

[Translation]

June 7, 2020

To:

Mr. Yasuichi Kaneda, Representative Director and Chairman, and  
Mr. Kaneto Fujino, Representative Director and President,  
TENMA CORPORATION

Shareholders' Committee for the Better Corporate Governance of TENMA

### **Opinions of Shareholders' Committee on "Warning Statement" as of June 4, 2020**

In the "Warning Statement" to Osamu Tsukasa, Hisashi Tsukasa (members of the "Shareholders' Committee for the Better Corporate Governance of TENMA" (the "Shareholders' Committee")) and Tsukasa Enterprise Corporation as of June 4, 2020 (the "Warning Statement"), you ("Tenma") asserted that, regarding the fact that Tenma underwrote 200 shares by third party allotment (the issue price being three hundred thousand yen per share, and the total amount being 60 million yen; the "Capital Increase") by Spinshell, Inc. ("Spinshell") on May 31, 2019 (the "Underwriting of Capital Increase"), the Underwriting of Capital Increase was a legitimate transaction in its purpose and transaction terms and that the Shareholders' Committee's allegation which denies this is false.

However, it is obvious that, as stated below, the Underwriting of Capital Increase was unreasonable both in its purpose and transaction terms and that the Warning Statement was only made in order to suppress the Shareholders' Committee's legitimate encouragement of general shareholders of Tenma to cover up the disadvantageous facts regarding Mr. Hiroshi Kaneda, who is the current executive director of Tenma.

In the situation where restructuring of Tenma's corporate governance and internal control framework was a pressing issue, it is very regrettable that it was unintentionally revealed that the current director's self-defense was still the main concern.

#### **1. Spinshell's Situation of Structural Conflict of Interest and Continuing Deficit**

In the first place, Spinshell is a company dominated by Mr. Hiroshi Kaneda, Tenma's current executive director, who hitherto holds the position of representative director since establishing Spinshell in February 2006, and holds the majority of shares in the vicinity of the Capital Increase (at the point immediately before the Capital Increase, Mr. Hiroshi Kaneda held 85% of Spinshell's shares privately, and Mr. Junichi Fujimoto, a director who is a member of Tenma's Audit and Supervisory Committee, held 10% of Spinshell's shares), and it is obvious that there is a structural conflict of interest between Tenma and Spinshell. Furthermore, Spinshell is a company that has mostly been in the red in the past fiscal terms. Accordingly, it is understandable that a sufficient explanation be provided regarding the necessity of the Underwriting of Capital Increase and the appropriateness of the issue price still being reasonable even in consideration of the structural conflict of interest.

#### **2. Nonexistence of Business and Strategic Reasons to Engage in Capital Alliance with Spinshell**

In this regard, in the Warning Statement, it is explained that the Underwriting of Capital Increase was made as part of a capital alliance for the purpose of accumulating know-how through strengthening Web strategy and semi self-manufacturing by cooperating with Spinshell and applying it in Tenma's future business development. However, no reasonable explanations were provided regarding the achievement of this purpose, such as (i) why it was

necessary to cooperate with Spinshell, the governance of which is dominated by Mr. Hiroshi Kaneda, the current executive director of Tenma, instead of another company,<sup>1</sup> (ii) why the financial contribution to Spinshell by Tenma (the Underwriting of Capital Increase) was necessary, instead of a business alliance, and (iii) why Tenma's investment ratio in Spinshell after the Underwriting of Capital Increase was maintained at more than 20%, instead of more than 50% based on which management rights could be obtained. If the main purpose was applying the know-how above in Tenma's future business development, Spinshell would normally be incorporated into Tenma's Group as a subsidiary.

In this regard, in relation to the transaction between Tenma and Spinshell, on page 9 of the convocation notice of the shareholders' meeting (the "Convocation Notice") pertaining to Tenma's annual shareholders' meeting scheduled to be held on June 26, 2020 (the "Meeting"), it is stated that, "although we have a business relationship for marketing and public relations agency services with Spinshell, Inc., of which Mr. Hiroshi Kaneda is the representative director, . . . as the transaction amount from us accounts for less than 7% of Spinshell's annual sales revenue, we consider that neither Mr. Hiroshi Kaneda nor us is a specially interested party." However, given such description, it seems that Spinshell was merely undertaking marketing and public relations agency services from Tenma and that Tenma was only playing the role of passing business onto Spinshell. It is the responsibility of Mr. Hiroshi Kaneda, Tenma's executive director who is also in charge of IR, to specifically explain how Tenma's capital alliance with Spinshell was contributing to Tenma's "accumulation [of] know-how through strengthening Web strategy and semi self-manufacturing" and applying it in "Tenma's future business development." We request that you specifically explain the above points to Tenma's shareholders.

### **3. Irrationality of the Business Plan Which is the Basis of Share Value Evaluation**

As stated in the Warning Statement, Tenma acquired the trial balance related to the share value of Spinshell from a third party in the Underwriting of Capital Increase. However, in such trial balance, the third party calculated the share value of Spinshell using the DCF method based on Spinshell's business plan *which Tenma provided* and the third party who conducted the calculation was not obliged to verify the accuracy, validity, and integrity of the business plan. Therefore, it is necessary to objectively verify the rationality of the business plan itself which Tenma provided and which formed the basis of the third party's evaluation. Moreover, as is obvious from Spinshell's certificate of complete history of company registration, etc., Spinshell increased its capital in the period leading to the Capital Increase and all the issue prices of shares were fifty thousand yen per share before the Capital Increase.

As to this point, it is stated in the Warning Statement that Spinshell's business plan was prepared on a reasonable premise. However, in the business plan which Spinshell provided, it is stated that (i) due to the 130-fold increase of the number of inquiries for marketing in Spinshell from the period ending May 2019 to the period ending May 2023, (ii) the sales revenue of Spinshell will grow sixfold from the period ending May 2019 to the period ending May 2023. It is obvious to everyone that the feasibility of the business plan is doubtful. However, the feasibility of the business plan is not reasonably explained at all.

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<sup>1</sup> For reference, in Spinshell's business purposes at the time before the change on the occasion of the Capital Increase, many businesses ultimately unexpected to achieve synergies with Tenma's business are included, such as (i) discovery, development, and management of artists, (ii) operation of music studios, rehearsal studios, video editing studios, (iii) publication and sale of printed materials such as musical scores and books, (iv) planning, producing, underwriting and copyright business of radio programs, TV broadcasting programs, commercial films, and commercial songs, (v) management of nail and makeup salons and beauty salons, and (vi) alcohol retail business and mail-order alcohol retail business.

In addition, although stock companies must give public notice of their balance sheets (or summaries) without delay after the conclusion of the annual shareholders meeting (so-called “obligation for public notice of settlement of accounts”) under Article 440, paragraphs (1) and (2) of the Companies Act, the Shareholders’ Committee confirmed again that there seems to be no indication that Spinshell has ever given public notice of the settlement of accounts since its incorporation. Although this fact itself is subject to sanction by civil fine, even if we leave that fact aside, we cannot help but consider that the reliability of the figures in the settlement of accounts which formed the basis of the business plan that Spinshell provided is doubtful, considering that Spinshell has not performed the obligation for public notice of settlement of accounts.

Considering the above, it is obvious that the issue price of the Capital Increase is not economically rational at all, and if you claim this is not the case, the rationality of Spinshell’s business plan which was pointed out above is required to be specifically explained to Tenma’s shareholders.

#### **4. Impossibility of Distinction of the Investment Money from Tenma from Investment Money from Other Companies Regarding the Repayment Source for the Loan from Mr. Hiroshi Kaneda (Individual)**

In the Warning Statement, it is claimed that another company in which Mr. Hiroshi Kaneda serves as the representative director (“Company X”) also invested 43.5 million yen (48 million yen in total, combined with other investment money)<sup>2</sup> at the same time as Tenma invested in Spinshell and the investment money from Company X, not the investment money from Tenma, was used to repay the loan from Mr. Hiroshi Kaneda (individual) immediately after the Capital Increase. However, from an economic perspective, Tenma and Company X invested 108 million yen in total in Spinshell due to the Capital Increase, and Spinshell repaid the loan of more than 40 million yen from Mr. Hiroshi Kaneda (individual) immediately after that. Since the money cannot be distinguished, it is merely quibbling to say that there is no fact that the investment money from Tenma was used to repay the loan from Mr. Hiroshi Kaneda (individual) and that the investment money by Company X was used to repay the loan from Mr. Hiroshi Kaneda (individual). At least, it is natural to consider that the investment amount of 60 million yen in cash from Tenma was necessary in order for Spinshell, which has been in the red and had insufficient cash and cash equivalents on hand, to repay the loan of more than 40 million yen from Mr. Hiroshi Kaneda (individual). Therefore, we are certain that the claim by the Shareholders’ Committee that “It is suspected the investment money from Tenma was transferred from Tenma to Spinshell to Mr. Hiroshi Kaneda (individual)” is an appropriate statement in light of the facts.

In addition, although it is stated in the Warning Statement that it was repeatedly explained at the board of directors’ meeting that there is no fact that the investment money from Tenma was used to repay the loan from Mr. Hiroshi Kaneda (individual), Mr. Hiroshi Kaneda did not explain at all that Spinshell was scheduled to repay the loan from Mr. Hiroshi Kaneda (individual) immediately after the Capital Increase at Tenma’s management meeting and the board of directors meeting. Furthermore, (as stated above, we cannot help but say it is quibbling) it was not explained at all that the investment money from Company X, not the investment money from Tenma, was used to repay the loan from Mr. Hiroshi Kaneda (individual).

In the first place, although the Capital Increase should have been conducted to meet the capital requirement, there seems to be no rationality in repaying in cash the loan from Mr. Hiroshi

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<sup>2</sup> The Capital Increase was registered one time (as of June 11, 2019).

Kaneda who is the representative director and has the majority of the total number of shares issued, not the outside loan, immediately after the Capital Increase.

In fact, as a result of the audit by the Audit and Supervisory Committee, after the fact that the loan of more than 40 million yen from Mr. Hiroshi Kaneda (individual) above was repaid was revealed, multiple directors other than Hisashi Tsukasa claim that they would have opposed the Underwriting of Capital Increase if such fact was explained.

Further, although “the legitimate transaction conducted based on the resolution by the Company’s board of directors and by unanimous agreement of all the directors of the time including Mr. Hisashi Tsukasa who is one of you and is also the Company’s director” [emphasis added] is particularly emphasized in the Warning Statement, we would like to inform you that Hisashi Tsukasa submitted a written resignation on May 15, 2020, to the effect that he will resign as Tenma’s director immediately before the annual shareholders’ meeting scheduled to be held in June 2020 in order to take management responsibility including the responsibility for the fact that he could not actively point out the problem of the Underwriting of Capital Increase, and has not become a candidate in the shareholders’ proposal (the “Shareholders’ Proposal”)

## **5. The Third Party Committee’s Investigation Report**

The Shareholders’ Committee sincerely accepts the third party committee’s investigation report regarding the overseas bribery case (the “Overseas Bribery Case”) published by Tenma on April 2, 2020, with a strong sense of crisis. Therefore, as stated on page 2 of the “Exercise of Shareholders’ Proposal Right over Tenma Corporation (Supplementary Material)” (the “Supplementary Material”) published by the Shareholders’ Committee on May 27, 2020, we propose in the Shareholders’ Proposal that all the officers who are from the founding families, including the Tsukasa family, should be removed and that management should be entrusted to employees who have worked for Tenma from the beginning of their careers and are familiar with Tenma’s practices. Moreover, as stated on page 7 of the Supplementary Material, the Shareholders’ Committee aims to restore Tenma’s sound corporate governance by (i) establishing a nomination and compensation committee whose majority consists of outside directors and (ii) establishing a management advisory committee consisting of outside directors and outside experts, in order to prevent members of the founding families, including Osamu Tsukasa and Hisashi Tsukasa, from exercising an unreasonable influence as large shareholders, as much as possible.

The company’s proposal for Mr. Hiroshi Kaneda, Mr. Takashi Sudo, and Mr. Akira Yosano, who were involved in the Overseas Bribery Case, to remain as directors clearly indicates that the persons who were involved in the scandal (other than President Fujino) place all the responsibility for the Overseas Bribery Case *only* on Osamu Tsukasa and Hisashi Tsukasa, and do not sincerely accept their own responsibility. In such a situation, Tenma’s insufficient corporate governance will not be improved at all and it is difficult to improve the enterprise value and the common interests of the shareholders.

As above, it is obvious that the Underwriting of Capital Increase was unreasonable both in its purpose and transaction terms. We cannot help but say that the Warning Statement was only made in order to cover up the disadvantageous fact regarding Mr. Hiroshi Kaneda, who is Tenma’s current executive director, and suppress the legitimate activity of the Shareholders’ Proposal and the encouragement to shareholders which the Shareholders’ Committee conducts in order to rebuild Tenma’s corporate governance and the internal control system.

The Shareholders’ Committee sincerely hopes that President Kaneto Fujino, Executive Director Hiroshi Kaneda, and CFO Takashi Sudo, who were involved in the Overseas Bribery Case, and Tenma’s current directors, including Executive Director Hiroshi Kaneda, who is an

interested party in the Underwriting of Capital Increase, will face the truth and perform their obligation of providing a sufficient explanation to Tenma's general shareholders, without taking the stopgap measure of publishing the Warning Statement.

End

This document is not to solicit the exercise of voting rights by Osamu Tsukasa or third parties for both the proposal by the company and the proposal by the shareholders at the annual shareholders' meeting of Tenma in March 2020.