FINAL NOTICE

To: **Yoshiaki Yamazaki**

Of: 4-4-17 Miyamoto
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Japan
Postcode: 273-0003

To: **Hiroshi Okazaki**

Of: 3-13-9-312 Inukura
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To: **Robert McKibbin**

Of: "Darragh"
Flordon Road
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To: **Kazuhide Oda**

Of: 3-25-40 Musashidai
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To: **Toru Morota**

Of: PO Box 064-0809
7-1-7-601
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To: **David Titterington**

Of: 275 Chelmsford Road
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29 January 2004

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice of its decision to impose prohibition orders in the terms set out below

THE ORDERS

The FSA gave you a Decision Notice dated 3 December 2003 which notified you that, for the reasons set out in that notice and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make prohibition orders in the terms set out below.

You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you.

Accordingly for the reasons set out below, the FSA hereby and in pursuance of section 56 of the Act, makes prohibition orders against Yoshiaki Yamazaki ("Mr Yamazaki"), Hiroshi Okazaki ("Mr Okazaki), Kazuhide Oda ("Mr Oda"), Robert McKibbin ("Mr McKibbin), David Titterington ("Mr Titterington") and Toru Morota ("Mr Morota") (together "the relevant individuals") in the terms set out below, pursuant to section 56 of the Act. These orders have effect from 5 February 2004.

<u>Prohibition terms: Messrs Yamazaki, Okazaki and McKibbin</u>

Prohibition orders prohibiting each of the above from performing any function in relation to any regulated activity carried on by any authorised person.

Prohibition terms: Messrs Oda, Morota and Titterington

Prohibition orders prohibiting each of the above from performing any function involving the exercise of management authority over any other person in relation to any regulated activities carried on by any authorised person.

REASONS FOR THE ACTION

1. The FSA has decided to exercise its power to make prohibition orders against the relevant individuals as it considers that their conduct, as set out below, demonstrated a fundamental lack of honesty and integrity. The FSA's action relates to the conduct of the relevant individuals between September 1999 and July 2001 as directors of, variously, the Chiyoda Fire and Marine Insurance Company Limited ("CJ" or "Chiyoda Japan") (based in Japan) and its wholly owned subsidiary, the Chiyoda Fire and Marine Insurance Company (Europe) Limited ("CE") (based in the UK).

2. In 1999, CE was making significant losses. These losses impacted upon the Chiyoda Group's consolidated results. In an attempt to improve CE's results for its year-end 31 December 1999, arrangements were made for an injection of capital from CJ and a loan from Partner Reinsurance Company Limited ("PRe" or "Partner Re"), another reinsurance company. Although these transactions were, respectively, a capital injection and a loan in substance, they were structured as reinsurance contracts, allowing the amounts received to be treated in CE's accounts as revenue (as opposed to being reflected in the balance sheet) and thereby reducing the underwriting loss shown in CE's profit and loss account at the year-end.

3. A number of further transactions were entered into for the purpose of firstly, concealing the capital injection and the loan made to CE to decrease its incurred losses and secondly, the subsequent repayment of the loan from PRe. The FSA's concerns arise out of the conduct of the relevant individuals in relation to the loan, capital injection and the subsequent transactions and events.

RELEVANT LEGAL AND REGULATORY PROVISIONS

4. The FSA is authorised by section 56 of the Act to exercise the power to make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

5. The procedure to be adopted in relation to prohibition orders is set out at sections 57 and 58 of the Act.

Relevant Guidance

6. In deciding to impose the prohibition orders, the FSA has had regard to guidance published in the FSA Handbook, in particular in the Enforcement Manual at:

6.1 ENF 8.1.2.:

> *"The power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system and reducing financial crime. The FSA may exercise its power to make a prohibition order where it considers that, to achieve any of those objectives, it is necessary either to prevent an individual from carrying out any function in relation to regulated activities or from being employed by any firm, or to restrict the functions which he may carry out or the type of firm by which he may be employed."*

6.2 The exercise of the power to make a prohibition order assists the FSA to meet its regulatory objectives, in particular the market confidence objective. The FSA considers that the relevant individuals present a risk to the FSA's regulatory objectives of maintaining market confidence and preventing

financial crime, and that in view of this risk, it is necessary for the FSA to exercise its power to make the orders in the terms proposed.

6.3 ENF 8.6.2.:

"When considering whether to exercise its power to make a prohibition order against an individual employed or formerly employed by a firm who is not an approved person, the FSA will consider those factors set out in ENF 8.5.2G (1), ENF 8.5.2G (3), ENF 8.5.2G (5)…

> *ENF 8.5.2 G (1): whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are contained in* [the Fit and Proper test for Approved Persons] *FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);*
>
> *ENF 8.5.2 G (3): the relevance, materiality and length of time since the occurrence of any matters indicating unfitness; and*
>
> *ENF 8.5.2 G (5): the severity of the risk which the individual poses to consumers and to confidence in the financial system."*

6.4 The FSA will consider making a prohibition order in cases of lack of fitness and propriety. Where an individual is not an approved person, prohibition may be the only appropriate action available. The FSA considers that the conduct of each of the relevant individuals demonstrated a serious lack of fitness and propriety. Further, the FSA considers that, as none of the relevant individuals are approved persons and in view of the seriousness of their misconduct, imposing prohibition orders is the appropriate action.

6.5 The FSA has decided that:

(a) None of the relevant individuals are fit and proper to perform the specified functions (as set out in the prohibition terms above) in relation to regulated activities. In particular their conduct does not satisfy the criterion of honesty, integrity and reputation. Each of the relevant individuals, with the exception of Mr Titterington, was an active and knowing participant in forming and executing an improper policy regarding CE's accounting for significant transactions. Each, with the exceptions of Mr Titterington and Mr Morota, concealed the relevant conduct from their fellow directors in CE. Messrs Okazaki and McKibbin were actively involved in the detail of the relevant conduct. They deliberately concealed the relevant conduct from CE's auditors and from the FSA and signed representations to CE's auditors and Returns to the FSA, knowing them to be fundamentally untrue.

(b) Messrs Oda and Morota assisted in the execution of the improper policy by participating in communicating information and instructions and by refraining from revealing the relevant conduct to CE's directors, auditors or the FSA.

(c) Mr Titterington backdated his signature on a significant reinsurance policy when asked to do so, without objection or questioning the request or otherwise exercising his authority and discretion.

(d) The possibility of the relevant individuals repeating their conduct in a similar situation poses a risk to confidence in the financial system.

6.6 In addition the FSA has had regard to the guidance on the application of the Fit and Proper test for Approved Persons. The FSA considers that none of the relevant individuals satisfy the criterion of honesty, integrity and reputation.

FINDINGS OF FACTS

7. The findings of facts are divided into two parts. Part I deals with the general factual background and Part II deals with the conduct of each of the relevant individuals in relation to the facts set out in Part I.

Part I

Background to CE & CJ

8. CE was registered as an insurance company in the UK in 1977, and was regulated in turn by the DTI and then HM Treasury. It was a wholly owned subsidiary of Chiyoda Japan, one of Japan's largest insurers. CE's role was to service CJ's clients in the UK. CE became increasingly active in the reinsurance market in London throughout the 1990's.

9. In April 2001, Chiyoda Japan merged with Dai Tokyo, another large Japanese insurer, to form the Aioi Insurance Company Limited ("AJ") and CE changed its name to Aioi Insurance Company of Europe ("AE"). On 1 December 2001 (N2), the FSA formally took over the regulation of AE from HM Treasury.

The Stop Loss Agreement ("SLA") with Partner Re

10. In September 1999 the CE board met and considered the company's projected financial results for 1999. At this time, CE's projected loss for the financial year was estimated at £10.8m, which was far in excess of earlier forecasts of losses during the year. The consolidated profit of the Chiyoda Group depended upon (among other things) the performance of CE. The executive directors of CE were requested to find means of improving CE's performance for the remainder of the fiscal year.

11. Among the options considered to improve CE's results were SLA's with CJ and with a third party, Partner Re. A SLA is a form of reinsurance under which the reinsured has cover if its losses for a specified type of business exceed a specified amount.

12. Mr Okazaki entered into initial discussions with PRe towards the end of September 1999 and on 28 October 1999, PRe sent Mr Okazaki, (among other things), the draft SLA and a guarantee for CJ to sign ("the Parental Guarantee"). The draft SLA included a payback clause in terms of which additional premiums were payable by CE, after the first year of the contract, which represented repayment of the amount advanced to CE by PRe. Mr Okazaki on CJ's behalf, attempted to negotiate revised wording for the Parental Guarantee which was then referred to as a "Letter of Comfort".

13. In terms of the Letter of Comfort CJ would stand ready to provide any necessary funds to CE in the event that CE failed to meet its contractual obligations to PRe. Mr Yamazaki signed the Letter of Comfort on or about 15 November 1999. This alternative was unacceptable to PRe.

14. On or around 22 November 1999 a meeting took place between CE and its auditors Ernst & Young ("E&Y") to discuss the proposed contract. E&Y stated that for the agreement with PRe to be treated as a reinsurance contract, there would have to be a transfer of risk to PRe and that any undertaking to repay PRe meant that there was no such transfer of risk.

15. E&Y also informed those present that it was necessary to look at the substance of the transaction in determining how to account for it. What appeared to be a reinsurance contract could not be treated as such if it did not involve any transfer of risk.

16. On the basis of E&Y's comments, the wording of the draft SLA was changed so that it became a one-year contract without payback provisions. The Letter of Comfort remained in place with an Addendum (intended to support the Letter of Comfort).

17. Although the payback provisions were removed from the draft SLA, E&Y requested the inclusion of a separate reference to the SLA in CE's Letter of Representation to E&Y in respect of the financial statements for the year ended 31 December 1999. The reference in the Letter of Representation was to be to the effect that there was no undertaking, written or implied, to repay any loss that PRe had incurred. Mr McKibbin informed PRe of this requirement and he advised E&Y that CE's relationship with PRe was intended to be of a long term nature, not purely related to the SLA, and that it involved covers granted on other parts of the Chiyoda Group.

18. Throughout the autumn of 1999, CE's projected losses increased and by 15 December 1999 they were in the order of £31m.

The Letter of Guarantee

19. On 29 December 1999 PRe informed Mr Okazaki that CE's requested cover was much higher than PRe initially expected and that PRe's auditors would therefore impose tougher conditions on CJ's guarantee. PRe's view was that because the SLA was intended to repair CE's balance sheet, the liability to repay ought to have been represented on CE's balance sheet.

20. PRe's proposed guarantee, titled "Letter of Guarantee" was faxed by PRe to Mr Yamazaki in Japan. It read:

> *"The Chiyoda Fire & Marine Company Limited ("Chiyoda Japan") hereby guarantees to re-pay to Partner Reinsurance Company, Ltd…("PartnerRe"), upon demand, any sums of monies (including all claim payments and related expenses, net of premium receipts) which PartnerRe has paid to any party under the 1999 Whole Account Stop Loss Program and any other reinsurance contracts entered into by and between Chiyoda Japan's subsidiary, Chiyoda Fire & Marine Insurance company (Europe) Ltd and PartnerRe during the 1999 or prior calendar years…*

The foregoing constitutes Chiyoda Japan's full unconditional guarantee, and there are no understandings or agreements, conditions or qualifications not fully expressed herein."

21. The Letter of Guarantee also contained a provision for interest to be paid on the balance outstanding. CJ informed Mr Oda that it was not prepared to sign the guarantee on PRe's suggested terms as it was *"…in truth a 'debt guarantee'*."

22. CJ and CE entered into correspondence in an attempt to persuade PRe to modify their requirements but these efforts were not successful. None of the alternatives to the Letter of Guarantee suggested by CJ were acceptable to PRe.

23. In view of the requirement to conclude the SLA before the end of CE's financial year, Mr Yamazaki signed the Letter of Guarantee on 31 December 1999 in the form proposed by PRe after discussions with CJ senior management. Before the Letter of Guarantee was signed Mr Okazaki obtained a verbal agreement from PRe that:

    (a) PRe would negotiate with CJ to agree an alternative measure to replace the Letter of Guarantee before the close of CJ's financial year on 31 March 2000 (to avoid CJ having to reflect the existence of the Letter of Guarantee in its financial statements for this period); and

    (b) the details of the transaction would not be made public in PRe's financial statements or other disclosable documents unless necessary.

24. After the Letter of Guarantee was received, the SLA was put in place by CE's year-end. Ultimately, CE drew down £22.907m of the £27.5m available cover.

25. E&Y were not made aware of the Letter of Guarantee prior to the year-end, during the audit or when the auditors' Representation Letter was signed, despite the significant change in the arrangements between the relevant parties.

The Stop Loss Agreement with CJ

26. As part of the plans for improving CE's 1999 results, CE also considered entering into a SLA with CJ. This would have been a renewal of a similar agreement between the parties which was entered into in 1998. The options were to continue the policy at the originally proposed level of £7.5m of cover or of increasing the cover. On 29 December 1999 the loss coverage was set at £10m.

27. The SLA was signed some time after 30 December 1999 by Mr Titterington for CE, and he backdated his signature. This was done in an attempt to avoid paying tax to the Japanese tax authorities who may treat reinsurance transactions between members of the same group of companies as taxable gifts or capital injections. It would not be a gift or capital injection if the transaction was carried out on normal commercial terms. Inserting an earlier date on the contract would assist in creating the impression that the transaction was carried out on such terms. The SLA was however an injection of capital from CJ to CE as there was no significant transfer of insurance risk.

28. The FSA was informed by Mr McKibbin that CE's losses of circa £34m were reduced to £4m through a combination of a SLA with PRe and a SLA with CJ. Further, the FSA was advised that PRe was prepared to enter into this contract (under which it was bound to suffer considerable losses) because it expected to write profitable future business with the Chiyoda Group and to recoup its losses within a reasonable time. No mention was made of the Letter of Guarantee.

Replacing the Letter of Guarantee

29. As stated in paragraph 23, PRe agreed in principle to the replacement of the Letter of Guarantee before it was signed.

30. Ultimately, it was decided to replace the Letter of Guarantee by:

(a) Casualty, Property and Speciality lines retrocession contracts between CJ and PRe whereby PRe ceded some of its loss making reinsurance business to CJ (£12.2m to be repaid over 4 years);

(b) a Profit Commission Waiver Agreement between PRe and CJ whereby CJ waived profits it had made on a contract to the benefit of PRe (£8.2m repaid on signing the agreement); and

(c) a Letter of Confirmation which acknowledged that the above agreements and the 1999 PRe SLA should be viewed together as representing components of a single transaction and that CJ would compensate PRe for all the monies advanced to CE plus interest and a 1.5% management fee.

31. The purpose of the retrocession agreements and the profit commission waiver agreement was to repay PRe so that the Letter of Guarantee could be returned to CJ prior to its financial year-end on 31 March 2000. These agreements were put in place at the end of March 2000 and the Letter of Guarantee was then returned to CJ and destroyed.

32. CJ and Dai Tokyo announced a proposed merger in March 2000 (this was finalised in April 2001 and CE became AE). It was agreed by both parties that full repayment of PRe should therefore be completed before the merger date. This necessitated the replacement of all 3 retrocessions, as CJ's repayment obligation to PRe in terms of these contracts extended over a number of years.

The Loss Portfolio Transfer Agreement ("LPT") with ACE Bermuda Insurance Limited ("ACE")

33. A LPT is an agreement in terms of which one reinsurer transfers to another a liability for outstanding losses for a consideration.

34. In September 2000 CE announced that it was closing its London market operation at the end of the year 2000 because of increasing losses and that it would accept no more new business after the end of September. By then it had been decided that CE should enter into an LPT to cap ongoing claims. The possibility of linking the novation of the retrocession agreements with the arrangements for the closure was considered.

35. CE instructed its brokers to find potential counterparties for the LPT. ACE was finally selected as the reinsurer for the LPT and a meeting took place at CE's offices at the beginning of December 2000 at which ACE was asked if it would assist with the issue of repayment of PRe. Mr Okazaki informed ACE that the payment had to be passed through CE to avoid problems with the Japanese tax authorities.

36. CE entered into a LPT with ACE. Although the LPT was a genuine contract, a 'bonus premium' of £5m was added on to the originally proposed premium of £87m to be paid to ACE. ACE agreed to pass the additional £5m to PRe through two further contracts as follows:

    (a) the Casualty Excess of Loss agreement between CJ and PRe (referred to in paragraph 30) was novated so that ACE took on the liabilities of CJ; and

    (b) this agreement was then settled (commuted) for the sum of £5m.

37. It was not appropriate to account for the additional £5m paid as a reinsurance premium, as the substance of this part of the transaction was a repayment of a debt owed to PRe by the Chiyoda Group.

38. On 21 December 2000 CE consulted E&Y about the LPT. During this discussion, CE did not inform E&Y that an additional £5m was added to the premium and would be paid to PRe. E&Y approved the accounting treatment for the LPT in CE's 2000 accounts on the basis that the premium paid to ACE was in connection with the cover being provided.

39. It appears that ACE was not informed about the guarantee that CJ gave to PRe and that its existence was the basis for the payback arrangements. The LPT had to be put in place by CE's year-end and this was accomplished by virtue of CE placing a firm order with ACE through brokers shortly before the end of December 2000. The details of the documentation were completed later and the final version of the LPT was signed on 31 July 2001. ACE paid PRe £5m on 8 January 2001.

40. The FSA was not informed about the use of the LPT to facilitate a payment of £5m to PRe.

The Stop Loss Agreement with Cologne Reinsurance Company (Dublin) Limited ("CRe")

41. The complete repayment of PRe had to occur before the merger. The remaining sum due to PRe, including interest, was £7.75m. CRe was suggested as a possible partner to achieve repayment.

42. On 16 March 2001 CRe were requested to assist CE with the repayment to PRe through a SLA with CE. On 29 March 2001 CRe sent first drafts of reinsurance and retrocession slips to CE. By 29 March 2001 the proposed SLA was broadly approved.

43. CE entered into a SLA with CRe for a premium of £8.3m. Of that amount, £7.75m was passed on to PRe on the basis that CRe took on the liabilities of CJ under the Property and Speciality Excess of Loss contracts (referred to in paragraph 30). These agreements were then settled (commuted) for the sum of £7.75m. The contracts appeared to be signed at the end of March 2001, shortly before the merger.

44. The SLA between CE and CRe was actually signed in early April 2001 but backdated to 31 March 2001. The SLA with CRe represented the final repayment of the debt to PRe by CE and as such, was not a proper reinsurance transaction.

Impact of Transactions on Financial Statements and FSA Returns

1999

45. On 4 May 2000 the CE Board approved the company's audited annual accounts, the directors' report and the FSA Return for the year ended 31 December 1999.

46. Both the annual audited accounts and the FSA Return based on these accounts, were not prepared in accordance with applicable accounting standards in that:

    (a) the SLA with PRe was accounted for as a reinsurance contract when the substance of this agreement was the borrowing of monies from PRe; and

    (b) the SLA with CJ was accounted for as a reinsurance contract when this was in substance an injection of capital by CJ.

47. As a result, the annual audited accounts and the FSA Return did not present a true and fair view. CE's losses of circa £34m had been reduced improperly to a reported loss of circa £4m.

48. Messrs Yamazaki, Titterington, McKibbin, Oda and Okazaki were present at this board meeting. Although under an obligation to ensure that the accounts presented a true and fair view, and while knowing they did not for the reasons set out above, they failed to disclose the true nature of both the SLAs to E&Y and their fellow directors.

49. Mr McKibbin and Mr Okazaki were authorised by the Board to sign the Letter of Representation to E&Y. They subsequently signed this letter even though it stated that the reinsurance arrangement effected with PRe was a genuine risk transfer insurance policy and that there were no conditions or commitments in connection with the policy, other than as set out in the policy.

2000

50. After the merger with Dai Tokyo, the first AE board meeting was on 9 May 2001. This meeting approved the signing of the company's audited annual accounts and the directors' report for the year ended 31 December 2000.

51. Both the audited annual accounts and the FSA Return based on these accounts, were not prepared in accordance with applicable accounting standards in that:

(a) they overstated the premium payable to ACE under the LPT by £5m. This amount actually represented the settlement of a liability (on behalf of CJ) rather than a reinsurance premium; and

(b) the comparative figures for 1999 did not reflect the substance of the SLAs with both PRe and CJ.

52. As a result the audited annual accounts and the FSA Return did not present a true and fair view.

53. Messrs Okazaki, Yamazaki, McKibbin and Oda were amongst those present at this board meeting. Although under an obligation as directors of the company to ensure that its accounts showed a true and fair view, and while knowing that they did not for the reasons set out above, they failed to disclose to E&Y and their fellow directors that the LPT with ACE facilitated a repayment to PRe of £5m.

54. During this meeting Mr McKibbin was authorised to sign the Letter of Representation to E&Y relating to the 2000 accounts dated 9 May 2001. The letter stated that all transactions undertaken by the company had been properly accounted for. For the reasons set out above, this was not the case.

Part II

55. This part considers the conduct of each of the relevant individuals and the FSA's view thereof in relation to the matters discussed above.

A. Mr Yamazaki

56. Mr Yamazaki joined CJ in 1967. In June 1998, he was appointed as a director and general manager of CJ's International Department, and in June 2000 became managing director in charge of the International Department. In May 2001 he was transferred to London as a senior officer of CJ to manage CE's European operation. He returned to Tokyo in December 2001 and resigned from AJ at the end of March 2002.

57. Mr Yamazaki was a director of CE from 18 April 1991 until 22 October 2001. As a non-executive director of CE based in Tokyo, he received on a regular basis, the minutes of CE's board meetings and updates about the management itself and new developments. CE reported matters to CJ via Mr Miura in CJ's International Department and where necessary, matters would be escalated firstly to Mr Morota and then to him.

58. He is not currently, and has never been, an approved person.

The Stop Loss Agreement with PRe and the Letter of Guarantee

59. Mr Yamazaki did not take part in the negotiations with PRe in the initial stages. However, as the amount of cover to be provided by PRe increased, it became necessary for him to be involved.

60. When PRe sought a guarantee from CJ, Mr Yamazaki became involved in the attempts to persuade PRe to accept an alternative. Following negotiations with PRe and CJ, minor changes were made to the Parental Guarantee and it was then named a

Letter of Comfort. Mr Yamazaki signed the Letter of Comfort on or around 15 November 1999 in which CJ undertook to ensure CE met its contractual obligations.

61. Mr Okazaki informed Mr Yamazaki on or about 29 December 1999 that despite the above, PRe required a stronger guarantee than the one it originally proposed and that PRe regarded the transaction as a balance sheet item, rather than as a reinsurance transaction.

62. On 30 December 1999 Mr Yamazaki received a facsimile from PRe with the suggested wording of the guarantee from CJ. Mr Yamazaki wrote to PRe in an attempt to persuade them that the Letter of Guarantee was not necessary. In this letter he argued that a guarantee was unacceptable to CJ as E&Y would not permit CE *"... to use any guarantee for the purpose of improvement of profit and loss account..."*

63. Mr Yamazaki met with Mr Fukuda (the President of CJ) on 30 December 1999 and informed him that PRe would not agree to the SLA without a guarantee from CJ in some form. On 31 December 1999, Mr Yamazaki signed the Letter of Guarantee on behalf of CJ and sent it to PRe.

64. Mr Okazaki described the events of 30 and 31 December 1999 leading up to the signing of the Letter of Guarantee in a memo, addressed to, amongst others, Mr Yamazaki, marked "*Do not make copy; discard after review*." The memo indicates that during this time Mr Okazaki spoke to PRe and that PRe would not be accounting for the contract as a reinsurance transaction but as a loan. In addition, PRe was willing to negotiate with CJ to arrive at an alternative measure to replace the Letter of Guarantee before the close of CJ's financial year-end. PRe also undertook that details of this transaction would not voluntarily be made public in their financial statements or other disclosable documents.

65. Mr Yamazaki was therefore aware that E&Y would not permit the SLA with PRe to be used to improve CE's profit and loss account, that PRe did not view it as a reinsurance transaction and that CJ did not wish to disclose the guarantee in its own financial statements for the year ended 31 March 2000.

The Stop Loss Agreement with CJ

66. Mr Yamazaki attended a meeting at CJ on 29 December 1999 at which it was decided that the amount of stop loss cover provided by CJ to CE should be £10m.

67. The SLA was signed some time after 30 December 1999 and the signatures on the agreement were backdated. Mr Yamazaki was aware of the backdating at the time and that it was backdated in an attempt to avoid paying tax to the Japanese authorities.

Replacing the Letter of Guarantee

68. CJ negotiated a mechanism for repaying PRe to ensure the return of the Letter of Guarantee prior to its financial year-end on 31 March 2000. Mr Yamazaki was kept informed of negotiations in this regard. Furthermore, Mr Yamazaki attended a CJ internal meeting on 9 March 2000 to discuss the negotiations with PRe on the return of the Letter of Guarantee.

69. The outcome of these negotiations included the signing by Mr Yamazaki of a Letter of Confirmation between PRe and CJ in late March 2000.

70. Once the mechanisms to repay PRe were in place, the Letter of Guarantee was returned to CJ by PRe, directly to Mr Miura. Mr Yamazaki instructed Mr Miura to destroy it. This was despite CE's internal retention policy of maintaining documents for 5 years.

The Loss Portfolio Transfer Agreement with ACE

71. The LPT was a genuine contract to cap CE's losses from the London Underwriting Centre, which had stopped writing new business. A further £5m was added on to the premium paid by CE to ACE and ACE passed it on to PRe, thus enabling partial repayment. Mr Yamazaki was aware of the arrangements to repay PRe through the LPT and did not object to them.

The Stop Loss Agreement with CRe

72. The SLA with CRe was created with the purpose of completing repayment to PRe. Mr Yamazaki attended a meeting on 29 March 2001 at which the detail of the SLA was agreed. At the meeting it was agreed that the proposed retrocession agreement involving CJ would be accepted, given that it was only required for *"... appearance's sake*."

73. Mr Yamazaki was aware of the reasons for the transaction with CRe and that it represented the final method of repaying PRe.

Representations made to E&Y and other directors

1999 Audited Accounts

74. Mr Yamazaki did not have any direct contact with E&Y prior to the AGM. He knew however that E&Y's position was that if the SLA had payback provisions, then it would have to be accounted for as a loan.

75. In his letter to PRe on 30 December 1999, Mr Yamazaki stated that E&Y would not permit CE to use the SLA as a means to improve its profit and loss account. He also received Mr Okazaki's memo written on 29 December 1999 which reflected PRe's view that the SLA was intended to repair CE's balance sheet, and that the liability to repay the stop loss ought therefore to be represented on CE's balance sheet. Mr Okazaki further stated in this memo that he suspected that PRe was concerned about the implications for it should CJ be found to have dealt with the transaction improperly.

76. Mr Yamazaki attended the CE board meeting of 4 May 2000, at which the 1999 accounts were approved. He did not inform either the auditors (who also attended) or his fellow directors at this time about the nature of CE's agreement with PRe.

2000 Audited Accounts

77. Mr Yamazaki attended the board meeting on 9 May 2001 when the CE board approved the 2000 accounts. He failed to disclose to E&Y and his fellow directors the "bonus premium" of £5m added to the LPT agreement with ACE.

Representations to FSA

78. Mr Yamazaki attended the CE board meeting where the annual accounts were approved on 4 May 2000 and 9 May 2001. The FSA Returns were based on the annual accounts and were also approved at the CE board meetings on 4 May 2000 and 27 June 2001. Mr Yamazaki failed to disclose his knowledge that the FSA Returns, having been based on the CE 1999 and 2000 annual accounts, were consequentially incorrect.

Conclusion

79. Mr Yamazaki was a director of CE between 26 June 1992 and 22 October 2001 and was also a director of CJ at the relevant time. As such he owed a duty of care to CE and his fellow directors. His position in CJ's International Department meant that he was in an important position to influence events. Mr Yamazaki failed in his duties as a director of CE and failed to act with integrity and/or honesty, in the following respects:

    (a) he took an active part in negotiating a loan from PRe but concealed that there were payback arrangements from E&Y and CE's directors so that the transaction was treated as a reinsurance contract and not a loan in CE's 1999 financial statements. He was aware that this resulted in a false reduction in CE's reported 1999 losses. As a consequence the FSA Return was also inaccurate;

(b) he signed the Letter of Guarantee requested by PRe in the knowledge that the guarantee meant that the sum advanced by PRe to CE was a loan and not a genuine reinsurance transaction. He knew E&Y would not accept the SLA with PRe as a genuine reinsurance contract if there were arrangements for payback to PRe and he failed to disclose the existence of the Letter of Guarantee to E&Y and his fellow CE directors;

(c) he was aware of the backdating of the CE/CJ 1999 SLA and that it was done in an attempt to conceal the nature of the agreement and avoid the tax implications for CJ;

(d) he was party to concealing the true nature of the retrocession agreements entered into by CJ in order to repay the sums paid to CE by PRe;

(e) he instructed a subordinate officer to destroy the Letter of Guarantee once PRe had returned it, despite CE's internal retention policy of maintaining documents for 5 years. Consequently, its existence was concealed from E&Y;

(f) in the knowledge of CE's arrangements with ACE to add an additional premium of £5m to the LPT to repay PRe, he failed to inform E&Y and his fellow CE directors of the full and true nature of the contract. This enabled CE to misstate its 2000 results (and, consequently, its 2000 FSA Return), and to avoid having to restate its 1999 accounts (and 1999 FSA Return); and

(g) in the knowledge of the arrangements with CRe to allow CE to repay £7.75m to PRe, Mr Yamazaki failed to disclose the true nature of these arrangements to E&Y and his fellow CE directors.

80. Given the fundamental importance it attaches to the duty owed by directors of regulated companies to act with honesty and integrity, the FSA has very serious concerns about Mr Yamazaki and the way he has acted.

81. It appears to the FSA that in view of the matters referred to in paragraph 79 above, Mr Yamazaki is not fit and proper to perform any functions in relation to any regulated activity carried on by any authorised person. The FSA has decided that it is necessary to impose a prohibition order as this is a most serious case of lack of fitness and propriety such that Mr Yamazaki represents a risk to consumers and to confidence in the financial system generally.

82. The FSA considers that, by his conduct as set out above, Mr Yamazaki demonstrated a fundamental lack of fitness and propriety and has failed to satisfy the criterion of honesty, integrity and reputation. Mr Yamazaki's misconduct has operated to the detriment of confidence in the financial system.

B. Mr Okazaki

83. In June 1999 Mr Okazaki became the Chief Executive of CE and in May 2001 he became the Chief Operating Officer of AE until December 2001. He was a director of CE between 1 August 1999 and 22 October 2001 and he was an acknowledged reinsurance expert.

84. As Chief Executive Mr Okazaki had autonomy to deal with purely local matters but all strategic matters had to be referred to CJ through CJ's International Department, which was considered "responsible" for CE. Either Mr Okazaki or Mr Oda (his assistant) was in constant contact with the International Department.

85. Mr Okazaki is not currently, and has never been, an Approved Person.

<u>The Stop Loss Agreement with PRe</u>

86. Mr Okazaki decided to approach PRe with the suggestion that it should enter into a SLA with PRe and he had a meeting with PRe at the end of September 1999 to discuss such a contract. He informed PRe that the cover was intended to improve CE's net results on its revenue account for 1999. He reported this to CJ.

87. Mr Okazaki was given approval to continue the discussions with PRe, which he did. PRe sent the first draft documents to put the SLA in place to Mr Okazaki on 28 October 1999. This included the draft SLA and Parental Guarantee. Mr Okazaki on CJ's behalf negotiated revised wording for the Parental Guarantee in the Letter of Comfort. Mr Okazaki was aware that this could not be regarded as a conventional reinsurance contract.

88. Mr Okazaki was present at the meeting with E&Y to discuss the proposed SLA and was aware that a genuine transfer of risk was required before it could be treated as a reinsurance contract. After these initial discussions with E&Y in November 1999, E&Y were not informed that repayment to PRe was being considered outside the SLA or of the existence of the Letter of Comfort.

89. Mr Okazaki was aware that changes were subsequently made to the draft SLA as a result of the discussions with E&Y, as E&Y would not permit the SLA with PRe to be used to improve CE's profit and loss account.

<u>The Letter of Guarantee</u>

90. Mr Okazaki was involved in the attempts to persuade PRe to accept something less than the originally proposed unconditional guarantee from CJ.

91. PRe informed Mr Okazaki on 29 December 1999, that PRe regarded the transaction as a balance sheet item, rather than as a reinsurance transaction and that the liability to repay the amount advanced under the SLA ought to be represented on CE's balance sheet.

92. Mr Okazaki received a copy of PRe's draft Letter of Guarantee from Mr Morota on 29 December 1999, as well as a draft of a suggested letter from Mr Yamazaki to PRe stating that the proposed guarantee was unacceptable to CJ because CE's auditors would insist that it be treated as a balance sheet item. Mr Okazaki also received a copy of the net worth agreement. This was a letter from CJ to CE, dated 30 November 1998, which promised to maintain the capital of CE and to provide cash to

enable it to meet its liabilities. Mr Okazaki sent a version of this in turn to PRe, suggesting that the agreement provided sufficient reassurance to PRe that it would be repaid. This alternative was not acceptable to PRe.

93. Mr Okazaki took part in further negotiations with PRe between 30 and 31 December 1999 during which PRe stated that they would not be accounting for the contract as a reinsurance transaction but as a loan. Mr Okazaki was aware that CJ did not wish to disclose the Letter of Guarantee in its own financial statements for the year ended 31 March 2000. PRe informed Mr Okazaki that they were willing to negotiate with CJ to arrive at an alternative measure to replace the Letter of Guarantee before the close of CJ's financial year-end and that the details of this transaction would not voluntarily be made public in their financial statements or other disclosable documents.

The Stop Loss Agreement with CJ

94. Mr Okazaki took part in the discussions with CJ regarding the SLA and the level of cover. He knew that the Japanese tax authorities were likely to tax any such arrangement as a gift unless it was entered into for commercial reasons. In this context, arrangements were made for the SLA to be backdated and Mr Okazaki decided that Mr Titterington was the appropriate person to sign and backdate the SLA because he was in charge of all reinsurance agreements for CE. He then asked Mr Oda to arrange for Mr Titterington to sign the cover note.

Replacing the Letter of Guarantee

95. Mr Okazaki was involved in negotiations with PRe regarding the replacement of the Letter of Guarantee, the discussions regarding alternative repayment mechanisms, and the process of retrieving the Letter of Guarantee.

96. On 9 March 2000 it was agreed that PRe would release the guarantee upon entering into three retrocession agreements and a profit commission waiver agreement with CJ and upon receiving a Letter of Confirmation. Mr Okazaki was updated on the

progress of negotiations and he was aware that the Letter of Confirmation and the three contracts were signed on 27 March 2000.

97. CJ requested Mr Okazaki to contact PRe to ensure the return of the Letter of Guarantee before CJ's financial year-end. Mr Okazaki did so. On 29 March 2000 Mr Okazaki was informed by PRe that the letter confirming the release of the Letter of Guarantee would be sent to CJ immediately. Mr Okazaki requested PRe to send this letter before the close of business in Bermuda on 30 March 2000, because of the time difference with Tokyo.

The Loss Portfolio Transfer Agreement with ACE

98. Mr Okazaki was aware in about July 2000 that in view of the merger between Dai Tokyo and CJ, Dai Tokyo did not wish to carry forward the liability to PRe into the new company.

99. In mid July 2000 Mr Okazaki discussed the possibility of novating the three retrocession contracts to CE and the potential problems with Mr McKibbin.

100. By the time that CE announced that it was closing its London market operation at the end of the year 2000, it had been agreed that a LPT would be concluded. Mr Okazaki was the primary point of contact for the brokers who were instructed to find potential counterparties for the LPT. He also attended a meeting with PRe to discuss how repayment of PRe could be achieved and to what extent this could be linked to the closure.

101. When ACE was selected as the counterparty reinsurer, Mr Okazaki informed ACE that the major reason for asking them to make part of the repayment to PRe through the LPT was to avoid the risk that the transaction would be taxed in Japan. He knew therefore that the arrangement for payment of the extra premium was unlikely to be regarded as a genuine reinsurance contract by the tax and regulatory authorities.

102. Mr Okazaki placed a firm order with ACE through brokers shortly before the end of December 2000, to ensure that the LPT was put in place by CE's year-end.

The Stop Loss Agreement with CRe

103. CRe undertook to contact Mr Okazaki with a decision as to whether it would enter into a SLA with CE. He received a note from CJ of a meeting with CRe in this regard, headed "*Handle with care*." Mr Okazaki then informed PRe of the meeting.

104. Mr Okazaki discussed possible arrangements with CRe and he kept CJ informed of progress. On 29 March 2001 CRe emailed first drafts of reinsurance and retrocession slips to Mr Okazaki and Mr Morota. He was kept informed of progress regarding the conclusion of the CRe SLA.

105. Mr Okazaki signed the SLA between CRe and CE on CE's behalf in early April 2001, which was backdated to 31 March 2001. Mr Okazaki was aware that the element of the contract that represented a repayment of the debt to PRe by CE was not a genuine reinsurance transaction.

Representations made to E&Y

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106. As a director of CE Mr Okazaki had a responsibility to ensure that the financial statements and FSA Return were accurate and gave a true and fair view of the results for any financial year. In addition as CEO of the company Mr Okazaki had overall responsibility for ensuring that the financial statements were accurate.

107. Mr Okazaki knew that E&Y would not permit the contract with PRe to be treated as a reinsurance contract while it contained payback provisions. He knew the payback clause was deleted from the SLA with PRe, whilst continuing discussions as to how

payback could actually be made to PRe. The true nature of the contract was therefore disguised from the auditors.

108. The Letter of Comfort to PRe was signed by CJ in terms of which CJ undertook to ensure that CE would repay PRe. Mr Okazaki took no steps to inform E&Y that it existed. When the Letter of Comfort was subsequently replaced by the stronger unconditional Letter of Guarantee from CJ to PRe, Mr Okazaki took no steps to inform E&Y that this had occurred.

109. On 7 April 2000 at a client meeting with CE, at which Mr Okazaki was present, E&Y referred to its requirement for a reference to the PRe SLA in CE's Letter of Representation, stating that it was a one-off, stand alone agreement. By this time the Letter of Guarantee had been returned to CJ and destroyed and the three retrocession contracts, the profit commission waiver and Letter of Confirmation had been agreed between CJ and PRe. Mr Okazaki did not make this known to E&Y.

110. The financial statements for the year ended 31 December 1999 were approved by the CE board at a meeting on 4 May 2000. E&Y staff attended part of the meeting and Mr Okazaki failed to inform those present of the payback arrangement associated with the PRe SLA.

111. On 4 May 2000 Mr Okazaki co-signed the Letter of Representation to E&Y, stating that all possible events of non-compliance with law or regulations of which the directors were aware, and the contingent consequences, had been disclosed to E&Y. The letter further stated that the reinsurance arrangements with PRe involved a genuine transfer of risk and that there were no conditions or commitments, other than those set out in the policy.

112. Mr Okazaki failed to take steps to ensure that the true nature of the SLA with PRe was reflected in the financial statements for 1999. It was accounted for as a reinsurance transaction and the financial statements were therefore materially misstated. As the FSA Return for the period was prepared from the same accounting records and was based on the financial statements, it too was materially misstated.

113. Mr Okazaki knew that the Letter of Confirmation required by PRe when the Letter of Guarantee was replaced by the three retrocession agreements and the profit waiver agreement meant that the PRe SLA, the guarantee from CJ, and the subsequent agreements should have been regarded as aspects of a single transaction. He therefore knew that the essence of the transaction between CE and PRe was that PRe made a loan to CE and that it was not a genuine reinsurance transaction, despite the fact that CJ was ultimately liable for repayment of the loan.

114. Mr Okazaki signed the financial statements and the FSA Return. He also signed the Letter of Representation, whilst knowing that there were conditions or commitments, written or otherwise, in connection with the SLA, despite the statement to the contrary set out in the Letter of Representation.

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115. Mr Okazaki did not attend the meeting with E&Y on 21 December 2000 regarding the LPT contract with ACE. He knew however that CE did not inform E&Y about the 'bonus premium' element of the amounts to be paid to ACE. Despite this, he reported to CJ on 21 December 2000 that the approval of E&Y had been obtained for the LPT contract.

116. The financial statements for the year ended 31 December 2000 were approved by CE's board at a meeting on 9 May 2001 at which E&Y staff were present. Mr Okazaki signed the financial statements while he knew that they included the £5m overstatement of the premium payable to ACE under the LPT and also that the comparatives were incorrect. This meant that the financial statements were materially misstated. Mr Okazaki failed to inform those present of the extra premium that had been paid to ACE or its purpose.

117. Mr Okazaki also signed the FSA Return (based on the misstated financial statements) for the year ended 31 December 2000.

Representations made to the FSA

118. On 26 January 2000 Mr Okazaki and Mr McKibbin attended a meeting with representatives of the FSA. At the meeting Mr Okazaki failed to inform the FSA about the true nature of the SLA with PRe or the fact that the SLA with CJ had been put in place after the year-end and, in the circumstances, contained no element of risk transfer.

119. There were a number of meetings between CE and the FSA during the years 2000 and 2001. Once the LPT had been agreed, Mr Okazaki failed to inform the FSA during these meetings about the bonus premium element of the LPT contract with ACE.

120. Mr Okazaki knew that the books and records of CE had been incorrect and that the audited annual statements sent to Companies House and the Return to the FSA contained misleading information.

Conclusion

121. Mr Okazaki was an executive director of CE between 1 August 1999 and 22 October 2001. As such he owed a duty of care to CE and his fellow directors. He acted primarily on instructions passed to him by the International Department at CJ. He was also the most senior executive director at CE throughout the period under review and therefore had the principal responsibility for its actions. He took a leading part in many of the negotiations with third parties and was proactive in seeking solutions to the problems that the Chiyoda Group faced. Mr Okazaki failed in his duties as a director of CE and failed to act with honesty and/or integrity. In particular:

(a) he negotiated the details of the SLA between CE and PRe while he knew that E&Y regarded the transaction as a loan (in substance), and not a reinsurance contract, if it included payback obligations to PRe;

(b) he did not inform E&Y of the existence of the Letter of Comfort, which was designed to ensure payback to PRe in the event that CE had insufficient resources;

(c) once the wording of the SLA was amended he took no steps to consult E&Y about the arrangements which he knew remained in place to ensure that PRe was repaid;

(d) whilst he attempted to persuade PRe not to insist on the guarantee it demanded from CJ at the end of 1999, he knew that the Letter of Guarantee was ultimately signed and that the substance of the transaction between PRe and CE was therefore a loan;

(e) he failed to ensure that the true nature of the transaction with PRe was properly reflected in the books and records of CE and consequently in the financial statements and FSA Return for the year ended 31 December 1999 and signed these documents in the knowledge that they were misleading;

(f) he signed a Letter of Representation to E&Y for the year ended 31 December 1999 which contained misleading statements in the knowledge that they were misleading;

(g) he failed to ensure that his fellow directors or E&Y were made aware of the true nature of the transaction with PRe;

(h) he knew that the Letter of Guarantee was replaced by retrocession contracts between CJ and PRe but failed to consult E&Y about the implications of these transactions for CE;

(i) at a meeting with FSA or thereafter, he failed to inform the FSA of the true nature of the contract with PRe and knew that this was misrepresented to the FSA (including through the FSA Return);

(j) having negotiated the terms of the LPT contract with ACE so that it entailed payment of £5m to PRe, he failed to take steps to ensure that E&Y was consulted about the proper treatment of this item, in the knowledge that it was unlikely to be regarded as a genuine reinsurance contract by the tax and regulatory authorities;

(k) he failed to alert his fellow directors to, or to inform the FSA of the extra payment to ACE;

(l) he signed financial statements and the FSA Return for the year ended 31 December 2000 in the knowledge that they were misleading; and

(m) he permitted the conclusion of the SLA with CRe in March 2001 when he knew that its main purpose was not reinsurance**.**

122. Given the fundamental importance it attaches to the duty owed by directors of regulated companies to act with honesty and integrity, the FSA has very serious concerns about Mr Okazaki and the way he has acted.

123. It appears to the FSA that in view of the matters referred to in paragraph 121 above, Mr Okazaki is not fit and proper to perform any functions in relation to any regulated activity carried on by any authorised person. The FSA has decided that it is necessary to impose a prohibition order as this is a most serious case of lack of fitness and propriety such that Mr Okazaki represents a risk to consumers and to confidence in the financial system generally.

124. The FSA considers that, by his conduct as set out above, Mr Okazaki demonstrated a fundamental lack of fitness and propriety and has failed to satisfy the criterion of honesty, integrity and reputation. Mr Okazaki's misconduct has operated to the detriment of confidence in the financial system.

C. Mr McKibbin

125. Mr McKibbin joined CE in 1992. He was appointed as a Director and General Manager (Finance and Administration) on 1 January 1996. Mr McKibbin was a director of CE between 1 January 1996 and 22 October 2001. He was also company secretary of CE between 17 September 1992 and 26 July 2001. As Group Corporate Finance Director and company secretary Mr McKibbin was responsible for the production of the financial statements and management accounts of CE.

126. Mr McKibbin attended the meetings of the Executive Management Committee in London instituted in July 1999. The Committee considered (among other things) the financial information presented to it by Mr McKibbin. He had limited direct contact with CE's head office in Japan.

127. Mr McKibbin is not currently, and has never been, an Approved Person.

The Stop Loss Agreement with PRe

128. On 4 November 1999 PRe informed, amongst others, Mr McKibbin that PRe would provide cover of £27.5m if CJ signed the Letter of Comfort.

129. Mr McKibbin was responsible for ensuring that E&Y were satisfied that any proposed contract could properly be treated as a reinsurance transaction. He attended the meeting with E&Y on 22 November 1999 to discuss the proposed SLA. At the meeting, E&Y explained the issues of repayment to PRe and of reporting the substance of the transaction.

130. Mr McKibbin did not inform E&Y at this meeting of the existence of the Letter of Comfort. He was aware that the substance of the relevant transaction was the borrowing of monies by CE from PRe, with the subsequent repayment of that borrowing and as a result, there was no significant transfer of insurance risk to PRe.

Mr McKibbin was aware that true risk transfer was essential for the agreement to qualify as a reinsurance contract.

131. Although the payback provisions were to be removed from the SLA, E&Y informed Mr McKibbin that they wished to include a separate reference to the SLA in the Letter of Representation to E&Y regarding CE's financial statements for the year-end 31 December 1999, to the effect that there was no undertaking written or implied to repay any loss that PRe incurred.

132. Mr McKibbin updated PRe about the changes to the contract as a result of E&Y's recommendations and informed them of E&Y's requirement in respect of the Letter of Representation.

The Letter of Guarantee

133. Mr McKibbin was involved to a limited extent in the attempts to persuade PRe to accept something less than an unconditional guarantee from CJ. On 30 December 1999, he sent a fax containing suggested wording for the Letter of Guarantee to be provided to PRe from his home to Mr Okazaki.

134. On 31 December 1999 Mr Yamazaki signed the Letter of Guarantee as originally proposed by PRe and PRe faxed the SLA cover note to Mr McKibbin at home, at the request of Mr Okazaki.

135. Mr McKibbin was consulted about the possibility of providing a guarantee to PRe and the wording that might be used. He was aware that suggested amendments to PRe's drafts had been put forward, and he did not object to the inclusion of references to CE in the draft document. Mr McKibbin was aware that an agreement was reached with PRe in terms of which PRe would be reimbursed in some way for the amounts that it paid to CE and that there was therefore no transfer of risk to PRe.

136. Mr McKibbin was aware that PRe had insisted on the Letter of Guarantee from CJ being provided before it extended the funds to CE and therefore knew that some form of guarantee to or arrangement with PRe had been put in place, at the latest, when he received the SLA cover note from PRe.

Replacing the Letter of Guarantee

137. Around March 2000, Mr Okazaki informed Mr McKibbin that the contracts (the three retrocessions entered into to repay PRe and the Letter of Confirmation) had been signed and that they represented a replacement of the Letter of Guarantee.

138. Mr McKibbin decided that it was not necessary for CE's financial statements for 1999 to be restated as the Letter of Guarantee was no longer in place, having been replaced. He did not take steps to discuss this matter with E&Y.

139. Mr McKibbin did not ask for a copy of the Letter of Guarantee and took comfort from the fact that the replacement contracts did not mention CE, although he did not have sight of these contracts.

140. As Finance Director of CE, Mr McKibbin was under an obligation to ensure that the financial statements of the company gave a true and fair view. He was aware of the Letter of Guarantee but did not enquire whether it was given prior to signing of the cover note for the PRe SLA. The PRe SLA combined with the Letter of Guarantee meant that the substance of the transaction was a loan and Mr McKibbin was aware that such an arrangement was not a reinsurance contact.

The Loss Portfolio Transfer Agreement with ACE

141. Mr McKibbin considered options to repay PRe in the context of the closure of CE's London Underwriting Centre operation and the necessity to find an accelerated method of repaying PRe in advance of the merger between CJ and Dai Tokyo. Mr

McKibbin met with PRe in Bermuda in October 2000 to discuss repayment of PRe and the link to the closure.

142. During November 2000 CJ requested that the LPT with ACE be used to "transfer profit" (i.e. partly repay) to PRe. Mr McKibbin stated that CE could have nothing to do with any payback arrangements. However ultimately it was agreed that one way that the repayment could be achieved was to make sure that the overall premium was a reasonable one.

143. It was Mr McKibbin's responsibility to consider the correct accounting treatment for the LPT contract. On 21 December 2000, Mr McKibbin met with E&Y to consider whether the LPT contract contained a sufficient element of risk transfer to be treated as a contract of reinsurance. Mr McKibbin did not inform E&Y of the bonus premium. He considered the payment to ACE as "borderline" in terms of whether it represented a risk premium or not and although he considered consulting E&Y, he did not do so. He believed that as long as there was adequate risk transfer in the contract for it to be treated as a reinsurance transaction, there was no need to make a distinction between the premium that was paid for the LPT cover and the extra £5m.

144. In both the financial statements of CE for the year ended 31 December 2000 and the FSA Return for the same period (based on the financial statements), the entire £92m premium payable to ACE was treated as a reinsurance premium. As Group Finance Director of CE, Mr McKibbin was under an obligation to ensure that the financial statements of the company gave a true and fair view. He failed to ensure that this transaction was correctly reflected in the books and records of CE.

145. In addition, given that the transaction entailed partial repayment of the amounts paid to CE by PRe and that he knew it was "borderline", he failed to ensure that the accounting treatment previously adopted for the SLA with PRe was revised, and failed to consult E&Y in this regard.

The Stop Loss Agreement with CRe

146. Mr McKibbin was not involved in the negotiations but knew about the proposed contract and instructed his staff on the appropriate accounting treatment. He received first drafts of reinsurance and retrocession slips for a proposed contract. He knew that the intended transaction was, in effect, a repeat of the one carried out with ACE, in that an extra amount was to be added to the premium payable by CE. This in turn would be passed to PRe in repayment of the amount advanced to CE.

147. In view of the doubts he had as to whether the SLA with CRe could be regarded as a reinsurance contract and whether it entailed sufficient risk transfer, Mr McKibbin discussed the issue with Mr Okazaki. At this stage, Mr Okazaki had concluded the arrangements and Mr McKibbin instructed his staff to account for the whole transaction as if it was a genuine reinsurance transaction. He did not consider raising the matter with E&Y and he believed that they would inevitably raise it with him because of the size of the "premium".

148. As Group Finance Director of CE, Mr McKibbin was under an obligation to ensure that the financial statements of the company gave a true and fair view. He knew that the proposed contract with CRe was not a genuine reinsurance transaction and he failed to ensure that it was accounted for properly when initially entered into the books and records of CE.

Representations made to E&Y and other directors

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149. As a director of CE Mr McKibbin was responsible for ensuring that the financial statements and FSA Return were accurate and gave a true and fair view of the results for any financial year. In addition, as Finance Director, Mr McKibbin had overall responsibility to ensure that the appropriate accounting treatment was applied to each transaction undertaken by CE.

150. In relation to the PRe SLA, Mr McKibbin was told by E&Y in November 1999 that there should not be any repayment to PRe. Given his knowledge of the Letter of Comfort Mr McKibbin understood that CJ would be involved in making a payback if CE did not fulfil the obligation to repay PRe. Mr McKibbin withheld this information from E&Y on the grounds that the repayment did not involve CE.

151. At the end of December 1999 Mr McKibbin was aware that PRe was insisting on a guarantee and was consulted on its wording. He was then sent the PRe SLA cover note and consequently knew that a guarantee in some form had been provided, despite being informed that the compliance matters had been cleared up in Japan.

152. Mr McKibbin was present at the CE board meeting on 4 May 2000 at which CE's accounts for the financial year-end 31 December 1999 were approved. He failed to disclose to his fellow directors that there was a repayment arrangement to PRe. At the same meeting the board approved the signing of the Letter of Representation by Mr Okazaki and Mr McKibbin. Mr McKibbin signed this on 4 May 2000 in the knowledge that there were conditions or commitments, written or otherwise, in connection with the SLA, despite the statement to the contrary set out in the Letter of Representation.

153. Mr McKibbin permitted the approval of CE's 1999 financial statements by the relevant CE directors, while he knew that they were false in material respects. In addition Mr McKibbin permitted some of his fellow board members to approve the Letter of Representation to E&Y at a time when he was aware of the existence of the Letter of Guarantee at the year-end and he failed to inform them accordingly.

154. Despite the above, Mr McKibbin signed the financial statements for the year ended 31 December 1999.

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155. On 9 May 2001 Mr McKibbin permitted the approval of CE's financial statements for the year ended 31 December 2000 by the relevant CE directors, while he knew that

they were false in material respects. Mr McKibbin was aware that some of his fellow board members approved the Letter of Representation to E&Y at a time when he was aware (while they were not) that, given the bonus premium paid on the LPT and the existence of the guarantee given to PRe, his declaration in the letter that every matter of significance to the accounts had been disclosed was not accurate.

Representations made to the FSA

156. On 26 January 2000 Mr McKibbin and Mr Okazaki attended a meeting with representatives of the FSA. The meeting was requested by Mr McKibbin to explain the steps that CE had taken in respect of the unexpectedly poor results for 1999. At the meeting, Mr McKibbin explained that the original losses for the year of circa £34m had been reduced to £4m by means of recoveries under SLA's with PRe and CJ. Mr McKibbin failed to inform the FSA of the true nature of the contract with PRe.

157. Mr McKibbin signed the FSA Return for the year ended 31 December 1999. This Return was based on the financial statements for this period which Mr McKibbin knew to be false in material respects.

158. During regular meetings with the FSA in the years 2000 and 2001, once the LPT had been agreed, Mr McKibbin failed to inform the FSA about the bonus premium element of the LPT contract with ACE when he knew that the FSA should have been informed of this matter.

159. Mr McKibbin signed the FSA Return for the year ended 31 December 2000, based on the financial statements for the period which Mr McKibbin knew to be false in material respects, in that they overstated the premium payable to ACE under the LPT by £5m, and the comparative figures for 1999 did not reflect the substance of the SLA's with both PRe and CJ.

Conclusions

160. Mr McKibbin was a director of CE between 1 January 1996 and 22 October 2001. As such he owed a duty of care to CE and his fellow directors. He did not initiate any of the transactions discussed above but took part in negotiations concerning them. He failed in his duties as a director of CE and failed to act with integrity and/or honesty, in the following manner:

(a) he was aware of the details of the proposed contract with PRe and was responsible for obtaining E&Y's approval for the transaction;

(b) having obtained EY's opinion and, as a result, having the wording of the contract changed, he did not consult the auditors about the arrangements that remained in place to ensure that repayment to PRe was effected, despite E&Y's advice that any repayment arrangements meant that the transaction was not a genuine reinsurance agreement;

(c) having been made aware that the Letter of Guarantee between CJ and PRe had been in existence at the end of CE's financial year (31 December 1999) he did not have regard to the wording of the guarantee nor the implications thereof for the financial statements of CE for the year ended 31 December 1999. He failed to take steps to revise the financial statements of CE or to consult E&Y about the proper treatment of the transaction with PRe;

(d) in the knowledge that the guarantee was replaced by retrocession contracts between CJ and PRe he still failed to consult E&Y about the implications for CE of these transactions;

(e) he signed misleading financial statements and the FSA Return for the year ended 31 December 1999 in the knowledge that they were misleading;

(f) he signed a Letter of Representation to E&Y for the year ended 31 December 1999 which similarly contained misleading statements. Mr McKibbin requested that Mr Okazaki also sign the Letter of Representation (in contrast with prior years) because he did not wish to take sole responsibility for signing the document;

(g) he failed to alert his fellow directors to, or to inform the FSA of the true nature of the contract with PRe and that it was in effect a loan;

(h) in the knowledge that the LPT with ACE entailed payment of £5m which ACE was to pass to PRe, Mr McKibbin failed to consult E&Y about the proper treatment of the transaction although he believed that as a reinsurance premium the payment was "borderline". He also permitted the extra payment to be treated as a reinsurance premium, causing the financial statements for the year ended 31 December 2000 to contain misleading statements, and he failed to revise the opening figures to reflect the fact that the amounts advanced by PRe in 1999 had in effect been a loan;

(i) he signed financial statements and the FSA Return for the year ended 31 December 2000 which were misleading in the knowledge that they were misleading;

(j) he failed to alert his fellow directors to, or to inform the FSA of the extra payment to ACE; and

(k) he permitted the arrangement with CRe in March 2001 to proceed when its main purpose was not reinsurance.

161. Given the fundamental importance it attaches to the duty owed by directors of regulated companies to act with honesty and integrity, the FSA has very serious concerns about Mr McKibbin and the way he has acted.

162. It appears to the FSA that in view of the matters referred to in paragraph 160 above, Mr McKibbin is not fit and proper to perform any functions in relation to any regulated activity carried on by any authorised person. The FSA has decided that it is necessary to impose a prohibition order as this is a most serious case of lack of fitness and propriety such that Mr McKibbin represents a risk to consumers and to confidence in the financial system generally.

163. The FSA considers that, by his conduct as set out above, Mr McKibbin demonstrated a fundamental lack of fitness and propriety and has failed to satisfy the criterion of honesty, integrity and reputation. Mr McKibbin's misconduct has operated to the detriment of confidence in the financial system.

D. Mr Oda

164. Mr Oda spent his career after graduation from university with CJ. In the spring of 1999 Mr Oda moved to London as assistant to the new Chief Executive Officer of CE, Mr Okazaki. He returned to Japan at the end of 2001. Mr Oda was a director of CE between 27 April 1999 and 14 August 2001.

165. Mr Oda was a non-executive director of CE and acted primarily under Mr Okazaki's direction. Mr Oda's role included direct contact with CJ's International Department. He also attended meetings of CE's managing committee with Mr Okazaki. He was entitled to vote at meetings of CE's executive management committee (which would normally be outside of the powers of a non-executive director). He is not currently, and never has been, an Approved Person.

The Stop Loss Agreement with PRe

166. Mr Okazaki conducted the negotiations with PRe and as his assistant Mr Oda was aware at all relevant times of the arrangements to improve CE's 1999 results, and of the resulting accounting issues. Mr Oda prepared an action plan for achieving the improvements in the 1999 results, including as a top priority, the PRe SLA. This plan was discussed at a CE internal meeting which he attended.

167. Mr Oda forwarded the Letter of Comfort signed by Mr Yamazaki on or about 15 November 1999 to PRe. Mr Okazaki and Mr Oda regularly reported to CJ on the progress on negotiations with PRe. In a note to CJ Mr Oda stated that it would be necessary to convince the PRe Board that "… *what is in reality a loan will not become irrecoverable*."

168. On 15 December 1999 Mr Oda updated the International Department on changes to the SLA. In this update Mr Oda discussed drafting an additional document which would state that the SLA should be viewed in conjunction with the Letter of Comfort and other documents. Mr Oda suggested that this additional document should remain concealed from both CJ's internal auditors and CE's auditors. The additional document was a precursor to the Letter of Confirmation which was signed during March 2000.

The Letter of Guarantee

169. Mr Oda was involved in the negotiations with PRe regarding the guarantee requirement. As discussed above, Mr Oda discussed with CJ the need for documentation to be concealed from CJ's internal auditors and E&Y.

The Stop Loss Agreement with CJ

170. Mr Oda was aware of the decision to backdate the SLA from a date after 30 December to June 1999. He was requested to and did ensure that Mr Titterington signed and backdated the agreement and covering letter. He knew that CJ wished the contract to be backdated for tax purposes and explained this to Mr Titterington.

Replacing the Letter of Guarantee

171. CJ intended to take the lead in negotiations with PRe to replace the Letter of Guarantee but informed Mr Okazaki and Mr Oda that their continued assistance

would be expected. Mr Oda was kept up to date with and was actively involved in negotiations.

172. He was aware of the detail of the arrangements to replace the Letter of Guarantee up to the date on which the retrocession agreements were eventually signed on or around 31 March 2000. He also knew that the true purpose of the transactions (i.e. the three retrocession agreements, the profit commission waiver agreement and the Letter of Confirmation) was to ensure that repayment was made to PRe and to obtain the return of the Letter of Guarantee. Mr Oda signed the novation and retrocession agreements necessary for repaying PRe on behalf of CJ as its London Representative.

The Loss Portfolio Transfer Agreement with ACE

173. Mr Oda was involved in designing the mechanism to use the LPT as a means to repay PRe. He also explained to the brokers involved how the LPT would result in a repayment to PRe of £5m. Mr Oda knew that the additional premium was not part of the LPT and was to be used to repay PRe in respect of the debt due from the 1999 SLA.

The Stop Loss Agreement with CRe

174. Mr Oda knew that the CRe SLA was used to transfer sums to PRe as repayment.

Representations made to E&Y and other directors

1999 Audited Accounts

175. As a director of CE Mr Oda had a responsibility to ensure that the financial statements and FSA Return were accurate and gave a true and fair view of the results for any financial year. He knew that E&Y were not consulted specifically about the Letter of Comfort or the Letter of Guarantee. He considered the need to conceal certain documents which explained the link between the Letter of Comfort and the PRe SLA.

176. Mr Oda was aware of the existence of the Letter of Confirmation, which linked the PRe SLA, the retrocessions and the profit commission waiver. He knew that the essence of the transaction between CE and PRe was that PRe made a loan to CE and that the fact that CJ was potentially liable for repayment of the loan did not make the transaction one of reinsurance. However, Mr Oda failed to inform E&Y of the existence either of the Letter of Confirmation or of the replacement transactions even though he knew that it might have affected the way the auditors viewed the PRe SLA.

177. Although he was actively involved in the backdating of the CE/CJ cover note by approximately 6 months, he did not inform E&Y of the true date on which the document was signed.

178. Mr Oda was present at the CE Board meeting where the financial statements for the year ended 31 December 1999 were approved on 4 May 2000. E&Y staff attended part of the meeting at which Mr Oda was present. Mr Oda failed to mention to his fellow directors and others present at the meeting that an arrangement was in place to repay PRe, despite being aware that such an arrangement existed.

2000 Audited Accounts

179. Mr Oda did not sign the financial statements for the year ended 31 December 2000, but he knew that these statements included the £5m overstatement of the premium payable to ACE under the LPT and also that the comparative figures for the previous year were therefore incorrect and should have been restated.

180. He did not inform E&Y about the true nature of the CRe contract which was concluded before the approval of the 2000 annual accounts (i.e. to facilitate the final repayment to PRe).

181. The financial statements for the year ended 31 December 2000 were approved by the board of CE at a meeting on 9 May 2001 and E&Y staff attended. Mr Oda failed to mention the extra premium that had been paid to ACE or its purpose to his fellow

directors and others present at the meeting or the nature of the contracts between CE and PRe, and between CE and CRe.

Representations made to the FSA

182. Mr Oda was aware of the meeting with the FSA where Mr McKibbin explained the steps that CE had taken in respect of its poor results for 1999. Mr Oda failed to inform the FSA about the Letter of Guarantee to PRe or the backdated SLA with CJ, when he knew that the FSA was not informed of their existence.

183. Despite being aware that the CRe SLA was used to transfer funds to PRe, Mr Oda did not inform the FSA of the true nature of the CRe contract.

Conclusions

184. Although Mr Oda acted primarily under Mr Okazaki's direction, he was involved in carrying out the decisions made and was involved in some of the decision making. Mr Oda was a director of CE between 1 August 1999 and 22 October 2001. As such he owed a duty of care to CE and his fellow directors. Mr Oda failed in his duties as a director of CE and failed to act with integrity and/or honesty, in the following respects:

(a) he was aware of the negotiations regarding the loan from PRe but failed to disclose the true facts to E&Y and his fellow CE directors;

(b) he was aware of the backdating of the CE/CJ 1999 SLA and that this was done for the purpose of concealing the nature of the agreement and avoid the tax implications for CJ. He requested and ensured that Mr Titterington backdated his signature;

(c) he was aware that the true nature of the retrocession agreements entered into by CJ was to facilitate repaying the sums paid to CE by PRe;

(d) he was aware of the arrangements to have the Letter of Guarantee returned by PRe, and that its existence was not disclosed to E&Y;

(e) he was aware of CE's arrangements with ACE to add an additional premium of £5m to the LPT to repay PRe, and he knew that the additional premium was not part of a genuine reinsurance contract. He failed to disclose the full and true nature of the contract to E&Y and to his fellow CE directors; and

(f) he was aware of the arrangements with CRe to facilitate the repayment of £7.75m to PRe, yet failed to disclose the true nature of these arrangements to E&Y and his fellow CE directors.

185. Given the fundamental importance it attaches to the duty owed by directors of regulated companies to act with honesty and integrity, the FSA has very serious concerns about Mr Oda and the way he has acted.

186. It appears to the FSA that in view of the matters referred to in paragraph 184 above, Mr Oda is not fit and proper to perform any function involving the exercise of management authority over any other person in relation to any regulated activity carried on by any authorised person.

187. The FSA has decided that it is necessary to impose a prohibition order as the obligation to take responsibility is particularly applicable to those who have been given the authority of management and that inaction in the face of impropriety can have a negative impact on market confidence and hamper the prevention of financial crime. Mr Oda's conduct demonstrated a fundamental failing in the performance of his functions as a director of a regulated insurance company.

188. The FSA considers that, by his conduct as set out above, Mr Oda demonstrated a lack of fitness and propriety and has failed to satisfy the criterion of honesty, integrity and reputation. Mr Oda's misconduct operated to the detriment of confidence in the financial system.

E. Mr Morota

189. Mr Morota joined CE in 1974 and spent most of his career in its International Department. He spent six years in London, during which time he was a director of CE between 20 April 1994 and 28 April 1998.

190. Upon his return to Japan Mr Morota rejoined the International Department, where he was promoted to the position of general manager, reporting to the Head of the Department, Mr Yamazaki. Mr Morota was re-appointed as a director of CE on 21 September 2000 and resigned as such on 22 October 2001.

191. He is not currently, and has never been, an Approved Person.

The Stop Loss Agreement with PRe

192. Mr Morota attended the meeting held in Japan on 6 October 1999 to discuss ways of improving the results of CE for the year ended 31 December 1999 and prepared a note of the discussion. He was therefore aware of the proposals to enter into an SLA with a third party from the initial stages. Furthermore he knew that CJ wished to avoid having to consolidate the losses of CE into the Group results.

193. Mr Morota was kept informed of the progress of negotiations with PRe and all developments in relation to the SLA. Mr Morota attended the meeting at CJ on 29 December 1999, where the procedures for finalising the Letter of Comfort were discussed including the most appropriate signatory.

The Letter of Guarantee

194. Mr Morota was involved in the discussions and correspondence attempting to persuade PRe to accept an alternative to the Letter of Guarantee. He was aware that PRe regarded the SLA as a balance sheet item, rather than as a reinsurance transaction.

195. He faxed a copy of the draft Letter of Guarantee provided by PRe on 29 December to Mr Okazaki in London, and also a draft of a suggested letter from Mr Yamazaki to PRe stating that the proposed guarantee was unacceptable to CJ as E&Y would not permit CE to use the SLA to improve its profit and loss account in view of the guarantee requested from CJ. He also faxed a copy of what was known as a net worth agreement to Mr Okazaki. This was a letter from CJ to CE, dated 30 November 1998, which promised to maintain the capital of CE and to provide cash to enable it to meet its liabilities. This was sent to PRe but was unacceptable to them as an alternative to the guarantee they required.

196. After CJ signed the Letter of Guarantee as drafted by PRe on 29 December 1999, Mr Okazaki prepared a memo setting out the events of 30 and 31 December 1999, leading up to the signing of the guarantee. Mr Morota was one of the addressees and the memo was marked "*Do not make copy; discard after review*." This note set out that PRe was willing to consider measures to replace the Letter of Guarantee before the close of CJ's financial year and that PRe would not voluntarily make the transaction public in their financial statements or other disclosable documents.

197. Mr Morota was therefore aware that there was an intention to disguise the nature of the liability of the Chiyoda Group to PRe.

<u>The Stop Loss Agreement with CJ</u>

198. Mr Morota attended meetings at which the proposed SLA with CE was discussed as one of the measures to improve CE's results. He knew that, by October 1999, the losses of CE would be so large that a SLA with CJ would be unlikely to entail a transfer of risk and that tax could be charged on the transaction as it was in essence a gift or capital injection, rather than a reinsurance contract. He knew that the transaction was in effect a loss transfer within the same group.

Replacing the Letter of Guarantee

199. Mr Morota was aware of the progress made in replacing CJ's Letter of Guarantee and he passed proposals to London for discussion with PRe and considered the response. He played a key role in devising methods for replacing the Letter of Guarantee and having it returned to CJ. He was therefore aware of the details of the negotiations and was involved in the decisions. He also knew that PRe returned the guarantee to CJ shortly before CJ's year-end and that Mr Miura destroyed it on the instructions of Mr Yamazaki.

The Loss Portfolio Transfer Agreement with ACE

200. Mr Morota was actively involved in the process of using the LPT to partly repay PRe. PRe suggested the novation of the retrocession agreements between CJ and PRe to a third party as a possible measure to partly repay PRe. He was also aware of the discussions within CE about the possibility of novating the three retrocession contracts.

201. He met with PRe during October 2000 to discuss the matter and later faxed a letter to PRe concerning the wording of the retrocession agreements. He continued to correspond with PRe over the finalisation of the contracts.

202. To put the LPT in place by CE's year-end (31 December 2000), a firm order was placed with ACE near the year-end, with the details of the documentation being completed later. Mr Morota was involved in this process.

203. Mr Morota was aware that the element of the contract that represented a repayment of the liability to PRe would be treated in the financial statements as part of a reinsurance transaction, which it was not.

The Stop Loss Agreement with CRe

204. Mr Morota attended a meeting with representatives of CRe on 16 March 2001. He explained the repayment issue to PRe and asked if CRe could assist through some form of reinsurance agreement with CE. CRe undertook to contact Mr Okazaki with that decision.

205. On 29 March 2001 CRe emailed first drafts of reinsurance and retrocession slips to Mr Morota and Mr Okazaki. Mr Morota knew that this was not a genuine reinsurance contract and that £0.8m of the total premium represented reinsurance cover. Over 90% of the premium was used to settle the remaining liability to PRe and Mr Morota was aware of this.

Representations made to E&Y and other directors

1999 Audited Accounts

206. Mr Morota was not a director of CE until September 2000. However, he was kept informed of developments in relation to the PRe SLA, and was aware of the intention to repay PRe. When the SLA was being discussed he knew that E&Y would not permit the SLA with PRe to be used to improve CE's profit and loss account.

207. After September 2000, as a director of CE, Mr Morota had a responsibility to ensure that the financial statements were accurate and gave a true and fair view of the results for any financial year. He was aware that the financial statements submitted for 1999 were materially incorrect in that the SLA with PRe was accounted for as a reinsurance transaction instead of as a balance sheet item. He failed to alert E&Y to this matter.

2000 Audited Accounts

208. Mr Morota was aware of the meeting held between Mr McKibbin and E&Y on 21 December 2000, about whether the LPT with ACE contained a sufficient element of risk transfer to be treated as a reinsurance contact. He knew that the contract would be structured so that £5m of the premium payable would be passed to PRe.

209. Mr Morota was under a duty as a CE director at the time to ensure that its 2000 financial statements were true and fair. Mr Morota took no action to alert E&Y to the misstatement in the accounts of the LPT.

210. Mr Morota knew that the directors of CE were responsible for ensuring that the transactions of the company were correctly accounted for and that he shared in that responsibility as a director of the company at the time when the contracts with ACE and CRe were negotiated.

Representations made to the FSA

211. Mr Morota was not a CE director until September 2000, but after this date, was aware that CE's financial position had been misrepresented to E&Y and was, therefore materially misrepresented in the annual accounts for the 2000 year-end. He was therefore aware that the FSA Return was also materially incorrect, but he failed to alert the FSA.

Conclusions

212. Mr Morota was a director of CE between 21 September 2000 and 22 October 2001. As such he owed a duty of care to CE and his fellow directors. Mr Morota failed in his duties as a director of CE and failed to act with integrity and/or honesty as set out below.

213. He was not a director at the time when the original SLA with PRe was negotiated, nor was he a key decision-maker in this regard. He was however involved in the negotiations in that he:

(a) was aware of all developments and gave instructions to CE about how to proceed;

(b) was involved in the attempts to persuade PRe to accept something less than the Letter of Guarantee that it asked for at the end of 1999;

(c) took part to a limited extent in the negotiations that resulted in the replacement of the Letter of Guarantee with alternative arrangements; and

(d) knew that the existence of the Letter of Guarantee and its replacement had not been disclosed to E&Y.

214. When he was appointed as a director of CE in September 2000 therefore, Mr Morota was aware that the purported reinsurance arrangement with PRe was in fact a loan and that this fact had been disguised. He took no steps to ensure that these matters were disclosed and knew that they were inappropriately dealt with.

215. Mr Morota was aware that the SLA between CE and CJ was not put in place before the end of December 1999. He knew that it was unlikely that there was an element of risk transfer in this contract.

216. Mr Morota was involved in the process of finding a means to accelerate the repayment to PRe, which resulted in the use of the LPT between ACE and CE. He failed to inform CE's auditors or his fellow directors of the true nature of the £5m part of the premium.

217. Mr Morota knew that reinsurance contracts were required to contain adequate transfer of risk before they could be dealt with as insurance transactions. He also knew that

E&Y would not allow an agreement with payback arrangements to be treated as an insurance transaction. He was therefore aware that the transactions reported in the financial statements and FSA Returns of CE for 1999 and 2000 had not been accurately accounted for.

218. Mr Morota was involved in the negotiations with CRe to facilitate the final repayment to PRe. He was therefore aware that this contract was not a genuine reinsurance contract and failed to disclose this to E&Y.

219. Given the fundamental importance it attaches to the duty owed by directors of regulated companies to act with honesty and integrity, the FSA has very serious concerns about Mr Morota and the way he has acted.

220. It appears to the FSA that in view of the matters referred to in paragraphs 212 to 218 above, Mr Morota is not fit and proper to perform any function involving the exercise of management authority over any other person in relation to any regulated activity carried on by any authorised person.

221. The FSA has decided that it is necessary to impose a prohibition order as the obligation to take responsibility is particularly applicable to those who have been given the authority of management and that inaction in the face of impropriety can have a negative impact on market confidence and hamper the prevention of financial crime. Mr Morota's conduct demonstrated a fundamental failing in the performance of his functions as a director of a regulated insurance company.

222. The FSA considers that, by his conduct as set out above, Mr Morota demonstrated a lack of fitness and propriety and has failed to satisfy the criterion of honesty, integrity and reputation. Mr Morota's misconduct operated to the detriment of confidence in the financial system.

F. Mr Titterington

223. Mr Titterington is a specialist in accident and property reinsurance. He was one of the principals in an agency which, amongst other things, wrote business on behalf of CE prior to 6 September 1988. On the latter date, CE bought the agency and Mr Titterington was subsequently employed by CE.

224. Mr Titterington was a director of CE from 1 January 1996 to 31 January 2002 (when he resigned as a director of AE and its subsidiaries). He took little or no part in the overall management of CE and was director of underwriting until the end of 1998 at which time he became director of direct and facultative underwriting. In October 1999, Mr Titterington's title was restored to director of underwriting as a result of staff changes.

225. He is not currently, and never has been, an Approved Person.

The Stop Loss Agreement with CJ

226. Mr Titterington signed and backdated the CJ SLA on behalf of CE. He had no part in either determining the amount of cover required under the SLA or the decision to backdate. At the request of Mr Oda, Mr Titterington signed the CJ SLA cover note some time after 30 December 1999, and backdated his signature to 28 June 1999. He then returned the cover note to CJ, attached to a letter which had also been backdated to June 1999.

227. Mr Oda explained to Mr Titterington that the documents should be backdated for reasons associated with an inspection at CJ by the Japanese tax authority. Mr Titterington signed the documents without objection and without questioning in detail why they were to be backdated. He failed to bring this to the attention of any relevant authorities or E&Y.

Conclusion

228. Mr Titterington was an executive director of CE between 1 January 1996 and 31 January 2002. As such he owed a duty of care to CE and his fellow directors. He backdated his signature on the SLA concluded between CE and CJ when he was informed that it was for reasons involving the inspection at CJ by the Japanese tax authorities. He failed to meet the professional and legal standards required by the FSA of an executive director of a regulated company (CE), in that he backdated his signature without any reservation or enquiries about the potential impact thereof. In backdating his signature, he also failed to act with integrity and/or honesty.

229. In addition he took no steps to ensure that his fellow directors, who were not involved in the matter, were made aware of the true date that the agreement was signed.

230. Given the fundamental importance it attaches to the duty owed by directors of regulated companies to act with honesty and integrity, the FSA has very serious concerns about Mr Titterington and the way he has acted.

231. It appears to the FSA that in view of the matters referred to in paragraphs 228 and 229 above, Mr Titterington is not fit and proper to perform any function involving the exercise of management authority over any other person in relation to any regulated activity carried on by any authorised person.

232. The FSA has decided that it is necessary to impose a prohibition order as the obligation to take responsibility is particularly applicable to those who have been given the authority of management and that inaction in the face of impropriety can have a negative impact on market confidence and hamper the prevention of financial crime. Mr Titterington's conduct demonstrated a fundamental failing in the performance of his functions as director of a regulated insurance company.

233. In making its decision, the FSA has taken into consideration that Mr Titterington's conduct related only to the backdating of the SLA, that he was acting on instructions with limited knowledge regarding its purpose and that he was not an active and

knowing participant (as were the other relevant individuals) in forming and executing an improper policy regarding CE's transactions with PRe and CJ.

IMPORTANT

This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

Sections 391(4), 391(6) and 391(7) of the Act 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 it considers appropriate. The information may be published in such a manner 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 interests of consumers.

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

FSA contacts

For more information concerning this matter generally, you should contact Lisa Demartini (direct line: 020 7 066 1436/fax: 020 7 066 1437) or Lize Lombard (direct line: 020 7066 1398/fax: 020 7066 1399) of the Enforcement Division of the FSA.

Brian Dilley
FSA Enforcement Division