

Issue 1 2010

WHITE & CASE

Global compensation **update**

The newsletter of the White & Case global equity-based compensation group

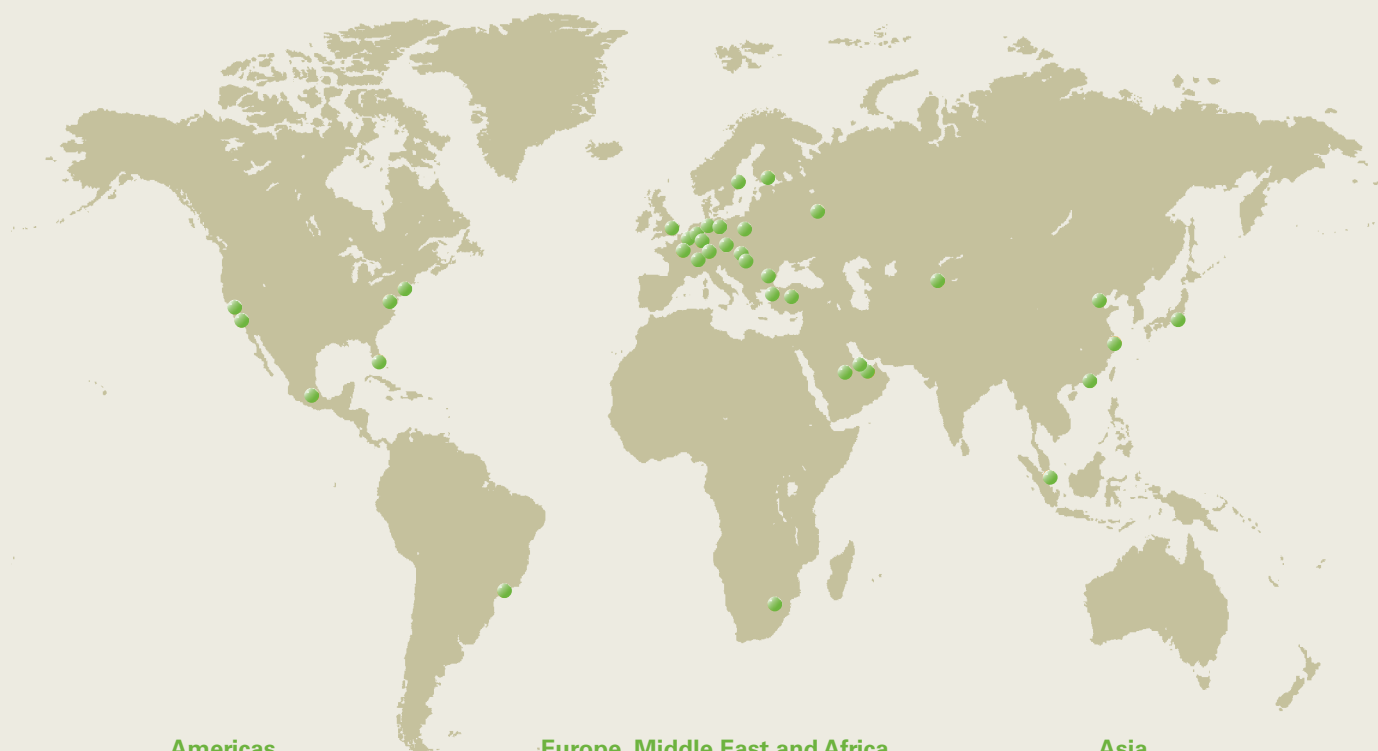
**Corporate Governance and Executive Compensation
– Impact of Dodd-Frank**

EU Prospectus Directive News

News in Brief

Upcoming Events

Our global office network...



Americas

Los Angeles
Mexico City
Miami
New York
Palo Alto
São Paulo
Washington, DC

Europe, Middle East and Africa

Abu Dhabi
Almaty
Ankara
Berlin
Bratislava
Brussels
Bucharest
Budapest
Doha
Dusseldorf
Frankfurt
Geneva
Hamburg
Helsinki
Istanbul
Johannesburg
London
Moscow
Munich
Paris
Prague
Riyadh
Stockholm
Warsaw

Asia

Beijing
Hong Kong
Shanghai
Singapore
Tokyo

Contacts

Editor
Charmaine Pollock
Associate, London

Tel: + 44 20 7532 1970
cpollock@whitecase.com

Nicholas Greenacre
Partner, London

Tel: + 44 20 7532 2141
ngreenacre@whitecase.com

Mark T. Hamilton
Partner, New York

Tel: + 1 212 819 8262
mhamilton@whitecase.com

Euan Fergusson
Associate, London

Tel: + 44 20 7532 2122
efergusson@whitecase.com

Focus



Corporate Governance and Executive Compensation Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

This new act signed into law by President Obama on July 21, is expected to have far reaching consequences for participants in the financial services industry. It is designed to “reform” Wall Street and to reshape the US financial services regulatory system by:

- subjecting all “systemically important” financial institutions to enhanced capital, leverage, liquidity and other prudential regulation
- providing a process to permit the “orderly liquidation” of financial institutions that would otherwise be considered “too big to fail”
- limiting the authority of the Federal Reserve to use its emergency authority to rescue failing financial institutions
- prohibiting or restricting under the Volcker Rule the authority of “banking entities” and “nonbank financial companies supervised by the [Federal Reserve Board]” to engage in “proprietary trading” and to invest in “hedge funds” or “private equity funds”
- stipulating which entities may engage in “swap” activities and providing a new regulatory regime for over-the-counter derivatives
- requiring the registration of advisers to hedge funds and private equity funds and imposing on them new record keeping and reporting requirements
- regulating securitizations and requiring issuers or originators of asset backed securities to keep “skin in the game” by retaining a limited amount of the credit risk related to such securities
- addressing conflicts of interest and other areas of concern about credit rating agencies
- addressing corporate governance and compensation matters
- expanding the SEC’s enforcement powers

The Act is designed to enhance “consumer protection” by establishing a “bureau” of the Federal Reserve with a broad mandate to regulate retail financial products and services.

The provisions of the Act become effective at various times and phase-in periods are provided for certain investments and activities to be brought into compliance with prohibitions and restrictions in the Act.

For a table summarising the corporate governance and executive compensation provisions, see overleaf.

Topic	Explanation	Effectiveness
<p>Shareholder Vote on Executive Pay (“Say-on-Pay”)</p> <p>[Section 951, adding new Section 14A to the Securities Exchange Act of 1934 (the “Exchange Act”)]</p>	<p>Requires that companies include in their annual proxy statement, at least every three years, a non-binding say-on-pay vote with respect to the compensation of named executive officers. Shareholders have the right to vote at least once every six years on the frequency of the say-on-pay votes.</p>	<p>Proxy statement for the first annual meeting held on or after January 22, 2011 (six months after enactment) must provide for (1) a non-binding say-on-pay vote, and (2) a vote on the frequency of subsequent say-on-pay votes.</p>
<p>Shareholder Vote on Golden Parachutes</p> <p>[Section 951, adding new Section 14A to the Exchange Act]</p>	<p>Requires a non-binding shareholder vote on golden parachute payments to named executive officers in connection with a change-of-control transaction of the company. The related proxy statement must contain clear and simple disclosure based on rules to be promulgated by the SEC. Does not apply to a golden parachute payment that was previously approved by shareholders in a say-on-pay vote.</p>	<p>Proxy statement related to a change of control that is subject to a shareholder vote held on or after January 22, 2011 (six months after enactment) must provide for such a vote.</p> <p>Note: No deadline is set for the SEC rules related to “clear and simple” disclosure and the effectiveness of the shareholder approval requirement does not appear dependant on those rules.</p>
<p>Compensation Committee Independence</p> <p>[Section 952, adding new Section 10C to the Exchange Act]</p>	<p>Requires the SEC to issue rules directing each national securities exchange to require the following:</p> <p>(a) each member of a listed company’s compensation committee must be (i) a director and (ii) independent under a definition of independence to be established by the SEC; and</p> <p>(b) (i) the compensation committee has authority to engage a compensation consultant, legal counsel or other advisor, and (ii) the company must disclose in its annual proxy statement whether the compensation committee used a compensation consultant and whether that use raised any conflicts of interest and how the conflicts were addressed.</p>	<p>SEC rules must be issued no later than July 16, 2011 (360 days after enactment). The effective date of those rules is not yet clear.</p> <p>Disclosure regarding the use of a compensation consultant and whether that use raised any conflicts of interest must be included in a proxy statement for an annual meeting occurring on or after July 22, 2011 (one year after enactment).</p>
<p>Pay for Performance</p> <p>[Section 953(a), adding new Section 14(i) to the Exchange Act]</p>	<p>Requires the SEC to issue rules requiring a company to include in its annual proxy statement, in graphical or narrative form, a clear description of any executive compensation required to be disclosed by the issuer under the SEC’s proxy rules, including information that shows the relationship between executive compensation paid and the financial performance of the company, taking into account any change in the value of the shares of stock and dividends of the company and any distributions.</p>	<p>There is no specified deadline for the SEC to issue the required rules.</p>
<p>Compensation Ratios</p> <p>[Section 953(b)]</p>	<p>Requires the SEC to amend Item 402 of Regulation S-K to require a company to disclose: (1) the median of the annual total compensation of all employees of the issuer, except the CEO; (2) the annual total compensation of the CEO; and (3) the ratio of the CEO’s compensation to the median compensation of all other employees.</p>	<p>No specified deadline for the SEC to amend Item 402 of Regulation S-K.</p>
<p>Clawback Requirements</p> <p>[Section 954, adding new Section 10D to the Exchange Act]</p>	<p>Requires the SEC to issue rules directing each national securities exchange to require listed companies to develop a policy requiring:</p> <p>(a) disclosure of incentive-based compensation that is based on financial information; and</p> <p>(b) the company to recoup incentive compensation that was paid on the basis of erroneous data from any current or former executive officer during the three-year period preceding the restatement.</p>	<p>No specified deadline for the SEC to adopt the required rules. Likely to be adopted before the 2011 proxy season.</p>

Topic	Explanation	Effectiveness
Employee and Director Hedging [Section 955, adding new Section 14(j) to the Exchange Act]	Requires the SEC to issue rules requiring companies to disclose in their annual proxy statement whether their employees or directors (or their designees) may purchase financial instruments designed to hedge equity securities of the company that the employee or director holds.	No specified deadline for the SEC to adopt the required rules.
Excessive Compensation [Section 956]	Applies only to certain “covered financial institutions.” Requires the appropriate federal regulators to issue rules applying enhanced reporting and regulation of incentive-based compensation structures to covered financial institutions. The rules must prohibit any type of incentive compensation arrangement that encourages inappropriate risks by an executive officer, employee, director or principal shareholder of the covered financial institution by providing “excessive compensation, fees or benefits” or that could lead to material financial loss to the institution.	SEC rules must be issued no later than April 22, 2011 (nine months after enactment). The effectiveness of those rules is not yet clear.
Broker Discretionary Voting [Section 957, amending Section 6(a) of the Exchange Act]	Each national securities exchange is required to adopt rules prohibiting brokers from voting uninstructed shares (e.g., discretionary voting) in connection with a shareholder vote on the election of directors, executive compensation or any other significant matter (as determined by the SEC).	July 22, 2010 (the date of enactment); however, there is no specified deadline for when the SEC or the exchanges must adopt the final rules. Note that effective January 1, 2010, new NYSE rules already prohibit brokers from voting uninstructed shares in director elections without explicit voting instructions.
Proxy Access [Section 971, amended Section 14(a) of the Exchange Act]	The SEC may, but is not required to, issue rules permitting shareholders to include their nominees for the board of directors in a company’s proxy materials.	Not applicable. The provision is permissive so the SEC may or may not issue any rules.
Board Leadership Structures [Section 972, adding new Section 14B of the Exchange Act]	Requires the SEC to issue rules that will require a company to explain in its annual proxy materials why it has either chosen to combine or separate its chairman and CEO positions.	SEC rules must be issued no later than January 17, 2011 (180 days after enactment). The effective date of those rules is not yet clear. Note that effective Feb 28, 2010, new rules issued by the SEC already require disclosure on this topic.
Sarbanes Oxley Section 404 Exemption [Section 989G, amending Section 404 of the Sarbanes-Oxley Act of 2002]	Section 404(b) of the Sarbanes-Oxley Act is amended to exempt non-accelerated filers and smaller reporting companies from the requirement of an auditor’s attestation report.	July 22, 2010 (the date of enactment).

The effect on Employee Share Plans of the Amending Directive of the Prospectus Directive

The Amending Directive which amends the EU's Prospectus Directive 2003/71/EC (the "Prospectus Directive") was approved by the European Parliament on 17 June 2010. It follows months of discussions between the EU institutions together with industry specialists which aimed to improve clarity and certainty as well as provide a reduction in the administrative burdens contained under the Prospectus Directive.

Following the approval of the Amending Directive, Member States are required to implement the directive into their national laws within 18 months after it comes into force, which is expected later this year.

Set out below is a summary of the principal amendments to the Prospectus Directive which affect employee share plans.

The current position for employee share plans

Currently, the exemption under the Prospectus Directive is of fairly minimal significance for a large number of share plans since many already fall outside the scope of requiring a prospectus:

- i) non-transferable options granted to employees, do not fall under the scope of the Prospectus Directive which only applies to "transferable securities". As such, share options are not covered by the rule to produce a prospectus (with the exception of share option plans in Germany and Poland).
- ii) free shares offered in the context of an employee share plan (offers made for no monetary consideration) will also not fall within the scope of the Prospectus Directive, since there is no element of "choice" for participants and as such there would be no "offer to the public". Where an offer of free shares is made to a recipient who must then choose whether to accept the offer, this is regarded as an offer for no consideration. It would therefore be an excluded offer under the Directive, but would also be subject to the exemption for offers of less than €100,000 and as such no prospectus would be required. However,

if the offer of free shares is deemed to disguise a "hidden" consideration, such an offer would fall within the scope of the Prospectus Directive. It is however commonly accepted that in most cases where free shares are offered in the context of an employee share plan, there is no such "hidden" consideration in the employment relationship; and

- iii) offers of transferable securities to fewer than 100 people at a time per Member State will also be exempt.

However, the Amending Directive, seeks to further extend the employee share plan exemption which will have a significant impact on non EU companies with Employee Stock Purchase plans.

Extension of the employee share plan exemption

Under the Prospectus Directive, certain companies are exempt from the obligation to publish a prospectus for offers to employees and directors provided that:

- i) the issuer has securities admitted to trading on a regulated market; and
- ii) a document is made available containing information on the number and nature of the securities; and the reason for and the details of the offer.

The Amending Directive extends the exemption to:

- i) European companies (being, all companies with their head office or registered office in the EU); and
- ii) non-European companies with securities traded on a regulated market; or with

securities traded on a market outside the EU (a third country) provided that in the latter case:

- a) a formal decision is made that the third country's legal and supervisory framework is equivalent to the framework that applies to regulated markets under the Market in Financial Instruments Directive (MiFID) by the Commission; and
- b) adequate information is available in a language customary in the sphere of international finance.

Changes to prospectus obligations

The Amending Directive also proposes the following changes to the general exemptions from prospectus obligations under the Directive:

- i) the number of persons within a member state to whom offers can be made without the requirement for a prospectus to be published, has been increased from 100 to 150 persons;
- ii) no prospectus is required for an offer with consideration of less than €5 million across the EU within any 12 month period, having been increased from €2.5 million.

Comment

Employers operating many share plans (such as options, restricted stock and restricted stock units) do not in fact need to consider the rules under the employee share plan exemption because they fall outside the scope of the Directive altogether. The narrow category caught

UK Stop Press

New SAYE bonus rates launched

The new bonus rates for SAYE (Save As You Earn) share option plans will come into effect on 12 September 2010 and are as follows (previous rates are in brackets):

Length of contract in years	Rate of bonus	Annual Equivalent Rate
3	0.00 (0.0) x monthly payments	0.00% (0.0%)
5	0.9 (1.8) x monthly payments	0.59% (1.16%)
7	3.2 (4.9) x monthly payments	1.15% (1.74%)

Applications will be allowed on previous bonus rates if the SAYE plan began before 12 September 2010 and the contracts were entered into within 30 days of this date.

Why they are being changed:

SAYE is a plan used by employers to give their employees options to purchase shares in the company at a future date, which can be granted at a discount of up to 20 per cent of the current share price. The employees enter into a 3, 5 or 7 year contract whereby they pay up to £250 a month from their income for a period of 3 or 5 years in return for these options.

At the end of the contract, the employees will receive a bonus rate on the money that they have invested which is calculated with reference to the market swap rate for the length of the contract they entered into. These bonus rates are adjusted automatically to maintain the prescribed percentage margins of the market swap rates. In August 2010, these margins could no longer be met and this triggered the requirement to make a corresponding adjustment in the bonus rates.

What is staying the same:

Bonus rates for 3 year contracts will remain at zero. Employees opting for contracts of this length will have no proceeds from the bonus rates which must be used to purchase shares on the exercise of an option. This means they will need to continue to rely heavily on capital growth to benefit from these plans.

under the Directive, has now been further reduced, with the extension to the employee share plan exemption affecting both European and non-European companies.

Companies trading on an "exchange-regulated" market rather than a regulated market (such as AIM), will now fall within the exemption where their head office or registered office is located in the EU. Furthermore, non-European companies (particular US multinationals) which have employee stock purchase plans in Europe, will now be caught under the exemption provided they have securities traded on a regulated market or securities traded on a market outside the EU which is deemed to be an "equivalent" market and provided the formalities listed above are complied with.

In particular, companies on major exchanges, such as the New York Stock Exchange, will benefit once equivalence has been established by the EU Commission. Such companies would avoid the significant cost and administrative burden of having to produce a full prospectus.

There is, however, a lack of clarity concerning the issue of non-European companies which do not have securities traded on a regulated market (as defined under MiFID, which covers certain specified stock exchanges in the EU), but are listed on well-regulated investment exchanges in their home countries.

Further clarification is required particularly in respect of EU regulators with regards to the issue of the equivalence of non-European regulatory standards.

News in Brief

In this section, we highlight some recent legislative changes which may affect your equity plans around the world.

Australia



From 1 July 2009, an entity which provides employee share schemes in Australia (an "ESS Provider") is subject to reporting obligations to both the individual employee and the Australian Tax Office (ATO). An ESS Provider is required to provide an 'ESS statement' to each employee no later than 14 July each year if an ESS taxing event occurred for that employee in that financial year. In addition, such an ESS Provider is required to lodge an 'ESS annual report' in the approved form to the Commissioner of Taxation no later than 14 August for each year in which an ESS taxing event occurs for at least one employee during that year.

The Compliance program for 2010-11 was released by the Australian Taxation Office (ATO) on 8 July 2010. Following the successful review of tax affairs of executives and directors, the ATO proposes a new agenda which focuses specifically on internationally mobile employees. This will affect not only Australian nationals, but also Australian resident employees who receive overseas employee shares and bonuses. This increased ATO scrutiny requires employees to get comfortable with the new rules, whilst employers are expected to ensure that appropriate systems are put in place to facilitate employee compliance.

Brazil



New Ordinance number 333 was enacted by the Brazilian Social Ministry on 30 June 2010, resulting in a 7.72% adjustment to the social security tax table, retroactive to January 2010. Employee social security contributions are levied from 8%-11% dependent on their income threshold. However, employer contributions are not affected.

China



China has introduced its first operational focused tax regulations with the publication of new Circular 461. This Circular extends and develops previous Chinese legislation by providing further guidance and clarification to operational procedures. The registration

requirements with local tax bureaus (relating to company share options and stock appreciation right plans) apply to both Chinese domestic companies and listed overseas companies.

Estonia



There has been an amendment to the Estonian Income Tax Act concerning stock options, restricted stock units and employee share purchase plans granted by a non-resident company in Estonia, which are to be deemed "fringe benefits" and therefore taxable to the employer (income and social security taxes). This amendment is likely to come into force on 1 January 2011.

France



Internationally mobile employees who spend their time both in and outside France during the vesting period of their options (and likely restricted stock units), will be subject to French income tax (on a pro-rata basis) based on the portion of the vesting period which they spent in France, following a French Supreme Court ruling. The social security treatment remains unchanged however the issue employer reporting and withholding obligations is unclear and it is suggested that affected employees should seek legal advice on this issue.

Greece



The new capital tax regime is set to come into effect as of 1 January 2011. The new rates will mean that the sale of shares which have been held for 3-12 months will be taxed at a 10% rate, whilst shares held for less than 3 months will be taxed at 20%. No capital gains tax will be due on the sale of shares held for over 12 months. The previous capital gains tax regime will continue to apply to shares acquired prior to 1 January 2011, where all shares sold would be subject to a flat transaction tax rate of 0.15%.

A new method of income calculation has been introduced following a new Greek tax law effective as of 27 April 2010, applying to

all outstanding options as of this date. Income from options is now calculated as the difference between market value of the shares at exercise and the exercise price. It is advised that issuers apply for a tax ruling from the Ministry of Economy and Finance to confirm the tax treatment of equity awards other than options. Furthermore, a number of key issues have been left unaddressed including employer tax withholding and reporting obligations as well as social security contributions. Once again, it is advised that clarification is obtained from the Ministry of Economy and Finance, and/or the Greek social insurance authorities.

Israel



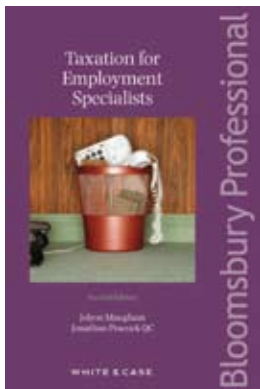
A circular was issued by the Israeli Tax Authorities addressing the calculation of the ordinary income gain on equity awards including stock options and RSUs granted under a trustee plan or capital gains track of section 102 of the Israeli Income Tax Ordinance. Companies with any shares traded outside Israel will be affected if they established a trustee plan in Israel for granting equity awards to their employees and if they elected for the capital gains track. Companies with established trustee plans or capital gains track programs for offering stock options or RSUs in Israel were able to make an election, by 28 July 2010, to potentially reduce the amount of tax that employees and the local employer in Israel will pay in respect of those options.

UK



On 22 June 2010, the UK Chancellor announced in his Emergency Budget, that Capital Gains Tax would be increased to 28% for higher rate taxpayers, coming into effect as of 23 June 2010. The higher rates for UK income tax introduced in April 2010, together with the expected increases in NICs from April 2011, suggest that it remains potentially more beneficial for equity based compensation plans to deliver future gains which fall to be taxed as capital rather than income.

Publications



New Practical Guide to Taxation Issues for Employment Specialists launched

The new, fully updated edition of *Taxation for Employment Specialists*, to which White & Case has contributed two chapters, is a practical guide to taxation issues facing employment lawyers. Published by Bloomsbury Professional. The book adopts a practical approach to an intricate subject, addressing the many tax issues that face the employment specialist in areas such as: unfair and wrongful dismissal; redundancy; sex discrimination; damages awards; termination; and various payments.

The new edition is extensively revised, including new coverage of the following areas:

- Income Tax Act 2007
- Income Tax (Earnings and Pensions) Act 2003
- Pensions law reforms of 2006
- Changes in residence and domicile status
- Redundancy and termination payments
- Anti-avoidance provisions

To ensure a clear understanding of the subject, the work is written in a jargon-free style and features many worked examples throughout the text.

Compiled by two leading barristers working in the field of tax law, this is an essential book for all employment lawyers who are looking for an accessible guide to an area which can be daunting for those who do not deal with taxation as part of their daily work.

The chapter on Termination and Variation payments was written by White & Case partner Stephen Ravenscroft and the chapter on Taxation of Shares and Share Options was written by White & Case partner Nicholas Greenacre and associate Euan Fergusson.

For more information, or to obtain a copy go to www.bloomsburyprofessional.com



Updated Countries at a Glance launched at NASPP

Countries at a Glance is a regular publication from the global equity-based compensation group at White & Case which includes some of the key legal and tax issues that arise from the operation of equity incentive plans of all different types, in countries across the world.

Through our extensive contacts, we publish guidance on Employee Stock Purchase Plans, Restricted Stock and RSU's and Stock Option Plans for 22 countries globally.

A summary which outlines six of the major countries will be available at the NASPP conference being held in Chicago, 20-23 September.

If you are interested in receiving a copy and are not attending NASPP, please email efergusson@whitecase.com or visit www.ecbel.whitecase.com

Upcoming Events

European Networking Group

14-15 September, Amsterdam

Representatives from the White & Case Employment & Benefits practice will be attending the 9th annual ENG Executive Compensation and Benefits conference on 14-15 September 2010 in Amsterdam. Nicholas Greenacre and Euan Fergusson from the White & Case London office will be leading a workshop on "A Practical Guide to Implementing International Share Plans"

Benefits after the Budget

9 November, London

This session will analyse the impact that the successive 2010 Budget changes have had on the structure and operation of equity based incentive plans. An update will also be provided on (i) measures likely to be taken by HM Revenue & Customs to tackle tax avoidance arrangements through the use of employee benefit trusts, and (ii) recent notable changes to overseas legislation which may impact the implementation and operation of

global share plans. The session will also consider the impact of the 2010 Budget on pensions, including the proposed scrapping of the "special annual allowance" in favour of a simplified (but lower) annual allowance to curtail tax relief available to high earners, and the move to scrap compulsory annuity purchase at age 75 for defined contribution scheme members.

Each seminar will be held at our White & Case London office at 5 Old Broad Street, London EC2N 1DW. To reserve your place at one or all of the seminars, please reply to rsvp@whitecase.com stating which seminar(s) you wish to attend.

JSB International Employment Law Seminar

10-12 November, Eastern Europe

White & Case lawyers from the London, Prague, Bratislava, Bucharest, Budapest and Istanbul offices will be chairing and presenting at the JSB International Employment Law Seminars for HR advisors on Employment Law in the Czech Republic, Slovakia, Romania, Hungary and Turkey.



NASPP Chicago

NASPP Conference

20-23 September, Chicago

Nicholas Greenacre, Euan Fergusson and Atlanta Stoye from the White & Case London office and Mark Hamilton from the White & Case New York office will be attending the NASPP 18th Annual Conference which will be held from 20-23 September in Chicago.

Nicholas Greenacre will participate in a panel session entitled "You Asked for It Again: Hot Topics from NASPP's Global Stock Plans Q&A Discussion Forum", as well as present a session, together with Julie Rumberger from PwC, on "Global Performance Plans".

During the conference, don't forget to stop by and visit us at booth #402.



Nicholas Greenacre



Euan Fergusson



Mark Hamilton



Atlanta Stoye

Worldwide. For Our Clients.

www.whitecase.com

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

www.ecbel.whitecase.com

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, corporations and undertakings.

LON 0810030