

Translation

INVESTIGATION REPORT

JUNE 10, 2021

INVESTIGATORS OF TOSHIBA CORPORATION

June 10, 2021

TO: TOSHIBA CORPORATION

INVESTIGATORS OF TOSHIBA CORPORATION

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Chapter 1 Overview of the Investigators and the Investigation

I. Background, etc. to the appointment of the Investigators

A. Overview of Toshiba

As of December 31, 2020, Toshiba Corporation (hereinafter referred to as “**Toshiba**”) consists of the company and 301 consolidated subsidiaries and is engaged in businesses related to nuclear power generation systems, thermal power generation systems, elevators and escalators, lighting equipment, air-conditioning equipment, public infrastructure, railroad and industrial systems, POS systems, multifunction devices, semiconductors, hard disk drives, digital solutions, etc., and related maintenance services. As of March 31, 2021, Toshiba’s total consolidated assets were 3.5006 trillion yen, shareholders' equity was 1.1645 trillion yen, and consolidated sales for the fiscal year ended March 31, 2021 were 3.0544 trillion yen.

B. Background to the appointment of the Investigators

On September 23, 2020, Toshiba shareholder Effissim Capital Management Pte Ltd (“**Effissimo**”) made a request to the management of Toshiba for an investigation by a third-party committee consisting solely of independent members into whether the 181st Annual General Meeting of Shareholders held on July 31, 2020 (“**the AGM**”) was fairly managed. However, the third-party committee was not established even after about three months had passed since such request. As a result, Effissimo and Suntera (Cayman) Limited as Trustee of ECM Master Fund (collectively, the “**Requesting Shareholders**”) on December 17, 2020 requested Toshiba to convene an extraordinary shareholders meeting, and made a proposal as follows for the appointment of persons who would be charged to investigate the status of the operations and property of a stock company as stipulated in Article 316, Paragraph 2 of the Companies Act (hereinafter referred to as the “**Proposal for Appointment of Investigators**”).

(1) Outline of the matters for resolution

A. Persons to investigate the status of the operations and property

To elect Mr. Yoji Maeda, Mr. Takashi Kizaki and Mr. Takao Nakamura as persons to investigate the status of the operations and property of the stock company, as set forth in Article 316, Paragraph 2 of the Companies Act (the "Investigators"), for the investigation of matters set out in "Matters for investigation". The election of the Investigators shall become effective upon the approval of this resolution, and no separate agreement with Toshiba Corporation (the "Company") shall be required.

(Omitted)

B. Matters for investigation

Any matters the Investigators deem necessary in relation to whether the Annual General Meeting of Shareholders for the 181st fiscal year of the Company held on July 31, 2020 (the "181st Annual General Meeting of Shareholders") was conducted in a fair and impartial manner (including the lawfulness and fairness of the resolutions thereat).

C. Method of investigation and report

- (i) The Investigators will conduct the investigation independently of both the Company and the shareholders requesting the Extraordinary General Meeting of Shareholders (Effissimo Capital Management Pte Ltd ("Effissimo") and Suntera (Cayman) Limited as Trustee of ECM Master Fund).
- (ii) The period of investigation shall be three months from the date on which the Investigators are elected at the Extraordinary General Meeting of Shareholders.
- (iii) By the last date of the period of investigation, the Investigators shall conduct necessary investigation and deliver a report setting out the results of the investigation (the "Report") to the Company and make the content thereof public. The Investigators shall also report the content of the Report at a General Meeting of Shareholders which will be held after the Extraordinary General Meeting of Shareholders.
- (iv) The Investigators may request the officers and employees of the Company to disclose or deliver documents, etc. they deem necessary for the investigation, and to report on matters they deem necessary for the investigation, and the officers and employees cannot refuse such requests.
- (v) If (i) the officers or employees of the Company or any other persons do not cooperate with or refuse or impede the investigation, or (ii) the officers or employees of the Company or any other persons, whether directly or indirectly, put pressure on the Investigators or their assistants, the Investigators shall record such fact in the Report.
- (vi) The Investigators will decide the scope of facts to be investigated (the "Scope of the Investigation") upon discussion with the Company, etc. The Scope of the Investigation should be the scope necessary and sufficient to accomplish the purposes of the election of the Investigators, which is to investigate whether the 181st Annual General Meeting of Shareholders was conducted in a fair and impartial manner (including the lawfulness and fairness of the resolutions thereat). The Investigators may at their discretion widen or change the Scope of the Investigation as necessary, and in such cases, the Investigators shall explain such sequence of events in the Report.
- (vii) The Investigators shall set the Scope of the Investigation with care and attention to the costs potentially incurred by the Company and the distribution of resources, so as not to cause significant adverse effect to the corporate value of the Company.

(Abbr.)

The doubts expressed by the Requesting Shareholders as to whether or not the AGM was fairly managed are mainly as follows.

(1) Vote counting issue

It has been revealed that by the day prior to the AGM, there had been improper processing in which 1,139 voting forms brought to Sumitomo Mitsui Trust Bank, Limited, the stock transfer agent entrusted with the counting of voting rights, were not counted as valid votes. In addition, according to media reports and inspection and copying of the voting forms, there are a number of unnatural points in the counting of the voting forms that cannot be explained by this alone.

(2) Pressure issue

There have been reports that some shareholders did not exercise their voting rights due to pressure and that voting advisory firms were also under pressure. In this regard, the Requesting Shareholders questioned dozens of major shareholders of the company and confirmed that there were in fact shareholders who gave up exercising their voting rights due to pressure.

On the other hand, Toshiba asserted that there was no need for further investigation, and expressed its opposition to the Proposal for Appointment of Investigators at the extraordinary shareholders meeting, for the following reasons. Toshiba requested Sumitomo Mitsui Trust Bank, Limited (“**SMTB**”), the stock transfer agent and the administrator of the shareholders’ register, to investigate the above vote counting issue, and the Audit Committee, which consists solely of Toshiba’s outside directors, appointed an outside law firm to verify the appropriateness of the methods and results of that investigation. The Audit Committee also appointed an outside law firm to investigate the above pressure issue. No wrongdoing as suspected by the Requesting Shareholders was found with regard to either of the issues.

In this context, at Toshiba’s extraordinary shareholders meeting held on March 18, 2021 (the “**EGM on March 18, 2021**”), the Proposal for Appointment of Investigators was approved by a majority of shareholders as originally proposed, and the investigators (the “**Investigators**”) were appointed as described below in “**II. Composition, etc. of the Investigators**”, and it was resolved that there would be an investigation into whether or not the AGM had been fairly managed (the “**Investigation**”). (the “**Resolution for Appointment of Investigators**”).

II. Composition, etc. of the Investigators

A. Investigators

The Investigators are the following investigators.

Yoji Maeda (Attorney-at-Law, O'Melveny & Myers Gaikokuho Kyodojigyo Horitsujimusho)

Takashi Kisaki (Attorney-at-Law, Kaneko & Iwamatsu)

Takao Nakamura (Attorney-at-Law, Wadakura Gate Law Office)

B. Assistants

The Investigators appointed the following 12 lawyers as assistants to assist in the Investigation.

Emiko Morisato (Attorney-at-Law, O'Melveny & Myers Gaikokuho Kyodojigyo Horitsujimusho)

Shinji Kusuda (same as above)

Makoto Morioka (Attorney-at-law, Kaneko & Iwamatsu)

Kengo Iida (same as above)

So Joishi (same as above)

Hiroyasu Ito (same as above)

Ichiro Koide (Attorney-at-law, Wadakura Gate Law Office)

Tei Kazushi (same as above)

Takaaki Agatsuma (same as above)

Kei Segawa (same as above)

Takaki Kobayashi (same as above)

Akitaka Yamashiro (same as above)

In addition, in conducting the Investigation described in “**III. D. Digital Forensic Investigation**” below, the Investigators appointed FRONTEO Inc. (“**FRONTEO**”), a company specializing in such work.

C. Independence of investigators and assistants

Each investigator and assistant have no interest in Toshiba nor in the Requesting Shareholders. The expenses incurred in the Investigation (including daily allowance for the investigators and assistants) shall be paid by Toshiba to the extent reasonable under socially accepted standards, and if Toshiba refuses to pay all or part of such expenses, Effissimo shall compensate the Investigators for the expenses for which they were not paid.

III. Purpose and Method of the Investigation

A. Outline of the purpose and method of the Investigation

The purpose of the Investigation is to clarify any and all matters that the investigators deem necessary in relation to whether or not the AGM was conducted fairly, and the Investigators, after consulting with Toshiba, have determined that any and all facts that the Investigators deem necessary among facts related to whether or not the AGM was conducted fairly are to be subject to Investigation.

During the investigation period, the Investigators continued to conduct the following investigations and held a total of 4 plenary meetings among investigators and assistants and 9 meetings with Toshiba's secretariat to discuss and deliberate on the investigation policy, fact finding, etc.

B. Scrutiny of relevant materials

As described in “**Chapter 2: Vote Counting Issue**” and “**Chapter 3: Pressure Issue**” below, the Investigators have examined and reviewed the records and all other materials used in the investigations conducted by Toshiba’s Audit Committee using an outside law firm with respect to each of the issues, the voting forms for the AGM, all materials that show the record of contact between Toshiba and its shareholders and the details of those contacts and negotiations, all materials that show the record of contact between Toshiba and outside parties subject to investigation and the details of those negotiations, and other materials provided by Toshiba, including relevant internal minutes, meeting materials, and other related materials, as well as relevant materials provided by Toshiba's shareholders and other parties outside Toshiba.

C. Interviews, etc. with related parties

The Investigators conducted a total of 13 face-to-face and videoconference interviews with a total of 9 officers (including former officers) and employees of Toshiba, and asked questions via telephone and e-mail as appropriate.

In addition to the above, the Investigators requested cooperation from the following parties, and certain of the parties provided information to the Investigators. Due to confidentiality or other obligations, the Investigators are not able to disclose the contents of certain information or materials provided by certain of the parties or the fact that the Investigators received cooperation from certain of the parties. Therefore, in the Investigation Report, the Investigators will state the facts as they find them by synthesizing the information, materials, testimonies, etc. provided without attribution.

Toshiba's shareholders at the time of the AGM

3D Investment Partners Pte. Ltd.
Argyle Street Management Limited
Effissimo Capital Management Pte Ltd
Farallon Capital Management, L.L.C.
Harvard Management Company, Inc.
King Street Capital Management, L.P.
Anonymous shareholders

Others involved

Glass, Lewis & Co., LLC
Institutional Shareholder Services K.K.
Ministry of Economy, Trade and Industry (including the former
Executive Advisor to the Ministry of Economy, Trade and Industry)
Torikai Law Office
Sumitomo Mitsui Trust Bank, Limited
Japan Stockholders Data Service Company, Limited
JAPAN POST Co., Ltd.
Former responsible member of a human resources search firm

D. Digital Forensic Investigation

The Investigators processed and analyzed the electronic data of the following seven Toshiba-related persons, who were presumed to be particularly relevant to the matters under investigation, by restoring deleted files from their mail servers (including backup data of past mail servers). After processing and analyzing the electronic data from mail servers (including backup data from past mail servers), a total of 778,227 de-duplicated e-mails and their attachments, such as Word files, Excel files, and PDF files (523,462 e-mails and 254,765 attached files) were uploaded to Lit i View, a review platform.

As for the uploaded files, the data was narrowed down to a certain amount (66,662 files) based on certain conditions, such as deletion of duplicate e-mails, keywords, etc. and those files were evaluated for importance by AI. Then the files with high importance were reviewed by the Investigators and assistants, and those with low importance were reviewed by FRONTEO reviewers.

Mr. Nobuaki Kurumatani (“**Mr. Kurumatani**”): Representative Executive Officer,
President and CEO at the time of the AGM and at the time of the

commencement of the Investigation; resigned on April 14, 2021 during the period of the Investigation.

Mr. Masayasu Toyohara (“**Mr. Toyohara**”): Representative Executive Officer and Corporate Senior Executive Vice President at the time of the AGM and at the time of the commencement of the Investigation. Mr. Toyohara is in charge of the Corporate Communication Division.

Mr. Masaharu Kamo (“**Mr. Kamo**”): Executive Officer, Corporate Senior Vice President at the time of the AGM and at the time of the commencement of the Investigation. Mr. Kamo is in charge of Strategic Planning Division.

Mr. Junji Ota (“**Mr. Ota**”): Outside Director (Chairperson of Audit Committee and member of Nomination Committee) at the time of the AGM and at the time of the commencement of the Investigation.

A manager in the Strategic Planning Division, at the time of the AGM and at the commencement of the Investigation.

A manager in the (Legal Affairs Division, at the time of the AGM and at the commencement of the Investigation.

A member of the Audit Committee Office at the time of the AGM and at the commencement of the Investigation.

E. Establishing a Hotline

In addition, on the same day, the Investigators established a hotline exclusively for the Investigators, and posted a document entitled “Information Hotline” on Toshiba's company website to announce the establishment of the hotline and to seek out the provision of as much information as possible by disseminating information about the hotline installation. As a result, throughout the period of the Investigation, the contact point for the above-mentioned hotline received several reports and communications from concerned parties.

F. Instructions to the Officers and Employees of Toshiba's Group to Cooperate in the Investigation

On the same day after the EGM on March 18, 2021, Toshiba sent the following statement by e-mail to the officers and employees of its group companies, instructing them to cooperate in the Investigation.

An extraordinary general meeting of shareholders of Toshiba Corporation was held today to address matters raised by shareholders. Two proposals from shareholders were voted on, and the majority approved the first, calling for the appointment of investigators to determine whether or not the 181st ordinary general meeting of shareholders, held on July 31, 2020, was conducted in a fair and appropriate manner.

We accept the shareholders' opinion and take it very seriously. We will cooperate fully and sincerely with the investigators and will strive to ensure further transparency in our operations.

We ask all of our officers and employees to give priority to full cooperation with the investigation. We particularly ask you to respond to questions and requests with all honesty, and not to commit any acts that may be seen as misleading or that may be misunderstood, such as the following:

1. Concealing, destroying or modifying materials and data that fall within the scope of the investigation
2. Reporting false information
3. Any other act that intentionally obstructs the conduct of the investigation

IV. Premises of the Investigation

- (i) The Investigation assumes that all of the copies of documents or electromagnetic records disclosed to the Investigators are identical to the originals, that all of the originals are authentically established and have not been subsequently altered, and that there are no material omissions in them.
- (ii) Pursuant to the Resolution for Appointment of Investigators, the Investigation is related to the matters described in "**III. A. Outline of the purpose and method of the Investigation**" above. This is not a direct or exhaustive investigation of violations of laws and regulations or governance issues of Toshiba or Ministry of Economy, Trade and Industry ("**METI**") or any other organization, irrespective of whether or not the AGM was conducted fairly.

V. Outline of the Investigation and Structure of the Investigation Report

A. Subject matter of the Investigation (Chapters 2 and 3)

With regard to the matters described in “III. A. Outline of the purpose and method of the Investigation” above, the Investigators conducted the investigation in two main areas: first, the items related to the vote counting issue, and second, the items related to the pressure issue.

B. Items related to the vote counting issue

In investigating the facts related to the vote counting issue, the Investigators mainly focused on (1) the overall picture of the so-called preemptive processing,¹ (2) whether there were other irregularities in the processing other than those revealed by the Prior Report on Preemptive Processing, and (3) whether Toshiba was aware of or involved in the vote counting issue (hereinafter referred to as “**Vote Counting Issue**”). The following is a summary.

1. Reviewing the overall picture of Preemptive Processing

Toshiba and SMTB conducted investigations into Preemptive Processing and the results were published in Toshiba's “Counting of voting rights exercised at the Ordinary General Meeting of Shareholders for the 181st Fiscal Period” dated September 18, 2020 and “(Update) Counting of voting rights exercised at the Ordinary General Meeting of Shareholders for the 181st Fiscal Period” dated December 18, 2020, and SMTB's “Notice of the Results of the Investigation into the Operations Related to the Tallying of Votes Exercised by the Company's Business Partners” dated September 18, 2020 and “Notice of the Results of the Investigation into the Operations Related to the Tallying of Votes Exercised by the Company's Business Partners” dated September 24, 2020. In addition, an investigation was also conducted by Torikai Law Office, and the results were reported to the Audit Committee of Toshiba in the report on the investigation dated December 16, 2020 (the “**Torikai Report**”) (hereinafter collectively referred to as the “**Prior Report on Preemptive Processing**”).

In addition to these reports, the Investigators also interviewed SMTB, JaSt, and JAPAN POST Co., Ltd. (“**Japan Post**”) to clarify the overall picture of the Preemptive Processing, after carefully examining the questionnaires, responses, interview records, and other materials that formed the basis of these reports. The specific matters to be investigated include the following points.

¹ Preemptive processing refers to the following process. Basically, in the busy months when there is a larger concentration of shareholders meetings, in order to ensure that there is enough time to count the large number of voting forms, Japan Shareholders Data Service Company, Limited (“**JaSt**”), which is entrusted by SMTB through its wholly owned subsidiary Sumitomo Mitsui TA Solution Co., Ltd. with the task of counting voting forms, requested Japan Post Sugunami Minami Post Office to perform a special delivery operation to deliver the voting forms as quickly as possible, and treated the voting forms delivered under the special operation as if they had arrived on the next day for the purpose of counting voting rights, assuming that they should have been delivered on the following day (“**Preemptive Processing**”). For details, see Chapter 2.

- (1) The background to the start of Preemptive Processing between SMTB and Japan Post;
- (2) The existence and details of the Preemptive Processing agreement between SMTB and Japan Post;
- (3) The process until the subject mails are delivered;
- (4) Details of the documents (supplementary form and delivery certificate) used in Preemptive Processing;
- (5) Method of setting the unit price of fees and how fees are billed;
- (6) Whether Toshiba was aware of the Preemptive Processing.

2. Whether there have been any other irregularities in the processing other than those revealed by the Prior Report on Preemptive Processing

According to the Prior Report on Preemptive Processing, there was improper handling in that 1,139 voting forms delivered to SMTB (JaSt) on the day before the AGM were not counted as valid voting rights.²

On the other hand, in the Prior Report on Preemptive Processing it was also reported that there were inconsistencies between the report by Japan Post and the report by SMTB regarding the delivery date and the number of voting forms postmarked on July 27, 2020. And if the report by Japan Post is correct, then there was a problem other than Preemptive Processing. Specifically, it gives rise to the need to suspect the possibility that, as a result of voting forms delivered to JaSt being left unprocessed by the OCR machine on the same day, there may be other voting forms besides the above 1,139 voting forms that were not counted as valid votes even though they were physically received by the end of the voting period of the AGM.

In this regard, the summary of the Torikai Report in the Prior Report on Preemptive Processing concludes that the above possibility is denied, however the Requesting Shareholders still have their doubts.

Therefore, the Investigators decided to investigate whether there were any other irregularities other than those revealed by the Prior Report on Preemptive Processing. In order to clarify this point, the Investigators received from Toshiba the voting forms received from the shareholders at the AGM, and they were recounted by investigating and confirming items including the postmark date and time, the date of arrival at JaSt, the date and time when the forms were scanned using the OCR machine located at JaSt, and the number of days required to reach JaSt. In addition, the Investigators investigated the number of days it took from the postmark date to the scan date for the voting forms of other companies that held their shareholders meetings on the same day as the AGM.

² There were 1,143 voting forms that were delivered on the day before the AGM but were treated as arriving after the deadline due to the Preemptive Processing, but 4 of them were also exercised via the Internet, and 1,139 cards (58,747 voting rights) should be additionally reflected as valid votes.

Furthermore, the Requesting Shareholders pointed out that Toshiba or subcontractors thereof may have encouraged only those shareholders who were friendly with the Toshiba's management to vote online. Therefore, the Investigators also investigated the existence of such a fact.

3. Whether Toshiba was aware of or involved in the Vote Counting Issue

The Investigators examined Toshiba's awareness of the Vote Counting Issue and the background to the discovery of the problem at Toshiba, and examined whether Toshiba was aware of or involved in the Vote Counting Issue.

C. Items related to the pressure issue

The "pressure issue" was raised by the Requesting Shareholders as a reason for the convocation of the EGM on March 18, 2021 in light of the fact that the Corporate Governance Code specifically stipulates that "Given the importance of shareholder rights, companies should ensure that the exercise of shareholder rights is not impeded." (Supplementary Principles 1.1.3) We consider this to mean, in essence, that the AGM cannot be evaluated as fairly managed if Toshiba directly or indirectly exerted pressure or other influence on some shareholders with the intention of effectively preventing them from exercising their rights in relation to the AGM. If such a fact exists, the AGM cannot be evaluated as fairly managed.

As described in "**III. A. Outline of the purpose and method of the Investigation**" above, the Investigators, in consultation with Toshiba, have decided to investigate all the facts that the Investigators deem necessary in relation to whether or not the AGM was fairly managed, which are specifically as follows (hereinafter referred to as the "**Pressure Issue**").

- (i) Existence and details of moves to effectively prevent shareholders from exercising their shareholder proposal right regarding the AGM, and Toshiba's involvement
- (ii) Existence and details of any attempts to effectively prevent the exercise of voting rights at the AGM and Toshiba's involvement in such attempts.

In the event that the Investigators determine that the AGM was not conducted fairly, the Investigators will discuss the causes to the extent that they can be determined from the results of the Investigation.

Chapter 2 Vote Counting Issue

I. Introduction

As described above in “**B. Items related to the vote counting issue**” in “**V. Outline of the Investigation and Structure of the Investigation Report**” in “**Chapter 1**”, the main items investigated by the Investigators concerning the Vote Counting Issue were: (1) the overall picture of Preemptive Processing; (2) whether there were irregularities in processing other than those revealed by the Prior Report on Preemptive Processing; and (3) whether Toshiba was aware of or involved in the Vote Counting Issue.

Therefore, in this chapter, we first explain in “**II. Overall picture of Preemptive Processing**” the process for delivery of voting forms at the AGM, as confirmed by the investigation, and the process for counting voting forms after they were received. We then evaluate the problems with Preemptive Processing (including whether or not Toshiba was aware of them).

Next, in “**III. Presence or Absence of Unfair Processing other than Preemptive Processing**”, we will report the results of the investigation of all voting forms exercised at the AGM, as well as the results of the investigation of voting forms exercised at other companies that held their shareholders meetings on the same day as the AGM, and determine whether there was any unfair treatment other than Preemptive Processing, taking into consideration Toshiba's awareness or involvement.

As described in “**IV. Doubts about the exercise of voting rights via the Internet immediately prior to the exercise of voting rights**” we report the results of our investigation of the allegations by the Requesting Shareholders that Toshiba or subcontractors thereof may have encouraged only those shareholders who were friendly with Toshiba's management to switch to online voting.

II. Overall picture of Preemptive Processing

A. Facts found as a result of the investigation

1. Delivery process of voting forms by post office (until delivery to JaSt)

a. Introduction

Generally, when a sender deposits mail in a mailbox, etc., it is collected by a post office (accepting office) and delivered in the following order: accepting office → regional office in the place of acceptance → regional office in the place of delivery³ → post office responsible for delivery (collection and delivery office) → delivery to the recipient.

Toshiba's voting form in question is a paid-by-recipient mail piece,⁴ and although the

³ A post office that collects mail within a region and serves as a base for coordinating mail to other regions.

⁴ This is a system that allows the sender to send mail without paying fees by using envelopes or

general flow from acceptance to delivery is the same, the delivery process is different from that of ordinary mail because of the need to inspect for misclassification to prevent mixing with other paid-by-recipient mail pieces, and the need to perform a count (counting the number of pieces).

In particular, Toshiba's voting form is also a mail item with a large-lot dedicated number,⁵ which makes the delivery process even more specialized because it has to go through a large-lot dedicated number sorting machine (it must go through the Shin-Tokyo Post Office, which has such a sorting machine).

The specific delivery process for paid-by-recipient mail pieces, as recognized according to interviews with Japan Post, is as follows.

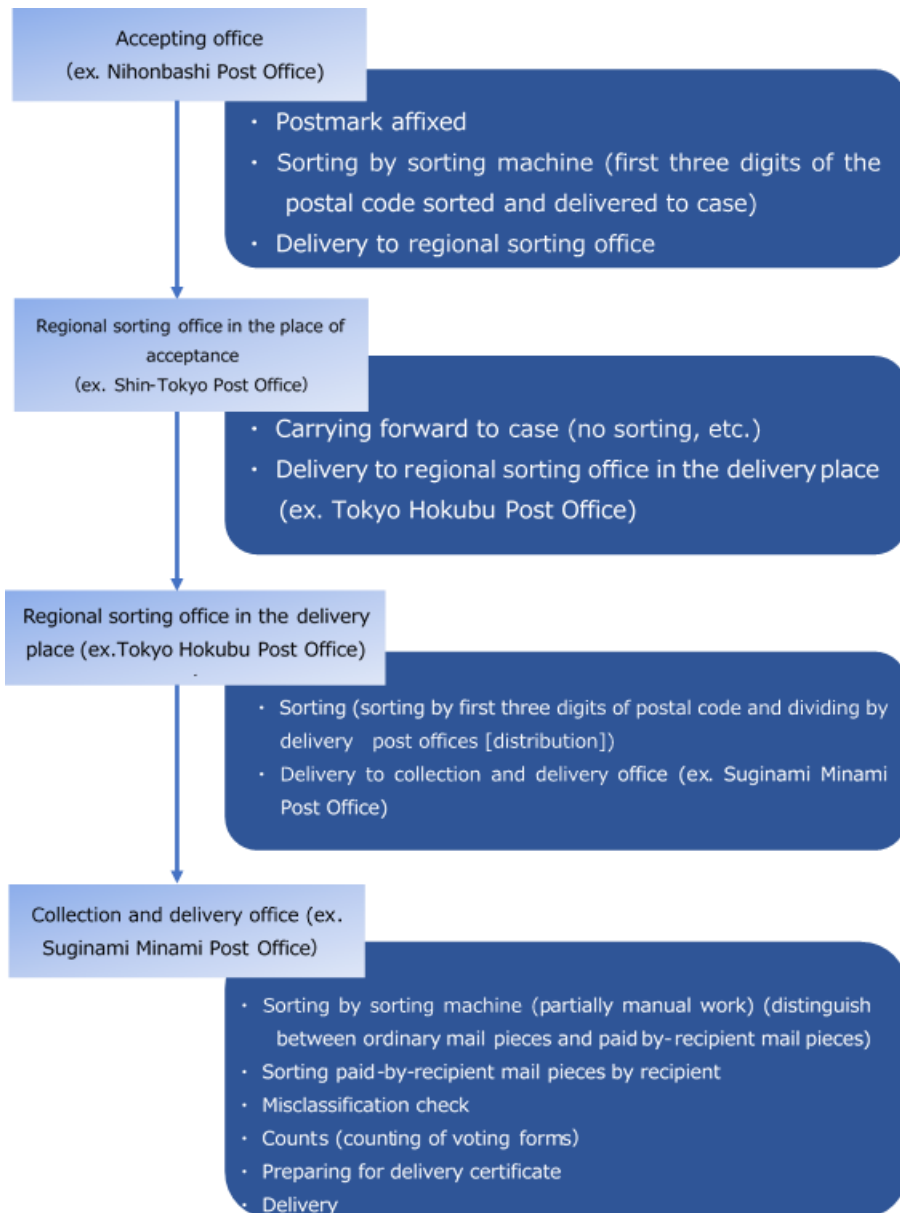
b. Delivery process for paid-by-recipient mail

(1) In the case of ordinary paid-by-recipient mail pieces

When delivering paid-by-recipient mail pieces, it is necessary for the collection and delivery offices to perform misclassification checks to prevent mixing with other paid-by-recipient mail pieces, as well as to perform counts (counting the number of mail pieces), and the delivery process is as follows

postcards that have been approved by the post office in advance and have the prescribed markings. The recipient pays the fee later or at the time of delivery. This system is also used for questionnaires and mail order applications. The fee varies depending on whether the fee is paid in advance or later, and whether the delivery address is a P.O. Box delivery.

⁵ An individual postal code address that is assigned to a recipient who receives a large amount of mail over a period of time. It is also known as a special number assigned for large-lot mail or a quiz number. The use of large-lot dedicated numbers is limited to the Tokyo metropolitan area and Osaka City. The number 119-○○○○ is used for the Tokyo metropolitan area and 539-○○○○ is used for Osaka City.



According to an interview with Japan Post, the approximate timing required for delivery is:

- At the Suginami Minami Post Office, if mail arrives at the post office by around 6:35 a.m., it will be sorted and counted on the same day and delivered to the recipient on the following day (mail arriving at the post office after around 6:35 a.m. will be delivered 2 days after it arrives).
- If the package is received by around 5:00 p.m. in the neighboring area, in many cases it will arrive at Suginami Minami Post Office by around 6:35 a.m. on “accepting date (i.e., the postmark date) + 1 day,” and it can be delivered on “accepting date (i.e., the postmark date) + 2

days.”⁶

(2) In the case of paid-by-recipient mail pieces with a large-lot dedicated number

Among paid-by-recipient mail pieces, items that are expected to be processed in large volumes over a certain period of time (e.g., questionnaires, voting forms, etc.) may be assigned a large-lot dedicated number, but in this case, the delivery process is even more specialized.

The key points of the delivery process (the main differences between the case of a simple paid-by-recipient mail and the case of paid-by-recipient mail with a large-lot dedicated number) that were recognized from the interview with Japan Post are as follows.

- In the case of paid-by-recipient mail with a large-lot dedicated number, the items are sorted by a specialized sorting machine for mail items with large-lot dedicated numbers. In Eastern Japan, there is only one specialized sorting machine for mail items with large-lot dedicated numbers at the Shin-Tokyo Post Office, and therefore all such items must go through that post office.⁷
- In the Shin-Tokyo Post Office, a sorting machine for mail items with large-lot dedicated numbers operates late at night and early in the morning (from 11 p.m. to 6 a.m.).
- Since the sorting machine for mail items with large-lot dedicated numbers sorts by 7-digit zip code, no further sorting is required at the regional sorting office or collection and delivery office at the place of delivery.

According to the interview with Japan Post, although it is not always clear how long it takes to deliver paid-by-recipient mail pieces with a dedicated large-lot number,⁸ their impression

⁶ For paid-by-recipient mail, the delivery address can be a P.O. Box. In that case, the delivery date to the recipient (date received by recipient) is not limited to that described above. The recipient can receive the mail earlier because there is no process of delivery to the recipient (timing of receipt depends on when the recipient goes to the P.O. Box to pick up the mail). Accordingly, we understand that since Toshiba's EGM on March 18, 2021 SMTB (JaSt) has changed the method of receiving voting forms to a P.O. Box at the Shin-Tokyo Post Office as the delivery address, from which JaSt picks up the voting forms.

⁷ For example, if an item is delivered from Omiya Post Office to Suginami Minami Post Office, it will be delivered according to the following flow: "Omiya Post Office → Shin-Iwatsuki Post Office (regional sorting office) → Shin-Tokyo Post Office (regional sorting office) → Tokyo Hokubu Post Office (regional sorting office) → Suginami Minami Post Office". On the other hand, in the case of delivery from the Nihonbashi Post Office, the Shin-Tokyo Post Office will also serve as the regional sorting office for the place of acceptance, and delivery will be made in the following order: "Nihonbashi Post Office → Shin-Tokyo Post Office (regional sorting office) → Northern Tokyo Post Office (regional sorting office) → Suginami Minami Post Office".

⁸ Other than JaSt, the Suginami Minami Post Office does not handle any paid-by-recipient mail piece using large-lot dedicated numbers, and as a result, during busy months when there is a high concentration of shareholders meetings, all mail using large-lot dedicated numbers is delivered using the special delivery operation described in c. below.

was as follows:

- As mail with large lot numbers must go through the Shin-Tokyo Post Office because it must go through a dedicated sorting machine (which operates late at night and early in the morning), it takes a longer time for such mail to arrive at Suginami Minami Post Office than regular paid-by-recipient mail pieces.
- However, since the Shin-Tokyo Post Office completes the sorting of 7-digit postal codes (using a dedicated sorting machine), the sorting at the Tokyo Hokubu Post Office and the Suginami Minami Post Office can be omitted.

c. Special delivery operation to JaSt during the busy period of shareholders meetings

During the busy months of March, May and June, which are usually the months when general shareholders meetings are concentrated, JaSt requested the Suginami Minami Post Office, which is the relevant collection and delivery office, to conduct the following special delivery operation in order to secure the working time needed to count the large number of voting forms, and the Suginami Minami Post Office complied with the request (In the Investigation, it was confirmed that since 2008, SMTB or JaSt has made a written request to Suginami Minami Post Office and implemented the special delivery operation, however the manner of operation up to 2007 is not clear, and when and how this special delivery operation started could not be clarified.). In 2020, due to the spread of the new coronavirus, a considerable number of companies postponed their general shareholders meetings to July, so special delivery operations were also conducted in July. The details of the operation differed slightly depending on the year and month, but the operation in July 2020, when the voting forms for the AGM were delivered, was found to be as follows.⁹

- In order to facilitate the counting of voting forms at JaSt, voting forms are delivered together at around 9:15 a.m. on weekdays.
- The Suginami Minami Post Office checks voting forms arriving at the post office by 4:20 p.m. for mis-categorization by zip code and reloads the voting forms into half-cases (each case containing about 3,000 voting forms) for delivery to JaSt on the next day (the actual delivery date), and checks only

⁹ These operations are for mailing by regular mail using paid-by-recipient mail postcards. When mailing by express mail or registered mail, or by means other than paid-by-recipient mail (in fact, it seems that there are many cases where the sender pays the express delivery fee and sends it by express mail, or puts the voting form in an envelope and then sends it), since it is delivered to JaSt through the same delivery process as regular mail, it does not enter into this special delivery operation flow.

the approximate number of voting forms. (In order to deliver to JaSt as quickly as possible, the priority is to save time and not to check the exact number of voting forms.)

- The voting forms are delivered to JaSt at around 9:15 a.m. on the actual delivery date, and a supplementary form (a document stating the number of voting forms, the fee,¹⁰ and the number of cases on the actual delivery date) is also delivered. The number of voting forms listed on the supplementary form is only an approximate number, not the exact number of those counted, and the fee is only the approximate number multiplied by the unit price. The number of voting forms and the number of cases listed on the supplementary form are the total number of voting forms of all the companies that SMTB is contracted to count, not just the number of voting forms and the number of cases for Toshiba.
- The actual delivery date and the number of cases are entered in the “voting postcard transfer books” maintained by Suginami Minami Post Office, and the deliverer (Suginami Minami Post Office staff) and the recipient (JaSt staff) affix their seals. This number of cases is also for all the voting forms of all the companies that SMTB is contracted to count.
- At around 10:00 a.m. on the next business day of the actual delivery date, the person in charge at Suginami Minami Post Office issues two delivery certificates (a receipt-like document dated on the business day following the actual delivery date, stating the number of voting forms and the charges) to the JaSt responsible employee. The JaSt responsible employee affixes their seal to one copy (for the custody of Suginami Minami Post Office) and returns it to the person in charge at Suginami Minami Post Office.
- The number of voting forms shown on the delivery certificate is merely a transcription of the approximate number on the supplementary form and the exact number of voting forms will be counted by JaSt and revised at a later date to match the monthly count. The number of voting forms shown on the delivery certificate is the total number of voting forms of all companies for which SMTB is contracted to count votes, not just the number of voting forms of Toshiba.¹¹

¹⁰ The fee for paid-by-recipient mail pieces is 78 yen (including a handling fee of 15 yen) within the valid submission period (until July 30, 2020 for Toshiba's voting form) and 63 yen after the submission deadline. According to an interview with Japan Post, the first mail collected from the mailbox on the day after the last day of the submission period is treated as if it were submitted within the valid period for submission.

¹¹ For confirmation, the meanings of the dates and number of cases shown on the supplementary forms, voting postcard transfer books, and delivery certificates are organized as follows (none of which describes the number, etc. of voting forms exercised for Toshiba individually) TA: transfer agent; JaSt

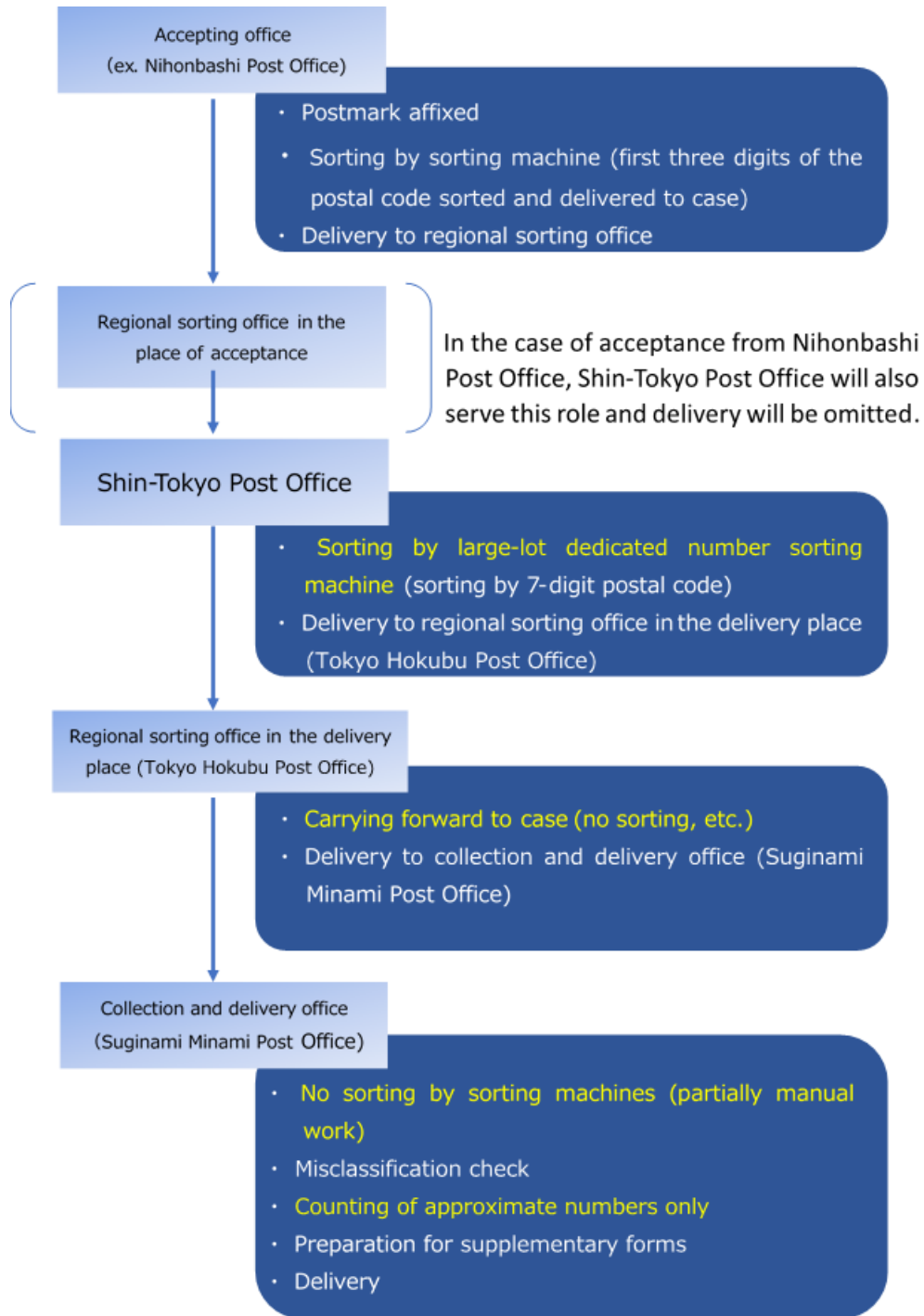
- Delivery from the Suginami Minami Post Office to JaSt is made only once daily around 9:15 a.m., and no deliveries are made on weekends or holidays.¹²

The delivery process premised on the above special operation, can be summarized as follows.

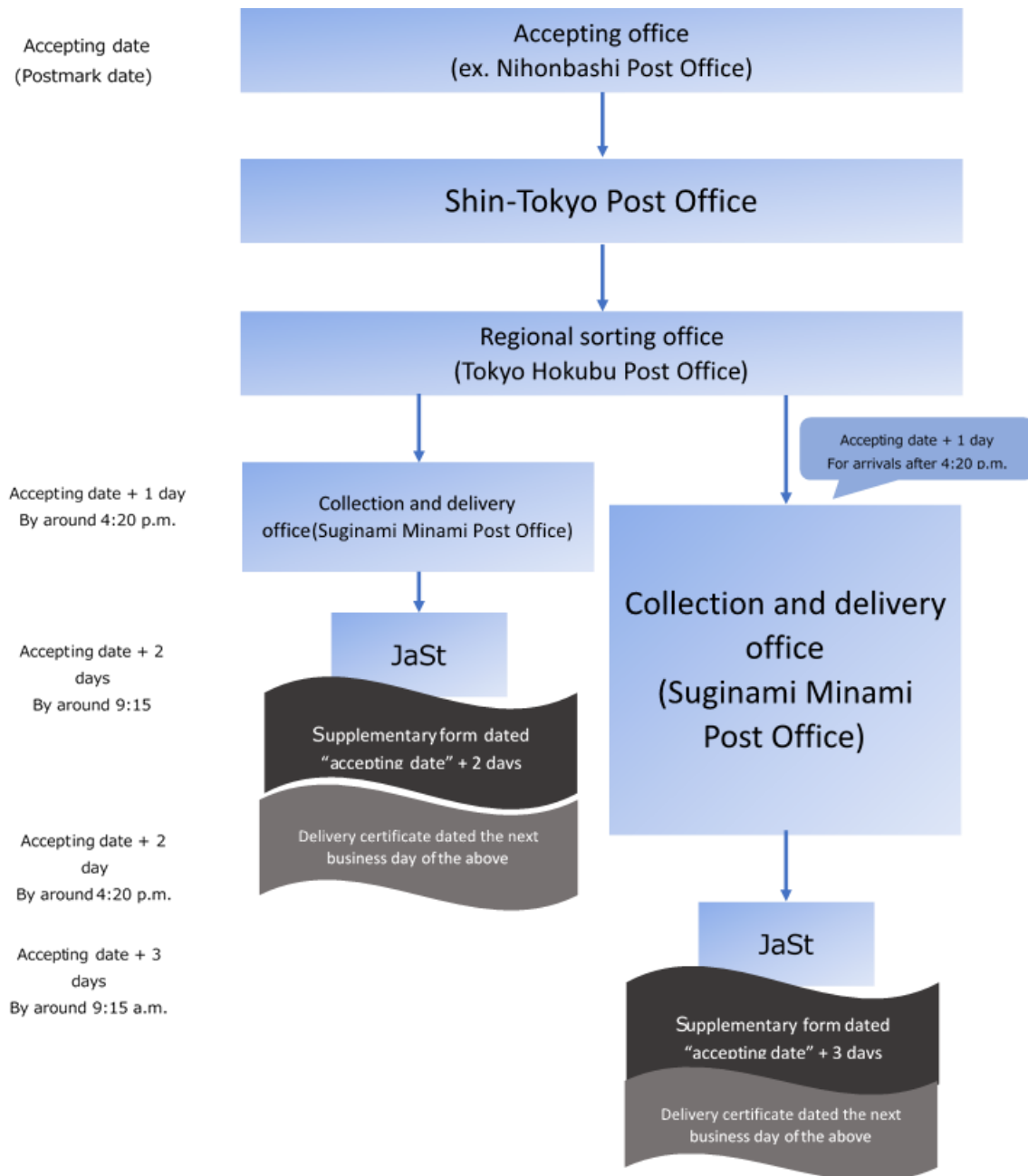
processes the voting forms of companies handled by four transfer agents (each, a “TA”): SMTB, Mizuho Trust & Banking Co., Tokyo Securities Transfer Agent Co., Ltd., and Japan Securities Agents, Ltd.

	Supplementary Form	Voting postcard transfer books	Delivery Certificate
Date	Actual delivery date	Actual delivery date	Actual delivery date + 1 business day
Number of forms	Number of forms per TA	-	Number of forms per TA
Number of cases	Number of cases per TA	Total number of cases for the day	Number of cases per TA

¹² In June 2020, Saturday deliveries were also made.



From the viewpoint of organizing the relationship between the accepting date (postmark date) and the delivery date, the delivery process assuming that the package reaches Suginami Minami Post Office on the “accepting date + 1 day” can be summarized as follows.



2. JaSt's process for counting voting forms

In order for JaSt to have enough time for the work of counting voting forms, SMTB or JaSt requested Suginami Minami Post Office to carry out the special delivery operation described above and also held related meetings among their respective responsible staff members.

The relationship between the actual delivery date (i.e., the date on the supplementary form) and the date on the delivery certificate (i.e., the next business day after the actual delivery date) has already been described, but SMTB and JaSt treated the date on the delivery certificate (i.e., the next business day after the actual delivery date) as the date of arrival of each voting form. In other words, JaSt treated the voting forms brought to them under the special delivery operation described above during the busy season of shareholders meetings as having been delivered on

the next business day after the actual delivery date from Suginami Minami Post Office (i.e., the date of the supplementary form) (Preemptive Processing).¹³

Specifically, the process of counting the delivered voting forms was recognized as follows.

a. Actual delivery date

(1) Receipt of Voting Forms

- At around 9:15 a.m., near the entrance on the first floor of the JaSt's main building half-cases (sorted by zip code) of voting forms and a supplementary form are delivered from a representative of the Suginami Minami Post Office.
- The number of half-cases is confirmed on the spot, and a seal is affixed to the recipient's column of the voting postcard transfer books maintained by Suginami Minami Post Office.
- In order to shorten the work time, the exact number of voting forms is not confirmed at this point (only an approximate number is given on the supplementary form).

(2) Counting work

All of the voting forms received were to be run through an OCR machine on the same day to count the voting rights exercise, and the specific process was as follows.

(i) Pre-processing

- As soon as the voting forms are received, they are delivered in a half-case and taken to the third floor of the JaSt's main building by elevator.
- Prior to reading by the OCR machine, as preparatory work (called "pre-processing" within JaSt) the following work is done visually and manually (by zip code) in a workshop lined with work desks (space for pre-processing operations and post-processing operations, hereinafter referred to as the "Shared Space") on the third floor of the JaSt's main building until around 11:00 a.m.
 - Remove the blindfold sticker attached to the voting form.
 - Voting forms are divided into six categories according to the content of the voting rights exercise¹⁴ and placed in a

¹³ Voting forms sent by express mail or registered mail were delivered individually without the special operation described above at Suginami Minami Post Office, and the actual delivery date was treated as the delivery date.

¹⁴ In order to increase work efficiency, voting forms were visually classified into six categories in advance. Among such six categories, for those that do not require judgment of the content on the IWF (Image Workflow) terminal, the workflow was such that the voting data was recorded without going

special box.

- Check whether or not mail other than the voting form has been mixed in.

(ii) Reading with an OCR machine

- After the pre-processing is completed, the boxed voting forms are brought to the OCR room on the third floor of JaSt's main building, where they are read by the OCR machine for each of the six categories.
- For all categories, the images of the front and back of the voting form are collected, and after the QR code or OCR characters on the voting form are read to identify the shareholder, such as which company the voting form relates to and whether within the exercise period,¹⁵ then the IJP number will be printed.¹⁶ The IJP number is a 17-digit generated number associated with the voting form.
- After being read by the OCR machine, the voting forms are discharged into a separate pocket for each company, and each company's portion is bundled with rubber bands (in units of 400), placed in a box again, and brought to the Shared Space.
- Of the above six categories, for those requiring IWF (Image Workflow) judgment on contents, the image read by the OCR machine is transferred to the IWF terminal, and the person in charge judges the contents of the entry individually.
- The work in the OCR room is managed using the "OCR Room Final Check List" to prevent work errors. After the work is completed, the person in charge checks that there are no documents left on the scanners and other devices, and affixes their seal to the "OCR Room Final Check List" for each item to be checked. In addition, the person in charge of the OCR team

through the IWF terminal after being read (scanned) by the OCR machine.

¹⁵ In the case of determination by an OCR machine on whether the delivery is within the exercise period, the aforementioned Preemptive Processing is used, and it was treated as if delivery were on the next business day (= the date of the delivery certificate) after the actual delivery date (= the date of reading by the OCR machine)

¹⁶ The IJP number (17-digit number) is basically printed on the voting forms that arrive within the deadline for exercising voting rights, however, it will not be printed for QR code reading errors (rejects) or for voting forms delivered separately by simplified registered mail, etc. (which are counted in the total based upon the actual delivery date). In addition, the IJP number (17-digit number) will not be printed on the voting forms if the form arrives on the last day of the deadline for exercising voting rights but is treated as arriving after the deadline due to Preemptive Processing.

(the team leader or the assistant investigator) also confirms that all items have been checked, and then affixes their seal to the list.

(iii) Post-processing

- After the voting forms are read by the OCR machine, a list counting the number of voting forms is output, and the results are manually checked for errors such as by comparing that list with the number of voting forms in the Shared Space on the third floor of JaSt's main building.
- For those voting forms not judged by IWF, the contents are checked again visually and manually to make sure that no erroneous entries are included.
- After confirming the above, bundles of voting forms for each company are bound with rubber bands in units of 400, delivered in cardboard boxes prepared for each company, and stored in a safe. (In addition, voting forms of which the IJP number (17-digit number) is not printed due to QR code reading errors (rejects) are bound with rubber bands separately with a piece of paper stating the "company name," "date of arrival",¹⁷ and "number of voting forms" attached.)

b. The next business day after the actual delivery date

- At around 10:00 a.m., at the mail room on the first floor of JaSt's main building, Suginami Minami Post Office delivers two delivery certificates along with the delivery of the general mail. JaSt's seal is affixed to the delivery certificate to be retained by Suginami Minami Post Office and that delivery certificate is returned to Suginami Minami Post Office.¹⁸
- A vote count is performed, including electronic votes on the same day, and on the evening of that day, a report on the results of voting rights exercise (listing both the cumulative total and the count result for that day) are uploaded and made available for viewing by Toshiba.

c. Last day of exercise period (July 30)

- As voting forms delivered to JaSt at around 9:15 a.m. on July 30 were

¹⁷ The arrival date premised on Preemptive Processing, i.e., the next business day after the actual delivery date, was listed.

¹⁸ Since the reading by the OCR machine had been completed, JaSt should have been able to grasp the exact number of voting forms received at this point, but the number on the delivery certificates was the approximate number (the number stated on the supplementary form). According to SMTB's explanation the total number of paid-by-recipient mail pieces and the postage charges due were corrected to match at an appropriate time, at least monthly.

treated as invalid and deemed to have a delivery date of the 31st (i.e., to have been delivered after the deadline) due to Preemptive Processing, the number of votes for or against the proposals were not counted. (In pre-processing, such voting forms were not classified into the above 6 categories, and only were checked to confirm if they contained any extra information.).

- However, since the number of voting forms needed to be known for the purpose of calculating postage, etc., the voting forms were read by an OCR machine to take an image and count the number of voting forms.
- Counting of voting rights including electronic votes continued until the exercise deadline (5:15 pm on the same day), and at around 6:00 p.m. on the same day, a report on the results of the exercise of voting rights was uploaded for Toshiba to view.
- In the evening of the same day, JaSt mailed to Toshiba the voting forms it had been keeping (limited to those treated as having been received within the exercise period, and excluding those received on July 30).
- The following day, July 31, the usual exchange of delivery certificates took place with Suginami Minami Post Office as described in b. above.¹⁹

B. Consideration of the problematic nature of Preemptive Processing

1. Special delivery operation to JaSt during the busy period of shareholders meeting

As described above in “**A. Facts found as a result of the Investigation**”, for the convenience of JaSt’s clerical work for counting the number of voting forms exercised at the AGM, a special process was carried out whereby only an approximate number of voting forms was confirmed using the supplementary form and voting forms were handed over to JaSt, without

¹⁹ The postage fee on the July 31 delivery certificate is 78 yen per unit. In this regard, according to the Torikai Report, the voting forms reflected on the July 31 delivery certificate were treated as having been delivered after the expiration of the period, due to Preemptive Processing, when in fact these voting forms were delivered on July 30, and it was confirmed that JaSt and Suginami Minami Post Office had agreed to treat the unit price of postage as 63 yen instead of 78 yen. The Torikai Report states that “If many of the voting forms that had been brought in on July 29 were processed as if they had been brought in on July 30 due to delays of work, etc. at JaSt, and if the postage for those forms was calculated based on the postage that would have been charged if the forms had been delivered after the deadline for exercising voting rights had expired (@63 yen), the Suginami Minami Post Office would have made some kind of indication. But in fact, no such objection was raised.” However, Japan Post recognized that the voting forms actually delivered on July 30 were within the valid period for delivery and were to be processed at 78 yen per form, and denied the unit price arrangement claimed by JaSt, and SMTB acknowledges that there was no document reflecting any agreement to charge the lower figure. In addition, JaSt’s billing instructions to Suginami Minami Post Office (instructions for the number of forms and the amount of money) are only for the total for the entire month without showing any particular data, and thus lacks the premise for Suginami Minami Post Office to raise any objection. Therefore, we believe that the aforementioned finding in the Torikai Report lacks grounds.

Suginami Minami Post Office doing the counting work (counting the exact number of forms) as it should have done, and a delivery certificate was issued as of the next business day.

This special delivery operation using supplementary forms was done only for the purpose of delivering a large number of voting forms earlier than usual in order to secure time for JaSt to count them. Even if there is a problem from the perspective of Japan Post's collection of correct postage, it cannot be judged that it was unfair from the perspective of whether the AGM was conducted fairly, which is the purpose of the Investigation.

Certainly, it cannot be denied that such special delivery operation was a remote cause of JaSt treating the voting forms that were actually received within the deadline for exercising voting rights as if they had been delivered on the next business day.²⁰ However, even if such a special delivery operation were conducted, JaSt would not infringe on the shareholders' right to exercise their voting rights, nor would it affect the results of the exercise of voting rights at the shareholders meeting, nor would it violate the principle of equality of shareholders, except that JaSt treated the delivery as if it had been received on the next business day after the date of the actual delivery from Suginami Minami Post Office (i.e., the date on the supplementary form).

The Investigation found no evidence to suggest that Toshiba was aware of such special delivery operations.

2. Treatment of voting forms that arrived within the deadline for exercising voting rights as invalid as if they had originally arrived the following day (Preemptive Processing)

a. Whether the AGM can be said to have been fairly conducted

As described above in **"A. Facts found as a result of the Investigation"**, JaSt usually processes voting forms received from Japan Post (Suginami Minami Post Office) through a special delivery operation using supplementary forms during the busy months of March, May and June (and July for 2020) when shareholders meetings are concentrated, as if they were delivered on the next business day (Preemptive Processing). As a result, some of the voting forms received before

²⁰ JaSt (SMTB) stated that the reason for Preemptive Processing was that the date of the delivery certificate on the next business day was the "original delivery date", not the date of the supplementary form, i.e., the voting forms were supposed to be delivered on the next business day absent any special delivery operation, but the Investigator concluded that this premise itself was erroneous. Japan Post also denies this premise, and the Torikai Report also analyzes that through special delivery operation, voting forms arriving at Suginami Minami Post Office "from 6:40 a.m. to 4:20 p.m." are delivered one day earlier than the normal processing (count of the exact number at Suginami Minami Post Office and then delivery). However, if the voting forms arrive at Suginami Minami Post Office at other times, the analysis shows that there is no difference in the date of delivery to JaSt between the special delivery operation and normal processing. And, above all, if the special delivery operation delivers one day (one business day) earlier than the original delivery date, then on July 30 (the day before the AGM), which was the last day of the special delivery operation, the voting forms that would normally be delivered on July 31 would be delivered, and there would be (almost) no deliveries on July 31. In fact, while there were 1,143 voting forms that were received on July 30 but were treated as having arrived on July 31 due to Preemptive Processing, and there were another 951 voting forms that were actually delivered on July 31.

the deadline were treated as invalid (not counted), as if they had been received after the deadline.

As SMTB itself admits that this Preemptive Processing was inappropriate (SMTB's timely disclosure titled "Notice regarding Reforms and Preventative Measures, etc. in Operations for the Tallying of Voting Rights Exercise Forms" dated December 17, 2020), it is undisputed that the counting of voting rights at the AGM was unlawful and unfair in this respect because it infringed on the rights of shareholders to exercise their voting rights by not permitting the exercise of voting rights for a part of the voting forms that arrived by the deadline for the exercise of voting rights set forth in Article 311, Paragraph 1 of the Companies Act and Article 69 of the Regulation for Enforcement of the Companies Act ("the end of business hours immediately prior to the date of the Shareholder Meeting").

b. Toshiba's awareness

In the Investigation, we went further and examined whether Toshiba was aware of such Preemptive Processing.

First of all, we conducted a digital forensic investigation and reviewed the e-mail data of the persons in charge at Toshiba's Legal Affairs Division, and Strategic Planning Division, who were involved in the preparation and operation of the AGM, but found no e-mails that suggested Toshiba's awareness of Preemptive Processing. In addition, we conducted interviews with relevant persons and examined documents other than e-mails, but found no evidence to suggest that

Toshiba was aware of Preemptive Processing.

Rather, from the documents reviewed by the Investigators, the following facts can be observed.

On Sunday, August 9, 2020, a person in charge at Toshiba's Legal Affairs Division, who was aware that 3D Investment Partners Pte. Ltd. (hereinafter referred to as "3D") had sent a letter by e-mail indicating that some of the company's voting rights had not been reflected in the extraordinary report dated August 4, 2020, sent an e-mail to relevant persons within the company on August 10 (a holiday) stating, "We have received the attached letter from 3D. We have not received such a report from SMTB, so we have not heard of this situation, but we sharing it with you as soon as possible." Then, on August 11, Toshiba made a phone call to SMTB to request an investigation and received a report from SMTB on the same day (at that time, the report did not mention Preemptive Processing and stated that the voting form of 3D in question had arrived on July 31). After that, Toshiba asked SMTB to conduct a detailed investigation and received a report dated August 18 (again, the report does not mention Preemptive Processing and states that 3D's voting form arrived after 9:00 a.m. on July 31), and on August 21, the company requested an outside law firm as an advisor to review the investigation methods and results by SMTB. Subsequently, on September 10, Effissimo, which had copied the image files of the voting forms for the AGM, pointed out that the file which should have contained only the image data of the voting forms that had arrived by July 30 might have contained the voting forms the exercise of which had been questioned in the press, and the concerned parties at Toshiba were also uniformly surprised

and, by letter dated September 11, requested SMTB to conduct an additional investigation, which led to the discovery of Preemptive Processing.

Such a series of responses by Toshiba cannot be regarded as that of those who were aware of Preemptive Processing.

c. Toshiba's supervisory obligations as a consignor

We should also consider whether Toshiba, as a consignor, has breached its supervisory obligation with respect to JaSt's (SMTB's) Preemptive Processing.

Toshiba entrusted SMTB with the work of counting the voting forms at the AGM, but listed companies are required to entrust stock administration work to a stock transfer agent approved by the Tokyo Stock Exchange (Article 205, Item 8 of the Securities Listing Regulations of the Tokyo Stock Exchange).

Among the stock transfer agents approved by the Tokyo Stock Exchange, SMTB (including its consolidated subsidiaries, Tokyo Securities Transfer Agent Co., Ltd and Japan Securities Agents, Ltd.) holds a 42.3% market share in the stock transfer agency business as of March 2020, and SMTB is considered to be a professional company acting as stock transfer agent.

In general, as long as a company entrusts its business to such a professional, it will not be held liable for breach of its supervisory obligation unless there is a circumstance in which the company could know that fraud is being committed at the entrusted company. In this case, as far as the Investigation could determine, including the digital forensic investigation and the interviews with the parties concerned, there is no circumstance suggesting that Toshiba, which entrusted the vote counting to SMTB, a professional securities transfer agent, should have been aware of the fact that Preemptive Processing was being conducted. Therefore, it is difficult to suggest that Toshiba breached its supervisory obligation with respect to SMTB, and it is not considered that Toshiba was in a situation to exercise its supervisory obligation (authority).

III. Presence or Absence of Unfair Processing other than Preemptive Processing

A. Overview of the verification process

In order to examine whether there are any circumstances other than Preemptive Processing that could raise questions about the fairness of the counting of voting rights at the AGM, the Investigators conducted the following verification work in addition to the scrutiny of related materials, interviews with relevant parties, and digital forensic investigation.

- (i) Verification of the voting forms for the AGM (including the number of days taken from the postmark date to the date when the voting form was scanned by the OCR machine at JaSt (hereinafter referred to as the "**Scan Date**"), and the voting rights exercise status of the voting forms delivered after the deadline for exercising voting rights)
- (ii) Verification of voting forms of other companies for which SMTB was contracted to

count voting forms in July 2020 (the number of days taken from the postmark date to the scan date)

- (iii) Checking and investigation of the security camera images installed in JaSt (only a small part of the images could be confirmed because they were automatically deleted after the storage period had passed).

B. Specifics and results of each verification task

1. Verification of the voting form for the AGM

- a. Verification of the number of days taken from the postmark date to the Scan Date

- (1) Details of verification

In order to investigate whether there were any unfair circumstances in the delivery and counting of the voting forms for the AGM, the Investigators conducted the following verification and analysis of the voting forms.

The Investigators were provided each original voting form and the scanned image file (the image file of the voting form scanned by the OCR machine at JaSt), which were retained by Toshiba. The Investigators first extracted by programming the tag information (metadata) date including the Scan Date from the scanned image file. The scanned image file contained images of 40,705 voting forms that actually arrived at JaSt and were scanned by July 30, the deadline for exercising voting rights.

The postmark information (postmark date, time zone, and name of the accepting post office) affixed on the actual voting forms was then read by human eyes. However, for 696 out of 40,705 voting forms, although the postmark information was confirmed using actual voting forms, the date could not be read due to the postmark affix being too thin, or because the postmark information was not affixed on the form in the first place. Such being the case, the 40,009 mail items for which the postmark date could be read were counted and analyzed.

Then, the Investigators counted the number of deliveries for each postmark date (Table 1), identified the Scan Date and postmark date for each voting form, and calculated the number of days taken from the postmark date to the Scan Date (on a business day basis, not counting accepting date) (Table 2).

As a premise of this counting, July 2020, which includes the voting rights exercise period for the AGM, has the following calendar, but JaSt did not operate on Saturdays, Sundays, or national holidays in July 2020, so the Scan Dates were only weekdays (seven days, namely July 20, 21, 22, 27, 28, 29, and 30). In line with JaSt's working days, delivery from Sugunami Minami Post Office to JaSt also were made only on weekdays.

[Calendar for July 2020]

Mon	Tue	Wed	Thu	Fri	Sat	Sun
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
<u>20</u>	<u>21</u>	<u>22</u>	23	24	25	26
<u>27</u>	<u>28</u>	<u>29</u>	<u>30</u>	31		

The underlined and bolded calendar days are Scan Dates.

(2) Results of verification

(a) Number of voting forms delivered per postmark date

First, Table 1 shows the number of voting forms by postmark date for the 40,009 voting forms we counted.

Table 1

Postmark Date		Number of items	Percentage
17	Fri	1,727	4.32%
18	Sat	8,320	20.80%
19	Sun	7,519	18.79%
20	Mon	9,783	24.45%
21	Tue	5,046	12.61%
22	Wed	2,949	7.37%
23	Thu	1,125	2.81%
24	Fri	1,078	2.69%
25	Sat	947	2.37%
26	Sun	521	1.30%
27	Mon	985	2.46%
28	Tue	9	0.02%
Total		40,009	100%

(b) Total number of days taken from the postmark date to the Scan Date

Next, we identified the Scan Date and postmark date for each voting form, and counted the number of forms for each postmark date and Scan Date. The results are shown in Table 2. As mentioned earlier, July 23 and 24 were national holidays, July 25 was a Saturday, and July 26 was a Sunday, so JaSt did not scan (nor did the Sugunami Minami Post Office deliver) on

any such days. Accordingly, they are not listed as Scan Dates.

Table 2

			Scan Date							Total
			20	21	22	27	28	29	30	
Postmark Date	17	Fri	927	755	33	12	0	0	0	1,727
	18	Sat	0	5,902	2,325	93	0	0	0	8,320
	19	Sun	0	25	6,362	1,131	1	0	0	7,519
	20	Mon	0	0	48	9,704	30	1	0	9,783
	21	Tue	0	0	1	4,971	63	10	1	5,046
	22	Wed	0	0	0	2,873	66	9	1	2,949
	23	Thu	0	0	0	1,086	34	4	1	1,125
	24	Fri	0	0	0	841	217	16	4	1,078
	25	Sat	0	0	0	0	672	264	11	947
	26	Sun	0	0	0	0	0	399	122	521
	27	Mon	0	0	0	0	0	2	983	985
	28	Tue	0	0	0	0	0	0	9	9
Total			927	6,682	8,769	20,711	1,083	705	1,132	40,009

Then, the number of days from the postmark date to the Scan Date (excluding the accepting date, and excluding Saturdays, Sundays, and holidays) was calculated. The results are shown in Table 3 and Table 4. For example, if the postmark is Friday, July 17, and the Scan Date is Monday, July 20, it takes one business day, and if the postmark is Saturday, July 18, and the Scan Date is Monday, July 27, it takes four business days.

Table 3

			1 business day	2 business days	3 business days	4 business days	5 business days	Total
Postmark Date	17	Fri	927	755	33	12	0	1,721
	18	Sat	0	5,902	2,325	93	0	8,320
	19	Sun	0	25	6,362	1,131	1	7,519
	20	Mon	0	48	9,704	30	1	9,783
	21	Tue	1	4,971	63	10	1	5,046
	22	Wed	2,873	66	9	1	0	2,949
	23	Thu	1,086	34	4	1	0	1,125
	24	Fri	841	217	16	4	0	1,078
	25	Sat	0	672	264	11	0	947
	26	Sun	0	0	399	122	0	521
	27	Mon	0	2	983	0	0	985
	28	Tue	0	9	0	0	0	9
Total			5,728	12,701	20,162	1,415	3	40,009

Table 4

			1 business day	2 business days	3 business days	4 business days	5 business days	Total
Postmark Date	17	Fri	53.7 %	43.7 %	1.9 %	0.7 %	0.0 %	100%
	18	Sat	0.0 %	70.9 %	27.9 %	1.1%	0.0 %	100%
	19	Sun	0.0 %	0.4 %	84.6 %	15.0 %	0.0 %	100%
	20	Mon	0.0 %	0.4 %	99.2 %	0.3 %	0.0 %	100%
	21	Tue	0.0 %	98.5 %	1.2 %	0.2 %	0.0 %	100%
	22	Wed	97.4 %	2.2 %	0.3 %	0.0 %	0.0 %	100%
	23	Thu	96.5 %	3.0 %	0.4 %	0.1 %	0.0 %	100%
	24	Fri	78.0 %	20.1%	1.5 %	0.4 %	0.0 %	100%
	25	Sat	0.0 %	71.0 %	27.9 %	1.2 %	0.0 %	100%
	26	Sun	0.0 %	0.0 %	76.6 %	23.4 %	0.0 %	100%
	27	Mon	0.0 %	0.2 %	99.8 %	0.0 %	0.0 %	100%
	28	Tue	0.0 %	100.0 %	0.0 %	0.0 %	0.0 %	100%
Total			14.3 %	31.7 %	50.4%	3.5%	0.0 %	100%

(c) Brief Summary

First of all, as for the Scan Date, July 27 was the day with the largest number of 20,711 voting forms scanned (Table 2). As mentioned above, this is because JaSt operated only on weekdays in July 2020 and so no voting forms were delivered from Suginami Minami Post Office from the 23rd to the 26th, and the voting forms that had been held at Suginami Minami Post Office were all delivered on the 27th. (As described later, there was no circumstance that led us to suspect that JaSt had not scanned all the delivered voting forms into the OCR machine on the same day, so we judged that the “Scan Date” = “actual delivery date”).

Next, 20,162 out of 40,009 voting forms took 3 business days from the postmark date to the Scan Date, the highest percentage (50.4% of the total), followed by 2 business days (31.7% of the total). In addition, the number and percentage of items that took 3 business days from the postmark date to the Scan Date by postmark date were as follows: 6,362 voting forms were postmarked on the 19th (84.6%), 9,704 forms were postmarked on the 20th (99.2%), 399 forms were postmarked on the 26th (76.6%), and 983 forms were postmarked on the 27th (99.8%) (Table 3 and 4).

On the other hand, 97.4% of the forms postmarked on the 22nd, 96.5% of the forms postmarked on the 23rd, and 78.0% of the forms postmarked on the 24th took one business day from the postmark date to the Scan Date (Table 4). This is because in all cases the postmark date was followed by at least two consecutive Saturdays, Sundays, or holidays. JaSt does not perform work (scanning) and voting forms are not delivered from Suginami Minami Post Office on Saturdays, Sundays, and holidays, while Japan Post does perform sorting operations within each post office and delivery operations between post offices on those days (see “II. A. 1.” above). As a result,²¹ Japan Post completed the work up to just before delivery to JaSt during Saturdays, Sundays, or holidays (specifically, from Thursday, 23rd (holiday) to Sunday, 27th), and delivered on the next day (specifically, Monday, 27th). It is presumably for this reason the number of days taken from the postmark date to the Scan Date was only one business day.

The percentage of items for which the postmark date to the Scan Date is no more than two business days is as high as 97.4% for voting forms postmarked on the 17th (53.7%+43.7%), 70.9% for those postmarked on the 18th, 98.5% for those postmarked on the 21st, and 71.0% for those postmarked on the 25th (Table 4). It is possible that this is due to the fact that, because the next day or later includes Saturdays, Sundays, or holidays, as mentioned above, while the post office works during these days, it is not counted as a business day. In addition, all of the forms

²¹ However, according to the interview with Japan Post, its workload including sorting operations within each post office and delivery operations between post offices is less on weekends and holidays than on weekdays, and although it is difficult to make a general statement because of regional characteristics, such workload is 70-90% of weekdays on Saturdays and 30-50% of weekdays on Sundays and holidays. For reference, the frequency of deliveries between post offices was about the same on Saturdays as on weekdays, and about half on Sundays as on weekdays for Nihonbashi Post Office to Shin-Tokyo Post Office, Shin-Tokyo Post Office to Tokyo Hokubu Post Office, and Tokyo Hokubu Post Office to Suginami Minami Post Office.

postmarked on the 28th, which is not followed by a Saturday, Sunday, or holiday, took two business days. However, the number of forms postmarked on that day was extremely small (9 voting forms), so this does not negate the above analysis.

b. Comparative verification of the tendency to approve or disapprove of the voting form

(1) Content and results of verification

The Investigators have analyzed and compared the trends of approval and disapproval of the exercise of voting forms as follows, and verified whether Toshiba (or persons acting on behalf of Toshiba) is suspected to have committed fraud in the counting of voting forms in favor of Toshiba (Specifically, irregularities such as treating voting forms exercised against a Company proposal or in favor of a shareholder proposal that are detrimental to Toshiba as if they had arrived after the deadline even though they actually arrived before the deadline).

- (a) First, we examine the results of the final exercise of voting rights at the AGM (the results of recounting as valid the voting rights that were actually delivered to JaSt within the deadline for exercising voting rights but were deemed invalid due to Preemptive Processing. These results as reported in the attached sheet of Toshiba's "(Update) Counting of voting rights exercised at the Ordinary General Meeting of Shareholders for the 181st Fiscal Period" dated December 18, 2020) are shown in Table 5 below. (Note that all figures other than % are the number of voting rights. The same applies to Tables 6 through 8 below).

Table 5

		For	Against	Abstention	Not Clear	Total	Ratio of "For"	Ratio of "Against"	Average value	
									Ratio of "For"	Ratio of "Against"
No. 1		3,295,942	10,088	63,916	1,305	3,371,251	97.77%	0.30%	97.77%	0.30%
No. 2	Satoshi TSUNAKAWA	3,038,126	267,668	64,579	1,305	3,371,678	90.11%	7.94%	77.28%	9.76%
	Nobuaki KURUMATANI	1,928,526	678,583	763,264	1,305	3,371,678	57.20%	20.13%		
	Yuki FURUTA	2,705,475	600,319	64,579	1,305	3,371,678	80.24%	17.80%		
	Junji OTA	1,982,206	624,903	763,264	1,305	3,371,678	58.79%	18.53%		
	Nobuyuki KOBAYASHI	2,892,916	412,878	64,579	1,305	3,371,678	85.80%	12.25%		
	Takashi YAMAUCHI	2,706,431	599,363	64,579	1,305	3,371,678	80.27%	17.78%		
	Yoshiaki FUJIMORI	2,595,398	710,396	64,579	1,305	3,371,678	76.98%	21.07%		
	Paul J. BROUGH	2,596,141	10,968	763,264	1,305	3,371,678	77.00%	0.33%		
	Ayako Hirota WEISSMAN	2,597,249	9,860	763,264	1,305	3,371,678	77.03%	0.29%		
	Jerome Thomas BLACK	2,597,152	9,957	763,264	1,305	3,371,678	77.03%	0.30%		
	George Raymond ZAGE III	2,343,860	10,651	1,015,862	1,305	3,371,678	69.52%	0.32%		
Osamu NAGAYAMA	3,294,818	11,639	63,916	1,305	3,371,678	97.72%	0.35%			
No. 3	Allen CHU	865,443	1,742,100	63,916	1,305	2,672,764	32.38%	65.18%	32.38%	65.18%
	Yuya SHIMIZU	865,473	1,742,070	63,916	1,305	2,672,764	32.38%	65.18%		
No. 4	Akira TAKEUCHI	1,441,387	1,820,984	107,870	1,305	3,371,546	42.75%	54.01%	41.35%	55.91%
	Tadaaki SUGIYAMA	1,250,212	2,012,159	107,870	1,305	3,371,546	37.08%	59.68%		
	Yoichiro IMAI	1,490,410	1,821,505	58,326	1,305	3,371,546	44.21%	54.03%		

(b) Next, we consider at the approval or disapproval of voting forms that were actually delivered to JaSt within the deadline for exercising voting rights but were deemed invalid due to Preemptive Processing (voting forms that were later deemed valid by amendment), as shown in Table 6.

Table 6

		For	Against	Abstention	Not Clear	Total	Ratio of "For"	Ratio of "Against"	Average value	
									Ratio of "For"	Ratio of "Against"
No. 1		58,300	438	0	0	58,738	99.25%	0.75%	99.25%	0.75%
No. 2	Satoshi TSUNAKAWA	58,293	461	0	0	58,754	99.22%	0.78%	63.72%	36.28%
	Nobuaki KURUMATANI	8,292	50,462	0	0	58,754	14.11%	85.89%		
	Yuki FURUTA	8,131	50,623	0	0	58,754	13.84%	86.16%		
	Junji OTA	8,301	50,453	0	0	58,754	14.13%	85.87%		
	Nobuyuki KOBAYASHI	58,305	449	0	0	58,754	99.24%	0.76%		
	Takashi YAMAUCHI	8,309	50,445	0	0	58,754	14.14%	85.86%		
	Yoshiaki FUJIMORI	8,301	50,453	0	0	58,754	14.13%	85.87%		
	Paul J. BROUGH	58,293	461	0	0	58,754	99.22%	0.78%		
	Ayako Hirota WEISSMAN	58,298	456	0	0	58,754	99.22%	0.78%		
	Jerome Thomas BLACK	58,293	461	0	0	58,754	99.22%	0.78%		
	George Raymond ZAGE III	58,328	456	0	0	58,784	99.22%	0.78%		
Osamu NAGAYAMA	58,135	619	0	0	58,754	98.95%	1.05%			
No. 3	Allen CHU	51,462	7,291	0	0	58,753	87.59%	12.41%	87.62%	12.38%
	Yuya SHIMIZU	51,496	7,257	0	0	58,753	87.65%	12.35%		
No. 4	Akira TAKEUCHI	51,825	6,928	0	0	58,753	88.21%	11.79%	59.82%	40.18%
	Tadaaki SUGIYAMA	1,824	56,929	0	0	58,753	3.10%	96.90%		
	Yoichiro IMAI	51,790	6,963	0	0	58,753	88.15%	11.85%		

(c) Then, the Investigators counted the voting results of 1,661 voting forms that were postmarked on or before July 29 of the same month (including July 29), out of the voting forms for the AGM that physically arrived on or after July 31, 2020, after the deadline for exercising voting rights. The results are shown in Table 7 below. (Note that none of the voting forms counted in Tables 7 and 8 show a split between approval and disapproval of individual candidates within each of the proposals for the election of directors in No. 2 through No.4, but rather a vote for or against all candidates in such proposal. Therefore,

it was not necessary to tabulate the approval and disapproval rates for each candidate nor the average approval and disapproval rates as in Tables 5 and 6.)

Table 7

Resolutions	For	Blank vote	Against	Other	Total	Ratio of "For"	Ratio of "Against"
Proposal 1 (Amendment to the Articles of Incorporation)	5,354	2,325	179	84	7,942	96.7%	2.3%
Proposal 2 (12 Directors)	5,275	1,130	225	1,312	7,942	80.6%	2.8%
Proposal 3 (3D Proposal)	2,200	2,346	3,271	125	7,942	27.7%	41.2%
Proposal 4 (ECM proposal)	2,307	1,143	3,157	1,335	7,942	29.0%	39.8%

(d) In addition, the Investigators counted the voting results of 945 voting forms that physically arrived on July 31, out of the 1,661 voting forms mentioned above that arrived on or after July 31. The results are as shown in Table 8 below.

Table 8

Resolutions	For	Blank vote	Against	Other	Total	Ratio of "For"	Ratio of "Against"
Proposal 1 (Amendment to the Articles of Incorporation)	3,421	1,825	78	41	5,365	97.8%	1.5%
Proposal 2 (12 Directors)	3,389	652	89	1,235	5,365	75.3%	1.7%
Proposal 3 (3D Proposal)	1,243	1,845	2,238	39	5,365	23.2%	41.7%
Proposal 4 (ECM proposal)	1,253	650	2,223	1,239	5,365	23.4%	41.4%

(2) Comparative analysis

(a) Status of voting rights exercised on the voting form subject to

amendment

Comparing the newly compiled (revised) voting forms (Table 6) with the final voting results (Table 5), there is almost no difference in the percentage of affirmative votes for the company's proposal (Proposal 1), with the percentage of affirmative votes exceeding 90% for both proposals. However, for Proposal 2, which is also a Company proposal, the newly compiled (revised) voting form (Table 6) shows that the ratio of affirmative votes (average value; hereinafter the same) is 63.72%, which is 13.56 points lower than Table 5, while the ratio of opposition votes is 36.28%, which is 26.52 points higher than Table 5.

As for Proposal 3, which is a shareholders proposal, the ratio of affirmative votes in the newly compiled (revised) voting form (Table 6) is high at 87.62%, while the ratio of affirmative votes for Proposal 4 is lower than that for Proposal 3 at 59.82%, but it is relatively high compared to Table 5 (32.38% for Proposal 3 and 41.35% for Proposal 4).

This is thought to be the effect of the fact that the voting rights (50,000) of 3D, the proponent of Proposal 3, were treated as invalid in Preemptive Processing but were later revised and considered valid votes, as described below.

(b) Status of voting rights exercised for voting forms that arrived after the deadline for exercising voting rights

Next, we compare Tables 7 and 8, which are the aggregate results of the voting forms that arrived after the deadline for exercising voting rights had passed, with Table 5, which is the final aggregate result.

As for Proposal 2, which is a Company proposal, Table 5 shows that it is difficult to make a general evaluation because there are differences among the candidates for the Board of Directors, but when compared to Tables 7 and 8 using the average percentage of approval, they are all at the same level (80.6% (Table 7) > 77.28% (Table 5) > 75.3% (Table 8)).

With regard to Proposals 3 and 4, which are shareholders' proposals, Table 5 shows that it is difficult to make a general evaluation because there are differences among the candidates for Directors in both cases. However, when we look at the average percentage of approval, the percentage of approval for both Proposals 3 and 4 is below 30% in Tables 7 and 8 (27.7% and 23.2% for Proposal 3, 29.0% and 23.4% for Proposal 4), which is lower than the final result in Table 5 (32.38% for Proposal 3, and 41.35% for Proposal 4).

All of these results mean that voting forms with content favorable to Toshiba were not counted, thus rejecting the hypothesis that there were irregularities in which voting forms with content unfavorable to Toshiba, i.e., voting against the company's proposal or in favor of the shareholders' proposal, were marked as having arrived after the deadline when in fact they had arrived within the deadline. This is a result in the direction of rejecting the hypothesis that there may have been fraud.

2. Verification of voting forms of other companies

a. Details of verification

A Reuters article dated September 2, 2020 included the statements “1,300 voting forms invalidated at Toshiba shareholder meeting, sources said”, and “Another company that held a shareholders meeting on the same day as Toshiba examined those received the day before the deadline for voting, and found that more than 80 percent were postmarked on the 27th and there was nothing unnatural about their delivery.”

Therefore, in order to verify the relationship between the postmark date of the voting forms and the scan date for the companies that held their shareholders meetings on July 31, 2020, like Toshiba, the Investigators asked several companies for which SMTB had undertaken the voting forms counting work and that had held their shareholders meetings on the same date as Toshiba to cooperate with the Investigation. As a result, a company agreed to allow use the scanned image files of the voting forms stored at SMTB as long as the personal information of the shareholders would not be revealed, although the original voting forms had already been destroyed.

SMTB then provided copies of 1,661 of the company's voting forms, the postmarked portions of which we could see (however, SMTB physically cut out the portions that identified personal information, such as shareholder numbers, names, and QR codes), as well as information on the date each voting form was scanned.

The Investigators visually read the postmark date from such voting forms and counted the number of days (on a business day basis) took from the postmark date to the scan date.

b. Results of verification

Since the 1,661 copies of the voting forms of the above companies provided by SMTB were scanned, not the actual ones, the images were unclear, and it was difficult to decipher the postmark dates on many of them. However, the postmark dates on 1,335 copies could be visually confirmed, which were used for the tabulation and analysis.

(1) Number of days taken from the postmark date to the scan date.

Table 9 shows the results of totaling the number of postmark dates and scan dates that could be read.

Table 9

			Scan Date							Total
			20	21	22	27	28	29	30	
Postmark Date	16	Thu	45	2	0	0	0	0	0	47
	17	Fri	198	117	3	3	0	0	0	321
	18	Sat	1	156	108	4	0	0	0	269
	19	Sun	0	0	88	25	0	0	0	113
	20	Mon	0	0	0	209	0	0	0	209
	21	Tue	0	0	0	112	3	0	0	115
	22	Wed	0	0	0	67	1	0	1	69
	23	Thu	0	0	0	42	0	0	0	42
	24	Fri	0	0	0	21	6	0	0	27
	25	Sat	0	0	0	0	25	6	0	31
	26	Sun	0	0	0	0	0	20	3	23
	27	Mon	0	0	0	0	0	0	69	69
	28	Tue	0	0	0	0	0	0	0	0
Total			244	275	199	483	35	26	73	1,335

Subsequently, the number of days from the postmark date to the scan date (the accepting date is not counted, and Saturdays, Sundays, and holidays are not included in the number of days) was calculated. The results are shown in Tables 10 and 11.

Table 10

			1 business day	2 business days	3 business days	4 business days	5 business days	Total
Postmark Date	16	Thu	0	45	2	0	0	47
	17	Fri	198	117	3	3	0	321
	18	Sat	1	156	108	4	0	269
	19	Sun	0	0	88	25	0	113
	20	Mon	0	0	209	0	0	209
	21	Tue	0	112	3	0	0	115
	22	Wed	67	1	0	1	0	69
	23	Thu	42	0	0	0	0	142
	24	Fri	21	6	0	0	0	27
	25	Sat	0	25	6	0	0	31
	26	Sun	0	0	20	3	0	23
	27	Mon	0	0	69	0	0	69
	28	Tue	0	0	0	0	0	0
Total			329	462	508	36	0	1,335

Table 11

			1 business day	2 business days	3 business days	4 business days	5 business days	Total
Postmark Date	16	Thu	0.0%	95.7%	4.3%	0.0%	0.0%	100%
	17	Fri	61.7%	36.4%	0.9%	0.9%	0.0%	100%
	18	Sat	0.4%	58.0%	40.1%	1.5%	0.0%	100%
	19	Sun	0.0%	0.0%	77.9%	22.1%	0.0%	100%
	20	Mon	0.0%	0.0%	100.0%	0.0%	0.0%	100%
	21	Tue	0.0%	97.4%	2.6%	0.0%	0.0%	100%
	22	Wed	97.1%	1.4%	0.0%	1.4%	0.0%	100%
	23	Thu	100.0%	0.0%	0.0%	0.0%	0.0%	100%
	24	Fri	77.8%	22.2%	0.0%	0.0%	0.0%	100%
	25	Sat	0.0%	80.6%	19.4%	0.0%	0.0%	100%
	26	Sun	0.0%	0.0%	87.0%	13.0%	0.0%	100%
	27	Mon	0.0%	0.0%	100.0%	0.0%	0.0%	100%
	28	Tue	0.0%	0.0%	0.0%	0.0%	0.0%	100%
Total			24.6%	34.6%	38.1%	2.7%	0.0%	100%

(2) Brief Summary

First, as for the scan date, the 27th was the most common, with 483 (Table 9), and the reason for this is seemingly the same as in the case of Toshiba (i.e., the voting forms that had been held up at the Sugunami Minami Post Office were all delivered on the 27th).

Next, 508 of the 1,335 documents that could be aggregated took three business days from the postmark date to the scan date, which was the highest percentage (38.1% of the total), followed by two business days (34.6% of the total). In addition, the number and percentage of items that took three business days from the postmark date to the scan date by postmark date were as follows: 88 items postmarked on the 19th, 77.9%; 209 items postmarked on the 20th, 100%; 20 items postmarked on the 26th, 87.0%; and 69 items postmarked on the 27th, 100% (Table 10 and Table 11 above).

On the other hand, 97.1% of items postmarked on the 22nd, 100% of items postmarked on the 23rd, and 77.8% of items postmarked on the 24th took only one business day from the postmark date to the scan date (Table 11). The reason for this is seemingly the same as in the Toshiba case mentioned above (the postmark date includes Saturdays, Sundays, and national holidays, so while work proceeds within the post office until just before delivery, it is not counted as a business day).

The number of days taken from the postmark date to the scan date was two business days or less for 95.7% for those items postmarked on the 16th, 98.1% for those postmarked on the 17th (61.7%+36.4%), 97.4% for those postmarked on the 21st, and 80.6% for those postmarked on the 25th (Table 11), which is similar to the case of Toshiba as described above.

3. Confirmation survey of security cameras installed in JaSt

a. Security camera footage related to the counting operation of the AGM

As noted above in “**II. A. Facts found as a result of Investigation**”, at JaSt, voting forms delivered from Sugunami Minami Post Office are brought to the third floor by elevator.

The third floor is divided into sections consisting of the Shared Space, an OCR room with several large OCR machines, and a space with many sets of desktop PC-like devices and seats for image workflow. There were several security cameras filming the office work in each of these spaces.

The Investigators reviewed a report dated October 9, 2020 (VTR confirmation and memo) by an external law firm (Torikai Law Office), which was retained by Toshiba's Audit Committee to verify the legitimacy of SMTB's investigation methods and results, confirming their review of the security camera footage of the Shared Space on the third floor of JaSt and the OCR room on July 30, 2020. The Investigators also conducted interviews with the law firm, as well as an interview with SMTB.

As a result, although there was no specific doubt about the contents of the report (which accepts that all voting forms received in the morning were counted and processed on the same

day, in line with JaSt's explanation), the Investigators thought that they should actually check the images from the security cameras (even images for dates other than July 30, 2020). The Investigators requested that SMTB permit them to view the images from these cameras in order to confirm the images from these cameras during the period from July 20, 2020 to July 30, 2020, when the counting of the voting forms for the AGM was actually conducted.

However, according to SMTB, the system automatically deletes the footage after a certain period of time. Accordingly, all the security camera footage for the above period in July 2020 was deleted. SMTB, at the request of the Investigator in question, tried to restore the deleted security camera footage, and as a result, a small portion of the files could be restored, but none of the restored files contain footage of counting of voting forms for the AGM (see Table 12).

However, the Investigators could confirm that some of the playable files (for July 30) still contained video footage of a scene in the OCR room where, after the OCR machine had finished scanning, the OCR machine was checked to confirm that there were no remaining voting forms that had been read into the OCR machine.

Table 12

	① Number of recovered files	② Number of files that could be played out of ①	③ Number of files for which the status of vote form counting could be confirmed out of ②
Aisle Section	36	0	0
Shared Space	45	0	0
OCR Room	1,807	85	0
Total	1,888	85	0

b. Security camera images at other times

The Investigators confirmed the video footage from the security camera (as at March 17, 2021) showing the clerical work in the Shared Space during the counting of voting forms at Toshiba's EGM on March 18, 2021.

Based upon the foregoing, the Investigators believe that the vote counting work was done in accordance with JaSt's explanation, and that all the voting forms received were counted and processed on that day without leaving any work for the next day.

C. Summary of verification results

Based on the facts described in "II." above, and the results of the verification conducted in "B." above, the Investigators summarize the existence or non-existence of improper processing

other than Preemptive Processing in the delivery and counting of voting forms at the AGM as follows.

1. Unreasonable delays in delivery and tallying operations

a. Whether or not there was an unreasonable delay in delivery by Japan Post

According to the verification of the voting forms for the AGM shown in “**B. 1.**”) above, if we assume that “Scan Date” = “delivery date,” 50.4% of the total number of voting forms were delivered in three business days as measured from the postmark date to the delivery date (Table 4), which does appear slow based on two business days (the accepting date plus two days until arrival) standard delivery period for recipient-paid mail with a regular large lot dedicated number claimed by Japan Post.

However, as mentioned in “**B. 2.**” above, the trend is not limited to Toshiba, as the most common delivery period for voting forms of other companies that held their shareholders meeting on the same day as Toshiba was also three business days (38.1%).

In addition, as mentioned in “**II. A.**” above, postage paid items such as voting forms are only delivered once daily from Suginami Minami Post Office to JaSt at around 9:15 a.m. (and not on Saturdays, Sundays and national holidays), and Suginami Minami Post Office only delivers voting forms that arrived by 4:20 p.m. the previous day (according to interviews with Japan Post, only up to the 3.00 p.m. delivery from Tokyo Northern Post Office to Suginami Minami Post). Therefore, voting forms arriving at Suginami Minami Post Office after 4:20 p.m. the previous day (according to interviews with Japan Post, there are at least three deliveries after the 3:00 p.m. delivery on the same day alone) are held at Suginami Minami Post Office until the 09:15 a.m. delivery on the second following day. As a result, the delivery to JaSt would be “accepting date + 3 days” (3 business days later) even though the package arrived at Suginami Minami Post Office at “accepting date + 1 day”.

Therefore, the fact that it took three business days from the postmark date to the Scan Date (delivery date) for 50.4% of the voting forms is not unnatural (and Japan Post does not deny this result). In the delivery process, it would be difficult for Toshiba to arbitrarily delay the delivery by Japan Post (and there is no motive to do so). In addition, there are no circumstances that suggest Toshiba actually committed such a fraud.

Although 3.5% (1,415) of the total number of voting forms took four business days from the postmark date to the Scan Date (delivery date), which falls short of the standard stipulated in Article 70, Paragraph 3, Item 4 of the Postal Act which stipulates that voting forms must be delivered within three days from the dispatch date, this does not mean that this AGM was unfair.²² In addition, all 1,415 voting forms that took four business days were delivered within the deadline for exercising

²² In order to start a postal service, it is required to establish postal service management regulations describing the method of delivery of mail, etc. and to obtain approval from the Minister of Internal Affairs and Communications.

voting rights, and such aggregate results do not indicate any intention to delay deliveries so that they arrived after the deadline for exercising voting rights.

b. Whether or not there was an unreasonable delay in the tallying process at JaSt

Next, we will examine the possibility that, in the course of the tallying process at JaSt, items were not scanned (tallied) on the day they were delivered by Japan Post, and were improperly retained.

Given that voting forms are ordinary post and not registered mail and so there is no recorded data from receipt to delivery, there is no means for accurately identifying the actual delivery date and time of each individual voting form,²³ and so there is insufficient evidence for the Investigation to completely exclude the possibility that the OCR machine, etc. did not count on the original delivery day the votes delivered by Suginami Minami Post Office at around 9:15 a.m.

However, the dates and time of scanning recorded by the OCR machine were all weekdays, and there was no data scanned on days other than the day on which Suginami Minami Post Office actually made the delivery (the date on the supplementary form), and according to the VTR confirmation memo prepared by Torikai Law Office which was confirmed the footage from the security cameras installed at JaSt, and interviews with JaSt, it would be difficult to hide some of the voting forms, and there is no suggestion that all the voting forms delivered on a day were not scanned and instead were left for the next day or later. In fact, such a pile-up could cause a great deal of confusion in the counting process.

Therefore, it is reasonable to assume that the scanning (tallying) work itself was completed during the actual delivery date (the date on the supplementary form), i.e., “Scan Date” = “actual delivery date,” and there is no evidence that the tallying work was unreasonably delayed.

c. Demonstration experiment and examples from other companies on paid-by-recipient mail

As explained in a and b above, we concluded that there was no unreasonable delay in the delivery by Japan Post nor the tallying work by JaSt, but in order to be sure, we will examine the demonstration experiment of paid-by-recipient mail conducted by Effissimo with the cooperation of a law firm, and the verification of the postmark date and the scan date of voting forms at the shareholders meeting of other companies held in June 2020.

²³ The supplementary form and delivery certificate contain the total number (approximate number) of voting forms of all companies for which SMTB serves as the stock transfer agent, and it is not possible to identify the number of voting forms of Toshiba, nor is it possible to identify the date and time of delivery by this. SMTB acted as stock transfer agent for 35 companies that held an annual general meeting of shareholders in July 2020, of which 4, including Toshiba, held such meetings on the 31st.

(1) Demonstration experiment for paid-by-recipient mail

(a) Details of the demonstration experiment

In order to investigate the delivery date, Effissimo, with the cooperation of a law firm, sent out a total of 320 postcards to a law firm in Sugunami Ward on November 9, 2020, in the morning and after 6:00 p.m., from eight locations in Tokyo (three locations comprising a post office counter and two nearby mailboxes, respectively), using three methods: ordinary mail, registered mail, and certified mail, with postage paid by recipient (hereinafter referred to as the “**Demonstration Experiment**”).

The results are as follows. Note that there are no national holidays in the period from November 9 (Monday) to November 13 (Friday) when the investigation was conducted.

Table 13

Time of receipt (of item by post office)	Types of mail	Date of arrival					Total
		Mon. Nov. 9	Tue. Nov. 10	Wed. Nov. 11	Thu. Nov. 12	Fri. Nov. 13	
Morning	Ordinary mail (post)	0	0	75	5	0	80
	Registered mail	0	40	0	0	0	40
	Certified mail	0	40	0	0	0	40
After 6 p.m.	Ordinary mail (post)	0	0	50	28	2	80
	Registered mail	0	40	0	0	0	40
	Certified mail	0	35	5	0	0	40
		0	155	130	33	2	320

According to the Demonstration Experiment, in the case of ordinary mail, 78% (125 letters) took 2 days (2 business days) to be delivered, 21% (33 letters) took 3 days, and 1% (2 letters) took 4 days.

(b) Consideration

As described in “II. A. 1.” above, the results obtained in this experiment seem to be consistent with Japan Post’s explanation that the package usually arrives on the “accepting date + two days” if it goes through the standard delivery process.

On the other hand, as mentioned in “B.” above, about half of Toshiba’s voting forms at the AGM were delivered three business days from the postmark date to the Scan Date, which is

longer than the results of the Demonstration Experiment.

However, as explained in “II. A. 1.” the delivery process by Japan Post above is only a general and standard flow, and the conditions differ from those of the Demonstration Experiment in that Toshiba's voting forms are assigned a “large-lot dedicated number”. Mail with a large-lot dedicated number was exclusively processed by a sorting machine at Shin-Tokyo Post Office. In the fiscal year ending July 2020, these sorting machines for large-lot dedicated numbers operated from around 11:00 p.m. each night to 6:00 a.m. the following morning every day, and depending on the timing of the arrival of mail at Shin-Tokyo Post Office, the time until around 11:00 p.m. when the sorting machines started operation would have been lost. As a result of such loss of time, the arrival at the collection and delivery post office would have been delayed (in the case of Suginami Minami Post Office, the arrival time is around 4:20 p.m. or later [see “II. A. 1. c.” above]), and as a result, it is possible that the number of days required for delivery is extended by one day.

In addition, the difference in the timing of July and November, and the fact that the Demonstration Experiment does not include weekends and holidays at all, may also have an impact.

Therefore, even if a larger percentage of voting forms for the AGM took longer to be delivered compared to the Demonstration Experiment and the explanation by Japan Post, this is not considered sufficient to lead to an inference of unfair treatment by Toshiba.

(2) Verification of postmark and scan date of other companies (June 2020 shareholders meeting)

(a) Results of verification by Effissimo

Next, Effissimo also verified the postmark date and scan date of voting forms for other companies' shareholders meetings held in June 2020, so we will also examine this.

The Investigators in this case were provided with the results of Effissimo's sample survey of postmark dates on voting forms of other companies and the number of days it took from the postmark date to the scan date (100 forms were randomly selected for each scan date and the postmark dates were visually checked. If the number of forms is less than 100, all of the forms for that scan date were selected and checked.), and the results were tallied as shown in Table 14 below. The results were tallied as shown in Table 14 below. In June 2020, unlike in July 2020, JaSt was also open on Saturdays. Therefore, in calculating the number of days (business days), Saturdays are treated as business days, while accepting dates, and Sundays and holidays are excluded.

Table 14

		1 business day	2 business days	3 business days	4 business days	5 business days	Total
June 2	Tue	0	90	5	0	0	95
June 3	Wed	0	61	25	1	0	87
June 4	Thu	0	51	27	1	0	79
June 5	Fri	0	48	22	4	0	74
June 6	Sat	1	36	6	0	0	43
June 7	Sun	0	7	20	0	0	27
June 8	Mon	0	46	50	5	1	102
June 9	Tue	0	29	39	6	0	74
June 10	Wed	0	26	27	13	0	66
June 11	Thu	0	34	36	0	0	70
June 12	Fri	0	40	22	0	0	62
June 13	Sat	0	38	5	0	0	43
June 14	Sun	0	24	16	1	0	41
June 15	Mon	0	43	32	1	2	78
June 16	Tue	0	48	0	34	0	82
June 17	Wed	0	2	53	0	0	55
June 18	Thu	2	2	0	0	0	4
Total		3	625	385	66	3	1,082
		0.28%	57.76%	35.58%	6.10%	0.28%	100%

(b) Examination

According to this sample survey, 57.76% took two business days from the postmark date to the scan date, and 35.58% took three business days, so two business days was the larger percentage.

However, for example, for items with a postmark date of June 5 (Fri.), 6 (Sat.), 12 (Fri.), and 13 (Sat.), there were Sundays when Japan Post was working but JaSt was not, and it could be said that it took three days to scan the documents, and the percentage of mail taking three business days for Toshiba was 50.4%, so it cannot be said that Toshiba took more time from the postmark date to the scan date, and this difference is not a circumstance that suggests there was some kind of fraud in relation to the AGM.

2. Possibility of other intentional counting manipulation by Toshiba

The Investigators in this case, for example, also investigated whether or not Toshiba concealed or intentionally did not count voting forms in which votes were cast against a Company proposal or in favor of a shareholder proposal.

First, based on digital forensics and interviews with related parties, there were no circumstances that suggested that Toshiba hid or intentionally did not count voting forms in order to ensure that resolutions would be passed in its favor.

Secondly, based on the results of the comparative verification of voting form approvals and disapprovals shown in “**B. 1. b.**” above, comparing the exercise results (Table 6) of the newly counted (revised) voting rights (i.e., voting rights that should have been counted but were not counted due to Preemptive Processing) against the final exercise results (Table 5) shows that for Proposal 2 proposed by the Company, the ratio of affirmative votes (63.72%) is 13.56 points lower than the final exercise result (Table 5), while the ratio of negative votes (36.28%) is 26.52 points higher, so the unavoidable conclusion is that the exercise was unfavorable to the Company. However, this is largely due to the fact that a large number of voting forms (50,000 voting rights) of 3D, the proponent of Proposal 3, were treated as invalid due to Preemptive Processing but were corrected and counted as valid votes (50,000 voting rights of 3D represents approximately 85% of the 58,747 voting rights that were excluded in Preemptive Processing and recounted as valid votes, and were against some of the 12 director nominees proposed by the company). As mentioned above, there is no evidence of Toshiba's involvement or awareness of Preemptive Processing.

In addition, as stated in “**B. 1. b.**” above, for voting forms received on or after July 31, 2020, which is after the deadline for exercising voting rights (Table 7), the percentage of votes for Proposal 1 proposed by the Company was over 96%, and the percentage for Proposal 2, the proposal for election of Directors, was also high at over 80% (and about 75% for those received on July 31). On the other hand, for both Proposals 3 and 4 proposed by shareholders, the percentage of votes in favor were low at below 30%, and the percentage of votes against were around 40%.

As described above, the attempted exercise of voting rights in voting forms that were ultimately excluded from the tally are favorable to Toshiba, and we cannot find any motive for Toshiba engaging in fraud by excluding voting forms from the tally due to them having arrived after the deadline for exercising voting rights. It is difficult to believe that Toshiba has committed such a fraud.

As described above, there is no suggestion that Toshiba intentionally manipulated the tally or committed any other wrongdoing.

IV. Doubts about the exercise of voting rights via the Internet immediately prior to the exercise of voting rights

A. Details of the suspicion

Company X, one of the top 100 shareholders of Toshiba (hereinafter referred to as “**Company X**”), mailed a voting form postmarked July 27, 2020 (which unanimously approved all resolutions in favor of the Company by a blank ballot: in favor of the Company's proposals and against the shareholders' proposals). Although the voting form actually arrived at SMTB on July 30, it was supposed to be treated as invalid as it arrived on July 31, after the deadline for exercising

voting rights, due to the Preemptive Processing.

On the other hand, in addition to the voting form, Company X also separately exercised its voting rights via the Internet at 4:54 p.m. on July 30, just before the deadline for exercising voting rights (21 minutes before) (the contents were the same as in the voting form: in favor of the Company's proposals and against the shareholders' proposals).

The suspicion of the Requesting Shareholders is that the reason why the voting rights were exercised via the Internet with the same content as the voting form just before the deadline was that Toshiba was aware of Preemptive Processing at JaSt, and was encouraging Company X, which was friendly to Toshiba's management, to switch to voting via the Internet in order to avoid having Company X's voting form invalidated by Preemptive Processing.

B. Results of the investigation

1. The Investigators conducted interviews with Toshiba and Company Y, to which Toshiba outsourced its activities to promote the exercise of voting rights, and also made a written inquiry to Company X and received a response by telephone. The following is a summary of the findings.
2. Company Y started contacting the Top Shareholders on June 22, 2020, and received a response from Company X that it would exercise its voting rights as recommended by Toshiba as of the same date.

However, after that, Toshiba asked Company Y to follow up with Company X, as the exercise of voting rights could not be confirmed even on July 26.

Company Y telephoned Company X on July 28, and received another reply that the company would exercise its rights (at that time, the company did not specifically mention the method of exercise).

However, Company Y subsequently was still unable to confirm the exercise of voting rights, so on July 30, Company Y again called Company X and exchanged the following information.

In the morning, the Company Y representative called the Company X representative from his office, but he was not available.

Around 2:30 p.m.: The Company Y representative called the Company X representative from his office, but he was not available. He asked the person in charge to call him back.

Around 4:45 p.m.: The Company Y representative called the Company Y representative from outside the office. He replied that he had already exercised the voting rights by posting them by post.

Around 4:55 p.m.: This time, the Company X representative called the Company Y representative's cell phone and said, "Just to be sure, we also exercised our rights on the Internet just before 5 p.m."

C. Evaluation

The exchange between the Company Y representative and the Company X representative was as described above, and the telephone interview with the Company X representative also revealed that the exercise of voting rights via the Internet just before the deadline was not requested by Company Y, but was done voluntarily as a precaution.

Therefore, there is no evidence that Toshiba was aware of Preemptive Processing by JaSt and urged Company X, which is friendly to Toshiba's management, to switch to voting via the Internet in order to avoid the invalidation of Company X's voting form due to Preemptive Processing, or that Toshiba or someone acting on its behalf pressured Company X to exercise its voting rights in a manner that was not in line with its intentions.

V. Conclusion

With respect to the counting of voting rights at the AGM, Preemptive Processing conducted by JaSt was unlawful and unfair, but there was no awareness or involvement on the part of Toshiba. Other than Preemptive Processing, there were no other illegal or unfair acts.

Chapter 3: Pressure Issue

I. Outline of the Investigation into the Pressure Issue

At its beginning, the Corporate Governance Code states, as General Principle 1, that “Companies should take appropriate measures to fully secure shareholder rights and develop an environment in which shareholders can exercise their rights appropriately and effectively. In addition, companies should secure effective equal treatment of shareholders. Given their particular sensitivities, adequate consideration should be given to the issues and concerns of minority shareholders and foreign shareholders for the effective exercise of shareholder rights and effective equal treatment of shareholders”, and Supplementary Principle 1.1.3 states that “Given the importance of shareholder rights, companies should ensure that the exercise of shareholder rights is not impeded. In particular, adequate consideration should be given to the special rights that are recognized for minority shareholders with respect to companies and their officers, including the right to seek an injunction against illegal activities or the right to file a shareholder lawsuit, since the exercise of these rights tend to be prone to issues and concerns.” Toshiba has disclosed that it implements the general principles of the Corporate Governance Code in their entirety (according to the Corporate Governance Report dated August 25, 2020, a date very close to the AGM).

As described in **“V. C. in Chapter 1”** above, the “pressure issue” raised by the Requesting Shareholders as a reason for the convocation of the AGM is, in light of the Corporate Governance Code which specifically stipulates that “Given the importance of shareholder rights, companies should ensure that the exercise of shareholder rights is not impeded.” (Supplementary Principle 1.1.3), more essentially the issue that, if Toshiba directly or indirectly exerted pressure or other undue influence on shareholders with the intention of effectively impeding the exercise of shareholders' rights at the AGM, the AGM cannot be considered to have been conducted fairly. If such fact exists, the AGM is considered not to have been conducted fairly.

As described in **“III. A. in Chapter 1”** above, the Investigators, in consultation with Toshiba, have set as the subject of this Investigation any and all facts that the Investigators deem necessary in relation to whether or not the AGM was conducted fairly, and have specifically investigated the following matters in relation to the pressure issue.

- (i) Whether or not there were any actions taken to impede the exercise shareholder proposal right at the AGM, the nature of such actions and Toshiba's involvement, and whether or not Toshiba attempted to have Effissimo and 3D's shareholder proposals

withdrawn by exerting undue influence in cooperation with METI;²⁴ thereby whether or not the AGM was fairly conducted.

(ii) Whether or not there were any actions taken to impede the exercise of voting rights at the AGM and the nature of such actions, and whether or not Toshiba's involvement in such moves was intended to impede HMC (as defined below) and other shareholders²⁵ from exercising their voting rights by exerting undue influence in cooperation with METI; thereby whether or not the AGM was fairly conducted.

If it is judged that the AGM was not fairly managed, the Investigators will touch on some of the causes to the extent that they can be seen from the results of this Investigation.

With regard to pressure on voting advisory firms, a Japanese subsidiary of Institutional Shareholder Services Inc. (both hereinafter referred to without differentiating as "ISS") and Glass, Lewis & Co., LLC (hereinafter referred to as "Glass Lewis"), have both denied any pressure being placed on them, and it cannot be found.

II. Outline of the Parties Concerned

A. Toshiba personnel

(1) Toshiba

Toshiba is a Company with a Nominating Committee, etc., established in June 1904, with a total of 455,000,000 shares issued and outstanding as of July 30, 2020, and its shares are listed on the Second Section of the Tokyo Stock Exchange and the Nagoya Stock Exchange (August 1, 2017-January 29, 2021; First Section from January 29, 2021). As of December 31, 2020, the company consisted of 301 consolidated subsidiaries (137 companies accounted for by the equity method), which are engaged in energy system solutions (manufacturing, sales, engineering, services, etc. of thermal power generation systems, nuclear power generation systems, power distribution systems, solar power generation systems, hydroelectric power generation systems), infrastructure system

²⁴ Argyle (as defined below) incorporated into the Company proposal to amend the Articles of Incorporation its proposal to add the appropriation of retained earnings to matters decided by resolutions of shareholders meetings, and withdrew other shareholder proposals. Farallon (as defined below) incorporated all four foreign directors' reappointments as company proposals. As for Argyle, it can be seen that as a result of negotiations it accepted some of the company proposals, and withdrew the remaining proposals, and Argyle has not stated that it was under any kind of pressure. Farallon was not prevented from exercising its rights because its proposal was adopted as a company proposal. In view of the above, these shareholder proposals are not the subject of this report.

²⁵ In addition to HMC, Effissimo did not vote on the 3D proposal because it was pointed out that to do so would violate its Covenant submitted in the prior notification under the Foreign Exchange and Foreign Trade Act, and 3D was told by METI officials not to get involved in the fire next door, which may have influenced its decision to vote against some of the Effissimo proposals.

solutions (manufacturing, sales, engineering, services, etc. of water supply and sewage systems, broadcasting systems, radio equipment, industrial light sources, compressors, industrial systems, environmental systems, road systems, station automation equipment, transportation equipment) building solutions (manufacture, sales engineering, services, etc., of elevators, general lighting, commercial air-conditioning equipment), retail & printing solutions (manufacture, sales, engineering, services, etc., of POS systems, multifunction devices, etc.), devices & storage solutions (manufacture, sales, engineering, services, etc., of power devices, small-signal devices, optical semiconductors, mixed-signal ICs, image sensors, logic LSIs, HDDs, semiconductor manufacturing equipment), digital solutions (IT solution services, etc.), and others (logistics services, manufacturing, sales and engineering services for batteries, etc.).

Toshiba's total assets on a consolidated basis as of March 31, 2021 were 3,500.6 billion yen, shareholders' equity was 1,164.5 billion yen, and sales on a consolidated basis for the fiscal year ended March 31, 2021 are 3,054.4 billion yen (rounded to the nearest 100 million yen).

(2) Mr. Nobuaki Kurumatani ("Mr. Kurumatani")

Director, Representative Executive Officer, President and CEO at the time of the AGM and at the time of the commencement of the Investigation. He resigned as Director and Executive Officer on April 14, 2021 during the Investigation period.

(3) Mr. Masayasu Toyohara ("Mr. Toyohara")

Representative Executive Officer and Corporate Senior Executive Vice President at the time of the AGM and at the time of the commencement of the Investigation. In charge of Human Resources and Administration Division, Corporate Communication Division, etc.

(4) Mr. Masaharu Kamo ("Mr. Kamo")

Executive Officer and Corporate Senior Vice President at the time of the AGM and at the time of the commencement of the Investigation. In charge of the Strategic Planning Division, etc.

(5) Mr. Naoya Sakurai (hereinafter referred to as "Mr. Sakurai")

Representative Executive Officer and Corporate Executive Vice President at the time of the AGM and at the time of the commencement of the Investigation. In charge of the Legal Affairs Division, etc.

(6) Mr. Yoshimitsu Kobayashi (hereinafter referred to as "Mr. Kobayashi")

Outside Director (Chairperson of the Board of Directors, Chairperson of Nomination Committee, Member of Compensation Committee) at the time of the AGM. Retires at the conclusion of the AGM due to expiration of his term of office.

(7) Mr. Junji Ota ("Mr. Ota")

Outside Director (Chairperson of Audit Committee (full-time), Member of Nomination Committee) at the time of the AGM and at the time of the commencement of the Investigation.

(8) Mr. Yuki Furuta (hereinafter referred to as “Mr. Furuta”)

Outside Director (Chairperson of Compensation Committee, Member of Audit Committee) at the time of the AGM and at the time of the commencement of the Investigation.

(9) Mr. Takashi Yamauchi (hereinafter referred to as “Mr. Yamauchi”)

Outside Director (Member of Nomination Committee, Member of Audit Committee) at the time of the AGM and at the time of commencement of the Investigation.

(10) Mr. Yoshiaki Fujimori (hereinafter referred to as “Mr. Fujimori”)

Outside Director (Member of Nomination Committee, Member of Compensation Committee) at the time of the AGM and at the time of commencement of the Investigation.

(11) Ms. Ayako Hirota Weissman (hereinafter referred to as “Ms. Weissman”)

Outside Director at the time of the AGM and at the time of commencement of the Investigation.

(12) Mr. Jerry Black (hereinafter referred to as “Mr. Black”)

Outside Director (Member of Compensation Committee) at the time of the AGM and at the time of commencement of the Investigation.

(13) Other staff

The responsible member in the Strategic Planning Division at the time of the AGM and at the time of the commencement of the Investigation (hereinafter referred to as “Mr. T1, Strategic Planning”)

The responsible member in the Legal Affairs Division at the time of the AGM and at the time of commencement of the Investigation (hereinafter referred to as “Mr. T2, Legal”)

The responsible member in the Human Resources & Administration Division and the Secretariat of the Nomination Committee at the time of the AGM and at the time of commencement of the Investigation (hereinafter referred to as “Mr. T3, HR”)

B. Foreign investors

(1) Effissimo Capital Management Pte Ltd (“Effissimo”)

Foreign investors with Singaporean nationality who are estimated²⁶ to have held

²⁶ The number of voting rights and the percentage of total voting rights here are both based on the figures in the list of top shareholders sent to METI by Mr. T1, Strategic Planning at the request of METI on June 25. However, for Argyle, the figures in the list of major shareholders as of May 15 prepared by Sumitomo Mitsui Trust Bank, Limited were used. The total number of voting rights of shareholders entitled to exercise their voting rights at the AGM was 4,518,649.

698,685 voting rights (15.46% of total voting rights) at the AGM. However, most of the members are Japanese.

(2) 3D Investment Partners Pte. Ltd. (“3D”)

Foreign investors with Singaporean nationality who are estimated to have held 186,582 voting rights (4.13% of total voting rights) at the AGM. However, most of the members are Japanese.

(3) Harvard Management Company, Inc. (“HMC”)

A foreign investor of U.S. nationality who is estimated to have held 200,000 voting rights (4.43%²⁷ of the total voting rights) at the AGM. This is an endowment manager of Harvard University.

(4) Farallon Capital Management, L.L.C. (hereinafter referred to as “Farallon”)

A foreign investor of U.S. nationality who is estimated to have held 292,395 voting rights (6.47% of total voting rights) at the AGM.

(5) King Street Capital Management, L.P. (“KS”)

A foreign investor of U.S. nationality who is estimated to have held 145,102 voting rights (3.21% of total voting rights) at the AGM.

(6) Argyle Street Management Limited (hereinafter referred to as “Argyle”)

A foreign investor of Hong Kong nationality who held 302 voting rights (0.006% of total voting rights) at the AGM.

C. METI officials

- Director, IT Industry Division, Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry (hereinafter referred to as “Director K1”) at the time of April to July 2020.²⁸
- The Director-General for Evidence-based Policymaking, Minister's Secretariat, Ministry of Economy, Trade and Industry (hereinafter referred to as “Director-General K2”) at the time of April to July 2020.²⁹
- The Director-General of the Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry (hereinafter referred to as “Director-General K3”) at the time of April to

²⁷ In estimation of votes at the shareholders meeting, Toshiba considered the impact of the approval or disapproval of each major shareholder on the outcome, assuming a turnout rate of roughly 80%. For example, the number of voting rights held by HMC would account for about 5.53% of the total number of voting rights cast, assuming a turnout rate of 80%. This led to later discussions in the vote reading of the AGM at Toshiba, such as “if HMC votes in favor of the proposal, the ratio of votes in favor of the proposal will increase by 5.5%.”

²⁸ Director K1 was transferred within METI on July 20, 2020.

²⁹ Director-General K2 was transferred within METI on July 20, 2020.

July 2020.³⁰

- Executive Advisor to the Ministry of Economy, Trade and Industry (hereinafter referred to as "Mr. M") at that time from May to July 2020.

III. Background (Change in Toshiba's Shareholder Composition)

In the fiscal year ended March 31, 2017, Toshiba had excess liabilities of 275.7 billion yen due to the accounting fraud problem revealed in 2015, the disclosure of a possible huge loss due to goodwill impairment of its U.S. consolidated subsidiary Westinghouse's acquired subsidiary in December 2016, and the subsequent filing of Westinghouse's petition for proceedings under Chapter 11 of the U.S. Bankruptcy Code in March 2017. On August 1, 2017, the company was reassigned to the Second Section of the Tokyo Stock Exchange.

In December 2017, Toshiba issued approximately 600 billion yen in new shares through a third-party allotment to a large number of foreign investors, in order to eliminate its excess liabilities by the end of the fiscal year ending March 2018, which would otherwise bring Toshiba within the delisting criteria. As a result, the percentage of shares held by foreign corporations, etc. (excluding individuals) increased from 38.13% to 72.29%. Effissimo had already acquired 9.84% of Toshiba's shares by April 2017, and the third-party allotment brought its shareholding above 10%, making it the largest shareholder.

As a result, foreign investors now hold a majority of the voting rights of all shareholders, and Toshiba has been unable to conduct stable shareholders meetings without dialogue with its major shareholders prior to the annual shareholders meeting. This situation remained largely unchanged prior to the AGM in 2020 (the percentage of shares held by foreign corporations other than individuals was 62.62%).

IV. Summary of Facts

According to the documents and interview results that the Investigators came into contact with, the following facts are recognized. The year and month are assumed to be 2020 unless otherwise stated.

Since most of the facts presented below are based on e-mails and file data obtained from Toshiba's internal e-mail server that the Investigators came into contact with, there are many references to Mr. Kamo and Mr. Toyohara, with whom there were many internal e-mail exchanges, and few references to Mr. Kurumatani, with whom there were extremely few internal e-mail exchanges.³¹

³⁰ Director-General K3 resigned on July 20, 2020.

³¹ In his work at Toshiba, Mr. Kurumatani often communicated by phone or in person, and used cell phone short messages (SMS) as a supplementary method, apparently minimizing the use of e-mail (According to Mr. Kamo's interview, Mr. Kurumatani "is not the type to write detailed

A. Developments in the initial stage of foreign investors (around March through April) and requests for support to METI in preparation for the AGM

As a result of the private placement of approximately 600 billion yen in December 2017, the percentage of shares held by foreign investors exceeded 60% as of May 2020. The foreign investors had been discussing with Toshiba since around March through April based on their different interests in preparation for the AGM. HMC was mainly interested in shareholder returns through share buybacks, 3D was interested in performance, and Effissimo was interested in compliance.

In particular, Toshiba disclosed in January and February that 24 fictitious and circular transactions were conducted between 2015 and 2019 at its sub-subsubsidiary, Toshiba IT Services Corporation (hereinafter referred to as "TSC") between 2015 and 2019, and Effissimo showed a strong interest in TSC's fictitious and circular transactions.

Effissimo and 3D each indicated that it would exercise its shareholder proposal right in their discussions, and 3D actually did so in the early stages.

HMC was considered relatively friendly by Toshiba at the initial stage, and only sent a letter to Toshiba stating its request. HMC later hardened its stance, partly because Toshiba did not reply to the letter for almost three months.

In addition, Toshiba became increasingly wary of Effissimo, as the largest shareholder with more than 10% of the shares which had a strong interest in TSC's fictitious and circular transactions and had been critical of the results of the related investigation, and Toshiba requested METI's support for the shareholders meeting, hoping that there would be some regulation or control of the company under the revised Foreign Exchange and Foreign Trade Act ("FEA"), in particular, the revised FEA (the "Revised FEA"), which was amended by the Act for Partial Revision of the Foreign Exchange and Foreign Trade Act (Act No. 60 of November 29, 2019), scheduled to take effect on May 8.

The following is a chronological order of the facts of the initial phase, divided into communications with HMC, Effissimo, and 3D, and communications with METI.

instructions" by e-mail, and "Mr. Kurumatani is the type to say a lot over the phone. According to the interview with Mr. T1, Strategic Planning, Mr. Kurumatani responded to e-mails, but often with only one line, and often with a phone call. On the other hand, he sometimes sent long messages via SMS. The Investigators also found that recipients had taken screenshots of the SMS screens allegedly sent by Mr. Kurumatani and shared the screenshots with other related parties in the company via e-mail.) Furthermore, the company-loaned cell phone that Mr. Kurumatani used during his tenure was returned with almost all of the call history, registered phone numbers, and SMS data in an unrecoverable state. In addition, Mr. Kamo, who was supposed to have received SMSs from Mr. Kurumatani, said that he had already deleted the SMSs from 2020 by replacing his mobile phone, and the Investigators were not able to access this evidence.

1. Communication between Toshiba and foreign investors

a. Communication with HMC

On March 3, HMC sent a letter to each of Toshiba's directors outlining its concerns about the board's failure to respond to the decline in the share price and asking them to (1) immediately undertake a large-scale share buyback, (2) pledge to use the proceeds from the sale of Kioxia shares for share buybacks, and (3) pledge to set aside the proceeds from future asset sales for share buybacks. In the same letter, HMC also said it would have no choice but to oppose the proposal for the election of directors on the grounds that Toshiba was not acting in the best interests of shareholders if it did not fulfill these conditions. HMC considers the resolution of the so-called principal-agent issue to be the role of independent outside directors and has a policy of sending very few letters to portfolio companies, but HMC stated that it sent the letter because it judged that the board was not functioning as a responsible Board of Directors (despite having a majority of outside directors).

b. Communication with Effissimo

On March 19, Effissimo sent a letter to Toshiba's board of directors requesting individual meetings with all Toshiba directors, citing its strong concern about the issues regarding fictitious and circular transactions at TSC. The letter also stated that, depending on the circumstances, it may be necessary to consider making shareholder proposals and the like.

On March 31, Mr. Satoshi Tsunakawa (then Chairperson of the Board) and Mr. Toyohara had a conference call with Effissimo.³² In the conference call, Effissimo provided specific details of the above-mentioned concern, which included that the investigation report on the fictitious and circular transactions was inadequate and arbitrary, that the investigation team's investigative skills were questionable, that the report did not focus on the root cause, and that the report did not mention the so-called "second and third lines" (professional discussions on the division of roles and functions related to risk management, etc.) and the organizational culture, and that the report turned a blind eye to what needed to be done to improve corporate value, and that Effissimo was considering whether there was anything that it could do to improve Toshiba's corporate value, including the exercise of shareholder rights. As part of this, Effissimo requested a meeting with the Outside Directors. On April 1, Director K1 told an official of Toshiba's Human Resources and Administration Division, "I have already shared yesterday's discussion with the Vice Minister and other senior officials. I will inform the Prime Minister's Office and the Secretary to the Chief Cabinet Secretary about it."

³² The March 31 conference call and the April 24 conference call were later called into question by METI.

On April 13, Effissimo sent a letter to Toshiba requesting individual meetings with all directors, and on April 24, Mr. Ota had a conference call with Effissimo.

On May 4, Effissimo sent a letter to Toshiba requesting continued meetings with the other directors, and conference calls were held with Mr. Fujimori and Mr. Yamauchi on May 14, with Mr. Kobayashi on May 15, and with Mr. Kurumatani on May 19.

c. Communication with 3D

On April 3, Mr. Kamo and 3D held a meeting, at which 3D expressed questions about the ability of the current outside directors to properly understand the internal situation of Toshiba as a conglomerate and to exercise leadership, due to their busy schedules, and said it was preparing a shareholder proposal.

On April 16, 3D sent a letter to Toshiba's Nomination Committee stating that Toshiba's absolute total shareholder return (TSR), relative TSR, and share price have been stagnant since Mr. Kurumatani became president, and that the performance of the current management team is considered to be extremely poor. If the Nomination Committee is evaluating the management team, it should explain the reasons to shareholders and the market, but there is no evidence of any dialogue to that effect; Toshiba's biggest problem is the conglomerate discount, which is caused by low return on invested capital (ROIC) below the cost of capital. The stock market is concerned that low ROIC investments below the cost of capital will damage shareholder value; the conversion of three listed subsidiaries into wholly-owned subsidiaries since the previous year's annual general meeting of shareholders is a measure that conflicts with the elimination of the conglomerate discount; and while the METI's Business Reorganization Study Group has called for the elimination of non-core businesses in Japanese companies, Toshiba is aggressively pursuing inclusion of non-core businesses. In sending the letter, 3D added, "We intend to submit a shareholder proposal this week."

On April 17, Mr. T1, Strategic Planning informed Mr. T2, Legal and others of Mr. Kurumatani's detailed instructions on how to respond to 3D's shareholder proposals and the like.

On April 30, 3D sent to Toshiba, and Toshiba received, a shareholders proposal requesting that the agenda item "Election of Two (2) Directors" be put forward at the AGM, that the appointment of Mr. Allen Chu (hereinafter referred to as "Mr. Chu") and Mr. Yuya Shimizu (hereinafter referred to as "Mr. Shimizu") as outside directors be submitted as an agenda item, and that shareholders be notified of the outline of the proposal.

2. Request to METI for support for the shareholders meeting

On March 25, Mr. Toyohara wrote Director K1, "I assume that our largest shareholder (Company E) will use this as an excuse to insist on various things. For example, they may say, 'Management that does not have good governance over group companies should be removed,' or 'We would like to recommend our own excellent candidates for directors.'" "I imagine that by the end of this month, Company E will go to the regulatory authorities to ask for permission to make an important proposal, and I would like you to let me know when that happens." "We are currently doing the initial estimation of votes, and if Company E abstains from the Company proposal, the Company proposal may be in serious jeopardy, and conversely, if the shareholders proposal is allowed, the shareholders proposal is highly likely to pass. If necessary, I will come to you for an explanation, so please let me know."

On April 9, Mr. Toyohara told Director K1, regarding the public comments on the amendment of the ministerial ordinance accompanying the amendment of the FEA, "Our review of the amendment of the act shows that, in a word, it is a 'drastic deregulation' and seems to be heading in the opposite direction of the 'strengthening of regulations' that we had initially heard about."

On April 10, Mr. Toyohara was discussing with Mr. T2, Legal about the public comments on the draft amendment to the ministerial ordinance implementing the amendment of the FEA "In short, our main concern is whether we can suppress activists or not," he said. "What we want to know is whether or not we can protect ourselves from activists, so is the public comment that was sent to us yesterday on the draft of the ministerial ordinance sufficient?"

On April 11, Mr. Toyohara asked Director-General K2 and Director K1 about the public comments, asking "whether it is legally possible to eliminate or control undesirable organizations and institutions," and if so, "what measures are being prepared?" "I understand that the main purpose of the amendment is to protect the "national security" sector from foreign companies and investors, but I am concerned that the essential part of the act may have been pushed aside by foreign financial institutions' calls to "avoid complications," "focus on efficiency," and "deregulation". It is our understanding, including that of legal experts, that so-called 'activists' are taking advantage of this trend, and as a result, they are winning an environment that makes it even easier for them to operate."

On April 30, Director K1 made an inquiry to a staff member of Toshiba's Human Resources & Administration Division about the personal history and contact information of Toshiba's outside directors, citing the possibility that METI might contact Toshiba's outside directors during the "Golden Week" holidays in preparation for the shareholders meeting. Mr.

Toyohara, who was informed that the said inquiry had been made, told the staff member concerned, “I just called both Director-General K2 and Director K1 of the Minister's Secretariat. We are requesting support for this year's general meeting, so I think this is part of it.”³³

On April 30 and May 1, Mr. Kurumatani telephoned Mr. Ota and said, “We want to deal with it, bearing in mind the May 8 effective date. After accurately recording the evidence such as meetings, such as opinions and proposals of institutional investors and shareholders sent to Toshiba, I would like to make efforts to build a consensus within the company and at Kasumigaseki after Golden Week.”

B. Toshiba's and METI's Moves toward Withdrawal of Shareholder Proposals: From “Written Request” to Announcement of Shareholder Proposals

1. Developments in the preparatory stages of Toshiba and METI

- a. Submission of a “Written Request” requesting an investigation, etc. under the FEA as directed by METI

On May 1, Mr. Toyohara and Mr. Kamo held discussions with Director-General K2 and Director K1, at which time Toshiba was requested by METI to submit a “written request” requesting an investigation, etc. under the FEA, as well as a shareholder voting forecast (estimation of votes).³⁴ In the draft of the “written request” prepared immediately after the meeting, Effissimo, Farallon, HMC, and 3D were listed as the targets of the investigation.

At around 8:13 p.m. on May 1, Mr. T2, Legal sent Mr. T1, Strategic Planning a draft of the “written request” to METI, stating that “after all, the Company E part is quite difficult,”

³³ According to Mr. Toyohara, the 2020 shareholders meeting was not the first time the company received METI's support. Mr. Toyohara said that, as he heard from METI, when KS proposed appointing seven directors in 2019, METI told KS that it was asking for seven chairs when it only owned four to five percent of the company at the time, and that METI strongly suggested that the request was too much. With METI's support, Toshiba appears to have negotiated with KS, carefully examined the proposed candidates, and concluded to appoint four foreign directors, including the one proposed by Farallon. In the interview with the Investigators, Mr. Toyohara said, “It may be that because this information was shared, HMC may have thought they were asking too much as Toshiba was under a reporting order at the time, and this may have been because they were wary of being investigated”, and “American companies are afraid of government investigations, especially if they want to continue their business in Japan. Just the thought of possibility of being investigated is scary. Foreigners have experienced scarier investigations by foreign authorities than in Japan, so are scared of Japanese authorities too. Harvard has invested in Effissimo and may have been afraid of being suspected of exercising joint voting rights,” “In addition, Harvard may have thought that there was a reputational risk in being perceived as hanging out with activists, since Harvard is a prestigious institution.”

³⁴ According to Mr. Kamo, “Without such a beginning, METI would not be able to move. I think it was meant to be a kick-off meeting to start preparations for measures to counter the activists. When Mr. Kamo asked METI about the format of the “written request,” METI disclosed examples of other companies.

etc. Mr. T1, Strategic Planning replied to Mr. T2, Legal with a revised draft of the “written request” claiming that he had “tried to expand the degree of aggressiveness”.

At around 1:00 p.m. on May 2, Mr. T2, Legal sent an e-mail to Mr. Toyohara, Mr. Kamo and Mr. T1, Strategic Planning with a simple analysis of the estimation of votes for the general meeting.³⁵ In response, Mr. Toyohara replied that he would instruct them to consider measures to obtain affirmative votes, and Mr. Kamo indicated his plan that the nine top shareholders should be individually consulted for estimation of votes, and that “METI can be used” to “negotiate the existence of shareholder proposals and their discount” and to “negotiate affirmative votes for existing directors”. He proposed to negotiate based on the “logic” that a large number of negative votes and abstentions would have a significant negative impact on the company's return to the First Section [of the stock exchange], saying, “I would like to have at least Farallon, HMC and King on our side.” At around 9:44 a.m. on May 3, Toyohara sent a reply saying, “If 3D is not stopped by METI this year, I think we may use FA as a backup”.³⁶

At around 9:33 p.m. on May 3, Mr. T2, Legal sent Mr. Kurumatani and others a draft of a “written request” to METI. The email to which the draft was attached contained a reservation that since all of the actions of each investor were taken prior to the Revised FEA taking effect, it would not be possible to write that there had been a direct violation of the law, and that the tone of the letter should be that there was a suspicion of violation if it continued in the future, and that urgent action was required. At around 11:29 a.m. on May 4, Mr. Kamo told Mr. T2, Legal that he had obtained Mr. Kurumatani's approval for the “written request” and that he wished to decide on a response plan for each fund at the beginning of the next week. At the same time, he instructed Mr. T2, Legal to provide him with a list of measures that METI could take against shareholders with 1% or more of the shares under the Revised FEA. At around noon, Mr. T2, Legal responded that there was not much that could be done, etc., and that there could be on-site inspections or questioning, recommendation for necessary measures to be taken to ensure compliance with the standards, order measures to be taken if the recommendations were not followed, and order the disposal of shares or other necessary measures if the orders were violated.

At around 0:53 p.m. on May 4, Mr. Kamo asked Mr. T2, Legal and others “what level

³⁵ It seems to be an estimation of votes to respond to a request from METI.

³⁶ Toshiba engaged a financial advisor to talk with shareholders, arrange meetings, and prepare estimation of votes for the AGM. This financial advisor will be abbreviated as “FA” in this report. If the name of this financial advisor is mentioned in the quoted email, the name will be changed to “FA” in this report.

of influence could be exerted” by METI in the voting for or against the proposal for election of directors, whether it could “stop at 'avoidance of rejection, i.e., induce abstentions”, “whether it could”, “go as far as 'affirmative votes’”, or “whether it could” do nothing. At around 2:00 p.m., Mr. T2, Legal replied that on a literal interpretation of the text (of the Revised FEA), there would be no provision that directly affects the exercise of voting rights to oppose or abstain on a proposal to appoint directors, as it does not fall under inward direct investment, etc.

At around 3:08 p.m. on May 4, Mr. Kamo sent a “written request” and a draft of the shareholder vote forecast to Director-General K2 and Director K1, and others, informing them that he wanted to hold a meeting on May 7. In response, Director K1 replied that he would contact them later, including the details of the discussion on May 3,³⁷ and Mr. Kamo forwarded the e-mail to Mr. T2, Legal.

On May 6, Mr. T2, Legal informed Mr. Kamo (and Mr. T1, Strategic Planning) that he believed that both the letter (from the shareholders) and the interview memo could be submitted upon receipt of a request for information from METI under the FEA.

At around 6:22 p.m. on May 6, Mr. Kamo informed Mr. T2, Legal and Mr. T1, Strategic Planning (and Mr. Toyohara) that METI had just contacted him and suggested a revision of the “written request”. He also informed them that a meeting with METI would be held on May 7.

On May 19, Toshiba submitted to the IT Industry Division of the Commerce and Information Policy Bureau of METI a “written request” to the effect of a request for appropriate measures, including confirmation of facts through an investigation based on Article 55-8 of the FEA, on the grounds that multiple proposals were made at the same time by multiple foreign investors and that the proposals as a whole would affect the continuous and stable implementation of businesses, including core industries, or lead to the transfer of businesses.³⁸

b. Mr. Kurumatani's explanation to the Chief Cabinet Secretary

- (1) Preparation of the Chief Cabinet Secretary's briefing materials
(preparation of position paper)

At around 7:22 a.m. on May 7, Mr. Kamo sent an e-mail from his private e-mail

³⁷ From the email, it appears that Mr. Kamo and Director K1 had a phone conversation on May 3, and another phone conversation after the email, but the details of the conversation are unknown.

³⁸ Although there had been some delay, it was the result of the intention of Effissimo's shareholder proposal expressed on May 15 which prompted the Director K1 “written request” with simplified contents of only key points on May 18.

address to his company address regarding instructions for dealing with foreign investors, without specifying the sender or recipient.³⁹ The email said, “Please confirm the overall situation with MITI [sic] today and the policy for dealing with each individual company. Here is a brief summary.”

“- The activists are working in tandem, in effect, as joint holders under the FEA.

“- The Revised FEA must be fully applied and operated to stop them. Please explain the sense of crisis to the maximum. I will also give a full explanation (based on the original wording) to the Chief Secretary on the 11th.”

“- Effissimo: In line with Effissimo’s contractual agreement to invest as a pure investment, notify them that they may be subject to a divestiture order for a clear breach of the contract. In addition to prohibiting Effissimo from making shareholder proposals, a vote in favor of the Company proposal is a condition for avoiding a divestiture order.”

“3D: Ask them to sign a new agreement to invest as a pure investment, and to withdraw or prohibit the shareholder proposal. If they do not comply, notify them that they may be subject to a divestiture order. Voting in favor of the Company proposal is a condition for avoiding a divestiture order.

“Harvard: same” and so on.

At around 9:44 a.m. on May 7, Mr. Kurumatani's secretary approached Mr. Kamo to set up a “meeting with President Kurumatani regarding the explanation to the Chief Secretary on May 11” within this week (the “Chief Secretary “ means then Chief Cabinet Secretary Yoshihide Suga (“Chief Cabinet Secretary Suga”).

At around 10:33 a.m. on May 7, Mr. Kamo sent Mr. Kurumatani, Mr. Toyohara, Mr. T1, Strategic Planning, and Mr. T2, Legal a draft of a position paper titled “Issues Concerning Company Shareholders Meetings” (the title on the document is “Status Concerning Company Shareholders Meetings(scheduled for July 15)”) that “put on paper the details received this morning from Mr. Kurumatani”, and stated, “I will take it to METI today under no name and on paper, so please check the contents.” At around 11:03 a.m., Mr. Kamo again sent a revised version of the same position paper.

The position paper states that “this general meeting is the first general meeting after the amendment of the FEA, but alternative investors have begun to step on the effectiveness of the revision” and that “urgent and strong government support is needed to ensure that the

³⁹ Judging from the description in Mr. Kamo's e-mail, which will be described later, such as “the contents received from Mr. Kurumatani this morning,” it can be inferred that Mr. Kamo himself forwarded the instructions from Mr. Kurumatani (via telephone or SMS) to his company address as a reminder.

purpose of the amendment of the law is carried out and made effective. If this is not prevented, there is a risk that the amendment of the law itself will be scrapped from the very beginning,” and regarding Effissimo, “They strongly hope to meet with each outside director regarding the TSC issue. This includes inquiries about the effectiveness of the Board of Directors and the activities of its members,” “Since before the Revised FEA, Effissimo has been a shareholder of more than 10% of the company, which should be classified as a pure investment,” and “If the shareholder does not agree with the Company proposal at the general meeting, there may be a divestiture order. In addition, the paper stated that 3D “holds a 2.9% stake in the company and has recommended two candidates for new outside directors,” and that this was “a case subject to prior notification at the time of the action,” that “if it is not a pure investment, there may be a divestiture order,” and that “if it is a pure investment, they should withdraw their proposal, reach an agreement with the government, and submit a written pledge.

At around 11:17 a.m., Mr. Toyohara responded with a revised position paper, “As is expected, don't think METI can accept a divestiture order. I think it is necessary to take the steps of confirming the purpose of holding more than 1% of the shares to 'shareholders who are taking some action' according to the purpose of the law, and taking appropriate measures for matters related to the maintenance of designated industries,” “ It's better to write with the expectation that it will be leaked outside somewhere.”

At around 0:42 p.m., Mr. Kamo replied with a further revised version of the position paper by Mr. Toyohara, and asked Mr. T2, Legal, “Can you confirm once again” involving an outside law firm, “the extent to which METI can provide guidance on voting behavior at shareholder meetings?” “Also, is there any way to calculate the number of votes without including 'abstentions' in the total? (Is it possible to amend the Articles of Incorporation to say that abstentions on specific proposals are not included in the total for calculating approval or disapproval? (Is it possible to change the articles of incorporation so that abstentions on specific proposals are not included in the population for calculating approval or disapproval?)”

In the position paper that Mr. Kamo revised at around 0:42 p.m., he stated that Effissimo's “actions are beyond the scope of a pure investment, and there may be a divestiture order,” and that 3D “is a case subject to prior notification at the time of action, and we need to take this opportunity to confirm the purpose of the investment. If it is a pure investment, shouldn't they withdraw the proposal, reach an agreement with the government, have them submit a written pledge, and set restrictions on their future activities?” and “Judging from the opinions and requests to date, there may be a divestiture order due to their involvement in the designated business.” (Note that there is no mention of HMC).

On May 7, Mr. Kamo met with METI and is presumed to have delivered the position

paper with the above revisions under “no name”.

At around 5:59 a.m. on May 8, Mr. Kamo sent Mr. T1, Strategic Planning a screenshot of a short message Mr. Kurumatani had sent Mr. Kamo. In the screenshot, Mr. Kurumatani wrote, “METI is the main player this time,” and, (regarding FA compensation) “Please keep the fixed amount as low as possible and increase the ratio of incentives. In fact, if they work hard, we will pay them well. However, since there is a high possibility that METI will be able to resolve the issue like a gatekeeper this time, there is a good chance that the FA will not do much work.” In response, at around 8:06 a.m., Mr. T1, Strategic Planning said to Mr. Kamo, “It may be difficult to write something like 'except in the case of METI's containment' in the contract.⁴⁰ I'll think about it, but I wish METI could resolve the issue at the gate.”

At around 5:14 p.m. on May 8, Mr. Kurumatani's secretary sent Mr. Kamo a document that Mr. Kurumatani was to bring to the meeting with the [Cabinet] “Secretary,” stating that Mr. Kurumatani seemed to have changed the appearance of the document himself. The document that Mr. Kurumatani's secretary sent to Mr. Kamo included a document titled “Status of Company Shareholders Meetings (scheduled for July 15),” in which the contents of the position paper revised by Mr. Kamo and Mr. Toyohara on May 7 were partially further revised. The document stated that, with regard to Effissimo, “no shareholder proposal has been made, but the company is acting against its promise to METI” and that “METI is to take a strong stance to negotiate and secure stable shareholders, without hesitating to issue a divestiture order,” and that, with regard to 3D, “candidates for outside directors other than closely related parties have been proposed” and that “admission that the reason for the proposal is to promote the sale of the business is to be taken, so deal with it through the Revised FEA”, and “If this is not possible, the worst case scenario is a proxy

⁴⁰ The fact that this exchange was an internal meeting about the contract with the FA to deal with the shareholders meeting, and the fact that it was argued that Toshiba was expecting METI to play a major role there, suggests that Toshiba was planning to ask METI for measures to counter the activists as a measure for the shareholders meeting after all. According to Mr. Toyohara, Toshiba, including Mr. Kurumatani, thought that the Revised FEA would be a little stronger, and had high expectations to METI because it had said that it would stop interference with normal activities, which led to the exchange described above. He also said that the ministerial ordinance of the FEA was set close to the shareholders' meeting, and in the end, it was full of holes because the Ministry of Finance was strong in wanting to make it easier for foreign capital to enter the country. However, the Minister of Finance and the officials in charge of drafting the Revised FEA before it was enacted clearly stated that it was not a law to exclude activists, and the public comments on ministerial ordinance for the Revised FEA were discussed within Toshiba in early May. It seems to have been objectively clear from the beginning that Toshiba's expectations for the Revised FEA were excessive.

battle at the shareholders meeting. (There was no mention of HMC.) In addition to 3D, the document also included materials on the total voting rights holding ratio of the top nine overseas institutional investors including Effissimo and HMC, and a document titled “Simplified Estimation Analysis of the Exercise of Voting Rights”, but these were not shown to the Chief Secretary and were said to be materials in Mr. Kurumatani's possession.

(2) Mr. Kurumatani's explanation to the Chief Cabinet Secretary

At around 7:30 a.m. on May 11, Mr. Kurumatani attended a breakfast meeting with Chief Cabinet Secretary Suga at “ORIGAMI” in The Capitol Hotel Tokyu. At that time, it is presumed that Mr. Kurumatani explained the contents based on the documents including the above-mentioned position paper.⁴¹

c. Preparation of action list for each shareholder

On May 8, Mr. Kamo told Mr. T1, Strategic Planning, “Please make the attached action list for each shareholder in consultation with FA for each schedule and decide what FA will do and what we will ask METI to do. (Ultimately, talking scripts would be nice.)” “Since it is not good to talk too openly to FA, you may want to tell them, 1) METI's stance is to 'listen to shareholders' opinions a little more carefully and then ask questions about conflicts with the Revised FEA.', so we will tap them in the second half of next week. 2) Therefore, METI's actions will be taken after the 18th, but strongly against Effissimo, which is already caught in the FEA. Other than that, we will focus on the shareholders who have submitted proposals and letters, while monitoring the contents. 3) In addition to these activists, make sure to follow up with general institutional investors. As for individuals, we would be grateful for any ideas, but if domestic securities companies are good in that area, we will consider them as well. I think that's about it,” he said, and then sent a letter titled “Shareholder Relations, Action List (May 8).”

The same “Shareholder Relations, Action List (May 8)” includes the following

⁴¹ In this regard, in an interview, Mr. Kurumatani (1) implicitly admitted to attending the breakfast meeting (initially he said he had no recollection of it), (2) said he had no recollection of the position paper itself, which he appears to have revised himself, and (3) said he could not talk to Chief Cabinet Secretary Suga individually at the breakfast meeting, nor before or after the breakfast. However, given that Mr. Kamo and others had prepared the position paper in advance and Mr. Kurumatani had revised it on the assumption that he would explain it to Chief Cabinet Secretary Suga at the breakfast meeting, and as it was the first case to which the Revised FEA would be applied, it was a case of high policy interest and not just a petition of an individual company, and later, on the morning of July 27, Mr. Kamo, a subordinate of Mr. Kurumatani, attended a breakfast meeting with Chief Cabinet Secretary Suga and explained the matter to him based on the documents he brought with him, and Chief Cabinet Secretary Suga commented “If we are aggressive, we can get them with the FEA”, Mr. Kurumatani's comments cannot be trusted.

actions against Effissimo: “First action: uncover intentions to sell the business through meetings with directors,” “Second action: METI-centered response based upon Revised FEA-related matters. Securing stable shareholders. For 3D, “First action: Ask about the background of those recommended as director candidates, and uncover intention to sell the business”, “Move to METI-centered measures or discuss again through meetings”, and for HMC, “First action: (to Consult with FA).

d. Meeting with Director-General K3 and internal review of the Revised FEA

At 1:00 p.m. on May 11, Mr. Yamauchi, Mr. Kamo, and Mr. T1, Strategic Planning had an online meeting with Director-General K3 and Director K1. According to an e-mail exchange immediately after the meeting, “I tried to tell them that I would resist shareholders who ask me to buy back shares when the priority of management in these times is to retain cash, but they didn't respond” (Mr. Yamauchi). In the meeting with the Director-General and Director, they said, “We want you to find out Effissimo's intentions for the sale of the business, etc. in the conversation,” but I have the impression that the Director-General level avoided direct expression.” “Show Effissimo that METI is taking the right process, so this is to gather evidence to pursue Effissimo’s violation of process”, and “I'm going to visit METI tomorrow, so I'll check their intentions a little more” (Mr. Kamo), “I'd like to hear more about what METI specifically wants”, “I also mentioned the key word of the Revised FEA, but they didn't react”. As it was a web conference, “it is hard to talk about touchy subjects when you don't know who is in the other room (especially the more senior the person, the less likely they are to say something carelessly),” (Mr. Yamauchi).

In an e-mail sent by Mr. Kamo to Mr. Yamauchi and Mr. Fujimori at around 6:05 p.m. on May 13, by which it is apparent that Mr. Kamo, Mr. Yamauchi, and Mr. Fujimori had a “teleconference” with Director-General K3 on the same day, The “common comments” of the Director-General K3 (at the May 11 meeting and the May 13 teleconference) were (1) From a narrowly-defined national security perspective, METI has a serious interest in protecting key businesses such as Fukushima nuclear power, defense, and semiconductors for national security as set out in the FEA (2) In addition, METI has a serious interest in the fact that, under the special circumstances of the COVID-19 impact (and other countries are showing such a trend), for national security in a broader sense, it is important to ensure the stability of large companies like Toshiba that have a significant impact on society (especially by maintaining employment), and (3) the threat from shareholders who make demands exclusively from a profit perspective is undesirable from these two national security perspectives. Mr. Kamo stated that he understood that METI's intention was to inform

Toshiba's directors of the Director-General K3's statements (1) through (3) above, and to ask them to inform him if any shareholder spoke contrary to these statements.⁴² In the same email, Mr. Kamo told Mr. Yamauchi and Mr. Fujimori that in a "separate meeting with METI," "from the department in charge," that the outside directors of Toshiba should state at the meeting with Effissimo that. (a) "Toshiba already has a fully independent Board of Directors with outside directors, including four investors' nominees (independence from management is ensured, and no further additions are necessary), (b) "The outside directors and the Audit Committee have conducted detailed hearings on scandals, and the Board of Directors has discussed them. Corporate governance is being sufficiently demonstrated.", and (c) "Toshiba has sufficiently improved profits in this short term, so which business or function is the issue, and what should be done about it? (see if there is any request for business sale or [share] buyback),⁴³ and in the course of the conversation, let METI know if there is anything contrary to the common comments (1) through (3) made by Director-General K3. Thus, METI asked him to find out the matters necessary for the application of the FEA during the meetings between outside directors and Effissimo and other shareholders.

At around 6:21 p.m. on May 14, Mr. Kamo forwarded to Mr. T2, Legal the above e-mail sent at 6:05 p.m. on May 13, asking for advice, "based on the comments" from Director-General K3, etc. "What can METI do within the scope of the Revised FEA, and what can METI do beyond that? It would be best if they could guide them to "withdraw the proposal" or the like by fitting it into the "framework of the Revised FEA," of course, but given Director-General K3's response to the fact that he mentioned national security in a broader sense (common comment (2) above) because of the COVID-19 pandemic crisis rather than simply talking about national security from a narrow perspective under the FEA (common comment (1) above) "Even if that is not possible, METI is saying that it is important as national security in a broader sense to respond to the COVID-19 disaster as a global emergency and to ensure the stable management of companies like Toshiba. What we can do with that, he said, "is to give strong administrative guidance," which suggests "the impact on future decisions on other companies' notifications," and "depending on their future voting behavior, we will consider a divestiture order. In response, on May 15, Mr. T2, Legal pointed out that (1) it would be difficult to apply the FEA without evidence suggesting an agreement on the joint exercise of voting rights, such as communication of intentions among investors, and that (2) if this was impossible, the method of "talking in mere conversation that does not lead to administrative guidance"⁴⁴ could be used (however, in the case of an emergency situation where it is

⁴² Like Mr. Kamo, Mr. Yamauchi was present at both the May 11 meeting and the May 13 teleconference, and there is no evidence that he raised any particular objection to this.

⁴³ Mr. Kamo stated that this (c) "may be a little irrelevant", i.e. misguided, with regard to Efficio.

⁴⁴ About a week after this, on May 21, Director K1 began contacting Effissimo by phone and

difficult to enter the country from abroad, it may be necessary to use conference calls), and cautioned that although administrative guidance was possible, there would be some restrictions, and that a divestiture order would be difficult as even if shares already acquired were retained, it still would not fall under an inward direct investment, etc., and further, he stated that it would be difficult for the government to prevent the rejection of the proposal to appoint Mr. Kurumatani, as “the act of opposing or abstaining from the Company proposal does not fall under the definition of 'inward direct investment, etc., so must be interpreted as outside of the scope of the administrative guidance. It is practically impossible to link the 'exercise of the negative vote' to 'national security, etc.,' and even more difficult to link the abstention vote.”

2. Toshiba and METI's Moves with Foreign Investors to Withdraw Shareholder Proposals

a. Effissimo's Shareholder Proposal and Toshiba and METI's Moves to Withdraw the Shareholder Proposal

(1) Shareholder proposal from Effissimo

On May 15, Effissimo had a conference call with Mr. Kobayashi and informed him of the company's intention to make a shareholder proposal for the election of Outside Directors and to vote against the proposal to elect Mr. Kurumatani. Mr. Toyohara said of Director K1's reaction, “He was like, 'What? He didn't think Effissimo would go that far. The other side asked us to continue collecting evidence because the current evidence is insufficient.”

On May 19, Effissimo notified Toshiba that it would submit the agenda item “Election of Four (4) Directors 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”) as Outside Directors and that it would notify the outline of the proposal to shareholders.

Mr. Kamo brought the shareholder proposal to Mr. Kurumatani's office immediately after receiving it, and Mr. Kurumatani informed Director-General K2 about it. At that time, Mr. Kamo said, “METI seemed to be unprepared, and said only, 'Let's discuss this later at the 5:00 meeting.

(2) The battle between Toshiba, METI and Effissimo to withdraw the

talking about mere matters that did not even lead to administrative guidance, and it can be seen that he was trying to induce Effissimo to withdraw the shareholder proposal with various suggestions. Although we could not find any direct evidence that Mr. Kamo told METI, it is highly likely that the “advice” of Mr. T2, Legal was conveyed to Director K1 via Mr. Kamo and others, since Mr. Kamo asked METI if he could “get into it” in the first place.

shareholder proposal

(a) Establishment of an information collection infrastructure by
METI - Report Requisition Order Addressed to Toshiba

On May 18, Director K1 told Mr. Kamo to prepare a simple written request stating that (1) “proposals from foreign investors” “in the form of engagement with directors and proposals for the general meeting of shareholders” “have been made with respect to the Company’s business, including businesses in designated industries that have national security implications” “that could lead to the transfer of the business or jeopardize the continuation of the business. (2) that “similar” “proposals” were being made “by several investors at the same time,” and (3) that “in light of this situation, we would like to consult with you in order to ensure compliance with the FEA and the revised FEA”⁴⁵.

On May 19, Toshiba (specifically, Mr. T2, Legal, who received instructions from Mr. Kamo) submitted a “written request” to the IT Industry Division (Director K1) of the Commerce and Information Policy Bureau of METI, requesting appropriate measures, including confirmation of facts through an investigation based on Article 55-8 of the FEA, on the grounds that multiple proposals were made at the same time by multiple foreign investors, and that the proposals as a whole would affect the continuous and stable implementation of businesses, including core businesses, or lead to the transfer of businesses. We submitted a “written request” to request appropriate measures including the confirmation of facts through an investigation based on Article 55-8 of the FEA.

On May 21, Director K1 informed Mr. Toyohara, “We expect to receive a request for report collection on May 22 under the names of both METI and the Ministry of Finance.”⁴⁶ The two ministries are making a decision as soon as possible.

On May 22, the Minister of Finance and the Minister of Economy, Trade and Industry

⁴⁵ Points (1) through (3) were included in an e-mail from Mr. Kamo to Mr. T2, Legal at around 5:43 a.m. on May 19, titled “Request for Information Industrialization (original wording),” he wrote: “I was contacted last night and was wondering if you could write a request letter with simple contents and the following points. If possible, I would like to check with them once today in the morning and bring it to them in the afternoon as a document. Also, since there is a possibility that the letter will be published later, I think it would be better to keep it as simple as possible and avoid proper nouns. In an e-mail from Director K1 to Mr. Kamo at around 8:15 a.m. on the same day, he wrote, “I apologize for the phone call last night. Please send me the file so I can check. It can be seen that Director K1 requested the submission of the application form in a short period of time, and from the background it is inconceivable that Mr. Kamo independently judged that the content of the document to be submitted to METI should be “simple”, and this strongly suggests that it was Director K1 who said it should be “simple”. In the same way, it is unnatural for Mr. Kamo to make an independent judgment on the points to be described in the document to be submitted to METI and communicate them to the legal staff without instructions from Director K1, so it is inferred that at least the purposes described in (1) through (3) were communicated as “points” by Director K1 to Mr. Kamo in a phone call on the night of May 18. .

⁴⁶ Within this report, when the term “collection” is used in an email citation, it shall be retained, and the term “requisition” shall be used in all other situations.

issued an order (hereinafter referred to as the "Report Requisition Order Addressed to Toshiba"), requiring Toshiba to report on the status of inward direct investment, etc., and requesting Toshiba to submit the report, pursuant to Article 7, paragraph 5 of the Order on Inward Direct Investment.

(b) METI's proposal to prepare written questions for Effissimo and to extend the deadline for negotiations on the withdrawal of shareholder proposals

At around 8:49 p.m. on May 20, Director K1 sent an attached file titled "Questions from Toshiba to Effissimo 200520.pdf" (hereinafter referred to as the "Written Questions"⁴⁷) to Mr. Toyohara and Mr. Kamo saying, "This is about the Written Questions we discussed the other day."⁴⁸ It is not necessary to get a written response from the other side, but we would very much like you to consider it as a form of communication." In addition, "since we believe that the battle will continue until the very last minute, how about considering how far we can push back the withdrawal deadline (printing schedule?) to the maximum extent possible?"⁴⁹

In the Written Questions, Effissimo's possible answers were also included, such as "the possibility of joint voting," "if there is sharing with METI, it will be one of the reasons for opposing E's reappointment," "it will be a trigger for analogizing the possibility that the purpose of opposing reappointment falls under the security purpose," and "the purpose of opposing the reappointment is to induce the cutting out of the security business with low profitability and small portfolio."⁵⁰

(c) Cooperation between Toshiba and METI over the withdrawal of

⁴⁷ This Written Questions file, according to Mr. Kamo, was prepared by Director K1. According to Mr. Kamo, the purpose of the Written Questions was to share in advance any questions that might lead to statements from METI about consent to joint voting or the sale of the business. In other words, according to Mr. Kamo, METI "had been asking Toshiba from the beginning if there was any mention of joint voting and divestitures from Effissimo and 3D. In that context, METI" asked us to ask about these things (so that they might come up with statements that would lead to the above point).

⁴⁸ According to Mr. Kamo, this was a discussion between Mr. Kamo and Director K1. The time is not clear, but from the history of the e-mails at the time, it is assumed that the Written Questions was discussed at the meeting on May 18, when he was instructed to explain the reason for the "written request".

⁴⁹ "Withdrawal" here means withdrawal of the shareholder's proposal, and it is thought that the company asked if it could postpone the deadline to have the shareholder's proposal withdrawn in relation to the printing of the convocation notice.

⁵⁰ Regarding the purpose of these Written Questions, Mr. Kamo stated that he had talked to Director K1 and recognized that the purpose of the Written Questions was to "induce a mistake by asking questions during the interview, because if you send it in writing, you will get a perfect answer from the lawyer," and Mr. Toyohara stated that he had the same recognition.

the Effissimo shareholder proposal

On May 21, Mr. A⁵¹ (who does not belong to the Security Trade Control Policy Division, Trade Control Department, Trade and Economic Cooperation Bureau, METI (hereinafter referred to as the "Security Trade Control Policy Division"), which is in charge of the examination of the FEA, but was a civil servant at the director level at METI. A pseudonym is used in relation to the provision of information relating to these facts) called Effissimo and had a short teleconference to exchange greetings.⁵²

On May 21, Toshiba had the FA investigate the implementation of business sales, restructuring, and excessive shareholder returns through management involvement (demands as a shareholder and dispatch of executives) in investors of Effissimo in preparation for the interview with Effissimo's proposed candidates (Mr. Takeuchi and Mr. Sugiyama) scheduled for May 23.

On May 22, Mr. A and Effissimo held a conference call. During the conference call, Mr. A listened to Effissimo's opinions on economic policy and other matters, and in response to Effissimo's statement that they thought he was the person in charge of dealing with Toshiba and would like to hear any opinions, he then stated that he would consult with Effissimo individually.

On May 23, Mr. A and Effissimo held a conference call. In the conference call, Mr. A said, "While Toshiba as a whole has a healthy atmosphere, there is a concern that the proposal may cause problems in areas that are not the main focus of the company," and "As a member of METI, Kasumigaseki, and the government as a whole, I have to say some things. I would like to have more meetings with you." When Effissimo informed Mr. A that Effissimo had sent a letter to several Toshiba shareholders on May 22, asking them to engage with the company with an awareness of the issues in light of the fictitious and circular transactions, Mr. A asked for the letter, which Effissimo delivered to Mr. A.

On May 24, Mr. A and Effissimo and had a conference call. During the conference call, Effissimo asked if METI or the Japanese government had any specific concerns, and Mr. A replied that "unnecessary miscommunication and costs are not good in the wartime situation of Coronavirus" and that "delays in Toshiba's listing on the First Section are also not

⁵¹ This "Mr. A" is recognized to be Director K1 in light of the e-mail discovered by Toshiba's internal forensics as described in the following footnote, but in "IV. Outline of Facts," in consideration of the fact that the informant remained anonymous, "Mr. A" will be described faithfully according to the objective data provided. In the case of relying on Toshiba's internal e-mails, they are also described in the report as described in the e-mails. In "V. Analysis and Evaluation of Pressure Issue," based on the evaluator's assessment of the facts of the case, Mr. A is identified as Director K1 and described as such.

⁵² On May 22, Director K1 sent an e-mail to Mr. Toyohara stating, "I talked with Mr. E Imai yesterday. It was the first conversation, so I did not discuss with him individually, only said hello", and from the contents of this e-mail, Mr. A is recognized as Director K1.

good.”

On May 26, Director K1 sent Mr. Kamo a letter entitled “Request for Collaborative Engagement given Fictitious and Round Tripping Transactions,” which Effissimo had sent to Toshiba shareholders, stating “not to reverse the trend. ”

On May 27, Director K1 contacted Mr. Kamo by some means and instructed him to prepare a “rebuttal memo”.⁵³

On May 28, Toshiba submitted a document entitled “Status of Acquisition of the Company’s Shares by Foreign Investors” and supporting materials (including letters from each foreign investor and records of interviews with each foreign investor) as a response to Report Requisition Order Addressed to Toshiba, stating that Effissimo had been in contact with Toshiba’s directors individually since January, that Effissimo had sent a letter to Toshiba’s shareholders requesting “collaborative engagement,” and that it was presumed that Effissimo had reached an agreement with the foreign investors to jointly exercise their rights.

On May 28, Mr. A and Effissimo held a conference call. In the conference call, Mr. A said, “A major move in a different direction from the shareholder proposal would be negative for both policy and the market, and could delay the listing of the company on the first section of the stock exchange. Toshiba is helping us with Coronavirus measures, and we trust them from a policy perspective.” “Is there not a different way than the proposal of four Outside Directors?” “Within the ministry, the relevant parties are not persuaded.” “Given the situation, 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,” “We are concerned about the policy of voting against top management,” and “We are concerned about voting against the appointment of directors proposed by the company (In response to a question from Effissimo as to whether they wanted Effissimo not to oppose the election of the company’s proposed directors), he stated that they would be concerned if the top management were to be replaced in a relatively short period of time during Corona’s emergency.

At around 4:51 p.m. on May 28, Mr. Kamo sent an e-mail titled “Rebuttal memo” to the Director K1, saying, “I am sending you the rebuttal memo that you told me about yesterday. It is still a draft, so I will send it again as soon as it is updated.

On the morning of Friday, May 29th, Director K1 contacted Mr. Kamo and said regarding “yesterday’s materials” (which is supposed to mean the above-mentioned rebuttal memo, as it is mentioned in an email titled “Rebuttal memo” and in the form of a forwarded

⁵³ In an e-mail from Mr. Kamo to Director K1 at around 4:51 p.m. on May 28, Mr. Kamo wrote to Director K1: “I am sending you the rebuttal memo that you mentioned yesterday. It is still a draft, so I will send it again as soon as it is updated.

email dated around 4:51 p.m. on May 28th) that “I saw in the ministry, the frank opinion of the Trade Bureau was, “What the heck! ‘We have acted properly and done nothing wrong’ goes too far and is not sympathetic at all ... If they are given this explanation, the other shareholders may not approve either, and in the only outcome is slugging it out”, so, “I asked if it would be possible to take a step back and give an explanation based on the initial position paper, for example, prepare something that could be sent to other shareholders that would include 1) our side acknowledging there was a lack of communication and 2) that we are of course responsible for the consequences of what happened.” Mr. Kamo responded by explaining, “I explained again that this paper is prepared for Director K1's response⁵⁴ and is not to be shown directly to the other party or given to the shareholders. I also explained that each director has given an explanation based on the position paper that was also explained by Mr. Ota to the other party, but since the other party did not listen to the explanation at all and the commentary was completely the same as the initial one, I wrote the points from a different angle.” In response, Director K1 told Mr. Kamo, “As the Trade Bureau, we would like to push the issue by taking the steps of (1) what are the objective points they raise, by removing abstract expressions and evaluations, (2) how can Toshiba defend against these points and what are the remaining issues (for example, shareholder communication, employee education, etc.), (3) how can their board nominees contribute to the improvement of the situation, especially the two remote nominees from Company E, and (4) if they cannot contribute to the improvement of the situation, is there a hidden agenda such as the sale of Toshiba’s business behind it.” He also informed us of the status of the regulatory review. Director K1 also told Mr. Kamo about the status of the meetings with Effissimo up to May 27: “Basically, we are listening to their ideas. We will start talking with them regarding Toshiba from Tuesday.” As for the status of the May 28 meeting, he said, “Yesterday, after listening to them for eight to nine hours over five days, I said, 'I have listened to you thoroughly and shared the views with the ministry, but I am not fully convinced. Therefore, you will have to talk with the Trade Bureau in the future. I am not in a position to talk about whether or not it is the FEA. We decided not to have a meeting today, but to discuss the matter on Saturday or Sunday if necessary.” Director K1 also told Effissimo, “I’ve listened to you carefully, but I’m still not convinced about (1) how to maintain the company in this Coronavirus situation and how to maintain key business such as the nuclear energy business, (2) even though you say it is to improve the corporate culture, I wonder what can be done remotely from Singapore? (3) As for the top management and management team, METI believes that they are doing their best to maintain important businesses, so we don’t understand why you are opposing

⁵⁴ On May 29, Mr. Toyohara said of the "rebuttal memo" that "the Trade Bureau's reaction is 'as expected" and "It was originally prepared by METI to beat E Company".

this.” To this, Effissimo replied “We did not think METI felt that way about the current top management. We were considering a counter proposal against top management, but will consider again.” When Director K1 asked him what exactly he meant by a relationship of trust between shareholders and management, they replied, “The share price is low, and there are even comments about a conglomerate premium when the issue is a conglomerate discount.” At 10:44 a.m. on May 29, Mr. Kamo sent an e-mail containing the above information to Mr. Toyohara, Mr. T2, Legal, and Mr. T1, Strategic Planning to share the information within Toshiba. The email also stated that Mr. Kamo would visit METI that day.

On May 29, the Security Trade Control Policy Division informed Effissimo's attorney that “it is likely that we will be reviewing the entire consultation procedure due to the information obtained about the suspected violation of the covenants in the advance notification form under the FEA. (Effissimo's attorney informed Effissimo of this at 1:51 p.m. on May 29th, saying that he had been informed “just now”. On the other hand, in an e-mail sent by Mr. Kamo to Mr. Toyohara, Mr. T2, Legal, and Mr. T1, Strategic Planning 10:31 a.m. on May 29, it was stated as information from Director K1 that “the Trade Bureau⁵⁵ will contact them today”. This indicates that Toshiba had received information in advance that the Security Trade Control Policy Division of the Trade and Economic Cooperation Bureau would contact Effissimo on May 29). The Security Trade Control Policy Division did not provide any details of the breach of the pledge at that time, but as described below, on June 3, it informed Effissimo's attorney that it considered the meeting with the Outside Directors before receiving “provisional permission from METI” to be a suspected breach of covenants.

On May 29, Mr. T1, Strategic Planning sent an email to Mr. T3, HR stating that “our policy has changed to be polite rather than aggressive” regarding the meeting between the Toshiba’s Nomination Committee and the candidates proposed by Effissimo. (Sunshine Policy) (Reconciliation and Cooperation Policy)”.

On May 30, Toshiba’s Nomination Committee met with Mr. Imai and Mr. Kosaka, candidates proposed by Effissimo.

On May 31, Mr. Toyohara sent Mr. Kamo an e-mail, saying that he had heard from the Toshiba Nomination Committee after the above meeting that “the contact from METI has been more effective than expected,” that “Mr. Imai commented that 'this week has been the most stressful week ever' (due to the contact from METI),” that “the four of us unanimously felt that this matter is negotiable, and that “the conclusion at this point is that we will let METI beat them for a while, but at some point METI will suggest to the other side, 'Why don't you

⁵⁵ It is believed that this refers to the Trade and Economic Cooperation Bureau within METI. Since Director Director K1 belonged to the IT Industry Division of the Commerce and Information Policy Bureau, it is thought that he used the term “Trade Bureau” to refer to the department with jurisdiction over the FEA.

have them set up a compliance committee? Mr. Kurumatani can then contact Effissimo and propose, “We would like to improve our company's level by having Mr. Takeuchi join the compliance committee.” Since “improving compliance” was the “main purpose” of Effissimo's proposal, they would “push things” with “a counter proposal (METI + the Company)” meaning METI and Toshiba would make a counter proposal to include Mr. Takeuchi, one of Effissimo’s director candidates, in a compliance committee, and if they adhered to the election of directors, they would present Mr. Takeuchi as the final offer and “try to bring the curtain down.”⁵⁶

On May 31, Mr. Toyohara told Mr. Kamo that he would like to inform METI that “we will ask METI to take a tough stance for a while,” and that “after that (from around the latter half of this week?), however, we will be in the mode of deciding whether to drop the matter at some level, and finally settle the matter by appointing Mr. Takeuchi as an advisor.”

On June 1, Mr. Kamo sent an e-mail to Director K1 asking for advice on “the method and timing of feedback to each shareholder” at a meeting between Mr. Kamo and Director K1 scheduled for the same day. In the same e-mail, he wrote about 3D: “Our basic policy is to decline their candidates because (1) they are inferior in terms of quality and (2) there is no need to add any more Outside Directors with finance backgrounds. From the conversations we have had so far, there have been comments that “we intend to do business in Japan for a long time to come, so we will be close to the needs of the regulator”, so we would like to discuss the feedback method”, and regarding Effissimo, “I heard that Kurumatani and Director-General K2 had already had a meeting last night, but we have not had a chance to discuss it. Based on Mr. Imai's statement below, we are thinking of creating a separate compliance committee and having Effissimo participate in it as a mechanism to strengthen compliance. We also recognize that the acceptance of one candidate is the final negotiation tool. We would like to discuss with you when we will make these efforts,” etc.

On June 2, Mr. Toyohara and Mr. Kamo had a conference call with Effissimo and proposed the establishment of a compliance experts' committee with Mr. Takeuchi and Mr. Sugiyama as members. However, after the meeting, Effissimo informed Toshiba that Mr. Takeuchi and Mr. Sugiyama were determined to become candidates for the Board of Directors based on the shareholder proposal, and therefore, they intended to decline

⁵⁶ Regarding the policy, Mr. Ota said, “They are also fully aware of the influence from Kasumigaseki, so I think they will find a way to compromise. We will be watching the outcome of the negotiations”. In response to Mr. Sakurai's later comment (in an email to Mr. Sakurai on June 18) he said that the "Compliance Advisory Committee" was being considered for establishment at Toshiba as a result of the policy, Mr. Ota responded, “The 'expert committee' started as a way to deal with Company E. In response to Mr. Sakurai's statement that “it started as a way to get Company E to drop its proposal” (Mr. Sakurai's e-mail of June 18), Mr. Ota said, “We started this 'experts' committee' as a way to counter Company E” (Mr. Ota's e-mail of June 18).

Toshiba's proposal.

On June 3, the Security and Trade Management Policy Division asked Effissimo's attorney to meet with Effissimo for an interview, claiming that the fact that he had met with Outside Directors before receiving "provisional permission" from METI was a violation of the covenant regarding personnel involvement.

On June 4, Mr. A and Effissimo held a conference call. In the conference call, Mr. A said, in general, "Toshiba's proposal to Effissimo regarding compliance is commendable," "However, Effissimo's insistence on having a set of four candidates is getting out of hand and may attract the attention of the market," and "We have been trying to talk to the regulators to keep them calm, but we can no longer control the situation. I have heard that not only METI but the government as a whole will start investigating the facts, including the FEA. The government does not want friction to occur during the Coronavirus crisis. We have been trying to explain to the people in the government why Effissimo is insisting on the shareholder proposal, but it is becoming difficult to behave that way with the government. "From our conversation today, I accept that you will not change your view that four candidates need to be a set. However, it would be unfortunate if the Company proposal and the shareholder proposal do not match in a company like Toshiba, which attracts a lot of attention, because it would have an impact on the entire economy. We can't provide any more support from within the government," he said, " I think this will be theatrical, and we are concerned that it will be sensational."

On June 4, Kurumatani sent an SMS to Mr. T3, HR, saying, "We must get Effissimo to voluntarily withdraw two of their recommended candidates. Please find out Mr. Takeuchi's lawyer's weak point. Kao as well," and instructed him to investigate.

On June 5, the Security Trade Control Policy Division held a conference call with Effissimo to obtain information on the violation of the covenant and to ask about the facts and other circumstances.

On June 11, Director-General K2 and Director K1 visited Toshiba headquarters and met with Mr. Kurumatani.

On June 15, the Minister of Finance and the Minister of Economy, Trade and Industry issued an order to the attorney representing Effissimo designating Effissimo as requiring a report on the status of inward direct investment, etc. and requiring the submission of the report by the Minister of Finance and the Minister of Economy, Trade and Industry pursuant to Article 7, Paragraph 5 of the Order on Inward Direct Investment (hereinafter referred to as the "Report Requisition Order Addressed to Effissimo"). (According to the letter of explanation of the Minister of Finance and the Minister of Economy, Trade and Industry in the request for review of the Report Requisition Order Addressed to Effissimo on June 22,

the reason for the disposition was that the meeting with the Toshiba directors was conducted in violation of the Paragraph 4 of the "Matters to be observed as a method of management involvement in the acquisition or discretionary management" (hereinafter referred to as the "Covenant") stated in the "Notification Concerning Acquisition of Shares, etc." (hereinafter referred to as the "Advance Notification Form") dated November 10, 2017.⁵⁷), and that Effissimo had sent a letter to Toshiba shareholders requesting "collaborative engagement", and it was necessary to confirm whether or not agreement to jointly exercise voting rights has been acquired).

On June 16, Toshiba met with Effissimo and informed them that the Nomination Committee would make a decision on the director nominees for the Company proposal on June 19, or June 25 at the latest, but that the nominees related to Effissimo's shareholder proposal would not be adopted for the Company proposal and that Effissimo's shareholder proposal would be announced to the outside world on the same day. On June 18, Mr. Kamo told Mr. T1, Strategic Planning, "I think we should give 3D the same kind of warning as Effissimo. Please tell them that if the Board of Directors does not accept the proposal tomorrow, the shareholder proposal will be issued without any revision.

On June 17, Director K1 reported to Toshiba that "Effissimo contacted us today saying they wanted to talk to us at 8:00 p.m."

On June 17, Effissimo telephoned Mr. A and held a conference call with him. In the conference call, Effissimo said that as the regulators had taken action and Toshiba would release Effissimo's shareholder proposal as early as June 19, Effissimo would consider revising its shareholder proposal paying maximum attention to METI's concerns. In response to this, Mr. A said, in general, "If it is made public that there is a conflict with the shareholder proposal, there is a high possibility that it will become a proxy fight," "I have reported this as the perception of the entire ministry after sorting it out not only with my department but also with the regulatory authorities," and "Based on the perception of the ministry, adding four more Outside Directors when there are 10 Outside Directors is wrong." "I think there is a different reason behind sending in four Outside Directors and also to 'vote down' the CEO's

⁵⁷ As a summary of the relevant parts of the case, Effissimo, the notifying party, is prohibited from engaging in personnel affairs (other than voting) with respect to the "management of the issuing company and its subsidiaries" as long as it holds 10% or more of the total number of issued shares. In the event that the need for personnel involvement arose, Effissimo pledged to confirm with the Security Trade Control Policy Division at least one month prior to the involvement that the involvement would not affect business related to security-sensitive products and technologies, and that they would withdraw the involvement if it resulted in the involvement affecting business related to security-sensitive products and technologies. The fact that Effissimo met with Outside Directors without obtaining prior confirmation was suspected by the Security Trade Control Policy Division to be a violation of the above covenant regarding "personnel involvement."

position,⁵⁸ for the outward reason of strengthening compliance. In other words, I believe that the real purpose is to break the balance of the current management team and sell off the business by bringing yourselves in as directors. This is also how the regulators view it. They are very concerned about the impact on national security-related businesses as a result of a sell-off,” he said. “It is quite unusual and quite serious for METI and MOF to jointly issue a request for a report. However, if Effissimo would like to change its behavior, claiming that the regulators’ concern is a misunderstanding, I would like to explain it to them and the Ministry of Finance.” In response to this, Effissimo said that such concerns were a misunderstanding, but that they thought it was not good for various people to have concerns based on what he had just said, and that they would like to consider revising the shareholder proposal, and that although they might not be able to do it by the day after tomorrow, they could promise to revise the proposal significantly, so they would like Mr. A to ask Toshiba to postpone the Nomination Committee's decision to the 25th instead of the 19th. Mr. A said he would contact Toshiba himself, and that in Japan, shareholder proposals become a big drama, so there were serious concerns about doing this during the Coronavirus crisis, and even if it was a fair and honest proxy fight, the public would not read it that way, and that the regulatory authorities, the Ministry of Finance and the entire government had made their decision, but that if Effissimo could present a revised proposal for strengthening compliance, he would take that to the regulatory authorities.

By 11:41 a.m. on June 18, Director K1 told Mr. Toyohara that “yesterday at 8:00 p.m.” he and Director K1 were discussing “the situation at Effissimo,” that “Effissimo is getting a little freaked out,” and that Director K1 said, “It’s strange to have a four-person proposal for a compliance issue. I can’t help but think they want to tear Toshiba apart, so report requisition order. Toshiba will make a decision on Friday the 19th. It won’t stop at this point. We have also reported to METI,” and Effissimo said, “We would like to consider changing our proposal, and we will contact the company during the morning of Thursday the 18th.”

On June 18, Effissimo informed Mr. T1, Strategic Planning that it would revise its shareholder proposal by June 21 and asked the Nomination Committee to postpone its decision until June 25—that it would withdraw at least one shareholder proposal—and sent him a letter of partial withdrawal of the shareholder proposal which included the withdrawal of the shareholder proposal to nominate Mr. Kosaka as a candidate for director. (The letter was stamped and submitted to Toshiba on June 19).

On June 18, Mr. A and Effissimo had a conference call. During the conference call,

⁵⁸ The Japanese term “vote down” is used in the context of a proposal to elect directors that is rejected as a result of a vote and not elected. Depending on the situation, the expression “board down” is also used with a similar meaning (to separate a member from the board – cause them to step down).

Effissimo stated they would withdraw their shareholder proposal if they could reach an agreement with Toshiba that either Mr. Imai or Mr. Takeuchi and Mr. Sugiyama would be the candidates for the company's shareholder proposal, but if not, they would maintain the shareholder proposal with three candidates. Mr. A stated that he wanted to avoid the shareholder proposal being publicized and causing a fuss, and that reducing the number of board candidates would not dispel concerns; that the Minister of Finance and the Minister of Economy, Trade and Industry had reached an agreement and the process was underway, and that reducing the number of board candidates by one would not make it alright; and that it would not dispel concerns over a proxy fight, that even though Effissimo intends to have the shareholders make a fair decision at the shareholders meeting, with the government about to invoke some of the FEA, the world will not see it that way if the company and the shareholders have conflicting opinions, that it would damage the reputation of Effissimo if Effissimo intended to continue investment activities centering on Japan, that the regulatory authorities shared the views he had expressed yesterday, and that even proposing one director candidate would mean they could vote down the current top management and add candidates at an extraordinary shareholders meeting, etc., so even reducing the number of candidates might not satisfy the regulatory authorities. On June 19, Toshiba's Nomination Committee decided to postpone the resolution on the company's proposed candidates to June 22, and Mr. T1, Strategic Planning informed Effissimo of the postponement and asked them to submit any amendments to the shareholder proposal by June 21.

On June 19, Mr. A and Effissimo had a conference call. During the conference call, Effissimo stated that they had decided to keep the shareholder proposal as a three-member proposal because Mr. A had said on the June 18 conference call that reducing the number of candidates for the board would not eliminate his concerns. Mr. A replied "if that is the case, you shouldn't have asked me to help extend the deadline to the 21st". "As a general principle, I have to question your request", and "As a member of society, if that is the case, I wish you hadn't made such a request to me." He further stated that it was his hope that a large company like Toshiba would not be destabilized, but that if a company like Toshiba had a conflict between the Company proposal and the shareholder proposal, it would result in an argument, which he believed was not desirable amid the current Coronavirus situation, and that he would have liked them to find some sort of common factor through discussion with Toshiba, the fact that the largest shareholder is adding four additional Outside Directors when there are ten Outside Directors does not seem to be the right balance, and if they are also asking for Kurumatani's dismissal, it seems that the real purpose is to destroy the balance of the current management team and sell-off the business. He also stated that not only the regulatory authorities but also the government as a whole was aware of the fact that selling

off the business would naturally have an impact on the national security businesses.

On June 21, Effissimo sent a letter to Toshiba stating that it would maintain the three shareholder proposal candidates.

On June 22, Toshiba disclosed the convocation of this annual general meeting of shareholders and its opposition to shareholder proposals. Proposal 1 of the AGM (partial amendment to the Articles of Incorporation) incorporated the proposal by Argyle, and Proposal 2 (election of four foreign directors) incorporated the proposal by Farallon. With this disclosure, the facts of the shareholder proposal by 3D (Proposal 3) and the shareholder proposal by Effissimo (Proposal 4) were made public.

b. METI's approach to 3D

On May 26, Mr. T1, Strategic Planning informed 3D that Director K1 wanted to contact him and that he would provide 3D's e-mail address to Director K1.

On Thursday, May 28, a responsible member at METI⁵⁹ who was introduced by Toshiba, sent an e-mail to 3D requesting a meeting this week or early in the next week to exchange opinions on capital market movements, etc. Although 3D replied that it would prefer a meeting one or two weeks in the future, the responsible member at METI requested an early meeting and asked if it would be possible to have a meeting late at night or early in the morning for 15 minutes. It was decided to hold the conference call on June 4 after confirming the agenda of the conference call between the legal advisor and the responsible member at METI in advance from the standpoint of compliance risk (in order not to receive information on individual stocks) and obtaining the responsible member at METI's prior approval for the legal advisor to attend the conference call.

At 8:30 a.m. on June 4 (Japan time), a conference call was held between 3D and the responsible member at METI (two 3D legal advisors also participated).

According to the record of 3D's legal counsel who participated in the conference call, the conference call started with a question from the responsible member at METI about how the capital market for the Coronavirus crisis should function, and then some time was spent on explaining 3D's investment philosophy. When the name of Toshiba came up, the responsible member at METI asked about 3D's assessment of Toshiba, to which 3D replied that they appreciated the company's direction but that Toshiba had not established a relationship of trust with the capital market and that 3D would like to cooperate in this.

In response, the responsible member at METI said that there were some investors who superficially emphasize the importance of corporate social contribution, but in reality

⁵⁹ Although his name is not specified in the information provided, given the existence of the e-mail obtained from Toshiba on May 26 above, it is recognized that this METI official is Director K1

behave in a completely different way, and that METI and MOF were talking about applying various regulations, including the FEA to such investors, and that they were working on specific cases. He also mentioned that the atmosphere was quite tense to see if there were any other cases.

At the request of METI, a teleconference was held again at 8:30 a.m. on June 17 between 3D and the responsible member at METI in question (two 3D legal advisors also participated).

According to the record of 3D's legal counsel who participated in the conference call, the call started with a question from the responsible member at METI about how 3D viewed the current market compared to the previous meeting. During the meeting, the responsible member at METI asked about the status of communication between 3D and Toshiba and another company in which 3D has invested.

The responsible member at METI said that nearly half of Toshiba's shareholders, who are also known as activists, are likely to have relatively positive opinions about the company, and that the policy makers want Toshiba to return to the First Section of the Tokyo Stock Exchange as soon as possible. It would be undesirable to delay the return to the First Section of the Tokyo Stock Exchange. The responsible member at METI also began to say that the FEA was being strengthened from the perspective of national security, and that although he was not from a regulatory authority, the FEA was currently being invoked in connection with Toshiba due to procedural problems. He mentioned that the authorities were checking some investors a little more strictly under the FEA, and that he wanted 3D to avoid getting caught up in that.

When 3D asked him if he had any concerns about 3D, the responsible member at METI in question stated that it was not about 3D, so 3D stated that he did not want to hear about other investors.

In response, the responsible member at METI said that, although he could not go into details, there had been some procedural problems with foreign activists in relation to Toshiba, and he hoped that 3D would not get involved in such problems. The government is very interested in companies like Toshiba that are important for national security reasons, and was taking strict measures against some investors.

The responsible member at METI said that another investor, not from 3D, had also discussed the matter with Toshiba to avoid making a Company proposal, that there was talk of the FEA in relation to the other investor, that there were procedural flaws, and that there were situations that needed to be controlled, and that he hoped that other investors would not get involved. Even if 3D is having a good discussion with Toshiba, there are some things that are not so good, and if you are having a barbecue when a big fire next door, so to speak,

it may not be enough, so to be careful not to become involved (the responsible member at METI referred to the big fire analogy several times). In addition, despite saying he was not from the regulatory authority for the FEA, so he did not know about it, he warned that a mistake in the procedure would lead to big trouble.

c. Communication with the HMC

(1) Hardening of HMC's attitude

On May 26, FA informed Mr. Toyohara and others by e-mail titled "Harvard (preliminary report)" that HMC had refused to hold a conference call with Toshiba and expressed its preference for dialogue by letter. Mr. Toyohara and Mr. T2, Legal wondered about this reaction and speculated about HMC's intentions, comparing it with the fact that HMC had accepted a conference call the previous year.⁶⁰

On May 26, Toshiba hurriedly had its FA draft a reply to HMC's March 3 letter, to which Toshiba had not responded before, and on May 28, following the draft, Toshiba told HMC that it had to be careful about capital allocation during the COVID-19 pandemic, that it was not in a position to comment on the timing of the IPO for Kioxia, that it was trying to maximize profits for shareholders, and that it could not commit to a share buyback, but there would be announcement on June 5, and that they wanted to talk after that.

In its response to the letter, HMC sent a letter dated June 1 stating that HMC was deeply disappointed in Toshiba's management and Board of Directors, that it regretted

⁶⁰ Mr. Kamo stated that around this time he reported to METI that he was having trouble communicating with HMC, and METI gave him the name of Mr. M, claiming he was someone with connections to HMC. In addition, although the relationship between the two parties is unclear, from June 3 to 7, a proposal to add a candidate for Outside Director proposed by the company temporarily surfaced and additional candidates were considered due to concerns that the Board of Directors would be led by the directors proposed by the shareholder if the shareholder-proposed candidates for director were elected at the AGM. At that time, Mr. Kurumatani mentioned Mr. M's name as one of the additional candidates, but in the end, the idea of adding a candidate itself was quickly dropped. In this regard, Mr. Kurumatani stated that the person in charge of the personnel search firm orally recommended Mr. M. However, the person in charge of the search firm at that time (who is now retired) was not acquainted with Mr. M in the first place and cannot be considered to have recommended Mr. M to Mr. Kurumatani. She stated that she did not record the recommendation of Mr. M to Mr. Kurumatani in her internal database of recommendations, which includes verbal recommendations. Since the timing of the recommendation was close to the time when the name of Mr. M was given to Mr. Kamo by METI, the possibility that there was some direct communication between Mr. Kurumatani and METI cannot be denied. On this point, Mr. Toyohara said, "I remember well Mr. Kurumatani explaining that when he was seconded from Sumitomo Mitsui Banking Corporation to the organization that established the compensation scheme for the Fukushima Daiichi Nuclear Power Plant, there was a person from METI who was also seconded, and that is how we formed a deep relationship." On the other hand, Mr. Toyohara also said "I don't know whether Mr. Kurumatani was in contact with METI through a different route when I was in charge of contact with METI. At least, I was not aware of any such thing. If there was, he may have been on the phone directly with someone or something, but I have no idea."

Toshiba's delay in responding to the letter sent in early March and that no substantive or meaningful consideration was given to the contents of the letter, and that it is deeply concerned by such a response, stated that the efforts regarding the three proposals mentioned in the March 3 letter would continue to contribute to the enhancement of shareholder value, and that Toshiba should support the reappointment of the four foreign Outside Directors. The HMC letter was also sent by Mr. Kamo to the Director K1 on June 4.

On June 10, Ms. Weissman reported to Mr. T1, Strategic Planning that HMC had contacted her asking to speak with her, but when she stated that she wanted to go through IR, the meeting was postponed. In response, Mr. T1, Strategic Planning asked Ms. Weissman to try to contact HMC, but on June 12, Ms. Weissman informed Mr. T1, Strategic Planning that HMC had informed her that it would not be possible to make direct contact with Toshiba until after the shareholders' meeting, and that the meeting with HMC was cancelled. Mr. T1, Strategic Planning informed Mr. Toyohara, Mr. Kamo, and Mr. T2, Legal about this report, and Mr. T2, Legal stated that HMC's response was "an indication that there is no room for compromise".

(2) Mr. M's contact with HMC

At around 9:14 a.m. on Friday, June 12, Director K1 informed Mr. Kamo that Mr. M was scheduled to have a "Zoom meeting" with the CIO of HMC at the beginning of the following week and that Mr. M had asked what they were going to 'add'. Mr. Kamo responded at 12:54 p.m. on the 12th, asking what he meant by 'add', and stating that Toshiba's message was: (1) that Toshiba was determined to manage its portfolio, including in the form of asset sales, and (2) the Kioxia message mentioned below (that Toshiba intends to pursue the optimal course of action to maximize shareholder value with respect to its investment in Kioxia, is currently considering realistic options to sell its shares in Kioxia, and plans to distribute a substantial portion of the profits from the sale to its shareholders).

Since the Zoom meeting was scheduled for the beginning of the following week, it is assumed that discussions between Mr. M and HMC were conducted by phone or other means between Monday, June 15 and Friday, June 19.

(3) Letter to HMC

At around 5:43 a.m. on June 22, Mr. Kamo sent a draft of a letter to HMC to Director K1 to supplement the shareholder return policy scheduled for disclosure that day.

At around 11:30 a.m. on June 22, Director K1 told Mr. Kamo and Mr. Toyohara that Mr. M had said in relation to the draft, "First of all, there is no acknowledgement of Harvard's request. Kioxia and share buybacks

are, in essence, specific measures for capital allocation, so we need to say at the outset that we are aware of them. Also, you don't understand the point about governance at all. The issue is independence, not experience as an external director, so your comments about experience with Sony and Roche miss the point. Also, since there is skepticism regarding the independence of Japanese directors, you need to say that you are including foreigners on the committee, and that since you included four people at the recommendation of activists last year, roughly a quarter of the committee has been recommended by activists, and that the opinions of those members are fully reflected and their shareholding ratios are also reflected.”

Regarding these comments, Director K1 said,

“Mr. M is the one who will negotiate with Harvard, so I would appreciate it if you could reflect his comments.

At 12:51 p.m. on June 22, Director K1 told Mr. Toyohara and Mr. Kamo that Mr. M had subsequently added,

“I expected Toshiba to have a little more sense, but this is a typical Japanese reply. It is standard practice to say at the outset that you know what the other party's intentions are. When talking to Harvard, if you don't talk about capital allocation and governance, they will assume that you don't understand the problem properly. The absence of subsequent explanation and the comments by Mr. Kobayashi's successor suggest that Harvard can tell that Toshiba does not understand Harvard's concerns.”

Director K1 then said, “Since Mr. M is determined to somehow persuade Harvard himself, I would like to ask you to take the comments below into consideration when making your revisions.”

At around 3:14 p.m. on June 22, Mr. Kamo sent a revised draft of the letter to Director K1 based on Mr. M's comments, and at around 3:56p.m. that day he said,

“I will entrust the matter to Mr. M. After all, he will be the one to persuade Harvard, so I think it would be better if he himself is convinced.”

From around 4:00 p.m. until around 8:00 p.m. on June 22, several drafts of the letter were exchanged between Director K1, on one hand, and Mr. Toyohara, Mr. Kamo, and Mr. T1, Strategic Planning on the other hand. Director K1 also conveyed Mr. M's comments twice.⁶¹ On 3:56 p.m. of that day, Director K1 wrote to Mr. Toyohara and the others saying, “The go-ahead has been given. Thank you very much. It appears that he will help. Praying for success,” indicating that Mr. M had agreed to the draft letter.

⁶¹ When sending his second additional comment (that the board of directors should include a statement that the proposal for a share buyback would be considered by the board of directors), Director K1 said, “We're nearly there. Could you please include this sentence? If you don't include it, it will be a risk, apparently,”

Mr. T1, Strategic Planning responded by saying that Mr. Kurumatani would seal and send the letter on the morning of June 23, and then at 8:34 a.m. on June 23, Director K1 replied, “The letter has been written with a great deal of involvement by Mr. M, so I believe he is motivated.”

On the morning of June 23, Mr. Kurumatani signed the final version of the letter, which was sent to HMC. The letter included a summary, the fact that the Board of Directors would consider a share buyback, and the fact that a proposal would be submitted for the election of four foreign candidates to the Board of Directors.

3. Communication with Voting Advisory Companies

Around the beginning of July, Toshiba conducted individual online interviews with ISS and Glass Lewis, which are voting advisory firms, to obtain their recommendations in favor of the Company proposal and against the shareholder proposals.

In mid-July, ISS and Glass Lewis issued recommendations in favor of each Company proposal and against each shareholder proposal.⁶²

C. Conflicts over the Election of Directors: From the time that the convocation notice was dispatched until the AGM

1. Dispatch of the Notice of Convocation of the AGM

On July 16, Toshiba sent out the convocation notice for the annual general meeting of shareholders.

At the meeting, the following resolutions were proposed:

Proposal 1: Amendment to the Articles of Incorporation (proposed by the company), Proposal 2: Election of 12 Directors (proposed by the company), Proposal 3: Election of 2 Directors (shareholder proposal by 3D), and Proposal 4: Election of 3 Directors (shareholder proposal by Effissimo). The convocation notice contained the opinion that Toshiba was against Proposals No. 3 and No. 4.

2. Background of Effissimo's Non-Voting on 3D's Proposal for the Election

⁶² Mr. Kurumatani stated that he expected the company's proposal to be approved and the shareholder's proposal to be rejected based on the above-mentioned recommendations by ISS and Glass Lewis, but on July 17, immediately after the release of the above-mentioned recommendations, Mr. T2, Legal told an outside expert, “Both ISS and GL have made favorable recommendations for us, thereby overcoming one hurdle. However, the situation is unpredictable because the overwhelming majority of our shareholders do not refer to voting advisory firms. Moreover, 3D has revealed to ISS that it is aiming to vote down two of the company's proposals, so the situation has become more confusing.”

of Directors

On July 15, Effissimo's attorney submitted a letter titled "Consultation on the Exercise of Voting Rights at the Company Shareholders Meeting of Toshiba Corporation" to the Security Trade Control Policy Division in accordance with Paragraph 3 of the prior notification form,⁶³ requesting confirmation on whether or not it would be permissible to vote in favor of 3D's proposal for election of directors in certain cases.

On July 22, the Security Trade Control Policy Division telephoned Effissimo's attorney, stating that the vote in favor of 3D's proposal for a director candidate was "a vote that could affect business related to products and technologies that were critical to national security."

On July 23, Effissimo's attorney sent an email to the Security Trade Control Policy Division stating that they would not vote on 3D's proposal for election of directors.⁶⁴

3. Sharing Information on the Status of Voting Right Counting and Estimation of Votes at the AGM with METI and the Chief Cabinet Secretary

a. Request for information on the status of vote counting from Director K1

On July 23, Director K1 informed Mr. Toyohara and Mr. Kamo that Director-General K2 would be called to "the hilltop" at 10:00 a.m. on July 27, and that he would therefore like to be updated "as needed" on the status of the vote counting, estimation of votes, and voting analysis (who voted in favor of E⁶⁵ or 3D, etc.).

b. Status of Daily Vote Counting and Sharing with METI, etc.

(1) Situation on July 24

The number of affirmative votes for the main candidates, based on the counting of votes as of 12:00AM in the morning on July 24, was as follows.⁶⁶

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,063,290	58,282	58,208	58,711	54,154	58,510

⁶³ Consult with the Security Trade Control Policy Division of the Ministry of Economy, Trade and Industry (METI) at least one week prior to exercising the voting right if it is as a proposal for the election of directors added by other foreign investors or there is otherwise a possibility that the exercise of such voting right may affect the management of the business related to security-sensitive products and technologies

⁶⁴ Toshiba learned of this through an e-mail from Director K1 at around 3:27 p.m. on July 26.

⁶⁵ Appears to refer to Effissimo.

⁶⁶ The total number of voting rights at the AGM is 4,518,649, and assuming a voting rate of 80%, it is necessary to obtain approximately 1.8 million affirmative votes in order to be elected.

At around 2:43 p.m. on July 24, Mr. T2, Legal reported to Mr. Kurumatani, Mr. Toyohara, and Mr. Kamo on the status of the above-mentioned counting, as well as the subsequently ascertained fact that a large number of votes against the proposal had been cast via voting platforms. Specifically, KS (145,102 voting rights) voted against Mr. Kurumatani and in favor of both the 3D Proposal and the Effissimo Proposal, and the Account of THE CHASE MANHATTAN BANK, N.A LONDON (approximately 80,000 voting rights) ⁶⁷ voted against Mr. Kurumatani and the Effissimo Proposal and in favor of the 3D Proposal.

At around 4:16 p.m. on July 24, Mr. Kamo told Director K1 that, “King and other unknown shareholders voted after midnight last night, so we are in a difficult situation.”

This led Mr. Kamo and Director K1 to exchange multiple emails regarding two points which are set forth below.

The first point related to the opposition to Mr. Kurumatani's proposal for election as a director, and the second to the impact of the split vote on the two shareholder proposals from 3D and Effissimo.

With regard to the first point, Director K1 said, “So this means that [225,000 voting rights (i.e., just under 5%) on the voting status update file as of midnight of July 24] are on board with the plan to vote down CEO Kurumatani's board, doesn't it?”

In response, Mr. Kamo stated,

“The risk of Mr. Kurumatani's board being voted down is increasing, so it has become imperative that Harvard and Farallon agree with us.”

In response to the second point, in regard to the fact that votes representing 80,000 voting rights were split between the proposals of 3D and Effissimo, Director K1 asked,

“Is this good news?”, to which Mr. Kamo said he “did not know yet”, but added, “If 3D opposes Effissimo, Effissimo's proposal will not be able to pass. On the other hand, there is still a possibility that 3D will be elected.”

Director K1 then asked,

“Can you say categorically that if 3D doesn't get on board with Effissimo, Effissimo's proposal won't pass?”

Mr. Kamo replied,

“I think the estimation of votes will be updated soon, but without 3D's 4%, I don't think it will pass.”

⁶⁷ As indicated in the e-mail, referring to the list of shareholders, this seems to refer to “THE CHASE MANHATTAN BANK, N.A LONDON SPECIAL ACCOUNT NO.1”. According to the e-mail, Toshiba did not know who was the beneficial shareholder of this account.

At around 5:02 p.m. on July 24, by way of a reply to the first point of the above exchange, Director K1 said to Mr. Kamo,

“Mr. M and Harvard are expected to be able to hold a conference call tomorrow night. However, the prospects are unclear, and it may turn into a dispute over conditions. Legal is also expected to be present, so it is difficult to say how far we can go.”

At 5:50 p.m. on July 24, Director K1 said,

“Director-General K2 and I will visit Toshiba tomorrow. We want to make sure we precisely understand their estimation of votes,” and requested a meeting at 11:00 a.m. on July 25.

At around 6:00 p.m. on July 24, Mr. Kamo sent the material she had received from FA regarding the estimation of votes analysis to Director K1.^{68 69}

When sending the document, Mr. Kamo told Director K1,

“This is the current FA vote estimate. We are still in the process of estimating the votes for each shareholder, and FA has hedged its risks. FA has estimated the minimum guaranteed votes for the Company proposal (1), while estimating the maximum number of votes for shareholder proposals (2) through (4) (3-5%), using inflated figures. Also, for the top five companies, FA assumes the worst case scenario. The voting rate is 79%.”

He continued by saying,

“Regarding actions going forward: Harvard: ask to support the Company proposal and reject the shareholder proposals (or just the 3D proposal if Effissimo is too difficult); 3D: ask to reject the Effissimo proposal; Farallon: ask to support the Company proposal; Other institutional investors: approach shareholders with unclear attitudes individually; Employees and related individual shareholders: encourage individual voting. To this end, we will continue to estimate the votes today and tomorrow, and we will complete the list of the top 100 companies (73% shareholding) and share it with you by email as soon as it arrives.”

At around 7:33 p.m. on July 24, the Director of the K1 Division replied to Mr. Kamo's message, saying,

“Please share the list of 100 companies when it arrives tonight, and I will communicate with

⁶⁸ However, the estimation of votes analysis at this point was based on the unrealistic assumption that individual shareholders would vote in favor of all Company proposals and against all shareholder proposals.

⁶⁹ In the same estimation of votes analysis, it was stated that (1) the approval rate for the Company Proposal was 53.2% (1.3% unknown), (2) the approval rate for the Effissimo proposal (Mr. Takeuchi and Mr. Sugiyama) was 49.7% (11.6% unknown), (3) the approval rate for the Effissimo proposal (Mr. Imai) was 49.7% (7.8% unknown), and (4) the approval rate for the shareholder proposal by 3D was 51.0% (13.2% unknown). (Note that hereinafter in this document “(1) the approval rate for the Company Proposal” refers to the approval rate for Mr. Kurumatani.) In the same analysis, HMC was expected to oppose (1) above, and to approve (2) through (4) above.

Mr. M.”

(2) Situation on July 25

The number of affirmative votes for the main candidates based on the counting of votes as of 12:00AM July 25 was as follows:

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,065,635	284,379	284,312	204,854	200,303	204,626
			Total		

At around 11:00 a.m. on July 25, Director K1 and Director-General K2 visited the Toshiba head office to meet with Mr. Toyohara, Mr. Kamo and others to discuss estimation of votes and other matters.⁷⁰

On the evening of July 25, Mr. M held discussions with HMC by phone and other means.⁷¹

The vote estimation analysis received from FA at around 4:00 p.m. on July 25 stated that (1) 53.8% of the votes were in favor of the Company proposal⁷² 1.3% unknown), (2) 44.1% of the votes were in favor of the Effissimo proposal (Mr. Takeuchi and Mr. Sugiyama)

⁷⁰ At the interview with the Investigators, Mr. Toyohara said that the talks were "a repetition of the story that they want Harvard to agree with Toshiba's proposal.

⁷¹ (1) At around 5:02 p.m. on July 24, Director K1 sent an e-mail to Mr. Kamo stating that "tomorrow night, Mr. M and HMC are expected to be able to hold a teleconference"; (2) until the evening of July 25, there was no mention or assumption of HMC's specific voting intentions in the exchanges between Toshiba and Director K1. On the other hand, on July 26, Mr. Kamo sent an e-mail at 5:12 p.m. that stated, "Since we have not been given any details about Harvard, please consider Mr. Kurumatani's estimation of votes of votes at plus 5.5%" and "Harvard's initial proposal (for Kurumatani, Kobayashi (and his successor, Nagayama), foreigners, in favor of 3D)". Mr. Kamo's email of July 26, 5:12 p.m. "Our preferred option is Harvard's initial proposal plus a negative vote (or abstention vote) for Effissimo" (Director K1's email of 6:30 p.m. on July 26); "Harvard's options are on pages 3-5, but because page 3 (the main scenario) has not been detailed to FA, support for the Company's proposal is low. In reality, however, the vote in favor of the Company's proposal will be 5.5% higher, since it will support Mr. Kurumatani, Mr. Nagayama, and four foreign directors" (Mr. Kamo's email of July 26 at around 7:25 p.m.), indicating that Toshiba and Director K1 knew HMC's specific intentions regarding voting behavior, and it can be inferred that feedback from Mr. M was received between the night of July 25 and the evening of July 26. (3) Mr. Toyohara's statement at the interview in this Investigation that "there were times when we were told that Harvard would support both proposals," and Mr. Kamo's statement at the interview that "I heard that Harvard was going to vote in favor of Mr. Kurumatani" shows that Mr. M had discussions with HMC by telephone or other means on the night of July 25.

⁷² The vote estimation analysis performed that same day made the unrealistic assumption that individual shareholders would vote in favor of all Company proposals and against all shareholder proposals.

(11.7% unknown), (3) 44.1% of the votes were in favor of the Effissimo proposal (Mr. Imai (10.8% unknown), and (4) 46.1% of the votes were in favor of the shareholder proposal by 3D (11.7% unknown). In the same analysis, HMC was expected to oppose proposal (1) above and to approve proposals (2) through (4) above.

(3) Situation on July 26

The number of affirmative votes for the main candidates based on the counting of votes as of 12:00AM July 26 was as follows:

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,095,323	284,490	284,426	210,597	206,042	210,336

At around 9:55 a.m. on July 26, Mr. T2 reported to Mr. Kurumatani, Mr. Toyohara, and Mr. Kamo on the status of voting rights counting described above in regard to the possibility that a motion for a continuation meeting would be submitted, and stated that,

“There is a reasonable possibility that a motion for a continuation meeting will be submitted, in order to allow shareholders to exercise their voting rights, where the passage of the shareholder proposal cannot be ruled out.”

At around 1:57 p.m. on July 26, Mr. Kamo sent a letter titled “Regarding the Company Shareholders Meeting on July 31” to Director K1, describing it as “a sheet of paper for tomorrow morning” (presumably intended as a document for Mr. Kamo's visit to the Prime Minister's Office). In the letter, Mr. Kamo wrote,

“Current status of estimation of votes at the General Shareholders' Meeting: unpredictable”; “While, with the revised FEA and with the support of the departments in charge, enough votes are being received so as to not allow for theatrics, the margin is still very small, and the situation is unpredictable”; “Company proposal: expected to achieve a majority”, “3D proposal: on the verge of failure but still too close to call”; and “Effissimo’s proposal: will not achieve a majority if the shareholders of the several companies we are currently in contact oppose it.”

In response to this communication, at around 2:07 p.m. on July 26, Director K1 replied, “I want to confirm something very basic ... If two types of no vote—'abstain' and 'do not exercise'—are possible, and each has a different effect, please inform me of the effect of each. This is an important point so we need to give correct input to Mr. M as well.”

At around 3:27 p.m. on July 26, after telephoning Mr. Toyohara, Director K1 told him and

Mr. Kamo that,

“The e-mail was sent to the authorities by E’s attorney, and it appears to say, ‘We will not exercise our voting rights in respect to the proposal for election of directors proposed by 3D.’ ... Since it is not clear whether by ‘not exercise’ they mean abstain or non-exercise, could you please check again what will happen to 3D’s results if (1) they abstain (=votes are added to the denominator and therefore synonymous with opposition) and (2) they do not exercise their voting rights (= votes are not added to the denominator)? It’s very important.”

At around 5:02 p.m. on July 26, Mr. T1, Strategic Planning received a document from FA regarding the estimation of votes analysis. The document stated that (1) 49.8%-53.5% of the votes were in favor of the Company proposal (1.3%-5% unknown), (2) 44.4% (11.7% unknown) of the votes were in favor of the Effissimo proposal (Mr. Takeuchi and Mr. Sugiyama), (3) 44.4% (10.8% unknown) of the votes were in favor of the Effissimo proposal (Mr. Imai), and (4) 46.5% (11.7% unknown) of the votes were in favor of the 3D shareholder proposal. In the same analysis, HMC was expected to vote against (1) above and in favor of (2) through (4) above.

At around 5:12 p.m. on July 26, Mr. Kamo sent Director K1 the same estimation of votes analysis and the updated information on the top 100 companies, and wrote, “We have not received detailed information about Harvard. You should therefore estimate that Mr. Kurumatani will receive 5.5% more votes⁷³... If Effissimo abstains from voting on 3D or submits a blank vote (non-vote) on 3D, then the best plan is still the original plan, and the second best plan will not be voted on.”⁷⁴

At around 5:29 p.m. on July 26, in response to Mr. Kamo’s message, Director K1 asked, “If Harvard abstains or does not exercise its right to all the proposals, what will happen to the Company proposal, Effissimo proposal and 3D proposal? We need to put that into Mr. M’s hands.”⁷⁵

In response, at 6:00 p.m., Mr. Kamo said that, assuming that Effissimo and Farallon would oppose the company’s proposal and envisaging that the unknown votes would be cast in favor of the company:

“1) If HMC only rejected the Effissimo proposal (Kurumatani, Nagayama and foreign

⁷³ This appears to mean that because FA had not been informed of HMC’s intention to support the Company proposal, actual support for the Company proposal would be 5.5% higher than stated in (1) above.

⁷⁴ The “initial proposal” here seems to refer to the message “HMC: support the company’s proposal, reject the shareholder’s proposal,” included in the e-mail sent by Mr. Kamo to Director K1 at 6:00 p.m. on July 24.

⁷⁵ This would appear to be a task assigned by Mr. M, as it is referred to below as “a task with which I was assigned”.

directors of the company voted in favor of 3D only):

Votes in favor of the company: 55.3-59.0% (1.3-5.0% unknown, 39.7% against)

Votes in favor of Effissimo: 38.9% (10.8-11.7% unknown, 49.4-50.3% against)

Votes in favor of 3D: 46.5% (11.7% unsure, 41.8% opposed) 19.4% of Effissimo assumed to be in favor.

2) If HMC did not vote:

Votes in favor of the company: 50.2-56.6% (1.4-7.8% unknown, 42.0% against)

Votes in favor of Effissimo: 41.1%-41.2% (11.5%-12.4% unknown, 46.4%-47.4% against)

Votes in favor of 3D: 43.3% (12.4% unsure, 44.2% opposed) 19.4% of Effissimo assumed to be in favor.

3) If HMC abstained from voting:

Votes in favor of the Company proposal: 49.8-53.5% (1.3-5.0% unknown, 45.2% opposed)

Votes in favor of the Effissimo proposal: 38.9% (10.8-11.7% unsure, 49.4-50.3% opposed)

Votes in favor of 3D: 43.3% (12.4% unsure, 44.2% opposed)”

At around 6:30 p.m. on July 26, based on this vote estimation, Director K1 sent Mr. Kamo a draft of the e-mail that Director-General K2 would send to Mr. M, stating, “This will be sent by Director General K2.” The contents of the draft are as follows:

“Dear Mr. M.:

As for the task you have been assigned, Director K1 and I conducted some estimation of votes and the results are as follows. Please read this.

Director General K2

1. Voting down Imai only

→No

→For the authorities, the issue is not just Imai but the entire Effissimo organization. Since it is the actions taken by the Effissimo organization that are at issue, a vote against all Effissimo proposals is desirable.

Isn't it the company's proposal to appoint four foreign nationals as external directors?

→No

→In fact, Toshiba received a proposal from Farallon and KS to retain the four members, and Toshiba responded by including this request in the Company proposal. The decision

to retain the four members was made in the course of coordination and negotiation with the activists.

3. ISS was pressured by the Japanese government to support the company's proposal and reject the shareholder's proposal.

→No

→This is completely unfounded. There is no ISS route, and we have confirmed with Toshiba that there is no such thing as pressure from the Japanese government in the discussions between Toshiba and ISS. You are free to strongly deny this allegation.

4. Possibility of no votes (vote estimation impact if Harvard chooses to abstain from all)

→All shareholders' proposals (Effissimo and 3D) will fail. On the other hand, there is also a possibility that the company's proposal is on the verge of failing.

→ Therefore, it is best to add to Harvard's original proposal {in favor of Kurumatani, Kobayashi (and his successor, Nagayama), foreigners, and 3D} a vote against Effissimo.

→ The options in order of preference are: Harvard's original proposal + Vote against (or abstain from) Effissimo > No Voting for any proposal > Abstain from all proposals.”

At around 6:59 p.m. on July 26, Mr. Kamo sent an updated version of the letter titled “Regarding the July 31 Shareholders' Meeting” to the Director K1 saying, “If there are any changes regarding Harvard, we would appreciate hearing from you by the time of the meeting with Chief Secretary tomorrow.”

The letter was amended to state that the “3D proposal ... will not achieve a majority if there are appropriate checks and balances in place against Effissimo.”

At around 7:25 p.m. on July 26, Mr. Kamo sent Mr. Kurumatani FA's vote estimation analysis materials and a revised letter titled “Regarding the July 31 Shareholders' Meeting”, which reads, “Regarding the Harvard option set forth on pages 3 through 5, while support for the main proposal on page 3 is low due to the fact that FA has not been informed of the details, in reality, the vote in favor of the company's proposal will be 5.5% higher, since it will support Mr. Kurumatani, Mr. Nagayama, and four foreigners”,⁷⁶ and “this evening Mr. M will enter negotiations with this main scenario as his first preference and a No Vote as his second preference.

⁷⁶ On the third page of the same vote estimation analysis, the estimation of votes for HMC is based on the assumption that the shareholders will vote against the company's proposal and Effissimo's shareholder proposal and in favor of 3D's shareholder proposal. Therefore, the “main scenario” referred to here, when combined with the statement that “In reality, the vote will be in favor of the company's proposal by Mr. Kurumatani, Mr. Nagayama plus four foreigners,” seems to refer to HMC voting in favor of the company's proposal and 3D's shareholder proposal and against Effissimo's shareholder proposal.

Regarding the document titled “Regarding the July 31 Shareholders' Meeting”, he said, “In regard to 3D: Effissimo and METI are negotiating to invoke the Foreign Exchange Law to persuade Effissimo not to vote in favor of 3D. Taking this into consideration, we have also revised the memo for the Chief Secretary.”

On the evening of July 26, Mr. M held discussions with HMC by phone and other means.⁷⁷

At around midnight on July 27, Director K1 told Mr. Kamo, “I waited until midnight to see if there was any contact from Mr. M, but received no contact or e-mail to speak of. I will contact you again tomorrow morning.”

(4) Situation on July 27

The number of affirmative votes for the main candidates, based on the counting of voting rights as of 12:00 a.m. on the morning of July 27, was as follows.⁷⁸

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,097,153	284,959	284,894	211,079	206,543	210,810

At around 6:21 a.m. on July 27, Director K1 wrote to Mr. Kamo, “As of 6:18 a.m., we have not received any e-mail or other communication from Mr. M. As the time before last he didn't have the energy to send an e-mail after the phone call and contacted us during the day the next day, it might be the same this time. In any case, I'll let you know as soon as I hear from him,” and “I think we'll have to proceed for the hilltop at 7:30 today without any additional information.

⁷⁷ In an e-mail sent by Mr. K1 to Mr. Kamo at around 7:25 p.m. on July 26, Mr. Kamo received a draft of a letter that Mr. K2 was to send to Mr. M. The email stated, “Regarding your assignment, Mr. K1 and I have read the votes and so on, and here they are. Please see the following”, and that “it is desirable to vote against all of the Effissimo proposals” and that “our preference for the options is Harvard's original proposal + vote against (or abstain from) the Effissimo > No Voting on all proposal > Abstain from all proposals”. (3) While there is no evidence that Mr. K1 was informed by Mr. M on or after July 27 that he did not have a meeting with HMC on the night of July 26, Director K1 contacted Mr. Kamo at around 5:48 p.m. on July 29, saying, “(Harvard is supposed to decide at the investment committee meeting on Tuesday, so I think they will exercise [their vote] today.”, shows that after holding discussions with HMC the day before (the night of July 25), Mr. M continued to hold consultations with HMC by phone and other means on the night of July 26 as well.

⁷⁸ The FA's estimation of votes analysis document dated July 27 stated that (1) 51.6%-53.5% in favor of the Company proposal (1.3%-3.2% unknown), (2) 44.4% in favor of the Effissimo proposal (Mr. Takeuchi and Mr. Sugiyama) (9.9% unknown), (3) 44.4% in favor of the Effissimo proposal (Mr. Imai) (9.1% unknown), and (4) 46.5% in favor of the shareholder proposal by 3D (10.0% unknown).

At 7:30 a.m. on July 27, Mr. Kamo met with Chief Cabinet Secretary Suga at a breakfast meeting.

At around 8:33 a.m. on July 27, Mr. Kamo reported to Director K1 about the meeting, "I spoke to him using the two attached sheets and the shareholder structure on page 7 of the 'Estimation of Votes Materials'. Though I'm sure he understood, one point that came up was the movement over the past couple of days, and I told him that the activists appear to be fragmenting with the support of METI since early Sunday morning", "There was also talk of 'if we push hard, we can catch them by the foreign exchange thing, right?' However, I said to him, 'at this point in time, the most risky thing is to make it theatrical, and it would be dangerous if individual shareholders take an interest and support the shareholder proposals. There is also the risk of motions. I would be grateful if you could make them promise various things, release them before the AGM, and then work out the details after that.'⁷⁹ The "attached" document is the one titled "Regarding the General Shareholders' Meeting on July 31." Comparing it with the version of the previous day, it has been revised to say that "with respect to the Effissimo candidates," "if a few shareholders currently in contact with us oppose the proposal, it will not exceed the majority".

At around 10 a.m. on July 27, Director-General K2 seems to have reported to Chief Cabinet Secretary Suga about Toshiba.⁸⁰

On July 27, Effissimo's lawyer was informed by the International Investment Control Office, Security Trade Control Policy Division, Trade Control Department that Effissimo could

⁷⁹ According to Mr. Toyohara, "Director K1 said, 'Even if we prolong the examination, we can't stop [it] in the end, because there is no way to stop it under the current Revised FEA. If we don't approve it and it goes beyond the date of the general meeting, there will be a lot of problems and disadvantages, so we decided to approve it before that' or something like that". It is thought that lobbying to Chief Cabinet Secretary Suga, who was interested in Toshiba, in advance, was based on such a judgment. [DGL NOTE: "it" means the exercise by Effissimo of its voting rights? I guess here you do not want to overstate what was said but you might consider replacing "it" with [exercise of voting rights] in square bracket?]

⁸⁰ According to Mr. Toyohara, "the hilltop" refers to the "Prime Minister's Office," and he stated that he had gone to the then Chief Cabinet Secretary (now Prime Minister Suga) to give a report, which in effect means the then Chief Cabinet Secretary Suga. Examining the course of the e-mails, in an e-mail from Director K1 to Mr. Toyohara and Mr. Kamo at around 4:54 p.m. on Thursday, July 23, he stated, "On Monday, after the CEO, at 10:00 a.m., Director-General K2 is being called up the hilltop. 10 minutes only, so there is a possibility that I or the Trade Bureau will not accompany him." Director K1 said, in an e-mail dated July 27 at around 6:21 a.m., "I think we have to proceed without additional information about today's 7:30 a.m. meeting at the hilltop," which clearly refers to the meeting between Mr. Kamo and Chief Cabinet Secretary Suga at 7:30 a.m. on July 27. Therefore, it is fair to judge that the "hilltop" referred to by Director K1 means the Prime Minister's Office, in effect, Chief Cabinet Secretary Suga.

proceed with the exercise of its right of instruction to exercise its voting rights, and proceeded with the instruction. On June 9, in order to vote in favor of the proposal for the election of directors proposed by Effissimo, Effissimo's lawyer submitted a "Notification of Consent to Proposals for the Election of Directors or Corporate Auditors" to the International Department, the Bank of Japan and thus filed an advance notification under the FEA. Under the FEA, the exercise of voting rights is prohibited for 30 days after the acceptance of such advance notification. In this case, this prohibition period was later extended and expired on July 29.⁸¹

(5) Situation on July 28

The number of affirmative votes for the major candidates based on the counting of voting rights as of 12:00 a.m. July 28 was as follows. According to the email sent by Mr. T2, Legal as an internal report,⁸² domestic institutional investors other than life insurance companies (in the name of trust banks) had exercised 95% of their voting rights, so had nearly completed their exercise of voting rights. 3D had exercised only 20,526 voting rights out of 186,582 voting rights (against Mr. Kurumatani, Mr. Furuta, Mr. Ota, Mr. Yamauchi, Mr. Fujimori, and Mr. Sugiyama), and about 60,000 abstentions were cast. According to the preliminary voting data from the voting platform, which had not yet been reflected, approximately 100,000 Goldman Sachs & Co. REG accounts⁸³ voted against some of the company's proposals and in favor of the shareholder proposals.

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,395,654	368,417	368,361	244,829	219,769	294,079

At around 3:03 p.m. on July 28, Mr. Kamo sent the above status of voting rights counting and FA's estimation of votes analysis materials to Director K1.

In response, at around 11:27 p.m. on July 28, Director K1 told Mr. Toyohara and Mr. Kamo, "The FA's estimation of votes (which is probably firm) continues to show that we are on thin ice. We'll give you feedback on Mr. M's evaluation tomorrow."

The FA's estimation of votes analysis document of the same day stated, as the base case, (1) 50.3% were in favor of the Company proposal (4.6% unknown), (2) 43.5% in favor of the Effissimo proposal (Mr. Takeuchi and Mr. Sugiyama) (8.5% unknown), (3) 43.4% in favor of the Effissimo proposal (Mr. Imai) (7.6% unknown), and (4) 45.5% in favor of the shareholder

⁸¹ The prior notification in this case was subject to withdrawal and resubmission procedures to correct the contents of the notification.

⁸² Email from Mr. T2, Legal, July 28, 10:02 a.m.

⁸³ Toshiba presumed that it was Farallon.

proposal by 3D (8.5% unknown) (an additional estimation of votes reflecting options as to HMC's voting behavior was also stated separately).

(6) Situation on July 29

The number of affirmative votes for the main candidates based on the counting of voting rights as of 12:00 a.m. July 29 was as follows.

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,721,230	502,605	502,579	440,408	415,368	489,574

At around 6:59 a.m. on July 29, Mr. T2, Legal reported to Mr. Toyohara, Mr. Kamo and others that Effissimo had informed them of their intention to exercise one voting right in attendance at the AGM by appointing an attorney as their proxy, to abstain from voting for Mr. Kurumatani, Mr. Ota and the four foreign directors, and not to exercise their voting rights for 3D's shareholder proposal. As a result, it became almost certain that Mr. Fujimori would be elected and that the candidates in 3D's shareholder proposal would not be elected.

In response, Mr. Toyohara asked Mr. Kamo, "I guess the most uncertain candidate is Mr. Kurumatani," and "Do you know what 'Mr. M's feedback tomorrow' is in Director K1's e-mail?" Mr. Kamo replied, "Yes, it's up to Harvard," and "I'll give you a detailed estimation in the morning."

At around 11:15 a.m. on July 29, Mr. Kamo sent an e-mail to Director K1 with the above-mentioned voting right tally as of 12:00 a.m. on July 29, the estimation of votes analysis data of the FA dated July 28, and other materials, and informed him that Mr. Kurumatani's election as a director would be "certain" if he received 30,000 votes out of 500,000 votes. In other words, assuming that 80% of the votes were cast, a majority would be achieved with approximately 1.8 million votes, but at this point, Mr. Kurumatani had 1.72 million votes, and considering that the 62,000 votes of a shareholder, which had not yet been reflected in the vote tally and were said to have been voted in favor of the company's proposal and against the shareholder's proposal, the actual number of votes won by Mr. Kurumatani was 1.78 million. He would definitely be elected if he received at least 30,000 votes out of 500,000 votes, excluding about 1 million votes of Effissimo, HMC, and 3D, out of the remaining 1.5 million. In addition, HMC was assumed not to have voted yet, but no matter how HMC exercised its power, Mr. Kurumatani was expected to be elected and both shareholder proposals would be rejected.

At approximately 2:10 p.m. on July 29, Director K1 wrote to Mr. Toyohara and Mr. Kamo, “Effissimo Company Proposal ×, E Proposal ×, 3D Proposal: Abstain⁸⁴”, “Farallon Company Proposal × (Zage abstain), E Proposal ○, 3D Proposal ○”, “3D Company Proposal ×, E Proposal ○ (Sugiyama ×), 3D Proposal ○”, “KS Company Proposal ×, E proposal ○, 3D proposal ○”, “Harvard (undecided) Company proposal partly ○ (except Kurumatani, Tsunakawa, and foreign 4: ×), E proposal × or abstain, 3D proposal ○”, and asked if he understood correctly, and at 3:23 p.m. on July 29, he wrote “I will be at the hilltop with another matter early morning tomorrow. I have created the attachment. Please check it as it may be the last one” and sent a list of estimation of votes titled “Materials for the Hilltop (Estimation of Votes)”.

In response, Mr. Kamo made classification of “oppose” and “abstain as well as some corrections to “not exercised” in the list and sent it to Director K1.

At around 5:48 p.m. on July 29, Director K1 said to Mr. Kamo, “This is roughly how it turned out. Please let me know if there is any movement tonight. (I heard that Harvard will decide at the investment committee meeting on Tuesday, so I think they will exercise it today)” and sent a list regarding estimation of votes dated “20200729_Toshiba”. In that document, it was stated that HMC would vote in favor of the company's proposal (in favor of Mr. Kurumatani, Mr. Tsunakawa, Mr. Nagayama, and the four foreign outside directors), abstain or vote against the Effissimo proposal, and vote in favor of the 3D proposal.

At around 9:40 p.m. on July 29, an employee of Toshiba's Legal Affairs Division sent a “non-voting version of the scenario” for the chairman of the AGM to an outside expert from whom Toshiba had been seeking advice on the operation of the meeting, and asked him to provide comments before the rehearsal of the AGM scheduled for the following day.

(7) Situation on July 30

The number of affirmative votes for the main candidates, based on the counting of voting rights as of 12:00 a.m. July 30, was as follows

(unit)

Mr. Kurumatani	Mr. Chu	Mr. Shimizu	Mr. Takeuchi	Mr. Sugiyama	Mr. Imai
1,842,276	810,137	810,120	1,022,746	881,559	1,071,807

⁸⁴ In fact, it was a non-exercise and this is a misunderstanding.

At around 0:44 a.m. on July 30, Mr. T2, Legal informed Mr. T3, HR and others that, according to the counting of voting rights as of midnight on July 30, HMC had not yet voted, but all of the company's proposed candidates had won a majority of votes based on the 80% exercise rate assumption.

At 8:12 a.m., Mr. Kamo informed Director K1 that, based on the latest voting status, "Mr. Kurumatani: basic vote may increase by 3~5% and exceed 60% in total with Harvard," "3D: basic vote may decrease by about 3%," and "Effissimo: no change".

Director K1 responded, "Why did the basic votes go up so much?" "It's not good to be optimistic to the hilltop, so we'll assess the situation," and Kamo said, "We are still uncertain about the extent to which Effissimo and Harvard have not yet voted, so that part is an estimate, but votes for Kurumatani-san have already exceeded the majority. We've already passed the majority," "Currently," "Harvard's account is still unexercised, so I'm assuming that all of the Harvard's votes are unexercised, but that part is uncertain," "We've raised Kurumatani-san's base vote from 51 to 53%, and if all the unknowns are included, it may just barely reach 60%. We think the increase is due to the unknown votes that came in."

At 10:31 a.m. on July 30, Director K1 told Mr. Toyohara and Mr. Kamo about the meeting at the Prime Minister's Office, "We reported pessimistically to the hilltop that there are still unknown ballots and that it is uncertain whether the turnout will be 80% or not, so we cannot make any predictions, because we can't be sure that there won't be unforeseen circumstances tomorrow," adding, "The authorities' procedures have been lifted since the beginning of this week, so there is no reason to say that they can't exercise."

4. The Annual Company Shareholders Meeting for the 181st fiscal year

The AGM was held on July 31 at 10:00 a.m. Proposals 1 and 2 were approved, and Proposals 3 and 4 were rejected.

At the AGM, Effissimo did not exercise its voting rights on all of the proposals for the election of directors proposed by 3D, and abstained from voting on some of the Company's proposals for the election of directors (including Mr. Kurumatani), while 3D voted in favor of only two of the candidates proposed by Effissimo (Mr. Takeuchi and Mr. Imai) and against one (Mr. Sugiyama). (However, some of these votes were initially treated as invalid due to Preemptive Processing). HMC did not exercise its voting rights on any proposal.

D. Developments after the conclusion of the AGM regarding the "Pressure Issue"

On September 1, Ms. Weissman was contacted by HMC by telephone, etc., and

was told that HMC did not exercise its voting rights at the AGM and that this was due to a certain person in Japan who contacted them just before the meeting. At that time, Ms. Weissman inquired about the person and the nature of the contact, but received no response.

On September 4, Ms. Weissman was contacted by HMC by phone, etc., and was told, in summary, “After the AGM, I consulted with concerned people in Japan and found out that HMC had no problem voting at this annual meeting. In the end, it seems that the person who contacted us before the AGM was a 'rogue agent' (a person who is acting on his own without official duty). We regret that we were not able to confirm this earlier and will vote at the next meeting.”

On September 4, at HMC's request, Mr. Black conducted a video conference and heard HMC explain that the reason they did not vote at the AGM was because “a person in Japan contacted us and we did not have time to confirm whether the person was acting in an official or unofficial capacity, and HMC's legal counsel advised us not to vote”. “After that, we found out that the person was not acting in an official capacity.”⁸⁵

On September 15, the Financial Times published an article about HMC's vote at the AGM, in which it was stated that Mr. M mentioned to HMC the close relationship between Toshiba and the Japanese government and the possibility that a negative vote by HMC could affect HMC's reputation.

On September 14, HMC sent a letter to all Toshiba directors regarding HMC's voting behavior at the AGM, stating only that they were unable to vote, but if they had voted, they would have voted in favor of both the director candidates proposed by the shareholders and those proposed by the board.

On September 23, Effissimo requested the Toshiba Board of Directors to set up a third-party committee consisting solely of members independent of Toshiba to investigate whether the AGM was fairly managed, referring to the counting and pressure issues. In the letter, Effissimo stated that it had questioned dozens of Toshiba shareholders and confirmed that there were several shareholders who were unable to exercise their voting rights as intended.

On October 2, Effissimo requested to have an opportunity to directly explain the contents of the above letter to the Audit Committee (letter to Mr. Kamo dated October 2).

On October 14, in response to the above request, four directors who are members of the Audit Committee (Mr. Ota, Mr. Furuta, Mr. Kobayashi, and Mr. Yamauchi) had a conference call with three members of Effissimo (Mr. Imai, Mr. Kosaka, and Mr. Sato). At this

⁸⁵ The information that Ms. Weissman and Mr. Black received from HMC was briefly shared with the internal IR department and published in the Investor Contact Report (September) dated September 25.

time, Mr. Ota asked Effissimo to disclose pressure-related information that Effissimo said it had obtained from other shareholders, but Effissimo did not respond to this request.⁸⁶

On December 17, Toshiba received a request from the Requesting Shareholders, including Effissimo, to convene an extraordinary shareholders' meeting for the purpose of electing the Investigators.

On December 23 and 24,⁸⁷ Reuters published a detailed report⁸⁸ by an anonymous source titled "METI executive advisor interferes with Harvard fund at Toshiba's July shareholders meeting, a source said",⁸⁹ on the communication between Mr. M and HMC before the AGM.

On December 23, citing the Reuters article on his Twitter account, Mr. M posted, "I am a special adviser at METI, a senior fellow at Harvard, and have a long term relationship of trust with the foundation, and I do consult with them on this basis. It is extremely regrettable that this article, which is based on the testimony of a source on condition of anonymity, is written as if the CEO and CIO were threatened by me at METI to decide the policy on the exercise of voting rights.

On January 22, 2021, the Audit Committee decided to investigate, with assistance by an outside law firm ("Law Firm A"),⁹⁰ whether Toshiba was involved in the undue

⁸⁶ According to Mr. Ota, although the board of directors discussed the above request from Effissimo to establish a third-party committee, the topic of pressure on the exercise of voting rights did not come up at all in the several dialogues that the business side had with HMC at the time, and not a single shareholder reported to the company that they had been subjected to undue pressure. In such circumstances, the establishment of a third party committee with an unrestricted scope of investigation (Effissimo had requested an investigation in accordance with the Japan Federation of Bar Associations guidelines) would not be in the best interest of the company in light of the time and cost required, and the board concluded not to accept the request. Also, according to Mr. Ota, the Audit Committee did not take any action, such as conducting its own investigation, in the absence of any specific clue of undue pressure.

⁸⁷ After Reuters published the article on December 23, it was updated on December 24 with an additional entry about Mr. M's Tweet.

⁸⁸ According to Mr. Ota, this report was the first time that he became aware of the issue of pressure on HMC as a concrete story, and over the New Year days, many similar reports were made by leading news media in Japan, which gradually led him to believe that a full-scale investigation was necessary.

⁸⁹ The article was updated after its initial publication, citing Mr. M's Twitter comment. The title of the updated article, which is available on the web at the time of writing this report, is "Toshiba shareholders meeting this summer, METI executive advisor interferes with Harvard fund: official" (source: Makiko Yamazaki, "Toshiba shareholders meeting this summer, METI executive advisor interferes with Harvard fund: official," Reuters (December 23, 2020) (<https://jp.reuters.com/article/toshiba-meti-harvard-idJPKBN28X0PW>, last visited May 24, 2021)).

⁹⁰ According to Mr. Ota, the business side of Toshiba had a relationship with Law Firm A, from which they received legal advice on a daily basis. However, in order to have a sufficient investigation conducted in a short period of time, it was desirable to ask Law Firm A, which was a large-scale firm with a lot of experience in this type of investigation work, to conduct the investigation, and the Audit Committee thought it would be no problem to have other lawyers belonging to the same firm conduct the investigation, if separated by a wall from other lawyers advising the business side on a daily basis. In this regard, even if a wall was set up regarding the

interference, if any, with HMC's voting rights reported in the December 24 Reuters article.⁹¹ In parallel with the investigation by Law Firm A, Mr. Ota said that he had read all the e-mails that Law Firm A had targeted for investigation.

On February 5, 2021, Mr. Ota, as Chairman of the Audit Committee, sent a letter to HMC requesting that HMC respond to him by 12:00 a.m. on February 10, 2021, with specific information on whether there was undue pressure and the nature, doer, date and time of the pressure.

On February 6, 2021, Mr. Ota and Mr. Furuta met with Ms. Weissman, Mr. Black, and two other foreign directors and explained the outline of the draft report on the above investigation by Law Firm A (hereinafter referred to as the "Report A") and the Audit Committee's view based on it.

On or about February 8, 2021, an English translation of the draft Report A was provided to the foreign directors.

On February 9, 2021, Mr. Black, through Mr. T1, Strategic Planning, stated to Mr. Ota that he had read the draft Report A and was aware that there had been quite frequent communication with METI, and proposed to state that there were more than usual communications and requests for information partly due to the timing of the revision of the FEA and partly due to the nature of the shareholder proposals at Toshiba's annual general meeting.

On February 9, 2021, HMC sent a letter to Mr. Ota stating that in the days prior to the 181st Annual Company Shareholders Meeting, it had received a request from a person unrelated to HMC for an unsolicited meeting regarding the Toshiba election, and that as a courtesy it had agreed to the meeting, but had found the exchange to be extremely inappropriate in both content and timing, and had decided not to vote.

On February 10, 2021, Mr. Ota sent a letter to HMC requesting a response by 12:00

distribution of information, as long as the investigation was conducted by a lawyer belonging to the same firm, the Investigators cannot deny the possibility that the investigation would be affected by risks such as the loss of work for the business side of Law Firm A due to the reporting of investigation results that go against the business side's wishes. In light of the fact that the Audit Committee conducted the investigation against the backdrop of the shareholder's proposal to appoint an investigator, without accepting the investigation by a third-party committee, which was also the reason for the opposition to the proposal, the choice of the law firm to conduct the investigation is not without question.

⁹¹ According to Mr. Ota, Toshiba considered various options, including conducting a questionnaire survey of shareholders regarding the existence of pressure and other issues. In the end, however, the investigation was limited to the existence of undue pressure on HMC and Toshiba's involvement in it because the issue viewed with suspicion by press was undue pressure on HMC and the time before the extraordinary shareholders meeting was limited.

a.m. on February 12, 2021, regarding the specifics of such contact, why they felt it was inappropriate, and whether or not the person who made the contact was affiliated with Toshiba. No response was made to this letter.

On or around February 11, 2021, Ms. Weissman, Mr. Black, and Mr. Brough met again with Mr. Ota and Mr. Furuta, and Ms. Weissman and others emphasized that direct inquiries to HMC should be made firmly, and also expressed surprise at Toshiba's extremely close communication with METI.⁹²

On February 12, 2021, Mr. Ota sent a letter to HMC requesting that HMC respond by February 16, 2021 (U.S. time)⁹³ only whether or not the person who contacted HMC was affiliated with Toshiba. No response was made to this letter.

On February 17, 2021, the Audit Committee submitted to the Board of Directors the "Audit Committee's Opinion in regard to ECM's Demand for Convocation of General Meeting of Shareholders". In this "Audit Committee's Opinion in regard to ECM's Demand for Convocation of General Meeting of Shareholders," the Audit Committee stated (1) that it had requested specific information from Effissimo on October 14, but the request was rejected, and (2) that on January 22, 2021, the Board of Directors decided to conduct an investigation, with assistance by Law Firm A, focusing on whether or not Toshiba was involved in the unfair interference with HMC's exercise of voting rights, if any, as described in the Reuters article of December 24, by examining documents related to the Company, interviewing three executives related to the Company, and reviewing e-mails. As a result, the Audit Committee determined that, as far as the evidence confirmed in the investigation was concerned, there was nothing to suggest that HMC had been subjected to undue pressure regarding the exercise of voting rights at the AGM, and that the Company was not involved in undue interference, such as trying to put undue pressure on HMC. (3) As a result of the inquiry to them, HMC replied, "In the days prior to the AGM, we received a request from a person not affiliated with Harvard Management Company for a meeting regarding the Toshiba election that we did not want. We accepted the meeting request as a matter of courtesy and found the exchange to be highly inappropriate in both content and timing, and decided not to vote", but did not provide specific information. The Audit Committee stated that they had decided that it was not appropriate to ask the Board of Directors to delay its decision any longer, and

⁹² According to Mr. Ota, he explained that the former was being dealt with and gained understanding, while the latter was due to background circumstances, such as the need to maintain a close relationship with METI due to the breadth of Toshiba's business scope and especially in relation to national security, and the fact that the company could not antagonize the government.

⁹³ The previous Monday had been a public holiday, and the holiday weekend was over. The Audit Committee had arranged to postpone the date of the Board of Directors' meeting to February 17, 2021, when it would decide to call an extraordinary shareholders meeting.

that it was appropriate to recommend to shareholders that they oppose the shareholder proposal regarding the appointment of the Investigators.

On February 17, 2021, the Board of Directors of Toshiba resolved to convene EGM on March 18, 2021 and stated that (i) Effissimo had not clarify the contents and grounds of specific suspicion, (ii) the Audit Committee appointed an “outside law firm” to examine and investigate whether Toshiba was involved in the unjustified interference with the exercise of voting rights by the major shareholders with respect to the exercise of voting rights at the AGM by examining relevant materials, interviewing several senior executives of the Company, and reviewing e-mails by the outside law firm, but no material nor information was found indicating Toshiba's involvement in unjustified interference such as by causing unjustified pressure, and (iii) it had made inquiries to the relevant major shareholder regarding the undue pressure that Toshiba was involved in with respect to the exercise of voting rights at this AGM, but no specific information was provided. The Board of Directors resolved to oppose the proposal for the appointment of the Investigators and disclosed this fact.

On March 3, 2021, ISS issued an opinion recommending approval of the proposal for the election of the Investigators in this case at the EGM on March 18, 2021. According to the report published by ISS, ISS met with HMC⁹⁴ on February 24, 2021, Effissimo on February 25, 2021, Farallon on February 25, 2021, and Toshiba on February 26, 2021.

On March 10, 2021, Mr. Yamauchi sent an e-mail to Mr. Ota stating, “I have read over the report by Law Firm A. If it is disclosed to the public, it will make the METI's methods and close relationship with Toshiba known to the public, which is not in Toshiba's best interest”. The attachment to the email said, “ 'By the Report Requisition Order from METI, Toshiba has been sharing elaborated and detailed information with METI, including the expected estimation of votes for the shareholders meeting'. The question is whether this information sharing is 'acceptable under the revised FEA, which is meant to protect Japan's national security',” and “it could be read as if 'METI did not want the Board of Directors to be confused by CEO Kurumatani's Vote Down and the inclusion of a shareholder-proposed candidate on the board, and that's why they appointed Mr. M to put pressure on HMC' thereby set up dark arts.” It concluded, “The report's conclusion is that 'there was no undue pressure involving Toshiba. There was no direct communication between Toshiba and Mr. M. Toshiba was not even able to talk to HMC and was not in a position to exert pressure on HMC'. This

⁹⁴ According to the published ISS report, the meeting with HMC was "Initiated By" "Shareholder," as HMC requested to be the first to talk, prior to Effissimo, the Requesting Shareholders, and Toshiba.

conclusion is that 'No information was obtained from HMC or otherwise which indicates Toshiba's involvement in the Pressure Issue'. This is correct." "On the other hand, if this Report A is disclosed, it would mean that "METI had been listening to the estimation of votes at the general meeting and the movements of activist shareholders in minute detail, and that METI had a close relationship with Mr. M, that the information provided by Toshiba to METI had been passed on to Mr. M, and that METI knew Mr. M would contact HMC". The same attachment discussed that it would be a "possible measure taken by the Company," to tell the Investigators that "Toshiba cannot disclose any communication with the Japanese government" and that "information such as what kind of information the Japanese government will request from core and designated industries in relation to the enforcement of the revised Foreign Exchange and Foreign Trade Law is sensitive information related to national security and Toshiba is not allowed to disclose this information," but that "Toshiba will not be involved in any way when investigators go to the Ministry of Finance or the Ministry of Economy, Trade and Industry to seek information." The attachment added, "The decision will be made after considering whether it is in Toshiba's best interest to have a report that says Toshiba refused to disclose the information, or to have METI accused or denounced by investors".

At the EGM on March 18, 2021, Toshiba responded as a blanket answer to the prior questionnaire, "We have not discovered any fact that any officer or employee of the Company has directly or indirectly requested Mr. M to do anything in relation to the exercise of voting rights by shareholders of the Company".

V. Analysis and Evaluation of the Pressure Issue

A. Background of the Pressure Issue

1. Status of Toshiba Prior to the AGM

As of the time before the AGM, more than 60% of Toshiba's voting rights were held by foreign corporations, etc. (excluding individuals), and Toshiba had to obtain the approval of foreign investors in order to operate the AGM.

In this context, in January 2020, 24 cases of fictitious and circular transactions were uncovered at TSC, a Toshiba subsidiary, over a five-year period from 2015 to 2019, and in February 2020, an investigation report (but not a report by a third-party committee) was published.

Effissimo, Toshiba's largest shareholder, took a critical stance on the TSC fictitious/circular transaction issue and Toshiba's subsequent handling of the matter. From

around March 2020, Effissimo began to inform Toshiba of its concern that the investigation was avoiding the essential issues, requested interviews with all directors, and mentioned the possibility of making shareholder proposals in some cases. (In November 2017, Effissimo subscribed to a third-party allotment of new shares, which exceeded 10% of total voting rights, and filed an advance notification at the time of acquisition. At that time, Effissimo had stated in part of the notification form, as requested by the authorities, that it would pledge to consult with the Security Trade Control Policy Division of the Trade and Economic Cooperation Bureau of METI one month in advance and to receive confirmation that there were no national security concerns, with respect to the exercise of voting rights (not including abstentions) against the company's proposals, requests for the appointment of directors, and involvement in the personnel affairs of the management. As a result, Effissimo was not able to exercise its shareholder proposal right until mid-May).

In addition to Effissimo, 3D, Farallon, and Argyle have made shareholder proposals to Toshiba regarding the AGM (in addition, KS and others made shareholder proposals in 2019, and as a result of dialogue, Toshiba had elected four foreign outside directors as a Company proposal that year). However, the interests of each shareholder and the content of their proposals vary, and the investigation did not find any evidence of collaboration in agreeing to jointly exercise voting rights or making shareholder proposals.

2. Revised FEA

In November 2019, the FEA was amended, to take effect on May 8, 2020. The amendments are intended to harmonize the promotion of investment and the prevention of outflow of technical information critical to national security. The main points of the amendments were: for tightening regulations, the system for advance notification at the time of acquisition was extended (an agreement to proposals for appointment of persons with a certain relationship, such as a representative, as director, etc. and agreements to jointly exercise voting rights became the subject of advance notification) and for easing of regulations, a system for exemption from advance notification at the time of acquisition was established (the threshold for advance notification at the time of acquisition was lowered from 10% to 1%, while the scope of exemption and ex-post reporting was expanded. The exemption does not apply to advance notification at the time of action).

In the deliberations in the Diet at the time of the legislation, it was stated that the purpose of the amendment was to “further promote sound foreign investment and other activities” and “prevent situations such as the leakage of information technology related to national security and the loss of business activities in advance”. “We have limited restrictions on the exercise of shareholders' rights to the minimum necessary in light of the purpose of

the law,” “we will not add restrictions on dialogue between shareholders and companies,” “based on stewardship,” and “sound and constructive dialogue between shareholders and companies” is “extremely important from the perspective of enhancing corporate value”. “I would like to emphasize again that the amendment to the law does not intend exclusion of activists”, “I have already said many times that the amendment to the law is not a law to exclude activists” (these are the answers of Taro Aso, Minister of Finance), “The restriction of shareholders' rights under the amendment is limited to acts that may damage national security or lead to the damage of national security, and does not restrict any other exercise of shareholders' rights or dialogue with companies in general”. “The purpose is to prevent the leakage of technology and loss of business activities related to national security, etc., so with respect to shareholder’s proposal at the shareholders' meeting and the appointment of directors, it is limited from this perspective and does not impose restrictions on the exercise of shareholder rights that are not related to national security in general”. (This was the reply of the Director General of the International Bureau of the Ministry of Finance.)⁹⁵

As described above, the Revised FEA, at least in the opinion of the drafting officials, restricts the rights of shareholders to the minimum extent necessary to prevent the leakage of technical information and loss of business activities related to national security, etc. It does not restrict the exercise of shareholder rights or corporate dialogue with shareholders that are not otherwise related to national security, nor was it intended to exclude so-called activists.

B. Pressure Issue related to the exercise of the shareholder proposal right

1. Outline

In this Investigation, it was suspected that Toshiba had improperly worked against Effissimo regarding the exercise of its shareholder proposal right. In other words, in this Investigation, the Investigators found materials that suggest that the interests of the Toshiba management and the Ministry of Economy, Trade and Industry (especially the Commerce and Information Policy Bureau) coincided. Toshiba management expected that the Revised FEA would enable them to take measures to counter activists, and METI stated that the disruption of Toshiba's management due to a proxy fight during the COVID-19 pandemic was a policy concern from the perspective of corporate management stability and employment maintenance. The two parties worked closely together to prevent Effissimo, which had raised compliance issues related to the TSC accounting fraud problem and hinted at the possibility of making a shareholder proposal, from exercising its shareholder proposal at the AGM, and then schemed to cause Effissimo to withdraw it.

⁹⁵ Based on the minutes of the November 21, 2019 meeting of the House of Councillors Committee on Finance and Banking.

The facts pertaining to this issue are divided into two periods as follow: from March 19, when Effissimo formally contacted Toshiba, until May 15, when Effissimo notified Toshiba that it would exercise its shareholder proposal right (see “**IV. A. 1. b.**, **IV. A. 2.**, and **IV. B. 1.**”; hereinafter referred to as the “Trends before the Notification of Shareholder Proposal”) and from May 15, when the notification of the shareholder proposal right was made, to June 22, when the shareholder proposal was announced to the public (“**IV. B. 2. a.**”; hereinafter referred to as the “Trends after Notification of Shareholder Proposal”).

2. Trends before the Notification of Shareholder Proposal

The Trends before the Notification of Shareholder Proposal are outlined below. In other words, (1) Toshiba requested support for the AGM in measures to counter the activists such as the revised FEA or METI's hard-line administrative guidance based on the revised law from Director-General K2, who was Director-General for Evidence-based Policymaking, Minister's Secretariat, METI, and the IT Industry Division, Commerce and Information Policy Bureau, METI (hereinafter collectively referred to as the “Commerce and Information Policy Bureau Route”) (hereinafter referred to as the “Commerce and Information Policy Bureau Route”) (“**IV. A. 2.**” and “**IV. B. 1.**”), (2) Mr. Kurumatani personally explained to Chief Cabinet Secretary Suga based on materials that summarized the situation of the AGM, which stated that METI was “negotiating with a strong stance that does not hesitate to issue a divestiture order” in order to “secure Effissimo as a stable shareholder” (“**IV. B. 1. b.**”); and (3) prepared to facilitate the provision of information to METI by preparing a “written request” for the issuance of Report Requisition Order Addressed to Toshiba (“**IV. B. 1. a.**”); However, this was not actually submitted at this time). (4) In the action list for shareholders, Toshiba stated that regarding Effissimo, it would “reveal its intention to sell off the business”, and that it would secure Effissimo as a stable shareholder (which seems to mean agreeing to the company's proposal and not making a shareholder proposal) by utilising the revised FEA, mainly by METI (“**IV. B. 1. c.**”). (5) The “department in charge” at METI (presumably Commerce and Information Policy Bureau Route) asked the outside directors to find out the necessary information for the application of the FEA, as stated by METI, when they meet with Effissimo (“**IV. B. 1. d.**”), and (6) In response to Director-General K3's statement (that not only national security in the narrow sense, which is an issue under the revised FEA, but also national security in the broader sense, as it is a serious concern that a large company like Toshiba, which has had a significant impact on society can continue its business operations in a stable manner (especially by maintaining employment) during the COVID-19 pandemic), Toshiba was considering “going in” to METI as part of the revised FEA or “going beyond that” and talking to METI in administrative guidance, or mere conversations that do not lead to

administrative guidance (“**IV. B. 1. d.**”). (It should be noted that about a week after Effissimo exercised his shareholder proposal right, Director K1 started a mere conversation with Effissimo that was not clear whether or not it amounted to administrative guidance).

3. Trends after the Notification of Shareholder Proposal

Following the notice of Effissimo's exercise of the shareholder proposal right, the Commerce and Information Policy Bureau Route and Toshiba implemented the various preparations discussed in “**2.**” above at a rapid pace by around May 29, and then skillfully took advantage of (i) the progress of procedures under the revised FEA by the Security Trade Control Policy Division through the official route, and in addition, they tried to force Effissimo to withdraw its shareholder proposal by closely linking (ii) Toshiba's “Sunshine Policy and (iii) obscure “conversations” through the Commerce and Information Policy Bureau Route. In the end, however, Effissimo only withdrew the proposal for the election of Mr. Kosaka as director, but maintained the shareholder proposal for the election of Mr. Imai, Mr. Takeuchi, and Mr. Sugiyama as directors, and the shareholder proposal was announced on June 22. This process is described in “**IV. B. 2. a. (2) (c)**” above. However, in order to clarify the reality of the close cooperation between Toshiba and METI, we discuss it again below with an evaluation.

- a. On May 15, when Toshiba was informed by Effissimo of its intention to exercise the shareholder proposal right, it communicated this fact to Director K1 on May 16.
- b. On May 18, Director K1 urged Toshiba to submit a “written request” for the issuance of the Order for Toshiba to Submit Reports, which had not been submitted until then. In doing so, he roughly instructed the matters to be stated in the written request, such as:
 - (1) “proposals from foreign investors have been made in the form of engagement with directors and proposals to the general shareholders’ meeting” that “could lead to the transfer of businesses or jeopardize the continuation of businesses of the Company, including businesses in designated industries that have national security implications”;
 - (2) “similar proposals” that had been made “by multiple investors at the same time, and
 - (3) “in light of such circumstances, we would like to consult with you for ensuring compliance with the FEA and the revised FEA”. On May 19, Toshiba submitted a revised “written request” to the IT Industry Division in accordance with the instructions of Director K1.
- c. On May 19, Toshiba received a formal exercise of the shareholder proposal right from Effissimo.
- d. On May 20, Director K1 sent Toshiba “Written Questions” prepared by METI that listed possible questions and answers to elicit gaffes during the meeting between Effissimo

- and the Toshiba directors. On the same day, Director K1 asked Toshiba if it would be possible to extend the practical deadline for announcing the shareholder proposal, with a view to negotiating the withdrawal of the shareholder proposal by Effissimo.
- e. On May 21, Director K1 informed Toshiba that he expected to issue Report Requisition Order Addressed to Toshiba on the following day, May 22, and began contacting Effissimo. Also on May 21, in preparation for the meeting with the candidates for the Effissimo proposal (Mr. Takeuchi and Mr. Sugiyama) scheduled for May 23, Toshiba had the FA investigate Effissimo's implementation of business sales, restructuring, and excessive shareholder returns through management involvement (demands as a shareholder and dispatch of executives) in its portfolio companies.
 - f. On May 22, Effissimo sent a letter entitled "Request for Collaborative Engagement given Fictitious and Round Tripping Transactions" to the top 30 shareholders, and Director K1 held a conference call with Effissimo. Although the conference call was very brief and focused on general economic trends, Director K1 requested another conference call at the same time the next day. When asked by Effissimo for his opinion as the Toshiba representative, he said he would consult with Effissimo if it felt he could be trusted and ended the call.
 - g. On May 22, Toshiba received Report Requisition Order Addressed to Toshiba.
 - h. On May 23, Director K1 held a conference call with Effissimo during which he for the first time expressed his concerns about Effissimo's shareholder proposal, and when he was told that Effissimo had sent a letter titled "Request for Collaborative Engagement given Fictitious and Round Tripping Transactions," he had the letter shared with him.
 - i. On May 24, Director K1 and Effissimo held a conference call. When Effissimo asked about METI's or the Japanese government's specific concerns with its shareholder proposal, Director K1 only commented negatively on the "unnecessary miscommunication and cost" during the COVID-19 pandemic and the delay in Toshiba's listing on the First Section of the Tokyo Stock Exchange.
 - j. On May 26, Director K1 sent to Toshiba the letter titled "Request for Collaborative Engagement given Fictitious and Round Tripping Transactions," stating that "there should be no reverse flow".
 - k. On May 27, Director K1 instructed Toshiba to prepare a "rebuttal memo" containing Toshiba's objections to the contents of the above-mentioned letter entitled "Request for Collaborative Engagement given Fictitious and Round Tripping Transactions. On May 28, Toshiba prepared a "rebuttal memo" and delivered it to Director K1 for the purpose of having it on hand "to hit Company E.
 - l. On May 28, in its response to the Report Requisition Order Addressed to Toshiba,

Toshiba mentioned Effissimo's contact with Toshiba directors and the sending of a letter to Toshiba shareholders requesting "collaborative engagement". This mention of the letter requesting "collaborative engagement" can be said to be based on the information received from Director K1 on May 26. In addition, the fact that the Security Trade Control Policy Division contacted Effissimo on the following day, May 29, suggests that Director K1 expected, to some extent, that the division, which is the regulatory authority under the FEA, would take action once it received Toshiba's response.

- m. On May 28, Director K1 had a conference call with Effissimo. In the conference call, Director K1 said, "A major move in a different direction by shareholder proposal would be negative for both policy and the market, and could delay the listing of the company on the first section, Toshiba is cooperative with the anti-COVID-19 measures and is trusted politically", "I believe other approaches are possible in regard to the four Outside Directors", "In the meantime, the bureau in charge of rules and regulations seems to be moving together with the Ministry of Finance", "I would like to discuss the landing spot for preventing something serious", and "exercise of voting rights against top management is a policy concern". In contrast to the previous conference calls, he began to express his concerns about Effissimo's shareholder proposal and the exercise of voting rights in concrete terms, saying (in response to a question as to whether it was his intention not to oppose the election of the company's proposed directors), "I'm worried about the instability caused if top management will be replaced after a relatively short period of time during the COVID-19 emergency".
- n. On May 29, when Toshiba received various information from the Commerce and Information Policy Bureau Route, Toshiba shifted its policy with Effissimo to a "Sunshine Policy", and the Security Trade Control Policy Division notified Effissimo of a review of the entire consultation process under the FEA, citing suspected violations of the covenants contained in Effissimo's prior notification under the FEA.

In other words, on May 29, Director K1 provided Toshiba with the following information: (1) the Security Trade Control Policy Division was scheduled to contact Effissimo on that day; (2) the opinions of the Trade and Economic Cooperation Bureau (Security Trade Control Policy Division) regarding the rebuttal memo and the status of the bureau's review of Effissimo's regulations; and (3) the status of the telephone conference with Effissimo. In addition, the Security Trade Control Policy Division informed Effissimo's attorney that "it is likely that we will have to review the entire consultation procedure this time" due to the information obtained that could lead to a suspected violation of the covenants in the Advance Notification Form under the FEA. And inside Toshiba, regarding the meeting between the Toshiba's Nomination Committee and the candidates

- for the Effissimo proposal, “the policy has changed to be more polite than intrusive. (Sunshine Policy)”.
- o. On May 30, Toshiba's Nomination Committee met with Mr. Imai and Mr. Kosaka, candidates for the Effissimo proposal, and after the meeting, the committee found that Effissimo was “stressed out” and feeling more pressure than expected due to contacts from the Commerce and Information Policy Bureau and the Security Trade Control Policy Division, respectively. Therefore, they shared a specific negotiating policy with Effissimo, which is to have METI “beat” Effissimo for a while, and when the time is right, METI and Toshiba will counter-propose a proposal for Mr. Takeuchi's participation in a Compliance Advisory Committee, etc., and if they are unable to push through with this proposal, they will include Mr. Takeuchi as the only Effissimo proposed candidate for the Company's proposed slate, thereby forcing Effissimo to withdraw the shareholder proposal. This was a specific negotiation policy shared with METI. This was a hard-line approach from METI (a metaphor for the north wind in the fable of “North Wind and Sun”). This is part of the “Sunshine Policy” where, based on the premise that METI will take a hard line in its contact with Effissimo (a metaphor for the sun in the fable “North Wind and Sun”), Toshiba will interact politely with Effissimo (as the Sun in the said fable), as shared within Toshiba on May 29.
 - p. On June 1, Toshiba told Director K1, regarding Effissimo, “I heard that Mr. Kurumatani and Director-General K2 already had a meeting last night. However, based on Mr. Imai's statement below, we are considering separately creating a Compliance Advisory Committee and having Effissimo participate in it to strengthen the compliance system. We also recognize that the acceptance of one candidate is the final negotiation tool. We would like to discuss with you when we will make these efforts. This was in line with the policy of Toshiba's Nomination Committee to request METI to bluff a “tough stance” “ while making a counter-proposal for Mr. Takeuchi's participation in the Compliance Advisory Committee, and at the same time proposing the inclusion of Mr. Takeuchi as a candidate for the Company's proposed board slate as a final negotiating tool. On June 1, Toshiba had a meeting with Director K1 regarding this policy and other matters.
 - q. On June 2, Toshiba held a hurried conference call with Effissimo and proposed to Effissimo the establishment of a Compliance Advisory Committee with Mr. Takeuchi and Mr. Sugiyama as its members. After the meeting, Effissimo informed Toshiba that Mr. Takeuchi and Mr. Sugiyama were willing to be candidates for the Board of Directors based on the shareholder's proposal, and that Effissimo would respect their intention to decline Toshiba's proposal for the compliance advisory committee.
 - r. On June 3, the Security Trade Control Policy Division requested an interview of Effissimo

on the suspicion of a violation regarding its covenant against involvement in personnel matters based on the fact that Effissimo had met with the outside directors before receiving “provisional permission” from METI.

- s. On June 4, Director K1 had a conference call with Effissimo. In the conference call, Director K1 said, “Toshiba’s proposal to Effissimo regarding compliance is commendable,” “However, Effissimo’s insistence on having a set of four candidates is getting out of hand and may attract the attention of the market,” and “We have been talking to regulatory authorities to ask them to remain calm, but the situation has become uncontrollable. I have heard that regulatory authorities in the form of not only METI but the government as a whole will start investigating the facts, including the FEA. We cannot stop regulatory authorities if they start on a full scale”. “The government does not want friction to occur under the COVID-19 pandemic. We have been trying to explain to the people in the government why Effissimo is insisting on the shareholder proposal, but it is becoming difficult for us in the government to behave in that way.” “From the conversation today, I understood that your insistence on having a set of four candidates would not change. However, it would be unfortunate if the Company proposal and the shareholder proposal do not match in a company like Toshiba, which attracts a lot of interest, because it would have an impact on the entire economy. We can't provide any more support from within the government,” he said, “I think this will be theatrical. We are concerned that it will be theatrical”. This, together with the June 3 notice from the Security Trade Control Policy Division to Effissimo about the suspected violation of the FEA, seems to be a strong push by Director K1 to conclude the deal (i.e., withdraw the shareholder proposal) with Mr. Takeuchi's participation in the Compliance Advisory Committee in line with the negotiation policy requested by Toshiba.
- t. On June 5, the Security Trade Control Policy Division of METI held a conference call with Effissimo to discuss the situation regarding the violation of the pledge.
- u. On June 15, Effissimo received an Report Requisition Order Addressed to Effissimo. In its letter of explanation against the request for review of the order, it was cited as the reasons for the order that the meeting with Toshiba directors could violate Paragraph 4 of the Covenant, that Effissimo had sent a letter to Toshiba shareholders requesting “collaborative engagement,” and that it was necessary to confirm whether or not Effissimo had obtained consent for the joint exercise of voting rights. They are consistent with Toshiba's response to the May 28 Report Requisition Order Addressed to Toshiba.
- v. On June 16, Toshiba “warned” Effissimo that it did not intend for Effissimo's shareholder proposal to become a Company proposal and that if it was not withdrawn by the date of the Toshiba Nomination Committee meeting scheduled for June 19 (or June 25 at the

latest), the shareholder proposal would be disclosed.⁹⁶

w. On June 17, at the request of Effissimo, Director K1 held a conference call with Effissimo at 8:00 p.m. (Director K1 immediately informed Toshiba of Effissimo's request for a conference call). In the conference call, Effissimo said it was told that the regulatory authorities had taken action and that Toshiba would release a shareholder proposal as early as June 19. Effissimo asked for the details of METI's concerns about the shareholder proposal because Effissimo was considering amending the shareholder proposal to take such concerns into account. Director K1 responded that (1) there is a high possibility of a proxy fight if it is made public that there is a conflict regarding the shareholder's proposal, (2) this was reported as the perception of the entire ministry after sorting it out together with the regulatory authorities as well as the department to which Director K1 belongs, and (3) there is a sense of discomfort in proposing the appointment of four more outside directors when there are 10 outside directors, and in exercising the right to vote against the appointment of Mr. Kurumatani, and it is suspected that the strengthening of compliance is only an ostensible reason and that the real purpose is to sell off the business by upsetting the balance of power of the current management team, which raises security concerns, which is the common understanding in METI including the Security Trade Control Policy Division. (4) The fact that METI and MOF jointly issued an Order Requiring Submission of Report is quite unusual and significant, and we have to assume that the government also has the concerns mentioned in (3) above. (5) If Effissimo says that such concerns are misunderstood and changes its behavior in such a way that everyone will say, "Yes, that's true," and that it is appropriate for the purpose of improving compliance and governance and enhancing shareholder value (in the context of the preceding and following paragraphs, it can only be interpreted as euphemistically encouraging the company to compromise and withdraw the shareholder proposal by participating in the compliance advisory committee), then Director K1 would like to explain the situation to the regulatory authorities and the Ministry of Finance. In response, Effissimo said that such concerns were misunderstood, but that they thought it was not good for people to have concerns about the proposal, and that they would like to consider revising the shareholder proposal, but that it might not be ready the day after tomorrow, and that they could promise to revise the proposal in some way and asked Director K1 to request Toshiba to postpone the Nomination Committee's decision to the 25th instead of the 19th. Director K1 said that he would request from Toshiba such postponement, that he

⁹⁶ From Toshiba's negotiating policy toward Effissimo, as mentioned above, it is basically understood to have been to this effect.

had concerns about shareholder proposals during the COVID-19 pandemic because shareholder proposals in Japan tend to be quite theatrical, and even if it was a fair and honest proxy fight, public opinion would not consider it as such, that regulatory authorities were making decisions together with Ministry of Finance and the whole government, and that if Effissimo would make an alternative proposal for improving compliance, he would negotiate with regulatory authorities with such alternative.

- x. On June 18, Director K1 told Toshiba that “Effissimo is getting a little spooked” by the June 17 conference call with Effissimo, and that Director K1 said on the conference call that “the four-person proposal on the compliance issue is strange. I can't help but think it's going to tear Toshiba apart. That is the reason for the issuance of the Order Requiring Submission of Report”. “Toshiba will make a decision on Friday the 19th. It won't stop at this point. We have already reported to the Minister of Economy, Trade and Industry,” and Effissimo said, “We would like to consider changing our proposal and will contact the company in the morning on Thursday the 18th”. From the fact of these communications, it is apparent that Director K1 made statements during the conference call on June 17 that seemed to suggest that the regulatory authorities would exercise their authority with the intention of influencing Effissimo's proposal. At the very least, Toshiba was able to recognize the fact that Director K1 had taken a tough stance with Effissimo that is considered to be problematic to some extent.
- y. On June 18, Director K1 held a conference call with Effissimo. During the conference call, Effissimo stated that they would withdraw the shareholder proposal if they could reach an agreement with Toshiba that either Mr. Imai or Mr. Takeuchi and Mr. Sugiyama would be director candidates included in the Company proposal, but if not, they would maintain the shareholder proposal with three candidates. Director K1 said that he would like to prevent that the shareholder proposal would be announced and cause confusion. It is not about how many candidates should be reduced.⁹⁷ As the Minister of Finance and the Minister of Economy, Trade and Industry have already agreed to the matter, and the process is underway, just reducing one candidate would suffice. Even though Effissimo intends to have the shareholders make a fair decision at the shareholders meeting, the world will not see it that way if there is a conflict of opinion between the company and the shareholders when the government is about to invoke some of the FEA. If Effissimo intends to continue investment activities, especially in Japan, it might be its reputation issue. The regulatory authorities also have the same concern as he

⁹⁷ In response to Effissimo's suggestion whether it is possible to separate the concerns regarding the announcement of the shareholder proposal from the security concerns of the regulatory authorities, Chief K1 stated that it is possible to consider and that it is a separate issue. Therefore, this part of his statement is not intended to imply that there are concerns under the FEA.

mentioned the day before. Even if the number of proposed members were reduced to one, it is possible to add more members to the board at an extraordinary shareholders' meeting after the current management team is voted down, so he does not know if the regulatory authorities will be okay with reducing the number of board members proposed by Effissimo.

- z. On June 18, Effissimo sent a letter of partial withdrawal of shareholder proposal to Toshiba, informing the company that it would amend its shareholder proposal by June 21, and requested the Nomination Committee to postpone its decision until June 25, and stated that it intended to withdraw at least one shareholder proposal, which included the withdrawal of the shareholder proposal to nominate Mr. Kosaka as a candidate for director.
- aa. On June 19, Toshiba's Nomination Committee postponed the resolution on the Company's proposed candidates, which had been scheduled for the same day, to June 22.
- bb. On June 19, Director K1 had a conference call with Effissimo. During the conference call, Effissimo stated that they had decided to keep the shareholder proposal as a three-member proposal because Director K1 had said on the June 18 conference call that reducing the number of candidates for the board would not eliminate his concerns. Director K1 said, "If so, you should not have asked me to request them to postpone the resolution until 21st". "That is not good on the basis of good faith and fair dealing". "I would appreciate it if you would think about it from the other side of the table". "As a member of society," and "If that's the case, I wish you hadn't made that request to me". He also stated that it was their hope that a large company like Toshiba would not be destabilized, but that if a company like Toshiba had a conflict between the Company's proposal and the shareholders' proposal, it would result in an argument, which he believed was not desirable under the circumstances of the COVID-19 pandemic, and that he wanted to have as much discussion with the Company as possible to find some kind of common ground. The largest shareholder sending 4 outside directors in addition to existing 10 outside directors seems to be unbalanced, and if they are also asking for the dismissal of Mr. Kurumatani, it seems that the real purpose is to sell off the business by destroying the balance of the current management team. He also stated that he suspects the regulatory authorities take a similar view and that not only the regulatory authorities but also the government as a whole is aware of the fact that selling off the business would naturally have an impact on the national security business.
- cc. On June 21, Effissimo sent a letter to Toshiba stating that it would maintain the three candidates for the shareholder proposal.

dd. On June 22, Toshiba disclosed the convocation of this AGM and its opposition to the shareholder proposal. By the said disclosure, the fact of the shareholder proposal (Proposition No. 4) by Effissimo was made public.

4. Evaluation by the Investigators

As described in "2. and 3." above, Toshiba requested the Commerce and Information Policy Bureau Route to provide support for the AGM including measures to counter the activists under the Revised FEA⁹⁸. In response, the Commerce and Information Policy Bureau Route instructed Toshiba the contents of the "written request", to elicit statements that would be problematic under the FEA from Effissimo and other alleged activist shareholders, and such. When the Report Requisition Order Addressed to Toshiba was issued based on such "written request," the Commerce and Information Policy Bureau Route leaked to Toshiba the information about the letter requesting collaborative engagement that Director K1 had obtained from Effissimo, and had the information included in Toshiba's response to the Report Requisition Order Addressed to Toshiba. In addition, they used the response to induce the Security Trade Control Policy Division, a regulatory authority, to issue the Report Requisition Order Addressed to Effissimo. In light of these circumstances, the series of actions taken by Toshiba and the Commerce and Information Policy Bureau Route in unison, so to speak, started from the determination that Effissimo was an activist who should be eliminated, and then, by invoking the authority of the authorities under the Revised FEA, or by contacting them using such authority as a backdrop, can be evaluated as an attempt to deal with Effissimo's shareholder proposal⁹⁹. As already mentioned, the legislative

⁹⁸ Toshiba's intention to use METI for measures to counter the activists can be seen in the following circumstances.

In other words, Mr. Kurumatani, when discussing within the company the remuneration for FAs to deal with activists, stated that "METI will play the main role this time" and that "there is a high possibility that METI will be able to turn the activists away at the door this time, so it is quite possible that the FAs will not do much work" (SMS attached to Mr. Kamo's email of May 8), indicating in short that he was expecting METI to play a major role in measures to counter the activists.

Mr. Kamo also commented that "METI can be used" for "the existence or nonexistence of shareholder proposals and negotiations for reduction" (e-mail of May 2). In the draft of the position paper (e-mail to himself of May 7), which was written under Mr. Kurumatani's direction, he made a statement indicating that he was trying to "prevent" Effissimo and 3D (and HMC) by "fully applying and operating the Revised FEA". In addition, the contents of the draft indicate that he knew about Effissimo's "contract" (which seems to mean the Covenant at the time of notification) with the authorities in relation to the FEA.

⁹⁹ Toshiba's intention to eliminate Effissimo as an activist who should be eliminated in connection with the Revised FEA can be seen in the following circumstances.

In other words, on March 25, Mr. Toyohara asked Director K1 to contact him if Effissimo came to METI to ask for permission to make a proposal such as nominating a director, and also told him that if Effissimo made a shareholder proposal and abstained from voting on the Company proposal, the shareholder proposal would be approved and the Company proposal would be

purpose of the Revised FEA is to restrict shareholders' rights to the minimum extent necessary to prevent the leakage of technical information and loss of business activities related to national security, etc., and not to eliminate activists. However, looking at the aforementioned series of actions taken by Toshiba and the Commerce and Information Policy Bureau Route, in unison, so to speak, it is difficult to admit that these actions were taken from a national security standpoint, considering Effissimo's shareholder proposal as a problem, and can be evaluated as a deviation from the original intent of the Revised FEA¹⁰⁰. (In the end, Effissimo was allowed to exercise its voting rights in favor of the proposal to appoint Mr. Imai as director, which is subject to advance notification at the time of action under the Revised FEA, despite the fact that the Report Requisition Order Addressed to Effissimo had been issued).

And Toshiba, in close communication and coordination with the Commerce and Information Policy Bureau Route as described above, (1) skillfully took advantage of the progress of procedures under the Revised FEA through the official route, such as the Report Requisition Order Addressed to Effissimo by the Security Trade Control Policy Division, a

rejected. We believe that Mr. Toyohara, anticipating that a shareholder proposal for election of directors would be made in response to the March 19 letter from Effissimo, asked METI to leak the specifics of the shareholder proposal and implicitly asked METI not to allow the shareholder proposal in order to prevent the current management team from being rejected. However, there is no indication here of any concern about the leakage of technical information or the loss of business activities related to national security, etc.

On April 10, Mr. Toyohara was discussing with Mr. T2, Legal about the public comments on the proposed amendment to the ministerial ordinance in accordance with the revision of the FEA. He said, "In short, our biggest concern is whether or not we can suppress activists," and "What we want to know is whether or not our company will be protected from activists, and for that purpose, is the public comment sent to us yesterday on the draft of the ministerial ordinance sufficient? In addition, on April 11, he commented to Director-General K2 and Director K1 whether "unlike the direction of tightening regulations that we had originally heard about in the revision of the FEA, the revised law has become a deregulation." He also asked them if it was "legally possible to eliminate or suppress 'undesirable organizations and institutions'," and "if so, what measures are being prepared." It can be seen that Toshiba considered activists to be "undesirable organizations and institutions" and expected the Revised FEA to exclusively "eliminate" and "suppress" them.

On May 1, at a meeting among Mr. Toyohara, Mr. Kamo, Director-General K2 and Director K1, it was decided to prepare a "written request" requesting an investigation under the FEA at the direction of METI, as a start, so to speak, for METI to act. However, at the same meeting, METI also requested Toshiba to submit a "shareholder vote forecast (estimation of votes), and it does not appear that METI was trying to obtain information on the leakage of technical information and loss of business activities related to national security, etc. At the interview, Mr. Kamo stated that the talks "were meant to be a kickoff meeting to start preparations for measures to counter the activists," and it can be said that, at least in Toshiba's view, the talks were a move toward measures to counter the activists.

¹⁰⁰ Mr. T2, Legal stated that the Minister of Finance clearly stated in the House of Councillors that the Revised FEA was not intended to counter activists, and that he thought it was impossible to counter activists under the Revised FEA because there were few things that could be done under the law, other than restrictions on agreement to jointly exercise voting rights. (Mr. T2, Legal also reported this internally at the time.)

regulatory authority, and in addition, tried to force Effissimo to withdraw its shareholder proposal by closely linking (2) Toshiba's "Sunshine Policy" and (3) the Commerce and Information Policy Bureau Route's administrative guidance or mere conversations that do not lead to administrative guidance. In other words, Toshiba asked them to divulge the fact that Effissimo had applied for approval as described in "2. and 3." above ("IV. A. 2."), and communicated with the Commerce and Information Policy Bureau Route very frequently. Toshiba received from Director K1, who is a national government official, a letter requesting collaborative engagement issued by Effissimo being warned to "avoid backflow", and the details of the conference call with Effissimo were immediately shared by Director K1, and even the status of the review of Effissimo by the Security Trade Control Policy Division, the regulatory authority, was disclosed, and thus received information as a matter of course in a way that might conflict with confidentiality obligation under National Public Service Act. In addition, when Toshiba pressed Effissimo to withdraw the shareholder proposal while making a proposal to form a Compliance Advisory Committee, Director K1 immediately stated in a conference call that the proposal was highly evaluated, and they worked closely together to force Effissimo to withdraw the shareholder proposal. In light of these and other factors, it is quite clear that Toshiba was working in unison with the Commerce and Information Policy Bureau Route to force Effissimo to withdraw the shareholder proposal.¹⁰¹

Furthermore, as a result of this so-called united effort between Toshiba and the Commerce and Information Policy Bureau Route, Director K1 encouraged Effissimo to withdraw the shareholder proposal before it was announced. He also stated the following several times and thus tried to get Effissimo to withdraw the shareholder proposal: "If Effissimo asked for an increase in the number of outside directors by 4 out of 10 and opposed proposal for election of Mr. Kurumatani as director, the regulators would believe that the real purpose of the proposal was to sell the business", "Even if the number of proposed directors was reduced, since the fact itself that the proposal was made public is seen as a problem, and since the Minister of Finance and the Minister of Economy, Trade and Industry jointly commenced necessary steps under the FEA, it would not solve the problem", and "I would talk to the Ministry of Finance and METI if Effissimo changed its behavior". In light of the fact that Director K1 was then the Director of IT Industry Division, the Commerce and Information

¹⁰¹ With respect to the Security Trade Control Policy Division, which is the regulatory authority, it is apparent that Director K1 had a considerable exchange of opinions with the Security Trade Control Policy Division on how to deal with Effissimo under the FEA, shared the Security Trade Control Policy Division's ideas and movements with Toshiba, and Toshiba provided necessary information to the Security Trade Control Policy Division in accordance with Director K1's instructions. In light of these facts, at least it can be evaluated that Toshiba and the Commerce and Information Policy Bureau Route at least skillfully used the Security Trade Control Policy Division, a regulatory authority.

Policy Bureau, and in light of the duties under the jurisdiction of the said division (Article 85 of the Order for Organization of Ministry of Economy, Trade and Industry), we cannot help but have strong doubts about whether he had a business need to contact foreign investors who were shareholders of Toshiba. The Trade and Economic Cooperation Bureau is in charge of the business activities of foreign investors (Article 6, Paragraph 1, item (9) of the Order for Organization of Ministry of Economy, Trade and Industry), and the Security Trade Control Policy Division within the Bureau is in charge of “matters related to the regulation of inward direct investment, etc., specified acquisition, and the conclusion of technology introduction contracts, etc., by foreign investors pursuant to the provisions of the Foreign Exchange and Foreign Trade Act” (Article 53, item (3) of the Order for Organization of Ministry of Economy, Trade and Industry). In light of the fact that the contact with Effissimo, a foreign investor, is considered to be under the jurisdiction of the Trade and Economic Cooperation Bureau, unless there are special circumstances, the above-mentioned contact by Director K1 deviates from the scope of the jurisdiction, and if this is an administrative guidance, it is highly problematic in light of Article 32, Paragraph 1 of the Administrative Procedure Act. If this is not even an administrative guidance, it is extremely inappropriate (in the first place, it is unclear whether the said content of the regulatory authority's perception is consistent with the actual perception of the Ministry of Finance and the Security Trade Control Policy Division of the Trade and Economic Cooperation Bureau of METI. If so, it could be said that he was leaking inside information of regulatory authorities to the addressee of the regulation beyond the scope of their jurisdiction.)

As described above, the series of moves by Toshiba to have Effissimo's shareholder proposal withdrawn, so to speak in unison with the Commerce and Information Policy Bureau Route, include acts suspected to be against laws, etc. throughout, can be evaluated as an attempt to unfairly restrict the exercise of the shareholder proposal right, at least for the purpose of deviating from the purpose of the Revised FEA. Moreover, the shareholder proposal right is an extremely important shareholder right that is a precondition to exercising voting rights at shareholders meetings, and as already mentioned, in light of the fact that the Corporate Governance Code stipulates that “Given the importance of shareholder rights, companies should ensure that the exercise of shareholder rights is not impeded.” (Supplementary Principle 1.1.3), it can be said that Toshiba's actions directly or indirectly had an undue influence on shareholders with the intention of effectively interfering with the exercise of shareholders' rights at this AGM. Therefore, we believe that this AGM was not

fairly managed.^{102 103}

¹⁰² In this regard, Mr. Kurumatani stated at the interview that "no matter what the government says, the exchange with them is completed by the board members," that "there is almost nothing that comes up to me as the president," and that "I rarely talk directly with the government." With respect to the communication with METI in or around May, "I don't know how it was divided between Toyohara and Kamo, and I wasn't involved in it nor did I receive any reports," he said, adding, "I never actively took any action to get METI to do anything, or to get Mr. M to do anything."

However, (1) on April 30 and May 1, Mr. Kurumatani telephoned Mr. Ota and said, "I would like to deal with it, with the enforcement date (May 8) of the Revised FEA in mind" and "I would like to make efforts to build a consensus within the company and at Kasumigaseki after Golden Week"; (2) on May 4, he confirmed and approved the contents of the "written request" to METI; and (3) on May 7, he instructed Mr. Kamo about an explanatory document ("position paper") for the Chief Cabinet Secretary, which included the contents of withdrawing and prohibiting the shareholder proposals of Effissimo and 3D. In addition, it is presumed that Mr. Kurumatani changed the appearance of the "position paper" on May 8 and used the same document to explain to the Chief Cabinet Secretary on May 11; (4) in the SMS sent to Mr. Kamo on May 8, he stated that "the main actor in this case is METI."; (5) On May 19, when the shareholder proposal from Effissimo arrived, he immediately contacted Director-General K2 himself; (6) On June 4, he told Mr. T3, HR, "We must cause the two people recommended by Effissimo to voluntarily withdraw. Please find out Attorney Takeuchi's weak point, and also that of the Kao person ("Kao person" is considered to be Mr. Sugiyama)." and "Please also check including who can speak to them effectively."; (7) Mr. Kurumatani met with Director-General K2 and Director K1 at Toshiba's headquarters on June 11, the same day that Director K1 was approaching 3D and Effissimo; and (8) According to the interview with Mr. T1, Strategic Planning, Mr. Kurumatani attended the regular meetings held "on a daily basis" from around June to July 28 (Mr. Toyohara also attended), where information concerning the AGM was shared. In light of this, it is impossible to conclude that Mr. Kurumatani fully entrusted Mr. Toyohara and Mr. Kamo with Toshiba's measures for the AGM, which began in earnest in early May and were in unison, so to speak, with METI, and that Mr. Kurumatani was not involved in them.

¹⁰³ In this regard, Mr. Kamo stated at the interview that he was careful not to get too deeply involved in receiving communications between METI and the shareholders, such as "Director K1 would easily leak information he received from third parties, so I tried to keep my distance" and "It was fine for Toshiba to have interviews with METI, but I thought it would be bad to hear from METI the results of their interviews with other people."

However, Mr. Kamo said, "I didn't want to hear what METI was discussing with the shareholders, but I heard it. Even if I couldn't help but have Toyohara also hear it, I didn't want Mr. T1, Strategic Planning or Mr. T2, Legal to hear it because that would make them worried." After all, he did not deny, but rather admitted, that he had actually heard what METI had interviewed from the shareholders from METI officials such as Director K1. In addition, during the investigation, there is no evidence that Mr. Kamo actually tried to "keep his distance" from Director K1 and others, such as by warning or complaining to Director K1 and others about the content of their communications, or by trying to avoid communication Director K1 and others. On the contrary, as stated in the main body of this report, Mr. Kamo kept in close contact with Director K1, and based on the information he obtained from Director K1, and taking advantage of the actions of Director K1 and others, he worked to have Effissimo's shareholder proposal withdrawn. Even if Mr. Kamo was secretly thinking of "keeping his distance," it cannot be said that this would change the requested relationship and collaborative relationship between Toshiba and the Commerce and Information Policy Bureau Route.

C. Pressure Issues related to the exercise of voting rights

1. Pressure Issues regarding the exercise of voting rights by Effissimo

At the AGM, Effissimo did not vote on all of 3D's proposals for election of directors. The reason Effissimo did not exercise its right to vote on the proposal for election of directors proposed by 3D is that on July 22, the Security Trade Control Policy Division, which has the professional authority to determine whether Effissimo's actions violate the Covenants in the Advance Notification Form based on the Order on Inward Direct Investment (see Article 53, item (3) of the Order for Organization of Ministry of Economy, Trade and Industry), stated to Effissimo that Effissimo's actions "may affect businesses related to products and technologies of national security importance (see "IV. C. 2." above).

As described above, Toshiba had requested support for the AGM involving measures to counter the activists from the Commerce and Information Policy Bureau Route. In light of the facts and circumstances described in "V. B. 3." it is undeniable that the Security Trade Control Policy Division may have been influenced in some way by the Commerce and Information Policy Bureau Route, which received the request from Toshiba, in making the above-mentioned comments to Effissimo. However, the materials obtained by the Investigators did not allow them to confirm that there was any influence from the Commerce and Information Policy Bureau Route on the Security Trade Control Policy Division.

Therefore, we do not find that Toshiba had undue influence on Effissimo's failure to vote on all of 3D's proposals for election of directors.

2. Pressure Issues related to the exercise of 3D voting rights

3D had made a shareholder proposal to Toshiba on April 30, earlier than Effissimo, and immediately after that, there were internal discussions within Toshiba that "METI could be used" to "negotiate the existence or non-existence of a shareholder proposal and its reduction" (Mr. Kamo's e-mail on May 2) and that 3D should be "stopped by METI" (Mr. Toyohara's e-mail on May 3). The 3D was also mentioned in the initial draft of the "written request" to METI and in the position paper. In addition, the "Action List by Shareholder" also included statements assuming that METI planned to take action on 3D.

In addition, based on the facts described in "IV. B. 2. b." above, the meeting between 3D and the METI official was requested from the METI official to 3D, through Mr. T1, Strategic Planning, after the shareholder proposal by Effissimo was made, and as described in "V. B. 3." above, after May 26, when the moves by Toshiba and the Commerce and Information Policy Bureau Route to cause withdrawal of the shareholder proposal were in full swing. In particular, while the meeting on June 4 was set up for the purpose of exchanging opinions on the movements of the capital market, etc., and the actual contents were not considered

to be highly urgent, the fact that the METI official repeatedly requested 3D for an early meeting makes it questionable whether the purpose of the METI official's request for a meeting was really only to exchange opinions on the above.

At the meeting on June 17, the METI official said that there was a need to take action against foreign activists under the FEA in relation to Toshiba, and that there were discussions with another non-3D investor that did not result in a Company proposal after discussions with Toshiba, suggesting that the activist in question might be making a shareholder proposal,¹⁰⁴ and told 3D not to get involved in the situation because if they are barbecuing next to a big fire, it might not be enough.

In addition to these facts, from the e-mails between Toshiba and Director K1, it is recognized that the METI official who interviewed 3D was Director K1; that Toshiba had requested support for the AGM involving measures to counter activists from the Commerce and Information Policy Bureau Route; and that Director K1 knew at the time of each of the above-mentioned interviews that the Trade and Economic Cooperation Bureau (Security Trade Control Policy Division) was planning to contact Effissimo on suspicion of violating the Covenants contained in the Advance Notification Form (see "**IV. B. 2. a. (2) (c)**" above). Thus, the above statements by Director K1, such as "if they are barbecuing next to a big fire, it might not be enough", suggests that if 3D exercises its voting right in favor of the proposal to appoint directors proposed by Effissimo, 3D may be involved in the control of Effissimo under the FEA, and the Trade and Economic Cooperation Bureau (Security Trade Control Policy Division) may take some measures against 3D under the FEA, such as an investigation. It can also be said that it had the effect of inducing 3D to vote against Effissimo's proposal to appoint directors.

In this regard, when the Investigators asked 3D at the interview whether there was any fact that 3D had changed its voting behavior in response to the contact by the METI official, 3D responded that after the meeting with the METI official, when the shareholder proposal of Effissimo was announced, they had sought legal advice from the legal counsel several times because they felt that there was a risk that METI would take some action against them if they voted in favor of Effissimo's shareholder proposal on all of the candidates. In this regard, 3D's legal counsel responded that he had given legal advice to 3D that opposing or abstaining from Effissimo's shareholder proposal would greatly reduce 3D's legal

¹⁰⁴ With respect to the statement made by this METI official, if there is a shareholder who is making a proposal for election of directors, Toshiba may solve the problem by incorporating this into the Company proposal through discussions with the shareholder, but it is understood that there may be a proposal that ends up not being resolved by being incorporated into the Company proposal, and it is inferred that there exists a shareholder proposal that Toshiba cannot solve in that way.

risk. Moreover, according to 3D, since it had never in fact committed any act that violated the FEA, it ultimately voted against one of the candidates proposed by Effissimo after considering the size of the Board of Directors (especially if the shareholder proposal passed) and the qualifications of each candidate, while referring to the said advice.

In that case, we do not find that the content of 3D's exercise of voting rights against the Effissimo Proposal was actually hindered by the interference from the Commerce and Information Policy Bureau Route in response to Toshiba's request for support. However, Toshiba's request for assistance to the Commerce and Information Policy Bureau Route and the Commerce and Information Policy Bureau Route's contact with 3D in response to the request was intended to have the effect of inducing 3D to exercise its voting rights against the Effissimo proposal. To this extent, it can be said that Toshiba's actions were devising of a plan to unfairly influence and effectively prevent 3D from exercising its voting rights on the Effissimo's proposal for election of directors. Considering provisions of the Corporate Governance Code, etc., we believe that this AGM was not fairly managed.¹⁰⁵

3. Pressure Issues related to the exercise of HMC voting rights

a. HMC's Rejection of Contact

Around May 2, when Toshiba began in earnest to respond to shareholders for the AGM, it viewed HMC as a relatively friendly shareholder and wanted to have HMC "on Toshiba's side" (Mr. Kamo's e-mail of May 2). However, after failing to respond to HMC's letter dated March 3, on or around May 26, Toshiba was informed by the FA who Toshiba had asked to communicate with HMC that HMC had refused to have a conference call or other meetings with Toshiba (even though HMC had accepted a conference call in the previous year). In response, Toshiba hurriedly prepared a response letter to HMC and sent it to HMC on May 28. However, HMC pointed out the delay in the response and the insufficient contents of the discussion in the letter dated June 1, and HMC informed Toshiba that it was deeply disappointed in the management and the Board of Directors of Toshiba.

Later, on June 10, Ms. Weissman reported that HMC had contacted her to talk to

¹⁰⁵ In response to the Investigators' interview, 3D's legal counsel answered that they had advised 3D not only with respect to a vote on the Effissimo proposal but also regarding the risk of maintaining 3D's own shareholder proposal. On the other hand, 3D responded that there was no violation of the FEA in making its own shareholder proposal, and that they didn't feel that the METI official's statement indicated that he considered 3D's shareholder proposal itself to be a problem. Given that the METI official's statement denied any concern about 3D and emphasized the point that they did not want to get involved with another investor, the hearing with 3D was also recognized that they were not substantially concerned about maintaining 3D's shareholder proposal, as opposed to 3D voting on the Effissimo proposal, and as a result 3D maintained its shareholder proposal. In light of the facts above, it cannot be recognized that Toshiba had undue influence on 3D's exercise of the shareholder proposal right.

her, but when she stated that she wanted them to go through IR, the meeting was postponed. She then tried to contact HMC. However, on June 12, HMC informed her that direct contact with Toshiba would not be possible until after the AGM.

Thus, HMC clearly refused to Toshiba to have any contact with Toshiba prior to this AGM, and it had become extremely difficult for Toshiba to directly negotiate with HMC through normal approaches. Under these circumstances, on June 12, Toshiba conveyed its “message” to HMC (mainly Toshiba's intentions regarding the sale of its shares in Kioxia), through Director K1, in response to questions from Mr. M, which had been informed by Director K1, under the assumption that Mr. M, who was a former Executive Advisor to METI, would hold a “ZOOM meeting” with HMC. It is presumed that Mr. M held discussions with HMC by telephone or other means between June 15 and 19 and conveyed Toshiba's “message” to HMC.

b. Provision of information to HMC and involvement of Mr. M

On June 22, in preparing a letter to HMC to supplement the shareholder return policy to be disclosed, through Director K1, Toshiba received several detailed “comments” from Mr. M based on “Harvard's awareness of problems”. In the correspondence regarding the preparation of the letter, Director K1 said, “Since Mr. M is the one who will negotiate with Harvard, I would certainly like you to reflect his comments,” “Since Mr. M himself is trying to persuade Harvard somehow, I would certainly like you to take the following comments into consideration for revision.” “I'll throw it to Mr. M. He's going to have to persuade Harvard, so I think it's better if he himself is convinced.” “I've got a green light. Thank you very much. He is likely to help us. I hope his success.” “I think he is motivated because he had substantially been involved in the letter.” On the other hand, Toshiba, without specifically objecting to what Director K1 said, sent a letter to HMC dated June 22 in the name of Toshiba, reflecting Mr. M's point outs related to his “comments”.

As a result of the above, Toshiba responded to HMC's request as indicated in HMC's letter dated March 3 and other documents (the letter stated that if Toshiba did not respond to the request described in the letter, it would be forced to oppose the proposal for election of directors on the ground that Toshiba was not acting in the best interests of shareholders). We believe that Toshiba was able to provide a considerable amount of information on Toshiba's intentions to HMC prior to the AGM.

c. Discussions between Mr. M and HMC immediately prior to the AGM (1st meeting) - ascertaining HMC's intentions regarding voting behavior

On July 24, a large number of people voted against the proposal for Mr.

Kurumatani's election to the Board of Directors, and there was a real possibility that both the candidates proposed by the 3D shareholder proposal and the Effissimo shareholder proposal would be elected. In light of this situation, Mr. Kamo said to Director K1, "The risk of Mr. Kurumatani's vote down is increasing, so it has become essential that Harvard and Farallon agree to our proposal." In response, Director K1 said on the evening of July 25, "It is expected that Mr. M and Harvard will be able to teleconference. However, the prospects are unclear and it may be a conditional dispute. Legal is also expected to be present, so it is difficult to say how far we can go." In response, Mr. Kamo sent the FA estimation of votes materials to Director K1 and sent an email stating, "As for future actions," "Harvard: request to support the Company proposal and not to support the shareholder proposal (at least 3D if it is difficult for Effissimo)",¹⁰⁶, "3D: request not to support Effissimo proposal", "Farallon: request to support the Company proposal", "Other institutional investors: individual approaches to shareholders with unclear attitudes", and "Employees and related individual shareholders: individual promotion of voting", informing them of Toshiba's plan of action and the details of HMC's voting action desired by Toshiba. On the other hand, Director K1, who had been in contact with Mr. M for some time, stated, "I will communicate with Mr. M as well," based on the materials sent by Toshiba. Furthermore, at around 11:00 a.m. on July 25 at Toshiba's headquarters, Director-General K2, Director K1, Mr. Toyohara and Mr. Kamo held a meeting to discuss the estimation of votes and other matters. At the interview, Mr. Toyohara said that "we just repeated that we need Harvard's support" at the meeting.

By the evening of July 25, there was no mention or assumption of HMC's specific voting intentions in the correspondence between Toshiba and Director K1. On the other hand, by July 26, there were communications indicating that Toshiba and Director K1 were aware of HMC's specific voting intentions, including "Since we have not been given any details about Harvard, please consider Kurumatani-san's estimation of votes as plus 5.5%" (Mr. Kamo's July 26 e-mail), "Harvard's initial proposal (in favor of Kurumatani, Kobayashi (Nagayama, his successor), foreigners, and 3D)," "The priority of the options is Harvard's initial proposal plus a vote against Effissimo (or an abstention vote)" (Director K1's July 26 e-mail), and "Harvard's options are on pages 3~5, but page 3 (main scenario) has not been detailed to the FA and therefore the votes in favor of the Company's proposal are estimated low. In reality, however, the actual number of votes in favor of the Company proposal will be plus 5.5%, because the Company proposal will be supported by votes in favor of Mr. Kurumatani, Mr. Nagayama, and 4 foreigners" (Mr. Kamo's e-mail of July 26). This suggests

¹⁰⁶ At the same time, it was expected that Effissimo would vote in favor of 3D's shareholder proposal, and given the state of the voting, it was expected that the director nominees in 3D's shareholder proposal would be more likely to be elected than the director nominees in Effissimo's shareholder proposal.

that Mr. M provided feedback on the contents of the discussions with HMC between the night of July 25 and the evening of July 26. In addition, at the interview, Mr. Toyohara said (in response to a question about Mr. M's meeting on the night of July 25), "At the conclusion of the meeting on July 25, I remember Director K1 asking me who HMC was going to x and who they were going to o, something like that," and "Certainly there was a conversation that Harvard had answered 'o for both'." At the interview, Mr. Kamo also stated that "I heard that Harvard was going to vote in favor of Mr. Kurumatani". On the other hand, HMC's letter to Toshiba dated September 14 states that if they had voted ,they would have voted in favor of the election of both the director candidates proposed by the shareholders and the director candidates proposed by the board of directors.

Given these circumstances, it is clear that (1) Mr. M held discussions with HMC by telephone and other means on the evening of July 25; (2) at the time of the discussions, HMC intended to vote in favor of all of the Company proposals (at least the proposal to elect Mr. Kurumatani as director), 3D's shareholder proposal, and Effissimo's shareholder proposal. Furthermore, (3) it is admitted that HMC's intention regarding the vote, which Mr. M had heard from HMC at the same meeting, had been conveyed to Toshiba (via Director K1) by the evening of July 26.

d. Discussions between Mr. M and HMC immediately before this AGM (2nd time) - Interference with HMC's exercise of voting rights

At around 3:00 p.m. on July 26, Mr. Toyohara and Mr. Kamo learned from Director K1 that Effissimo intended to "not vote" on 3D's shareholder proposal (i.e., that regardless of HMC's voting behavior, there was almost no chance that the director candidate for 3D's shareholder proposal would be elected). Mr. Kamo then told Director K1 that "if Effissimo abstains or gives a carte blanche to 3D," the preferred form of HMC's voting behavior for Toshiba would be: the "best" is to support the Company proposal and disapprove Effissimo's shareholder proposal, and the "second best" is to "not vote."¹⁰⁷

Also, at around 7:00 p.m. on July 26, Mr. Kamo informed Mr. Kurumatani that Mr. M was "planning to negotiate" with HMC on the evening of July 26, making it his "first priority" to vote in favor of the Company proposal and against Effissimo's shareholder proposal, and making "No Vote" his "second priority".

In an e-mail sent by Director K1 to Mr. Kamo at around 6:00 p.m. on July 26, Mr. Kamo received a draft of a letter that Director-General K2 was to send to Mr. M. It stated,

¹⁰⁷ At the interview, Mr. Toyohara said, "Kurumatani seemed OK, so I wanted to reject the Effissimo proposal; I thought the 3D proposal would not pass; with METI's pressure on Effissimo, I was no longer worried that the 3D proposal would pass."

“Regarding your homework, Director K1 and I have done some estimation of votes, etc., and here it is.” In addition, it stated that “it is desirable to vote against all of the Effissimo proposals” and that “the priority of the options is Harvard's original proposal + vote against (or abstain from) the Effissimo > No Voting for all proposals > Abstain from all proposals.” Such a statement is consistent with Toshiba's request above that the “Best” vote is to support the Company proposal and disapprove Effissimo's shareholder proposal, and that the “second best” vote is “No Vote”.¹⁰⁸

There was an email from Director K1 from around midnight to 6:21 a.m. on July 27 stating that he was expecting and waiting for Mr. M to inform him of the result of the discussion with HMC, and after that, there was no evidence that Director K1 was informed by Mr. M that there was no discussion with HMC on the night of July 26th. On the other hand, On July 28, Director K1 communicated, “I will also give you feedback on Mr. M's evaluation tomorrow” and on July 29, Director K1 communicated, (Harvard is supposed to decide at the investment committee meeting on Tuesday, so I think they will exercise it today.

Under these circumstances, although there is no evidence that Toshiba directly communicated with Mr. M, and there is no evidence that Toshiba discussed in advance what kind of statement Mr. M would make to HMC or knew what kind of statement Mr. M had made. However, (1) it must be assessed that Toshiba, through Director K1, effectively requested Mr. M to negotiate with HMC on the night of July 26, including the non-exercise of voting rights, and based on such request, (2) Mr. M, who discussed with HMC on the previous day (the night of July 25), is recognized to have continued to discuss with HMC by telephone or other means on the night of July 26. Further, (3) In light of the fiduciary duty that HMC owes to its investors, it is highly unusual that HMC did not exercise any voting rights at this AGM.¹⁰⁹This indicates that Mr. M pointed out to HMC in the evening meeting on July 26 that there were risks related to HMC's voting behavior that would cause HMC to not exercise any of its voting rights even after considering its fiduciary duty.

At the interview, Mr. Toyohara said, “METI would never ask us to provide such and

¹⁰⁸ The Investigators have not come into contact with any direct evidence that Director-General K2 actually sent an e-mail to Mr. M concerning the “draft letter”. However, given the fact that the contents of the email are described as a response to Mr. M's “homework”, that there is no evidence that Director K1 informed Toshiba that he did not send the contents of the “draft” to Mr. M, and that it is difficult to imagine any reason for Director-General K2 or Director K1 not to communicate the contents of the email to Mr. M, it is natural to assume that Director-General K2 did send the draft to Mr. M, and even if Director-General K2 did not send the draft to Mr. M himself, it is natural to assume that Director K1 informed Mr. M of the same contents.

¹⁰⁹ According to Mr. T2, Legal, HMC had “always exercised all voting rights” at previous shareholders meetings. Mr. T2, Legal also stated at the interview that HMC's “non-exercise of voting rights is an unthinkable situation and I was very surprised.”

such materials because we would have to explain it to Harvard.”, “Toshiba did not ask METI but just answered its priority because asked by METI, I guess. I do not know what Mr. M told HMC”. At the interview, Mr. Kamo stated that “Toshiba was careful not to approach METI” and that “Toshiba never asked METI to use Mr. M to do anything, nor did Toshiba discuss this with METI”. Both of them deny the fact that Toshiba asked Mr. M to negotiate with HMC.

However, in the voting situation where (1) Mr. Kurumatani would not be elected and the shareholder proposal candidate would be elected, on July 25, Mr. Kamo wrote to Director K1 that Toshiba would take “as for future actions” by itself or through a third party, including “3D: request not to support Effissimo proposal,” “Farallon: request to support the Company proposal,” “Other institutional investors: individual approaches to shareholders with unclear attitudes”, and “Employees and related individual shareholders: individual promotion of voting”, as well as “Harvard: request to support the Company proposal and not to support the shareholder proposal (at least 3D if it is difficult for Effissimo)”. In light of the fact that the email was sent the next day after Director K1's message that Mr. M was expected to be able to discuss the matter with HMC, and that Toshiba was in a situation where it was extremely difficult to directly negotiate with HMC through normal approaches at that time, the email indicates Toshiba's intention to ask Mr. M to ask HMC to take Toshiba's preferred voting action, i.e., to negotiate with HMC on the voting course. In addition, as of July 25, there is no indication that the meeting between Mr. M and HMC on the night of July 26 was scheduled, and the email sent by Director K1 to Mr. Kamo at 6:30 p.m. on July 26 contains Director K1's response to the “homework”. Given these facts, the meeting on the night of July 26 was considered to be a series of meetings set up in response to the results of the meeting on the night of July 25. In addition to the above, (2) in drafting the letter to HMC dated June 22 in Toshiba's name, Director K1 wrote: “ Since Mr. M is the one who will negotiate with Harvard, I would certainly like you to reflect his comments,”. “Since Mr. M himself is trying to persuade Harvard somehow, I would certainly like you to take the following comments into consideration for revision”. “I'll throw it to Mr. M. He's going to have to persuade Harvard, so I think it's better if he himself is convinced,” etc., and then sent Mr. M's “comments” on the contents of the letter, and Toshiba, without specifically objecting to him, reflected Mr. M's “comments” on the letter. (3) At the interview, Mr. Toyohara said (in response to the Investigator's question as to why it was necessary to talk to HMC and why a letter was not sufficient), “We want them to understand what we are doing and what we claim. For that purpose, direct conversation is better than a letter.” It is apparent that Toshiba wanted to have direct discussions with HMC, not just send a letter. (4) On July 26, Mr. Kamo, knowing HMC's intentions regarding the vote, told Director K1 that “if Effissimo abstains or gives a carte blanche to 3D,” the preferred form of HMC's voting behavior for Toshiba would be: the

“best” is to support the Company proposal and disapprove Effissimo's shareholder proposal, and the “second best” isto “not vote.”; (5) Mr. Kamo told Mr. Kurumatani that on the night of July 26, Mr. M was “planning to negotiate” with HMC in a manner consistent with Toshiba's request, i.e., making it his “first priority” to vote in favor of the Company proposal and against Effissimo's shareholder proposal, and making “No Vote” his “second priority“; and (6) At the interview, Mr. Toyohara said, “I thought HMC was OK with the initial proposal plus opposition to ECM, but when I opened the door, everything was unexercised,” and that he thought HMC had changed its intentions regarding voting behavior through discussions with Mr. M, in line with what Toshiba considered “best” or “first priority. (7) As already mentioned, the results of the discussions between Mr. M and HMC on the night of July 25 were promptly communicated to Toshiba, and around midnight on July 27 Director K1 told Mr. Kamo and others about the results of the discussions on the night of July 26 that he had waited until for “some kind of communication from Mr. M until 24h, but there was no special communication. I will contact you again tomorrow morning,” and then at around 6:00 a.m. on July 27th, he wrote, “As of 6:18 a.m., I have not received any e-mail or other communication from Mr. M. As he didn't have the energy to send an e-mail after the phone call and contacted us during the day the next day, at the time before last, it might be the same this time. In any case, I'll let you know as soon as I hear from you,” and on July 28, “I'll give you feedback on Mr. M's evaluation tomorrow,” suggesting that the content of the discussion between Mr. M and HMC was supposed to be fed back to Toshiba. Therefore, even if Toshiba did not directly communicate with Mr. M, and even if Toshiba did not expressly request Mr. M to negotiate with METI, Toshiba must be evaluated as having effectively requested Mr. M, through Director K1, to negotiate with HMC so that HMC would vote in accordance with Toshiba's request. And, in the discussions on the night of July 26, it can be said that Toshiba effectively asked Mr. M to negotiate with HMC so that HMC would not exercise any of its voting rights.

If Mr. M, who was then at the position of Executive Advisor to METI, had discussion with a foreign shareholder in a private company just before shareholders meeting of that company regarding the details of the exercise of the shareholder's voting rights, it is easy to predict that he would have a strong influence on the decisions of the foreign shareholders regarding the exercise of their voting rights considering the background of the METI's regulatory authority over foreign shareholders. ¹¹⁰(Even if Mr. M said that he would hold consultations as a private individual apart from his position as Executive Advisor to METI, the

¹¹⁰ At the interview, Mr. Toyohara said, "American companies are afraid of government investigations. Especially if they want to continue their business in Japan. Just the thought of being investigated is scary. Gaijin have experienced scarier investigations by foreign authorities than those in Japan, so they are also very scared of Japanese authorities."

way the shareholders would perceive him and the influence he would have on them would not change.).

In this regard, HMC's letter to Toshiba dated February 9, 2021 states that in the days prior to the AGM, it received a request from a person unrelated to HMC for an unsolicited meeting regarding Toshiba's election, and as a courtesy it agreed to the meeting, but found the exchange to be extremely inappropriate in both content and timing. At the interview in this Investigation, Farallon stated that they had talked with HMC after the AGM and heard from HMC that (1) There was an aggressive call from Mr. M on the weekend just before the Custodian Vote Deadline, which was Monday or Tuesday of the same week as the AGM, and HMC was "threatened", and (2) after that, HMC had no choice but to decide not to exercise their voting rights because they had no time or room to investigate whether METI was actually acting.¹¹¹ Considering these circumstances and the fact that the Investigation could not confirm anyone other than Mr. M to have been in contact with HMC "a few days" before the AGM,¹¹² it can be inferred that the "person" who is said to have discussed with HMC in HMC's letter dated February 9, 2021 refers to Mr. M,¹¹³ and that Mr. M discussed with HMC on the night of July 26 and pointed out the substantial risks associated with HMC's voting behavior, which HMC took as a serious point. And it can be said that HMC decided not to exercise any of its voting rights at the AGM based on the results of the discussion with Mr. M.

Thus, it can be seen that HMC was forced to change the content of the exercise of voting rights because Mr. M, who was in the position of Executive Advisor of METI, pointed it out, and it can be said that Mr. M, and by extension METI's influence on overseas shareholders, had an actual effect.

¹¹¹ Ms. Weissman stated at the interview that she had spoken with HMC by phone and other means on September 4 and heard that HMC said that it had "consulted with Japanese officials after the AGM and found that there was no problem with HMC voting at the AGM. In the end, it seems that the person who contacted us before the AGM was a 'rogue agent' (a person who is acting on his own without official duty). We regret that we were not able to confirm this earlier and will vote on it at the next shareholders meeting.," At the interview, Mr. Black stated that on September 4, he conducted a videoconference at the request of HMC and heard HMC explain that the reason for not voting at this AGM was that "a person in Japan contacted us and we did not have time to confirm whether the person was acting in an official or unofficial capacity, and HMC's legal advisor advised us not to vote," and "we later found out that the person was not acting in an official capacity". These statements by Ms. Weissman and Mr. Black from HMC are to a large extent consistent with what Farallon claims to have heard from HMC.

¹¹² At the interview, Mr. Toyohara stated that he had not heard of anyone other than Mr. M being involved at all.

¹¹³ The "Harvard Senior Fellow" referred to by Mr. M seems to refer to an appointment at Harvard Business School, while the Harvard Management Company (defined as "HMC" in this report) is a separate entity from Harvard Business School and it is understandable that Mr. M is regarded as a "person not related" to HMC.

In this regard, on December 23, Mr. M posted on his Twitter account, citing the Reuters article, “I am Executive Advisor to METI, a senior fellow at Harvard, and have a long-standing relationship of trust with the foundation, and I do consult with them. However, this article, which is based on the testimony of an anonymous source, is extremely regrettable because it is written as if the CEO and CIO were threatened by me at METI and decided how to exercise their voting rights.” Based on the content of this post, it can be interpreted that Mr. M is not denying that he had consultations with HMC, but is claiming that the consultations were held after “consultation” from HMC.

However, given the the correspondence between Toshiba and Director K1 when Mr. M held discussions with HMC, , the fact that the above-mentioned letter from HMC states that it “received a request (from Mr. M) for an unsolicited meeting related to vote at Toshiba,” and the fact that, according to the letter, HMC was at least aware that Mr. M was an unrelated person, it is difficult to conclude that the discussions took place as a result of HMC's request to Mr. M for consultations regarding the vote at the AGM.

However, given that HMC's letter dated February 9, 2021 does not contain any specific statements made by Mr. M, and that the content of the hearing with Farallon was hearsay and some reservations must be made about the accuracy of the specific statements made, while it is admitted that Mr. M pointed out the substantial risks associated with HMC's voting behavior, which HMC took as a serious point, it is not enough to admit that Mr. M used intimidating words and actions as reported in some media reports.

As described above, it is recognized that, based on Toshiba's de facto request, Mr. M held consultations with HMC on the evening of July 26, and in those consultations, Mr. M pointed out certain risks regarding HMC's voting behavior, and as a result, HMC decided not to exercise all voting rights at the AGM, in line with Toshiba's desired “second best” voting behavior (non-exercise of all voting rights).

e. Summary

As pointed out above, Toshiba intended to have HMC change its voting behavior as requested by Toshiba at the imminent time of the AGM, despite HMC's refusal to make contact with Toshiba under the circumstances where Toshiba's intentions have already been communicated to HMC to a considerable extent. Especially in the discussions held on the evening of July 26, Toshiba ascertained HMC's specific intentions regarding the vote, and intended to change the voting behavior as requested by Toshiba, including the option of not exercising any voting rights because such exercise would be inconvenient for Toshiba's management. The fact that Toshiba, with such intention, working in unison with METI, so to

speak, specifically through Director K1¹¹⁴, effectively asked Mr. M, who was in the position of Executive Advisor to METI, to negotiate with HMC can be said that Toshiba devised a plan to effectively prevent shareholders from exercising their rights through undue influence, and considering provisions of the Corporate Governance Code, etc., we believe that the AGM was not fairly managed.¹¹⁵

f. Corollary (magnitude of impact of non-exercise of voting rights by HMC)

If HMC had voted in favor of all the proposals for election of directors, the following is an estimate of whether or not the outcome of the resolution of the AGM would have been affected.

First of all, the ratio of affirmative votes of Mr. Shimizu and Mr. Imai, who received the most affirmative votes among the 3D proposal and the Effissimo proposal in the corrected count results reflecting the uncounted votes due to the Preemptive Processing, was as follows.

Actual Mr. Shimizu: 32.38% Mr. Imai: 44.21%

Next, assuming that HMC had voted in favor of both of them, the ratio of affirmative votes of each would have been as follows (assuming the number of voting rights of HMC as

¹¹⁴ With regard to this matter, the Director of the IT Industry Division, Commerce and Information Policy Bureau of METI, who succeeded Director K1, stated to the Investigators that "METI has never asked Mr. M, the former Executive Advisor, to encourage individual investors to exercise their voting rights, as reported in the media," which is the official view of METI. The Investigators also requested an interview with Director K1, but were refused.

¹¹⁵ In this regard, Mr. Kurumatani said at the interview that Mr. Kamo sent an e-mail to Mr. Kurumatani at around 7:00 p.m. on July 26 regarding discussions between Mr. M and HMC: "I get so many e-mails, I can't remember every single one. I don't care what Harvard does, I thought we won with non-activist shareholders, so I wouldn't care if I saw the e-mails," and "I don't even know about Mr. M's negotiations." and as a backdrop, with respect to the estimation of votes for AGM, "After July 20, we thought we would not lose," "When ISS and Glass Lewis became OK, I thought it was OK".

However, the perceptions of Mr. Kurumatani regarding the status of his estimation of votes differ greatly from the perceptions of at least Mr. Toyohara, Mr. Kamo, and other Toshiba officials other than Mr. Kurumatani. At the interview, Mr. T1, Strategic Planning said, "Mr. Kurumatani called me, talked to me at regular meetings, and asked me almost every day about my estimation of votes," "We had our last regular meeting on (July) 28, and at that time, less than half of the votes had been opened," and Mr. Kurumatani "was still worried about his own vote down, even after recommendations were made". It can be seen that Mr. Kurumatani was highly concerned about the status of the estimation of votes. In addition, as already mentioned, Mr. Kurumatani seems to have had a strong sense of refusal regarding the election of the candidates in the shareholder proposals.

In light of these circumstances, it is extremely unnatural to think that Mr. Kurumatani, who was highly interested in estimation of votes, knew nothing about Mr. M's negotiations while receiving specific reports on the status of negotiations between HMC and Mr. M, to which Mr. Toyohara and Mr. Kamo were paying a great deal of attention at the time, in the midst of the real possibility of his own rejection or the election of the shareholder-proposed candidates. The above statement by Mr. Kurumatani cannot be trusted.

described in “**II. B. 3.**”¹¹⁶).

Assumption Mr. Shimizu: 37.09% Mr. Imai: 47.33%

As a result, there was no change in the conclusion that the shareholder proposals for election of directors were all rejected, but at least for Mr. Imai, the impact was not negligible, as his proposal would have been approved if only 3% more votes had been cast in favor of it.

D. Conclusion

As described above, Toshiba, so to speak in unison with METI, devised a plan to prevent Effissimo from exercising its shareholder proposal right at the AGM, devised a plan to unfairly influence the content of 3D's exercise of its voting rights, and effectively asked Mr. M to negotiate with HMC to change its voting behavior to include the option of not exercising any of its voting rights.

Therefore, we believe that the AGM was not fairly managed.

VI. Causes

In the course of this Investigation, the Investigators came into contact with circumstances that may have contributed to Toshiba's inappropriate behavior as described above, and this point is added below.

As described in “**IV. D.**” above, from late January 2021 to early the following month at least Mr. Ota, chairperson of the Audit Committee, reviewed all of the e-mails that Law Firm A targeted for investigation in the Report A. Law Firm A prepared the transcripts of interviews with Mr. Kurumatani, Mr. Toyohara, and Mr. Kamo, which were the subject of the investigation, and attached to these hearing transcripts were approximately 40 related e-mails, the meaning of which Mr. Kurumatani, Mr. Toyohara and Mr. Kamo were asked to explain (These emails are hereinafter referred to as the “Hearing Record Emails”). Some of the Hearing Record Emails contained the following message: “We will ask METI to beat them up for a while, but at some point METI will suggest to them, 'Why don't you have them set up a compliance committee? (Mr. Toyohara's e-mail of May 31), or “Mr. M will negotiate this evening with this main scenario as his first priority and No Vote as his second priority” (Mr. Kamo's e-mail of July 26), and “From around early Sunday, with the support of the METI, the activists are being divided” (Kamo's email of July 27). These emails suggest that Toshiba, with METI's help, was trying to effectively prevent shareholders from exercising their

¹¹⁶ There were some documents within Toshiba that estimated the number of voting rights held by HMC to be slightly higher than 200,000 (e.g., 213,935), but even if this larger number were adopted, the approval ratio would only increase by about 0.3% and there would be no change in the outcome of the resolution.

shareholders proposal right and voting rights at the AGM. When the Investigator showed these e-mails to Mr. Ota at the time of the interview, Mr. Ota stated, "There were indeed e-mails with such harsh expressions," and admitted that he had read these e-mails at the time.

Nevertheless, at least the the Audit Committee did not report these issues to the Board of Directors as problematic and rather, in the "Audit Committee's Opinion in regard to ECM's Demand for Convocation of General Meeting of Shareholders " dated February 17, 2021, it reported to the Board of Directors that Toshiba was not involved in any undue interference with HMC, and expressed the view that it was appropriate to recommend to shareholders to oppose the shareholder proposal regarding the appointment of the Investigators.¹¹⁷ In light of this, we believe that Toshiba's Audit Committee was unable to fully perform its check and balance function as of around February 2021, in the sense that it did not take any action such as reporting or investigating the issue even when it came into contact with the beginning of serious governance problems such as executive officers' attempts to prevent shareholders from exercising their rights.

Given that the composition of Toshiba's Audit Committee prior to this AGM is the same as that of February 2021, we believe that this failure of the Audit Committee to function as a check and balance is part of the reason the above problematic acts could not be prevented from occurring¹¹⁸.

¹¹⁷ The Audit Committee may claim that it relied on the report of Law Firm A. However, although the main text of that report clarified a considerable amount of facts under the time constraint, it made the concluding part of the report seem unproblematic at first glance by setting up a rather limited inquiry. This is not usually done unless the Audit Committee, the client, specifically requests it. Mr. Ota stated that the investigation was limited to whether or not Toshiba was involved in the undue pressure on HMC, which was the issue in the media reports, because the media would not write a lie at all, and the initial setting of such an investigation by the Audit Committee seems to have a certain rationality. However, if, in the course of the investigation, the committee came to know of other related problematic activities, the committee, which is expected to act as a check and balance on management, should have taken new measures. However, even if the Audit Committee had read the text of the report and especially the e-mails themselves, which were thought to contain information suggesting the existence of an inappropriate collaboration with METI to eliminate activists, and even if foreign directors had marveled at the close relationship between Toshiba and METI, the Audit Committee's attitude seemed to have been as if: it is natural and foreigners don't understand. A company like Toshiba has to get along with METI (which is why they do their best to keep such facts closely held within the company, assuming that is the intention of METI), as suggested by Mr. Ota's interview. (Mr. Furuta also commented that a company like Toshiba needs to get along with METI). Toshiba is a Company with Committees that has a Board of Directors with a majority of Outside Directors, and it appears from the outside that it is a most advanced company in corporate governance. However, if there is such a strong tendency in Outside Directors' recognition and awareness, it seems difficult for such an impressive structure to fully function.

¹¹⁸ It should be noted that Mr. Ota received phone calls from Mr. Kurumatani on April 30 and May 1, 2020, saying that "we would like to deal with it with the enforcement date (May 8) of the Revised FEA in mind" and "we would like to make efforts to build a consensus within the company and at Kasumigaseki after Golden Week" (Mr. Ota's e-mail of May 2), and that "they are also fully aware of the influence from Kasumigaseki and are paying attention to the results of future negotiations"

VII. Conclusion

As described above, Toshiba requested METI's support for the so-called measures to counter the activists at the AGM, worked closely with METI's Commerce and Information Policy Bureau Route, exerted undue influence on some shareholders against the backdrop of the possibility of invoking the authority under the Revised FEA, and, so to speak, worked in unison with METI's Commerce and Information Policy Bureau Route to deal with shareholders.

Specifically, as described in "V. B. 4.", Toshiba, in close coordination with the Commerce and Information Policy Bureau Route, (1) skillfully took advantage of the procedures under the Revised FEA, including Report Requisition Order Addressed to Effissimo by the Security Trade Control Policy Division, a regulatory authority. In addition, Toshiba attempted to force Effissimo to withdraw its shareholder proposal by closely linking (2) Toshiba's "Sunshine Policy" dialogue and (3) the Commerce and Information Policy Bureau Route's mere conversation that did not lead to divestiture order or administrative guidance. In this series of actions, there were even suspicions of violations of laws and regulations in many places, and it was at least an attempt to unfairly restrict the exercise of shareholder proposal right for a purpose that deviated from the purpose of the Revised FEA.

In addition, as described in "V. C. 2." above, in conjunction with the above-mentioned move against Effissimo, the Commerce and Information Policy Bureau Route, which was, so to speak, working in unison with Toshiba to deal with shareholders, contacted 3D and told them that "if you are barbecuing next to your neighbor when there is a big fire, it may not be enough," suggesting if 3D votes in favor of Effissimo's proposal to appoint directors, there is a possibility that 3D will be involved in the enforcement against Effissimo under the FEA, and that the Security Trade Control Policy Division may take some actions against 3D under the FEA, such as an investigation. This had a certain impact on 3D's decision to exercise its voting rights.

In addition, as described in "V. C. 3.", despite HMC's refusal to have any contact with Toshiba, just a few days before the AGM, Toshiba effectively made a request to Mr. M, who was then Executive Advisor to METI, through the Commerce and Information Policy Bureau Route, to carry negotiations, which are normally considered extremely difficult to be settled, to change the voting behavior of HMC in accordance with Toshiba's request by including the option of not exercising any of its voting rights. As a result of Mr. M's contact with HMC, HMC

(Mr. Ota's e-mail of May 31), and "We started thinking of the "advisory committee" as a way to deal with Company E" (Mr. Ota's e-mail of June 18). We can see that there is a possibility that Mr. Ota may have been exposed to some of the problematic actions by the business side even at the stage when they were in progress.

did not exercise any of its voting rights.

According to the above, Toshiba is found to have devised a plan to effectively prevent shareholders from exercising their shareholder proposal right and voting rights at the AGM by giving undue influence to shareholders Effissimo, 3D and HMC. Considering the importance of shareholders' right to make proposals and exercise their voting rights, and the fact that the Corporate Governance Code stipulates that "Given the importance of shareholder rights, companies should ensure that the exercise of shareholder rights is not impeded." (Supplementary Principle 1.1.3), the Investigators believe that this AGM was not fairly managed.

End