

Notice: The document is an English translation of the original Japanese release, and is only for reference purpose. The Japanese original is official.

February 17, 2021  
Toshiba Corporation

FOR IMMEDIATE RELEASE

**Notice Regarding the Date and Venue and the Agenda of an Extraordinary General Meeting of Shareholders, and the Opinion of the Company’s Board of Directors on the Shareholder Proposals**

As announced in the releases titled “Notice Concerning a Shareholder Demand to Call an Extraordinary General Meeting of Shareholders” dated December 18, 2020 and dated December 25, 2020, Toshiba Corporation (“Toshiba”) received written demands to call an extraordinary general meeting of shareholders (the “Extraordinary General Meeting of Shareholders”) from shareholders, Effissimo Capital Management Pte Ltd and Suntera (Cayman) Limited as Trustee of ECM Master Fund on December 17, 2020, and from a shareholder Chinook Holdings Ltd on December 25, 2020, respectively.

In response to these demands, Toshiba has announced in the release titled “Notice Concerning Setting Date of Record for Voting Rights for an Extraordinary General Meeting of Shareholders” dated January 15, 2021 that the date of record for voting rights for an extraordinary general meeting of shareholders held within three months from February 1, 2021 will be set on February 1, 2021. This release is to announce that, at its Board of Directors meeting held today, Toshiba resolved as follows with respect to the date and venue and the agenda of the Extraordinary General Meeting of Shareholders.

**Toshiba** also unanimously (excluding Directors who refrained from voting by way of caution in light of applicable laws.) resolved at its Board of Directors meeting held today, including Outside Directors, **to oppose to both of the shareholder proposals** after seriously considering and discussing the shareholder proposals (Proposals Nos. 1 and 2).

Details

1. Date and Venue of the Extraordinary General Meeting of Shareholders
  - (1) Date and Time: Thursday, March 18, 2021 at 10:00 a.m., Japan time
  - (2) Venue: Belle Salle Takadanobaba,  
8-2, Okubo 3-chome, Shinjuku-ku, Tokyo, Japan

In the interest of preventing the spread of COVID-19, we sincerely request your cooperation in refraining from attending this General Meeting in person to the extent possible. This Extraordinary General Meeting of Shareholders will be broadcast live on the Internet, so the proceedings of the meeting will be available online. Please exercise voting rights in advance by mail or via the Internet. Prior submission of questions is also accepted. If you do plan on attending the meeting in person, we ask that you read and accept in advance the notes set out in the convocation notice.

## 2. The Agenda of the Extraordinary General Meeting of Shareholders

### Matters for resolution

#### <Shareholder Proposals>

- (1) Proposal No.1: Election of 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

This shareholder proposal is made by Effissimo Capital management Pte Ltd and Suntera (Cayman) Limited as Trustee of ECM Master Fund.

#### <Summary of the Matter for Resolution>

The summary of this matter for resolution is 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”), to have them investigate the matters set out in “Matters for investigation” below.

#### “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 was conducted in a fair and impartial manner (including the lawfulness and fairness of the resolutions thereat).

The full text of the outline of the matter for resolution and reason for the shareholder proposal is as set out in Appendix I “Details of the Shareholder Proposal.”

- (2) Proposal No.2: Partial Amendment of the Articles of Incorporation

This shareholder proposal is made by Chinook Holdings Ltd.

#### <Summary of the Matter for Resolution>

The summary of this matter for resolution is to add the following article to the Company’s Articles of Incorporation and renumber the current Article 34 as Article 35.

Article 34 (Capital Policy)

1. The Board of Directors of the Company shall formulate a capital policy proposal, including a reasonable explanation of the policy, for strategic investment for growth for the fiscal years ending between April 1, 2021 and March 31, 2026, which shall be presented to a shareholders meeting for its approval.
2. If the capital policy proposal stipulated in the preceding paragraph is rejected at or has not been submitted to a General Meeting of Shareholders held before or at the Ordinary General Meeting of Shareholders for the fiscal year ending on March 2021, the Company will return to the shareholders, subject to the capital policy set forth in the Toshiba Next Plan, the full amount of operating cash flow in the financial statements (up to the amount available for distribution under the Companies Act) for each fiscal year ending between April 1, 2021 and March 31, 2026, by means of a dividend of surplus or share buyback.
3. “Toshiba Next Plan” in the preceding paragraph refers to the corporate transformation plan announced on November 8, 2018 (and includes subsequent changes but excludes changes on or after July 31, 2020).

The full text of the outline of the matter for resolution and reason for the shareholder proposal is as set out in Appendix II “Details of the Shareholder Proposal.”

Among the shareholder proposals made by Chinook Holdings Ltd, “the Growth Investment and Capital Policy of the Company” is not included as the agenda for of the Extraordinary General Meeting of Shareholders because it is an agenda seeking an advisory resolution, which is not matters for resolutions at the general meetings of shareholders under applicable laws or the Articles of Incorporation, and is therefore not compliant with applicable laws as a shareholder proposal.

With the exception of some changes in formatting and layout, the content and reasons for each shareholder proposal of Proposals Nos.1 and 2 in Japanese are presented as received from the proposing shareholders.

3. Opinion of the Board of Directors on Each Shareholder Proposal

**The Board of Directors of the Company is OPPOSED to both of the shareholder proposals.**

- (1) Opinion of the Board of Directors in opposition to Proposal No.1 (Election of 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) is as described below:

**The Board of Directors of the Company is OPPOSED to and advices shareholders to vote AGAINST this Shareholder Proposal (Proposal No.1).**

The Board of Directors of the Company has determined that there is no necessity, validity or reasonable grounds to conduct further investigation, and the election of three investigators as per this Shareholder Proposal (Proposal No. 1) is not acceptable for the following reasons.

- (1) Effisimo Capital Management Pte. Ltd. And Suntera (Cayman) Limited as Trustee of ECM Master Fund (Effisimo) (collectively, the “Demanding Shareholders”) have alleged that (i) “there were in fact shareholders that have given up exercising their voting rights due to such pressure” (the “Pressure Issue”); and, (ii) “there are a number of abnormal facts related to the counting of the voting rights which cannot be explained by this alone” with respect to the Company’s explanation regarding the fact that “1139 voting cards received through the day before the 181st Annual General Meeting of Shareholders were not counted as valid votes” (the “Voting Rights Counting Issue”).
- (2) Regarding the Pressure Issue, while the Company requested the Demanding Shareholders to disclose the details of the suspicion and the grounds thereof, the Demanding Shareholders have not made such points clear. However, in light of having received this Shareholder Proposal from the Demanding Shareholders, the Audit Committee of the Company, comprised solely of outside directors, embarked upon further investigation by engaging an outside law firm. This investigation has sought to, inter alia, verify whether the Company had taken part in applying such pressure if a certain large shareholder indirectly owning the shares in the Company (the “Large Shareholder”) was in fact subject to undue pressure in respect of the exercise of its voting rights at the 181st Annual General Meeting of the Company (the “AGM”) as reported by certain news media. The investigation undertaken by the Audit Committee included review of Company documents, interviews of certain relevant senior management of the Company and review of their email correspondence by the outside law firm. Based on the Audit Committee’s review, no material or information was discovered that would lead to a conclusion that the Company was involved in any undue intervention by attempting to exert undue pressure. Moreover, the Audit Committee wrote to the Large Shareholder to ask whether or not it has been the subject of any undue pressure in relation to the exercise of its voting rights at the AGM that the Company had taken part in, but the Large Shareholder did not provide any specific information as to whether or not there has been any undue pressure that the Company had taken part in.
- (3) In addition, the Audit Committee also received records and reports from the related administrative divisions of the Company, regarding contact by the Company or its agents with shareholders other than the Large Shareholder and reviewed those records and reports; however,

nothing came to the Audit Committee's attention which raises concerns that undue influence, intervention or similar act was exerted by the Company or its agents, in regard to the exercise of shareholders' voting rights.

In the written demand of a general meeting of shareholders, the Demanding Shareholders have stated that "media coverage has reported that ... proxy advisers were pressured." The Audit Committee has, in relation to the AGM, conducted hearings with the related administrative divisions of the Company in regard to contact with the proxy advisers. Based on these hearings and review, nothing has come to the Audit Committee's attention which raises concerns that undue influence, intervention or similar act was exerted by the Company or its agents, in regard to the advice by the proxy advisers.

- (4) Regarding the Voting Rights Counting Issue, as described in the release titled "(Update) Counting of voting rights exercised at the Ordinary General Meeting of Shareholders for the 181st Fiscal Period" dated December 18, 2020, the Company requested its Transfer Agent and Shareholder Registration Agent, Sumitomo Mitsui Trust Bank ("SMTB"), to investigate the issue and received a report on the results thereof. Further, in order to ensure objectivity and transparency, the Audit Committee engaged an outside law firm to assist it in evaluating the appropriateness of the process and procedures adopted by SMTB in its investigation of the issue and the results thereof. While the results of such evaluation have already been disclosed in the aforementioned release, its outline is as described below:

The Voting Rights Counting Issue relates to work in which the Company was not involved; SMTB was responsible for counting voting rights, and Japan Post Co., Ltd. was responsible for handling the mailing of voting right exercise forms. As announced by SMTB, it has become clear that the issue of shareholder voting right exercise forms that arrived before the deadline not being counted appropriately is not something limited to the Company.

While the Demanding Shareholders are alleging that "there are a number of abnormal facts...which cannot be explained by this alone" and demanding further investigation, no specific facts have been presented. Against this background, the Audit Committee requested the related Administrative Divisions of the Company to report the facts relating to counting of votes; however, no facts that the Company should further investigate have been discovered.

The Company has taken the issue regarding inappropriate counting of votes seriously and responded sincerely; however, the Company believes that the Voting Rights Counting Issue is an issue relating to work for which the Company's Transfer Agent and Shareholder Registration Agent and the Post Office were responsible, and it would be impossible for the Company to

conduct further investigation than it has already done and it is not an issue the Company should further investigate.

While the Company has received explanation regarding measures to prevent recurrence from SMTB, the Company for its part will also make efforts to ensure appropriate counting of votes by encouraging the use of online voting for future general meetings of shareholders and other means, in light of the situation regarding the counting work.

- (5) The Company believes that the voting rights of shareholders are the fundamental and important rights, and has put focus on fair and impartial operation of the general meetings of shareholders. The Company will continue to make efforts to make sure the shareholders' rights are exercised appropriately and to ensure fair and impartial operation of the general meetings of shareholders.

As described above, the Audit Committee of the Company has investigated the Pressure Issue and the Voting Rights Counting Issue to the fullest extent possible; however, no matters, that would lead to a conclusion that further investigation by the Company with respect to those issues is required, has been discovered. Conducting an investigation by forming an independent committee or by electing investigators would give rise to concern that such investigation would create a situation where officers and staff including a management team that should be focusing on business operations cannot concentrate on the day-to-day business operations and cause a significant impact on the management of the Company. Accordingly, conducting such an investigation as described above is something that should only be resorted to in cases where suspicions based on concrete evidence that are sufficient to find that an investigation is necessary even after taking into consideration the above exist; however, as described above, no such suspicion existed pertaining to those issues.

The Board of Directors has concluded that there is no validity or reasonable grounds to further investigate the Pressure Issue and the Voting Rights Counting Issue by electing investigators in terms of the time and the disruption of the Company's business operations, as well as the additional cost, because no material or information, that would lead to a conclusion that further investigation by the Company with respect to those issues is required, has been discovered. Therefore, the Board of Directors is **OPPOSED** to and advises shareholders to vote **AGAINST** this Shareholder Proposal.

- (2) Opinion of the Board of Directors in opposition to Proposal No.2 (Partial Amendment of the Articles of Incorporation) is as described below:

**The Board of Directors of the Company is OPPOSED to and advices shareholders to vote AGAINST this Shareholder Proposal (Proposal No.2).**

The Company is currently implementing its five-year whole-company transformation plan “Toshiba Next Plan,” published on November 8, 2018. Since its formulation of the “Toshiba Next Plan,” the Company has not made any particular changes to the growth strategy and capital policy it presented up until its publication of the Toshiba Next Plan Progress Report on June 5, 2020, even in the Toshiba Next Plan Progress Report announced on November 11, 2020. And in the “FY2020 Third Quarter Consolidated Business Results (First nine months cumulative)” published on February 12, 2021, the Company maintained and restated the growth strategy and capital policy presented in the “Toshiba Next Plan” and the Toshiba Next Plan Progress Reports while sorting out the details.

In the “Toshiba Next Plan,” the Company presents its growth strategy, divided into three phases. The Company positions the strengthening of core earning power in “Toshiba Next Plan – Phase 1,” and this has already led to significant results in the form of improvements in the marginal profit rate and reductions in fixed costs. This shows that the phase 1 has been steadily implemented.

In “Toshiba Next Plan - Phase 2,” the Company is aiming to achieve further growth by accomplishing its transformation into an infrastructure services company utilizing cyber physical systems (CPS) technology (\*Note).

(\*Note) “CPS” refers to a system that enables users to create added value by collecting data in the physical world, analyzing it in cyberspace using digital technologies, and then feeding it back to the physical world as information and knowledge that can easily be utilized.

The specific growth factors in “Toshiba Next Plan - Phase 2” comprise three pillars—enhancing the competitiveness of service operations, expanding service locations, and evolving into value-added services. The Company is aiming to expand its infrastructure services revenue by approximately 500 billion yen, 230 billion yen of which is planned to be achieved by acquiring locations through M&A. The M&A will be centered on programmatic M&A (\*Note), in which a number of acquisitions on a scale ranging from billions to tens of billions of yen will be made incrementally. The Company is also anticipating growth of approximately 100 billion yen mainly in the field of renewable energy, the market for which is expected to see rapid growth in the future. The Company will shift into a light capital model from a heavy capital model in its approach to invested capital.

(\*Note) “Programmatic M&A” means not major M&A encountered opportunistically but planned, small-scale M&A that is carried out every year as part of business strategy and that is focused on areas that are adjacent and complementary to the existing business of a company.

In “Toshiba Next Plan – Phase 3,” with the aim of making significant strides as a CPS technology company, the Company will provide value to users by providing data services and building a data matching platform. The Company has also engaged in developing new businesses related to areas such as decarbonization and precision medicine, and in doing so it plans to build a next-generation business model.

In its approach to growth investment, the Company has set internal ROIC/IRR benchmarks for strategic investments and implementing stricter investment selection processes. Decisions about whether to make

investments will be considered in a fair and open manner based on strict discipline and governance within the framework of the foregoing growth strategy. Further, the Company views strategic investment as a combination of shareholder returns based on appropriate capital measurement and inorganic growth investment such as M&A.

The Company adopts a basic policy of maintaining an average consolidated dividend payout ratio of at least 30% (\*Note) and uses capital in excess of the appropriate level of capital to provide shareholder returns, including share repurchases. The appropriate level of capital shall be reviewed every year by the Board of Directors based on the then current balance sheet, portfolio, and business plan. The Board of Directors will also review the appropriate level of capital each time there is a significant change to shareholders' equity, such as upon realization of asset sales or in the event of a large-scale deal that is extremely strategically significant to the Company. Regarding the Company's 40.2% holding in KIOXIA Holdings Corporation, the Company has no strategic intention that its Group remain in the Memory business, so it is continuing to evaluate means of monetizing its investment in order to realize the value of the shares it holds in that company. Once such monetization is completed, the Company, in principle, intends to return a majority portion of the net proceeds to shareholders.

(\*Note) For the time being, equity-method income/losses from KIOXIA Holdings Corporation are excluded from this policy.

In this way, since its formulation of the "Toshiba Next Plan," there has been no change to the growth strategy and capital policy the Company presented up until the Toshiba Next Plan Progress Report announced on June 5, 2020. There is a misunderstanding in the Shareholder Proposal on this point.

The Company has also been appropriately fulfilling its responsibility to shareholders by providing progress reports at regular intervals regarding the growth strategy and capital policy it presented in the "Toshiba Next Plan." In addition, in managing the Company it confirms and reflects shareholder intentions by submitting director election proposals at the ordinary general meeting of shareholders each year and securing the confidence of shareholders in respect of such proposals. Accordingly, it is not necessary to establish provisions in the Articles of Incorporation to the effect that approval must be obtained at the general meeting of shareholders regarding the content of a "capital policy proposal containing a reasonable explanation of the policy for strategic investment for growth" as demanded in the Shareholder Proposal. The Shareholder Proposal would also obligate the Company to return to shareholders every year the full amount of operating cash flow in the financial statements over the five-year period from April 1, 2021 to March 31, 2026 in the event that the above capital policy proposal submitted by the Board of Directors is not approved at the general meeting of shareholders. However, such rule would have the effect of constraining into the future the ways in which the Company can use its cash flows and the level of its undistributed profits despite the possibility of future changes to the management situation, financial



situation, external environment, etc. The Shareholder Proposal therefore constitutes nothing less than an excessive intervention in a matter of business management that should naturally be recognized as falling within the discretion of the Board of Directors. Moreover, in an environment that is undergoing dramatic changes due to factors such as COVID-19, the ability of the Board of Directors to make agile management decisions tailored to such environmental changes is essential for the Company to realize the growth strategy and capital policy presented in the “Toshiba Next Plan.” The Board of Directors therefore believes that the provisions of the Articles of Incorporation demanded in the Shareholder Proposal are unrealistic provisions that would hinder the realization of such Plan.

Further, the Companies Act prescribes that “each time” a stock company intends to distribute dividends of surplus it shall determine the details of such distribution by resolution of a shareholders meeting (Article 454, Paragraph 1 of the Companies Act), and it is regarded that the question of whether the surpluses or cash balance resulting from the cash flows of the company should be returned to shareholders or retained by the company is a question that should be determined “each time” depending on the current circumstances at the time of such decision (such as the management situation, the financial situation, and the external environment). Accordingly, by rigidly and peremptorily prescribing that the Company must make a decision to return the entire amount of its operating cash flow to shareholders if the capital policy proposal is not approved, the Shareholder Proposal is also contrary to the basic principles of the Companies Act.

Further, the Company is actively engaged in initiatives addressing ESG, and is continually investing resources in those that may not directly contribute to the business of the Company within a short period of time based on a medium-to-long term perspective such as investments necessary for maintaining and expanding production and other capacity. Applying the entire amount of generated operating cash flow to shareholder returns would in this sense also impede the medium-to-long term growth of the Company.

As described above, the Company has not made any particular changes to the growth strategy or capital policy it presented in the “Toshiba Next Plan.” Not only is there a misunderstanding from the very beginning in what is claimed in the Shareholder Proposal, but also the content of the Shareholder Proposal itself is unreasonable, and would prevent the medium-to-long term improvement of the Company’s corporate value. Therefore, the Board of Directors is **OPPOSED** to and advises shareholders to vote **AGAINST** this Shareholder Proposal.

End

## Details of the Shareholder Proposal

Proposal No.1 is made by Effissimo Capital management Pte Ltd and Suntera (Cayman) Limited as Trustee of ECM Master Fund.

**Proposal No.1:****Election of 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**

## (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.

Name (Date of birth)	Summary of the career, positions, responsibilities and other important roles held	Number of the Company's shares owned
Yoji Maeda (June 15, 1964)	1990: Registered as a lawyer, joined Anderson, Mori & Rabinowitz 1999: Partner at Anderson Mori 2000: Partner at Taiyo Law Office (Paul, Hastings, Janofsky & Walker, Foreign Law Joint Enterprise) 2005: Partner at O' Melveny & Myers (present)	0
Takashi Kizaki (May 29, 1964)	1991: Registered as a lawyer, joined Kaneko & Iwamatsu 1999: Partner at Kaneko & Iwamatsu (present) 2004: Part-time lecturer at Tokyo Women's Medical University 2007: Arbitrator at the Medical ADR associated by the three Bar Associations in Tokyo (present) 2012: Mediator at the Financial Instruments Mediation Assistance Center (present) 2013: Practicing-Attorney-Professor for Civil Advocacy at the Legal Training and Research Institute of the Supreme Court of Japan 2015: Secretary of the Board of the Legal Training and Research Institute of the Supreme Court of Japan 2016: Examiner of the bar examination and the preliminary bar examination (Civil Procedure) 2019: Outside Corporate Auditor of Takachiho Koheki Co., Ltd. (First Section of TSE) (present)	0
Takao Nakamura	1989: Bank of Japan	0

(August 25, 1965)	1996: Director/CFO of Digital Garage, Inc. 1997: Representative Director and Vice President, COO&CFO of Digital Garage, Inc. 1999: Representative Director and President of Infoseek Japan K.K. 2008: Registered as a lawyer, joined Torikai Law Office 2009: Outside Director of PA Co., Ltd. (Second Section of TSE) (present) 2015: Partner at Torikai Law Office 2016: Partner at Wadakura Gate Law Office (present) 2016: Outside Director (Audit and Supervisory Committee Member) of Value Commerce Co., Ltd. (First Section of TSE) (present) 2018: Outside Director (Audit and Supervisory Committee Member) of Kayak Inc. (TSE Mothers) (present) 2019: Outside Director of Medical Data Vision Co., Ltd. (First Section of TSE) (present) 2019: Outside Corporate Auditor of Matsuya Co., Ltd. (First Section of TSE) (present)	
-------------------	--	--

**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.

#### D. Remuneration

- (i) The Company shall pay to the Investigators, to the extent socially reasonable, the costs incurred in the investigation (including a daily allowance for the Investigators and investigation assistants). In case the Investigators and investigation assistants charge a fee for their ordinary course of business on a time charge basis, such fee calculated on a time charge basis will be deemed socially reasonable.
- (ii) If the Company refuses to pay the costs incurred in the investigation in whole or in part at the Investigators' demand, Effissimo will compensate the Investigators for the remaining amount.

#### E. Others

Each of the Investigators may appoint as investigation assistants whoever he deems appropriate for the investigation, and delegate the investigation in part. However, the officers or employees of the Company cannot serve as investigation assistants.

#### (2) Reason for the convocation

It is unclear whether the 181st Annual General Meeting of Shareholders was conducted in a fair and impartial manner, and the actual situation has not been revealed regarding this matter.

According to the Company's news release "Counting of voting rights exercised at the Ordinary General Meeting of Shareholders for the 181st Fiscal Period" dated September 18, 2020, 1139 voting cards received through the day before the 181st Annual General Meeting of Shareholders were not counted as valid votes. Regarding this matter, it was explained by Sumitomo Mitsui Trust Bank ("SMTB"), to which the Company entrusted vote counting tasks for the voting rights of the Company, that it illegally excluded the voting cards received on the last day of voting from the tally. As a result, the Financial Services Agency has issued an order to SMTB to submit a report on this matter. Furthermore, media coverage about the 181st Annual General Meeting of Shareholders and our inspection and copying of the voting cards, etc. reveal that there are a number of abnormal facts related to the counting of the voting rights which cannot be explained by this alone.

In addition, media coverage has reported that some shareholders were pressured not to exercise their voting rights, and that proxy advisors were likewise pressured at the 181st Annual General Meeting of Shareholders. We have interviewed several dozen major shareholders of the Company regarding this matter and have confirmed that there were in fact shareholders that have given up exercising their voting rights due to such pressure.

Given these circumstances, we have asked the Company management to establish a third-party committee consisting solely of independent members to investigate whether the 181st Annual General Meeting of Shareholders was conducted in a fair and impartial manner, and to clarify the truth, and if the 181st Annual General Meeting of Shareholders was not conducted in a fair and impartial manner, to investigate the causes for the failure and develop preventive measures so that such is not repeated in the future. However, roughly three months have passed since such request, and to date the Company has not established a third-party committee.

The exercise of voting rights is the most fundamental right vested in shareholders, and the fair and impartial operation of the shareholders' meeting, where voting rights are exercised, is the foundation of

the joint-stock company system. If voting cards, which were in fact valid, were not counted as valid voting rights or shareholders hindered from exercising their intended voting rights due to undue pressure, - this would be nothing more than the denial of the most fundamental and inalienable right of shareholders. Such a situation cannot be condoned.

In order to safeguard the necessary transparency that secures the fair and impartial operation of the general meeting of shareholders at the Company, we have come to the conclusion that it is necessary to clarify the current state of uncertainty by conducting an investigation by investigators independent of the Company's management. Since this investigation is related to the operation of the general meeting of shareholders, we believe that the investigation should be completed prior to the Ordinary General Meeting of Shareholders for this fiscal year (the 182nd Annual General Meeting of Shareholders).

Therefore, we have decided to request the convocation of an Extraordinary General Meeting of Shareholders and propose this resolution.

Under this proposal, Mr. Yoji Maeda, Mr. Takashi Kizaki and Mr. Takao Nakamura, are the candidates for persons who will be charged 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. All candidates have sufficient expertise and experience as attorneys at law. We believe that they will be able to engage in efforts to unravel the actual situation in a fair and objective manner as investigators, independent not only from the management of the Company but also from us. If this proposal is approved, the investigative report by the investigators will be reported to the Company shareholders at the subsequent general meeting of shareholders which is expected to be the Ordinary General Meeting of Shareholders for this fiscal year (the 182nd fiscal year).

We kindly ask fellow shareholders of the Company to understand the significance of this proposal, which is to protect the most fundamental and important right of shareholders – the ability to exercise voting rights, and to safeguard the transparency that secures the fair and impartial operation of the general meeting of shareholders going forward.



Requester is a corporation that commissions asset management to Farallon Capital Management LLC (“Farallon”). Since 2017, Farallon has engaged in constructive discussions with the Company as a major shareholder. Raymond Zage, who has experience as Farallon’s head of Asia, was appointed as the Company’s director at the Company’s Ordinary General Meeting of Shareholders held in June 2019, based on Farallon’s recommendation.

Farallon evaluates the Company highly for its success in strengthening internal control/governance and revamping its financial structure and business portfolio under CEO Kurumatani’s leadership and for its steady improvement of its earnings structure through the restructuring efforts aimed at “maximizing enterprise value as an infrastructure service company” set forth in the Toshiba Next Plan.

On the other hand, in the Toshiba Next Plan, the Company promised/announced a growth strategy not dependent on major M&A transactions, but on organic growth and small-scale M&A transactions, and a capital policy based on that growth strategy. However, the Company significantly changed such growth strategy in the Toshiba Next Plan progress report titled “Moving on to Growth” dated November 11, 2020 (the “November 11 Progress Report”), and abruptly announced a growth strategy and a capital policy which clearly departs from the Toshiba Next Plan, stating that capital in the order of 1 trillion yen would be used in M&A transactions, etc., without providing any rational reason for changing the policy of the growth strategy.

While the current directors of the Company were appointed based on a public promise to execute the Toshiba Next Plan, if they are to make a major change in the Toshiba Next Plan and implement a business policy based on risky growth investments such as major M&A transactions, such policy will inevitably involve a significant departure from the capital policy set forth in the Toshiba Next Plan (to date, the Company has recorded a total of 1.8 trillion yen in impairment losses after major M&A transactions over the last 20 years, leading to decreased shareholders’ equity and bringing about a management crisis). Furthermore, at the Ordinary General Meeting of Shareholders held in July 2020, the Company proposed to amend the articles of incorporation to make capital policy a matter of General Meeting of Shareholders resolution, which was approved by an extremely high 97.74% vote in favor of the proposal.

Based on this background, if the Company is to drive a growth strategy and capital policy that is a major change from its past promises in the Toshiba Next Plan, the board should carefully consider the desired business model to be achieved through strategic investments such as major M&A transactions, provide rational explanations of its execution criteria and policies, and confirm the shareholders’ intent concerning such policies at a General Meeting of Shareholders.

Therefore, the Requester requests the convention of an Extraordinary General Meeting of Shareholders with the proposal stated above (“Proposal”) as an agenda item.

#### B. Growth Strategy and Capital Policy Promised/Announced in the Toshiba Next Plan

In the Toshiba Next Plan announced on November 8, 2018, and progress reports, we understand that the Company has promised/announced (1) the strengthening of basic earning power and focused investments in growth areas; (2) a business model transition from capital-heavy businesses, which require significant capital expenditures, to capital-light businesses, which only require limited capital expenditures; (3) achieving growth not through major M&A transactions but through organic growth and programmatic M&A transactions (focusing on areas that are adjacent and complementary to existing businesses and engaging in multiple small-scale M&A transactions every year as a part of business strategy); (4) utilizing leverage (borrowings) for growth investments and reducing cost of capital; (5) returning excess capital to shareholders; and (6) the step-wise sale of Kioxia Holdings Corporation (“Kioxia”) shares. The conclusions derived from reasonable interpretation of these 6 promises/announcements on growth strategy and capital policy are as follows: (a) the Company has limited capital need for future capital expenditures and M&A transactions, and therefore proceeds from the sale of Kioxia shares and leverage

(borrowings) are sufficient to cover such needs (growth strategy); and (b) any excess cash flows resulting from strengthened basic earning power will be returned to shareholders (capital policy). In other words, the Company has promised/announced such growth strategy and capital policy (“TNP Growth Strategy/Capital Policy”) as a part of its Toshiba Next Plan.

C. Capital Policies of Competing Infrastructure Services Players

As the Company itself states in its Toshiba Next Plan, the TNP Growth Strategy/Capital Policy are extremely rational and are comparable to those of the Company’s much larger competitors in terms of enterprise value and equity value (KONE, Schindler, and Otis (former United Technologies)).

In other words, on a cumulative basis over the last 3 years, KONE, Schindler, and Otis have returned to shareholders almost all of the amount of (1) operating cash flows (2) less repayment of borrowings (reduction of net debt) and (3) capital expenditures. According to the TNP Growth Strategy/Capital Policy, the Company (3) can fund capital expenditures and M&A transactions with increased borrowings and (2) plans to increase borrowings and has no need to reduce them; thus, considering the capital policy taken by the Company’s competitors, (1) almost all operating cash flows should be returned to shareholders. Such capital policy is precisely what is set forth in the TNP Growth Strategy/Capital Policy and is a rational capital policy comparable to that of the competitors.

We believe that the reason for the much higher enterprise value and equity value attributed to these 3 competitors lies in their value-creating growth strategy and capital policy. We believe that the Company’s directors considered this in formulating the TNP Growth Strategy/Capital Policy, which is comparable to that of its competitors, in order to enhance shareholder value by maximizing enterprise value, which is the objective of Toshiba Next Plan, and publicly promised to deliver on such strategy/policy, which led them to be appointed as directors.

D. The Company’s Track Record in Growth Investments

Based on past disclosures of the Company’s financial statements, the Company invested a cumulative total of approximately 6.7 trillion yen (capital expenditures and M&A transactions) over the past 20 years but recorded total impairment losses of approximately 1.8 trillion yen, leading to a net decrease instead of an increase in shareholders’ equity. In other words, when considering the cost of shareholders’ equity, the Company has significantly impaired its own enterprise value and equity value through aggressive growth investment strategies including major M&A transactions over the last 20 years.

E. Growth Strategy and Capital Policy Announced on November 11, 2020

However, the November 11 Progress Report announced a growth strategy and capital policy for the next 5 years that are completely different from the abovementioned TNP Growth Strategy/Capital Policy.

Cash flows of about 2.3 trillion yen are expected to be created over the next 5 years, with 1.3 trillion yen from forecasted operating cash flows, around 0.5 trillion yen from estimated proceeds from the sale of Kioxia shares, and 0.5 trillion yen from increased borrowings (\*Note), as mentioned in the November 11 Progress Report. On the other hand, even when considering 700 billion yen in capital expenditures for the growth strategy the Company anticipates and programmatic M&A transactions in the order of several hundreds of billions of yen planned/disclosed in the past Toshiba Next Plan and progress reports, there should be excess operating cash flows of about 1.3 trillion yen.

However, in the November 11 Progress Report, the Company announced that it would use about 1.3 trillion of the 2.3 trillion in future cash flows for strategic investments in the form of M&A transactions (after subtracting dividends of about 300 billion yen based on a 30% dividend payout ratio and 700 billion yen in capital expenditures) without providing any reasonable explanation for the need thereof, as if the decision had already been finalized. The size of such strategic investments in the form of M&A transactions go beyond the disclosed size of programmatic M&A transactions in the order of several



hundreds of billions of yen, and can only be interpreted as including major M&A transactions, which the Company promised not to do in the TNP Growth Strategy/Capital Policy. Furthermore, there has been no effective explanation of the rationale, other than the formulaic investment criteria of “meeting ROIC/IRR criteria” which is an obvious condition that was most likely formally met even in the Company’s past M&A transaction failures (this policy is hereinafter referred to as the “2020 Growth Strategy/Capital Policy”).

The 2020 Growth Strategy/Capital Policy is the direct opposite of the previously promised/announced TNP Growth Strategy/Capital Policy and violates the Toshiba Next Plan. In his explanation of the November 11 Progress Report, CEO Kurumatani clearly explained that “shareholders’ equity as of fiscal year end is basically at an appropriate level and financial stability has been achieved.” Assuming the Company will continue to record profits, considering the 508.2 billion yen worth of valuation allowance for deferred tax assets stated on page 156 of the Annual Report of the 181<sup>st</sup> fiscal year is expected to be reversed, and considering that the proceeds from the sale of Kioxia shares will create proceeds in the order of several hundreds of millions of yen, the Company’s capital most likely already significantly exceeds the adequate level. Thus, pursuant to the Toshiba Next Plan, future operating cash flows will be excess capital which should be returned in full to shareholders. Toshiba Next Plan was a means of announcing this as a growth strategy/capital policy to its shareholders.

#### F. Background for this Request

We understand that the current directors of the Company were appointed based on their public promise to execute the Toshiba Next Plan to enhance shareholder value by maximizing enterprise value. For a board composed of directors who were appointed for such reason, it is a betrayal of shareholder trust to significantly change the TNP Growth Strategy/Capital Policy set forth in the Toshiba Next Plan without fulfilling their duty to provide a reasonable explanation or inquiring shareholders’ intent.

Furthermore, in light of major M&A transaction failures in the past leading to total impairment losses of 1.8 trillion yen over the last 20 years, which led to a decrease in shareholders’ equity and a management crisis including a capital deficit, directors will not be forgiven for investing large amounts of capital in risky growth investments such as M&A transactions once again, without fulfilling their duty to provide a reasonable explanation.

In addition, the Company has amended its articles of incorporation making capital policy (dividend from surplus and share buyback) a matter of General Meeting of Shareholders resolution in Proposal 1 (company proposal) of the Ordinary General Meeting of Shareholders held in July 2020 with an extremely high 97.74% vote in favor, which is much higher support than the selection of each of the board of directors. On the other hand, the support for reappointment of director and representative executive officer CEO Kurumatani was 57.20% (based on a revised report disclosed by the Company). Furthermore, if we are to believe media coverage such as “Connecting the dots in exercising voting rights at Toshiba: various suspicions in the details” (electronic version of Nikkei Shimbun, October 14, 2020), “Harvard pressured to support Toshiba chief in ‘dark arts’ campaign” (Financial Times, September 15, 2020), and “Summer 2020 Toshiba Ordinary General Meeting of Shareholders: METI Advisor Interferes with Harvard University Fund, According to Close Sources” (Reuters, December 23, 2020), some major shareholders’ voting rights were not appropriately processed or exercised at the Ordinary General Meeting of Shareholders, which makes it difficult to deny the possibility that CEO Kurumatani’s effective support rate may have been even lower.

The results for each agenda item at the July 2020 Ordinary General Meeting of Shareholders reflect the Company’s shareholders’ rational intent that “matters relating to the Company’s capital policy should be determined by General Meeting of Shareholders and not by the current board, consisting of directors with a low support rate.” As capital policy is an issue of “how to allocate a company’s cash flows between

growth investments and returns to shareholders,” a major change in growth strategy inevitably leads to a major change in capital policy.

For the reasons stated above, the Requester requests that the Company convene an Extraordinary General Meeting of Shareholders with the Proposal before the General Meeting of Shareholders as an agenda item.

As dividends from surplus and share buybacks are issues within the rights of the General Meeting of Shareholders pursuant to both the Companies Act and the Company’s articles of incorporation, the Requester requested that the item be made an agenda item of the General Meeting of Shareholders in the form of an advisory proposal instead of a change in the articles of incorporation. However, if the Company rejects this request, the opportunity to have shareholders make a judgment on the Company’s capital policy would be lost. Therefore, the Requester had no choice but to make the Proposal an agenda for the Extraordinary General Meeting of Shareholders. Thus, even if the Proposal is rejected by not obtaining a favor by 2/3 of shareholders participating in the Extraordinary General Meeting of Shareholders, if it obtains a majority vote in favor, the shareholders’ intent is clear that they agree with the Proposal. In that case, the Company should not ignore such shareholders’ intent and such a result should be respected as if it has the same meaning as the approval of the advisory resolution.

In fact, at Takeda Pharmaceutical Company Limited’s Ordinary General Meeting of Shareholders held in June 2019, while a proposal to change the articles of incorporation to implement a so-called clawback clause (provision which sets forth a return of officers’ compensation to the company in the event that fraudulent accounting, etc. is discovered) was rejected, as 52.20% of the votes were in favor of the resolution, the board of directors rapidly decided to introduce a clawback policy as an internal regulation. Finally, the Requester and Farallon are not asserting that growth investments should be sacrificed in order to prioritize shareholder returns. We understand that the current directors were appointed based on their public promise to execute the Toshiba Next Plan. If they are to make a major change in the Toshiba Next Plan and implement a business policy of risky growth investments such as major M&A transactions, because such shift in business policy inevitably involves a significant change in capital policy, we believe it is appropriate for the board to carefully consider the desired business model to be achieved through strategic investments such as major M&A transactions, provide rational explanations of its execution criteria and policies, and confirm the shareholders’ intent at a General Meeting of Shareholders. In light of the fact that the Company has recorded a total of 1.8 trillion yen in impairment losses through major M&A transactions over the last 20 years, leading to a decrease in shareholders’ equity and a management crisis, we believe it is clear that the board has a duty to engage in in-depth consideration and to provide an adequate explanation.

(\*Note) According to page 10 of the FY 2020 Q2 financial statement dated November 11, 2020, net interest-bearing debt (excluding operating lease liabilities) as of the end of September 2020 was - 101.7 billion yen, meaning that the Company effectively has a net cash position. The November 11 Progress Report states “expand leverage up to ... 100% net-debt/EBITDA” and sets target EBITDA of 530 billion yen in FY 2025. Based on these assumptions, the Company is planning to increase its borrowings in the order of 500 billion yen by FY 2025.