



Westinghouse Non-Proprietary Class 3

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**Via Electronic Information Exchange**

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Subject: Request for Threshold Determination

Westinghouse Electric Company LLC ("Westinghouse") submits this letter requesting a Threshold Determination that the acquisition by Brookfield WEC Holdings LLC (or one of its affiliates, collectively "BWH") of Toshiba Nuclear Energy Holdings (US) Inc. ("TNEH US") described herein (the "Interim Transaction") would not constitute an indirect transfer of control over Westinghouse's licenses requiring prior written consent pursuant to Section 184 of the Atomic Energy Act of 1954 and 10 C.F.R. 70.36(a).

Westinghouse, a Delaware limited liability company, holds licenses issued by the U.S. Nuclear Regulatory Commission ("NRC") under Part 70 for the Columbia Fuel Fabrication Facility in Columbia, SC (SNM-1107) and for the Hematite Nuclear Fuel Manufacturing Facility in Festus, MO (SNM-33).<sup>1</sup> Westinghouse also holds 29 NRC import and export licenses.<sup>2</sup> Westinghouse

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<sup>1</sup> . On December 20, 2017, Westinghouse submitted an application for termination of the license for the Hematite facility. See Letter from V. Kelmeckis, Westinghouse, to Document Control Desk, Hematite Decommissioning Project: Application for Termination of License No. SNM-00033, Docket No. 070-00036 (Dec. 20, 2017).

<sup>2</sup> XCOM1014 XCOM1252  
XCOM1047 XCOM1255  
XCOM1072 XCOM1262  
XCOM1082 XCOM1298  
XCOM1093 XR169  
XCOM1094 XR176  
XCOM1102 XR178  
XCOM1111 XSNM3006  
XCOM1113 XSNM3034  
XCOM1116 XSNM3163  
XCOM1170 XSNM3264  
XCOM1188 XSNM3461  
XCOM1219 XSNM3702  
XCOM1246 XSNM3769  
XCOM1249

is owned and controlled through several intermediate holding companies by Toshiba Corporation, a Japanese corporation (“Toshiba”).<sup>3</sup> A simplified diagram of the current U.S. organization is provided in Exhibit A-1.

### Background

On March 29, 2017, Westinghouse and its direct intermediate parent, TSB Nuclear Energy Services Inc. (“TSB Services”), and other affiliated entities filed petitions for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. The NRC has appeared in that proceeding. On January 4, 2018, Westinghouse announced entry into an agreement for its and its affiliates’ nuclear business to be acquired by a subsidiary of Brookfield Business Partners L.P., a publicly traded limited partnership headquartered in Toronto, Canada, together with institutional partners (collectively the “Brookfield WEC Purchasers” and such acquisition being the “Ultimate Transaction”). The Ultimate Transaction is expected to be approved by the Bankruptcy Court in March 2018. Westinghouse, Toshiba and the Brookfield WEC Purchasers (collectively, the “Parties”) recognize the necessity for NRC consent for any direct or indirect transfer of control over Westinghouse’s NRC licenses prior to the closing of the Ultimate Transaction.

Westinghouse anticipates that an application for NRC consent for transfer of control in connection with the Ultimate Transaction (the “Westinghouse License Transfer Application”) will be submitted shortly and possibly during the NRC’s review of this independent request. This request for a Threshold Determination relates to an interim transaction (the “Interim Transaction”) expected to occur prior to March 31, 2018. Bankruptcy Court approval of the Interim Transaction is not required.

On January 17, 2018, Toshiba selected BWH (collectively with the Brookfield WEC Purchasers, “Brookfield”) as the buyer under the Interim Transaction of Toshiba’s equity interests in TNEH US and entered with BWH into a share purchase agreement (the “SPA”) to effect the Interim Transaction. BWH has also, under the SPA, agreed to acquire Toshiba’s equity interests in TNEH UK. Toshiba, Westinghouse and the Brookfield WEC Purchasers have also entered into a Plan Support Agreement (the “PSA”) with key stakeholders in Westinghouse’s Chapter 11 reorganization proceedings to advance a plan of reorganization (the “Plan”) for Westinghouse’s restructuring and emergence from chapter 11.

The Interim Transaction is a key element of the overall Westinghouse restructuring, and a key inducement to Toshiba to enter into the PSA and support the Plan. The Parties believe that their agreement to effect the Interim Transaction may help simplify and expedite Westinghouse’s emergence from bankruptcy, which in turn will benefit Westinghouse, its customers, suppliers and the nuclear industry. Under the Plan, several billions of dollars of claims formerly owned by Toshiba, and sold to a third party on the basis of the proposed Plan, will receive less favorable treatment than the claims of other unsecured creditors. As a result, Westinghouse may be able to

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<sup>3</sup> Toshiba currently holds legal title in respect of 100% of the equity securities of Toshiba Nuclear Energy Holdings (U.K.) Ltd. (“TNEH UK”). TNEH UK and its direct and indirect subsidiaries hold no licenses subject to the jurisdiction of the NRC. Subject to receipt of required regulatory approvals in the jurisdictions in which TNEH UK operates, BWH will also be acquiring Toshiba’s equity interests in TNEH UK as part of the Interim Transaction.



pay such non-Toshiba claims in full. Toshiba agreed to this approach, and sold the claims described above on the basis of the proposed Plan, because of other benefits it will be receiving under the proposed structure, including exiting the Westinghouse business and refocusing its management on other ventures by terminating its capital relationship. As a result, the Interim Transaction is important to the Parties and helpful to Westinghouse's timely emergence from bankruptcy.

#### Interim Transaction

Under the SPA, Brookfield, through BWH, will acquire Toshiba's equity interest in TNEH US (and TNEH UK) subject to certain restrictions (the "Operating Control Restrictions"), preventing Brookfield from exercising control or influence over such entities and their subsidiaries, including Westinghouse and the NRC and/or Agreement State licenses held by Westinghouse. Prior to the closing of the Interim Transaction, the Toshiba-affiliated directors at each of TNEH US, TSB Nuclear Energy USA Group Inc. ("TSB Group"), TSB Services and Westinghouse (collectively the "TNEH Entities") will resign from those boards, leaving only the existing independent directors in place. The structure immediately following the Interim Transaction is shown at Exhibit A-2.

The Interim Transaction was designed specifically to provide Brookfield with ownership of TNEH US without permitting it to exercise influence over or control of NRC licensed activities. The Interim Transaction does not involve a transfer of control of any NRC licensed activity, because the entities and individuals who control Westinghouse today (other than Toshiba (which will no longer own any equity interest in Westinghouse following the Interim Transaction) and Toshiba affiliated directors (who will resign prior to closing the Interim Transaction)) will continue to control Westinghouse following the closing of the Interim Transaction and, pursuant to the Operating Control Restrictions, BWH will be unable to change such Operating Control Restrictions or exercise management influence or control prior to closing of the Ultimate Transaction. The officers and managers overseeing NRC-licensed activities at Westinghouse and its subsidiaries are unaffected by the Interim Transaction and remain under the control and supervision of the Westinghouse Board of Directors. Importantly, no change in control will occur until the NRC considers and grants approval of the Westinghouse License Transfer Application and closing of the Ultimate Transaction. Exhibit B addresses the six subjects identified in Section 5, Change of Control, of NUREG-1556 as required for applications for changes in control over NRC licenses.<sup>4</sup>

Further, the Interim Transaction has no effect on Westinghouse's financial qualifications and decommissioning assurance obligations. Westinghouse currently has access to approximately \$1 billion, inclusive of approximately \$800 million of debtor-in-possession financing.

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<sup>4</sup> See U.S. Nuclear Regulatory Comm'n, NUREG-1556, Vol. 15, Rev. 1, *Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses* at 5-1 to 5-8, Appendix E (June 2016), <https://www.nrc.gov/docs/ML1618/ML16181A003.pdf>. Item 1 includes a description of Westinghouse's financial qualifications to operate the Columbia Fuel Fabrication Facility. The responses in Exhibit B further demonstrate that the Interim Transaction does not involve a change in control over Westinghouse and its NRC and/or Agreement State licenses.



Brookfield also brings significant financial strength to the Ultimate Transaction; it has over \$265 billion of real assets worldwide focused on energy, real estate, infrastructure, renewable power, industry and services. Westinghouse recently provided financial information in connection with its license renewal application for the Columbia Fuel Fabrication Facility.<sup>5</sup>

This includes a strong presence in the United States, where Brookfield manages \$141 billion in assets with 9,500 employees.<sup>6</sup> Brookfield is also already invested in the U.S. nuclear industry through its approximately 15.5% (~\$ 1.24 B based on market capitalization) interest in Vistra Energy, the parent company of the NRC licensee for Comanche Peak Nuclear Power Plant, Units 1 & 2.

As a result, the practical effect of the acquisition by BWH of the TNEH US and TNEH UK equity interests through the Interim Transaction provides BWH with no managerial influence or control over NRC regulated activities. Notably, BWH will not have the benefit of operating revenues through the Interim Transaction. In short, (i) the Interim Transaction has no effect over the control or financial operations of Westinghouse during the period between the closing of the Interim Transaction and the closing of the Ultimate Transaction, and (ii) the proceeds of the Ultimate Transaction will fund the payment of Westinghouse's nuclear business creditors. No remainder left following such payments will go to TNEH US or TNEH UK.

#### Current Corporate Governance

As currently organized, the three entities depicted in Exhibit A-1, between Toshiba and Westinghouse – specifically, TNEH US, TSB Group and TSB Services – are Delaware corporations under the control of Toshiba, and each exercises control of Westinghouse. The names, citizenship, and affiliation (independent or affiliated with Toshiba or its affiliates) of each of the current directors of each of the TNEH Entities are identified in Exhibit A-1. All of the current independent directors are U.S. citizens and will remain following closing of the Interim Transaction. As discussed above, the non-independent directors of the TNEH Entities will resign on or prior to closing of the Interim Transaction. As a result, following the closing of the Interim Transaction, consistent with the Operating Control Restrictions, the boards of each of the TNEH Entities will consist only of individuals who are currently serving as independent directors on such boards, and BWH will be unable to appoint or remove directors. The names, citizenship and independent status of each of the directors of each of the TNEH Entities following closing of the Interim Transaction are identified in Exhibit A-2.

The Westinghouse Board of Directors is currently composed of six directors, all of whom are designated by TSB Services which currently is controlled by Toshiba. Three of the directors are employees of Toshiba (or its affiliates) and three are independent of both Toshiba and

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<sup>5</sup> See *Westinghouse Response to Request for Additional Information* (TAC #L33317) (Jan. 5, 2018).

<sup>6</sup> Further information on the financial strength of Brookfield can be found in Brookfield's financial reports, including filings with the U.S. Securities and Exchange Commission. See Brookfield Asset Management, Inc., *Form 6-K: Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 of the Securities Exchange Act of 1934* (Nov. 2017), available at: [https://otp.tools.investis.com/clients/us/brookfield\\_asset\\_management\\_inc/SEC1/sec-outline.aspx?FilingId=12383727&Cik=0001001085&PaperOnly=0&HasOriginal=1](https://otp.tools.investis.com/clients/us/brookfield_asset_management_inc/SEC1/sec-outline.aspx?FilingId=12383727&Cik=0001001085&PaperOnly=0&HasOriginal=1)



Westinghouse. On or prior to the closing of the Interim Transaction the Toshiba directors will have resigned from each board, leaving in place only the independent directors. Each board continues to satisfy its quorum requirements and remains fully capable of conducting its control and oversight functions. While in bankruptcy, Westinghouse and TSB Services must obtain Bankruptcy Court approval (on notice to all parties in interest, including the NRC) of any action outside the ordinary course of their businesses. This Bankruptcy Court oversight provides an important limit on what the independent boards can do.

### Non-Controlling Equity

Under the Interim Transaction, Brookfield agrees in post-closing covenants of the SPA to forego the ability to exercise control over TNEH US and TNEH UK by filling or replacing members of the boards and other restrictions (*i.e.*, the “Operating Control Restrictions” described above). Specifically, Section 6.2(c) of the SPA provides:

(c) During each Post-Closing Period (with respect to the Equity Interests (and corresponding Transferred Entities) acquired by Buyer at the Closing Date that occurred on the commencement of such Post-Closing Period), Buyer shall not, directly or indirectly, except (i) as required by applicable Law or to the extent necessary to comply with Nuclear Obligations, (ii) by order of the Bankruptcy Court or to the extent necessary in connection with the Bankruptcy Case, or (iii) as otherwise contemplated by or necessary to effectuate this Agreement:

(i) grant any Lien on the Equity Interests;

(ii) transfer or otherwise dispose of, grant any options, warrants, calls, or other rights of any kind to acquire, the Equity Interests;

(iii) exercise any voting, nomination, appointment or similar rights (including to pass a resolution without a vote of members) attached to the Equity Interests, except to: (A) appoint as a director of a Transferred Entity a person nominated in writing by [Westinghouse], but only if and to the extent that, absent such appointment, such Transferred Entity would have no directors at the time of such appointment; (B) appoint as a director of a Transferred Entity a person approved by the board of the Transferred Entity; (C) remove any director who, in the opinion of Buyer (acting reasonably), has engaged in a material breach of his or her fiduciary (or similar directors’) duties to a Transferred Entity; (D) pass or vote on any resolution of a Transferred Entity to the extent such resolution has been approved unanimously by the board of such Transferred Entity; (E) pass or vote on any annual or similarly recurring resolution of a Transferred Entity required by applicable Law to be passed in connection with the ongoing solvency or standing of a Transferred Entity; (F) pass or vote on a resolution of a Transferred Entity reasonably necessary either (x) to give effect to or otherwise consummate the Transactions or (y) for a Party to perform its obligations under this Agreement, it being understood that nothing in this Section 6.2(c)(iii) shall prevent the independent directors of a Transferred Entity from appointing a director to fill a vacancy on the board of such Transferred Entity independently of Buyer;

(iv) enter into any legally binding commitment with respect to any of the foregoing; or



(v) in each case to the extent of any power it may have, permit or cause a member of the Transferred Group to do any of the foregoing (as though references therein to Equity Interests were to equity interests held by such Transferred Group member and references to Transferred Entities were to Subsidiaries of such Transferred Group member).

Thus, following the Interim Transaction, Brookfield will have acquired Toshiba's equity interests in TNEH US and for the interim period will have renounced any ability to exercise influence or control over TNEH US and its subsidiaries for so long as TNEH US and TNEH UK own the Westinghouse business. Until the Ultimate Transaction is completed, only the independent directors who are U.S. citizens are empowered to exercise influence or control over TNEH US and its subsidiaries and in any event subject to the constraints of Bankruptcy Court oversight. Once the Ultimate Transaction is completed, the TNEH Entities will no longer own or control the Westinghouse business.

#### NRC Precedents Recognize Non-Voting Equity Ownership Does Not Confer Control

Under Section 184 of the Atomic Energy Act of 1954, written consent from the NRC is required for the "transfer of control of any license to any person" whether such transfer takes place "directly or indirectly".<sup>7</sup> Consistent with NRC regulations, guidance, and case law, the proposed Interim Transaction does not constitute a transfer of control of Westinghouse's licenses because the Operating Control Restrictions in the SPA effectively prevent Brookfield from exercising control over NRC licensed activity during the interim period.

In guidance, the NRC has explained that "[c]ontrol over licensed activities can be construed as the authority to decide when and how that license (licensed material and/or activities) will be used."<sup>8</sup> Here, the Interim Transaction does not constitute a transfer of control because the authority to decide when and how Westinghouse's licenses will be used will remain with the independent boards of directors. The TNEH Entities' boards generally have authority to control Westinghouse, including over how Westinghouse's NRC and Agreement State licenses will be used. More specifically, Westinghouse's board, through its Special Committee, currently has authority over the Westinghouse sale process and the Plan process. Further, Bankruptcy Court approval is required for any action by the debtors in bankruptcy to take any action outside the ordinary course, regardless of whether such action has been approved by their boards. Following the closing of the Interim Transaction, these boards shall consist only of independent directors appointed on or prior to closing and they will retain this authority, subject to Bankruptcy Court supervision, following the Interim Transaction, until closing of the Ultimate Transaction. In effect, there will be no change in the ability to decide how and when to use Westinghouse's NRC licenses as a result of the Interim Transaction.

<sup>7</sup> 42 U.S.C. § 2234; *see, e.g.*, 10 C.F.R. 70.36(a).

<sup>8</sup> U.S. Nuclear Regulatory Comm'n, NUREG-1556, Vol. 15, Rev. 1, *Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses* at 5-2 (June 2016), <https://www.nrc.gov/docs/ML1618/ML16181A003.pdf>; *see also* U.S. Nuclear Regulatory Comm'n, Regulatory Issue Summary 2008-19, *Lessons-Learned from Recent 10 CFR Part 70 License-Transfer Application Reviews* at 6 (Aug. 28, 2008), <https://www.nrc.gov/docs/ML0817/ML081760011.pdf>.



Notably, the NRC previously has issued threshold determinations and regulations consistent with the finding that prior consent is not required for changes in non-voting equity ownership. The NRC should make the same finding with respect to the Interim Transaction.

In 2006, the operating licensee of South Texas Project Units 1 & 2 notified the NRC of plans to create a new intermediate holding company between the top-tier, publicly-traded parent company and a subsidiary that held a 44% interest in the licensee and to remove several generation subsidiaries from the chain of control. The new intermediate holding company was created for the purpose of holding non-voting equity interests, but had none of the voting rights of the generation subsidiaries. The applicant explained that control would remain in an existing, parallel, intermediate parent company which was retaining voting rights. In letters dated August 18, 2006 and November 2, 2006, the NRC staff issued the requested Threshold Determination, agreeing that no consent was required where the new equity owner did not also obtain voting control over the subsidiaries holding the licenses.<sup>9</sup>

An analogous treatment of non-controlling equity ownership is reflected in the NRC's "Creditor Regulations" at 10 CFR § 70.44, under which a secured creditor may exercise its rights, but may not take possession of a collateral facility without first obtaining NRC consent for transfer of control.<sup>10</sup> The NRC's creditor regulations reinforce the fact that transactions involving changes in passive, non-voting interests do not constitute transfers of control. These regulations allow mortgages and liens to be created on licensed materials and facilities.<sup>11</sup> Notably, the definition of "creditor" in these regulations includes "any purchaser of such special nuclear material [subject to licensing] at the sale thereof upon foreclosure of such mortgage, pledge, or lien . . ."<sup>12</sup> Under the Interim Transaction, Brookfield will hold an analogous position by buying equity that is subject to the Operating Control Restrictions in TNEH US, which is the indirect upstream owner of the debtors in bankruptcy, TSB Services and Westinghouse. Importantly, the regulations also note that such creditors may not "take possession of the special nuclear material [subject to licensing] pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing such possession or the transfer of the license."<sup>13</sup> Under the Interim Transaction, Brookfield is analogous to a creditor that purchases a licensed facility upon foreclosure. Additionally, based on the Operating Control Restrictions in the SPA, Brookfield will not have the ability to take possession of or otherwise exercise control or influence over Westinghouse's NRC licenses prior to the NRC authorizing transfers of Westinghouse's NRC licenses as requested under the Westinghouse License Transfer Application.

Further, in 2003, the NRC determined that consent was not required for restructuring transactions that included "(1) the transfer of non-voting common stock of an intermediate parent of the licensee to a newly-formed wholly-owned subsidiary of TXU Corp., the ultimate parent of the licensee; (2) the elimination of an intermediate parent, wholly-owned by an upstream

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<sup>9</sup> ADAMS Accession Nos. ML062220406 & ML062890043.

<sup>10</sup> See also 10 CFR § 50.81.

<sup>11</sup> 10 CFR 70.44(a); see also 10 C.F.R. § 50.81(a) Creditors' Rights; and Transfer, Surrender, and Termination of Licenses, 26 Fed. Reg. 9546 (Oct. 10, 1961).

<sup>12</sup> 10 C.F.R. § 70.44(c)

<sup>13</sup> *Id.* § 70.44(a)(2)



intermediate parent, TXU Energy Company LLC; and (3) the substitution of a new limited partner of TXU Generation Company LP for the current limited partner, without any change in the general partner of the licensee.”<sup>14</sup> The threshold determination noted that a license transfer approval was not required because “(1) there will be no direct or indirect transfer of any right or authority, whether immediate or contingent, to exercise control over the decisions of the directly affected entities, notwithstanding the substantial amount of equity in such entities being transferred, and (2) those persons who presently control the decisions of those entities will continue to maintain such control.”<sup>15</sup> Similarly, the Interim Transaction involves no transfer of authority to exercise control over Westinghouse’s decisions regarding its licenses. The TNEH Entities’ boards, through the remaining independent directors who presently control those decisions, will continue to maintain such control until the NRC grants the Westinghouse License Transfer Application and consents to the change of control at emergence from bankruptcy.

Finally, in 2011, the NRC determined that a proposed financial transaction involving the purchase by Toshiba American Nuclear Energy Corporation (“TANE”) and the Babcock & Wilcox Investment Company (“BWIC”) of non-voting preferred stock in USEC Inc., a holder of various NRC licenses, including Part 70 licenses such as those involved here, did not involve a transfer, direct or indirect, of control over such licenses.<sup>16</sup> Similarly, the equity (which is subject to the Operating Control Restrictions) being transferred under the SPA pursuant to the Interim Transaction is passive and effectively non-voting. Further, because the equity is restricted, it serves to transfer only Toshiba’s residual economic interest in the TNEH Entities to Brookfield.<sup>17</sup> Like the non-voting preferred voting rights acquired by TANE and BWIC, the equity being acquired by Brookfield under the Interim Transaction confers no rights or ability to control Westinghouse’s NRC and/or Agreement State licenses. Accordingly, prior written consent under Section 184 of the Atomic Energy Act of 1954 should not be required.

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<sup>14</sup> ADAMS Accession No. ML032410234.

<sup>15</sup> *Id.*

<sup>16</sup> ADAMS Accession No. ML103630746.

<sup>17</sup> As noted above, neither TNEH (UK) nor any of the TNEH Entities will be entitled to receive any distributions from Westinghouse pursuant to the proposed Plan.



Request

Accordingly, the Parties request that the NRC issue a Threshold Determination confirming that Brookfield's acquisition of the equity interests of TNEH US pursuant to the Interim Transaction, subject to the restrictions in Section 6.2(c) of the SPA as described in this letter, does not give rise to a direct or indirect transfer of control for which prior written consent of the NRC would be required under Section 184 of the Atomic Energy Act. Because the benefits of this Interim Transaction accrue fully only if the closing occurs on or before March 31, 2018, the Parties respectfully request the NRC issue the Threshold Determination no later than March 9, 2018. The Parties also request that if the NRC has questions or requires additional information, you contact us as soon as possible.

Sincerely,



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Senior Vice President & General Counsel  
Westinghouse Electric Company

cc:

Office of General Counsel  
Director, Office of Nuclear Materials Safety and Safeguards  
Director, Office of International Programs  
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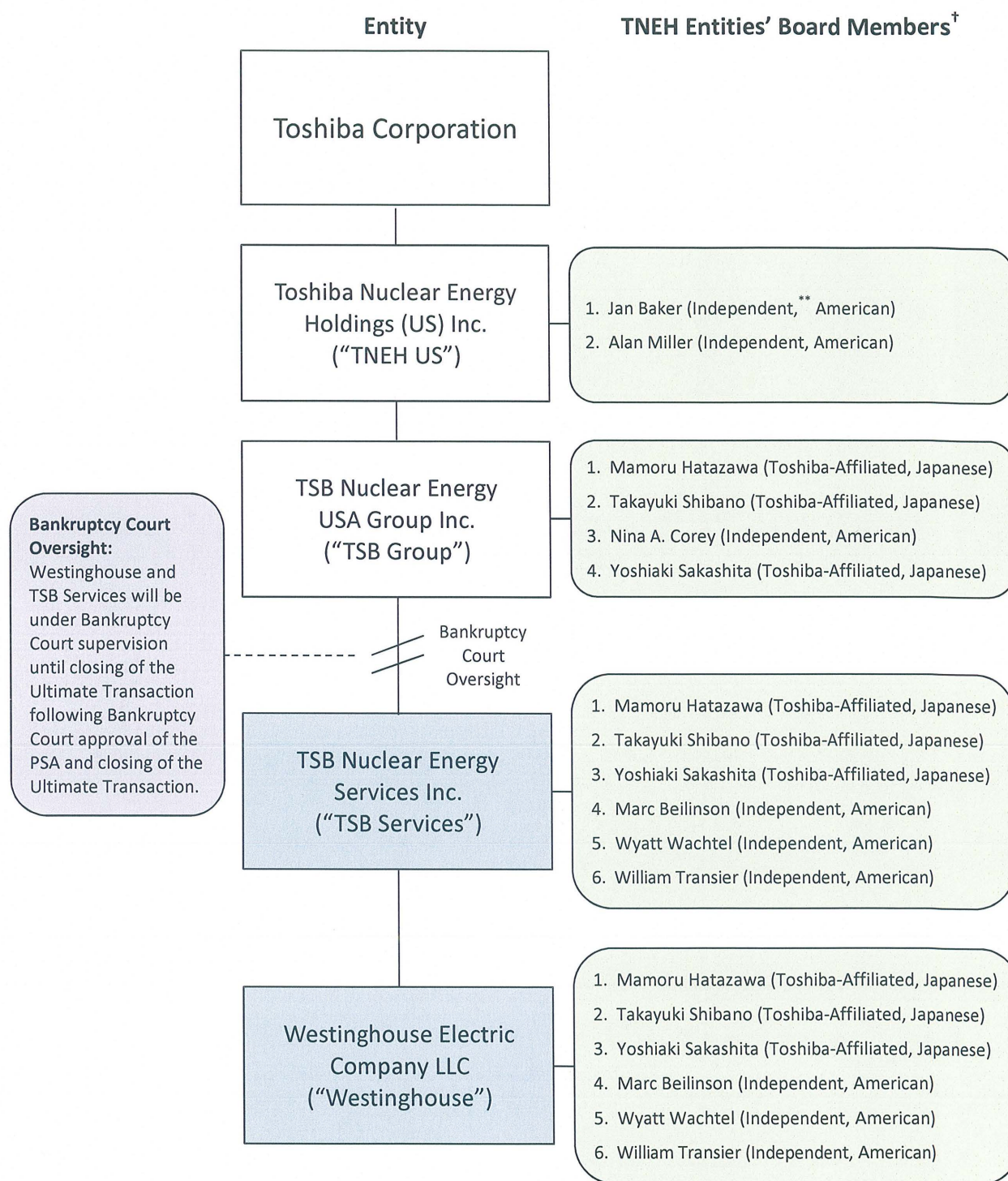


## **Exhibit A:**

# **Simplified Corporate Structure**



## Exhibit A-1: Simplified Corporate Structure (Current)\*



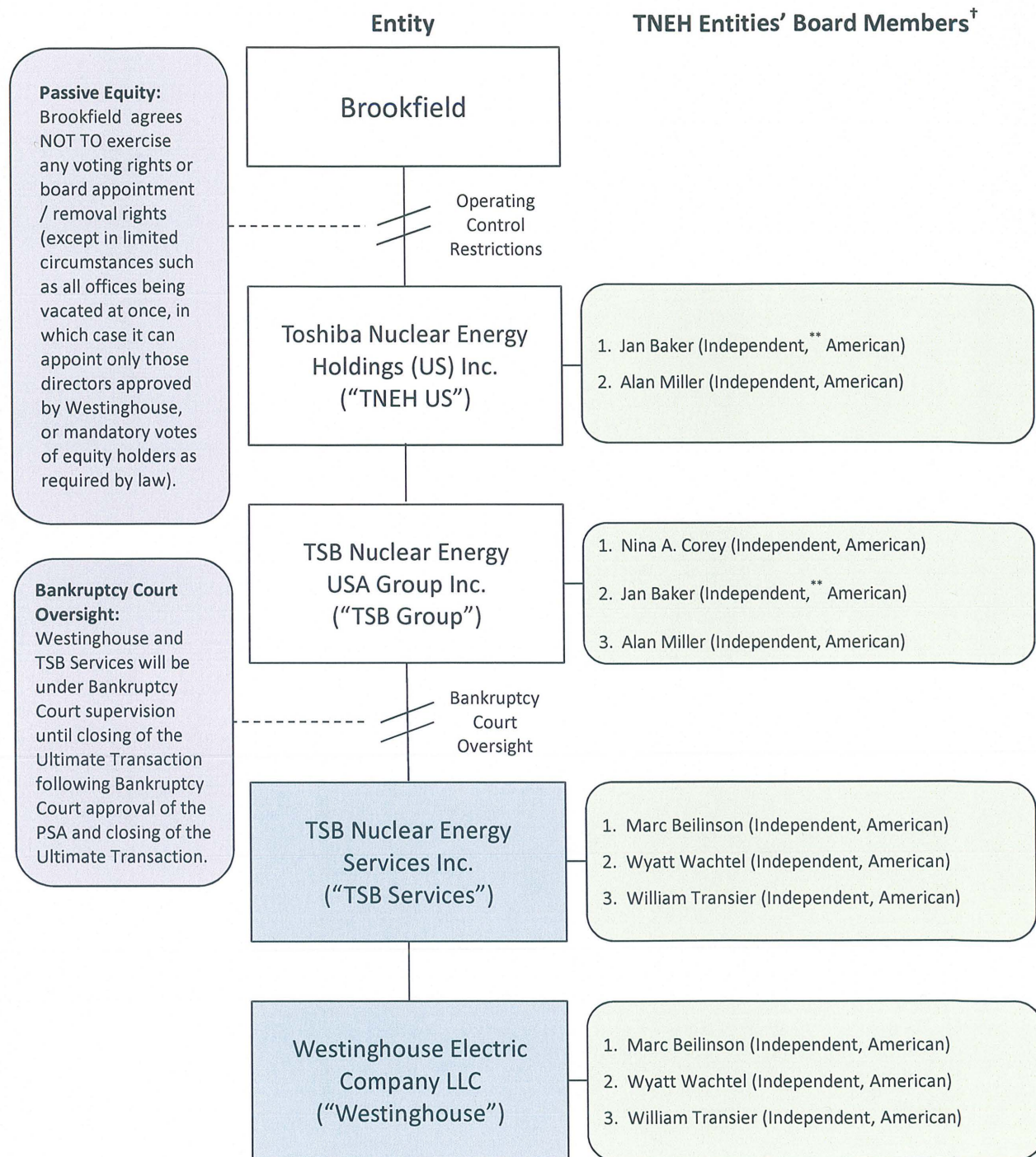
\* Light blue boxes indicate that the entity is a Chapter 11 debtor.

<sup>†</sup> TNEH US, TSB Group, TSB Services and Westinghouse, collectively the TNEH Entities.

\*\* Independent Director Standards for each of the TNEH Entities are attached at Exhibit C.



## Exhibit A-2: Simplified Corporate Structure (Proposed Interim)\*



\* Light blue boxes indicate that the entity is a Chapter 11 debtor.

<sup>†</sup> TNEH US, TSB Group, and TSB Services and Westinghouse, collectively the TNEH Entities.

\*\* Independent Director Standards for each of the TNEH Entities are attached at Exhibit C.

**Exhibit B:**

**NUREG 1556**

**Information Regarding Interim Transaction**



## **Exhibit B: NUREG 1556 Information Regarding Interim Transaction**

The discussion below addresses the six subjects identified in Section 5, Change of Control in NUREG 1556, Volume 15, Rev. 1, Consolidated Guidance about Materials Licensees, Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses Final Report, June 2016. These considerations support the conclusion that the Interim Transaction does not represent a change of control.

### **1. Description of the Transaction:**

**Prior to approval of a change of control, NRC requires a complete, clear description of the transaction, including the identity and the technical and financial qualifications of the proposed transferee and financial assurance for decommissioning information.**

Westinghouse has entered into an agreement to be acquired by Brookfield Business Partners L.P., a publicly traded limited partnership headquartered in Toronto, Canada, together with institutional partners (collectively "Brookfield"). Westinghouse anticipates that an application for NRC consent for this transfer of control will be submitted shortly (the "Westinghouse License Transfer Application").

The instant request relates to an interim transaction ("Interim Transaction") pursuant to which Brookfield will acquire the equity of Westinghouse's intermediate parent company Toshiba Nuclear Energy Holdings (US) Inc. ("TNEH US"), a Delaware corporation, subject to certain restrictions preventing Brookfield from exercising control or influence over that entity and its subsidiaries. Prior to closing of the Interim Transaction, the Toshiba-affiliated directors of Westinghouse and its intermediate parent companies, TNEH US,<sup>22</sup> Toshiba Nuclear Energy USA Group Inc. and TSB Nuclear Energy Services Inc., (collectively the "TNEH Entities") will resign from those boards, leaving only the independent directors in place. Under the Interim Transaction, Brookfield agrees in post-closing covenants to forego the ability to exercise any control or influence over TNEH US, including by filling or replacing members of the boards and other restrictions (except in limited circumstances such as all offices being vacated at once, in which case it can appoint only those directors approved by Westinghouse, or mandatory votes of equity holders as required by law). The Interim Transaction does not involve any changes to Westinghouse's name, mailing address or contact information.

As discussed in the body of the letter and above, Brookfield's interest under the Interim Transaction will be passive and the Interim Transaction does not involve transfer of control of Westinghouse's licenses. Following closing of the Interim Transaction, Brookfield will not have the ability to influence or control any Westinghouse licensed material or activity. Further, Westinghouse will remain financially qualified to engage in licensed activities. Westinghouse recently provided the NRC with information in connection with a license renewal application for the Columbia Fuel Fabrication Facility demonstrating that Westinghouse is financially qualified to continue conducting normal operations at the Columbia Fuel Fabrication Facility. More particularly, Westinghouse provided the NRC a

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<sup>22</sup> TNEH US does not have any Toshiba-affiliated directors.

summary of income statements and balance sheet forecasts to the NRC.<sup>23</sup> These forecasts demonstrate that Westinghouse's business activity at Columbia is net cash positive. The information provided by Westinghouse also details additional protections in the bankruptcy proceeding that will assure financial resources sufficient to ensure the safe operation of Columbia, such as the protections of a debtor in possession during Chapter 11 proceedings subject to Bankruptcy Court supervision.

The Interim Transaction does not involve changes to the decommissioning funding plans or other financial assurance documents

## **2. Changes in Personnel:**

**Prior to approval of a change of control, NRC requires that changes in personnel be documented, reviewed, and approved.**

The Interim Transaction does not involve any changes in personnel or duties that relate to any NRC or Agreement State licensed program.

## **3. Changes of Location, Equipment, and Procedures**

**Prior to the approval of a change of control, the licensee must submit a complete description of any planned changes in location, facilities, equipment, or procedures.**

The Interim Transaction does not involve any changes in the location, facilities, equipment, radiation safety program, use, possession, waste management or other procedures that relate to any NRC or Agreement State licensed program.

## **4. Surveillance Records**

**Prior to the approval of a change of control, licenses or applicants must submit a review of the status of all surveillance requirements and records. This should include an indication of whether the surveillance program is current and if it will be current at the time of transfer.**

The Interim Transaction does not affect or result in any change in the status of the licensee's facilities, equipment and radiation safety program, including any known contamination and whether decontamination will occur prior to the transfer. Westinghouse's regulatory programs, including radiation safety, quality assurance, records management and corrective action will continue, unaltered, by the interim transaction.

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<sup>23</sup> See Westinghouse Response to Request for Additional Information (TAC #L33317) (Jan. 5, 2018).



## **5. Decommissioning and Related Records Transfers.**

**Prior to the approval of a change of control, NRC regulations require that licenses arrange for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. NRC also requires a description of the status of the licensed facility, with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC-licensed activities. The transferee must confirm, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment.**

As discussed in the body of the letter and above, Brookfield's interest under the Interim Transaction will be passive and the Interim Transaction does not involve transfer of control of Westinghouse's licenses. All records concerning the safe and effective decommissioning of the facilities will be retained by Westinghouse.

## **6. Transferee's Commitment to Abide by the Transferor's Commitments**

**The transferee must either (i) commit to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license, or (ii) provide a description of its own program to comply with the license and all applicable regulations.**

As discussed in the body of the letter and above, Brookfield's interest under the Interim Transaction will be passive and the Interim Transaction does not involve transfer of control of Westinghouse's licenses. After the Interim Transaction, TNEH Entities (including Westinghouse) will continue to abide by all constraints, conditions, requirements, representations and commitments in Westinghouse's licenses.

## **Exhibit C:**

# **Independent Director Standards**



## **Exhibit C-1: Independent Director Standards for TNEH Entities<sup>1</sup>**

Director confirms the following matters when undertaking the duties of the office of an independent director of Toshiba Nuclear Energy Holdings US Inc. and Toshiba Nuclear Energy Holdings UK Ltd.

1. Director does NOT meet any of the ineligibility criteria provided by the General Corporation Law of the State of Delaware and the UK Companies Act 2006.
2. Director does NOT fall under any of the item (ii) to (iv) of paragraph (1) of Article 331 of Companies Act of Japan.
3. There is no business relationship between Toshiba Group (excluding less than 1 million JPY) and the persons below:
  - (a) The Director, their spouse or any relative within the second degree of kinship;
  - (b) Any corporation or any of its subsidiaries, a majority of whose votes are owned substantially by any individual in (a) above;
  - (c) The company (excluding Toshiba Group) that (a) serves as a representative officer, etc.
4. Except for (a) the transaction that is obviously the same in general terms and conditions of business and (b) compensations for directors and wages, Director does NOT have any money claim or obligation to Toshiba Group.

Director shall bring objectivity and independence and as part of the Board provide the Company with sound leadership. The Board as a whole is collectively responsible for promoting the Company's success by directing and supervising its affairs. The Board:

1. provides entrepreneurial leadership of the Company within a framework of prudent and effective controls which enable risk to be assessed and managed;
2. sets the Company's strategic aims, ensures the necessary financial and human resources are in place for the Company to meet its objectives, and reviews management performance; and
3. sets the Company's values and standards and ensures that its obligations to its shareholders and employees are understood and met.

In the Director's role as independent director, the Director (and any other independent director appointed) will have sole decision-making authority concerning the Sales Process and Plan Process.

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<sup>1</sup> Toshiba Nuclear Energy Holdings (US) Inc., TSB Nuclear Energy USA Group Inc., and TSB Nuclear Energy Services Inc., collectively the TNEH Entities.

## Companies Act of Japan

Article 331 (1) The following persons may not act as directors:

- (i) A juridical person;
- (ii) An adult ward, a person under curatorship, or a person who is similarly treated under foreign laws and regulations;
- (iii) A person who has been sentenced to a penalty for having violated the provisions of this Act or the Act on General Incorporated Association and General Incorporated Foundation (Act No. 48 of 2006), or for having committed: a crime under Article 197, Article 197-2(1)(i) through (x) or (xiii), Article 198(viii), Article 199, Article 200(i) through (xii), (xx) or (xxi), Article 203(3) or Article 205 (i) through (vi), (xix) or (xx) of the Financial Instruments and Exchange Act; a crime under Articles 255, 256, 258 through 260 or 262 of the Civil Rehabilitation Act (Act No. 225 of 1999); a crime under Articles 65, 66, 68 or 69 of the Act on Recognition and Assistance for Foreign Insolvency Procedures (Act No. 129 of 2000); a crime under Articles 266, 267, 269 through Article 271 or 273 of the Corporate Reorganization Act (Act No. 154 of 2002); or a crime under Articles 265, 266, 268 through 272 or 274 of the Bankruptcy Act, for whom two years have not elapsed since the day on which the execution of the sentence was completed or the sentence no longer applied.
- (iv) A person who violated the provisions of laws and regulations other than those provided for in the preceding item, was sentenced to imprisonment or severer penalty and who has not completed the execution of the sentence or to whom the sentence still applies (excluding persons for whom the execution of the sentence is suspended).

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## **Exhibit C-2: Independent Director Standards for Westinghouse Electric Company LLC<sup>1</sup>**

### Definitions:

“Specified Company” means any of Toshiba, Westinghouse, SCANA Corporation, the Southern Company, Fluor Corporation, IHI Corporation, National Atomic Company Kazatomprom JSC, and Chicago Bridge & Iron Company N.V. and their respective Affiliates.

“Affiliate” means, with respect to a specified person, such other person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

“Westinghouse” means Westinghouse Electric Company LLC, Westinghouse Electric UK Holdings Limited and their respective controlled Affiliates.

“Toshiba” means Toshiba Corporation and its Affiliates.

1. Director has no material relationship with Westinghouse or Toshiba and, within the last three years, has not engaged in any business transactions with Westinghouse or Toshiba (in either case either directly or as a partner, shareholder or officer of an organization that has a relationship with Westinghouse or Toshiba).
2. Director is not, nor has Director been within the last three years, an employee of any Specified Company, and no immediate family member of Director is, or within the last three years has been, an executive officer<sup>2</sup> of any Specified Company.
3. Director has not received, nor has an immediate family member<sup>3</sup> of Director received, during any twelve-month period within the last three years, more than \$120,000 in direct compensation from any Specified Company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service).
4. (A) Director is not a current partner or employee of PricewaterhouseCoopers; (B) Director does not have an immediate family member who is a current partner of PricewaterhouseCoopers; (C) Director does not have an immediate family member who is a

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<sup>1</sup> These standards are modeled on New York Stock Exchange Standards for independent directors.

<sup>2</sup> The term “executive officer” shall mean, with respect to each Specified Company, such Specified Company’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of such Specified Company in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for such Specified Company. Executive Officers of such Specified Company’s parent(s) or subsidiaries shall be deemed executive officers of the Specified Company if they perform such policy-making functions for such Specified Company.

<sup>3</sup> The term “immediate family member” includes a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home.

current employee of PricewaterhouseCoopers and personally works on Toshiba's or Westinghouse's audit; and (D) neither Director nor an immediate family member of Director was within the last three years a partner or employee of PricewaterhouseCoopers and personally worked on Toshiba's or Westinghouse's audit within that time.

5. Neither Director nor an immediate family member of Director is, or has been within the last three years, employed as an executive officer of another company where any of Toshiba's or Westinghouse's present executive officers at the same time serves or served on that company's compensation committee.
6. Director is not a current employee, nor is an immediate family member of Director a current executive officer, of a company that has made payments to, or received payments from, either Toshiba or Westinghouse for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues.
7. Director does not, directly or indirectly, own any stock or other equity interests in any of the Specified Companies (other than through mutual funds or other non-directed investment funds).
8. Director has no relationship with any Specified Company or any of its directors, executive officers or controlling stockholders (if any) that would prevent Director from acting objectively in making decisions with respect to the Company in matters involving, relating to or affecting such Specified Company.
9. Since January 1, 2007, none of the events described below occurred:
  - (a) Any petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, you or any partnership in which you were a general partner at or within two years before the time of such filing, or any corporation or business association of which you were an executive officer at or within two years before the time of such filing.;
  - (b) You have been convicted in a criminal proceeding or are a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or you have been found in a civil proceeding to have engaged in fraud or are a named subject of a pending legal proceeding alleging that you engaged in fraud;
  - (c) You are or have been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining you from, or otherwise limiting, the following activities:
    - (i) Acting as a futures commission merchant, introducing broker, commodity trading adviser, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission or an associated person of any of the foregoing or as an investment advisor, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any



investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with any such activity;

- (ii) Engaging in any type of business practice; or
  - (iii) Engaging in any activity in connection with the purchase or sale of any security or commodity, or in connection with any violation of Federal or state securities laws or Federal commodities laws;
- (d) You have been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in (c)(i) above or to be associated with persons engaged in any such activity;
- (e) You have been found by a court of competent jurisdiction in a civil action or by the Securities and Exchange Commission to have violated any Federal or state securities law, and the judgment of such civil action or finding by the Commission has not been subsequently reversed, suspended or vacated;
- (f) You have been found by a court of competent jurisdiction in a civil action or by the Commodities Futures Trading Commission to have violated any Federal commodities law and the judgment in such civil action or finding by the Commodities Futures Trading Commission has not been subsequently reversed, suspended or vacated;
- (g) You have been the subject of, or a party to, any Federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of: (i) any Federal or state securities or commodities law or regulation; or (ii) any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, or of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order, or (iii) any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;
- (h) You have been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, such as a national securities exchange, registered securities association, or registered clearing agency), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act (7 U.S.C. 1(a)(29)), such as a board of trade, derivatives transaction execution facility, or derivatives clearing organization), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member; or
- (i) You have not been a party adverse to Toshiba or Westinghouse in any legal proceedings.