UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

December 19, 2017

Brian A. Miller
The AES Corporation
brian.miller@aes.com

Re: The AES Corporation
Incoming letter dated December 4, 2017

Dear Mr. Miller:

This letter is in response to your correspondence dated December 4, 2017 concerning the shareholder proposal (the "Proposal") submitted to The AES Corporation (the "Company") by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

December 19, 2017

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The AES Corporation
Incoming letter dated December 4, 2017

The Proposal asks the board to take the steps necessary (unilaterally if possible) to amend the bylaws and each appropriate governing document to give holders in the aggregate of 10% of the Company's outstanding common stock the power to call a special shareowner meeting.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(9). In our view, the Proposal directly conflicts with management's proposal because a reasonable shareholder could not logically vote in favor of both proposals. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(9). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

Brian A. Miller
Executive Vice President, General Counsel and Corporate Secretary

The AES Corporation
4300 Wilson Boulevard
Arlington, VA 22203
tel 1 703 682 6427
brian.miller@aes.com
www.aes.com

December 4, 2017

VIA E-MAIL

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: *The AES Corporation*
Omission of Stockholder Proposal of John R. Chevedden
Rule 14a-8 under the Securities Exchange Act of 1934

Ladies and Gentlemen:

This letter is to inform you that The AES Corporation (the "Company") intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal and statement in support thereof (as revised, the "Stockholder Proposal") received by the Company from Mr. John R. Chevedden (the "Proponent").

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934 (as amended, the "Exchange Act"), we have:

- filed this letter with the U.S. Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Stockholder Proposal, a copy of such correspondence should be furnished concurrently to the undersigned, on behalf of the Company, pursuant to Rule 14a-8(k) and SLB 14D.

THE STOCKHOLDER PROPOSAL[1]

The Proposal states:

Proposal [4] — Special Shareowner Meetings

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board's current power to call a special meeting.

Scores of Fortune 500 companies allow 10% of shares to call a special meeting. Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings.

This proposal may be particularly timely because we may have a need for board refreshment after the 2018 annual meeting since Charles Rossotti still our Chairman at age 76. Mr. Rossotti had 14-years long-tenure, which can challenge the independence of any director no mater how qualified. Mr. Rossotti also received the highest negative votes of any AES director in 2017. Mr. Rossotti could be on the Board as a director – with no additional assignments. Our previous Chairman, Philip Odeen, did not retire as Chairman until age 77.

Any claim that a shareholder right to call a special meeting can be costly — may be largely moot. If shareholders have a good reason to call a special meeting — we can perhaps give our board credit that they will take positive action to make a special meeting unnecessary.

Please vote for improved corporate governance:
Special Shareowner Meetings — Proposal [4]

A copy of the Stockholder Proposal is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Stockholder Proposal may properly be excluded from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(i)(9), because it directly conflicts with the Company Proposal to be submitted to stockholders for ratification at the 2018 Annual Meeting of Stockholders (the "2018 Annual Meeting"); and

[1] Mr. Chevedden submitted a revised version of the Proposal to the Company on November 6, 2017. This revised version is the subject of this no-action request.

- Rule 14a-8(i)(8), because the Stockholder Proposal (i) questions the competence and business judgment of one or more directors and (ii) otherwise could affect the outcome of the upcoming election of directors at the 2018 Annual Meeting.

ANALYSIS

I. The Stockholder Proposal May Be Excluded Under Rule 14a-8(i)(9) Because It Directly Conflicts with the Company Proposal to be Submitted to Stockholders for Ratification at the 2018 Annual Meeting

The Company believes that it may properly exclude the Stockholder Proposal from its 2018 Proxy Materials under Rule 14a-8(i)(9), which permits the exclusion of a proposal "[i]f the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." *See also* Staff Legal Bulletin No. 14H (Oct. 12, 2015) ("SLB 14H").[2] The Company intends to include a proposal at the 2018 Annual Meeting (the "Company Proposal") seeking stockholder ratification of the current aggregate ownership threshold to call a special meeting of stockholders contained in Section 2.04 of the Company's Amended and Restated By-Laws (the "By-Laws").

The relevant portion of the By-Laws that would be implicated by the Stockholder Proposal (the "Special Meeting Provisions") may be summarized as follows.

- One or more stockholders of record (acting on their own behalf or on behalf of beneficial owners) owning shares that represent at least 25% of the outstanding shares of Company capital stock have the ability to require the Company to call a special meeting of its stockholders (the "25% Ownership Threshold").

- The right to call a Stockholder Requested Special Meeting (as defined in the By-Laws) is subject to substantive and procedural requirements and limitations.

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[2] SLB 14H states that consideration of when a stockholder proposal may be excluded under Rule 14a-8(i)(9) should be based on whether there is a direct conflict between the management and stockholder proposals at issue:

> After reviewing the history of Rule 14a-8(i)(9) and based on our understanding of the rule's intended purpose, we believe that any assessment of whether a proposal is excludable under this basis should focus on whether there is a direct conflict between the management and shareholder proposals. For this purpose, we believe that a direct conflict would exist if a reasonable shareholder *could not logically vote in favor of both proposals, i.e., a vote for one proposal is tantamount to a vote against the other proposal*. While this articulation may be a higher burden for some companies seeking to exclude a proposal to meet than had been the case under our previous formulation, we believe it is most consistent with the history of the rule and more appropriately focuses on whether a reasonable shareholder could vote favorably on both proposals or whether they are, in essence, mutually exclusive proposals.

Emphasis added.

The Company's By-Laws are attached hereto as Exhibit B, and the text of the Company Proposal is attached hereto as Exhibit C.

The Proponent is requesting that the Special Meeting Provisions be amended to include a 10% ownership threshold, which is in direct conflict with the Company Proposal seeking ratification of the current 25% Ownership Threshold set forth in the Special Meeting Provisions. Therefore, the Stockholder Proposal directly conflicts with the Company Proposal such that the Company's stockholders could not logically vote for both the Stockholder Proposal and the Company Proposal (i.e., a vote for one proposal would be tantamount to a vote against the other proposal). *See* SLB 14H. An affirmative vote on both the Stockholder Proposal and the Company Proposal would result in exactly the kind of conflict that Rule 14a-8(i)(9) was designed to prevent.

In SLB 14H, the Staff provided examples of situations in which a reasonable stockholder could not logically vote for both a management and stockholder proposal. For example, proposals would directly conflict where a company seeks stockholder approval of a merger, and a stockholder proposal asks stockholders to vote against the merger. Similarly, a stockholder proposal that asks for separation of the company's chairman and chief executive officer would directly conflict with a management proposal seeking approval of a bylaw provision requiring the chief executive officer to be the chair at all times. The direct conflict between the share ownership thresholds of the Stockholder Proposal and the Company Proposal, therefore, fall squarely within the examples used by the Staff in SLB 14H. A stockholder cannot logically vote for the Company Proposal to ratify the Special Meeting Provisions, including the 25% Ownership Threshold, and also vote for the Stockholder Proposal to significantly amend those Special Meeting Provisions, including changing the 25% Ownership Threshold to a 10% share ownership threshold.

The Staff previously has agreed with companies that management proposals to retain an existing governance feature that is in opposition with the subject of a stockholder proposal presents an inherent conflict within the meaning of Rule 14a-8(i)(9). For example, in *Illumina, Inc.* (Mar. 18, 2016), the Staff concurred with the company's view that it could exclude a stockholder proposal under Rule 14a-8(i)(9). In *Illumina*, a stockholder proposal sought to eliminate and replace supermajority provisions in the company's charter and bylaws with a simple majority voting standard, which conflicted with the company's plans to seek ratification of existing bylaw and charter provisions related to the company's existing supermajority voting requirements at the same annual meeting. Additionally, in *Herley Industries, Inc.* (Nov. 20, 2007), the Staff agreed with the company that it could rely on Rule 14a-8(i)(9) to exclude a stockholder proposal that sought to amend its bylaws to provide for a majority vote standard for the election of directors, when the company intended to submit for stockholder approval at the same annual meeting a proposal to amend its bylaws to maintain the plurality vote standard that was in place (as well as to add a director resignation policy). *See also Bureau of National Affairs* (Feb. 21, 1995).

The Staff's decisions in *Illumina* and *Herley* are instructive here. As with the Stockholder Proposal and the Company Proposal, the management proposals in *Illumina* and *Herley* sought stockholder ratification and approval of existing provisions in these companies' governing

documents that directly conflicted with the stockholders' proposals to be presented at the same annual meetings. As was the case in *Illumina* and *Herley*, it would be impossible for a stockholder to logically vote for the Stockholder Proposal and the Company Proposal; a vote for one proposal would be tantamount to a vote against the other proposal.

As the Commission noted when it amended Rule 14a-8(i)(9), the Commission did "not intend to imply that proposals must be identical in scope or focus for the [Rule 14a-8(i)(9)] exclusion to be available." *See* Exchange Act Release 34-40018, n.27 (May 21, 1998). Rather, Rule 14a-8(i)(9) permits exclusion of a proposal where presenting the stockholder's proposal and a company's proposal at the same stockholder meeting would present alternative (but not necessarily identical) decisions for the company's stockholders and would create the potential for inconsistent or conflicting results were both proposals approved. *See Equinix, Inc.* (Mar. 17, 2011).

Consistent with the precedent cited above, because the Company Proposal and the Stockholder Proposal seek to take mutually exclusive approaches, presenting both proposals in the 2018 Proxy Materials would result in directly conflicting mandates for the Company's Board of Directors (the "Board"). For example, the Stockholder Proposal and the Company Proposal could both receive sufficient votes in order to be adopted. The Board would not know whether to seek amendments to the By-Laws that comport with the 10% ownership threshold requested by the Proponent, or retain the 25% Ownership Threshold in the Special Meeting Provisions of the By-Laws.

Therefore, the Company respectfully requests that the Staff concur in its belief that the Proposal may be excluded from the 2018 Proxy Materials in its entirety pursuant to Rule 14a-8(i)(9).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(8) Because The Proposal Questions the Competence and Business Judgment of One or More Directors and May Affect the Outcome of the Upcoming Election

If the Staff does not concur with the Company that the Stockholder Proposal is excludable pursuant to Rule 14a-8(i)(9), the Company nonetheless believes that it may properly exclude the Stockholder Proposal from the 2018 Proxy Materials under Rule 14a-8(i)(8), which permits the exclusion of a proposal if it "[q]uestions the competence, business judgment, or character of one or more nominees or directors" or "[o]therwise could affect the outcome of the upcoming election of directors." *See* Rule 14a-8(i)(8)(iii) and (v).

On a number of occasions, the Staff has permitted a company to exclude a proposal under Rule 14a-8(i)(8) where the proposal, together with the supporting statement, questioned the business judgment, competence or service of directors. *See, e.g., Rite Aid Corporation* (Apr. 1, 2011) (stockholder proposal was excludable when the supporting statement questioned the business judgment of certain board members), *Marriott International, Inc.*, (Mar. 12, 2010) (permitted the exclusion of a stockholder proposal criticizing the suitability of members of the board of directors to serve), and *The Black & Decker Corporation* (Jan. 21, 1997) (allowing exclusion of a proposal under Rule 14a-8(c)(8) (the predecessor to Rule 14a-8(i)(8)) that questioned the

independence of board members, where contentions in the supporting statement questioned the business judgment, competence, and service of the chairman of the board standing for reelection).

The Commission confirmed its position with respect to Rule 14a-8(i)(8) in Exchange Act Release 34-62764 (Aug. 25, 2010) when it stated that a company would be permitted to exclude a proposal pursuant to Rule 14a-8(i)(8) if it "[q]uestions the competence, business judgment, or character of one or more nominees or directors ... *or* [o]therwise could affect the outcome of the upcoming election of directors." Emphasis added. The Commission has also previously stated that "the principal purpose of this provision is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns ...." Exchange Act Release 34-12598 (Jul. 7, 1976).

Here, the Proponent and the Stockholder Proposal have directly questioned the competence, business judgment, and character of the Chairman of the Board, Mr. Charles Rossotti, as well as that of the Board as a whole in regard to the Board's (i) re-nomination of Mr. Rossotti to the Board and (ii) selection of both him and the former Chairman of the Board, Mr. Philip Odeen, as independent Chairmen of the Board.

In short, the supporting statement of the Stockholder Proposal is ageist and specifically cites Mr. Rossotti's age as the primary reason for supporting the Stockholder Proposal. In this regard, the Proponent has directly questioned Mr. Rossotti's competence to continue to serve as Chairman of the Board due to his age. The supporting statement of the Stockholder Proposal directly refers to a planned purpose of "…electing new directors…," thus clearly indicating the Proponent's aim of impacting an upcoming election of directors. Specifically, the Stockholder Proposal appears designed to impact the outcome of Mr. Rossotti's election and that of other incumbent directors on the Board, stating as follows:

> …we may now have a need for board refreshment after the 2018 annual meeting since Charles Rossotti is still our Chairman at age 76. Mr. Rossotti had 14-years long-tenure, which can challenge the independence of a director…. Mr. Rossotti also received the highest negative votes of any AES director in 2017. Mr. Rossotti could be on the Board as a director – with no additional assignments. Our previous Chairman, Philip Odeen, did not retire as Chairman until age 77.

This statement attempts to directly link Mr. Rossotti's age with the Proponent's perception that Mr. Rossotti is unable to serve competently as Chairman of the Board. The Proponent's statement that "Mr. Rossotti could be on the Board…with no additional assignments" suggests that Mr. Rossotti's age alone, not tenure, would impair his ability to act in the role of independent Chairman of the Board (i.e., beyond that of an independent director on the Board only). In the *Black & Decker* no-action request cited above, the company noted that the supporting statement submitted by the proponent contained "…statements that directly impugn the character, integrity and personal reputation of Black & Decker's Chairman of the Board…," which statements were viewed by the company as a "…veiled attempt by the Proponent to affect the upcoming election of directors." Similarly, here, the supporting statement highlights Mr.

Rossotti's age and links the same to Mr. Rossotti having "…received the highest negative votes of any AES director in 2017." In addition to its ageist sentiment, this statement is patently misleading, because it fails to acknowledge that Mr. Rossotti received over 90% of the shares of common stock present in person or represented by proxy and entitled to vote at the Company's 2017 Annual Meeting of Stockholders voting "FOR" his reelection. Such a vote result is hardly a rebuke of Mr. Rossotti's competence and fitness to serve on the Board, including as its Chairman, his independence from management, or of the Board's decision to re-nominate him for re-election as a director and Chairman of the Board. Nonetheless, as in *Black & Decker*, the Proponent's ageist and deleterious comments regarding Mr. Rossotti represent attacks on his character and could very well impact the upcoming election of directors at the 2018 Annual Meeting (and not only Board elections after the 2018 Annual Meeting, as the supporting statement suggests).

In addition to questioning the business judgment and competence of Mr. Rossotti based solely on his age, which necessarily also impacts Mr. Rossotti's potential reelection at the 2018 Annual Meeting (should Mr. Rossotti be re-nominated for election by the Board), the supporting statement calls into question the business judgment of the remainder of the Board, many of whom are expected to stand for reelection at the 2018 Annual Meeting. Under the Company's Corporate Governance Guidelines, the Chairman of the Board is selected annually by a majority vote of all members of the Board. The Company's directors serve one year terms and, accordingly, all directors may potentially be nominated for reelection at the 2018 Annual Meeting. Nine of the ten directors are potentially standing for reelection at the 2018 Annual Meeting and participated in the selection of Mr. Rossotti to serve as the Chairman of the Board. As such, the supporting statement to the Stockholder Proposal questions the business judgment and competence of each of these members of the Board, due to their prior selection of Mr. Rossotti as the Chairman of the Board, not only for future annual meetings, as the supporting statement suggests, but specifically for the 2018 Annual Meeting. Further, the supporting statement suggests a pattern of poor business judgment on the part of the Board in this regard by also referring to the former Chairman of the Board, Mr. Odeen, who did not retire from the Board until age 77. In *Rite Aid*, the company noted that the supporting statement included language that disparaged actions taken by members of the board of directors and argued that such statements amounted to an inappropriate assessment of the directors' business judgment. The Staff agreed, noting in the no-action letter that "…[t]he proposal appear[ed] to question the business judgment of board members whom Rite Aid expects to nominate for reelection at the upcoming annual meeting of shareholders."

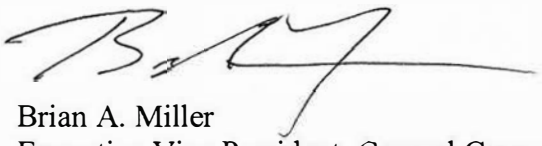
The Proposal is excludable from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(8) because it questions the business judgment and competence of one or more directors on the Board and is likely to affect the outcome of the upcoming election of directors.

CONCLUSION

Based on the foregoing analyses, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(9) and Rule 14a-8(i)(8).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to the undersigned at brian.miller@aes.com. If you have any questions with respect to the foregoing, please contact the undersigned at (703) 682-6427.

Sincerely,



Brian A. Miller
Executive Vice President, General Counsel and
Corporate Secretary
The AES Corporation

Enclosures

cc: John R. Chevedden

Exhibit A

Stockholder Proposal

Revised Proposal

Submitted November 6, 2017

JOHN CHEVEDDEN
***

Mr. Brian A. Miller
Secretary
AES Corp (AES)
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
PH: 703-522-1315
PH: 703-682-1110

REVISED 6 NOV 2017

Dear Mr. Miller,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the large captializtion of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to ***

Sincerely,

John Chevedden

October 10, 2017
Date

cc: Megan Campbell <megan.campbell@aes.com>
Ahmed Pasha <ahmed.pasha@aes.com>
Vice President, Investor Relations
PH: 703-682-6451

*** FISMA & OMB Memorandum M-07-16

[AES – Rule 14a-8 Proposal, October 10, 2017, Revised November 6, 2017]
[This line and any line above it is not for publication.]

Proposal [4] – Special Shareowner Meetings

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board's current power to call a special meeting.

Scores of Fortune 500 companies allow 10% of shares to call a special meeting. Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings.

This proposal may be particularly timely because we may have a need for board refreshment after the 2018 annual meeting since Charles Rossotti is still our Chairman at age 76. Mr. Rossotti had 14-years long-tenure, which can challenge the independence of any director no mater how qualified. Mr. Rossotti also received the highest negative votes of any AES director in 2017. Mr. Rossotti could be on the Board as a director – with no additional assignments. Our previous Chairman, Philip Odeen, did not retire as Chairman until age 77.

Any claim that a shareholder right to call a special meeting can be costly – may be largely moot. If shareholders have a good reason to call a special meeting – we can perhaps give our board credit that they will take positive action to make a special meeting unnecessary.

Please vote for improved corporate governance:
Special Shareowner Meetings – Proposal [4]
[The line above is for publication.]

John Chevedden, *** sponsors this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***.

*** FISMA & OMB Memorandum M-07-16

Soehner, Celia A.

Subject: FW: Rule 14a-8 Proposal (AES)``
Attachments: CCE06112017_9.pdf

From: ***
Sent: Monday, November 6, 2017 8:21 PM
To: Megan Campbell <megan.campbell@aes.com>
Cc: Ahmed Pasha <ahmed.b.pasha@aes.com>
Subject: Rule 14a-8 Proposal (AES)``

Dear Ms. Campbell,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the large market capitalization of the company.
Sincerely,
John Chevedden

Original Proposal

Submitted October 10, 2017

JOHN CHEVEDDEN
***

Mr. Brian A. Miller
Secretary
AES Corp (AES)
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
PH: 703-522-1315
PH: 703-682-1110

Dear Mr. Miller,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the large captializtion of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to ***

Sincerely,

John Chevedden

October 10, 2017
Date

cc: Megan Campbell <megan.campbell@aes.com>
Ahmed Pasha <ahmed.pasha@aes.com>
Vice President, Investor Relations
PH: 703-682-6451

*** FISMA & OMB Memorandum M-07-16

[AES – Rule 14a-8 Proposal, October 10, 2017]
[This line and any line above it is not for publication.]

Proposal [4] – Special Shareowner Meetings

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board's current power to call a special meeting.

Scores of Fortune 500 companies allow 10% of shares to call a special meeting. Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings.

This proposal may be particularly timely because we may now have a need for board refreshment with Charles Rossotti still our Chairman at age 76. Mr. Rossotti had 14-years long-tenure, which can challenge the independence of a director. Mr. Rossotti also received the highest negative votes of any AES director in 2017. Mr. Rossotti could possible serve further as a regular director. Our previous Chairman, Philip Odeen, did not retire as Chairman until age 77.

Any claim that a shareholder right to call a special meeting can be costly – may be largely moot. If shareholders have a good reason to call a special meeting – we can perhaps give our board credit that they will take positive action to make a special meeting unnecessary.

Please vote for improved corporate governance:
Special Shareowner Meetings – Proposal [4]
[The line above is for publication.]

John Chevedden, *** sponsors this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***.

*** FISMA & OMB Memorandum M-07-16

Soehner, Celia A.

Subject: FW: Rule 14a-8 Proposal (AES)``
Attachments: CCE10102017_4.pdf

From: ***
Sent: Tuesday, October 10, 2017 8:44 PM
To: Megan Campbell <megan.campbell@aes.com>
Cc: Ahmed Pasha <ahmed.pasha@aes.com>
Subject: Rule 14a-8 Proposal (AES)``

Dear Ms. Campbell,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the large market capitalization of the company.
Sincerely,
John Chevedden

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

October 13, 2017

John R. Chevedden
***

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in each of the following securities, since October 1, 2016:

Security name	CUSIP	Trading symbol	Share quantity
AES, Corp.	00130H105	AES	250
Cigna Corporation	125509109	CI	100
Goodyear Tire and Rubber Company	382550101	GT	100
Lennar Corporation	526057104	LEN	100
Marathon Petroleum Corp.	56585A102	MPC	100
Pfizer, Inc.	717081103	PFE	100

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

George Stasinopoulos
Personal Investing Operations

Our File: W497107-12OCT17

*** FISMA & OMB Memorandum M-07-16

Soehner, Celia A.

Subject: FW: Rule 14a-8 Proposal (AES) blb
Attachments: CCE13102017_10.pdf; ATT00001.htm

Begin forwarded message:

From: ***
Date: October 13, 2017 at 8:24:05 PM EDT
To: Megan Campbell <megan.campbell@aes.com>
Cc: Ahmed Pasha <ahmed.pasha@aes.com>
Subject: Rule 14a-8 Proposal (AES) blb

Dear Ms. Campbell,
Please see the attached broker letter.
Sincerely,
John Chevedden

Exhibit B

Amended and Restated By-Laws of The AES Corporation

As Filed on Form 8-K/A on December 2, 2015

AMENDED AND RESTATED BY-LAWS

OF

THE AES CORPORATION

ARTICLE I
OFFICES

Section 1.01 The registered office shall be at 2711 Centerville Road in the City of Wilmington in the State of Delaware.

Section 1.02 The Corporation may also have offices and places of business at such other places, within or without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.01 All meetings of stockholders shall be held at such time and place within or without the State of Delaware as may be determined from time to time by the Board of Directors (or the Chairman in the absence of a designation by the Board of Directors) as shall be stated in the notice of the meeting, or in a duly executed waiver of notice thereof.

Section 2.02 Annual meetings of stockholders shall be held on the first Friday of June of each year, if not a legal holiday, and if a legal holiday, then on the next succeeding business day not a legal holiday, or at such other date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At the annual meeting, the stockholders shall elect a Board of Directors, and transact any other business as may properly come before the meeting, notice of which was given in the notice of the meeting.

Section 2.03 The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 2.04 (A) Special meetings of the stockholders, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be held at such place as may from time to

time be designated by the Board of Directors and (1) may be called by the Chairman of the Board, the President or by resolution adopted by a majority of the entire Board of Directors or (2) shall be called by the Chairman of the Board or the Secretary at the written request of one or more stockholders of record that at the time a request is delivered Own (as defined below) or who are acting on behalf of one or more stockholders or beneficial owners who Own (as defined below) shares representing at least twenty-five percent (25%) (the "Requisite Percent") of the outstanding shares of the capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting, provided a special meeting called at the request of one or more stockholders (a "Stockholder Requested Special Meeting") shall be called by the Chairman of the Board or the Secretary only if the stockholder(s) requesting such meeting provide the information regarding such stockholder(s) and the proposed special meeting and comply with such procedures set forth in Section 2.04(B).

(B) In order for a Stockholder Requested Special Meeting to be called by the Chairman of the Board or the Secretary, one or more written requests for a special meeting (individually or collectively, a "Special Meeting Request") signed and dated by the stockholders of record that Own the Requisite Percent of capital stock of the Corporation (or their duly authorized agents), must be delivered to the Secretary at the principal executive offices of the Corporation and must be accompanied by:

(1) in the case of any Stockholder Requested Special Meeting at which director nominations are proposed to be presented, the information required by Sections 2.16 and 9.01 of these By-Laws; and/or

(2) in the case of any Stockholder Requested Special Meeting at which any business other than nominations of persons for election to the Corporation's Board of Directors is proposed to be presented, the information required by Sections 2.15 and 2.16 of these By-Laws (which shall be in addition to the information required by Section 9.01 if director nominations are also proposed to be considered); and

(3) (a) as to each stockholder of the Corporation signing such request, or if such stockholder is a nominee or custodian, the beneficial owner(s) on whose behalf such request is signed, (i) an affidavit by each such person stating the number of shares of capital stock of the Corporation that it Owns (as defined below) as of the date such request was signed and agreeing to continue to Own such number of shares of capital stock through the date of the Stockholder Requested Special Meeting and an agreement by such person to update and supplement such affidavit as of the record date for the Stockholder Requested Special Meeting, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting; provided that in the event of any decrease in the number of shares of capital stock of the Corporation Owned by such person at any time before the Stockholder Requested Special Meeting, such person's Special Meeting Request shall be deemed to have been revoked with respect to such shares of capital stock of the Corporation comprising such reduction and shall not be counted towards the calculation of the Requisite Percent, and (ii) a statement stating whether it intends to maintain Ownership of the Requisite Percent of

capital stock of the Corporation for at least one year following the Stockholder Requested Special Meeting, and (b) as to the stockholder seeking to call the special meeting (or the person on whose behalf the stockholder is acting, as applicable) or any stockholder or beneficial owner who has solicited other stockholders to request the special meeting, the information required under Sections 2.15 and 2.16 as to such stockholder or beneficial owner.

(C) One or more written requests for a special meeting delivered to the Secretary shall constitute a valid Special Meeting Request only if each such written request satisfies the requirements set forth above and has been dated and delivered to the Secretary within 60 days of the earliest dated of such requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request shall not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request (or within five business days thereafter) of such signatory's authority to execute the Special Meeting Request on behalf of the record holder. Any requesting stockholder may revoke his, her or its Special Meeting Request at any time prior to the Request Receipt Date by written revocation delivered to the Secretary at the principal executive offices of the Corporation; provided, however, that if following such revocation, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Requisite Percent, there shall be no requirement to hold a special meeting. The determination of the validity of a Special Meeting Request shall be made in good faith by the Board of Directors, which determination shall be conclusive and binding on the Corporation and the stockholders and the date of such determination is referred to herein as the "Request Receipt Date." A Special Meeting Request shall not be valid if: (1) such Special Meeting Request relates to an item of business that is not a matter on which stockholders are authorized to act under, or that involves a violation of, applicable law, or (2) the Request Receipt Date occurs during the period commencing 90 days prior to the first anniversary of the date of the most recent annual meeting of stockholders and ending on the date of the next annual meeting of stockholders, or (3) the purpose specified in the Special Meeting Request relates to an item of business (other than the election of directors) that is the same or substantially similar (as determined in good faith by the Board of Directors, a "Similar Item") to an item of business that was presented at any meeting of stockholders held within the 12 months prior to the Request Receipt Date, or (4) a Similar Item is included in the Corporation's notice as an item of business to be brought before a stockholder meeting that has been called or that is called for a date within 90 days of the Request Receipt Date.

(D) Any special meeting of stockholders shall be held at such date and time as may be fixed by the Board of Directors in accordance with these By-Laws and in compliance with the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("Delaware Law"); provided, however that a Stockholder Requested Special Meeting shall be called for a date not more than (1) 90 days after the Request Receipt Date (or, in the case of any litigation related to the validity of the requests for a Stockholder Requested Special Meeting, 90 days after the resolution of such litigation), or (2) 50 days after the date the Corporation files definitive soliciting materials with respect to such meeting pursuant to Schedule 14A under the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the "Exchange Act"), whichever is latest.

(E) Business transacted at any Stockholder Requested Special Meeting shall be limited to (1) the purpose(s) stated in the valid Special Meeting Request(s) received from the Requisite Percent of record holders and (2) any additional matters that the Board of Directors determines to include in the Corporation's notice of the meeting. If none of the stockholders who submitted the Special Meeting Request, or their qualified representatives (as defined below), appears at the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request(s), the Corporation need not present such matters for a vote at such meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation. For purposes of this Section 2.04, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the presentation of such matters at the meeting stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(F) For the purposes of this Section 2.04 and Section 9.02, a stockholder or beneficial owner shall be deemed to "Own" only those shares of outstanding capital stock as to which such person possesses both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (a) sold by such person or any of its affiliates in any transaction that has not been settled or closed, (b) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell or (c) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such person or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding capital stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have the purpose or effect of (i) reducing in any manner, to any extent or at any time in the future, such person's or affiliates' full right to vote or direct the voting of any such shares, and/or (ii) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such person or affiliate. A stockholder or beneficial owner shall "Own" shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A person shall be deemed to continue to Own shares during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on five (or less) business days' notice, and has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the person. The determination of the extent to which a stockholder or beneficial owner "Owns" any shares of capital stock for these purposes shall be made in good faith by the Board of Directors, which determination shall be conclusive and binding on the Corporation and the stockholders.

Section 2.05 Written notice of the annual meeting or any special meeting of stockholders stating the place, date and hour of the meeting shall be given in accordance with Section 4.01 to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 2.06 Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.07 The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, or the officer presiding over the meeting, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjournment at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than 30 days, or after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with Section 2.01 or 2.05 as the case may be, to each stockholder of record entitled to vote at the meeting.

Section 2.08 (A) Unless otherwise provided in the Certificate of Incorporation and subject to the Delaware Law, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Unless otherwise provided in Delaware Law, the certificate of incorporation or these By-Laws, the affirmative vote of a majority of the shares of capital stock of the Corporation present, in person or by written proxy, at a meeting of stockholders and entitled to vote on the subject matter shall be the act of the stockholders.

(B) At any meeting of stockholders at which directors are to be elected, a nominee for election as a director in an uncontested election shall be elected if the number of votes cast for the nominee's election exceeds the number of votes cast against the nominee's election. In an election of director other than an uncontested election, the nominees receiving the greatest number of votes shall be elected as directors, up to the number of directors as shall constitute the whole Board as set pursuant to Section 3.02. For purposes of this Section 2.08(B), an "uncontested election" means any meeting of stockholders at which the number of candidates does not exceed the number of directors to be elected and with respect to which (1) no stockholder has submitted notice of an intent to nominate a candidate for election at such meeting in accordance with Section 2.04, 9.01 or 9.02, or (2) such a notice has been submitted, and on or before the tenth day prior to the date that the Corporation files its definitive proxy statement relating to such meeting with the Securities and Exchange Commission (regardless of whether thereafter revised or supplemented), the notice has been (a) withdrawn in writing to Secretary, (b) determined not to be a valid notice of nomination by the Board of Directors (or a committee thereof) or if challenged in court, by a final court order, or (c) determined by the Board of Directors (or a committee thereof) not to create a *bona fide* election contest.

Section 2.09 If a vote is to be taken by ballot, each ballot shall state the number of shares voted and the name of the stockholder or proxy voting.

Section 2.10 Each meeting of the stockholders, whether annual or special, shall be presided over by the Chairman of the Board if present, and if he or she is not present or declines to preside by the President if present. If neither officer specified in the preceding sentence is present, the meeting shall be presided over by the person designated in writing by the Chairman of the Board, or if the Chairman of the Board has made no designation, by the person designated by the President, or if the President has made no designation, by the person designated by the Board of Directors. If neither officer specified in the first sentence of this Section 2.10 is present, and no one designated by the Chairman of the Board or the President or the Board of Directors is present, the meeting may elect any stockholder of record who is entitled to vote for directors, or any person present holding a proxy for such a stockholder, to preside. The Secretary of the Company (or in his or her absence any Assistant Secretary) shall be the Secretary of any such meeting; in the absence of the Secretary and Assistant Secretaries, any person may be elected by the meeting to act as Secretary of the meeting.

Section 2.11 Any voting proxy given by a stockholder must be: in writing, executed by the stockholder, or, in lieu thereof, to the extent permitted by law, may be transmitted in a telegram, cablegram or other means of electronic transmission setting forth or submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. A copy, facsimile transmission or other reliable reproduction of a written or electronically-transmitted proxy authorized by this Section 2.11 may be substituted for or used in lieu of the original writing or electronic transmission to the extent permitted by law.

Section 2.12 The directors shall appoint one or more inspectors of election and of the vote at any time prior to the date of any meeting of stockholders at which an election is to be held or a vote is to be taken. In the event any inspector so appointed is absent from such meeting or for any other reason fails to act as such at the meeting, the person presiding at such meeting pursuant to these By-Laws may appoint a substitute who shall have all the powers and duties of such inspector. The inspector or inspectors so appointed shall act at such meeting, make such reports thereof and take such other action as shall be provided by law and as may be directed by the person presiding over the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.

Section 2.13 The directors may, at any time prior to any annual or special meeting of the stockholders, adopt an order of business for such meeting which shall be the order of business to be followed at such meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at such meeting shall be announced at such meeting by the person presiding over such meeting.

Section 2.14 (A) For purposes of determining the means of conducting the vote at any meeting of stockholders, a stock vote shall be taken by ballot on any resolution or other matter properly presented to the meeting for action in accordance with Section 2.15 or Section 9.01 if so ordered by the person presiding over the meeting or on the demand of any stockholder of record entitled to vote at the meeting or any person present holding a proxy for such a stockholder. Such order or demand for a vote by ballot may be made either before or after a vote has been taken on such resolution or other matter in a manner other than by stock vote and before or after

the result of the vote taken otherwise than by stock vote has been announced. The result of a stock vote taken by ballot in accordance with this By-Law shall supersede the result of any vote previously taken in any other manner.

(B) The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding at such meeting shall have the authority to announce and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of such person, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders may include without limitation, establishing: (1) an agenda or order of business for the meeting; (2) rules and procedures for maintaining order at the meeting and the safety of those present; (3) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the person presiding at such meeting shall permit; (4) provisions regarding entry to the meeting after the time fixed for the commencement thereof; (5) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (6) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (7) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the person presiding at such meeting may convene and, for any or no reason, from time to time, adjourn and/or recess any meeting of stockholders.

Section 2.15 (A) Only such business (other than nominations of persons for election to the Board of Directors, which must comply with the provisions of Section 9.01(A) or Section 9.02) may be transacted at an annual meeting of stockholders as is brought before the meeting (1) pursuant to the Corporation's notice of meeting, (2) by or at the direction of the Board of Directors or (3) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 2.15 and at the time of the annual meeting, is entitled to vote thereon at the meeting and who complies with the notice procedures set forth in this Section 2.15; clause (3) shall be the exclusive means for a stockholder to submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting) before an annual meeting of stockholders.

(B) For business (other than the nominations of persons for election to the Board of Directors, which must comply with the provisions of Section 9.01 or Section 9.02) to be properly brought before an annual meeting by a stockholder pursuant to Section 2.15(A)(3), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such business must be a proper subject for stockholder action.

To be timely, a stockholder's notice shall be delivered, either by personal delivery or by United States mail, postage pre-paid, to the Secretary at the principal executive offices of the Corporation by the close of business (as defined in Section 2.15(D)) not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, or if no meeting was held in the

(3) is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and

(4) if elected as a director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors.

At the time of submission of the Stockholder Notice, the Stockholder Nominee must submit all completed and signed questionnaires required of the Corporation's directors and, at the request of the Corporation, provide to the Corporation such other information as it may reasonably request. The Corporation may request such additional information as necessary to permit the Board of Directors to determine if each Stockholder Nominee satisfies the requirements of this Section 9.02.

(I) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the Corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any defect or limit the Corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 9.02.

(J) Notwithstanding anything to the contrary contained in this Section 9.02, the Corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(1) the Eligible Stockholder or Stockholder Nominee breaches any of its respective agreements, representations, or warranties set forth in the Stockholder Notice (or otherwise submitted pursuant to this Section 9.02), any of the information in the Stockholder Notice (or otherwise submitted pursuant to this Section 9.02) was not, when provided, true, correct and complete, or the requirements of this Section 9.02 have otherwise not been met,

(2) the Stockholder Nominee (a) is not independent under any applicable listing standards, any applicable rules of the SEC, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's Directors, (b) does not qualify as independent under the audit committee independence requirements set forth in the rules of the principal U.S. exchange on which shares of the Corporation are listed, as a "non-employee director" under Exchange Act Rule 16b-3, or as an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision), (c) is or has been, within the past three years, an officer or director of a

competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (d) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding (excluding traffic violations and other minor offenses) within the past ten years or (e) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended,

(3) the Corporation has received a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director in Section 9.01 of this Article IX,

(4) the election of the Stockholder Nominee to the Board of Directors would cause the Corporation to violate the Certificate of Incorporation of the Corporation, these By-Laws, any applicable law, rule, regulation or listing standard, or

(5) the Eligible Stockholder or applicable Stockholder Nominee fails to comply with its obligations pursuant to these By-Laws, including but not limited to its obligations under this Section 9.02.

(K) The maximum number of Stockholder Nominees submitted by all Eligible Stockholders that may be included in the Corporation's proxy materials pursuant to this Section 9.02, shall not exceed twenty percent (20%) of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 9.02 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number (rounding down) below twenty percent (20%) (such resulting number, the "Permitted Number"); provided that the Permitted Number shall be reduced by (1) any nominees who were previously elected to the Board of Directors as Stockholder Nominees at any of the preceding two annual meetings and who are nominated for election at such annual meeting by the Board of Directors as a Board of Directors nominee, and (2) any directors in office or director candidates that in either case will be included in the Corporation's proxy materials with respect to such an annual meeting as an unopposed (by the Corporation) nominee pursuant to an agreement, arrangement or other understanding between the Corporation and a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of capital stock, by such stockholder or group of stockholders, from the Corporation). In the event that one or more vacancies for any reason occurs after the date of the Stockholder Notice but before the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 9.02 exceeds the Permitted Number, the Corporation shall determine which Stockholder Nominees shall be included in the Corporation's proxy materials in accordance with the following provisions: each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of the Corporation each Eligible Stockholder disclosed as Owned in its respective Stockholder Notice submitted to the Corporation. If the Permitted Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the

Permitted Number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 9.02 thereafter is nominated by the Board of Directors, thereafter is not included in the Corporation's proxy materials or thereafter is not submitted for director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 9.02), no other nominee or nominees shall be included in the Corporation's proxy materials or otherwise submitted for director election in substitution thereof.

(L) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (1) withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these By-Laws (provided that in no event shall any such withdrawal, ineligibility or unavailability commence a new time period (or extend any time period) for the giving of a Stockholder Notice) or (2) does not receive a number of votes cast in favor of his or her election at least equal to twenty-five percent (25%) of the shares present in person or represented by proxy and entitled to vote in the election of directors, will be ineligible to be a Stockholder Nominee pursuant to this Section 9.02 for the next two annual meetings.

(M) The Board of Directors (and any other person or body authorized by the Board of Directors) shall have the power and authority to interpret this Section 9.02 and to make any and all determinations necessary or advisable to apply this Section 9.02 to any persons, facts or circumstances, including the power to determine (1) whether one or more stockholders or beneficial owners qualifies as an Eligible Stockholder, (2) whether a Stockholder Notice complies with this Section 9.02 and has otherwise met the requirements of this Section 9.02, (3) whether a Stockholder Nominee satisfies the qualifications and requirements in this Section 9.02, and (4) whether any and all requirements of this Section 9.02 have been satisfied. Any such interpretation or determination adopted in good faith by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be binding on all persons, including the Corporation and its stockholders (including any beneficial owners). For purposes of applying the requirements of this Section 9.02 (including Section 9.02(A)(2)), the number of Required Shares required to be Owned by any person or persons during any time period shall be adjusted, in the manner determined by the Board of Directors (or any authorized committee thereof) to account for any stock dividend, stock split, subdivision, combination, reclassification or recapitalization of capital stock. Notwithstanding the foregoing provisions of this Section 9.02, unless otherwise required by law or otherwise determined by the chairman of the meeting or the Board of Directors, if the stockholder or a qualified representative of the stockholder (as defined in Section 2.04(E)) does not appear at the annual meeting of stockholders of the Corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the Corporation. This Section 9.02 shall be the exclusive method for stockholders to include nominees for director election in the Corporation's proxy materials.

stockholders' ability to act on important and urgent matters and protecting against misuse of the right by a small number of stockholders whose interests may not be shared by the majority of stockholders.

25% Special Meeting Ownership Threshold is Consistent with Market Practice. The 25% ownership threshold is a common threshold for special meeting rights at public companies, among those companies that provide for this right. Additionally, one of the Company's largest institutional stockholders, T. Rowe Price, has indicated that 25% is an appropriate ownership threshold.

Corporate Governance Practices

The Board believes that the current Special Meeting Provisions should be considered in the context of the Company's overall corporate governance practices, including the stockholder rights available under its By-Laws and Certificate of Incorporation, applicable law, and the Company's demonstrated commitment to stockholder engagement and responsiveness to stockholder concerns as described on page [___] of this Proxy Statement.

In addition to the existing right of stockholders to call a special meeting at the 25% ownership threshold, stockholder approval is required for many key corporate actions before action may be taken. Under Delaware law and New York Stock Exchange rules, the Company must submit certain important matters to a stockholder vote, including the adoption of equity compensation plans and amendments to its Certificate of Incorporation.

Additionally, our By-Laws provide stockholders with the ability to nominate candidates to the Board both through traditional processes and our proxy access procedures. Under existing law, stockholders may request the Company to include stockholder proposals in proxy materials to be considered by our full stockholder base. Directors are elected by majority vote on an annual basis, and stockholders have multiple avenues of communication to the Board.

Given the existing right of stockholders to call a special meeting, coupled with the Company's strong corporate governance policies, the Board strongly recommends that stockholders ratify the existing Special Meeting Provisions.

The Board of Directors Unanimously Recommends that Stockholders Vote "FOR" the Proposal to Ratify the Special Meeting Provisions.