

November 12, 2021  
Toshiba Corporation

FOR IMMEDIATE RELEASE

**Notice Regarding Receipt of the Report from  
the Governance Enhancement Committee**

Toshiba Corporation (“Toshiba”) has announced that it today received the Investigation Report of the Governance Enhancement Committee (“Report”) from the Governance Enhancement Committee, as described in “Notice Regarding Establishment of the Governance Enhancement Committee” dated August 6, 2021. Toshiba has released both a summary of the Report and the Report in whole, as attached.

In response to the finding in the investigation report from the Persons Who Will be Charged to Investigate the Status of the Operations and Property of the Stock Company, pursuant to Article 316, Paragraph 2 of the Companies Act, that the 181st Annual General Meeting of Shareholders held on July 31, 2020 was not conducted fairly, as required by the Corporate Governance Code, Toshiba announced the initiation of an inquiry that would, in an objective and transparent manner, through means including the participation of third parties, investigate and identify root causes, clarify responsibilities, and take appropriate measures to prevent recurrence, in respect of what is referred to in the investigation report as the “Pressure Issue”. Thereafter, Toshiba established the Governance Enhancement Committee and assigned to it the missions of (i) analyzing the root causes; (ii) clarifying responsibility; and (iii) making suggestions on how to develop measures to prevent recurrence.

Toshiba takes the contents of the Report seriously, and will proceed with the formulation and implementation of recurrence prevention measures based on the suggestions contained in the Report.

Attachments

1. Investigation Report of Governance Enhancement Committee (Summary)
2. Investigation Report of Governance Enhancement Committee

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**Investigation Report of Governance Enhancement Committee (Summary)**

I. Introduction

1. The Committee has been commissioned by Toshiba to conduct root cause analysis, clarify responsibilities and provide suggestions for developing recurrence prevention measures, in connection with the matters concerning so-called “pressure issue” pointed out in the Investigation Report dated June 10, 2021. Before such commissioning, the relevant authority requested Toshiba to clarify the issues such as whether there was any breach of duty of care by any of its directors. The commissioned matters mentioned above include the consideration of such request.

2. Basic Policy of Committee

(1) The Committee has no intention of reinvestigating the facts found in the Investigation Report. The Committee assumes the facts under “IV. Summary of Facts” in Chapter 3 of the Investigation Report as true and accurate, except in cases such as the case where any new facts or any misunderstandings in the Investigation Report were found from the interviews with relevant parties or from the results of any other investigations which the Committee viewed as necessary for making decisions on the commissioned matters. With respect to “V. Analysis and Evaluation of the Pressure Issue” in Chapter 3 and subsequent sections of the Investigation Report, the Committee is required to conduct its own analysis and evaluation in accordance with the purpose of consideration mentioned above, by taking into account the Committee’s duty to conduct review on the matters such as existence of breach of duty of care by executive officers and directors of Toshiba (hereinafter referred to as “Toshiba Officers”).

(2) The Investigation Report provided the evaluation and analysis of facts, which were conducted in accordance with the purpose of investigation, to the extent necessary to determine whether or not the AGM held on July 31, 2020 was fairly managed, and did not provide a definite decision on whether any of Toshiba Officers’ acts was illegal. In order for the Committee to carry out the commissioned matters, however, the Committee is required to consider whether or not any of Toshiba Officers’ acts was illegal and would be determined as breach of duty of care. Since this issue involves legal responsibility of Toshiba Officers, the Committee is required to make the decision under strict legal analysis and review.

(3) Considering the fact that company is a social entity which must endeavor to enhance its corporate value and shareholder value under the trust of shareholders, the fact that executive officers’ acts are not illegal is not enough. The Committee views that executive officers’ acts should not violate the Ethical Standards such as causing doubts as to fairness and transparency of how the

company deals with its shareholders and undermining the trust of investors and stock market. If the Committee only considered (2) above, the Committee would not be carrying out all commissioned matters described above. Therefore, it is absolutely necessary for the Committee to conduct analysis and review on the Series of Acts which two executive officers of Toshiba (hereinafter referred to as “Executive Officers”) and METI engaged in for the AGM, including exchange of information, in connection with the matters such as how to deal with shareholder proposal of Effissimo, from the viewpoint of whether or not there was any violation of Ethical Standards.

## II. Facts Forming the Basis of Committee’s Decisions

Out of the facts which the Committee added to the facts in the Investigation Report which the Committee viewed as necessary to make its decisions on the commissioned matters, the main facts are as provided in 1 and 2 below. The reason why the Committee viewed that it was necessary to add 1 and 2 is because in order for the Committee to accurately decide on the commissioned matters, it was necessary for the Committee to understand (i) the fact that inward direct investments and equivalent actions, which are subject to prior notification under the Foreign Exchange and Foreign Trade Act (hereinafter referred to as “FEFTA”), include election of foreign investors, etc. as director and joint exercise of voting rights by foreign investors, (ii) how METI actually enforces the FEFTA and (iii) the relationship between Toshiba and METI.

1. Overview of Amended FEFTA, etc. (see II.2. of the Committee’s investigation report)
2. Relationship between Toshiba and METI (see II.3. of the Committee’s investigation report)

## III. Issues Concerning Acts of Executive Officers and Directors of Toshiba

The overview of Committee’s decisions on the following issues are as provided below: (i) whether there was anything illegal with respect to the acts of executive officers (i.e., two executive officers and CEO) and directors of Toshiba relating to the Series of Acts and (ii) even if there was nothing illegal, whether there was anything which was in violation of Ethical Standards.

1. Upon conducting strict legal analysis and review under the basic policy mentioned above, the Committee concludes that the Executive Officers did not make an illegal approach jointly with METI to impose restrictions on shareholder proposal right or exercise of voting right. In the Investigation Report, the investigators (hereinafter referred to as “Investigators”) concluded that the Executive Officers “worked in unison with METI’s Commerce and Information Policy Bureau route to deal with shareholders” and a series of acts under which the Executive Officers closely coordinated with the Commerce and Information Policy Bureau route was “an attempt to unfairly restrict the exercise of shareholder proposal right, at least for the purpose of deviating from the purpose of the revised FEFTA.” However, when the Committee checked with the Investigators, the Investigators stated that such conclusion did not include the decision on whether or not the acts of Executive Officers were illegal.

Therefore, the Committee has come to following decisions from the viewpoint of whether any acts of Executive Officers legally violated duty of care:

(1) The direct approaches made against Effissimo, etc., which have been raised as so-called “pressure issue,” had been made by Director K1 of the IT Industry Division and/or Mr. M who was an executive advisor of METI. Therefore, the Committee views that in order to conclude that the acts of two executive officers of Toshiba, who have been considered to be in coordination with METI in the Investigation Report, were in violation of duty of care, such conclusion must be based on the premise that the acts of Director K1 and/or Mr. M were found to be illegal.

(2) The Committee concludes that (i) it is reasonable to view that the approaches made by Director K1 to Effissimo and 3D were for administrative purposes such as economic security of Japan and (ii) such approaches cannot be viewed as illegal approaches made for the purpose of restricting the exercise of shareholder proposal right or voting right which deviated from the purpose of FEFTA. The Committee also concludes that the way Director K1 acted did not deviate from the scope of discretion he had for carrying out the affairs under his authority. This conclusion is based on the fact that the Committee focused on the facts such as (i) the fact that it was important from the perspective of economic security of Japan to prevent Toshiba’s technology from divulging overseas and to stabilize Toshiba’s management and (ii) the fact that inward direct investments and equivalent actions, which are subject to prior notification under the FEFTA, include shareholder’s proposal and exercise of voting right such as proposal for election of foreign investors, etc., as director and joint exercise of voting rights by foreign investors.

(3) The Committee concludes that there is not sufficient evidence to conclude that the approach made by Mr. M to HMC is illegal because the Committee was not able to confirm the details of such approach.

(4) The Committee concludes that the Executive Officers and Director K1 or Mr. M did not have a joint legal relationship under which they assumed joint legal responsibility.

For the reasons explained in (2) through (4) above, the Committee concludes that (i) the acts of Director K1 and Mr. M, who directly made an approach to Toshiba’s shareholders, are not illegal and (ii) there was not a joint legal relationship between the Executive Officers and Director K1 or Mr. M. Therefore, the Committee concludes that the Executive Officers did not engage in any illegal acts which were in breach of duty of care.

2. The Committee concludes, however, that the Series of Acts by the Executive Officers is in violation of Ethical Standards even if these acts might not have been illegal. In other words, the information exchanges, etc., which were made between Toshiba and METI concerning Toshiba’s business operation, included Toshiba’s acts such as (i) Toshiba’s act which raises a suspicion that Toshiba mixed into the discussions between Toshiba and its shareholders its purpose of gathering information as requested by METI, (ii) Toshiba’s receipt of information from METI personnel including the

information which is not normally disclosed by administrative authority personnel to company employee and (iii) Toshiba's consultations with METI on the negotiations between Toshiba and its shareholders including negotiations between company and its shareholders in which administrative authorities normally do not get involved. When looking at the Series of Acts as a whole in hindsight from a third-person point of view, with regard to how the Executive Officers dealt with shareholders, it shows that the Executive Officers (i) were too dependent on METI, (ii) were excessively exchanging information and opinions, (iii) had a relationship with METI which was too close and (iv) were negotiating with METI in a way which was behind closed doors and was difficult to see from outside. Furthermore, by considering these facts together with the fact that the Executive Officers had an intention of making use of the administrative acts of METI when dealing with shareholders, the Committee concludes that the Series of Acts violated the Ethical Standards in ways such as causing doubts as to fairness and transparency of how Toshiba dealt with its shareholders and undermining the trust of investors and stock market. Although these acts, which are in violation of business ethics, will not immediately become subject to any legal liability, executive officers have a duty to avoid engaging in such acts in the course of performance of their work.

3. When looking at the involvement of Mr. Nobuaki Kurumatani, CEO of Toshiba at the time, in the Series of Acts, the Committee has found that (i) Toshiba's executive officers were making decisions on how to deal with shareholders with Mr. Kurumatani's active involvement, with an expectation that METI would make an administrative approach from the viewpoint of economic security and (ii) Mr. Kurumatani was also generally aware of Series of Acts and was giving approvals based on subsequent work reports frequently provided to him. Therefore, the Committee concludes that Mr. Kurumatani's acts were not in breach of duty of care, but they were in violation of Ethical Standards.

4. Due to the fact that the Committee has concluded that Toshiba's executive officers (including CEO) were not in breach of duty of care as explained in 2 and 3 above, the Committee concludes that whether or not Toshiba's directors, who supervise the performance of Toshiba's executive officers of their duties, were in breach of duty of care will not become an issue because there is no premise to discuss this issue.

With respect to the fact that the Executive Officers engaged in acts which were in violation of Ethical Standards, although directors are expected to prevent executive officers from such violation, the Committee concludes that all directors of Toshiba except for Mr. Kurumatani lacked the premise to meet such expectation due to the fact that such directors did not have sufficient knowledge of the facts which may have led such directors to become aware of Series of Acts.

#### IV. Root Cause Analysis

The Committee's view on the root cause of Series of Acts by the Executive Officers which violated the Ethical Standards as explained in III.2. above is as follows:

1. The direct causes of Series of Acts are Toshiba's excessive cautiousness towards foreign investment funds, its lack of willingness to develop a sound relationship with them and its tendency to become overly dependent on METI.

2. The Committee views that what caused Toshiba to act in such a way are the following problems concerning Toshiba's corporate governance:

(1) Without having adequate discussions with its board of directors (including its foreign directors) (hereinafter referred to as "Board of Directors"), Toshiba solidified its view that the real purpose of Effissimo's shareholder proposal was not to resolve Toshiba's compliance issues, but was to become involved in Toshiba's management in order to provide comments, which go against Toshiba's mid- and long-term growth, by using the compliance issue as a pretense, and dealt with Effissimo's shareholder proposal based on such view.

(2) Despite the fact that Toshiba should have made efforts to investigate and review the attributes of foreign investment funds and their activities and to deepen the discussions with them, a number of executive officers (including CEO) and Japanese directors of Toshiba could not change their one-sided view on foreign investment funds without having any discussions at the Board of Directors meeting on the matters such as Toshiba's stance on how to deal with foreign investment funds.

(3) Based on the background that Toshiba has historical and traditional relationship with METI, there is a corporate culture within Toshiba in which Toshiba views the close information exchanges and consultations with METI as something natural and in which Toshiba relies on them. Toshiba did not have enough self-awareness of the fact that their corporate activities should be conducted autonomously and that it was necessary for Toshiba to rectify its tendency to rely on administrative authorities.

(4) Under the background described in (3) above, Toshiba's executive officers made decisions on how to deal with Toshiba's shareholders with Mr. Kurumatani's active involvement, in order to have Effissimo's shareholder proposal withdrawn or rejected, with an expectation that METI would make an administrative approach from the viewpoint of national security. The Board of Directors was not even notified of such decisions.

3. It seemed that Toshiba was ahead of others in terms of corporate governance by being a company with nominating committee, etc., and was in progress of achieving independence and diversity of directors as of the time of AGM. However, the Committee views that the root cause of the problems in Toshiba's corporate governance as pointed out in 2 above was (i) the fact that the reports from the executive officers to the Board of Directors and the issues raised at the Board of Directors meeting were not enough for the Board of Directors to supervise the executive officers' performance of their work and (ii) the fact that Toshiba was not able to make use of the diversity of outside directors for its corporate governance.

4. The Committee also views that the root cause, which caused the Series of Acts by the Executive

Officers, was a corporate governance-related problem, in which the view, that executive officers' performance of their work needs to be in compliance with the Ethical Standards, was not sufficiently instilled.

#### V. Clarification of Responsibilities

1. Due to the fact that the Committee did not find Toshiba's executive officers (including CEO), who had a main role in the Series of Acts, to be in breach of duty of care, it is not possible to pursue legal liability against them. However, they are required to take responsibility for violating the business ethics by engaging in the Series of Acts in the course of performance of work. After the Investigation Report became public, the Executive Officers, who were involved in the Series of Acts, have taken responsibility for the Series of Acts when they were not reelected as executive officer by the Board of Directors and lost their positions.

2. Due to the fact that Toshiba's directors did not breach duty of care, they cannot be held legally accountable. The directors other than Mr. Kurumatani also could not be expected to prevent any acts in violation of Ethical Standards due to the fact that such directors did not have sufficient knowledge of the facts which may have led such directors to become aware of Series of Acts. Therefore, they cannot be held accountable for such failure as well.

#### VI. Suggestions for Developing Recurrence Prevention Measures

The Committee hereby makes the following suggestions in order for Toshiba to develop recurrence prevention measures:

##### 1. Development of Sound Trust Relationship with Shareholders

It is necessary for Toshiba to have constructive discussions with its shareholders for the common purpose of enhancing mid- and long-term corporate value of Toshiba without having a one-sided view on foreign investment funds, etc. by taking actions such as investigating and reviewing the attributes of such foreign investment funds and their activities, and to make efforts to gain the understanding of shareholders on the management policy made by Toshiba, while maintaining a resolute stance, in order to maintain or develop an appropriate relationship with not only shareholders, but also all stakeholders such as customers, employees and local community and to run a business by adequately taking into consideration the interests of such stakeholders.

##### 2. Rectification of Tendency to Become Overly Dependent on Administrative Authorities

It is absolutely necessary for Toshiba to exchange information and have consultations with and to receive advice from administrative authorities which have jurisdiction over Toshiba's business, including the IT Industry Division, with respect to its business operations. Therefore, Toshiba is also required to maintain a good relationship with competent administrative authorities for the operation of its business. However, it is extremely important for Toshiba's executive officers negotiating with

administrative authorities (i) to always be conscious of whether their acts would gain the understanding of shareholders, stock market and society in general, whether their acts would not undermine the trust in Toshiba and whether their acts would not undermine Toshiba's autonomous activities and (ii) to refrain from becoming overly dependent on administrative authorities, in order to avoid exchanging information or having consultations which go beyond the appropriate scope.

### 3. Redevelopment of Corporate Governance

It is imperative for Toshiba to make its corporate governance truly ahead of others and to redevelop its monitoring system so that it can appropriately supervise executive officers' performance of their work. In order to do so, Toshiba is required to find a CEO and a chairperson of Board of Directors, who correctly understand the importance of corporate governance and have high ethical standards, and to take following specific priority measures to strengthen its corporate governance:

(1) For the composition of Board of Directors, Toshiba should adequately consider skill matrix and become more conscious of achieving diversity of directors.

(2) It is absolutely necessary for Toshiba to make arrangements, which will enable Toshiba to appropriately select the proposals from both Board of Directors and directors' council of Toshiba and to timely and appropriately provide required materials to the Board of Directors and directors' council for their deliberations, so that a variety of opinions will be actively exchanged at Board of Directors meetings and directors' council meetings.

(3) In order for Toshiba's audit committee (hereinafter referred to as "Audit Committee") to fulfill its responsibilities including supervision over business ethics, Toshiba should consider taking measures to arrange sufficient resources such as increasing the number of personnel who will become members of secretariat or who will be in charge of internal audit directly under the Audit Committee and strengthening the quality of such personnel.

(4) It is important for Toshiba to secure opportunities for its outside directors to conduct investigations and have discussions independently from its executive officers such as setting up opportunities for only outside directors to have meetings.

(5) With respect to the issue of whether arrangements are made for the Board of Directors and all committees of Toshiba to adequately fulfill their roles, it is absolutely necessary for Toshiba to continuously conduct evaluations on the effectiveness of performances of Board of Directors and committees, including third-party evaluation, and to use the matters pointed out in such evaluations to strengthen and improve Toshiba's corporate governance structure. The Committee also views that investigation to make credibility assessment on CEO of Toshiba, which Toshiba is already conducting, will also continue to act as the last line of defense for Toshiba's corporate governance.

### 4. Tone at the Top

Correct tone at the top is more important than anything else for strengthening corporate governance. Toshiba has an established reputation with respect to its high-level human resources and technologies.

Therefore, as long as Toshiba is able to deeply implant its corporate philosophy of “Do the right thing” into Toshiba as its corporate culture, the Committee is confident that Toshiba will be able to turn into an organization in which Toshiba’s directors, executive officers and employees will perceive that questioning mistakes and problems occurring in their daily work is a good starting point leading to improvements.

**English Translation**

## **INVESTIGATION REPORT**

November 12, 2021

To: Toshiba Corporation

Governance Enhancement Committee of Toshiba Corporation

Seishi Kanetsuki, Chairperson

Mariko Watahiki, Member

Masaaki Sawano, Member

Tadashi Kakiuchi, Member

Takao Nakamura, Member

## Table of Contents

I. Introduction .....	5
1. Matters Commissioned by Toshiba.....	5
2. Basic Policy of Committee .....	5
3. Interviews and Exchange of Opinions .....	6
II. Facts Forming the Basis of Committee’s Decisions.....	7
1. General Situation of Toshiba before AGM .....	7
(1) Overview of Toshiba .....	7
(2) Status of Shareholders .....	8
(3) Status of Board of Directors .....	9
(4) Status of Executive Officers.....	10
2. Overview of Amended Foreign Exchange and Foreign Trade Act .....	11
(1) Overview of Amendment .....	11
(2) Procedural Steps of Prior Notification .....	12
(3) How METI Applies FEFTA .....	13
3. Relationship between Toshiba and METI.....	14
(1) Toshiba’s Status after Third-Party Allotment in 2017.....	14
(2) METI’s Interest in Toshiba.....	15
(3) Status of Toshiba’s Shareholders Meeting in 2019 .....	16
4. Progress over Withdrawal of Effissimo’s Shareholder Proposal at the AGM.....	17
(1) Effissimo’s Actions Relating to Fictitious and Circular Transactions of TSC .....	17
(2) 3D’s Actions.....	19
(3) Course of Action on How to Deal with Shareholders for AGM.....	19
(4) Shareholder Proposal by Effissimo .....	22
(5) METI’s Approach to Effissimo .....	25
(6) Proposal from Toshiba to Establish Compliance Committee .....	26
(7) Subsequent Actions in Anticipation of AGM .....	28
(8) Subsequent Actions Taken against Effissimo under FEFTA .....	29
5. Background of 3D’s Exercise of Its Voting Right at AGM.....	30
(1) Shareholder Relations Policy against 3D .....	30
(2) METI’s Approach against 3D.....	30
(3) 3D’s Reaction.....	31
6. Background on HMC’s Exercise of Its Voting Right at AGM.....	31
(1) Letter Exchanges between Toshiba and HMC.....	31
(2) Mr. M’s Involvement in Preparation of Letter to HMC .....	32
(3) Sharing of Information between Toshiba and METI Immediately before AGM.....	33

7. Background on Investigation into Whether or Not Approach Has been Made to Shareholders on Their Exercise of Voting Rights, etc. ....	35
(1) Information on Approach to HMC on Its Exercise of Voting Rights .....	35
(2) Effissimo's Request for Establishment of Independent Committee.....	36
(3) Investigation by Audit Committee .....	37
(4) Resolution of Board of Directors after Receiving the Results of Audit Committee's Investigation and Its View.....	37
III. Issues Concerning Acts of Executive Officers and Directors of Toshiba.....	39
1. Confirmation of Committee's Review Policy.....	39
2. Viewpoint Concerning Consideration of Whether Acts of Toshiba's Executive Officers Were Illegal 1 ~ Whether Toshiba Made Illegal Approach Jointly with METI to Impose Restrictions on Shareholder Proposal Right or Voting Right ~.....	40
(1) Whether Director K1's Acts against Effissimo and 3D Were Illegal .....	40
(2) Whether Mr. M's Approach to HMC Was Illegal.....	44
(3) Cooperative Relationship between Toshiba's Executive Officers and Director K1 and between Toshiba's Executive Officer and Mr. M.....	45
(4) Summary .....	46
3. Viewpoint Concerning Consideration of Whether Acts of Toshiba's Executive Officers Were Illegal 2 ~ Whether Executive Officers Have Taken Advantage of METI's Administrative Approach by Using Means or Method Which Deviated from Scope of Discretion Permissible in General Societal Terms in Order to Restrict Shareholder Proposal Right or Voting Right~ .....	46
4. Consideration of Whether There Were any Acts in Violation of Business Ethics as Required by the Relevant Market.....	48
5. CEO's Involvement in Series of Acts .....	53
6. Whether or Not There Was Breach of Duty of Care by Directors .....	55
IV. Root Cause Analysis .....	56
1. Viewpoint of Review .....	56
2. Excessive Cautiousness towards Foreign Investment Funds and Lack of Willingness to Develop Sound Relationship.....	57
3. Problem of Being Overdependent on METI.....	61
4. Corporate Governance-related Issues .....	64
V. Clarification of Responsibilities .....	67
1. Responsibilities of Executive Officers.....	67
2. Responsibilities of Directors.....	67
VI. Suggestions for Developing Recurrence Prevention Measures .....	67
1. Development of Sound Trust Relationship with Shareholders .....	67

2. Rectification on Toshiba's Tendency to be Overly Dependent on Administrative Authorities...	68
3. Redevelopment of Corporate Governance.....	69
4. Tone at the Top.....	71

## I. Introduction

### 1. Matters Commissioned by Toshiba

The Governance Enhancement Committee (hereinafter referred to as “Committee”) has been commissioned by Toshiba Corporation (hereinafter referred to as “Toshiba”) to conduct root cause analysis, clarify responsibilities and provide suggestions for developing measures to prevent reoccurrence, in connection with the matters concerning so-called “pressure issue” pointed out in the Investigation Report dated June 10, 2021 (hereinafter referred to as “Investigation Report”) prepared by the investigators (hereinafter referred to as “Investigators”) who conducted investigation on the status of business and assets of stock company (*kabushiki kaisha*) pursuant to Article 316, Paragraph 2 of the Companies Act. Before such commissioning, the relevant authority requested Toshiba to clarify the following (1) and (2) and the abovementioned commissioned matters include the consideration of such request:

- (1) In case there was pressure which has been pointed out, whether such pressure is an issue of internal control system under Article 362, Paragraph 4, Item 6 of the Companies Act; and
- (2) Whether there was breach of duty of care by any directors of Toshiba.

### 2. Basic Policy of Committee

The Committee will conduct analysis and review of commissioned matters described above based on the following policy:

(1) The Committee has no intention of reinvestigating the facts found in the Investigation Report. The Committee assumes the facts under “IV. Summary of Facts” in Chapter 3 of the Investigation Report as true and accurate, except in the case where any new facts or any misunderstandings in the Investigation Report were found from the interviews with relevant parties or from the results of any other investigations. With respect to Section V and subsequent sections of Chapter 3 of the Investigation Report, the Committee is required to conduct its own analysis and assessment by taking into account the Committee’s duty to review matters such as existence of breach of duty of care by executive officers and directors of Toshiba (hereinafter referred to as “Toshiba Officer(s)”).

(2) The purpose of investigation by Investigators was “to clarify any and all matters which are deemed by the Investigators as necessary to determine whether or not the AGM (as defined below) was fairly managed.” With regard to Section V and subsequent sections of Chapter 3 of the Investigation Report, it is understood that the Investigators conducted assessment and analysis of facts in connection with the “pressure issue” to the extent necessary to determine whether or not the 181st Annual General Meeting of Shareholders of Toshiba (hereinafter referred to as “AGM”) was fairly managed. Therefore, by taking into consideration the matters such as the importance of shareholder

rights and the first sentence of 1.1.3 of the Supplementary Principles of the Japan's Corporate Governance Code which prescribes that "Given the importance of shareholder rights, listed companies should ensure that the exercise of shareholder rights is not impeded," the Investigators came to a conclusion that the AGM was not fairly managed in the Investigation Report and it is understood that the Investigators did not clearly indicate in the Investigation Report<sup>1</sup> their decision on whether any of Toshiba Officers' acts was illegal.

However, it is absolutely necessary for the Committee to consider (i) whether any of Toshiba Officers' acts was illegal and/or would be determined as breach of duty of care and (ii) if yes, which act would be determined as so on what basis, in order for the Committee to carry out the commissioned matters. Since the consideration of these issues involve legal responsibility, it is necessary to make the determination under strict legal analysis and review.

(3) Considering the fact that company is a social entity which must endeavor to enhance its corporate value and shareholder value under the trust of shareholders, the fact that executive officers' acts were not illegal is not enough. It is viewed that executive officers' acts may not be in violation of business ethics required by the relevant market (hereinafter referred to as "Ethical Standards") such as causing doubts as to fairness and transparency of how the company deals with shareholders and undermining the trust of investors and stock market. This is because the executive officers' acts in violation of Ethical Standards will possibly reduce the trust of relevant market and society in the company and cause negative impact on various aspects of external and internal activities of the company, among other things.

If the Committee only considered (2) above, the Committee would not be carrying out all commissioned matters described above. Therefore, it is necessary for the Committee to conduct analysis and review on a series of acts which Toshiba's executive officers and the Ministry of Economy, Trade and Industry (hereinafter referred to as "METI") engaged in for the AGM (hereinafter referred to as "Series of Acts"), including exchange of information, in connection with matters such as how to deal with shareholder proposal of Effissimo Capital Management Pte. Ltd. (hereinafter referred to as "Effissimo"), from the viewpoint of whether or not there was any violation of Ethical Standards .

### 3. Interviews and Exchange of Opinions

As mentioned above, the Committee has no intention of reinvestigating the facts found in the Investigation Report. However, the Committee (i) conducted interviews with 13 relevant parties and exchanged opinions with four academic experts and other experts (hereinafter referred to as "Expert Advisor(s)"), four foreign directors of Toshiba and representative and legal counsel of Effissimo,

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<sup>1</sup> Upon checking with the Investigators on their view, the Committee was able to confirm that the Investigation Report (i) clarified the Investigators' view on the purpose of abovementioned investigation concerning the so-called "pressure issue" and (ii) did not indicate their decision on whether any of Toshiba Officers' acts was illegal.

whom the Committee viewed as necessary to come to decisions on the commissioned matters described above and (ii) referred to the opinion letter jointly submitted to the Committee by the former audit committee members of Toshiba, the opinion letter jointly submitted to the Committee by Mr. Masayasu Toyohara and Mr. Masaharu Kamo, both of whom are former executive officer of Toshiba, the opinion letter prepared by the attorney of Mr. Nobuaki Kurumatani, who is former Representative Executive Officer, President and CEO of Toshiba, and the opinion letter prepared by Effissimo (including supplementary explanations) (in the order submitted).

In particular, with respect to the analysis and review from the viewpoint explained in 2(3) above and the suggestions for developing measures to prevent reoccurrence, the Committee viewed that it was necessary to deepen the Committee's consideration by receiving assistance from Expert Advisors in and outside Japan who have deep insight into how corporate governance should be. The Committee sought assistance of Expert Advisors provided below and had several opportunities to exchange opinions with them. The Committee would like to express its deepest gratitude to them for the preparation of this Report.

Mr. Shigeru Morimoto	Professor Emeritus, Kyoto University/Attorney-at-Law
Mr. Hideaki Miyajima	Professor, Faculty of Commerce, Waseda University
Mr. Kenichi Osugi	Professor, Graduate School of Law, Chuo University
Mr. Toby S. Myerson	CEO, Longsight Strategic Advisors LLC/Attorney-at-Law (licensed to practice in New York and California)

The Committee hereby reports the results of its analysis and review based on the abovementioned basic policy as provided below.

## II. Facts Forming the Basis of Committee's Decisions

The Committee has no intention of reinvestigating the facts in the Investigation Report (hereinafter referred to as "Investigation Report") and is basically following the facts under "IV. Summary of Facts" in Chapter 3 of the Investigation Report, but the Committee will make decisions on the commissioned matters based on the facts provided below which incorporate the additions of any new facts considered as necessary for making decisions on the commissioned matters and/or the corrections on any misunderstandings, etc. in the Investigation Report which were found from the interviews with relevant parties and/or from any other investigations.

### 1. General Situation of Toshiba before AGM

#### (1) Overview of Toshiba

As of the time before the AGM (as of March 31, 2020), Toshiba Group (a) consisted of Toshiba and 331 consolidated subsidiaries, (b) operated a wide range of diverse businesses related to seven

departments, which are (i) energy system department which manufactures, sells and provides engineering services, etc. on (hereinafter referred to as “Manufacturing, etc.”) thermal power generation systems, nuclear power generation systems and power transmission & distribution systems, etc., (ii) infrastructure system department which conducts Manufacturing, etc. of water and sewerage systems, broadcasting systems, radio equipment and transportation equipment, etc., (iii) building department which conducts Manufacturing, etc. of elevators, (iv) retail & printing department which conducts Manufacturing, etc. of POS systems and multifunction devices, etc., (v) device & storage department which conducts Manufacturing, etc. of power devices, optical semiconductors and semiconductor manufacturing devices, etc., (vi) digital solution department which provides IT solution services, etc., and (vii) miscellaneous department which provides logistics services and conducts Manufacturing, etc. of batteries, etc., (c) had a number of offices and factories in various locations in Japan, and (d) had employees exceeding 120,000.

## (2) Status of Shareholders

First, Toshiba’s account fraud problem occurred in 2015. Then, in March 2016, Toshiba assumed the possibility of goodwill impairment of its nuclear power business which arose with its acquisitions such as acquisition of Westinghouse Electric Company (hereinafter referred to as “Westinghouse”) which is Toshiba’s U.S. consolidated subsidiary. In December 2016, it became clear that Westinghouse Group incurred a huge amount of loss due to reasons such as delay in nuclear power construction projects. In March 2017, rehabilitation proceedings of Westinghouse and its affiliates under Chapter 11 of the U.S. Bankruptcy Code commenced. During the period mentioned above, Toshiba has taken actions such as selling all of the shares in Toshiba Medical Systems Corporation, which was operating medical device business, in March 2016 in order to strengthen its financial structure in preparation for the goodwill impairment of its nuclear power business, etc. However, Westinghouse Group incurred a huge loss, its rehabilitation proceedings began, and Toshiba had excess liabilities in the fiscal year ended March 31, 2017 and was reassigned from the First Section of the Tokyo Stock Exchange and Nagoya Stock Exchange to the Second Section of the Tokyo Stock Exchange and Nagoya Stock Exchange on August 1, 2017. In January 2017, Toshiba began to consider receiving from outside a capital injection in its memory business. In September 2017, Toshiba executed a contract to sell the shares in Toshiba Memory Corporation which was established by splitting off Toshiba’s memory business. However, there was a risk that the sale of shares in Toshiba Memory Corporation would not be completed by March 2018. Therefore, in order to avoid delisting by having excess liabilities for two consecutive fiscal years, Toshiba issued approximately 600 billion yen in new shares through a third-party allotment in December 2017 and such new shares were allotted to foreign investors<sup>2</sup>.

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<sup>2</sup> There were foreign investors who acquired shares in Toshiba before third-party allotment in December 2017.

As a result, as of the time before the AGM, approximately 63% of 455,000,000 total outstanding shares in Toshiba were held by foreign corporations, etc., and the principal shareholders were as follows (Number of voting rights held by each foreign investor is number of voting rights estimated by Toshiba as of the time before the AGM.):

- (i) Effissimo Capital Management Pte. Ltd. ( “Effissimo”) which is Singaporean investor (However, its members are mostly Japanese.) who holds 698,685 voting rights (15.48% of total voting rights)
- (ii) 3D Investment Partners Pte. Ltd. (hereinafter referred to as “3D”) which is Singaporean investor (However, its members are mostly Japanese.) who holds 186,582 voting rights (4.13% of total voting rights)
- (iii) Harvard Management Company, Inc. (hereinafter referred to as “HMC”) which is U.S. investor (Harvard University fund) who holds 200,000 voting rights (4.43% of total voting rights)
- (iv) Farallon Capital Management, L.L.C. (hereinafter referred to as “Farallon”) which is U.S. investor who holds 292,395 voting rights (6.47% of total voting rights)
- (v) King Street Capital Management, L.P. (hereinafter referred to as “King Street”) which is U.S. investor who holds 145,102 voting rights (3.21% of total voting rights)
- (vi) Argyle Street Management Limited (hereinafter referred to as “Argyle”) which is Hong Kong investor who holds 302 voting rights (0.006% of total voting rights)

### (3) Status of Board of Directors

As of the time before the AGM, Toshiba was a company with nomination committee having a board of directors comprising of 12 directors including 10 outside directors, and the members of board of directors of Toshiba (hereinafter referred to as “Board of Directors”) were as follows:

- (i) Mr. Nobuaki Kurumatani (hereinafter referred to as “Mr. Kurumatani”): Director, Representative Executive Officer, President and CEO
- (ii) Mr. Satoshi Tsunakawa (hereinafter referred to as “Mr. Tsunakawa”): Director and Chairperson of the Board
- (iii) Mr. Yuki Furuta (hereinafter referred to as “Mr. Furuta”): Outside Director (Chairperson of Compensation Committee and Member of Audit Committee)
- (iv) Mr. Yoshimitsu Kobayashi (hereinafter referred to as “Mr. Kobayashi”): Outside Director (Chairperson of the Board of Directors, Chairperson of Nomination Committee and Member of Compensation Committee)
- (v) Mr. Junji Ota (hereinafter referred to as “Mr. Ota”): Outside Director (Chairperson of Audit

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Effissimo filed a statement of large-volume holdings in March 2017 and King Street filed a statement of large-volume holdings in August 2017 with the Financial Services Agency of Japan.

Committee and Member of Nomination Committee)

- (vi) Mr. Nobuyuki Kobayashi: Outside Director (Member of Audit Committee)
- (vii) Mr. Takashi Yamauchi (hereinafter referred to as “Mr. Yamauchi”): Outside Director (Member of Nomination Committee and Member of Audit Committee)
- (viii) Mr. Yoshiaki Fujimori (hereinafter referred to as “Mr. Fujimori”): Outside Director (Member of Nomination Committee and Member of Compensation Committee)
- (ix) Mr. Paul Brough (hereinafter referred to as “Mr. Brough”): Outside Director
- (x) Ms. Ayako Hirota Weissman (hereinafter referred to as “Ms. Weissman”): Outside Director
- (xi) Mr. Jerry Black (hereinafter referred to as “Mr. Black”): Outside Director (Member of Compensation Committee)
- (xii) Mr. Raymond Zage (hereinafter referred to as “Mr. Zage”): Outside Director

At the time, the Board of Directors shared information, which should have been shared such as letters from shareholders to Board of Directors and shareholder proposals, by means such as posting such information on “Board Vantage” which is a portal site for the Board of Directors viewable by all directors, held a Board of Directors meeting generally once a month and as necessary and also held an executive session (hereinafter referred to as “Executive Session”) (It was initially a meeting only for independent outside directors, but at the time (before the AGM), it became a meeting where all directors participated and exchanged opinions.) just as often. Other committees were also held as necessary, but the meeting only for outside directors was not held from November 2019 to February 2021.

#### (4) Status of Executive Officers

At the time, the executive officers of Toshiba, who were in charge of corresponding with the shareholders, who were foreign investors as described above, and with the IT Industry Division (hereinafter referred to as “IT Industry Division”) of the Commerce and Information Policy Bureau of METI and the personnel of Toshiba who assisted such executive officers were as follows:

- (i) Mr. Masayasu Toyohara (hereinafter referred to as “Mr. Toyohara”), Representative Executive Officer and Corporate Senior Executive Vice President (in charge of Human Resources and Administration Division and Corporate Communication Division)
- (ii) Mr. Masaharu Kamo (hereinafter referred to as “Mr. Kamo”): Executive Officer and Corporate Senior Vice President (in charge of Strategic Planning Division and Group Management Division)
- (iii) Mr. T1 of Strategic Planning: Toshiba personnel in charge who is working in the Strategic Planning Division
- (iv) Mr. T2 of Legal: Toshiba personnel in charge who is working in the Legal Affairs Division

- (v) Mr. T3 of HR/Administration: Toshiba personnel in charge who is working in the Human Resources and Administration Division and the Secretariat of the Nomination Committee

Mr. Kamo succeeded Mr. Toyohara as the personnel in charge in the Strategic Planning Division in April 2020. Mr. Kamo succeeded Mr. Toyohara as the personnel in charge of corresponding with foreign investors and IT Industry Division, but Mr. Toyohara continued as the personnel in charge of corresponding with foreign investors and IT Industry Division together with Mr. Kamo even after such succession until around the time when the AGM ended.

The METI personnel, who were mainly corresponding with Toshiba at the time, were as follows:

- (i) Director K1: Director of the IT Industry Division
- (ii) Director-General K2: Director-General for the Evidence-based Policymaking of the Minister's Secretariat
- (iii) Director-General K3: Director-General of the Commerce and Information Policy Bureau

## 2. Overview of Amended Foreign Exchange and Foreign Trade Act

### (1) Overview of Amendment

Even before its amendment, under the Foreign Exchange and Foreign Trade Act (hereinafter referred to as "FEFTA"), when a foreign investor attempts to engage in certain type of act or transaction such as inward direct foreign investments, an examination was conducted in certain cases from the perspective of national security, maintenance of public order, public safety and smooth management of Japanese economy among other things, and such foreign investor was required to file a prior notification to the Minister of Finance and competent minister for the business (Article 27, Paragraph 1 of the FEFTA). Under the amendment in November 2019 (The amendment became effective on May 8, 2020 and became fully applicable on June 7, 2020.), the system to exempt prior notification was adopted for the purpose of further facilitating inward direct investments, etc. which will lead to sound economic development, but on the other hand, the provisions concerning inward direct investments, etc., which are subject to prior notification, became stricter for the purpose of taking appropriate measures against investments, etc. which have the risk of hindering national security, etc.

Under the prior notification exemption system, a foreign investor is exempted from prior notification by complying with prescribed exemption criteria even if the inward direct investments, etc. are made to any company, etc. operating any type of business requiring prior notification (i.e., designated type of business which is prescribed in "Matter Concerning Types of Businesses Prescribed by Minister of Finance and Competent Minister for Business pursuant to Article 3, Paragraph 3 of the Order on Inward Direct Investment") as long as such foreign investor does not fall under any reason for exception. Furthermore, under the prior notification exemption system, in case of inward direct

investments, etc. to any company, etc. operating any designated type of business, which is designated as core business (i.e., type of business prescribed in “Matter Concerning Types of Businesses Prescribed by Minister of Finance and Competent Minister for Business pursuant to Article 3-2, Paragraph 3 of the Order on Inward Direct Investment”) which requires specially careful examination from the perspective of national security, etc., a foreign investor is exempted from prior notification by complying with additional criteria as long as the percentage of shares to be held by such foreign investor will be less than 10% of total outstanding shares in such target company (Article 27-2 of the FEFTA). On an additional note, exemptions for certain foreign financial institutions were implemented more gradually.

On the other hand, the provisions concerning inward direct investments, etc., which are subject to prior notification, became stricter by the amendment. For example, one of the triggering events for prior notification prior to the amendment was (a) foreign investor acquires shares or voting rights in the target listed company (limited to the case where capital contribution ratio of foreign investor is 10% or more or voting right ratio of foreign investor is 10% or more), but after the amendment, the 10% threshold of capital contribution ratio and voting right ratio was reduced to 1% (Article 26, Paragraph 2 of the FEFTA). Another example is that the following two triggering events for prior notification were added after the amendment: (b) foreign investor consents to the proposal to elect the foreign investor or person closely related to the foreign investor as director or corporate auditor at the shareholders meeting (limited to the case where voting right ratio of foreign investor is 1% or more) and (c) foreign investor proposes and consents to the transfer or discontinuation of important business at the shareholders meeting (limited to the case where voting right ratio of foreign investor is 1% or more) (Article 26, Paragraph 2 of the FEFTA). On an additional note, the following triggering event was added to the types of inward direct investment, etc. through the partial amendment to the Cabinet Order on Inward Direct Investment, etc., which became effective in October 2019 which was prior to the abovementioned amendment to the FEFTA: (d) after the acquisition of voting right in the target listed company, foreign investor procures the consents of other foreign investors to jointly exercise their voting rights (limited to cases where the total voting right ratio of such foreign investors is 10% or more)<sup>3</sup>.

## (2) Procedural Steps of Prior Notification

In case the prior notification mentioned above is filed, the Ministry of Finance and the competent ministry for the business (i.e., the competent ministry for the designated type of business operated by the target company) will conduct examination of prior notification, but in practice, the

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<sup>3</sup> Inward direct investments, etc. subject to prior notification are not only transactions and acts which themselves are directly linked to sale of important business or divulgement of sensitive technology as in (c), but also election of director who is foreign investor, etc. and foreign investors' joint exercise of their voting rights as in (b) and (d) which are stages before (c). It is deemed that these acts should also be subject to examination.

actual examination will mainly be conducted by the competent ministry for the business. For the examination, the ministers of both ministries may require the person, who will engage or has engaged in the act or transaction subject to the prior notification, or any relevant parties to report on the matters concerning such act or transaction (i.e., report requisition order) (Article 55-8 of the FEFTA) and may enter their offices, etc., inspect their properties such as their books and documents and ask questions to relevant parties to the extent necessary (Article 68, Paragraph 1 of the FEFTA). The examination normally ends within 30 days, but if the ministers determine that further examination is necessary to check whether it falls under Inward Direct Investment, etc. Relating to National Security, etc. as explained below, the ministers may extend the examination period up to 4 months. The filer is prohibited from engaging in the inward direct investment, etc. concerning the filed notification until the examination period expires (Article 27, Paragraphs 2 and 3 of the FEFTA).

If the Ministry of Finance and the competent ministry for the business determine, as a result of the examination during the extended period, that the act or transaction falls under inward direct investments, etc. which will hinder the national security of Japan, maintenance of public order or public safety or will cause material adverse effect on the smooth management of Japanese economy (hereinafter referred to as “Inward Direct Investment, etc. Relating to National Security, etc.”), the ministries may listen to the opinion of Council for Customs and Foreign Exchange, etc. and issue a recommendation to change or discontinue the inward direct investment, etc. during the examination period and if the filer of prior notification does not agree to such recommendation, the Minister of Finance and the competent minister for the business may issue an order to change or discontinue such inward direct investment, etc. (Article 27, Paragraphs 3 ~ 10 of the FEFTA).

In the course of examination, there were also cases where if the concern for national security, etc. is not alleviated with respect to the act or transaction for which the notification is filed, the Ministry of Finance and the competent ministry for the business will make adjustments by showing the foreign investor, who filed the notification, the specific compliance items (hereinafter referred to as “Covenant Items”) relating to such act or transaction and requesting such foreign investor to write down such items on the notification. If such foreign investor fails to comply with any of the compliance items, it is deemed that such foreign investor may become subject to the order to take certain measures (i.e., order to take required measures such as disposal of all or part of acquired shares or interests) for filing a notification with false statement (Article 29, Paragraph 2 of the FEFTA).

### (3) How METI Applies FEFTA

METI has a broad scope of jurisdiction over the designated type of business under the FEFTA. As the competent ministry of businesses described above, METI is in charge of application of FEFTA to the prior notification examination, etc. by being conscious of the issue of whether there is a risk of sale of important business or divulgement of sensitive technology from the perspective of ensuring national security

METI also has jurisdiction over the types of businesses which are not directly related to the FEFTA, and each of the departments and divisions of METI, which has jurisdiction over the types of businesses not directly related to the FEFTA, conducts work, etc. relating to growth, improvements and adjustments on the industry and business over which it has jurisdiction (As explained later, the division which mainly has jurisdiction over Toshiba's business is the IT Industry Division.). As a part thereof, each of such departments and divisions is communicating with various companies, financial institutions, foreign investors and other people from the perspective of sound development of businesses over which METI has jurisdiction among other things.

Within METI, any matters concerning the regulations of inward direct investments, etc. of foreign investors under the FEFTA are under the jurisdiction of the Security Trade Control Policy Division of the Trade and Economic Cooperation Bureau (hereinafter referred to as "Security Trade Control Policy Division") (Article 53, Paragraph 3 of the Order for Organization of Ministry of Economy, Trade and Industry Organization). The Security Trade Control Policy Division receives all prior notifications filed to METI under the FEFTA. Upon receipt of prior notification, the Security Trade Control Policy Division asks the filer of notification to answer questions as necessary by sending a questionnaire to the filer, conducts examination by receiving information and opinions from the departments and divisions having jurisdiction over the businesses as mentioned below, and makes decisions, from the perspective of ensuring national security, etc. The Security Trade Control Policy Division issues orders, etc. as prescribed by law depending on the results of examination.

On the other hand, the departments and divisions, which have jurisdiction over the businesses, make efforts to grasp, and have information and knowledge on, the matters concerning their business fields such as actual situation of each technology and company, industry trends, status of foreign investors and international trends. These departments and divisions agree to have consultations with relevant parties such as relevant companies and foreign investors and provide them with advice, etc. on a regular basis, and provide the Security Trade Control Policy Division with procured information and their opinions as the departments and divisions having jurisdiction, before and after the filing of the prior notification, from the perspective of ensuring national security, etc. The Security Trade Control Policy Division uses them as a basis of its examination and decision mentioned above.

### 3. Relationship between Toshiba and METI

#### (1) Toshiba's Status after Third-Party Allotment in 2017

Due to the fact that Toshiba operates many businesses which concern national and public interests such as those relating to infrastructure system and security, Toshiba had a tendency which required Toshiba to prioritize long-term contracts and developments and had an aspect that it could not prioritize short-term business performance enhancement and shareholder returns.

However, after the third-party allotment in 2017, there were comments from foreign investors, who were not satisfied with Toshiba's low stock price, requesting for share buyback and to resolve the issue of conglomerate discount among other things. Therefore, after completing the sale of its memory business in June 2018, Toshiba bought back its shares in the total amount of 700 billion yen. However, Toshiba continued to receive similar comments even after that.

In order to respond to shareholders, Toshiba sent out shareholders' newsletters to all shareholders several times a year and the IR division provided an opportunity to communicate with shareholders each time the quarterly financial results were announced and an opportunity to provide explanation to each large shareholder and investor who might become a shareholder. In addition, from around 2017, Toshiba, especially its Strategic Planning Division, began to communicate with each foreign investor who became a shareholder. If there was a letter from a shareholder, Toshiba provided a response and if there was any request from a shareholder, Toshiba held a meeting with such shareholder. With respect to meetings with shareholders, depending on the topic or participants, personnel in charge at Strategic Planning Division or Legal Affairs Division, executive officer of Strategic Planning Division, Representative Executive Officer and President and outside director, etc. handled the meetings. In January 2019, there was also a group meeting between chairperson of Board of Directors and investors.

Due to the fact that Toshiba's stock prices remained low even though there was an opportunity to provide explanation to foreign investors as explained above, the foreign investors continued providing comments requesting for share buyback and to resolve the issue of conglomerate discount and Toshiba was required to continue dealing with such comments.

## (2) METI's Interest in Toshiba

Due to the fact that (i) METI has been involved with Toshiba for a long period of time, (ii) each division of METI has been exchanging information with each department of Toshiba which runs a business, over which such division of METI has jurisdiction such as nuclear power business, and (iii) the IT Industry Division of METI is in charge of the work relating to growth, improvements and adjustments of numerous businesses operated by Toshiba, which the IT Industry Division has jurisdiction over, such as businesses relating to computers and related devices, broadcasting devices and other data communication devices (Article 9, Item 17 and Article 85, Paragraph 1 of the Order for Organization of Ministry of Economy, Trade and Industry Organization), METI has been keeping a close eye on the status of Toshiba's business and management and has been exchanging information with Toshiba on a daily basis as the ministry in charge of entire Toshiba.

Toshiba and its subsidiaries not only are a large corporation having numerous employees and large number of offices and factories in various locations, but also operates a number of businesses falling under designated type of business under the FEFTA as explained above. In particular, Toshiba operates businesses falling under core business which especially concerns national security such as

weapons, aircrafts, space-related business, nuclear power business, equipment manufacturing business such as general-purpose products which can be used for military purposes and IT business relating to cybersecurity, and businesses relating to public infrastructure, including electricity and sewerage and water supply. Therefore, the IT Industry Division was naturally interested in the continuation of Toshiba's business and stability of its management from the perspective of generally conducting its work relating to growth, improvements and adjustments of business over which it has jurisdiction. For the IT Industry Division, Toshiba is also an extremely important company, which the IT Industry Division has a strong interest in terms of continuation of its stable management, from the perspective of national security, etc.

Due to the fact that Toshiba sold its medical device business and memory business in order to strengthen its financial structure and to avoid excess liabilities and was also in the situation where there was a risk of tilting toward excessive shareholder returns and sale of businesses depending on the comments from foreign investors whose shareholder ratio in Toshiba increased, the IT Industry Division has been exchanging information and opinions on a routine basis with Toshiba and foreign investors who were attempting to engage in any act or transaction falling under inward director investment to Toshiba and obtaining information from financial institutions and other people, in order to make sure that there was no risk of unstable management, sale of any important business or divulgement of any sensitive technology. Furthermore, in case any prior notification had been filed, the IT Industry Division has been gathering information on prior notification, agreeing to have consultations with relevant parties and advising them and providing information and opinions to the Security Trade Control Policy Division, which is in charge of examination of prior notification.

At the time before the AGM, the Director K1 of the IT Industry Division was mainly communicating with Mr. Toyohara and Mr. Kamo of the Strategic Planning Division of Toshiba such as exchanging information and opinions, agreeing to have consultations and providing advice via meeting, telephone or e-mail, etc.

On an additional note, Toshiba, as an organization, did not keep any records of communications between Mr. Toyohara, Mr. Kamo and METI personnel in charge including Director K1 such as exchange of information and opinions between them via meeting, etc.

### (3) Status of Toshiba's Shareholders Meeting in 2019

With respect to Toshiba's shareholders meeting in 2019, King Street requested changing a majority of directors in March 2019. Based on the approval of Board of Directors, Mr. Toyohara, who was personnel in charge in the Strategic Planning Division at the time, negotiated with King Street to reduce the number of its nominated director candidates in accordance with the number of shares held by it which was more than 5% at the time. On the other hand, the Nomination Committee had interviews with over 10 director candidates and selected appropriate candidates. The result was that

Toshiba was able to come to a compromise with King Street by withdrawing the director candidates whom Toshiba initially planned to propose and by incorporating three foreign director candidates nominated by King Street and one foreign director candidate nominated by Farallon into Toshiba's proposal and this Toshiba's proposal was approved at the shareholders meeting. The four foreign director candidates at the time were Mr. Brough, Ms. Weissman, Mr. Black and Mr. Zage.

At the time, Mr. Toyohara provided to the IT Industry Division each time the information such as the fact that there was a shareholder proposal from King Street and the progress of negotiation with King Street. During such period, the Minister of Finance and the Minister of Economy, Trade and Industry issued a report requisition order to Toshiba under the FEFTA. During such time, King Street was also in contact with METI<sup>4</sup>.

#### 4. Progress over Withdrawal of Effissimo's Shareholder Proposal at the AGM

##### (1) Effissimo's Actions Relating to Fictitious and Circular Transactions of TSC

Around December 2019, it became clear that fictitious and circular transactions were conducted at Toshiba IT Services Corporation (hereinafter referred to as "TSC"), which is a sub-subsiary of Toshiba, and Toshiba announced such fact and the results of investigation conducted by lawyers during the period between January and February 2020 (hereinafter, the year of the month and day which do not provide the year will be deemed as 2020). The details of such investigation results provided that (i) no independent involvement by any of TSC's directors, officers or employees or systematic involvement of TSC in the fictitious and circular transactions was found and (ii) no direct evidence, which proves that any of TSC's directors, officers or employees was aware that the transactions in question were fictitious or circular transactions, was found.

In response thereto, on March 19, Effissimo sent a letter to the Board of Directors (i) stating that Effissimo was seriously concerned about the fictitious and circular transactions of TSC, (ii) requesting for meeting with each director and (iii) stating that it would consider making a shareholder proposal depending on the situation.

Before this, on March 6, Effissimo consulted with the Security Trade Control Policy Division on matters such as whether or not Effissimo could make a shareholder proposal to Toshiba on election of directors. This is because the Covenant Items included in the prior notification filed by Effissimo provided that (i) Effissimo would not become involved in personnel affairs of management of the company in which Effissimo acquired shares and its subsidiaries (except for exercise of voting rights) and (ii) if it was necessary for Effissimo to become involved in such personnel affairs, Effissimo was required to confirm with the Security Trade Control Policy Division no later than one month in advance that such involvement would not affect any business relating to any product or technology

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<sup>4</sup> According to Mr. Toyohara, when King Street came in contact with METI, it seems that METI also told King Street that King Street's proposal contained too many director candidates as compared to the number of shares held by it.

which is important in terms of national security. After agreeing to have consultation with Effissimo, the Security Trade Control Policy Division began conducting the review and Effissimo was in a situation where it could not make a shareholder proposal to Toshiba on election of directors.

In response to Effissimo's letter mentioned above, Mr. Tsunakawa and Mr. Toyohara had a telephone conference with Effissimo on March 31, but Effissimo sent a letter again on April 13 requesting for meeting with each director.

At the Executive Session held on April 18, in response to the request made by Effissimo in the second letter, the Executive Session came to a decision that Mr. Ota, Chairperson of Audit Committee, would be the first director to have a meeting with Effissimo and thereafter, each member of Audit Committee and then several other directors would have a meeting with Effissimo.

Therefore, Mr. Ota had a telephone conference with Effissimo on April 24 to explain to Effissimo on the matters such as how the Audit Committee views the TSC issue and the compliance issue arising therefrom and how the Audit Committee would handle them, and thereafter, Mr. Fujimori and Mr. Yamauchi had telephone conferences with Effissimo on May 14, Mr. Kobayashi had a telephone conference with Effissimo on May 15 and Mr. Kurumatani had a telephone conference with Effissimo on May 16. Mr. Ota and other Audit Committee members, who had telephone conferences with Effissimo until May 14, perceived that they gained Effissimo's understanding on the TSC issue and the compliance issue due to the fact that Effissimo expressed a certain degree of understanding and did not touch on matters such as Effissimo's nomination of directors<sup>5</sup>.

Mr. Toyohara provided Director K1 of the IT Industry Division with Effissimo's letters and details on telephone conferences with Effissimo during such period. On March 25, Mr. Toyohara requested Director K1 to notify him in case Effissimo requested the FEFTA regulation authority for approval to make an important shareholder proposal after he told Director K1 his prediction that Effissimo would make assertions such as requesting to remove Toshiba's management member(s) and to nominate director(s) by using the TSC issue as a starting point. At that time, Mr. Toyohara told Director K1 that upon making an early-stage prediction on the shareholders' votes at the AGM, Mr. Toyohara imagines that it would become very difficult for Toshiba's proposal to be approved if Effissimo abstains from voting on Toshiba's proposal and that Effissimo's proposal would very likely be approved if Effissimo's proposal is approved by METI.

On an additional note, Director K1 did not inform Toshiba of the fact that Effissimo consulted with the Security Trade Control Policy Division around this time on matters such as whether or not

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<sup>5</sup> During the exchange of opinions with the Committee, Effissimo stated that (i) Effissimo could not talk about the nomination of directors at the time because Effissimo was consulting with the Security Trade Control Policy Division about the shareholder proposal on election of directors in accordance with the Covenant Items and was in a situation where Effissimo was uncertain whether it would receive an approval from the Security Trade Control Policy Division on making the shareholder proposal until it received a response from the Security Trade Control Policy Division and (ii) due to the fact that the Security Trade Control Policy Division gave an approval to Effissimo to make the shareholder proposal on election of directors on May 15, Effissimo talked to Mr. Kobayashi about the shareholder proposal on election of directors in the telephone conference held on the same day.

Effissimo could make a shareholder proposal to Toshiba on election of directors in relation to the Covenant Items.

## (2) 3D's Actions

On the other hand, 3D (i) told Mr. Kamo on April 3 that 3D was ready to make a shareholder proposal, (ii) sent a letter to Toshiba on April 16 informing that 3D would make a shareholder proposal shortly upon pointing out matters such as the occurrence of conglomerate discount at Toshiba, and (iii) sent a shareholder proposal to Toshiba on April 30 proposing election of two directors.

## (3) Course of Action on How to Deal with Shareholders for AGM

On April 30, Mr. Toyohara explained to the personnel of Human Resources and Administration Division of Toshiba that Mr. Toyohara believed that Director K1 requested the Human Resources and Administration Division for curriculum vitae, etc. of Toshiba's outside directors partially because Mr. Toyohara had been communicating with Director-General K2 and Director K1 of METI and had been requesting for their support for the AGM.

On April 30 and May 1, Mr. Kurumatani made telephone calls to Mr. Ota and explained to him that (i) he wished to basically deal with the actions of Effissimo and 3D by keeping in mind May 8 when the amended FEFTA would come into force and (ii) he wished to endeavor to come to an agreement within Toshiba and with Kasumigaseki (i.e., METI) after the Golden Week holidays on matters such as opinions and proposals from shareholders, who are institutional investors, which came to Toshiba so far, after accurately recording the evidences such as meetings held<sup>6</sup>.

On May 1, Mr. Kamo and Mr. Toyohara had a discussion with Director K1 and Director-General K2 on the measures to be taken for the AGM by taking into account the actions of Effissimo and 3D, and at that time, METI requested Toshiba for Toshiba's written request requesting METI to conduct investigation, etc. under FEFTA (hereinafter referred to as "Written Request") and for Toshiba's submission of its prediction on shareholders' votes.

From May 2 to May 3, in their e-mail exchanges, Mr. Toyohara and Mr. Kamo stated that they could use METI for the negotiation to have (3D's) shareholder proposal withdrawn and Mr. Toyohara stated that they could consider using a financial advisor (hereinafter referred to as "FA") to whom they would entrust discussions with shareholders for the AGM, arrangement of such discussions and analysis of prediction on shareholders' votes among other things if METI could not stop 3D.

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<sup>6</sup> These statements by Mr. Kurumatani were found in the e-mails which Mr. Ota sent to Mr. T1 of Strategic Planning and others which provided the details of what Mr. Kurumatani said in his telephone conversation with Mr. Ota. In the course of conducting his work, Mr. Kurumatani frequently used telephone and had direct talks as a form of communication, used the short message service (SMS) in his mobile phone as an auxiliary form of communication and rarely used e-mails. Due to the fact that Investigators' investigation mainly used the remaining e-mails of relevant parties as evidence, the Investigation Report provided that the Investigators found very few facts on Mr. Kurumatani such as his statements and acts.

On May 4, Mr. Kamo sent to Director K1 draft Written Request, which received Mr. Kurumatani's approval, and prediction on shareholders' votes. This draft Written Request mentioned that Effissimo, Farallon, HMC and 3D were subject of investigation and requested for appropriate application of FEFTA in a timely manner including on-site inspection under the FEFTA hereafter due to the possibility of contravention with the prior notification obligation among other things.

On May 7, Mr. Kamo handed or sent to the IT Industry Division a document entitled "Status Concerning Company Shareholders Meetings (scheduled for July 15)" (hereinafter referred to as "Position Paper"). This document was a document which (i) Mr. Kamo drafted based on the draft sent by Mr. Kurumatani, (ii) incorporated Mr. Toyohara's comments and (iii) was completed after receiving Mr. Kurumatani's confirmation<sup>7</sup>. This document, among other things, (i) provided the fact that the AGM was the first general meeting of shareholders of Toshiba after the amended FEFTA and it was necessary to receive swift and strong government support in order to achieve and effectuate the purpose of amended FEFTA because activist shareholders were attempting to measure its effectiveness, (ii) provided the fact that activist shareholders had no choice but to request Toshiba for share buyback and sale of its business due to the fact that activist shareholders' financing cost was 20% to 30% per year and that activist shareholders were attempting to efficiently take control of Toshiba by having a large number of outside director candidates, who can cause impact, elected, (iii) provided the fact that Effissimo mentioned about the effectiveness of Board of Directors and board members' activities at Effissimo's meetings with outside directors which were held in connection with the TSC issue, and stated that such action by Effissimo was beyond the scope of pure investment and could become subject to an order to sell (its shares in Toshiba), and (iv) provided the fact that 3D nominated two outside director candidates, and stated that this was an opportunity to check with 3D on its investment purpose and if 3D would respond that it was a pure investment, Toshiba would have 3D's shareholder proposal withdrawn and would establish restrictions on 3D's activities hereafter by having 3D agree to Covenant Items and if 3D would respond that it was not a pure investment, 3D could become subject to an order to sell (its shares in Toshiba).

On May 8, Mr. Kamo showed Mr. T1 of Strategic Planning a draft entitled "Shareholder Relations, Action List (May 8)" and instructed him to prepare the action list according to each shareholder. This instruction was given to have consultation with FA to decide on what FA would do and what Toshiba would ask METI to do according to each schedule and to request METI to take a strong action against Effissimo which was already tied up under the FEFTA. The draft provided that (i) with respect to

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<sup>7</sup> These facts were found from the remaining e-mails and from Committee's interview with Mr. Kamo. Even from the remaining e-mails, the Committee has found that (i) Mr. Kamo sent a draft of Position Paper from his private e-mail address to his company e-mail address in the morning of May 7 and the drafted included a statement "(I) will also provide a thorough explanation to the director-general on May 11," which shows that Mr. Kurumatani was involved in preparing the draft of Position Paper and (ii) Mr. Kamo requested Mr. Kurumatani, Mr. Toyohara and others via e-mail to check the contents of Position Paper and such e-mail included a statement that "(I) have written down the details provided by Mr. Kurumatani this morning," which shows that Mr. Kamo received the draft from Mr. Kurumatani.

Effissimo, the first action was to uncover Effissimo's intention to sell Toshiba's business through Effissimo's meetings with directors and the second action was to secure stable shareholders through METI-centered response to the amended FEFTA and (ii) with respect to 3D, the first action was to uncover 3D's intention to sell Toshiba's business when asking 3D for the background of its nominated director candidates and the second action was to move to METI-centered measures or to have discussion with 3D again by having meetings.

Mr. Kamo, Mr. Yamauchi and Mr. T1 of Strategic Planning had an online meeting with Director-General K3 and Director K1 on May 11 and Mr. Kamo, Mr. Yamauchi and Mr. Fujimori had a video or telephone conference (hereinafter, non-face-to-face meeting shall be referred to as "Teleconference") with Director-General K3 on May 13. In these meetings, Director General K3 mentioned that METI had a strong interest in protecting the businesses operated by Toshiba which were important in terms of national security such as nuclear power, defense and semiconductors and also had a strong interest in ensuring the stability of large companies such as Toshiba that have a significant impact on society under the special circumstances involving COVID-19 pandemic in terms of national security in a broader sense and therefore, METI viewed that the threat on these two national security perspectives from shareholders who made demands exclusively from a profit perspective was undesirable. Upon receiving such message, Mr. Kamo understood that Toshiba had been requested to report to METI in case any of the shareholders mentioned any matter threatening national security as described above.

Meanwhile, Mr. Toyohara and Mr. Kamo prepared the documents such as Position Paper mentioned above, exchanged information with METI, and had Mr. T2 of Legal review and outside law firm check on whether the regulations on inward direct investments, etc. by foreign investors under the amended FEFTA could be used to protect the company from activist shareholders among other things. Mr. Kamo and Mr. Toyohara initially thought that the acts of activist shareholders could suitably be restricted by the amended FEFTA due to the fact that Toshiba ran a number of core businesses, but after receiving information such as the information from Mr. T2 of Legal that (i) without any evidence of agreement between foreign investors on their joint exercise of voting rights, the only method which could be used was for METI to encourage such foreign investors to take a certain action during a conversation with them which would not amount to even administrative guidance and (ii) the conclusion of review that it would be difficult for METI to prevent the rejection of proposal to elect Mr. Kurumatani due to the fact that the act of voting against or abstaining to vote for Toshiba's proposal does not fall under inward direct investments, etc., Mr. Kamo and Mr. Toyohara began to view that it would not be possible to impose strong restrictions on shareholder proposal and exercise of voting right under the amended FEFTA.

#### (4) Shareholder Proposal by Effissimo

On May 15, the Security Trade Control Policy Division provided a response to Effissimo that the Security Trade Control Policy Division gave an approval on Effissimo to proceed with its shareholder proposal on election of directors which Effissimo had been consulting with the Security Trade Control Policy Division.

Therefore, on May 15, Effissimo told Mr. Kobayashi during its telephone conference with him that (i) due to the fact that Toshiba's executive officers had compliance and corporate governance issues such as how they were dealing with the TSC issue, Effissimo was considering making a shareholder proposal requesting for election of outside directors who would take a role of rectifying the issues and (ii) Effissimo intends to oppose the proposal to elect Mr. Kurumatani. Mr. Toyohara informed Director K1 thereon on May 16.

On May 18, there were communications between Mr. Kamo and Director K1 on the Written Request of which the preparation was stopped at the draft stage. Under Mr. Kamo's instructions to Mr. T2 of Legal, the Written Request was completed and was submitted by Mr. T2 of Legal to the IT Industry Division on May 19. With respect to this Written Request, its contents became simpler than the existing draft based on the instructions from Mr. Kamo and it provided a request to METI to take appropriate measures, including confirmation of facts through an investigation based on Article 55-8 of the FEFTA, based on the grounds that similar proposals were made at the same time by multiple foreign investors and that the proposals as a whole would have a risk of leading to transfer of Toshiba's businesses including its core businesses and would affect the continuous and stable implementation of Toshiba's businesses including its core businesses.

On May 19, Effissimo submitted a proposal to Toshiba to elect four directors who were Mr. Akira Takeuchi (hereinafter referred to as "Mr. Takeuchi"), Mr. Tadaaki Sugiyama (hereinafter referred to as "Mr. Sugiyama"), Mr. Yoichiro Imai (hereinafter referred to as "Mr. Imai") and Mr. Takashi Kosaka (hereinafter referred to as "Mr. Kosaka"). Mr. Kamo provided and reported to Mr. Kurumatani the shareholder proposal received from Effissimo and Mr. Kurumatani notified Director-General K2 thereof.

With regard to the work reports, etc. provided to Mr. Kurumatani around this time, (i) Mr. Kamo provided Mr. Kurumatani with reports including how to deal with shareholders approximately once a day, (ii) the meetings on matters such as how to deal with shareholders were also held at least once a week between Mr. Kurumatani, Mr. Toyohara, Mr. Kamo, Mr. T1 of Strategic Planning, Mr. T2 of Legal and Mr. T3 of HR/Administration, and (iii) such meetings were held every day or once every two days from mid-June<sup>8</sup>.

With respect to Effissimo's shareholder proposal, Mr. Kamo and Mr. Toyohara became cautious of

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<sup>8</sup> The Committee has found the facts concerning the work reports, etc. provided to Mr. Kurumatani from its interviews with Mr. Kamo and others.

the possibility that foreign investors including Effissimo were trying to manage Toshiba as they wish by increasing the total number of directors of Toshiba by adding four directors nominated by Effissimo, by rejecting the election of Mr. Kurumatani, by ultimately making the total number of directors 15 directors and by making up a majority of directors with eight directors comprising of four foreign directors from last year and four directors nominated by Effissimo. Therefore, Mr. Kamo and Mr. Toyohara planned to have this shareholder proposal withdrawn.

This shareholder proposal by Effissimo was also shared with Toshiba's directors. By the Executive Session held on May 23 as mentioned later, a number of Japanese directors, who constitute a majority of Toshiba's directors, perceived that the purpose of Effissimo's shareholder proposal was something other than resolving the compliance issue and felt a sense of danger in Effissimo's shareholder proposal that Effissimo was trying to become involved in Toshiba's management, which would go against Toshiba's mid- and long-term growth, due to the fact that Effissimo made such proposal despite the fact that such Japanese directors' understanding was that Toshiba gained Effissimo's understanding on the compliance issue such as TSC's fictitious and circular transactions based on the explanation received from Mr. Ota and other Audit Committee members. On the other hand, four foreign directors did not have such sense of danger or understanding and did not talk to Japanese directors about Effissimo's intentions or about sense of danger.

On May 20, Director K1 sent to Mr. Toyohara and Mr. Kamo a document entitled "Q&A Outline". This document provided possible questions and answers in case Toshiba had a meeting with Effissimo and was an attempt to question Effissimo on (i) whether the real reason for its shareholder proposal was to sell Toshiba's businesses and was not due to strengthen compliance and (ii) whether Effissimo had an agreement with other foreign investors to jointly exercise their voting rights. Through this document, METI requested Toshiba to provide information to METI if Effissimo said yes to either of above questions. Director K1 also informed Toshiba that since the battle with Effissimo was expected to continue until the very last minute, he would like Toshiba to consider how far Toshiba could push back the deadline to withdraw the shareholder proposal.

On May 21, Director K1 informed Mr. Toyohara that the Ministry of Finance and METI were in the process of approving the issuance of report requisition order against Toshiba and would probably issue the order the next day and therefore, Toshiba should be ready.

On May 22, the Minister of Finance and the Minister of Economy, Trade and Industry issued an order against Toshiba to submit a report on the status of inward direct investments, etc. (i.e., report requisition order) by designating Toshiba as a company, which needs to provide them with such report, pursuant to Article 7, Paragraph 5 of the Order on Inward Direct Investment.

On May 23, the Board of Directors meeting and Executive Session were held. For the period until these meetings, the letters and shareholder proposals from Effissimo and 3D were shared with all directors by posting them on the portal site for the Board of Directors each time, but the draft Written

Request, a document entitled “Status Concerning Company Shareholders Meetings (scheduled for July 15),” action list on how to deal with each shareholder and Written Request as mentioned above were not shared with the directors. At the Executive Session held on May 23, executive director explained the amended FEFTA and the requisition order issued against Toshiba on May 22, and opinions were exchanged on the policy on measures to be taken against each shareholder proposal. With respect to the report requisition order, it took some time and effort to gain the understanding of foreign directors for reasons such as its English translation was not made on time, but the foreign directors agreed that Toshiba would report the information (to the Minister of Finance and the Minister of Economy, Trade and Industry) in response to such report requisition order. Furthermore, the written explanation prepared by FA, which provides the policy on how to deal with the shareholder proposals from Effissimo, 3D and Argyle, was distributed to directors. Such document provided, among others, a summary on how the negotiation for withdrawal would be held with respect to the shareholder proposals and the suggestion that formal procedure of Nomination Committee would be taken with respect to Effissimo’s proposal. At the Executive Session, there was also a common understanding that formal selection procedure of Nomination Committee would be taken with respect to the proposed director candidates based on the premise that the number of directors should not be increased from the current number of 12.

During the Board of Directors meeting and the Executive Session mentioned above or after such meetings, the documents such as Written Request as mentioned above were not shared with directors and the executive officers did not report to the Board of Directors on the communications with METI, including exchange of information between them, which were carried out before and after these meetings. Therefore, only some of the Japanese directors knew only bits and pieces of tiny portion of information exchanges and consultations made between executive officers and METI concerning matters such as how to deal with the shareholder proposals<sup>9</sup>. Therefore, such Japanese directors were not aware of most of the communications between the executive officers and METI and other Japanese directors and foreign directors did not know even bits and pieces of such communications.

On an additional note, the abovementioned written explanation prepared by FA also provided that executive officers, including Mr. Toyohara and Mr. Kamo, also already had a considerable number of meetings with several foreign investors other than Effissimo and plan to continue having such meetings with them in the future.

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<sup>9</sup> The Committee has found that (i) Mr. Yamauchi and Mr. Fujimori knew bits and pieces of the fact that executive officers and METI were exchanging information such as information on how to deal with the shareholder proposals due to reasons such as the fact that they were having Teleconference, etc. with Director-General K3 and (ii) most of members of Audit Committee and Nomination Committee, to which Mr. Yamauchi and Mr. Fujimori belong, also had the same degree of knowledge.

#### (5) METI's Approach to Effissimo

During the period from May 21 to 28, Director K1 of the IT Industry Division repeatedly had telephone conferences with Effissimo, and upon exchanging opinions on Toshiba's management, Director K1 made statements concerning Effissimo's shareholder proposal such as the concern that such proposal might hinder the stability of Toshiba's management in the midst of COVID-19 pandemic and the possibility that such proposal might become subject to regulations under the FEFTA. At that time, Director K1 also made statements such as "it appears the bureaus responsible for rules and regulations will take action with the Ministry of Finance" and "we would like to consult with you on where to land, so that you don't get into trouble."

Meanwhile, on May 26, Director K1 sent to Mr. Kamo a letter from Effissimo entitled "Request for Collaborative Engagement Taking into Account Fictitious and Circular Transaction" with a warning that Toshiba should not pass it over to Effissimo. This letter was a letter from Effissimo to request multiple Toshiba shareholders to engage by being conscious of TSC issue.

On May 28, in response to the report requisition order, Toshiba submitted (to Director K1) a document with its supporting materials stating, among other things, that Effissimo (i) had been in contact with each Toshiba director since January and (ii) sent letters to Toshiba's shareholders to request for collaborative engagement which could be viewed that there was a possibility that Effissimo would jointly exercise its voting rights, etc. with other foreign investors.

On May 28, Mr. Kamo sent to Director K1 a draft document entitled "Rebuttal Memo" in response to Director K1's request. This document is a document which provides the rebuttal from Director K1 in anticipation of Effissimo's assertions to Director K1 such as the assertion that Toshiba's investigation on TSC issue was insufficient. In response to this draft, Director K1 requested to rewrite the draft so that the rebuttal contains acknowledgment that Toshiba was also at fault, and explained that METI is thinking of taking the following steps as its rebuttal: (i) distinguishing the rebuttals, which could be made after sorting out Effissimo's assertions, from the leftover issues; (ii) questioning whether Effissimo's proposal to elect directors could contribute to remedy the problems; and (iii) if such proposal could not make such contribution, questioning whether the sale of businesses is hiding in the background. Director K1 also provided Mr. Kamo with information such as how Director K1 responded to Effissimo's assertions during the telephone conferences with Effissimo held until then and what Effissimo stated as problems with the current Toshiba management team.

On May 29, the Security Trade Control Policy Division notified Effissimo that it was likely that METI would be reviewing the entire consultation procedure due to the information obtained about the suspected violation of Covenant Items provided in the prior notification submitted by Effissimo. Prior to that, Director K1 notified Mr. Kamo that the Security Trade Control Policy Division would be contacting Effissimo on May 29.

On May 29, Mr. T1 of Strategic Planning told Mr. T3 of HR/Administration that the policy on how

the Nomination Committee would approach at the meeting with Effissimo's director candidates changed from pursuit approach to polite approach. At that time, Mr. T1 of Strategic Planning added that the abovementioned policy is "Sunshine Policy" which he cited from the words of someone else.

(6) Proposal from Toshiba to Establish Compliance Expert Committee

The Nomination Committee had meetings with Mr. Takeuchi and Mr. Sugiyama, who were director candidates nominated by Effissimo, on May 23 and with Mr. Imai and Mr. Kosaka, who were also director candidates nominated by Effissimo, on May 30.

After the meetings on May 30, there was a conversation between four Nomination Committee members and Mr. Toyohara, and the members informed Mr. Toyohara that Mr. Imai stated that the contact with METI this week was more stressful than ever before and that all Nomination Committee members felt that the shareholder proposal this time was fully negotiable, among other things. In the conversation with the Nomination Committee members after these meetings, there were discussions that as a possible compromise with Effissimo, there was a possible option in which a compliance expert committee would be established and Mr. Takeuchi would join the committee and a possible option to add Mr. Takeuchi to one of the candidates under the Toshiba's proposal if Effissimo would insist on the (election of) directors no matter what.

By taking this discussion into account, Mr. Toyohara prepared an e-mail which provided a memo on how to proceed hereafter. This memo provided that while having METI take a strong approach against Effissimo for the time being, (i) METI would make a proposal to establish a compliance expert committee at some point in time, (ii) Mr. Kurumatani would also make a proposal to Effissimo at an appropriate timing to have Mr. Takeuchi join the compliance expert committee in order to enhance compliance, (iii) Mr. Kurumatani would recommend Effissimo to agree to the proposal of having Mr. Takeuchi join the compliance expert committee, and (iv) if Effissimo would insist on the election of directors, Mr. Kurumatani would put an end to it by making a final proposal to elect only Mr. Takeuchi as director. These details were notified to Mr. Kamo.

Mr. Kurumatani had a meeting with Director-General K2 on May 31, and in response to this, Mr. Kamo and Director K1 had a meeting on how to approach Effissimo and 3D hereafter on June 1. Prior to this meeting, Mr. Kamo sent an e-mail to Director K1 stating that (i) with respect to Effissimo, compliance expert committee would be established and if a compromise could not be reached with Effissimo by using the proposal to establish a compliance expert committee and to have Effissimo's director candidate join such committee, Toshiba would make a final proposal to Effissimo to agree to have one director candidate of Effissimo elected as director, and therefore, Toshiba would like to consult, etc. with Director K1 on the timing when such approach would be made and (ii) with respect to 3D, due to the fact that skills of director candidates nominated by 3D are not as good as others and that there is no need to increase the current number of directors, Toshiba refuses to accept 3D's director

candidates, but 3D seemed to be planning to also ask the supervisory authority for its view and therefore, Toshiba would like to consult, etc. with Director K1 on how METI would approach 3D.

On June 2, Mr. Toyohara and Mr. Kamo made a proposal to Effissimo to establish a compliance experts' committee and to have Mr. Takeuchi and Mr. Sugiyama as expert members, but Effissimo refused such proposal even after continuing having discussions with Effissimo on June 3, 4 and 8 because Effissimo planned to have Mr. Takeuchi and Mr. Sugiyama as director candidates.

On June 3, the Security Trade Control Policy Division requested Effissimo to have a meeting to conduct an interview due to the suspicion of violation of Covenant Items relating to involvement in personnel affairs by having meetings with outside directors of Toshiba before receiving provisional permission from METI.

On June 4, Director K1 and Effissimo had a telephone conference, and Director K1 stated, among other things, that (i) Toshiba's proposal to Effissimo regarding compliance was commendable, (ii) Director K1 heard that regulators would begin an investigation on the facts including the FEFTA and (iii) Director K1 was concerned that the conflict between shareholder and company would become theatrical if the shareholder proposal to elect four directors was maintained. At that time, Director K1 stated, among other things, that "we have been trying to talk to the regulators to keep them calm, but we can no longer control the situation," "once the regulators begin moving on full scale, there is no way to stop" and "we can't provide any more support from within the government."

On June 5, the Security Trade Control Policy Division had a telephone conference with Effissimo and conducted an interview to question the violation of Covenant Items.

On June 9, Effissimo submitted to the International Department of the Bank of Japan a prior notification concerning the consent on the proposal to have the proposer or a person closely related to the proposer elected as director or corporate auditor, which was necessary under the amended FEFTA, in order for Effissimo to exercise its voting right to vote for its own shareholder proposal on election of directors. Thereafter, the examination period of such notification was extended from the normal period of 30 days and the abovementioned voting right became non-exercisable during such period.

On June 11, Director-General K2 and Director K1 visited Toshiba's head office and had a meeting with Mr. Kurumatani.

On June 15, the Minister of Finance and the Minister of Economy, Trade and Industry issued an order against Effissimo to submit a report on the status of inward direct investments, etc. (i.e., report requisition order) by designating Effissimo as a company, which needs to provide them with such report, pursuant to Article 7, Paragraph 5 of the Order on Inward Direct Investment.

On June 16, Toshiba notified Effissimo that Nomination Committee's decision on the director candidates proposed by Toshiba would be made on June 19 and that Effissimo's shareholder proposal would be announced by June 25 at the latest.

On June 17, Effissimo requested Director K1 to have a talk, and Director K1 had a telephone

conference with Effissimo on the same day after notifying Toshiba thereof. In the telephone conference, (i) Director K1 touched on the regulators' actions and made statements such as asking Effissimo to withdraw its shareholder proposal, (ii) Effissimo stated that it would consider revising its shareholder proposal and asked Director K1 to request Toshiba to postpone the Nomination Committee's decision, and (iii) Director K1 agreed that he would negotiate with Toshiba. At that time, Director K1 made statements such as "they (regulators) are very concerned about the impact on national security-related businesses as a result of a sell-off," "it is quite unusual and quite serious for METI and MOF (Minister of Finance) to jointly issue a request for a report" and "it must be regarded that the government has a concern as mentioned based on that."

On June 18, Director K1 informed Mr. Toyohara on the details of what Director K1 said in the telephone conference with Effissimo held on the previous day and told Mr. Toyohara that Effissimo was considering changing its proposal and would notify Toshiba.

On June 18, Effissimo requested Toshiba to postpone the Nomination Committee's decision on the director candidates to be proposed by Toshiba and notified Toshiba that Effissimo would withdraw Mr. Kosaka from the director candidates in its shareholder proposal.

On June 18, Director K1 and Effissimo had a telephone conference, and Effissimo told Director K1 that Effissimo would maintain its shareholder proposal to elect three director candidates unless the director candidates proposed by Toshiba did not include either (i) Mr. Imai or (ii) both Mr. Takeuchi and Mr. Sugiyama. Director K1 stated, as before, that the government was about to trigger a part of FEFTA and stated that the concern was not eliminated by reducing the number of director candidates, among other things.

On June 19, Toshiba informed Effissimo that since the Nomination Committee's decision on the director candidates to be proposed by Toshiba was postponed to June 22, Effissimo was required to submit any revision on its shareholder proposal by June 21.

On June 19, Director K1 and Effissimo had a telephone conference, but Effissimo stated that it would maintain three director candidates as its shareholder proposal. Director K1 complained to Effissimo on how Effissimo proceeded with the negotiation. The telephone conference ended there.

On June 21, Effissimo sent a letter to Toshiba stating that it would maintain the number of its director candidates at three.

#### (7) Subsequent Actions in Anticipation of AGM

At the Board of Directors meeting held on June 22, there was a board resolution on the AGM agenda items and it was decided that the agenda items would be Proposal No. 1 (amendment to the Articles of Incorporation) and Proposal No. 2 (election of 12 directors) as company proposals and Proposal No. 3 (election of two directors) and Proposal No. 4 (election of three directors) as shareholder proposals. Proposal No. 1 incorporated Argyle's proposal, Proposal No. 2 would be a

proposal to reelect incumbent 11 directors and to newly elect Mr. Osamu Nagayama (hereinafter referred to as “Mr. Nagayama”) in place of Mr. Kobayashi, and would include the reelection of four foreign directors which was due to incorporation of Farallon’s proposal. Proposal No. 3 was a shareholder proposal requesting for election of two directors nominated by 3D and Proposal No. 4 was a shareholder proposal requesting for election of three directors nominated by Effissimo. It was decided that opposing opinion of Board of Directors would be added to Proposal No. 3 and Proposal No. 4. The Board of Directors acknowledged that the executive directors would thereafter make approaches, etc. to each shareholder to pass Toshiba’s proposals and reject the shareholder proposals.

On June 22, Toshiba convened the AGM and disclosed the agenda items, etc. From this, it became known to the shareholders, etc. that 3D and Effissimo made shareholder proposals and that the Board of Directors was against them.

In early July, Toshiba had web meetings with ISS and Glass Lewis, which are voting advisory firms, respectively to provide them with explanation, in order to obtain their recommendations in favor of Toshiba’s proposals and against the shareholder proposals. In mid-July, ISS and Glass Lewis announced their recommendations in favor of Toshiba’s proposals and against the shareholder proposals.

On an additional note, Toshiba had discussions with a total of 258 shareholders during the period from February to July in anticipation of AGM and there were quite a few discussions handled by Mr. Toyohara, Mr. Kamo and Mr. Kurumatani and outside directors.

#### (8) Subsequent Actions Taken against Effissimo under FEFTA

On July 15, Effissimo requested the Security Trade Control Policy Division for confirmation on whether or not it would be permissible for Effissimo to vote in favor of 3D’s proposal for election of directors, in accordance with its Covenant Items provided in the prior notification submitted by Effissimo, which states that in case there is a possibility that the exercise of voting right on any proposal by any other foreign investors such as proposal for election of directors which could affect any business operation relating to the products and technologies which are important in terms of national security, Effissimo is required to consult with the Security Trade Control Policy Division no later than one week prior to the exercise of such voting right.

On July 22, the Security Trade Control Policy Division stated that with respect to the abovementioned matter which Effissimo requested for confirmation, such exercise of its voting right has the possibility of affecting the business operation relating to the products and technologies which are important in terms of national security. On July 23, Effissimo responded that it would not exercise its voting right on 3D’s proposal on election of directors. On July 26, Director K1 notified Toshiba thereof.

On July 27, the Security Trade Control Policy Division notified Effissimo that Effissimo could proceed with the exercise of its right of instruction to exercise its voting right, in relation to the prior

notification submitted by Effissimo to exercise its voting right in favor of its own proposal on election of directors.

On an additional note, during the period from the issuance of report requisition order on June 15 to the time of notification of approval as mentioned above, the Security Trade Control Policy Division conducted examination under the FEFTA, including multiple communications between the Security Trade Control Policy Division and Effissimo in which the Security Trade Control Policy Division provided Effissimo with many questions which amounted to scores of questions each time and Effissimo provided answers to these questions.

## 5. Background of 3D's Exercise of Its Voting Right at AGM

### (1) Shareholder Relations Policy against 3D

As mentioned in 4(2) above, 3D made a shareholder proposal to Toshiba to elect two directors on April 30 by pointing out matters such as occurrence of conglomerate discount.

As explained in 4(3) and (4) above, the draft Written Request, a document entitled "Status Concerning Company Shareholders Meetings (scheduled for July 15)" and action list against each shareholder mentioned that course of action on how to deal with shareholder basically similar to the one taken against Effissimo would be taken against 3D. At the Executive Session on May 23, it was decided that formal selection procedure of Nomination Committee would also be taken with respect to the director candidates nominated by 3D. However, due to reasons such as the fact that the skills of director candidates nominated by 3D were not as good as others, Mr. Toyohara and Mr. Kamo did not feel a sense of danger that much at that stage even if such candidates remained in the shareholder proposal. Toshiba's executive directors and METI were more concerned of whether or not Effissimo's shareholder proposal would be approved.

### (2) METI's Approach against 3D

On May 26, upon Mr. Kamo's receipt of request from Director K1 that Director K1 wished to get in contact with 3D, Mr. T1 of Strategic Planning provided Director K1 with 3D's contact information after notifying 3D that he would provide Director K1 with 3D's contact information.

On May 28, Director K1 coordinated a date for telephone conference with 3D via e-mail. Due to the fact that Director K1 requested to have the telephone conference as early as possible, the telephone conference was scheduled on June 4.

On June 4, a telephone conference between Director K1 and 3D was held with 3D's legal counsel also present. In the telephone conference, Director K1 said, among other things, that METI and Ministry of Finance were making considerations such as applying regulations under the FEFTA against any investors who engage in any problematic acts, were taking actions based on specific precedents and were keeping an eye on any other precedents.

On June 17, a telephone conference between Director K1 and 3D was held with 3D's legal counsel also present. In the telephone conference, Director K1 said, among other things, that (i) confirmation under the FEFTA was being made against a foreign investor of Toshiba other than 3D due to procedural problem, (ii) such investor was making a proposal which could not be incorporated into the company proposal, and (iii) 3D should not get dragged into this investor. At such time, Director K1 stated, among other things, that "if you are barbecuing next to your neighbor where there is a big fire, you cannot get away with just that."

### (3) 3D's Reaction

As mentioned in 4(7), Toshiba disclosed the agenda items of AGM on June 22 and 3D became aware of the fact that Effissimo made a shareholder proposal to request for election of three directors.

3D (i) sought advice from its legal counsel on whether there would be a risk that METI would take any measures against 3D in case 3D exercises its voting right in favor of electing all of director candidates nominated by Effissimo, (ii) considered matters such as size of Board of Directors and quality of each candidate, and (iii) decided to exercise its voting right to vote against one of the candidates nominated by Effissimo.

## 6. Background on HMC's Exercise of Its Voting Right at AGM

### (1) Letter Exchanges between Toshiba and HMC

On March 3, HMC sent a letter addressed to all Toshiba directors. In this letter, HMC raised the failure by the Board of Directors to respond to the decline in Toshiba's stock price as a problem, requested Toshiba (i) to immediately make a large-scale share buybacks, (ii) to promise to use the sale proceeds from the sale of shares in KIOXIA Corporation (formerly, Toshiba Memory Corporation) to acquire its own shares and (iii) to promise to save the sale proceeds from any future sale of its assets to acquire its own shares, and stated that if Toshiba did not carry them out, HMC had no choice but to oppose the proposal to elect directors.

On May 26, FA notified Mr. Toyohara that HMC refused to have a telephone conference with Toshiba and wished to discuss with Toshiba via letters. Mr. Toyohara and Mr. T2 of Legal were confused by HMC's reaction, which was different from its reaction a year before in which they had a telephone conference. Therefore, they hastily decided to reply to HMC's letter of March 3.

On May 28, Toshiba sent a letter to HMC stating, among other things, that (i) it was necessary to make a capital allocation carefully due to COVID-19, (ii) Toshiba was not in a position to comment on the timing of IPO of KIOXIA Corporation, and (iii) Toshiba could not commit to share buybacks and would like to provide an explanation after the announcement on June 5.

Toshiba received a HMC's letter in response to the abovementioned letter as of June 1. This letter stated, among other things, that (i) HMC was deeply disappointed by Toshiba's management team and

Board of Directors, (ii) it was regrettable that Toshiba's reply to HMC's letter of March 3 was late and that Toshiba did not make substantive consideration on the three proposals to raise Toshiba's stock price as provided in HMC's letter, and (iii) Toshiba should support the reelection of four outside directors who were foreign nationals. On June 4, Mr. Kamo sent HMC's letter to Director K1.

On June 5, Toshiba announced that with respect to shareholder return policy hereafter, Toshiba would keep an eye on the impact of COVID-19 and its second wave risk and would focus on stability of its financial structure for the time being, but would consider more active capital allocation, including shareholder return and investments for its growth, after COVID-19 settled down.

On June 10, Mr. T1 of Strategic Planning, who found out that HMC contacted Ms. Weissman to request for a meeting, requested Ms. Weissman to try to get in contact with HMC, but Ms. Weissman reported to Mr. T1 of Strategic Planning on June 12 that HMC withdrew its request for a meeting by stating that HMC did not wish to get in direct contact with Toshiba until the end of shareholders meeting. This report was shared with Mr. Toyohara, Mr. Kamo and Mr. T2 of Legal.

#### (2) Mr. M's Involvement in Preparation of Letter to HMC

On June 12 (Friday), Director K1 informed Mr. Kamo that an executive advisor of METI who had connection to HMC (hereinafter referred to as "Mr. M") was scheduled to have a meeting with CIO of HMC via Zoom early next week and told Mr. Kamo that he would like to know any message which Toshiba wished to provide to HMC via Mr. M<sup>10</sup>.

Mr. Kamo responded that Toshiba's message to HMC was that Toshiba would conduct portfolio management, including sale of assets, with a determined resolution and that Toshiba was considering as realistic option to sell the shares in KIOXIA Corporation in order to maximize shareholder profits and was planning to distribute to shareholders a substantial portion of profit from such sale.

Due to the fact that the shareholder return policy concerning the sale of shares in KIOXIA Corporation was scheduled to be announced, Mr. Kamo sent a draft letter to Director K1 on June 22 which provided a supplementary explanation to HMC on such policy. On the same day, Director K1 (i) provided Mr. Toyohara and Mr. Kamo with Mr. M's comments to such draft, (ii) told them to incorporate such comments into the draft letter because it was Mr. M who would be negotiating with HMC, and (iii) pointed out to them as Mr. M's comments that the draft letter should contain a statement which provided that Toshiba was aware of HMC's demands and that Toshiba did not understand the points made by HMC on the governance, among other things. On the same day, there were additional comments from Mr. M via Director K1 and Director K1 said that the draft letter should be rewritten by incorporating Mr. M's comments because Mr. M intended to persuade HMC. Thereafter, Mr. Kamo sent to Director K1 the revised draft letter, which had been revised based on Mr. M's comments,

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<sup>10</sup> According to Mr. Kamo, when Toshiba reported to METI that Toshiba could not get in contact with HMC during the period from late May to early June, METI notified Toshiba of Mr. M, who was an executive advisor of METI from May to July 2020, as a person who had connection to HMC.

and Director K1 responded that he would send such revised draft letter to Mr. M because it would be better that Mr. M agrees to it due to the fact that Mr. M would be attempting to persuade HMC. Thereafter, after further exchanges of draft letter between Director K1 and Mr. Toyohara, Mr. Kamo and Mr. T1 of Strategic Planning and after receiving Mr. M's comments twice via Director K1, Director K1 notified Toshiba that Mr. M agreed to the draft letter.

On June 23, the final version of the letter, which provided, among other things, that share buyback would be considered at the Board of Directors meeting and that the proposal to elect the four foreign director candidates would be submitted, was sent to HMC after Mr. Kurumatani signed it. Prior to that, Director K1 told Mr. T1 of Strategic Planning that he believes that Mr. M became motivated to persuade HMC because the letter became a letter in which Mr. M himself became substantially involved.

### (3) Sharing of Information between Toshiba and METI Immediately before AGM

On July 23, Director K1 told Mr. Toyohara and Mr. Kamo that Chief Cabinet Secretary Suga called Director-General K2 to come on July 27 and therefore, requested Mr. Kamo and Mr. Toyohara to timely notify the status of vote counting and estimation of votes at AGM and their analysis until then.

On July 24, Mr. Kamo sent to Director K1 the vote counting status as of midnight of such day and exchanged e-mails with Director K1. In such e-mail exchanges, Mr. Kamo stated, among other things, that (i) King Street and other large investor(s) voted against the election of Mr. Kurumatani after midnight of July 24 and it was a difficult situation, (ii) the risk that Mr. Kurumatani would not be elected was growing and the votes from HMC and Farallon would become vital, and (iii) with respect to shareholder proposal, Effissimo's proposal was expected to be rejected if 3D voted against it. Director K1 notified, among other things, that (i) Mr. M was scheduled to have a Teleconference with HMC on the following night, (ii) the prospects of Teleconference were unclear and it could turn into a dispute over conditions, and (iii) attorney was also expected to be present at the Teleconference and therefore, it seems that it would be difficult to have in-depth talk. Thereafter, Mr. Kamo sent to Director K1 the materials prepared by FA on the analysis of estimation of votes and told Director K1 that Toshiba was considering as its actions hereafter to request HMC to support Toshiba's proposals and oppose shareholder proposals (If it would be difficult for HMC to oppose Effissimo's proposal, then request would be made to at least oppose 3D's proposal.) and that Toshiba was planning to prepare a list of top 100 largest shareholders. Director K1 requested Mr. Kamo to send such list and responded that he would also communicate with Mr. M.

On July 25, Director-General K2 and Director K1 visited Toshiba's head office and had a meeting with Mr. Toyohara, Mr. Kamo and others to discuss on the estimation of votes, etc.

On July 26, Director K1 told Mr. Kamo that it would be necessary to provide accurate message to

Mr. M and requested Mr. Kamo to let him know how the effects of “not exercising the voting right” and “abstention” differ and their impact. Director K1 also told Mr. Toyohara that Effissimo replied that Effissimo would not exercise its voting right on 3D’s shareholder proposal as mentioned in 4(8). Thereafter, Mr. Kamo sent to Director K1 the updated materials on FA’s analysis on estimation of votes and the list of top 100 largest shareholders, and Mr. Kamo and Director K1 communicated with each other on the message to be given to Mr. M with respect to how Toshiba wishes HMC to vote. In such communications, Mr. Kamo told Director K1 the estimated votes in case HMC voted against Effissimo’s proposal and voted for a part of Toshiba’s proposal, in case HMC did not vote and in case HMC abstained. In response, Director K1 sent to Mr. Kamo a document which Director-General K2 planned to send to Mr. M as a draft and which provided that (i) the best option, which Toshiba wished HMC to take, was to vote for Toshiba’s proposal to elect Mr. Kurumatani, Mr. Nagayama and foreign directors, to vote for 3D’s shareholder proposal and to vote against Effissimo’s proposal, (ii) the next best option was not to exercise the voting rights with respect to all proposals and (iii) the next best option was to abstain from voting with respect to all proposals<sup>11</sup>. Thereafter, Mr. Kamo sent to Mr. Kurumatani the materials on FA’s analysis on the estimation of votes as mentioned above and told him that Mr. M was scheduled to negotiate with HMC on the night of July 26 in which Mr. M would propose HMC to vote for a part of Toshiba’s proposals and vote against Effissimo’s proposal as Toshiba’s best option and would propose not to vote as Toshiba’s second-best option.

On July 27, Director K1 (i) told Mr. Kamo as of midnight that Director K1 was waiting for Mr. M to contact him, but Mr. M had not contacted or e-mailed him and (ii) told Mr. Kamo that Mr. M had not yet contacted him as of 6:18 am, but there were times in the past when Mr. M did not contact him until the next day because he no longer had energy to send an e-mail after the telephone conference and therefore, it might be the same case this time. At 7:30 am, Mr. Kamo had breakfast meeting with Chief Cabinet Secretary Suga. At this meeting, Mr. Kamo explained to Mr. Suga, among other things, that (i) with the support of amended FEFTA and with the support from METI departments and divisions in charge, enough votes are being received in a way that would prevent the AGM from becoming theatrical, but the margin was still very small and the situation was unpredictable and (ii) it would be desirable for the examination on Effissimo’s prior notification by the competent ministries to be completed by the time of AGM in order to avoid the risk of Effissimo motioning for a continuation meeting at the AGM., in accordance with the documents which were sent to Director K1, checked by him and also sent to Mr. Kurumatani beforehand. On July 27, as mentioned in 4(8) above, the Security Trade Control Policy Division notified Effissimo that Effissimo could proceed with the exercise of its right of instruction to exercise its voting right, in relation to the prior notification submitted by Effissimo to exercise its voting right in favor of its own proposal on election

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<sup>11</sup> According to Director-General K2, Director K1 explained to Mr. Kamo that Director-General K2 would send the document to Mr. M, but such document was not sent by Director-General K2 to Mr. M thereafter.

of directors.

On July 28, Mr. Kamo sent to Director K1 the status of vote counting as of midnight of July 28 and the updated materials on FA's analysis on the estimation of votes. In response, Director K1 stated that even by looking at the estimation of votes, he felt like he was walking on thin ice and said that he would provide Mr. Kamo with a feedback on Mr. M's assessments the next day.

On July 29, Mr. Kamo sent to Director K1 the status of vote counting as of midnight of July 29 and the updated materials on FA's analysis on the estimation of votes and told Director K1 that the election of Mr. Kurumatani would become certain if such proposal receives 30,000 of 500,000 votes actually remaining excluding the votes of Effissimo, 3D and HMC. Director K1 prepared a list on estimation of votes of principal shareholders, sent such list to Mr. Toyohara and Mr. Kamo and asked them to check such list. The list provided that HMC voted for the company proposal to elect Mr. Kurumatani, Mr. Tsunakawa, Mr. Nagayama and four foreign directors, abstain from or vote against Effissimo's proposal and vote for 3D's proposal. Director K1 also said that he believed that HMC would exercise its voting right on July 29 because it seemed that HMC would make its decision at its investment committee on July 28.

On July 30, Mr. Kamo told Director K1 that based on the updated status of vote counting, the votes for Mr. Kurumatani already exceeded the majority and HMC has not yet exercised its voting right. Director K1 stated that Effissimo would not be asserting that it could not exercise its voting right due to the fact that regulators' restrictions against Effissimo were lifted on July 27.

On July 31, the AGM was held, and Proposal No. 1 on the amendment to the Articles of Incorporation and Proposal No. 2 on the election of 12 directors, which were Toshiba's proposals, were approved and Proposal No. 3, which was 3D's proposal, and Proposal No. 4, which was Effissimo's proposal, were rejected. HMC did not exercise its voting right on any of the proposals<sup>12</sup>.

## 7. Background on Investigation into Whether or Not Approach Has been Made to Shareholders on Their Exercise of Voting Rights, etc.

### (1) Information on Approach to HMC on Its Exercise of Voting Rights

From September 1 to 4, HMC informed Ms. Weissman and Mr. Black that (i) the reason why HMC did not exercise its voting rights at the AGM was because HMC received contact from certain Japan individual immediately before the AGM, could not confirm whether or not such individual was in an official capacity and therefore followed the advice of its legal counsel and (ii) HMC later found out that such individual was not in an official capacity.

On September 15, Financial Times issued an article which stated, among other things, that Mr. M

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<sup>12</sup> The fact that investment funds (except for certain sovereign wealth funds) do not exercise their voting rights is generally rare (i) due to the fact that such exercise is a good opportunity to show their intentions to the companies to which they are investing and (ii) from the standpoint of investment funds which are commissioned to manage the funds of their investors.

and HMC had a private discussion on HMC's exercise of its voting rights at the AGM and that Mr. M told HMC that there is a possibility that HMC's reputation would be affected if HMC voted against Toshiba's proposal due to the fact that Toshiba had a close relationship with the Japanese government.

On December 23, Reuters issued an article with a title "Japan government adviser pressured Harvard with talk of probe before Toshiba vote – sources" based on anonymous sources, which provided details such as communications between Mr. M and HMC. The article stated that after focusing on HMC's relationship with Effissimo, Mr. M told HMC that there is a possibility of regulatory investigation under the FEFTA if HMC exercised its voting rights against Toshiba's interests.

On December 23, after citing the Reuters' article mentioned above, Mr. M posted in Twitter account that "I am a METI adviser and a Harvard senior fellow and have a long relationship of trust with the endowment fund and as such, I am sometimes called on for consulting. However, it is extremely regrettable that this article is written as if the CEO/CIO (of HMC) was threatened by me who have relationship with METI over the exercise of voting rights."

## (2) Effissimo's Request for Establishment of Independent Committee

After the Financial Times article mentioned above was issued on September 23, Effissimo requested the Board of Directors to establish an independent committee comprised of only members who were independent from Toshiba, in order to investigate whether or not the AGM was fairly managed by focusing on the pressure issue, including the fact that some of the shareholders did not exercise their voting rights for a reason of being pressured, and vote counting issue. Such request provided the fact that when Effissimo asked questions to more than ten shareholders of Toshiba, Effissimo found out that multiple shareholders were not able to exercise their voting rights as they wished.

On October 14, upon Effissimo's request, four Audit Committee members, Mr. Imai and Mr. Kosaka of Effissimo and one other person had a telephone conference. In this telephone conference, Mr. Ota requested Effissimo to disclose the information which Effissimo obtained from other shareholders that they were not able to exercise their voting rights as they wished, but Effissimo did not agree to such request<sup>13</sup>.

On December 17, Effissimo and one other shareholder of Toshiba requested for convocation of Extraordinary General Meeting of Shareholders for the purpose of appointing three attorneys who would conduct investigation on the status of business and assets of stock company pursuant to Article 316, Paragraph 2 of the Companies Act, in order to investigate the issue of whether or not the AGM was fairly managed in terms of two issues mentioned above including the pressure issue.

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<sup>13</sup> During the information exchange with the Committee, Effissimo stated that (i) although Effissimo felt pressured when it was exchanging information from with METI, Effissimo perceived it as within the scope permissible in general societal terms and did not perceive it as undue pressure, but (ii) Effissimo was furious when it found out later about the communications between Toshiba's executive officers and METI through the Investigation Report.

### (3) Investigation by Audit Committee

On January 22, 2021, the Audit Committee requested the outside law firm (hereinafter referred to as “Law Firm A”), from which the executive officers regularly received legal advice, to provide assistance in the investigation of whether or not Toshiba was involved in Mr. M’s (possible) undue interference with HMC’s exercise of its voting rights (hereinafter referred to as “Investigation A”) if Mr. M did engage in undue interference as reported in the Reuters’ article as mentioned above. Law Firm A assigned this investigation to a team of attorneys (hereinafter referred to as “Team of Attorneys A”) which was different from the team of attorneys which is in charge of providing legal advice to Toshiba’s executive officers.

Team of Attorneys A carefully examined the materials, etc. relating to communications with Toshiba’s principal shareholders concerning the AGM, conducted interviews with Mr. Toyohara, Mr. Kamo and Mr. Kurumatani, and reviewed the e-mail data from April 1 to August 31 concerning these three individuals.

On February 5, 2021, Mr. Ota sent a letter to HMC as the Chairperson of Audit Committee, (i) in which Mr. Ota requested HMC for specific information such as whether or not there was any undue pressure relating to the exercise of voting rights, its details, main person(s) involved and date and time and (ii) in which Mr. Ota requested for HMC’s response by noon of February 10, 2021.

On February 9, 2021, HMC sent a letter to Mr. Ota in response to the request mentioned above. In the letter, HMC stated that (i) HMC received from a person not related to HMC a request to have a meeting concerning the election of Toshiba directors, which HMC did not wish to have, a few days prior to the AGM, (ii) HMC agreed to such request for a meeting as a matter of courtesy, (iii) HMC found out that the contents and timing of such communications were very inappropriate, and (iv) HMC decided not to exercise its voting right.

On February 10, 2021, Mr. Ota sent a letter to HMC, (i) in which Mr. Ota requested for information such as the details of contact from such person as mentioned in the response letter, the reason why HMC felt such contact as inappropriate and whether or not such person who contacted HMC was someone related to Toshiba and (ii) in which Mr. Ota requested for HMC’s response by noon of February 12, 2021. However, HMC did not provide a response to this letter.

On February 12, 2021, Mr. Ota sent a letter to HMC (i) in which Mr. Ota requested only for information on whether or not the person who came in contact with HMC was someone related to Toshiba and (ii) in which Mr. Ota requested for HMC’s response by noon of February 16, 2021 (US time). However, HMC also did not provide a response to this letter.

### (4) Resolution of Board of Directors after Receiving the Results of Audit Committee’s Investigation

and Its View

On February 6, 2021, due to the fact that the Audit Committee received a draft of report on Investigation A (hereinafter referred to as “Report A”) from Law Firm A, the Audit Committee decided to provide explanation to foreign directors. Mr. Ota and Mr. Furuta explained to four foreign directors a summary of such draft and the view of Audit Committee which has taken such draft into consideration.

On February 8, 2021, the English translation of such draft was provided to four foreign directors.

On February 9, 2021, Mr. Black informed Mr. Ota that (i) he understood that there were considerably frequent communications between METI and Toshiba and (ii) the fact that there were requests from METI to Toshiba for information which was more than usual due to the timing when the FEFTA was amended and the features of shareholder proposals made at the AGM.

On February 11, 2021, Mr. Ota and Mr. Furuta had an interview with Ms. Weissman, Mr. Black and Mr. Brough. During the interview, Ms. Weissman and others mentioned that the Audit Committee should directly inquire HMC on whether there was any undue interference with HMC’s exercise of its voting rights and Mr. Ota responded that the Audit Committee already made such inquiry. Ms. Weissman and others also reacted that they were surprised by the fact that Toshiba was carrying out very close communications with METI and Mr. Ota responded that it was necessary for Toshiba to maintain a close relationship with METI for reasons such as broad scope of Toshiba’s business and especially due to national security.

Report A provided that there were frequent communications between METI and Toshiba and Toshiba provided METI with documents such as draft Written Request, materials concerning vote counting at the AGM and Written Request, but did not provide the details of such communications and documents. At the time, Mr. Ota read the e-mails which were subject to the investigation of Team of Attorneys A. Among such e-mails, Mr. Ota certainly read approximately 40 relevant e-mails, which included the attachments of the minutes of interviews with Mr. Kurumatani, Mr. Toyohara and Mr. Kamo, and which included the e-mails from which a large portion of communications between Mr. Toyohara, Mr. Kamo and METI could be understood such as e-mails of Mr. Kamo and others concerning the preparation of Position Paper, Mr. Toyohara’s e-mail to have METI make a proposal to Toshiba to establish a compliance expert committee and Mr. Kamo’s e-mail in which Mr. Kamo informed Mr. Kurumatani that Mr. M was scheduled to negotiate with HMC in which Mr. M would propose HMC to vote for a part of Toshiba’s proposals and vote against Effissimo’s proposal as Toshiba’s best option and would propose not to vote as Toshiba’s second-best option.

On February 17, 2021, Law Firm A submitted Report A to the Audit Committee. The Audit Committee submitted to the Board of Directors its recommendation to shareholders to oppose Effissimo’s shareholder proposal on appointment of investigators pursuant to Article 316, Paragraph 2 of the Companies Act due to reasons such as the fact that the results of investigation by Law Firm A

did not show that there was undue pressure exerted on HMC with respect to its exercise of voting rights at the AGM and the fact that the Audit Committee did not find Toshiba's involvement in such undue interference.

On February 17, 2021, the Board of Directors passed a resolution to convene Extraordinary General Meeting of Shareholders and to oppose the proposal requesting for appointment of investigators pursuant to Article 316, Paragraph 2 of the Companies Act and announced such resolution.

At the Extraordinary General Meeting of Shareholders held on March 18, 2021, Toshiba provided responses all at once to the questionnaires, which Toshiba received beforehand, that Toshiba did not find the fact that any of Toshiba's directors, officers or employees directly or indirectly requested Mr. M to make an approach of some kind in connection with the exercise of voting rights by Toshiba's shareholders. At this meeting, the shareholders decided to appoint the investigators pursuant to Article 316, Paragraph 2 of the Companies Act as mentioned above and the investigation by such investigators would be conducted.

### III. Issues Concerning Acts of Executive Officers and Directors of Toshiba

#### 1. Confirmation of Committee's Review Policy

As mentioned in I above, the Committee came to a decision to conduct analysis and review on the matters commissioned by Toshiba based on the basic policy described below.

(1) It is necessary to consider (i) whether any of Toshiba Officers' acts was illegal and/or would be determined as breach of duty of care and (ii) if yes, which act would be determined as so on what basis, in order for the Committee to carry out the commissioned matters described above. If the consideration of these issues involves the legal responsibility of Toshiba Officers, the Committee will be required to make decisions based on strict legal analysis.

(2) Considering the fact that company is a social entity which must endeavor to enhance its corporate value and shareholder value under the trust of shareholders, the fact that executive officers' acts were not illegal is not enough. It is viewed that executive officers' acts may not be in violation of Ethical Standards such as causing doubts as to fairness and transparency of how Toshiba deals with shareholders and undermining the trust of investors and stock market. If the Committee only considered (1) above, the Committee would not be carrying out all commissioned matters described above. Therefore, it is necessary for the Committee to conduct analysis and review on the Series of Acts which Toshiba's executive officers and METI engaged in for the AGM, in connection with matters such as how to deal with Effissimo's shareholder proposal, from the viewpoint of whether or not there was any violation of Ethical Standards.

(3) The Committee will consider issues such as whether or not there was any breach of duty of care by any director of Toshiba based on (1) and (2) above.

2. Viewpoint Concerning Consideration of Whether Acts of Toshiba's Executive Officers Were Illegal  
1 ~ Whether Toshiba Made Illegal Approach Jointly with METI to Impose Restrictions on Shareholder Proposal Right or Voting Right ~

According to the Facts Forming the Basis of Committee's Decisions (hereinafter referred to as "Facts"), out of the approaches made to Effissimo, 3D and HMC in order to have Effissimo's shareholder proposal withdrawn or rejected, the acts which will become subject to consideration in determining the existence of illegality are the acts of Director K1 of the IT Industry Division and Mr. M who was an executive advisor of METI<sup>14</sup>. In order for the Committee to legally conclude that the abovementioned approaches are illegal acts of Toshiba's executive officers, it is necessary for the Committee to agree that (i) the approaches made by Director K1 against Effissimo and 3D and the approach made by Mr. M against HMC were illegal and (ii) it can be deemed that Toshiba's executive officers engaged in these illegal acts jointly with Director K1 and/or Mr. M and are legally liable jointly with Director K1 and/or Mr. M.

(1) Whether Director K1's Acts against Effissimo and 3D Were Illegal

A. In general, personnel in charge at administrative authority carries out administrative affairs for certain administrative purpose based on the decision made as administrative authority. It would be difficult to imagine that personnel in charge at administrative authority would engage in any act for the interest of one company without any administrative purpose or administrative necessity unless there is any special motive or reason.

As explained in detail later, when consideration is made by applying the abovementioned view to the facts in the case at hand, (i) it would be reasonable to view that the approach for withdrawal of shareholder proposal, etc. was made by the IT Industry Division, which has jurisdiction over the entire Toshiba business, based on the administrative determination that there was a possibility that Effissimo's shareholder proposal would affect the national security, etc. such as causing impact on Toshiba's continuation of its business by changing the composition of Board of Directors and that there was a possibility of joint exercise of voting rights and violation of Covenant Items and (ii) it would be difficult to deem that Director K1's acts deviated from the purpose of FEFTA and fall under illegal acts whose purpose was to restrict the exercise of shareholder proposal right or voting right.

According to the Facts, Toshiba operates businesses such as businesses falling under core business,

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<sup>14</sup> The fact that Toshiba's executive officers approached Effissimo to have Effissimo amicably withdraw its shareholder proposal by establishing a compliance expert committee and by having Mr. Sugiyama and Mr. Takeuchi, who were director candidates proposed by Effissimo, become members of such committee is as provided in the Facts. It is clear that the abovementioned approach itself is appropriate settlement negotiation and cannot be deemed as illegally restricting the exercise of shareholder proposal right. The Investigation Report provides the view that the issue lies in the fact that the abovementioned approach was made in coordination with the approach of IT Industry Division against Effissimo. However, as discussed below, it would be difficult to deem that the approach made by the IT Industry Division against Effissimo was illegal. If so, the Committee views that there is also no room for the argument that the approach made by Toshiba's executive directors as mentioned above is illegal.

including nuclear power business, equipment manufacturing business such as general-purpose products which can be used for military purposes and IT business relating to cybersecurity, which are related to national security, etc., and businesses relating to public infrastructure, including electricity and sewerage and water supply. From the perspective of economic security of Japan, it was important to prevent Toshiba's technology from divulging overseas and to stabilize Toshiba's management. However, Toshiba had excess liabilities because the rehabilitation proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code was initiated against Toshiba's U.S. subsidiary, Westinghouse, and other companies, due to a massive loss incurred by the nuclear power plant construction business of Westinghouse as of the end of FY2016. In order to avoid becoming delisted for having excess liabilities for two consecutive fiscal years, Toshiba increased its capital by approximately 600 billion yen in December 2017 by issuing new shares to foreign investors through third party allocation. After such capital increase, the foreign investors, who were not satisfied with Toshiba's low stock price, continued to repeatedly request Toshiba for share buyback and to resolve the issue of conglomerate discount. After repeatedly having discussions with its shareholders, Toshiba has taken measures such as having four foreign directors nominated by foreign investment funds as director candidates proposed by Toshiba at the 2019 Annual General Meeting of Shareholders of Toshiba. The IT Industry Division, which has jurisdiction over Toshiba's business, was aware of the situation faced by Toshiba as described above and has taken actions such as providing consultation and advice to Toshiba in order to prevent Toshiba's management from becoming unstable and to prevent the risk of sale of Toshiba's important businesses and divulgement of its sensitive technologies. The IT Industry Division also made the monitoring of actions of Toshiba's shareholders its important duty. Under the background described above, the shareholder proposal made by Effissimo before the AGM was a proposal which had a possibility of causing a majority of Board of Directors to be comprised of directors nominated by foreign investment funds and therefore, the IT Industry Division had a deep concern over whether Effissimo's shareholder proposal would cause a dangerous situation such as a situation where the stability of Toshiba's management would be adversely affected, its businesses would be sold and/or its sensitive technologies would be divulged in case a resolution for Effissimo's shareholder proposal was passed. This fact was seen from the statement of Director-General K3 who had online meetings, etc. with the executive officers and members of Nomination Committee on May 11 and 13, 2020. More than anything else, administrative authority clearly indicated its official decision that it would be necessary to conduct investigation on Effissimo to determine whether or not to have Effissimo become subject to the regulations under the FEFTA, based on the fact that (i) the Minister of Finance and the Minister of Economy, Trade and Industry jointly issued a report requisition order against Toshiba on May 22, 2020, (ii) the Security Trade Control Policy Division, which has jurisdiction over the work concerning the regulations of inward direct investments by foreign investors, began to make inquiries against Effissimo in June 2020 and (iii) the Minister of Finance and the

Minister of Economy, Trade and Industry jointly issued a report requisition order against Effissimo on June 15, 2020 and the Security Trade Control Policy Division had a number of questions to Effissimo from the perspective of national security.

The purpose of amendment to FEFTA in November 2019 was to further facilitate inward direct investments leading to sound economic development as well as to take appropriate measures against investments, etc. which had the risk of undermining national security. From this fact, it can be seen that in May and June 2020 which were shortly after the effectuation of amendment mentioned above, METI was carrying out the administrative affairs while holding a serious interest in how the amended FEFTA should be effectively enforced from the perspective of national security, under the situation where the practical procedures for determining the cases where METI's power for the latter purpose could be exercised had not yet been established. In addition, in view of the fact that Director K1 had been conscious of the risk of sale of Toshiba's important businesses and divulgement of its sensitive technologies from the perspective of national security, etc. and made gathering of information on prior notification and consultation and advice to relevant parties his duty, it is reasonable to view Director K1's approaches to Effissimo and 3D under the situation described above as approaches based on administrative purpose such as economic security. Therefore, it would be difficult for the Committee to conclude that these approaches by Director K1 were illegal approaches made for the purpose of restricting the exercise of shareholder proposal right or voting right which deviated from the purpose of FEFTA.

B. Even if the act was for administrative purpose such as economic security as explained above, if Director K1 attempted to prevent Effissimo and 3D from exercising their rights by giving completely baseless statements or attempted to prevent them from exercising their rights by illegal means such as use of threatening words, there is a room that Director K1's approach to Effissimo and 3D will be deemed as illegal in light of such manner of approach. According to the Facts, during the telephone conference with Effissimo, Director K1 made statements such as "it appears the bureaus responsible for rules and regulations will take action with the Ministry of Finance," "we would like to consult with you on where to land, so that you don't get into trouble" and "once the regulators begin moving on full scale, there is no way to stop." Director K1 also attempted to get in contact with 3D by telephone even though 3D did not wish to come in contact with the IT Industry Division and in the telephone conference with 3D which the legal counsel of 3D also attended, Director K1 stated that "if you are barbecuing next to your neighbor where there is a big fire, you cannot get away with just that." Under the background of the possibility of becoming regulated under the FEFTA, these statements could be viewed as putting pressure against the shareholder's exercise of shareholder proposal right or voting right. However, in view of the fact such as (i) the fact that the practical procedures for determining what regulations are possible under the amended FEFTA of November 2019 had not yet been established, (ii) the fact that the affairs which was under Director K1's authority were affairs as

described above, and (iii) the fact that the Security Trade Control Policy Division actually began inquiring Effissimo and the Minister of Finance and the Minister of Economy, Trade and Industry ended up jointly issuing a report requisition order against Effissimo, it cannot be said that the statements made by Director K1 in the telephone conference as mentioned above are completely baseless or threatening. Furthermore, even if Effissimo and 3D felt a certain pressure from the above statements, it is not enough to conclude that such conduct is illegal based on the reason that it deviates from the scope of discretion that Director K1 had in order for him to carry out the affairs which was under his authority<sup>1516</sup>.

C. The Investigation Report points out that a series of acts to have Effissimo withdraw its shareholder proposal included here and there the acts suspected to be in violation of laws and regulations, etc. Therefore, the Committee hereby makes a consideration as to whether such series of acts would become a basis for concluding that Toshiba's executive officers engaged in any illegal act.

According to the Facts, it is found, among other things, that (i) on May 26, Mr. Kamo received from Director K1 a letter from Effissimo entitled "Request for Collaborative Engagement Taking into Account Fictitious and Circular Transaction" with a warning that Toshiba should not pass it over to Effissimo; (ii) around the same time, Mr. Kamo received from Director K1 the information including the details of telephone conference with Effissimo and METI's view on the steps for rebuttal against Effissimo; (iii) Mr. Kamo was informed by Director K1 beforehand that the Security Trade Control Policy Division would contact Effissimo concerning the Covenant Items to which Effissimo is subject; and (iv) Mr. Kamo was informed by Director K1 that Effissimo requested Director K1 to talk to him and Mr. Kamo received from Director K1 the details of subsequent communications between Director K1 and Effissimo. It is understood that the Investigation Report points out that these acts might be in breach of confidential obligation under the National Public Service Act. However, it is doubtful that the information disclosed to Toshiba through such acts would fall under "secret" as prescribed in Article 100 of the National Public Service Act. Since Toshiba's executive officers received such information through such disclosure only passively, it is not enough for the Committee to conclude that such receipt of information was the basis of illegal acts of Toshiba's executive officers. However,

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<sup>15</sup> When exchanging opinions with the Committee, the representative of Effissimo stated that Effissimo felt pressure from METI when Effissimo was communicating with METI at the time, but Effissimo did not view that it deviated from the scope permissible in general societal terms.

<sup>16</sup> In the comments from Expert Advisors, there was a comment casting doubt on whether administrative authority's attempt to restrict shareholder proposal and exercise of voting right in relation to election of directors was really for security purposes since no event, which directly concerns security issue such as sale of business, had occurred, by having in mind factors such as example of regulation under CFIUS of the United States. Under the FEFTA, the acts relating to shareholder proposal and exercise of shareholder right, such as election of director who is foreign investor, etc. and joint exercise of voting rights by foreign investors, are included in inward direct investments, etc. which are subject to prior notification. Therefore, it is viewed that in Japan which is under the regulation of FEFTA, the fact that administrative authority, which has jurisdiction over certain business, comes into contact with foreign investor will not become a legal issue as long as such act is within the scope of advice and consultation.

as discussed in 4 below, the Committee is of the view that the fact that Toshiba's executive officer was receiving from administrative authority the information which is not normally disclosed by administrative authority personnel to company employee leads to a conclusion that the act of Toshiba's executive officer was in violation of Ethical Standards.

The Investigation Report points out that unless any special circumstances exist, the fact that Director K1 came in contact with Effissimo, which is Toshiba's foreign investor, to have Effissimo withdraw its shareholder proposal deviates from the scope of affairs over which Director K1 has authority. However, departments and divisions in METI, which have jurisdiction over certain business, endeavor to grasp, and have information and knowledge on, the matters concerning their respective business fields such as actual situation of each technology and company, industry trends, status of foreign investors and international trends on a regular basis. The department or division in METI, which has jurisdiction over Toshiba's business, provides consultation and advice, etc. to relevant parties such as relevant companies and foreign investors and has been providing the Security Trade Control Policy Division with procured information and its opinions before and after the filing of prior notification, etc., as described in the Facts. Therefore, the Committee concludes that the consultation and advice, etc. provided by Director K1 of IT Industry Division, which has jurisdiction over Toshiba's business, to Effissimo and other foreign investors of Toshiba are not acts which go beyond the scope of jurisdiction of IT Industry Division.

## (2) Whether Mr. M's Approach to HMC Was Illegal

According to the Facts, the letter sent by HMC to Mr. Ota on February 9, 2021 stated that (i) HMC received from a person not related to HMC a request to have a meeting concerning the election of Toshiba's directors, which HMC did not wish to have, a few days prior to the AGM, (ii) HMC agreed to such request for a meeting as a matter of courtesy, (iii) HMC found out that the contents and timing of such communications were very inappropriate, and (iv) HMC decided not to exercise its voting right. Furthermore, among the media reports on the communications between Mr. M and HMC, some of them provided that Mr. M made an inappropriate approach to HMC. The Committee also found that Mr. M posted a message on his Twitter account which seemed to acknowledge that he came in contact with HMC. However, it would be difficult to determine from these facts alone the details of kind of approach Mr. M made to HMC. It is also difficult to infer whether there was anything illegal with respect to Mr. M's approach to HMC due to the fact that HMC came to a decision not to exercise its voting right on any of the proposals which is an act not normally taken by foreign funds.

For the reasons provided above, the Committee is not able to confirm the details of approach which Mr. M made to HMC and therefore concludes that it would be difficult to find out the basis which supports the view that such approach was illegal.

(3) Cooperative Relationship between Toshiba's Executive Officers and Director K1 and between Toshiba's Executive Officer and Mr. M

The Committee concludes that the approaches made by Director K1 of the IT Industry Division and Mr. M, who was an executive advisor of METI, to Effissimo, 3D and HMC in order to have Effissimo's shareholder proposal withdrawn or rejected were not illegal acts such as an act whose purpose was to go against the purpose of FEFTA. Therefore, it is not enough for the Committee to conclude that the acts of Mr. Toyohara and Mr. Kamo, who were Toshiba's executive officers, were illegal even if Mr. Toyohara and Mr. Kamo were in cooperative relationship with Director K1 and/or Mr. M with respect to the approaches made by Director K1 and Mr. M.

For the sake of clarity, the Committee will hereby provide its view on the issue of whether Mr. Toyohara and Mr. Kamo were coordinating with Director K1 or Mr. M when Director K1 and Mr. M were making approaches to Effissimo, 3D and HMC and thereby had a legal relationship with Director K1 or Mr. M under which they assumed joint legal responsibility.

From a third-person point of view, the exchange of information and opinions by Mr. Toyohara and Mr. Kamo with Director K1 of IT Industry Division seemed excessive and their relationship seemed too close. However, as already discussed earlier, such exchange of information and opinions by Director K1 should be viewed as Director K1 carrying out the affairs under his authority for administrative purposes such as economic security. On the other hand, it is clear that Mr. Toyohara and Mr. Kamo, who are Toshiba's executive officers, were engaged in such acts for Toshiba's interest which was to ensure that resolution for Toshiba's proposal would be passed and to ensure that resolution for any shareholder proposal which differed from Toshiba's proposal would not be passed at the AGM. It can only be said that the acts of Mr. Toyohara and Mr. Kamo and the act of Director K1 were for different purpose, but their acts had a common goal. It is not enough for the Committee to conclude that their acts formed a legal relationship under which they assumed joint legal responsibility.

According to the Facts, the cooperative relationship between Mr. Toyohara, Mr. Kamo and Mr. M is as described below. Mr. Toyohara and Mr. Kamo were aware of the fact that Mr. M was in contact with HMC in connection with Mr. M's approach to HMC through the information provided by Director K1. However, Mr. Toyohara and Mr. Kamo did not know the details of how Mr. M was approaching HMC. It is also found that in response to Director K1's request, Mr. Toyohara and Mr. Kamo were providing Director K1 with information such as updated analysis by FA on the estimation of votes at the AGM, list of top 100 largest shareholders of Toshiba and how Toshiba wished HMC to vote at the AGM by ranking the possible ways which HMC would vote, with an expectation that such information would be provided to Mr. M. However, Mr. Toyohara and Mr. Kamo were not aware at all of the method and manner of Mr. M's negotiation with HMC. Therefore, even if Mr. M's

approach to HMC was illegal or inappropriate in any way, it cannot be said that Mr. Toyohara and Mr. Kamo knew in detail that such approach would be made. Accordingly, it is clear based on these facts that Mr. M's act did not form a legal relationship between Mr. Toyohara, Mr. Kamo and Mr. M under which they assumed joint legal responsibility.

#### (4) Summary

As explained above, it can be viewed that the approaches made by Director K1 of the IT Industry Division to Effissimo and 3D in order to have Effissimo's shareholder proposal withdrawn or rejected were advice provided by Director K1 to Effissimo and 3D based on the request from Effissimo and 3D for administrative purposes such as economic security. Therefore, it is not enough for the Committee to conclude that such approaches fall under illegal act whose purpose goes against the purpose of FEFTA. Furthermore, with respect to Mr. M's approach to HMC, the Committee was not able to confirm the details of such approach. For these reasons, the Committee concludes that Director K1's act and Mr. M's act are not illegal. In addition, it is also difficult for the Committee to deem that legal relationship was formed between Director K1 and Mr. Toyohara or Mr. Kamo or between Mr. M and Mr. Toyohara or Mr. Kamo under which they assumed a joint legal responsibility. Accordingly, the Committee concludes that Mr. Toyohara and Mr. Kamo, who are Toshiba's executive officers, did not assume joint legal responsibility based on the assumption that the act of Director K1 or Mr. M was illegal.

### 3. Viewpoint Concerning Consideration of Whether Acts of Toshiba's Executive Officers Were Illegal 2 ~ Whether Executive Officers Have Taken Advantage of METI's Administrative Approach by Using Means or Method Which Deviated from Scope of Discretion Permissible in General Societal Terms in Order to Restrict Shareholder Proposal Right or Voting Right~

As discussed in 2 above, even if the Committee views that the act of Director K1 of the IT Industry Division was for administrative purposes such as economic security and therefore did not fall under illegal act, if the act of Mr. Toyohara or Mr. Kamo to have Effissimo's shareholder proposal withdrawn or rejected deviated from the scope of discretion permissible in general societal terms, there is a room to deem that such fact would be in breach of duty of care. Therefore, the Committee will also discuss this issue as provided below.

In general, if a company receives a shareholder proposal which opposes the proposal which the company plans to make, it is a duty of executive officer to act to have such shareholder proposal withdrawn or rejected. In such case, due to the fact that executive officer has discretion over which means or method he or she will use, seeking assistance from a third party including administrative authority is not illegal as long as means or method used does not deviate from the scope of discretion

permissible in general societal terms<sup>17</sup>.

The Committee will hereby consider the acts of Mr. Toyohara and Mr. Kamo from the viewpoint mentioned above. The Committee has found that Mr. Toyohara and Mr. Kamo had the intention to use the administrative acts of METI in dealing with shareholders as seen in (i) the e-mail from Mr. Kamo to Mr. Toyohara which states that they could use METI for the negotiation to have a shareholder proposal withdrawn and (ii) the message from Mr. Kurumatani to Mr. Kamo that METI was the main player in terms of dealing with shareholders. The Committee has also found that Mr. Toyohara or Mr. Kamo provided the information to Director K1 and the IT Industry Division with such a intention. The Committee has also found that the information was provided in such a way as follows: (i) after receiving from Effissimo a letter dated March 19, 2020 expressing its concern with the problem of fictitious and circular transactions of TSC, Mr. Toyohara and Mr. Kamo provided to the IT Industry Division the letters received from Effissimo and the details of telephone conferences with Effissimo; (ii) on March 25, 2020, Mr. Toyohara (x) informed the IT Industry Division that there was a possibility that Effissimo would make requests such as request to nominate directors, (y) requested the IT Industry Division to notify him if Effissimo requested the FEFTA regulation authority for approval to make an important shareholder proposal and (z) informed the IT Industry Division that based on early-stage prediction on the shareholders' votes at the AGM, it would become rather difficult for Toshiba's proposal to be approved if Effissimo abstained from voting for company's proposal among other things; (iii) on May 7, 2020, Mr. Kamo handed or sent to the IT Industry Division a position paper entitled "Status Concerning Company Shareholders Meetings (scheduled for July 15)"; (iv) based on Mr. Kamo's instruction, Toshiba's employee submitted a written request to METI on May 19, 2020 requesting METI for appropriate measures such as confirmation of facts by conducting investigation pursuant to Article 55-8 of the FEFTA; and (vi) on June 1, 2020, Mr. Kamo sent an e-mail to Director K1 stating, among other things, that Toshiba wished to consult with Director K1 on the timing when Toshiba would begin approaching Effissimo with respect to the proposal for compromise including a proposal that Toshiba would establish a compliance expert committee and have director candidate nominated by Effissimo join such committee. If such provision of information had a possibility of causing Director K1, etc. to make any wrong decision, such provision of information deviated from the scope of discretion permissible in general societal terms. The Committee concludes that out of the information provided as described above, Toshiba's position provided in the Position Paper entitled "Status Concerning Company Shareholders Meetings (scheduled for July 15)" is a position which is impossible to construe as being consistent with the FEFTA. However, it is not enough for the

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<sup>17</sup> One Expert Advisor pointed out that scope of permissible discretion used in negotiation to have shareholder proposal withdrawn might be narrower than scope of permissible discretion used in ordinary course of business, but such Expert Advisor did not point out that the fact that executive officers provided information to Director K1 of the IT Industry Division deviated from the scope of discretion permissible in general societal terms. Other Expert Advisors commented that executive officers' provision of information to Director K1 was basically provision of information in response to Director K1's inquiry and therefore, was not illegal.

Committee to conclude that the Position Paper indicated Toshiba's position which will cause administrative authority, which has expertise on the interpretation of FEFTA, to make any wrong decision. With respect to other information provided, nothing illegal was found which deviated from the scope of discretion permissible as a part of performance of executive officer's work in general societal terms. In addition to the above, Mr. Kamo sent to Director K1 a document entitled "Rebuttal Memo" on May 28, 2020. However, it is not enough for the Committee to conclude that this document is a document causing the IT Industry Division to make any wrong decision because the Committee has found that this document was sent in response to Director K1's request and Mr. Kamo received instruction from Director K1 to rewrite this document so that this document contains Toshiba's acknowledgment that Toshiba was also at fault with respect to fictitious and circular transactions of TSC, among other things.

Furthermore, according to the Facts, the Committee has found that in relation to Mr. M, Mr. Toyohara and Mr. Kamo were providing Director K1 with information requested by Director K1 such as updated analysis by FA on the estimation of votes at the AGM, list of top 100 largest shareholders of Toshiba and how Toshiba wished HMC to vote at the AGM, with an expectation that such information would be provided to Mr. M. As discussed in 4 below, there is a room to deem the acts described above as a problem from the perspective of Ethical Standards, but it is not possible to view the act of Mr. Toyohara or Mr. Kamo as an illegal act which used means or method that deviated from the scope of discretion permissible as a part of performance of executive officer's work in general societal terms.

As explained above, the Committee concludes that Mr. Toyohara and Mr. Kamo, who are Toshiba's executive officers, did not attempt to take advantage of acts of administrative authority or any other third party by using means or method, which deviated from the scope of discretion permissible as a part of performance of executive officer's work in general societal terms, in order to have Effissimo's shareholder proposal withdrawn or rejected. The Committee also comes to a decision that Mr. Toyohara and Mr. Kamo did not breach duty of care when conducting their work based on the reason that they deviated from the scope described above.

#### 4. Consideration of Whether There Were any Acts in Violation of Business Ethics as Required by the Relevant Market

(1) With regard to the Series of Acts which Toshiba's executive officers and METI engaged in for the AGM, including exchange of information, in connection with the matters such as how to deal with Effissimo's shareholder proposal, the Committee did not find anything illegal as discussed earlier. However, the fact that executive officers' acts are not illegal is not enough. Even if executive officers' acts are not illegal, in case such acts are deemed as violating the Ethical Standards such as causing doubts as to fairness and transparency on how the company deal with shareholders or undermining the trust of investors and stock market, the executive officers have the obligation to avoid engaging in

such acts. Just because executive officers breached such obligation, it does not mean that they would become immediately legally liable. However, due to the fact that such acts will possibly reduce the trust of relevant market and society in the company and cause negative impact on various aspects of external and internal activities of the company among other things, executive officers have the obligation to avoid such acts.

The Committee views that such a way of thinking is consistent with (i) the fact that the concept of compliance no longer concerns only legal compliance and has expanded to prevention of acts which are broadly socially unjustifiable and (ii) the fact that in recent years, more companies are beginning to incorporate the concept of integrity into their code of conduct for directors, officers and employees in order to thoroughly put business ethics, which are higher level of compliance, into practice. Furthermore, all Expert Advisors, from whom the Committee sought advice on this issue, commented that while they could not say that the Series of Acts was illegal, the Series of Acts as a whole was not appropriate as acts of executive officer. When the Committee exchanged opinions with the foreign directors, the foreign directors also commented that the Series of Acts had ethical problem which is at a standard higher than the standard required by laws and regulations. The Committee views that foreign director's comments have the same purpose as Expert Advisors' comments.

(2) Therefore, the Committee hereby considers whether the Series of Acts was in violation of Ethical Standards. The distinctive characteristic of Series of Acts is that METI's purpose to apply the FEFTA and the purpose of Toshiba's executive officers to deal with Toshiba's shareholders for the AGM are intertwined. Due to the fact that METI has jurisdiction over a number of businesses operated by Toshiba including businesses, etc. falling under core business relating to national security, etc., Toshiba has continued to develop a close relationship with METI and to exchange necessary information and opinions. Such acts themselves will not become a problem as long as METI and Toshiba engage in such acts within an appropriate scope. In this section, the Committee will consider the Series of Acts by focusing on issues such as whether or not the relationship between Toshiba's executive officers and METI was too close beyond the appropriate scope and whether or not the frequency of information exchange and the contents of information exchanged were beyond the appropriate scope based on the facts identified in the Facts.

A. The Committee has found the following facts as facts occurring prior to Effissimo making an official shareholder proposal: (i) after receiving from Effissimo a letter dated March 19, 2020 expressing its concern with the problem of fictitious and circular transactions of TSC, Mr. Toyohara provided to the IT Industry Division the letters received from Effissimo and the details of telephone conferences with Effissimo; (ii) on March 25, 2020, Mr. Toyohara informed the IT Industry Division that there was a possibility that Effissimo would make requests such as request to nominate directors

and requested the IT Industry Division to notify him if Effissimo requested the FEFTA regulation authority for its approval in order for Effissimo to make an important shareholder proposal; (iii) on May 1, 2020, Mr. Toyohara and Mr. Kamo had a discussion with Director-General K2 and Director K1 of IT Industry Division on the actions to be taken for the AGM and at such time, Mr. Toyohara and Mr. Kamo received a request from METI to have Toshiba submit a written request requesting METI to conduct investigation, etc. under the FEFTA; (iv) on May 7, 2020, Mr. Kamo handed or sent to the IT Industry Division a position paper entitled “Status Concerning Company Shareholders Meetings (scheduled for July 15)” and such document appealed for the need to regulate pursuant to the FEFTA, such as the need for immediate and strong government support on the AGM and activist shareholders’ attempt to control Toshiba; and (v) Toshiba submitted a written request to METI on May 19, 2020 requesting METI for appropriate measures such as confirmation of facts by conducting investigation pursuant to Article 55-8 of the FEFTA. In general, when a company determines that its own shareholder is attempting to engage in any act which is suspected of falling under inward direct investments, etc. regulated by the FEFTA, the company’s request to the administrative authority in charge of such regulation to exercise an appropriate administrative power such as requesting for appropriate measures including confirmation of facts pursuant to Article 55-8 of the FEFTA should not be viewed as a problem in and of itself. Furthermore, in case a company seeks consultation with administrative authority prior to engaging in an act on which the company seeks consultation, it is not unusual in Japan for administrative authority to encourage a company to submit a request for exercise of administrative power regardless of whether it would be appropriate or not. However, when viewing a series of communications described above as a whole, it shows the closeness of relationship and frequency of communications between METI and Toshiba’s executive officers.

B. (vi) On May 20, Mr. Toyohara and Mr. Kamo received from Director K1 a document entitled “Q&A Outline.” This document provided possible questions and answers in case Toshiba had a meeting with Effissimo. The Committee has also found that this document questioned Effissimo to find out whether the real reason for Effissimo’s shareholder proposal was to sell Toshiba’s businesses instead of strengthening compliance and whether Effissimo had an agreement with other foreign investors to jointly exercise their voting rights, by using the questions prepared by METI based on the possible answers. Through this document, METI requested Toshiba to notify METI if Effissimo made an admission of any of such facts. The fact that Mr. Toyohara and Mr. Kamo received this document raises a suspicion that while Toshiba agreed to cooperate with METI in carrying out administrative affairs, Toshiba also mixed into the discussion between Toshiba and its shareholder its purpose of gathering information as requested by METI.

C. Furthermore, the following facts are found as already pointed out in 2(1)C: (vii) on May 26,

Mr. Kamo received from Director K1 a letter from Effissimo entitled “Request for Collaborative Engagement Taking into Account Fictitious and Circular Transaction” with a warning that Toshiba should not pass it over to Effissimo; (viii) around the same time, Mr. Kamo received from Director K1 the information including the details of telephone conference with Effissimo and METI’s view on the steps for rebuttal against Effissimo; (ix) Mr. Kamo was informed by Director K1 beforehand that the Security Trade Control Policy Division would contact Effissimo concerning the Covenant Items to which Effissimo is subject; and (x) Mr. Kamo was informed by Director K1 that Effissimo requested Director K1 to talk to him and Mr. Kamo received from Director K1 the details of subsequent communications between Director K1 and Effissimo. Toshiba’s executive officer was receiving from administrative authority the information which is not normally disclosed by administrative authority personnel to company employee.

D. In addition to the above, the Committee has found that (xi) Mr. Kamo requested Director K1 for consultation on the timing to make an approach to Effissimo on the proposal for compromise in which Toshiba would establish a compliance expert committee and have a director candidate(s) nominated by Effissimo join such committee and on the final proposal under which Toshiba would accept to have one director candidate nominated by Effissimo become a director if a compromise could not be reached through the first proposal; (xii) before Toshiba sent to HMC a letter providing supplemental explanation on the shareholder return policy concerning the shares in KIOXIA Corporation, Mr. Kamo sent the draft of such letter to Director K1, received from Director K1 a request to revise the letter based on the comment from Mr. M, who would negotiate with HMC, and agreed to such request; (xiii) by agreeing to Director K1’s request, Mr. Kamo sent to Director K1 the updated estimation of votes prepared by FA and a list of top 100 largest shareholders of Toshiba expecting Mr. M to be informed of such information and informed Director K1 of how Toshiba wishes HMC to vote. Under the circumstances where a report requisition order had been issued by METI against Toshiba, the Committee cannot deny the fact that provision of information to METI based on METI’s request is a duty of Toshiba’s executive officer. However, the communication on the matters such as the timing of negotiation for compromise between Toshiba and its shareholder(s), exchange of letters and actions to influence shareholder voting are regarded as information exchange and consultation concerning the matters which administrative authority is not normally supposed to be involved in.

(3) The Series of Acts includes facts as described in (2)B, C and D above which could be suspected of inappropriateness in and of themselves. However, it is understood that executive director has discretion over the specific method to be taken with respect to matters such as how to deal with shareholders, measures to be taken for shareholders meeting and negotiation with administrative authority. When looking at the Series of Acts one by one, many of them are passive acts for which

Toshiba's executive officers cannot be blamed entirely and therefore, it would be difficult for the Committee to conclude that these acts themselves are acts in violation of Ethical Standards. However, when looking at the Series of Acts as whole in hindsight from a third-person point of view, with regard to how Toshiba's executive officers dealt with shareholders, it shows that the executive officers were too dependent on administrative authority, were excessively exchanging information and opinions, had a relationship with administrative authority which was too close, and were negotiating with administrative authority in a way which was behind closed doors and was difficult to see from outside. In addition, by considering the fact that Toshiba's executive officers had the intention to use the administrative acts of administrative authority in dealing with shareholders together with other facts, it must be said that there are doubts as to whether the Series of Acts as a whole conforms to the Ethical Standards<sup>18</sup>. On this point, all of Expert Advisors, whom the Committee sought opinion from, commented that they had a similar impression. There were also quite a few directors, officers and employees of Toshiba who had an interview with the Committee and had a similar opinion<sup>19</sup>. The information and opinions exchanged between Toshiba's executive officers and METI were mostly concerning the applicability of FEFTA and therefore, it would not be illegal. The reason why the abovementioned opinion comes up despite such fact is the existence of view that company is supposed to deal with its shareholders at its responsibility and even if the company seeks outside help, becoming overly dependent on administrative authority or excessively exchanging information and opinions with administrative authority will result in undermining the trust of investors because it concerns the corporate governance of private company.

(4) When looking at it in such a way, the Committee must conclude that the Series of Acts as a whole (i) raises doubts as to fairness and transparency of how Toshiba dealt with its shareholders and (ii) is a series of acts which undermined the trust of investors and stock market and which violated the Ethical Standards. The Committee also cannot deny the fact that the Series of Acts raises doubts as to its appropriateness in light of the spirit of first sentence of 1.1.3 of the Supplementary Principles of the Japan's Corporate Governance Code which states that "Given the importance of shareholder rights, listed companies should ensure that the exercise of shareholder rights is not impeded."

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<sup>18</sup> At the interview with the Committee, Mr. Toyohara mentioned that he only told METI that he wanted METI to make sure to apply the amended FEFTA. However, as discussed above, the Committee's conclusion after looking at the Series of Acts as a whole is that it would be difficult to conclude that Mr. Toyohara merely told METI that he wanted METI to make sure to apply the amended FEFTA based on the facts such as excessive exchange of information and opinions with METI and excessively close relationship with METI.

<sup>19</sup> There were statements from directors, officers and employees of Toshiba such as "Regarding the measures for shareholders meeting, I think there was an issue of overdependency on METI," "I thought it was okay for Toshiba to have an interview with METI, but it was not okay to receive the results of interviews which METI had with other people," "It is not illegal to have METI have conversations which will not become subject to administrative guidance, but if there is a choice between appropriate and inappropriate, I think it was inappropriate," "I thought it was not a good idea to use FEFTA. . . . If it becomes known that (we) had a part in such action, there is a huge risk that it will result in severely undermining the trust of investors" and "What is most discomfoting is to make such request to the authorities (i.e., to have METI propose to Effissimo to have (Toshiba) establish a compliance committee)."

(5) The Committee cannot deny the fact that the Series of Acts raises doubts as to its appropriateness in light of the spirit of first sentence of 1.1.3 of the Supplementary Principles of the Japan's Corporate Governance Code. However, the Committee did not find the acts of Toshiba's executive officers as illegal as already mentioned earlier. It is also not objectively clear whether or not Toshiba complied with the abovementioned Supplementary Principle. Furthermore, Toshiba announced the facts, including the matters pointed out in the Investigation Report and the fact that Toshiba commissioned this matter to the Committee, through the Corporate Governance Report (updated on August 12, 2021) promptly after receiving the Investigation Report, as an explanation of reason why Toshiba did not comply with the first sentence of 1.1.3 of the Supplementary Principles, etc. Therefore, the Committee concludes that Toshiba did not refuse to explain the reason why it handled the abovementioned Supplementary Principles in such a way and that Toshiba did not provide false explanation as to the reason of such handling. Considering these facts, the Committee is of the view that Toshiba's announcement that "We comply with all principles of Corporate Governance Code" at the time when Toshiba was getting ready for the AGM is not inclusion of false statement in the Corporate Governance Report.<sup>20</sup>

#### 5. CEO's Involvement in Series of Acts

(1) The Committee hereby considers (i) whether or not Mr. Kurumatani was involved in the Series of Acts (i.e., exchange of information, etc. between Toshiba's executive officers and METI for AGM in connection with the matters such as how to deal with Effissimo's shareholder proposal) and (ii) the degree of his involvement.

During the interview with the Committee, Mr. Kurumatani denied his active involvement in the Series of Acts. Moreover, due to the fact that Mr. Kurumatani frequently used telephone and had direct talks as a form of communication and very rarely used e-mails when he was conducting work for Toshiba, the number of Mr. Kurumatani's acts found in "IV. Summary of Facts" in Chapter 3 of the Investigation Report, which are the facts forming the basis of Committee's decisions, was very few. However, the following facts are as provided in the Facts: (1) the fact that on April 30 and May 1, 2020, Mr. Kurumatani made telephone calls to Mr. Ota and explained to him that (i) he wished to basically deal with the actions of Effissimo and 3D by keeping in mind May 8, 2020 when the amended FEFTA would come into force and (ii) he wished to endeavor to come to an agreement within Toshiba

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<sup>20</sup> According to the analysis prepared by personnel in charge at Tokyo Stock Exchange, Inc., the possible cases where Tokyo Stock Exchange, Inc. will take measures to ensure effectiveness against a listed company for not complying with the principles of Corporate Governance Code and for not providing any reason therefor are "the cases where it is objectively clear that (the listed company) is not complying with the principles of (Corporate Governance) Code and where the listed company refuses to explain the reason therefor or the cases where the explanation of such reason is clearly false, among other things" (Toshihiko Sato, *Overview of Development of Listing System in Connection with Formulation of Corporate Governance Code*, 2065 JUNKAN SHOJI HOMU 59 (2015)).

and with Kasumigaseki (i.e., METI) after the Golden Week holidays after accurately recording the evidences such as the opinions and proposals from shareholders, who are institutional investors, which came to Toshiba so far, and the meetings with them, (2) a document entitled “Status Concerning Company Shareholders Meetings (scheduled for July 15)” was a document, (i) which provided, among other things, the fact the AGM was the first general meeting of shareholders of Toshiba after the amended FEFTA and it was necessary to receive swift and strong government support in order to achieve and effectuate the purpose of amended FEFTA because activist shareholders were attempting to measure its effectiveness and (ii) which was drafted by Mr. Kamo based on the draft sent by Mr. Kurumatani and was completed after receiving Mr. Kurumatani’s confirmation and (3) the fact that on May 8, 2020, Mr. Kurumatani sent to Mr. Kamo a message concerning FA compensation which included a statement that METI was the main player in terms of correspondence with the shareholders at the AGM and there was a high possibility that METI would be able to resolve the issue like a gatekeeper. Mr. Kurumatani stated that he did not recall the facts provided in (1) through (3) above. However, the Committee has found that (1) through (3) above were facts based on the objective evidence provided in the Facts. Furthermore, according to Committee’s interview with Mr. Kamo, the Committee has found that Mr. Kamo had been providing Mr. Kurumatani with work reports including the status of correspondence with shareholders approximately once a day<sup>21</sup> and the meetings between Toshiba’s officers including Mr. Kurumatani and senior employees were also held once every two days from June 2020. By taking into consideration these facts, especially the statements made by Mr. Kurumatani such as “endeavor to come to an agreement with Kasumigaseki (i.e., METI),” “it was necessary to receive strong government support” and “METI was the main player,” the Committee concludes that it is reasonable to view that the course of action that Toshiba would take to deal with its shareholders, with an expectation that METI would make an administrative approach from the viewpoint of economic security, in order to have Effissimo’s shareholder proposal withdrawn or rejected was decided by Toshiba’s executive officers with Mr. Kurumatani’s active involvement. Furthermore, the Committee views that based on the work reports frequently provided by Mr. Kamo to Mr. Kurumatani as mentioned above, Mr. Kurumatani was generally aware of Series of Acts and was giving approvals afterwards at the very least.

(2) Due to the fact that the Committee concludes that Mr. Toyohara and Mr. Kamo, who played a main role in the Series of Acts, were not in breach of duty of care as explained in 2 and 3 above, Mr.

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<sup>21</sup> Degree of detail of reports provided by Mr. Kamo to Mr. Kurumatani is unknown. However, for example, with respect to the approach made by Mr. M (i.e., person whom METI introduced to Toshiba in order to communicate with HMC) to HMC, the fact that Mr. Kamo told Mr. Kurumatani that Mr. M was scheduled to negotiate with HMC, in which Mr. M would propose HMC to vote for a part of Toshiba’s proposals and vote against Effissimo’s proposal as Toshiba’s best option and would propose not to vote as Toshiba’s second-best option, on the night, which was the same day as the day when Mr. Kamo informed Mr. Kurumatani of such negotiation, is as provided in the Facts. Based on facts such as the fact described above, the Committee infers that the reports provided by Mr. Kamo to Mr. Kurumatani were considerably detailed.

Kurumatani was not in breach of duty of care as manager and supervisor because such breach by Mr. Kurumatani was premised on the breach of duty of care by Mr. Toyohara and Mr. Kamo. The Committee's decision explained in 2 and 3 also applies to the issue of whether or not the acts of Mr. Kurumatani himself were in breach of duty of care. Therefore, the Committee concludes that Mr. Kurumatani was not in breach of duty of care in connection with the Series of Acts.

However, considering the fact that Mr. Kurumatani was involved in the Series of Acts as explained above and was CEO of Toshiba who managed and supervised Mr. Toyohara and Mr. Kamo, the Committee views that it is reasonable to conclude that Mr. Kurumatani's involvement as explained above was in violation of Ethical Standards.

#### 6. Whether or Not There Was Breach of Duty of Care by Directors

(1) It is generally understood that (i) directors of stock company (*kabushiki kaisha*) have the authority to supervise not only legality, but also reasonableness of executive officers' performance of their work and (ii) members of audit committee of company with nomination committee, etc. also have such authority. However, due to the fact that executive officers are authorized to have a broad scope of discretion with respect to performance of work, it is necessary for the determination of whether or not directors' exercise of their authority to supervise the executive officers was unreasonable to become very delicate and broad in scope. Based on this premise, it is reasonable to construe that cases where directors' non-exercise of their authority over executive officers is in breach of duty of care are limited to cases where executive officers are engaging in any act which is in violation of laws and regulations or articles of incorporation.

When applying this view to the case at hand, the fact that the Committee did not find that any of Toshiba's executive officers (including Mr. Kurumatani) engaged in any illegal act which was in breach of duty of care is as discussed in 2, 3 and 5 above. Therefore, there is no premise to raise an issue of breach of duty of care by any of Toshiba's directors.

(2) However, since directors have the authority to supervise or audit the reasonableness of executive officers' performance of their work, there is an issue of whether Toshiba's directors were expected to restrain Mr. Toyohara and Mr. Kamo from engaging in the Series of Acts.

According to the Facts, it seems that some of the Japanese directors (especially Nomination Committee members) knew bits and pieces of tiny portion of information exchanges and consultations made between Toshiba's executive officers and METI concerning matters such as how to deal with shareholder proposals. However, due to the fact that Toshiba's executive officers did not (i) share with directors other than Mr. Kurumatani documents such as document entitled "Status Concerning Company Shareholders Meetings (scheduled for July 15)" which provided the course of action on how to deal with shareholders as decided by the executive officers or (ii) report the Series of Acts to the

Board of Directors, the Committee has found that the directors other than Mr. Kurumatani were not aware of entire picture of Series of Acts. In particular, the Committee has found that foreign directors did not know the fact that the executive officers were exchanging information and consulting with METI on Effissimo's shareholder proposal. Even looking at other Facts, the Committee has found that the directors other than Mr. Kurumatani did not have sufficient knowledge of the facts which might have led such directors to become aware of Series of Acts<sup>22</sup>.

Although directors are expected to restrain executive officers from engaging in any act in violation of Ethical Standards, the Committee concludes that directors of Toshiba except for Mr. Kurumatani lacked the premise to meet such expectation due to the fact that such directors did not have sufficient knowledge of the facts which might have led such directors to become aware of Series of Acts. This conclusion will not change even considering the fact that Audit Committee members, who are directors, have the authority to conduct investigation and the fact that Toshiba has full-time Audit Committee members<sup>23</sup>.

(3) As mentioned in I above, the relevant authority made a request to Toshiba that if there was any pressure as pointed out in the case at hand, Toshiba should clarify whether such pressure is an issue of Toshiba's internal control system pursuant to the Companies Act. However, as discussed above, the Committee did not find anything in directors' performance of their work which was in violation of laws and regulations or articles of incorporation. Therefore, it is clear that there was not any issue with Toshiba's system (i.e., so-called internal control system as prescribed in Article 416, Paragraph 1, Item 1(e) of the Companies Act) to ensure the compliance of directors' performance of their work with laws and regulations and articles of incorporation.

#### IV. Root Cause Analysis

##### 1. Viewpoint of Review

As discussed in III, the Committee concludes that the Series of Acts, such as exchange of information between the Executive Officers and METI for the AGM in connection with the matters such as how to deal with Effissimo's shareholder proposal, is not an illegal act which is in breach of duty of care. However, when looking at the Series of Acts as a whole, the Committee has come to a

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<sup>22</sup> For example, the Nomination Committee members were aware of the compromise proposal (which Toshiba's executive officers were planning to make to Effissimo) in which compliance expert committee would be established and which would encourage the director candidates proposed by Effissimo to join such committee. However, the Committee did not find the Nomination Committee members were aware of various communications between Toshiba's executive officers and METI such as (i) details of e-mail(s) which Mr. Toyohara sent to METI in connection with the compromise proposal in order to also have METI make an approach to Effissimo and (ii) the fact that Mr. Kamo consulted with METI on the timing when the approach on the compromise proposal would be made to Effissimo.

<sup>23</sup> The Audit Committee members would have been expected to exercise their authority to conduct investigation if they had sufficient knowledge of the facts which might have led them to become aware of any acts which were suspected of being illegal or unreasonable. However, since the Audit Committee members were not aware of such facts, non-exercise of their authority to conduct investigation cannot become an issue.

decision that the Series of Acts was in violation of Ethical Standards such as raising doubts as to fairness and transparency of how Toshiba dealt with its shareholders and undermining the trust of investors and stock market. The evaluation mentioned above was made from an overall point of view after taking a look at the Series of Acts in hindsight. By taking into consideration the fact that executive officers have a discretion on the matters such as how to deal with shareholders, the Committee views that it would be difficult to establish a standard of conduct for each specific act as of the time when such act was carried out. Therefore, the Committee views that it would be reasonable to conduct root cause analysis not by searching for the reason why each act could not be restrained, but by finding out the cause which resulted in causing the Series of Acts.

## 2. Excessive Cautiousness towards Foreign Investment Funds and Lack of Willingness to Develop Sound Relationship

(1) The Committee has come to a decision that Mr. Toyohara and Mr. Kamo, who were Executive Officers, were in violation of Ethical Standards by engaging in the Series of Acts. The direct causes of Series of Acts were not only the fact that Mr. Toyohara and Mr. Kamo were cautious that Effissimo was attempting to become involved in Toshiba's management ever since they predicted that Effissimo would make a shareholder proposal, but also the fact that a number of Japanese directors of Toshiba (i) were cautious as of the time when Effissimo made a shareholder proposal that Effissimo was attempting to become involved in Toshiba's management in order to provide comments, which go against Toshiba's mid- and long-term growth, by using Toshiba's compliance issue as a pretense and (ii) were in a position to support executive officers' acts to have Effissimo's shareholder proposal withdrawn or rejected under the common understanding that Effissimo's shareholder proposal was unacceptable<sup>24</sup>.

Before the 2019 Annual General Meeting of Shareholders of Toshiba, Toshiba received a shareholder proposal from King Street to request for replacement of majority of directors and came to a compromise with King Street to include four foreign directors nominated by King Street in the director candidates to be included in Toshiba's proposal. Based on this fact, the Committee infers that Mr. Toyohara and Mr. Kamo became cautious as mentioned above due to their view that stability of Toshiba's management would be undermined if Effissimo made a shareholder proposal in which Effissimo nominates director candidates and the resolution was passed for such shareholder proposal. The Committee views that there was a good reason for Mr. Toyohara and Mr. Kamo to have such cautiousness based on their view and evaluation of facts as explained above. Furthermore, with

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<sup>24</sup> The Committee did not find the facts such as the resolution was passed at the Board of Directors meeting in support of executive officers' acts to have Effissimo's shareholder proposal withdrawn or rejected, but the Committee has found that there was a common understanding among Japanese directors as mentioned above (even though it might have been informal), based on the opinion letter jointly signed by former members of Audit Committee and the results of interview with Mr. Ota.

regard to the fact that a number of Japanese directors of Toshiba were cautious as mentioned above, the Committee has found that under the circumstances, including (i) the fact that after receiving from Effissimo a letter dated March 19, 2020 expressing its concern with the problem of fictitious and circular transactions of TSC, the Audit Committee members including Mr. Ota had telephone conferences with Effissimo and explained to Effissimo the matters such as how the Audit Committee would deal with the TSC issue, (ii) the fact that Effissimo expressed a certain degree of understanding on the explanation by Mr. Ota and other Audit Committee members and did not touch on the matters such as nomination of director candidates during the telephone conferences and Mr. Ota and other Audit Committee members therefore viewed that they gained a certain degree of understanding from Effissimo on the TSC issue and Toshiba's compliance issue, (iii) the fact that Toshiba received from Effissimo on May 19, 2020 a shareholder proposal requesting for election of Mr. Imai and three others as Toshiba's director despite the fact mentioned in (ii), (iv) the fact that Toshiba felt that such shareholder proposal by Effissimo, in which Effissimo requested for election of four candidates nominated by Effissimo, was excessive in terms of number of candidates for a proposal whose purpose was to resolve Toshiba's compliance issue and (v) the fact that Toshiba did not view that Mr. Imai and Mr. Kosaka, who were Effissimo's representatives, were familiar with Toshiba's compliance issue, the Japanese directors perceived that the real purpose of Effissimo's shareholder proposal was not to resolve Toshiba's compliance issue, but was something else which caused them to become cautious as explained above. The Committee views that from a standpoint of Japanese directors, there were reasonable grounds to perceive the matter in such a way. The fact that the Minister of Finance and the Minister of Economy, Trade and Industry jointly issued a report requisition order against Effissimo and the Security Trade Control Policy Division, a division in METI which has jurisdiction over the regulation on inward direct investments, etc. of foreign investors under the FEFTA, was conducting investigation on Effissimo's shareholder proposal mentioned above also supports the fact that there were reasonable grounds for the Japanese directors to feel a sense of caution and sense of danger as explained above.

On the other hand, the Committee views that (i) Effissimo's statements found in the minutes of telephone conferences with the Audit Committee members as mentioned above and Effissimo's awareness of the problem of TSC's fictitious and circular transactions which became clear while Effissimo exchanged opinions with the Committee are not unreasonable and (ii) Effissimo's problem awareness was due to its concern of Toshiba's stance on how Toshiba deals with scandals which seems somewhat superficial. Furthermore, the reason why Effissimo did not touch on the director nomination in the telephone conferences with the Audit Committee members is because Effissimo was consulting with the Security Trade Control Policy Division on the shareholder proposal for election of directors at the time in accordance with the Covenant Items and Effissimo viewed that talking with the Audit Committee members on such shareholder proposal would have a risk of breaching the

Covenant Items. When Toshiba's stock price declined, Effissimo has taken the risk and begun investing in Toshiba. When Toshiba issued approximately 600 billion yen in new shares in December 2017, Effissimo made a large amount of investment in such shares and has continued to keep such shares even as of 2020. The explanation provided by Effissimo on its investment method when exchanging information with the Committee (i.e., value approach in which investment is made in stocks, whose price is cheaper than potential corporate value, in order to receive capital gains and dividends coming from mid- and long-term corporate value increase) is not unreasonable considering the circumstances leading up to Effissimo's acquisition of shares in Toshiba and Effissimo's retention of such shares. Several Expert Advisors indicated their view that mid- and long-term enhancement of corporate value should have been the common goal of Toshiba and its shareholders and Toshiba should have made efforts to deepen the discussions with its shareholders to enhance its corporate value. Furthermore, when foreign directors of Toshiba exchanged opinions with the Committee, they stated that they did not have any sense of caution or sense of danger described above, which the executive officers and a number of Japanese directors had, and that such issue should have been thoroughly discussed at the Board of Directors meeting if the executive officers had such sense of caution and sense of danger. There is a possibility that the Series of Acts could have been restrained if such discussion was conducted. Considering these facts, the Committee views that one of the direct causes of Series of Acts was the fact that the executive officers solidified their view that the real purpose of Effissimo's shareholder proposal was not to resolve Toshiba's compliance issue, but was to become involved in Toshiba's management by using the compliance issue as a pretense, and dealt with Effissimo's shareholder proposal based on such view, without having adequate discussion at the Board of Directors meeting including foreign directors.

(2) The Committee infers that the background behind the fact that sense of caution and sense of danger were felt by not only executive officers of Toshiba, but also many Japanese directors of Toshiba as mentioned above was the fact that Toshiba continued to be in a situation where foreign investors own over 60% of outstanding shares in Toshiba and where foreign investors, who were not satisfied with Toshiba's low stock price, kept requesting for share buyback and to resolve the issue of conglomerate discount among other things. It is understandable that executive officers and many Japanese directors had a sense of caution and sense of danger in foreign investors' attempt to become involved in Toshiba's management in order to fulfill their requests mentioned above.

However, the situation described above is exactly the reason why it was absolutely necessary for Toshiba to have a serious discussion on how to develop trust relationship with its shareholders. Despite such fact, it seems that no adequate discussions were held between Toshiba's executive officers or at the Board of Directors meeting. On the contrary, Mr. Kurumatani, who is former CEO of Toshiba, dealt with investors who were investment funds based on the understanding that activist

shareholders are shareholders who make unreasonable demands which are not compatible with sound corporate management. The Committee views that not even Board of Directors was able to rectify how Mr. Kurumatani dealt with shareholders.

In other words, (i) a document entitled “Status Concerning Company Shareholders Meetings (scheduled for July 15),” which was based on a draft prepared by Mr. Kurumatani and completed upon receiving his confirmation, provided that activist shareholders had no choice but to request Toshiba for share buyback and sale of its business due to the fact that activist shareholders’ financing cost was 20% to 30% per year and that activist shareholders were attempting to efficiently take control of Toshiba by having a large number of outside director candidates, who can cause impact, elected and (ii) in the interview with the Committee, Mr. Kurumatani indicated his understanding that activist shareholder, who is an investment fund, would demand a company, to which such investment fund is investing, to raise its stock price by using any and all means with a goal of raising the stock price of such company by 30% ~ 40% per year based on such investment fund’s relationship with institutional investors, etc., who are making investments in such investment fund, because making such demand is investment fund’s job. Based on such facts, it seems that Mr. Kurumatani was dealing with investment fund-type investors based on the understanding that activist shareholders are those who make unreasonable demands which are incompatible with sound corporate management<sup>25</sup>. The Committee concludes that Mr. Kurumatani’s stance towards foreign investment funds as described above was one of the causes of Series of Acts.

It is widely known that foreign investment funds, which are activist shareholders, engage in various forms of activities depending on factors such as attributes of investors behind such foreign investment funds and therefore, foreign investment funds cannot be viewed one-sidedly. Such fact is also pointed out in published books and journals. A number of Expert Advisors pointed out that in a situation where foreign investors own over 60% of outstanding shares in Toshiba, Toshiba should have (i) investigated and reviewed the attributes of foreign investment funds and their activities, etc. so far, (ii) attempted to gain the understanding of foreign investment funds on Toshiba’s own management plan and management policy, and (iii) made efforts to deepen the discussions with them<sup>26</sup>. One of the leading businessmen in the Japanese business world also made a same point<sup>27</sup>. Despite such fact,

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<sup>25</sup> There were statements on Mr. Kurumatani’s stance against foreign investment funds from Toshiba’s directors, officers and employees, etc. who were interviewed such as “(Mr. Kurumatani) views that activist shareholders do not understand about management and only think about raising the stock price and (Mr. Kurumatani) did not make serious attempt to improve (Toshiba) even if activist shareholders make proposals” and “There was an impression that (Mr. Kurumatani) was looking down on shareholders.”

<sup>26</sup> Expert Advisors’ view also does not deny the necessity to have a discussion on whether or not it is worth having a discussion with such activist shareholder. Expert Advisors pointed out that (i) a company should identify the investment funds with which the company is able to have a constructive discussion upon investigating and reviewing the attributes of foreign investment funds and their activities, etc. so far and have good faith discussions with them and (ii) it is unreasonable for a company to refuse having any discussions with the investment funds or to be hostile towards them just based on the fact that they are foreign investment funds.

<sup>27</sup> Mr. Yoshimitsu Kobayashi, who is one of the leading businessmen in the Japanese business world, made some points such as the fact that it is not necessary for Japanese companies to avoid activist shareholders by assuming that they are

a number of executive officers and Japanese directors of Toshiba could not change their one-sided view on foreign investment funds and could not rectify CEO's understanding and actions as described above. The Committee views that one of the reasons why they were not able to do so is because there is weakness in corporate governance of Toshiba as an organization. The Committee also views that such fact impeded the development of sound trust relationship with foreign investors and became one of the causes of Series of Acts.

Executive officers, directors and employees of IR division of Toshiba had opportunities to have discussions with 258 shareholders during the period from February to July 2020. The Committee concludes that the IR division did not belittle the discussions with shareholders at all. However, it seems that such on-site efforts alone were not enough to develop a trust relationship between foreign investment funds and Toshiba.

### 3. Problem of Being Overdependent on METI

(1) Toshiba operates businesses such as businesses falling under core business, including nuclear power business, equipment manufacturing business such as general-purpose products which can be used for military purposes and IT business relating to cybersecurity which are related to national security, etc., and businesses relating to public infrastructure, including electricity and sewerage and water supply. Therefore, from the perspective of economic security of Japan, it was important to prevent Toshiba's technology from divulging overseas and to stabilize Toshiba's management. For this reason, as already mentioned earlier, (i) Toshiba historically and traditionally has been exchanging information and consulting with the IT Industry Division, which has jurisdiction over Toshiba, and has been receiving advice from the IT Industry Division among other things and (ii) the IT Industry Division has been providing consultations, advice and other supports to Toshiba and has made monitoring of actions of Toshiba's shareholders as its important duty, in order to prevent Toshiba's management from becoming unstable and to prevent the risk of sale of any of Toshiba's important businesses or divulgement of any of Toshiba's sensitive technologies, due to the fact that foreign investors became shareholders of over 60% of shares in Toshiba due to Toshiba's increase of its capital by approximately 600 billion yen in December 2017 by issuing new shares. The Committee views that there is no room for debate that the IT Industry Division's relationship with Toshiba with regard to Toshiba's business operation as described above is normal in and of itself and that Toshiba is required to maintain a good relationship with the IT Industry Division which is the administrative authority having jurisdiction over Toshiba<sup>28</sup>.

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short-termist and evil and the fact that Japanese companies still lack the theoretical background to communicate with investors and the willingness to actively grasp the issues within the company (MINISTRY OF ECONOMY, TRADE AND INDUSTRY, ACTUAL IMAGE OF OUTSIDE DIRECTORS – THOUGHTS AND PRACTICE OF 15 PERSONS – 57-254 (Kinzai Institute for Financial Affairs, Inc. 2021)).

<sup>28</sup> When the Committee exchanged opinions with foreign directors, the foreign directors stated that they had the same general understanding as mentioned above.

However, the Series of Acts include (i) the fact that Toshiba received from Director K1 the information which Director K1 normally would not have been expected to provide to company's personnel in charge, (ii) the fact that Toshiba consulted with Director K1 on how Toshiba should proceed with its proposal for compromise which Toshiba was planning to make to Effissimo and (iii) the fact that Toshiba informed Director K1 of how Toshiba wished HMC to vote with an expectation that such wish would be passed on to HMC. When looking at them as a whole, with respect to the matters concerning how to deal with shareholders, the Committee concludes that doubts arose as to fairness and transparency of how Toshiba deal with shareholders and the trust of investors and stock market in Toshiba was undermined due to the fact that relationship between Toshiba's executive officers and METI became too close beyond what was appropriate and the frequency and contents of information and opinions exchanged went beyond what was appropriate. On the other hand, the Committee views that it is difficult to draw a clear line on (i) where the relationship which is too close beyond what is appropriate begins and (ii) where excessive exchange of information and opinions begins<sup>29</sup>. Therefore, it would probably have been difficult to expect Mr. Toyohara and Mr. Kamo to make an appropriate decision on a case-by-case basis on the limit which they should have kept with regard to the information exchange and consultations with the IT Industry Division. Even so, the Committee views that if Toshiba's executive officers, who were dealing with administrative authority having jurisdiction over Toshiba, acted while being conscious of whether their acts would gain the understanding of shareholders and stock market and whether their acts would undermine the trust of shareholders and stock market in Toshiba by keeping in mind of the possibility that their exchange of information and consultations with such administrative authority might affect shareholders' exercise of their shareholder rights, Toshiba could have expected such executive officers to act in a way which did not exceed the limit overall. To act while being conscious in such a way is what should be considered as good practice in terms of business ethics<sup>30</sup>. The Committee views that this is exactly what one of the Expert Advisors meant when he said that executive officers should decide on their own actions by using the standard of whether their actions fall under good practice, in order to avoid the risk of harming company's reputation. As mentioned in III.4(1), it should also be noted that more companies are beginning to incorporate the concept of integrity into their code of conduct for directors, officers and employees. Such actions demonstrate sincerity towards shareholders. The Committee views that the fact that there was not enough consciousness as explained above led to acts which undermined the trust of shareholders and stock market in Toshiba.

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<sup>29</sup> Several Expert Advisors had similar opinion.

<sup>30</sup> During the interview with the Committee, Mr. Kamo stated that he believed that it was dangerous for him to receive too much various information. During the interview with the Investigators, Mr. Kamo stated that (i) there were times when the information on shareholders was leaked to him when he was communicating with METI with regard to the FEFTA, (ii) he thought that it was a problem for him to receive information on METI's communications with shareholders and (iii) he made sure that he did not receive no further information when he felt dangerous. Therefore, the Committee views that Mr. Kamo did not completely lack the consciousness mentioned above.

The Committee views that it was not a problem unique to Mr. Toyohara and Mr. Kamo, but was a problem of Toshiba's corporate culture in which Toshiba views the close information exchanges and consultations with METI as something taken for granted and in which Toshiba relies on them, based on the background where Toshiba has historical and traditional relationship with METI. The factors such as the circumstances leading up to the compromise on King Street's shareholder proposal before the 2019 Annual General Meeting of Shareholders of Toshiba were also causes of the situation where Toshiba's relationship with the IT Industry Division seemed to become considerably close at the time before the AGM. The Committee views that one of the causes of Series of Acts was the fact that Toshiba was not fully conscious of the fact that corporate activities should be autonomous and that it was necessary to rectify the tendency to become overly dependent on administrative authorities. When the Committee exchanged opinions with Expert Advisors, the Expert Advisors also made a point that Toshiba's stance which is overly dependent on METI as an organization was one of the causes of Series of Acts, which is similar to the point mentioned above.

(2) In addition, as mentioned in III.5, it would be reasonable to view that decision of Toshiba's executive officers on how to deal with shareholders, which was made to have Effissimo's shareholder proposal withdrawn or rejected with an expectation that METI would make an administrative approach from the viewpoint of economic security, was made with Mr. Kurumatani's active involvement. The Committee views that such stance of CEO was one of the causes of Series of Acts which was overly dependent on METI.

(3) Furthermore, several Expert Advisors made points such as the point that although executive directors generally have a certain discretion as a part of performing their work (i) to negotiate with shareholders in order to have a shareholder proposal withdrawn or (ii) to make an approach to shareholders to encourage them to vote for company's proposal and vote against shareholder proposal, Toshiba's dealing with shareholders to have Effissimo's shareholder proposal withdrawn or rejected with an expectation that METI would make an administrative approach from the viewpoint of economic security is not a measure against shareholders which is normally taken and therefore should have been reported to the Board of Directors. When the Committee exchanged opinions with foreign directors, the foreign directors made comments such as the comment that the biggest problem was the fact that the foreign directors was not informed of Toshiba's submission of written request to METI requesting METI to take appropriate measures such as confirmation of facts by conducting investigation pursuant to Article 55-8 of the FEFTA.

Toshiba submitted the written request mentioned above based on the request from METI with an expectation that METI would begin an investigation on Effissimo from the perspective of economic security. As mentioned earlier, it is not unusual in Japan for administrative authority to encourage a

company to submit a request to such administrative authority to exercise administrative power regardless of whether it is appropriate or not. Considering this fact, the Committee views that the fact that submission of written request mentioned above was not reported to the Board of Directors should not have been seen as a problem in and of itself. However, when taking into consideration the points and comments mentioned above, the Committee views that if a summary of policy on how to deal with matters in order to have Effissimo's shareholder proposal withdrawn or rejected had been reported to and discussed by the Board of Directors during the time when the Series of Acts was carried out, there was a good possibility that the acts of Toshiba's executive officers based on the abovementioned policy would have been restrained after having discussion with foreign directors, who felt uncomfortable about the submission of written request, etc., even if a number of directors supported such policy. In that sense, the Committee views that with respect to the decision on Toshiba's dealing with its shareholders with an expectation that METI would make an administrative approach from the viewpoint of economic security, it would have been more desirable under the corporate governance to make such decision under the check of Board of Directors instead of leaving such decision up to executive officers only.

#### 4. Corporate Governance-related Issues

(1) Based on the discussions in 2 and 3 above, the Committee views that the following corporate governance-related issues are the root cause which caused the Series of Acts:

A. Without having adequate discussions with the Board of Directors including foreign directors, Toshiba solidified its view that the real purpose of Effissimo's shareholder proposal was not to resolve Toshiba's compliance issues, but was to become involved in Toshiba's management in order to provide comments, which go against Toshiba's mid- and long-term growth, by using the compliance issue as a pretense, and dealt with Effissimo's shareholder proposal based on such view.

B. Despite the fact that Toshiba's executive officers and directors should have made efforts to investigate and review the attributes of foreign investment funds and their activities so far and to deepen the discussions with them, a number of executive officers and Japanese directors of Toshiba could not change their one-sided view on foreign investment funds without having any discussions at the Board of Directors meeting on matters such as Toshiba's stance on how to deal with foreign investment funds. It seems that this fact contributed to the view on Effissimo's shareholder proposal as mentioned in A above.

C. Based on the background that Toshiba has historical and traditional relationship with METI, there is a corporate culture within Toshiba in which Toshiba views the close information exchanges and consultations with METI as something taken for granted and in which Toshiba relies on them. Toshiba did not have enough self-awareness of the fact that their corporate activities should be conducted autonomously and that it was necessary for Toshiba to rectify its tendency to rely on

administrative authorities.

D. Under the background described in C above, Toshiba's executive officers made decisions on how to deal with Toshiba's shareholders with an active involvement of Mr. Kurumatani (who is former CEO of Toshiba), in order to have Effissimo's shareholder proposal withdrawn or rejected, with an expectation that METI would make an administrative approach from the viewpoint of national security. The Board of Directors was not even notified of such course of action.

(2) It seemed that Toshiba was ahead of others in terms of corporate governance by being a company with nominating committee, etc., and was in progress of achieving independence and diversity of Board of Directors based on the fact that 10 out of 12 directors were outside directors and four of such outside directors were foreign directors nominated by investment funds. However, by looking at the corporate governance-related issues pointed out in (1) above as a whole, the Committee views that the causes of Toshiba's corporate governance-related issues as pointed out in (1) above were (i) the fact that the reports from the executive officers to the Board of Directors and the issues raised at the Board of Directors meeting were not enough for the Board of Directors to supervise the executive officers' performance of their work and (ii) the fact that Toshiba was not able to make use of the diversity of outside directors for its corporate governance. In particular, it seems that there were not enough discussions with outside directors who symbolized diversity in terms of composition of Board of Directors and that the discussions of Board of Directors were mainly between Japanese directors who have a high affinity for executive officers in terms of how they think. Therefore, the Committee views that various opinions were not effectively used in the supervision over executive officers' performance of their work. It is widely known that it is dangerous to have a meeting with only participants having similar opinions. Such aspect is seen from the fact that the Series of Acts was carried out without any views or opinions criticizing the way of thinking and decisions of executive officers led by CEO.

(3) Furthermore, the Committee views that it would have been more desirable good practice in terms of business ethics for Toshiba's executive officers, who were dealing with the administrative authority having jurisdiction over Toshiba, to act while being conscious of whether their acts would gain the understanding of shareholders and stock market and whether their acts would undermine the trust of shareholders and stock market in Toshiba. Despite this fact, such consciousness has not sufficiently permeated as pointed out in 3(1) above.

According to the Facts, the Committee has found that despite the fact that Mr. Ota, who is Chairperson of Audit Committee, not only read as of February 2021 the e-mails which Law Firm A included as one of the subject matters of its investigation for its investigation report, but also was aware of a large portion of e-mail exchanges relating to the Series of Acts by checking approximately

40 e-mails attached to the minutes of interviews with Mr. Kurumatani, Mr. Toyohara and Mr. Kamo who were investigated by Law Firm A, Mr. Ota did not report them to the Board of Directors by seeing them as a problem or attempt to conduct investigation on them.

As explained earlier, the Committee did not find anything illegal, which is in breach of duty of care, in the Series of Acts by Mr. Toyohara and Mr. Kamo, but concludes that the Series of Acts was in violation of Ethical Standards upon making overall consideration of Series of Acts as a whole under the situation where the entire picture of Series of Acts became clear. Moreover, as of the time when Mr. Ota read the e-mails mentioned above, the media reports, which reported on the possibility that Toshiba exerted undue pressure on its shareholders, only included articles which reported on Mr. M's approach to HMC and did not see the Series of Acts relating to Effissimo's shareholder proposal as a problem. Effissimo also did not make any assertions such as assertion that Toshiba exerted undue pressure on Effissimo. Based on these facts, the Committee concludes that Mr. Ota did not engage in any act, which is in breach of his legal duty as an Audit Committee member, by not seeing the Series of Acts as a problem and by not reporting to the Board of Directors, among other things. However, by considering the facts such as (i) the fact that Mr. Ota, even if he was not in breach of his legal duty as an Audit Committee member, had opportunities to become aware of overview of Series of Acts such as when he read the e-mails mentioned above (The e-mails included e-mails concerning the course of action on how Toshiba would deal with its shareholders with an expectation that METI would make an administrative approach and e-mails which draw a suspicion of METI's involvement in Toshiba's compromise negotiation with its shareholders.) even though these opportunities arose after the occurrence of Series of Acts and (ii) the fact that Mr. Black and Ms. Weissman, who had an opportunity to read the summary of draft of Law Firm A's report, said that they were uncomfortable with Toshiba's frequent communications with METI, the Committee views that it was more desirable under the corporate governance to conduct reviews on how executive officers should perform their work under stricter standards from the viewpoint which requires executive officers' acts to be in compliance with the Ethical Standards. The Committee views that if such review was conducted, there would have been options other than the option mentioned above.

(4) For the reasons explained above, the Committee is of the view that corporate governance-related problems, such as (i) the fact that Toshiba left the work to its executive officers without being able to make use of diversity of its directors and without having adequate discussions and conducting adequate reviews on its relationship with foreign investment funds and with administrative authorities despite the fact that it has been making arrangements to become a company which is ahead of others in terms of corporate governance and (ii) the fact that the consciousness, that executive officers' performance of their work needs not only be legal, but also be in compliance with the Ethical Standards, has not sufficiently permeated, were the root cause which caused the Series of Acts by the executive

officers.

## V. Clarification of Responsibilities

### 1. Responsibilities of Executive Officers

As discussed in III.2 and 3, Mr. Kamo and Mr. Toyohara, who engaged in the Series of Acts, were not in breach of duty of care and Mr. Kurumatani, who was partially involved in the Series of Acts and who had a power to give directions and instructions to Mr. Kamo and Mr. Toyohara, was also not in breach of duty of care. Therefore, it is not possible to pursue legal liability against these three executive officers.

As discussed in III.4, these three executive officers are required to take responsibility for violating the Ethical Standards by engaging in the Series of Acts in the course of performance of work. If they still hold positions in Toshiba, the Board of Directors should consider taking measures against them such as HR-related measures, but they have already resigned and therefore, such measures cannot be taken against them. However, with regard to Mr. Kamo and Mr. Toyohara, they have actually taken responsibility since they were not reelected as executive officer by the Board of Directors and lost their positions after the Investigation Report became public.

### 2. Responsibilities of Directors

As discussed in III.5, it is not possible to pursue legal liability against Toshiba's directors excluding Mr. Kurumatani for the Series of Acts because they were not in breach of duty of care. Since they did not have sufficient knowledge of the facts which might have led such directors to become aware of Series of Acts, these directors could not have been expected to restrain any acts in violation of Ethical Standards to begin with and therefore, it is not possible to pursue liability against them for such violation.

## VI. Suggestions for Developing Recurrence Prevention Measures

### 1. Development of Sound Trust Relationship with Shareholders

When evaluating the Series of Acts as a whole in hindsight, the Series of Acts caused doubts as to fairness and transparency of how Toshiba dealt with its shareholders and Toshiba is required to take seriously the fact that the Series of Acts undermined the trust of investors and stock market. To have planned and continuous discussions with shareholders in order to develop a sound trust relationship with them is a good starting point to prevent recurrence of Series of Acts.

As mentioned in "IV. Root Cause Analysis," it is widely known that foreign investment funds, which are so-called activist shareholders, engage in various forms of activities depending on factors such as attributes of investors behind such foreign investment funds and they cannot be viewed one-sidedly. Needless to say, Toshiba's executive officers and directors should not take a stance such as refusing to

have discussions with foreign investment funds or being hostile towards them by solidifying a one-sided view such as a view that foreign investment funds' purpose is to gain short-term profits which go against company's mid- and long-term growth. The Committee cannot deny the fact that there are foreign investors and investment funds that strongly request for shareholder return such as distribution of dividends upon sale of business or assets or share buyback for the sole purpose of gaining short-term profits and thereby causing difficulty to the company to make investments necessary for its mid- and long-term growth. Whether or not certain shareholder is worth having a discussion could become an issue for the company and the company should not be denied of holding a necessary sense of caution against any investment funds whose sole purpose is to gain short-term profits. Company is also required to maintain a resolute stance in order to maintain or develop an appropriate relationship with all stakeholders such as customers, employees and local community and to run a business by adequately taking into consideration the interests of such stakeholders. On the other hand, there are ways to find out whether or not the purpose of such investment funds is only gaining short-term profits by taking measures such as investigating and reviewing the attributes and activities of such investment funds so far. Therefore, Toshiba should take such measures against investment funds and deepen discussions with them in order for Toshiba to have mid- and long-term growth which is supposed to be the common goal between Toshiba and investment funds.

In order to have discussions as described above, it is especially important for Toshiba's executive officers and directors to show its shareholders convincing financial analysis, capital policy and business portfolio concerning the management policy aimed for its mid- and long-term growth and to provide them with sincere explanations in order to gain their understanding. Toshiba is also required to listen to reasonable criticisms from its shareholders on its management policy. If Toshiba does not make efforts to gain shareholders' understanding as mentioned above and takes a stance to exclude foreign investment funds' opinions, it would be impossible for Toshiba to develop a sound trust relationship with its shareholders and to achieve stable management in a situation where foreign investors own a considerable percentage of outstanding shares in Toshiba.

A key point to develop a sound trust relationship with its shareholders is for Toshiba not to solidify a one-sided view on foreign investment funds, to have constructive discussions with shareholders who have a common goal of enhancing Toshiba's mid- and long-term corporate value and to make efforts to gain shareholders' understanding on the management policy made by Toshiba.

The Committee views that Toshiba should be commended as a part of its efforts for launching the Strategic Review Committee and for working on its mid-term management plan by having discussions with its shareholders after its 2021 Annual General Meeting of Shareholders.

## 2. Rectification on Toshiba's Tendency to be Overly Dependent on Administrative Authorities

Toshiba operates businesses falling under core business which especially concerns national

security, etc. such as nuclear power business, equipment manufacturing business such as general-purpose products which can be used for military purposes and IT business relating to cybersecurity, and businesses relating to public infrastructure, including electricity and sewerage and water supply. From the perspective of economic security of Japan, it is important to prevent Toshiba's technology from divulging overseas and to stabilize Toshiba's management. Therefore, it is absolutely necessary for Toshiba to exchange information and have consultations with and to receive advice from administrative authorities which have jurisdiction over Toshiba's business, including the IT Industry Division, with respect to its business operations. It is also necessary for Toshiba to maintain a good relationship with competent administrative authorities for the operation of its business.

Based on such premise, executive officers, who correspond with competent administrative authorities, are required to make efforts not to exchange information and have consultations with and to receive advice from competent administrative authorities in a frequency and with details which go beyond the appropriate scope. However, it will be very difficult to establish a standard of behavior which is capable of uniformly and clearly determining whether or not each information exchange, consultation or advice is appropriate. This is why it is extremely important for executive officers (i) to be always conscious of whether their acts would gain the understanding of shareholders, stock market and society in general, whether their acts would not undermine the trust in Toshiba and whether their acts would not undermine Toshiba's autonomous activities and (ii) to engage in acts with caution in order to refrain from becoming overly dependent on administrative authorities. Furthermore, the fact that overdependence on administrative authorities may cause doubts on the autonomy of company's activities is not limited to cases where shareholder rights are involved, such caution is required for wide range of executive officers' acts.

The Committee views that key point for recurrence prevention is for executive officers to perform their work with a high level of consciousness as described above and that it is also useful to consider designing a system which ensures such recurrence prevention. The possible measures which could be considered for this are, among other things, (i) enabling the Audit Committee to conduct supervision by requiring reporters to provide reports from the perspective of compliance and business ethics when providing departmental and divisional reports and internal audit reports to the Audit Committee and (ii) establishing a structure which enables recording of discussions with administrative authorities concerning performance of business<sup>31</sup> and conducting review of discussion process.

### 3. Redevelopment of Corporate Governance

It seemed that Toshiba was ahead of others in terms of corporate governance by being a company with nominating committee, etc., and was in progress of achieving independence and diversity of

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<sup>31</sup> According to Toshiba, Toshiba decided to examine the details of recording of its discussions with administrative authorities, in response to the fact that the Series of Acts became a problem.

directors as of the time of AGM based on the facts such as the fact that 10 out of 12 directors were outside directors and four of such outside directors were foreign directors nominated by investment funds. As explained earlier, the Committee views that the root cause of Series of Acts was the fact that in spite of corporate governance structure mentioned above, the corporate governance did not work effectively enough such as (i) the fact that how Toshiba should perceive Effissimo's shareholder proposal was not raised as an issue at the Board of Directors meeting and (ii) the fact that the decision that Toshiba would deal with shareholders with an expectation that METI would take an administrative approach was not notified to most of directors and was not discussed at the Board of Directors meeting. It is imperative for Toshiba to make its corporate governance truly ahead of others and to redevelop its monitoring system so that it can appropriately supervise executive officers' performance of their work.

In order to do so, needless to say, Toshiba is not only required to have a CEO and a Chairperson of the Board of Directors, who correctly understand the importance of corporate governance and have high ethical standards, but should also work on strengthening its corporate governance, including the measures already taken to a certain degree, by focusing on the following:

(1) For the composition of Board of Directors, Toshiba should adequately consider skill matrix and become more conscious of achieving diversity of directors. In order to achieve this, it is important for the Nomination Committee to select director candidates with a keen insight under the leadership of Chairperson of Nomination Committee.

(2) It is absolutely necessary for Toshiba to make arrangements, which will enable Toshiba to appropriately select the proposals from both Board of Directors and Executive Session and to timely and appropriately provide required materials to the Board of Directors and Executive Session for their deliberations, so that a variety of opinions will be actively exchanged at Board of Directors meetings and Executive Session meetings. In order to achieve this, it is important for the Chairperson of the Board of Directors to directly provide guidance to the secretariat of Board of Directors with respect to selection of proposals and provision of deliberation materials and it is desirable to develop a framework under which directors can also actively express their opinions.

(3) In order for the Audit Committee to adequately fulfill its responsibilities including supervision over business ethics, Toshiba should consider taking measures to arrange sufficient resources such as increasing the number of personnel who will become members of secretariat or who will be in charge of internal audit directly under the Audit Committee and strengthening the quality of such personnel.

(4) It is important for Toshiba to secure opportunities for its outside directors to conduct

investigations and have discussions independently from its executive officers such as setting up opportunities for only outside directors to have meetings, in order to develop a framework under which outside directors will supervise executive officers' performance of their work by having true independence.

(5) With respect to the issue of whether arrangements are made for the Board of Directors and all committees of Toshiba to adequately fulfill their roles by taking the measures mentioned above, it is absolutely necessary for Toshiba to continuously conduct evaluations on the effectiveness of performances of Board of Directors and committees, including evaluation by third party such as attorney, and to use the matters pointed out in such evaluations to strengthen and improve Toshiba's corporate governance structure, with active involvement of (i) Nomination Committee, which has the authority to make decisions on the details of proposal concerning the election and removal of directors submitted to General Meeting of Shareholders, and (ii) Audit Committee, which has the authority to audit the performance of work of executive officers and directors. The Committee also views that investigation to make credibility assessment on CEO of Toshiba, which Toshiba is already conducting with active involvement of attorney, will also continue to act as the last line of defense for Toshiba's corporate governance.

#### 4. Tone at the Top

In order for Toshiba to redevelop its corporate governance, it is extremely important not only to develop the frameworks described in 3, but also have correct tone at the top. As long as leader of organization not only disseminates slogan, but also does not fail to show his or her stance to cherish ethical values and sincerity through his or her actions, such stance will definitely permeate through the entire organization even if it might take time.

Toshiba has a corporate governance guideline in order to comply with Japan's Corporate Governance Code and has prescribed a detailed code of conduct, which requires all of its directors, officers and employees to act under high ethical values, such as making a basic sustainability policy which corresponds to the amended Japan's Corporate Governance Code. Such code of conduct and basic policy (i) require a common understanding to include in compliance not only compliance with laws and regulations, but also compliance with social norms, business ethics and internal rules and (ii) have very carefully-designed framework to ensure compliance such as whistleblowing system, in order to thoroughly implement compliance. However, when looking back at the Series of Acts, the Committee views that the stance to cherish ethical values and sincerity, which should be something basic in the prescribed code of conduct, was not adequately implanted.

Toshiba is the foundation supporting the sustainable growth of Toshiba Group. The introduction of "Our Values" section in Toshiba Group's corporate philosophy, which is a backbone of all of Toshiba

Group's activities, sets out a message "Do the right thing," which is shared among all directors, officers and employees of Toshiba Group. The Committee views that (i) delicate and careful preparation of code of conduct, (ii) reaffirmation of this simple and clear message, (iii) continuing efforts by CEO, who is the head of organization, to send out this message and (iv) executive officers and directors putting this message into practice with high ethical values and passion are how a living tone at the top should be. It is important for top management members including CEO who is the head of organization (i) to grasp negative facts and information which undermine the corporate value such as mistakes and failure, (ii) not to rebuke the person who reported such facts or information, (iii) not to show a stance to gloss over such facts, (iv) to share such negative information, and (v) to use such negative information as an opportunity to make improvements on business and to grow as an organization. Toshiba should also seek out something not permissible or questionable from the acts which follow the precedents and from the matters which have been taken for granted, from not only a legal standpoint, but also from a standpoint of business ethics. If someone raises an issue, Toshiba should face such issue squarely and use it to improve its business or to grow as an organization. The Committee views such actions as actions of company which correctly understands the message above.

Toshiba has an established reputation with respect to its high-level human resources and technologies. Therefore, as long as Toshiba's top management is able to deeply implant its corporate philosophy of "Do the right thing" into Toshiba as its corporate culture, the Committee believes that Toshiba will be able to turn into an organization in which Toshiba's directors, executive officers and employees will perceive that questioning mistakes and problems occurring in their daily work is a good starting point leading to improvements. The Committee is confident that such change will lead Toshiba to rebirth and sustainable growth.

End