unless it is remitted to the UK)

Aligns the UK tax treatment of share based pay with general international practice

BUT: two years on and many companies still don't fully understand it and are getting it wrong!



What is an IME?

- What is an IME?
 - UK resident going overseas
 - Overseas resident coming to the UK
 - UK and overseas residents who move in and out of the UK

- New legislation prescribes a ‘relevant period’ under which the IME is subject to UK income tax if it relates to UK employment duties. The relevant period depends on the specific arrangements of the plan but broadly it is:
 - Grant to vest for share option/RSU’s
 - Grant to lifting of restrictions for restricted stock

(NB: When the employee is taxable overseas on the full unrestricted market value (UMV) of the shares at acquisition, UK tax will not be charged when the restrictions lift)



How is the gain apportioned?

- The gain is apportioned evenly over the ‘relevant period’:
 - Portion of the gain that relates to a period of UK residence where the remittance basis does not apply, is subject to income tax in respect of both UK and non-UK duties
 - Portion of the gain that relates to non-UK duties during a period of UK residence where the remittance basis does apply, is subject to income tax if remitted to the UK
 - Portion of the gain that relates to a period of non-UK residence is subject to income tax based on UK duties only

IME's – example of new rules



Option gain = $(£1.50 - £1) \times 1000 = £500$

Gain subject to UK tax = $\frac{2 \text{ years}}{3 \text{ years}} = £333$



IME's - winners and losers under the new rules

➤ **Winners**

UK outbounds with options (previously gains arising on options after leaving UK could have been subject to income tax in full, unless treaty relief applied).

➤ **Losers**

- UK inbounds with options. No scope any more to take the position that no UK income tax charge on exercise on options granted before coming to the UK and not granted in contemplation of any UK duties
- UK outbounds with options taxed under the '3C rules'
- UK inbounds with restricted stock. Potential post-acquisition charges for restricted or convertible shares

➤ **RSU's**

Need to look at carefully – an RSU with an employer right to cash settle can prevent the RSU falling within the definition of a “share option” which means that the income tax charge is based on general principles – ie treated like cash



Social security (National Insurance Contributions)

- NIC treatment is broadly aligned with the income tax treatment but not in every case
- Due to differences with international social security agreements and double tax treaties it is not possible to align completely
- Employee may continue to be within their home country social security system while on secondment. E.g. If certificate of coverage is held or within the EEA
- Mismatches will arise



Case study – beware of non-UK resident directors

US parent co-listed on NASDAQ

UK subsidiary

Two directors serving on main board of the group are in the US and registered as directors on all global subsidiaries including the UK

Share options and RSU's vested in 2015 / 16 tax year - \$130m gains

Potential UK IT liability on vesting (RSU's) and exercise (share options)

Time apportioned based on period where they were UK residents and / or had UK workdays

Confirmed not UK resident but did have UK workdays

UK subsidiary failed to account for any PAYE/NIC

Highlights the importance of good record keeping



Practical difficulties when managing IME's

- How to identify the taxable and reportable events for each jurisdiction?
- How to track each relevant event (i.e. grants, vesting, exercises, sales, lapses, lifting of restrictions)?
- How to track the country mobility of the employees (i.e. days worked in each country)?
- How to manage the sale process to ensure correct tax and social security withholding rates are applied?
- How to share information internally with the relevant stakeholders – payroll, HR, employees, broker, tax authorities?



Quick overview of other countries

France

- Options taxable at exercise
- Tax due on French source income only (i.e. based on the services rendered by the employee to the French entity during vesting period)
- Employer withholding depends on residency status at the taxable event (eg. no withholding if resident in France at the taxable event, but withholding is required if non resident)

Spain

- Tax treatment depends on whether the employee qualifies for 'special expat regime'
- Spanish sourcing rules do not follow standard OECD principles
- Spain sources gains from grant to exercise (not vesting)



Quick overview of other countries

Germany

- Options taxable at exercise.
- Generally all individuals are subject to tax on German source income only (same as France). But if no double tax treaty, then the entire award is subject to German tax if German resident

Japan

- Options taxable at exercise
- Japan sourcing rules do not follow OECD principles – Japan sources from grant to exercise based on the time spent in Japan during this period

Maldives

- No income tax due!!

EXPERTS WITH **IMPACT**[™]

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C H A N C E



Session closure

PLEASE JOIN US AT THE COCKTAIL PARTY KINDLY HOSTED BY
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newspad summit

CLIFFORD CHANCE, PARIS

JUNE 15–16 2017

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#EsopParis17

Fred Hackworth

newspad, editor

Opening remarks

Damian Carnell

Willis Towers Watson, director

Titans of global capitalism collide: the clash between core capital and top talent

An aerial photograph of a winding asphalt road with yellow double lines, cutting through a dense, lush green forest. The road curves from the top left towards the bottom right of the frame. The trees are thick and vibrant green, with some lighter patches visible through the canopy.

Titans of Global Capitalism Collide: The clash between core capital and top talent

Newspad Summit Paris 2017
Employee Share Ownership Centre

15 & 16 June

What are the issues?

Cost dilution

Excessive pay

P4P

Pay for failure

Overgearing/
excess compliance/
inappropriate metrics

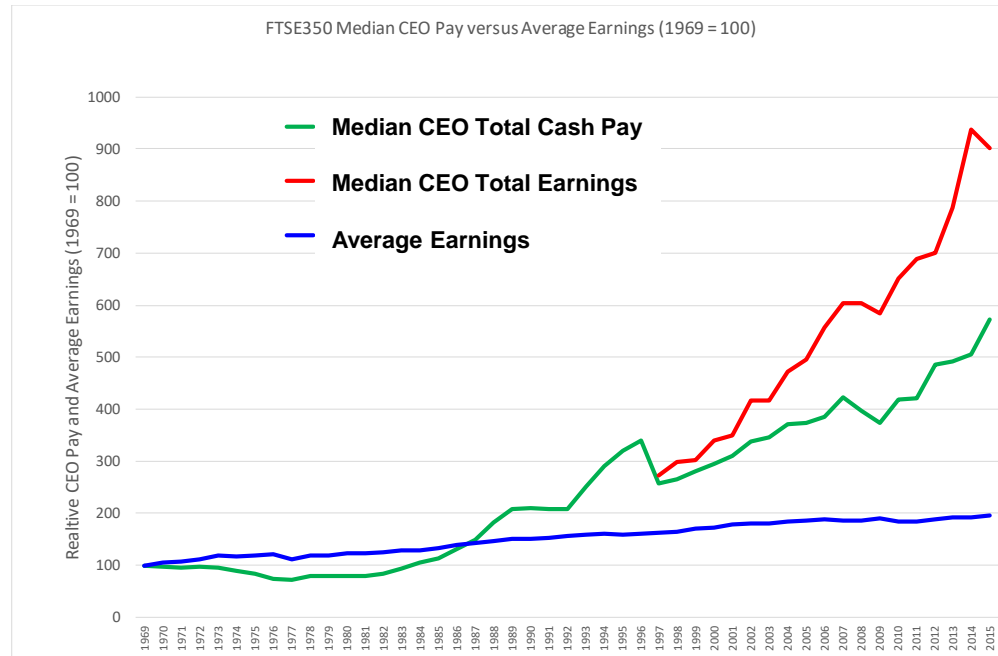
Social outrage

History of many interventions, governance

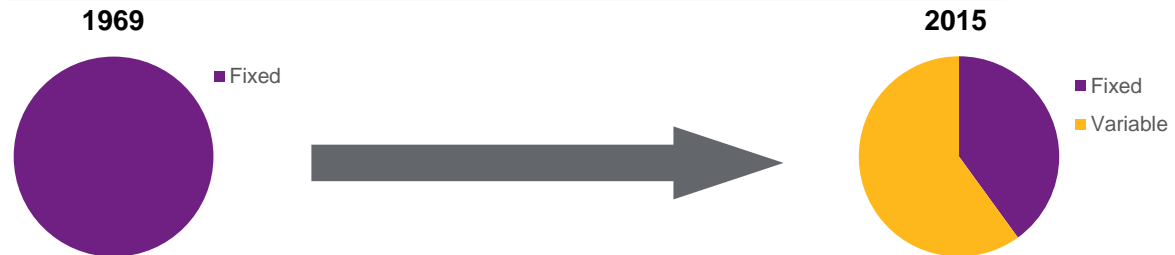
+30-year rise in prevalence of STI and options, then PSP in
FTSE 100

Quantum

FTSE 350 median

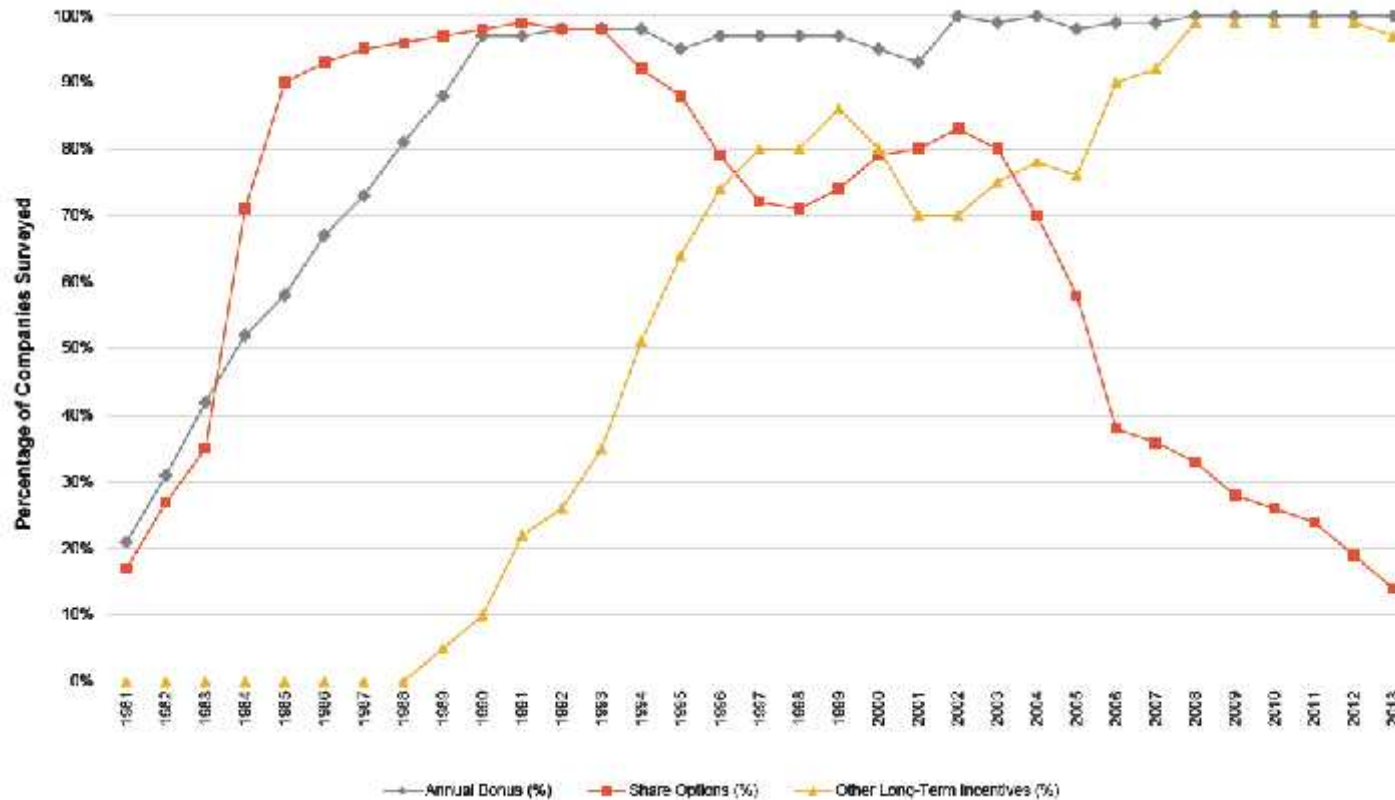


Gap is big and is getting bigger



Origin of bonus and share-based remuneration: the genie is out of the bottle

Leading UK companies 1981–2013



Source: Towers Watson Top Executive Compensation Surveys 1981–2013

Corporate Governance and Unintended Consequences

1984	Finance Act – Executive Share Options and ‘ABI Guidelines’* 4 x emoluments becomes standard grant
1984	SEC limit on Golden Parachutes – 3x previous year’s pay became standard
1988	NAPF: ‘Share Schemes’
1988	ABI Addendum to Share Option and Profit Sharing Incentive Scheme Guidelines
1993	Clinton tax act limiting tax deductibility on non-performance executive pay causes \$1m to become standard salary and an explosion of option grants
1998	Combined Code
1999	ABI’s ‘Phasing’/ ‘Relative Performance’ / ‘No re-testing’ guidance become standard practice
2002	Say-on-Pay regulations leading to greater influence of proxy-voting advisory companies, such as Institutional Shareholder Service (ISS)
2003	Higgs Report on reforming the role of Non-Executive Directors
2014	UK Two vote DRR and Policy – And EU’s CRD IV leads to increased base pay

Soon: Shareholder Right’s Directive: European Union will be adopting the UK model (2 vote system)

Four theories – what's really going on here?

Stewardship Theory

Will executives naturally act in shareholders' interest?

Agency Theory

Do executives only look out for themselves?

Tournament Theory

Winner-takes-all profile promotes individual 'brand' and fight for CEO status.

Prisoner's Dilemma

Are Remuneration Committees outbidding each other? Last mover disadvantage.

Innate desire for social justice

Frans de Waal, Dutch primatologist Professor of Primate Behaviour at Emory University, Atlanta, Georgia.

- [Experiments](#) on equity among capuchin monkeys
- Fairness study highlights that the monkeys reject unequal pay
- Both are happy with the cucumber, but give one monkey cucumber and the other grapes, then the monkey with the cucumber rejects it
- This is because s/he has seen grapes as a possible reward



Is this an issue of selective perception?

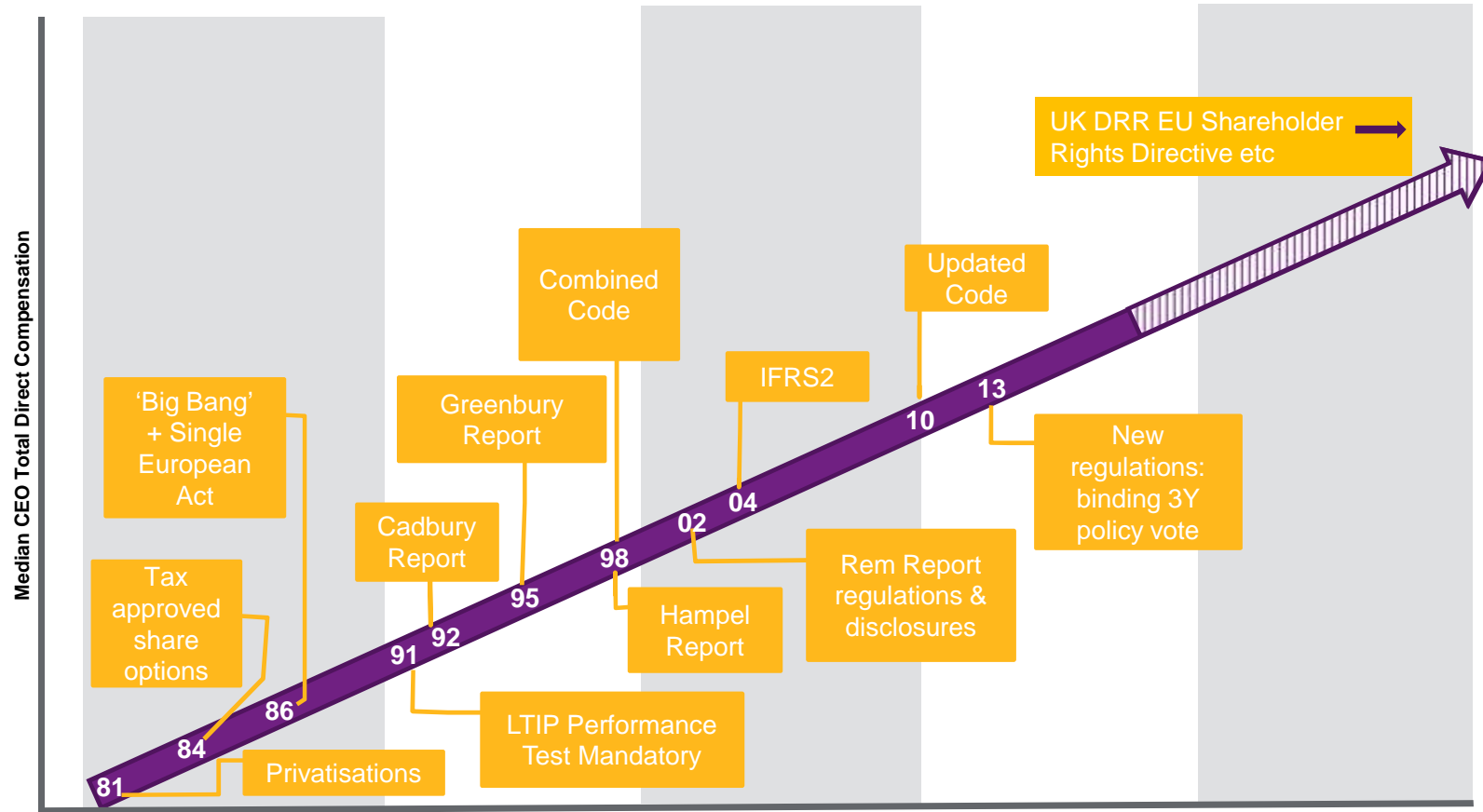
“HP CEO Meg Whitman set to get massive payout if fired”

“Chipotle’s CEO makes 1,000x the salary of average worker”

“Persimmon bosses to share £600m payout under bonus scheme”

“Robbing Peter to pay the CEO”

Looking backwards - what has been done - lots and ongoing



Bengt Holmström

Nobel Prize in Economics 2016



Pay arrangements invariably 'boilerplate' because:

- Remuneration is a sensitive matter and want to avoid contentious negotiations with the executive team. Erring on the generous side is cheap
- When they try to be innovative (e.g. relative performance) the executives push back, and the remuneration committee feeling is that it would cost more than it is worth
- The remuneration committee fears the 'law of unintended consequences' if they try anything too innovative
- Safer to follow what others do

Where has the governance movement attained success or improvement?

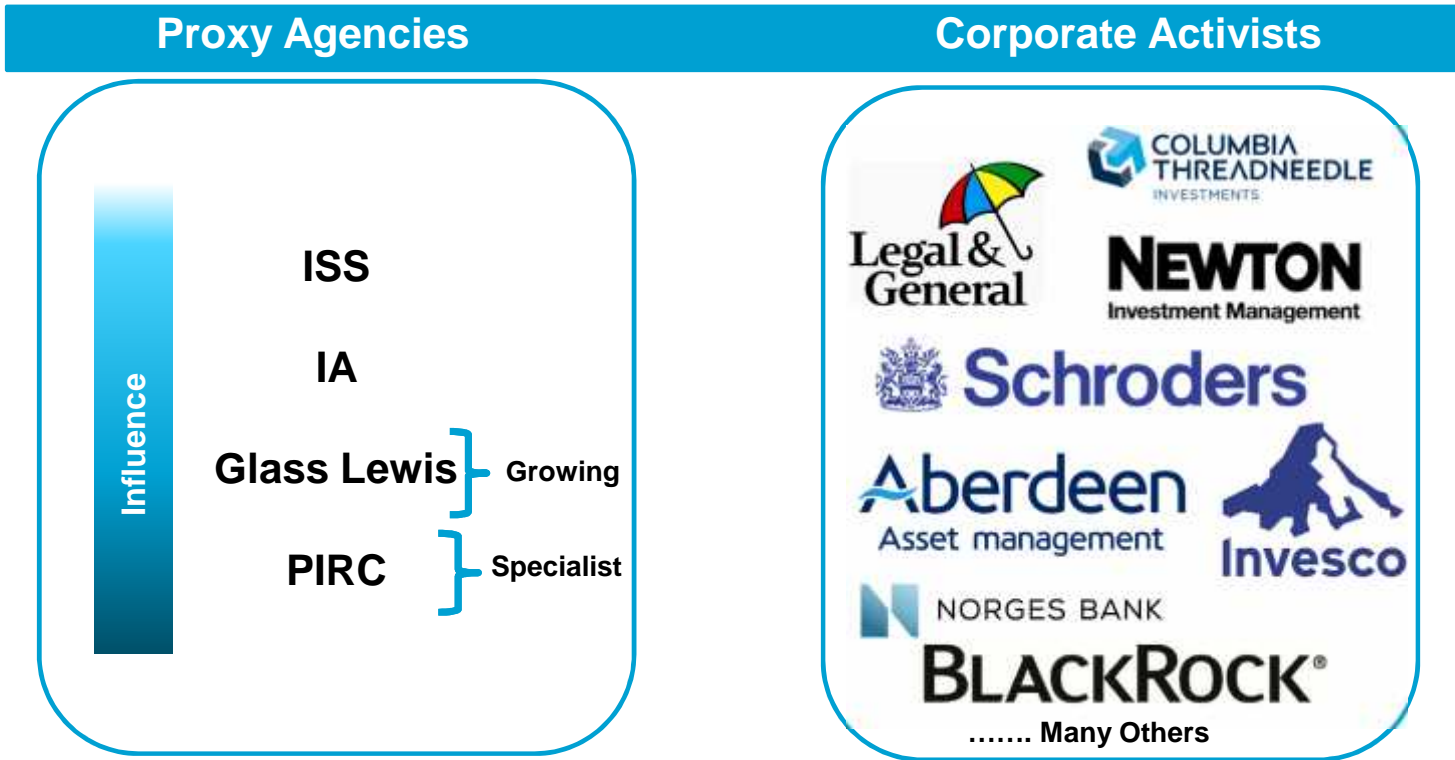
- Dilution limited to 10% in 10 years
- Dilution for selective plans only 5% in 10 years
- Limits on individual awards of 4x total remuneration in 10 years (then)
- Shareholder votes on all dilutive share plans
- Shareholder votes on all director LTI
- Full disclosure of directors remuneration
- TSR style LTI quasi mandatory TSR resting LQ – Media
- TSR threshold vesting 50% of max – 25% of max (over some years)
- Directors notice periods: 5 years ⇒ 2 years ⇒ 1 year
- No ‘retesting’ allowed
- No Golden Hellos only genuine buy-outs for loss
- No soft good leaver treatment for directors
- All leavers’ LTI reduced time pro rata
- Introduction of shareholding guidelines
- Bonus deferral into shares

Where has the governance movement attained success or improvement?

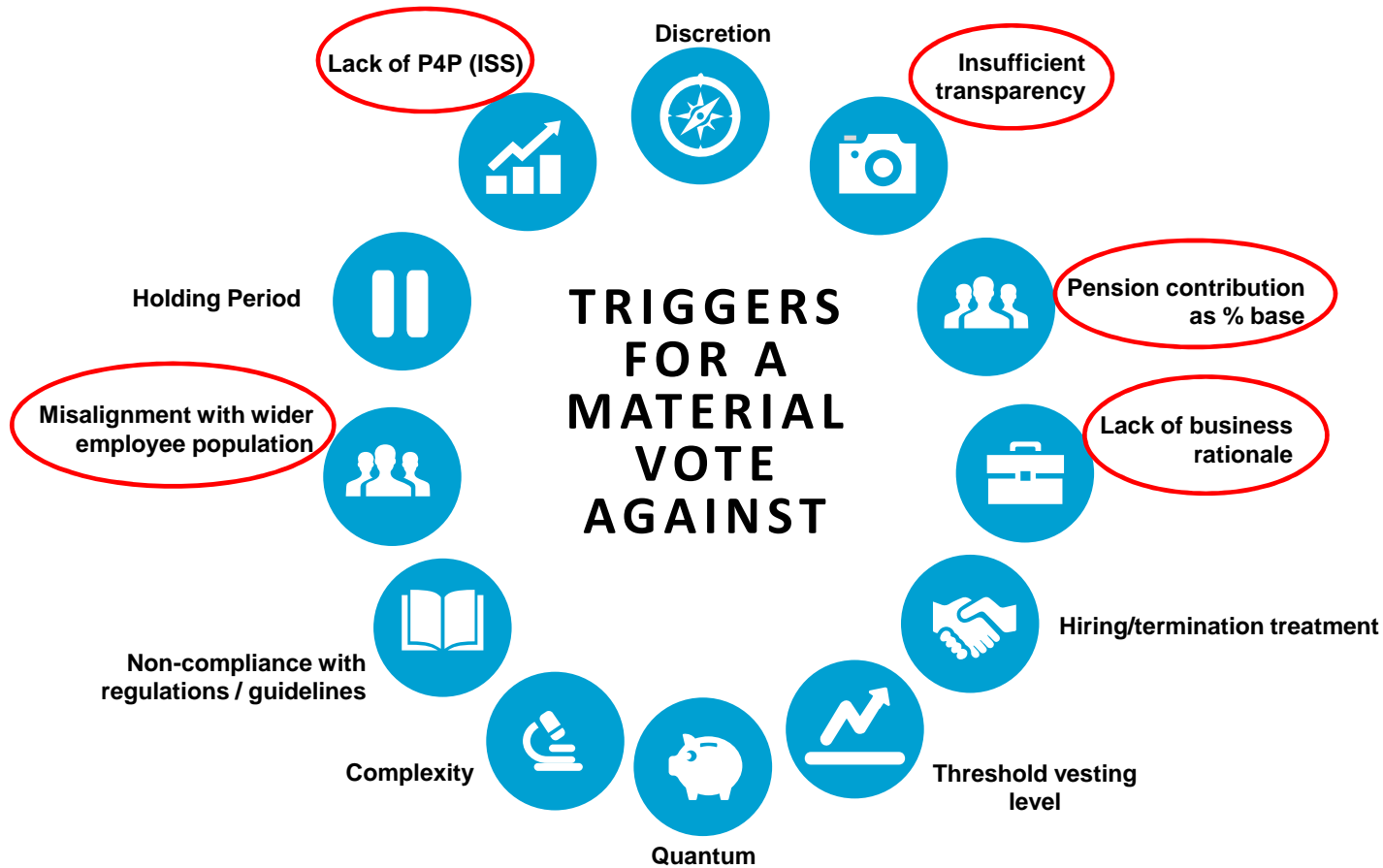
- Ongoing pressure against bonus share matching plans
 - No payments for failure however defined
 - LTI share plans plus shareholding period '3+2'
 - No unjustified base pay rises above inflation or workforce overall
 - No over-reliance on market data argument – 'no ratcheting'
 - Full disclosure of performance targets
 - RemCo chair as RemCo member 12 months, or more before
 - Big presence to 'hold the line' pay companies
 - Pressure to use negative discretion and awareness of 'the wider scene'
-
- And so...can we assume that the world is now happy with Executive Compensation practices?

No

Navigating the diverse playing field of influencers



Investor Hot Buttons...



Top Eight Investor Views

Holder	Views on remuneration	Voting correlation with ISS
Schroders	<ul style="list-style-type: none"> Favour TSR very strongly 	90.4%
Newton	<ul style="list-style-type: none"> Not known to have particularly strong views on pay although growing presence. Dislikes a high percentage of remuneration based on non-financial measures. 	70.6%
Invesco	<ul style="list-style-type: none"> Focus is on whether the company is a good investment prospect and business performance rather than remuneration structures – will vote with ISS 	93.5%
Aberdeen Asset Inv	<ul style="list-style-type: none"> All financial and corporate alterations must be disclosed both periodically and in an on-going nature 	82.9%
BlackRock	<ul style="list-style-type: none"> Favours TSR Not supportive of one-off awards Recently placing significant pressure on high payers in the FTSE Pressure to reduce pension to level of wider workforce 	89.7%
Columbia Threadneedle	<ul style="list-style-type: none"> Advocate the use of deferral of variable pay on a risk basis – heavily follow ISS 	87.6%
Legal & General	<ul style="list-style-type: none"> Oppose matching plans Encourage reduction of bonus levels, with 200% of salary reserved for only largest global companies. Support for restricted stock (although limited examples yet to be seen) Supports publication of CEO pay ratio. 	86.1%
Norges Bank Investment Management	<ul style="list-style-type: none"> Pay plans should be sensitive to risk Expect full disclosure on key elements of remuneration scheme 	94.9%

What are Big UK Companies saying? (June 2016)

“This isn’t the right question”

- Pay for performance is the key and should be the focus
- This speaks to potentially more complexity rather than less

“The system isn’t broken”

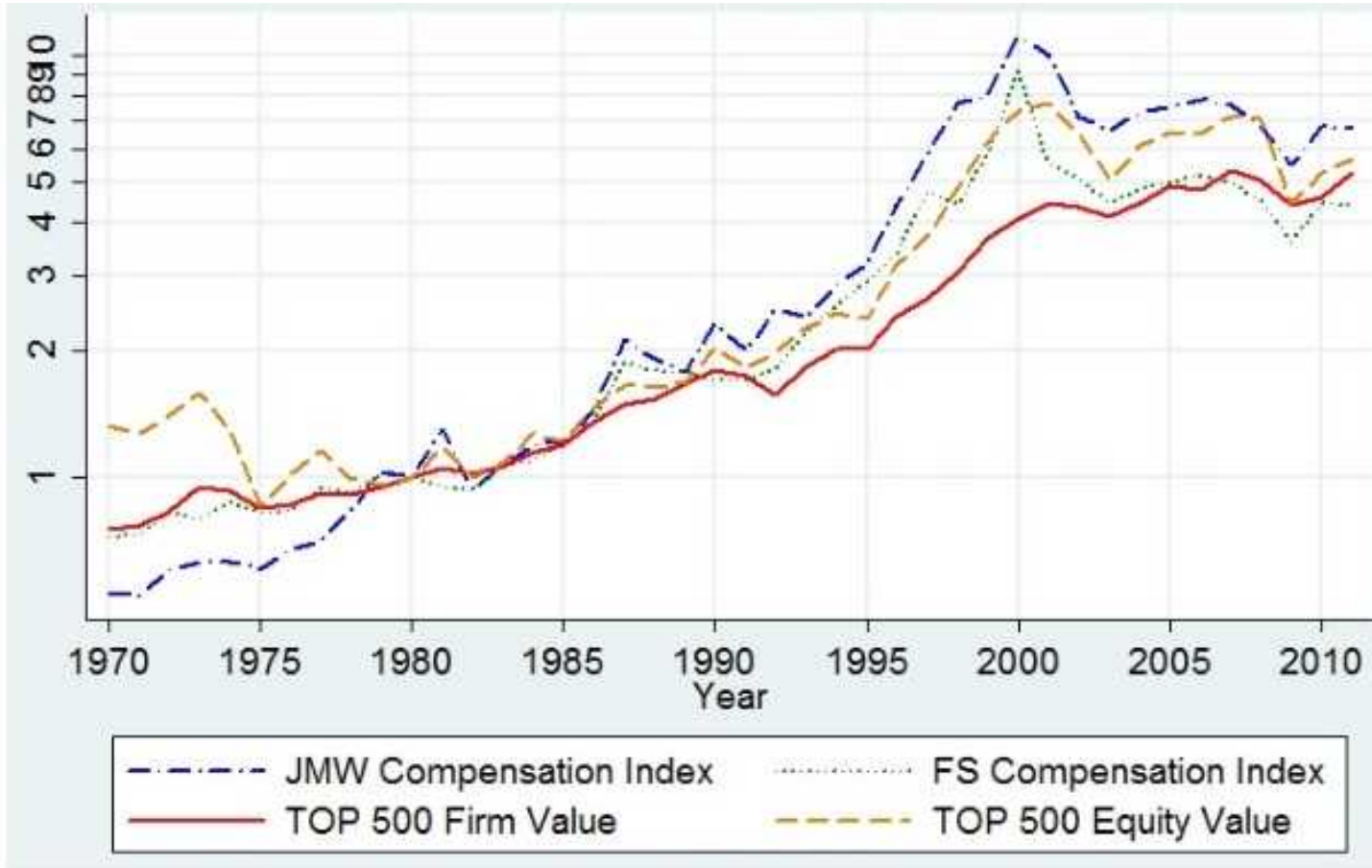
- Most companies don’t believe the system is broken
- Still getting to grips with details of DRR regulations and change is not helpful
- Pay is complex because business is complex – should be careful not to lose this connection

“Even with a ‘clean sheet’ we wouldn’t change much”

- If it isn’t broken, why fix it?
- It is only the brave who do something different (see Holmström)
- Something radical wouldn’t get proxy advisory/ shareholder approval

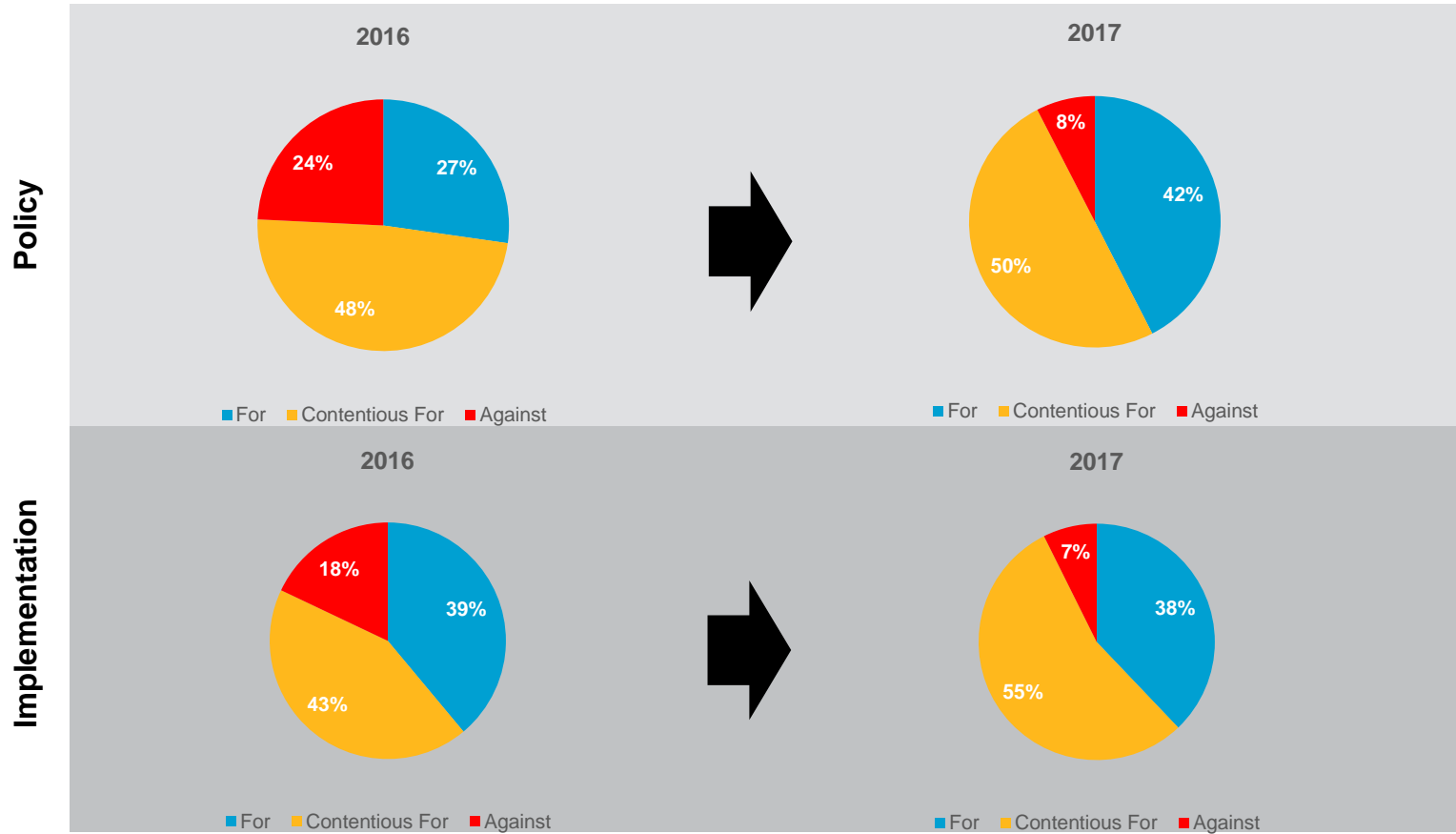
Executive Compensation and size of Top 500 US firms

Normalised to 1 in 1980



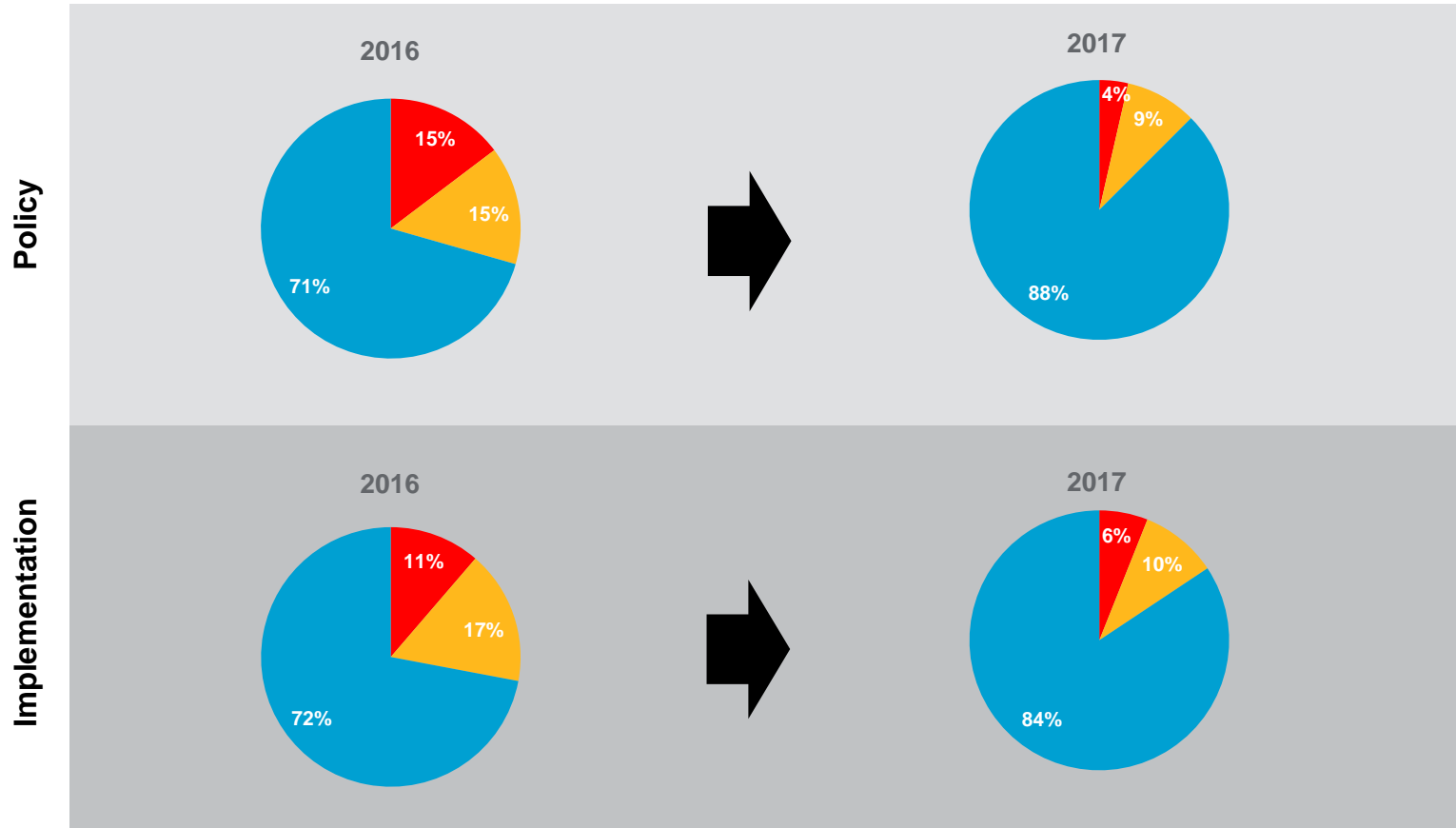
What have we seen so far this season?

Policy and Implementation recommendations are more favourable



What have we seen so far this season?

AGM votes have been more favourable in 2017



Balancing Top Talent and Core Capital

- **Core capital**

- Investor likely impact of 'new powers' (not a lot this AGM season)
- Company responses (Structural issue, prisoners dilemma, first mover disadvantage)

- **Top talent**

- Mostly expect them to 'put up' with it. Disengagement risk is unlikely



So what is next?

Past – UK regime history

Purely Capitalist Model

Hierarchy of labour
Value of capital & labour combination is **retained by capital**
Seek 'slaveholder engagement'
Door to wealth accumulation is closed
Notion of the 'loyal' worker

Now

Emerging labour voice
(management)
clashing with capital
(investors)

Pure debt economy

The door to wealth is opened
Ability for top talent to build retain capital
Transitory nature of employee share ownership means labourers fails to be major owners of capital
"Ship has capsized", can those at the bottom can be at the top?

Present – Theresa May/BEIS – simplification agenda

Future – Shareholder Rights Directive – Ongoing activism

Garry Karch

RM2 Partnership

Latest trends in employee ownership and
management executive incentives in the UK and in
the USA

ESOP Centre Paris Newspad Conference

Latest Trends in Employee Ownership and Management
Executive Incentives in the UK and in the USA

Presented by Garry Karch, Managing Partner, RM2

16 June 2017



Overview – Presentation Content

- Today's presentation will provide a current overview of employee ownership in both the US and UK, as well as comparing the key features of the primary broad-based employee ownership structures in both countries.
- It will also discuss the use of individual stock/share incentive plans within the US and UK markets.
- The comments within the presentation focus on privately owned Middle Market (US) and SME (UK) businesses, rather than larger listed companies.
- It will conclude with a discussion of ownership economics from an employee perspective under the common US and UK employee ownership structures.

Overview – Employee Ownership in the United States

- In general, there appears to be an increasing focus on sharing the economics of equity ownership with employees in both the UK and the US.
- The manner in which ownership and its economics are shared does vary, however, between the two countries.
- In the United States, the primary employee ownership vehicle is the Employee Stock Ownership Plan, commonly known as the ESOP.
- ESOPs have existed since the 1970s in the US and were the brainchild of Louis Kelso, with the enabling legislation sponsored by Senator Russell Long of Louisiana.
- The primary incentive for business owners in the US to sell to an ESOP is the deferral of the capital gains tax on the sale.
- Another factor in the widespread adoption of the ESOP model is readily available finance to support ESOP transactions.
- The ESOP provides employees with direct ownership in the business that is allocated to employee accounts and vests over time.
- When ESOPs are established, management is generally further incentivised through the implementation of some type of management incentive plan.

Overview – Employee Ownership in the United Kingdom

- The Employee Ownership Trust (“EOT”), the equivalent structure to the US ESOP, was established in the Finance Act 2014, with one of its primary features, Capital Gains Tax relief, likely modeled after the ESOP’s capital gains tax deferral.
- The EOT utilises an indirect employee ownership model. When a business owner sells to an EOT, shares are held in trust on behalf of the employee beneficiaries.
- Under the EOT structure itself, employees never take direct share ownership. This is a fundamental difference from the ESOP model.
- Generally, the only point at which the beneficiaries receive the true economics of equity ownership would be if and when the business is sold at some point in the future.
- Broad-based direct employee ownership can be achieved through the use of another tax-advantaged share scheme, the Share Incentive Plan, or SIP, operating alongside the EOT.
- The biggest constraint on widespread direct share ownership is the requirement that the EOT continue to hold a controlling interest.
- If the EOT fails to maintain a controlling interest, that constitutes a disqualifying event and the capital gains tax relief is subject to clawback from either the seller or the EOT.
- Under the EOT structure, employees are eligible for income tax-free annual bonuses of up to £3,600. Payments at that level are unlikely in the early years of EOT ownership, as the company is most likely focused on debt repayment.

ESOP (US) vs. EOT (UK)

ESOP

- Ownership level required for capital gains tax deferral is 30% - applies to C-corporation (traditional double taxation)
- Proceeds of sale must be reinvested to receive capital gains tax deferral; If replacement investment is held until death, proceeds pass to heirs on a stepped up basis and CGT is avoided forever
- ESOP company can switch to S-Corporation structure after completion and become a non-taxpayer at the Federal level
- Shares are allocated to employee accounts over time and they vest in their direct ownership in the shares over no more than the six years
- Employees are paid for their shares at death, disability or retirement
- Principal and interest payments on ESOP loans are tax-deductible as contributions to employee benefit plan
- Very robust financing market for ESOPs in the US
- Generally include share incentive plan for management

EOT

- Ownership level required for capital gains tax deferral is 50%+
- If disqualifying event occurs, CGT relief is subject to recapture
- Employees never take direct share ownership through the EOT; beneficial ownership through trust structure
- Employees would only receive economics of share ownership in the event the company is sold; Proceeds would be allocated based upon objective, non-discriminatory formula
- Employees are eligible to receive income tax-free annual bonuses of up to £3,600
- Payments on EOT loans are not deductible against corporation tax
- Financing market is developing; most transactions are still vendor financed, more frequently on commercial terms than in the past
- Share incentive plan for management and key employees may be operated alongside the EOT

Management Incentives in the US and UK

United States

- Share incentive plans are still relatively rare in privately owned middle market businesses; more common in start up ventures and the technology world
- Traditional management incentives have used cash bonuses
- When offered, they are primarily focused on a select group of key managers
- While phantom stock plans and warrants (in effect, options provided by the company to the individual) are often used, proceeds are taxed as income rather than capital gains. This increases the tax burden on the beneficiary of the plan
- Share incentive plans are commonly provided in conjunction with the implementation of an ESOP, as the next generation of management is responsible for growing the business and ensuring the ESOP-related debt is repaid
- Use of share incentive plans is increasing, due in part to a desire to more closely align the interests of management with the employees
- Optimal tax structure would allow for increases in value to be treated as capital gains; often requires tax planning to accomplish

United Kingdom

- Tax-advantaged share schemes in privately owned SME businesses is more common in the UK than in the US middle market
- There are significantly more alternatives available in the UK in this area than in the US
- There is more of an shared equity culture in the UK than in the US from a key employee and management incentive perspective
- The EOT is often not the trigger for share incentive plans in the way the ESOP can be in the US
- There seems to be an expectation both on the business owner's and the beneficiaries' parts that some type of share incentive plan will be offered to key staff
- The key plan is the Enterprise Management Incentive (EMI) plan; EMIs may offer relatively low costs and gains are taxed at the Entrepreneurs CGT rate of 10% when options are exercised and shares are sold
- EMI schemes are only available to companies that have 250 or fewer employees and meet other size and trading requirements

Employee Ownership Economics – Reaping the Reward

United States

- Employees in an ESOP plan take direct ownership of their shares and can sell them back to the company at retirement, disability or in the event of death. Under these scenarios, shares are generally sold with a minority discount
- If an ESOP company is sold, all shares generally vest and employee beneficiaries are paid for their shares at a control premium price
- In some cases, former employees may be able to continue owning shares and qualify for CGT treatment of the gains, but this is rare; most privately owned businesses want to avoid non-employee shareholders and there are limitations to the number of S-Corporation shareholders that are a factor as well
- In most cases, there is no ongoing, current benefit to “employee owners” under plans in the US
- When shares are sold back to the company by employees, they are generally paid out in cash

United Kingdom

- On an ongoing basis, “employee owners” in the UK can benefit in two major ways:
 - Income tax-free bonuses of up to £3,600 annually paid in connection with an EOT
 - Dividends paid on shares owned directly by employees under EMI, SIP or other tax-advantaged share schemes
- On an individual basis, there are more alternatives available in the UK in this area than in the US
- There is more of a shared equity culture in the UK than in the US from a key employee and management incentive perspective
- The EOT is often not the trigger for share incentive plans in the way the ESOP can be in the US
- There seems to be a greater understanding both on business owners’ and staff/beneficiaries’ parts that some type of share incentive plan will be offered to key staff than in the US

Conclusion

- Thank you for your time and attention
- Questions?

About the Speaker – Garry Karch



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Aon Hewitt, head of reward analytics

EU Shareholder Rights Directive



Introduction to the Shareholder Rights Directive: Say on pay for Europe

newspad summit – 16 June 2017

Prepared by **New Bridge Street**
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Introduction

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Agenda

EU Shareholder Rights Directive

- EU Shareholder Rights Directive
- Recent developments and timeline
- Binding and advisory votes
- Implications of Say on Pay

Getting ready for say on pay

- Preparation – what do you need to do?
- Key drivers for executive pay in Europe
- Remuneration report drafting

How might this effect share plans

- Shareholder views



EU Shareholder Rights Directive



Recent developments and timeline



The current position on say-on-pay across Europe

The legislation presents considerable change across Europe and will provide much greater transparency and scrutiny on executive pay arrangements.

The table below shows the current requirements:

Country	Remuneration Policy	Remuneration Report	Country	Remuneration Policy	Remuneration Report
Austria	-	-	Latvia	-	-
Belgium	-	Advisory	Lithuania	-	-
Bulgaria	-	-	Luxembourg	-	-
Croatia	-	-	Malta	-	-
Cyprus	-	-	Netherlands	Binding	Discussion Item
Czech Republic	-	-	Poland	-	-
Denmark	Binding	-	Portugal	Advisory	-
Estonia	-	-	Romania	-	-
Finland	-	-	Slovakia	-	-
France	Binding¹	Advisory	Slovenia	-	-
Germany	-	Advisory	Spain	Binding	Advisory
Greece	-	-	Sweden	Binding	-
Hungary	-	-	United Kingdom	Binding	Advisory
Ireland	-	-	Shareholder Rights Directive	Binding	Advisory
Italy	-	Advisory ²	Switzerland		Binding ³
			Norway	Binding	

¹ The binding vote on remuneration policy only exists since the ratification of the legislation called "Sapin II", an anti-corruption law, which came into force in December 2016.

² Vote is binding for banks and insurance companies.

³ The vote is on the total remuneration for members of the executive management, and the company can chose to show it retrospectively (i.e. what they have paid), or prospectively (the maximum of what they will pay in the following year).

Increased disclosure requirements for companies

One of the biggest changes for companies will be in the level of detail required

	Current European Practice	Required under the Shareholder Rights Directive	Existing UK practice
Disclosure of the remuneration philosophy & link to strategy	n	n	n
Separate policy report	n	n	n
Pay disclosed for each individual executive director	n	n	n
Annual bonus - maximum opportunity disclosed	n	n	n
Annual bonus - performance measures and weightings disclosed	n	n	n
Annual bonus - performance against targets disclosed	n	n	n
LTI - maximum opportunity disclosed	n	n	n
LTI - performance measures and weightings disclosed	n	n	n
LTI - performance against targets disclosed	n	n	n
Pensions policy disclosed	n	n	n
Details of service contracts disclosed	n	n	n
Pay history disclosed	n	n	n
Reference to employee pay and conditions	n	n	n
Reference to shareholder views	n	n	n

- n Disclosed
- n Practice mixed
- n Not normally disclosed

EU Shareholder Rights Directive in detail:

Definition of Director

The Directive introduces a binding vote on the pay policy and an advisory vote on the pay-out for Directors

Definition of Director:

All members of the **administrative, management or supervisory** body of a company

It will be up to Member States to determine the exact definition but as a minimum this must include, the Chief Executive Officer and Deputy Chief Executive Officer, where such a role exists

Member States may also include in the definition of director other persons who perform similar functions

EU Shareholder Rights Directive in detail: *The binding vote on Remuneration Policy*

The binding shareholder vote* on the remuneration policy must take place at least every **4 years** or where there is a 'material change' in policy.

The Policy must set out:

the **different components** of directors' pay and their relative proportions

how the policy **supports the business strategy**, long-term interests and sustainability of the company

how the **pay and employment conditions of employees** have been taken into account when setting the policy

the **financial and non-financial criteria** used to measure performance along with details of any deferral, vesting and share retention periods

the key terms of the **Directors' contracts**, including notice periods, early retirement provisions and the policy on termination

the **role of the Remuneration Committee**, the decision making process **and how the Committee takes into account the views of its shareholders**

Directors' pay must be within the terms of a policy – pay may deviate from policy in temporary and exceptional circumstances (where it is '*necessary to serve the long term interests and sustainability of the company as a whole, or to assure its viability*') but it must set out in the policy the elements of pay that can be flexed.

* The legislation allows Member States to apply an advisory vote as an alternative to the binding vote.

EU Shareholder Rights Directive in detail: *The advisory vote on Remuneration Report*

The Directive also includes articles detailing the annual advisory vote by shareholders at the AGM on the remuneration report for the past financial year

The remuneration report must contain:

total remuneration for each **individual Director**, split out by component

explain how remuneration **complies with the policy**, including details of performance criteria applied

details of the **annual change in remuneration** over at least the last **five years** compared to performance of the company and average employee remuneration over the same period

details of any **shares or share options granted**

The remuneration report should be made available on the corporate website for 10 years.

For small and medium sized companies*, Member States may allow the remuneration report to be submitted for discussion at the AGM as an alternative to the vote

** Defined under Directive 2013/34/EU as meeting two of the following criteria: (i) balance sheet total €20m; (ii) net turnover €40m and (iii) 250 employees*

EU Shareholder Rights Directive in detail:

What happens if a company fails the vote?

Failure to approve the binding vote on the Remuneration Policy

If no policy has been approved yet and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with its existing practices.

If an approved policy exists and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with the existing approved policy.

In both cases, the company must submit a revised policy for approval at the next general meeting.

Failure to approve the advisory vote on the Remuneration Report

Where shareholders vote against the remuneration report, the company should explain in the next remuneration report how the shareholder vote has been taken into account.

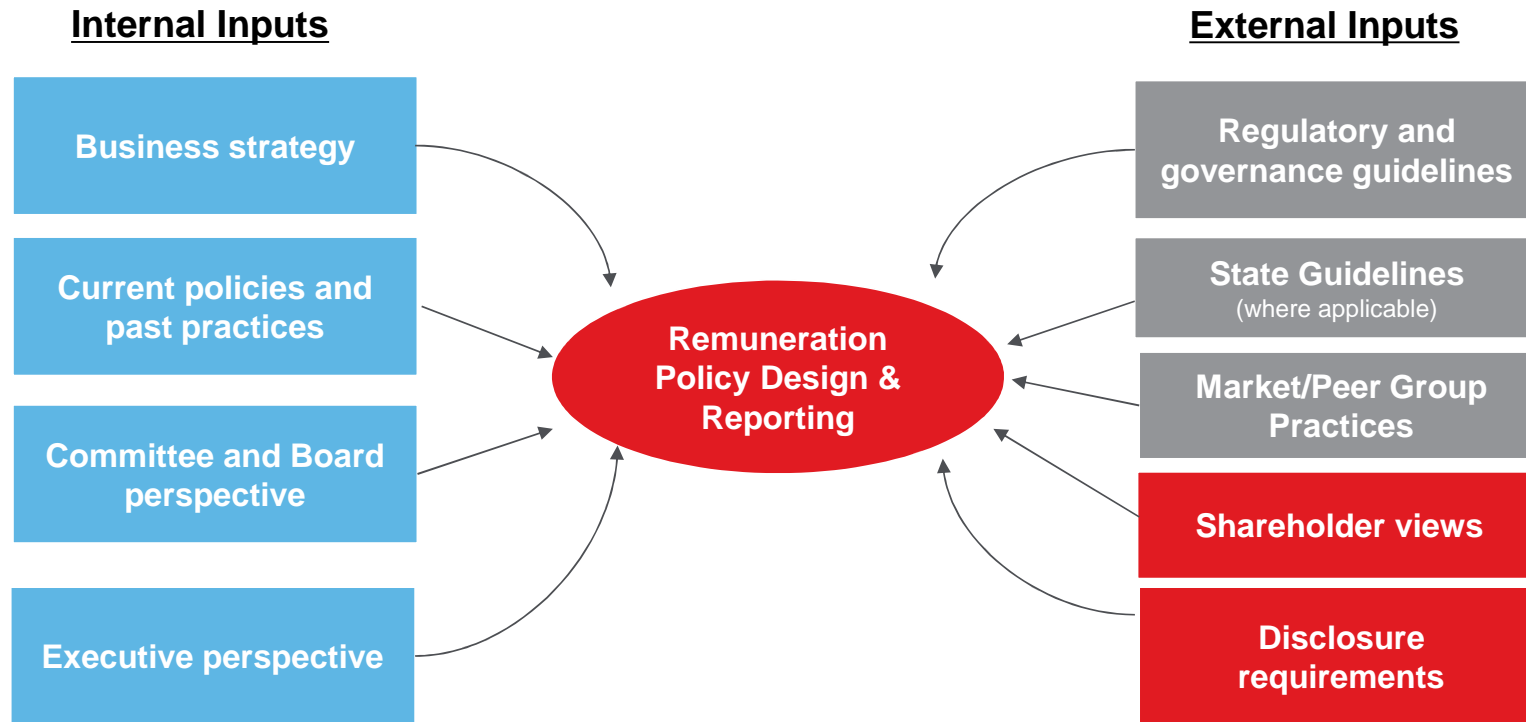
Pay ratio?

	Legislative/governance developments
EU Shareholder Rights Directive	<ul style="list-style-type: none">• Pay ratio included in the EU Shareholder Rights Directive, vague definition:<ul style="list-style-type: none">• The annual change of the remuneration over at least the last five financial years, the evolution of the performance of the company and of the average remuneration on a full-time equivalent basis of employees of the company other than directors during that period, presented together in a manner which permits comparison
UK	<ul style="list-style-type: none">• In the UK, institutional investors and investor bodies have started requesting pay ratios, with some companies already publishing the ratio• Pay ratio is included among other considerations in the Green Paper on Corporate Governance Reform published by the Department for Business, Energy & Industrial Strategy (BEIS), consultation period ended in February
US	<ul style="list-style-type: none">• Listed companies in the US will be required to disclose the ratio of CEO pay to median employee pay in the 2018 proxy statement for the 2017 fiscal year<ul style="list-style-type: none">• Surveys conducted show that the pay ratio is expected to be less than 200:1• Ratios differ considerably as expected between different industry segments:• However, this legislation is currently under review as part of Trump's deregulation initiatives – the acting Head of SEC is conducting a consultation to reconsider the implementation of this rule



Getting ready for say on pay

External inputs will have much bigger impact on policy design



Preparation - what do you need to do?



- Educate key stakeholders on the changes ahead
- Document your current policy
- Benchmark against peers
- Compare against governance and investor norms



- Develop a robust remuneration policy
- Are changes needed to existing practices?
Consider implementing them ahead of time
- Mock-up draft disclosures



- Consider consulting with shareholders ahead of publication
- Prepare media Q&A
- Finalise report



- Shareholders approve binding policy

Implications for remuneration reporting

Good policy reports

Demonstrates a clear link to company strategy

Meets best practice guidelines

Balances providing clarity for shareholders and flexibility for company

Good remuneration reports

Shows pay for performance – transparency over performance measurement and pay outcomes

Explains Committee's decision making progress, including any use of discretion

Demonstrates an understanding of the investor views and sensitivity of pay debate

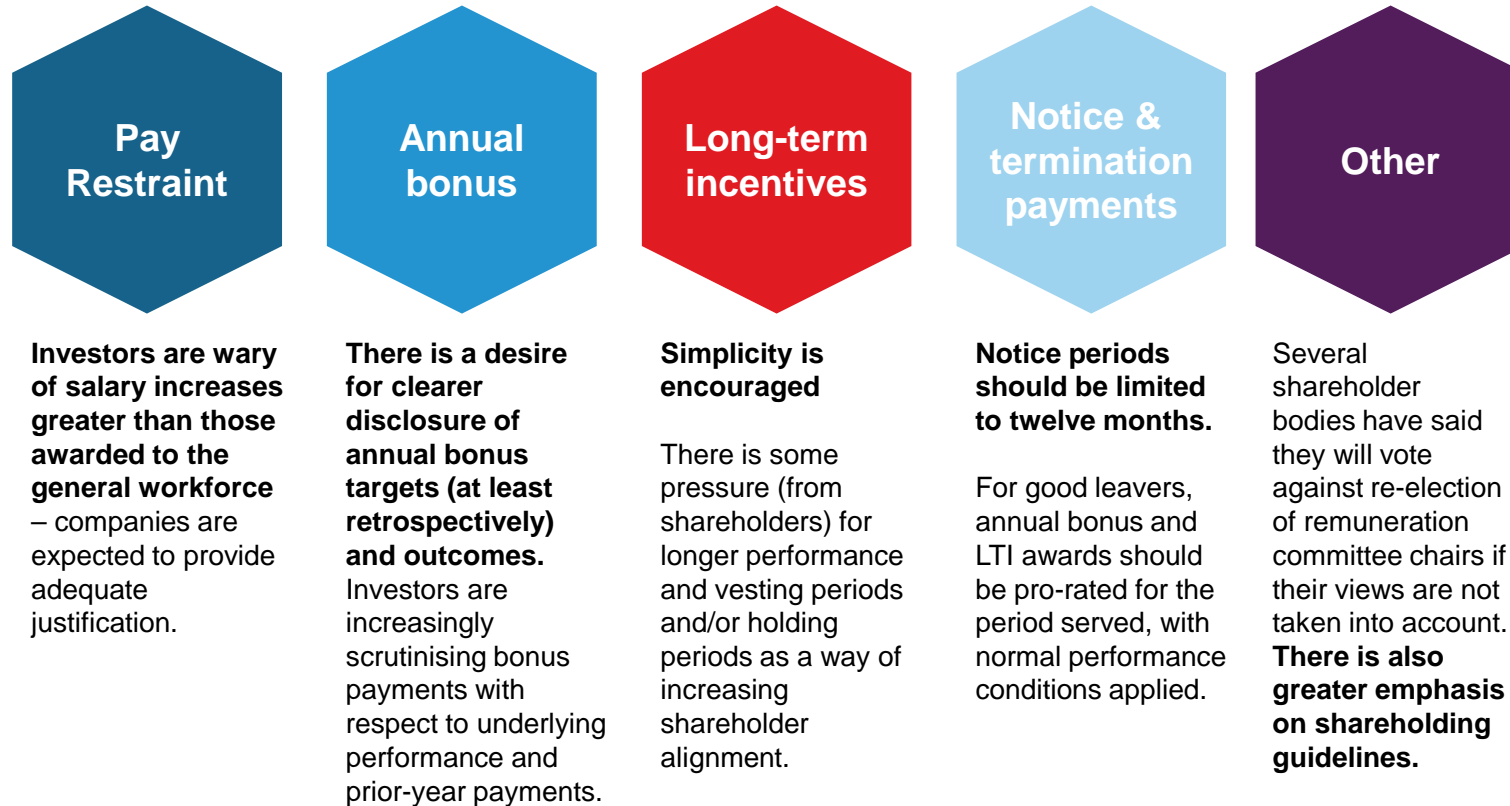
Contentious issues are clearly explained

Clear and concise - avoid boiler plate or compliance driven disclosure



How might this effect share plans

2017 pay agenda - key drivers of executive pay in Europe



Top 10 European Investors



Investor activism – investors have mixed views

Legal & General

- Pay should be fair, balanced and understandable
- Want to see high levels of executive share ownership particularly post cessation of employment.
- Full disclosure of targets is expected.
- Strongly in favour of simplicity.
- Would consider restricted stock.

Blackrock

- Becoming more activist
- Expect alignment with workforce on salary increases and pension arrangements (support CEO to employee pay ratios)
- Want Committees to use discretion to ensure outcomes are aligned with shareholder interests
- Wary of companies that just use EPS/TSR
- Support high levels of executive share ownership

APG

- Performance targets should be aligned to long-term strategy and clearly disclosed
- Expect clawback provisions to be in place
- Severance terms should not exceed one times annual pay
- Will consider restricted stock but needs to be significant reduction in quantum

Aberdeen Asset Management

- Looks closely at link between performance metrics and company KPIs and at degree of stretch in targets;
- Would support restricted stock

State Street

- Expect full details of the proposed arrangements before voting on share plans.
- May vote against re-election of CompCo members if there are serious concerns over remuneration practices
- Generally no support for discounted options or re-testing of performance metrics.

AXA

- Becoming more aggressive on executive pay
- Difficult to engage with
- Dislike over-reliance on benchmarking data, non-disclosure of performance targets and/or weak targets

Norges

- Favour long-term performance and retention periods and want to see high levels of executive share ownership.
- Preference for TSR/share price measures over EPS
- Becoming more activist on executive pay

Investor activism – proxy advisors

- Proxy advisors publish voting reports on listed companies for their subscribers
- Some give actual vote recommendations (“vote for” or “vote against”)
- Can be difficult to engage with – reluctant to give a firm view on proposals
- Can be very influential – particularly for companies whose register is dominated by overseas institutional investors who do not have the knowledge to monitor local market practices in depth
- Some shareholders will simply take the research into account when making their voting decisions others will have default approach of following the proxy agencies vote recommendation
- Under the EU Shareholder Rights Directive:
 - Shareholders will be obliged to disclose their use of proxy advisors
 - Proxy advisors will be required to adhere to a Code of Conduct, disclose on an annual basis their voting policies for each market and their approach to engagement with companies



2017 pay agenda – voting so far

- Signs of increased levels of activism, especially in the UK
- A handful of companies have even withdrawn their remuneration proposals prior to the AGM
- Reasons for shareholder dissent are mixed

Examples of high votes against UK companies this year:

Company	Sector	Meeting Date	Resolution	% votes against	Reasons
Crest Nicholson Holdings plc	Residential Construction	23-Mar-17	Annual Advisory	58.12	LTIP targets not challenging enough
Pendragon PLC	Auto & Truck Dealerships	27-Apr-17	Binding Policy	44.66	Unusual new LTIP
AstraZeneca PLC	Drug Manufacturers - Major	27-Apr-17	Annual Advisory	38.83	Change to inflight LTIP targets
Drax Group PLC	Utilities	13-Apr-17	Annual Advisory	33.65	Bonus award to new CFO
Rotork PLC	Diversified Industrials	28-Apr-17	Annual Advisory	32.17	Executive salary increases
SVG Capital PLC	Speciality Finance	30-Mar-17	Annual Advisory	28.21	Poor bonus disclosure & treatment of good leaver
Fenner PLC	Diversified Industrials	11-Jan-17	Annual Advisory	26.03	LTIP targets not challenging enough
Carr's Group PLC	Farm Products	10-Jan-17	Binding Policy	25.15	Policy does not reflect good practice
Treant PLC	Chemicals	27-Jan-17	Binding Policy	24.77	Policy permits excessive discretion
Drax Group PLC	Utilities	13-Apr-17	Binding Policy	22.97	Increase in vesting at threshold performance under LTIP

Questions

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Refreshments break

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Nicholas Greenacre

White & Case, partner

Singapore of the North Sea, or a one-way trip to Mars? The impact of Brexit on international equity plans

Singapore of the North Sea, or a one-way trip to Mars?

The impact of Brexit on international equity plans

Nicholas Greenacre

16 June 2017

Introduction

- Brexit
- The impact areas...
 - Markets
 - Data Protection
 - Remuneration
 - Securities
 - State Aid

Markets

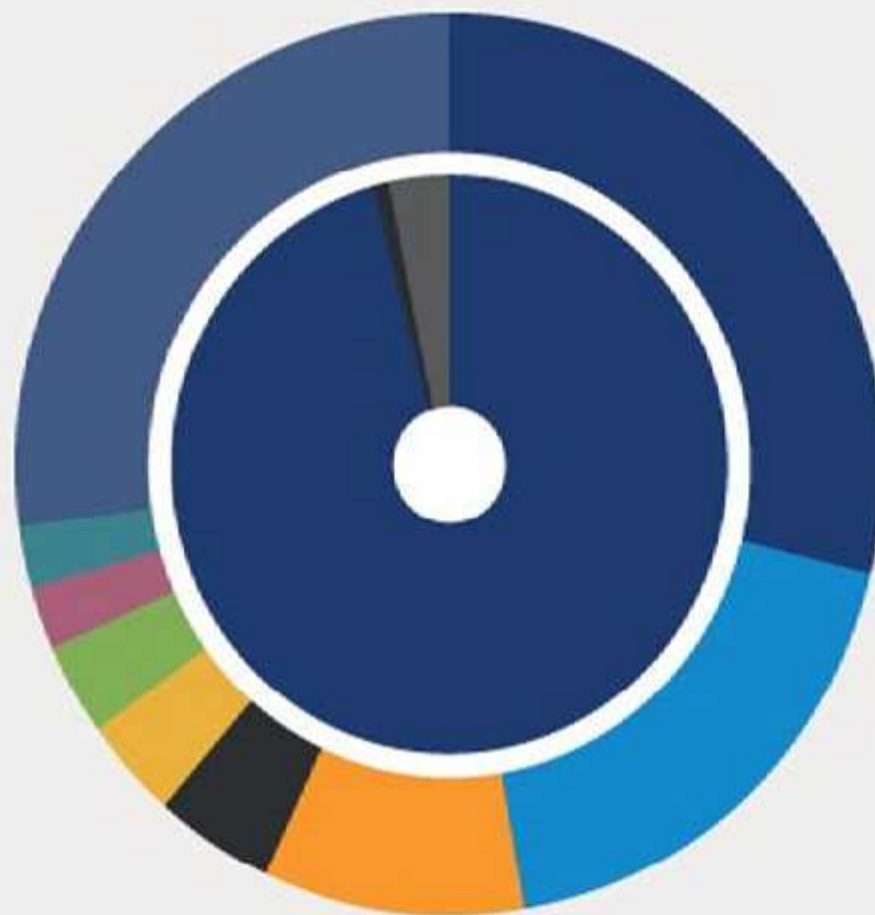
- FTSE vs Pound
- Commercial Property: Safe Haven to Frozen Funds
- Pensions Issues:
 - Ageing population, less tax efficient (£10k High Earners)
 - DB funding; DC value loss
- Share plans in decline?
- Millennials: Company purpose, values, culture

Outer: Primary Revenue

28.9% United Kingdom

Inner: Primary Domicile

97.0% United Kingdom



Data Protection

- EU Data Protection Directive 1995
- New General Data Protection Regulation
 - Applies from 25 May 2018; Fines €20m or 4% worldwide annual turnover
 - “Right to be Forgotten”, “Right to Access, Consent, DPOs
- Great Repeal Bill and “equivalents”
- Privacy Shield and the Trump Factor

Remuneration

- Post-banking crisis – increased regulation and corporate governance
 - Regulation: Bonus Cap (variable capped at 100%/200% of fixed remuneration), Malus and Clawback
 - Scrap Bonus Cap... US / Dodd Frank repeal
 - Corporate Gov: SH Say on Pay, Binding vs Non Binding votes...
 - EU Regulation vs UK Corporate Governance

Say on Pay

Country	Vote
Canada	Issuers may voluntarily adopt say-on-pay with non-binding vote
Denmark	Binding
France	Proposed
Germany	Advisory
Italy	Advisory
Netherlands	Binding
Norway	Binding
Sweden	Binding
Switzerland	Binding
United Kingdom	Binding
United States	Advisory

Has it worked?

- 2016 – the year of shareholder revolt?
- Trends in 2017
 - Fewer pay rises
 - Smaller pay rises
- US bucking the trend

Securities

- EU Prospectus Directive
- UK companies rely on:
 - employee share scheme exemption (max 150 persons),
 - prospectus “passporting”
- But prospectus filings rare even for Stock Option Plans
- New Regulation: no requirement for “market equivalency”

State Aid

- Treaty on Functioning of European Union governs UK state aid regime
- Enterprise Management Incentive plans offer substantial tax reliefs for SMEs:
 - Max 250 employees and £30m gross assets
- Relax EU qualifying restrictions?
- Brexit Tax Bonanza?

Conclusion

- Brexit impact remains speculation
- Short/Medium Term
 - Market volatility
- Long Term
 - More volatility and share plans in decline?
- Free Market Singapore or Protectionist Trump America?

Thank you

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Open debate

Moderated by Fred Hackworth, editor, *newspad*

Executive reward developments in the UK and in France

Is the regulation and guidance governing the shape and size of executive reward packages sufficient to prevent future excess?

Are peer group and performance indicators enough for justifiable equity pay benchmarks?

How is institutional shareholder involvement affecting remuneration committees and their advisers?

Trustee session

Moderated by Fred Hackworth, editor, *newspad*

What are the main concerns among share scheme trustees concerning the Brexit negotiations?

Would the loss of 'passporting' rights in financial services transactions, such as international equity awards, worry trustees?

As employee benefits trusts face competition from the Employee Ownership Trust and other vehicles in the SME sector – will EBTs retain their popularity going forward?

What are the responsibilities of trustees regarding employee shareholder voting rights, record-keeping and share buy-back provisions for 'good' leavers?

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Thank you for attending

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