

NOTE: This prohibition order was revoked by the FSA on 21/07/2010.

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## FINAL NOTICE

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To: **Mr Christopher Headdon**

Date: **1 June 2004**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about the following action**

### **ACTION**

For the reasons set out below and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to make an order against you, Christopher Headdon, to prohibit you from carrying out any of the governing and required functions listed in the controlled functions contained in paragraph 10.4.5 of the Supervision Manual in the FSA's Handbook of Rules and Guidance within firms regulated by the FSA ("the prohibition terms").

The FSA will, on application by you at any time after 26 May 2010, revoke this order under section 56(7).

### **REASONS FOR ACTION**

#### **Summary**

The FSA concludes that you should have provided information to the FSA and the Government Actuary's Department (jointly referred to as "the Regulator") at a meeting on 28 January 1999 about a Side Letter (termed a "Letter of Understanding") to a reinsurance treaty ("the Treaty") that may have limited the regulatory value of that Treaty and you should have subsequently disclosed that Side Letter to the FSA.

## **Facts and Matters Relied Upon**

### *Background*

Between 1997 and January 2001, you were the Appointed Actuary to Equitable. In July 1999, you became a Director of Equitable and, in December 2000, became its Chief Executive. You are not currently approved by the FSA to perform any controlled function for any authorised person.

### *Decision to support statutory reserves through reinsurance*

Towards the end of 1998 and in early 1999 Equitable agreed with the Regulator to offset a proportion of statutory reserves by a reinsurance arrangement valued at approximately £800 million. That reinsurance was ultimately provided through a the Treaty between Equitable Life Assurance Society ("Equitable") and the Irish European Reinsurance Company Limited ("IRECO").

During the first half of January 1999, Equitable informed IRECO that a provision in an early draft of the proposed Treaty permitting it to be cancelled if withheld claims reached £100 million would not give Equitable the required beneficial effect on its reserves. Following negotiations, IRECO and Equitable agreed that the Treaty would provide for the parties to renegotiate its terms if withheld claims reached £100 million. In addition, IRECO proposed and Equitable agreed that the parties' intentions to cancel the Treaty if those renegotiations failed would be recorded in a separate document termed a "letter of understanding" discussed in more detail below.

You agreed at this stage that Equitable would provide IRECO with a Letter of Understanding with wording on the following lines:

*"In the event that the total withheld reinsurance claims balance exceeds £100,000,000 at any December 31 negotiations will take place to find a mutually agreeable restructuring of the Treaty. However, should no mutually agreeable solution be found it is the understanding of both parties, which shall have no legal obligation whatsoever, that the Treaty will be cancelled by mutual consent as at the above said December 31."*

### *28 January Meeting*

You approved the concept of a Side Letter in early January 1999. During a meeting with the Regulator on 28 January 1999 you were asked by the Regulator about the provision in the draft Treaty that provided for the parties to renegotiate its terms if withheld claims reached £100 million. The Regulator explained to you that they were concerned that reaching the £100 million on the balance of reinsurance claims should not provide grounds for cancellation of the Treaty. In response you informed the Regulator that there was no intention that reaching the £100 million limit should provide grounds for cancellation and that it was only intended that the limit should provide a right to review the terms of the treaty and that if no agreement could be reached on revising the terms, the treaty would continue unamended. You did not mention the proposed Letter of Understanding.

Although the Regulator commented upon draft copies of the Treaty and was shown the final version of the Treaty, it was not shown a copy of the Side Letter. Nor was the Regulator informed about the proposal between Equitable and IRECO to express their intentions

relating to what might happen in the event of failure to agree re-negotiated terms on the Treaty in a separate document.

The failure to inform the Regulator was not a matter of inadvertence but followed from a decision on your part. The Regulator should have been made aware of the existence of a Side Letter.

#### *The Side Letter*

On 1 April 1999, you signed and sent to IRECO a Side Letter which included the following:

*"The purpose of this letter is to confirm the intentions of the Equitable Life Assurance Society and the Irish European Reinsurance Company Limited in respect of the Stop Loss reinsurance treaty entered into by both parties incepting 31 December 1998. This letter is not intended to be a legally binding document, however, it is the purpose of this letter to clarify the intentions of the parties in respect of certain aspects of the above said treaty.*

*Both parties agree that should the withheld fund exceed £100,000,000 sterling and no solution can be found as per the format laid down under the Agreement section of the slip, then the parties will cancel the treaty by mutual agreement with full repayment of any balances (both cash and withheld) due from either party within three months of the termination date."*

#### *The Annual Returns*

On 31 March 1999 you signed the Annual Regulatory Returns for Equitable for the year ended 31 December 1998 in which you attributed a value of £793 million to the Treaty. You prepared Equitable's Annual Returns without qualification. You acted in a similar manner in relation to the Annual Return for the year ended 31 December 1999 signed in 2000, notwithstanding that the Side Letter remained in effect. You left Equitable in February 2001. The Annual Return for 31 December 2000, signed in 2001, was prepared on a similar basis by your successor who was not, at that stage, aware of the Side Letter.

#### **Conclusions**

On the basis of the facts and matters described above, the FSA has concluded that you are not fit and proper to perform the governing or required functions and that to achieve its regulatory objectives it is necessary that the FSA should exercise its power to make an order in the prohibition terms. Those objectives include public awareness, market confidence and consumer protection.

The FSA recognises that you have subsequently accepted that it was reasonable for the Regulator to expect to be made aware of the full extent of any agreement reached between the parties to the Treaty, including any aspects of the agreement set out in a separate document. The FSA also acknowledges that you consider that, if you were to find yourself in a similar situation in the future, you would act differently by ensuring that all ancillary information is provided to the FSA.

#### **DECISION MAKER**

The decision that is implemented by the giving of this notice was made by the Regulatory Decisions Committee on behalf of the FSA.

## **IMPORTANT NOTICES**

This Final Notice is given to you in accordance with Section 390 FSMA.

### **Publicity**

Sections 391(1), 391(6) and 391(7) FSMA apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interest of consumers.

The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Third party rights**

A copy of the Decision Notice was given to Equitable and IRECO as a third parties identified in the reasons described above which relate to matters which, in the opinion of the FSA, are prejudicial to it. The FSA will also give a copy of the Final Notice to Equitable and IRECO.

### **FSA contacts**

For more information concerning this matter generally, you should contact Jonathan Phelan at the FSA (direct line: 020 7066 1470/fax: 020 7066 1471).

**Andrew Procter**  
**Director**  
**FSA Enforcement Division**