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

DIVISION OF
CORPORATION FINANCE

April 7, 2025

Yian Huang
Allen Overy Shearman Sterling US LLP

Re: AEye, Inc. (the "Company")
Incoming letter dated April 6, 2025

Dear Yian Huang:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Ransom Wuller for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Company withdraws its January 16, 2025 and February 24, 2025 requests for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Ransom Wuller

A&O SHEARMAN

1460 El Camino Real, Floor 2
Menlo Park, CA 94025
+1.650.838.3600

January 16, 2025

VIA STAFF ONLINE FORM

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

Re: AEye, Inc. - Exclusion of Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen:

On behalf of AEye, Inc., a Delaware corporation (the "Company"), we are filing this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude the shareholder proposal described below (the "Proposal") from the Company's proxy statement and form of proxy (together, the "2025 Proxy Materials") to be distributed to the Company's stockholders in connection with its 2025 annual meeting of stockholders (the "2025 Annual Meeting"). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance of the Commission (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2025 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), a copy of this letter and its attachments are being concurrently sent to the Proponent (as defined below), informing the Proponent of the Company's intention to exclude the Proposal from the 2025 Proxy Materials.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

THE PROPOSAL

On December 2, 2024, the Company received the Proposal dated November 27, 2024 from Ransom Wuller (the "Proponent") for inclusion in the 2025 Proxy Materials. The Proposal states as follows:

> "The shareholders of AEye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3, and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provision with those necessary to establish a non-classified board.
>
> All directors will be up for election at that time (and all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.
>
> Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board.)"

Copies of the Proposal and the supporting statement relating thereto are attached to this letter as Exhibit A.

BASES FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company believes that it may properly exclude the Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(2), Rule 14a-8(i)(6) and Rule 14a-8(i)(8)(ii) because (1) implementing the Proposal would cause the Company to violate Delaware law, (2) the Company lacks the power to implement the Proposal and (3) implementing the Proposal would remove a director from office before their term has expired.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because the Implementation of the Proposal Would Cause the Company to Violate Delaware Law

Rule 14a-8(i)(2) provides for the exclusion of a stockholder proposal if implementation of the proposal would "cause the company to violate any state, federal, or foreign law to which it is subject." As discussed below and for the reasons set forth in our opinion attached hereto as Exhibit B (the "Opinion"), the Company believes that the Proposal is excludable under Rule 14a-8(i)(2) because the Proposal seeks an amendment to the Company's Second Amended and Restated Certificate of Incorporation (as further amended from time to time, the "Certificate"), the filing of which without prior approval from the Company's board of directors would be in

contravention of Delaware law. Additionally, even assuming *ex arguendo* that a unilateral amendment of the Certificate were not in contravention of Delaware law, fully implementing the Proposal, which states that "all directors will be up for election" immediately following declassification, would result in the three-year terms of the directors previously elected to be prematurely terminated in contravention of Delaware law.

As a Delaware corporation, the Company is subject to the General Corporation Law of the State of Delaware (the "DGCL"). Additionally, Article V, Section 5.2(b) of the Certificate governs classification of the board of directors. It states, in relevant part, that "the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II, and Class III." The Proposal seeks a unilateral amendment of the Certificate by the shareholders to declassify the board. Under the DGCL, as explained more thoroughly in the Opinion, bilateral action by the board and shareholders, in a specific order, is required to amend a company's certificate of incorporation. First, according to Section 242 of the DGCL, the board of directors must adopt resolutions setting forth the proposed amendment, recommending the adoption of the amendment by the shareholders, and calling a meeting at which the shareholders may vote to approve it. Second, a majority of the outstanding shareholders entitled to vote on the amendment must affirmatively vote in favor of amending the company's certificate of incorporation. *See 8 Del. C.* § 242(b)(1). Only if these two steps are taken in precise order does the Company have the power to file a Certificate of Amendment with the office of the Secretary of State of the State of Delaware to effectuate the amendment. The Delaware Supreme Court has required strict compliance with this two-step procedure:

> *[I]t is significant that two discrete corporate events must occur in precise sequence to amend the certificate of incorporation under 8 Del. C. § 242: First, the board of directors must adopt a resolution declaring the advisability of the amendment and calling for a stockholder vote. Second, a majority of the outstanding stock entitled to vote must vote in favor.*[1]

The Proposal explicitly seeks adoption of an amendment to the Certificate by the shareholders unilaterally. However, the Company has advised us that its board of directors has not currently approved or recommended to shareholders an amendment to the Certificate to declassify the board, and the shareholders do not have the power to unilaterally amend the Certificate under Delaware law. Therefore, filing an amendment to the Certificate, which is

[1] Williams v. Geier, 671 A.2d 1368, 1381 (Del. 1996); see also Gantler v. Stephens 2008 Del. Ch. LEXIS 20, at *45 n. 81 (Del. Ch. Feb. 14, 2008) ("A board must submit a proposed amendment of the certificate of incorporation to the shareholders for a vote, and it will not be effective unless 'a majority of the outstanding stock entitled to vote thereon votes in favor of the amendment."); Lions Gate Entm't Corp. v. Image Entm't Inc., 2006 Del. Ch. LEXIS 108, at *23-*24 (Del. Ch. June 5, 2006) ("Because the Charter Amendment Provision purports to give the….board the power to amend the charter unilaterally without shareholder vote, it contravenes Delaware law and is invalid."); Klang v. Smith's Food Drug Centers, Inc., 1997 Del. Ch. LEXIS 73, at *53-*54 (Del. Ch. May 13, 1997) ("Pursuant to 8 Del. Co. § 242, amendment of corporate certificate requires board of directors to adopt resolution which declares the advisability of the amendment and calls for shareholder vote. Thereafter in order for the amendment to take effect majority of outstanding stock must vote in its favor.").

necessary to implement the Proposal, with only shareholder approval would be in contravention of the DGCL. This conclusion is supported by the Opinion.

The Staff has repeatedly permitted the exclusion of proposals on the basis that they do not follow proper amendment procedure by requiring either unilateral action of shareholders or the board of directors in violation of state law. In *The Stanley Works* (Feb. 2, 2009), the Staff permitted the exclusion of a proposal that called for "the articles of incorporation to be amended to provide that directors shall be elected by the shares represented in person or by proxy at any meeting for the election of directors at which a quorum is present," in reliance on Rules 14a-8(i)(2) and 14a-8(i)(6). *Stanley Works* argued that under the laws of Connecticut, its state of incorporation, *Stanley Works'* charter may not be amended by action only of the stockholders and without the necessary prior approval of the board. This position was supported by an opinion submitted by *Stanley Works'* Connecticut counsel. In a similar way, the Staff has permitted the exclusion of proposals that request the board to unilaterally amend the company's charter, contrary to state law that requires stockholder action. In *Pfizer Inc.* (Mar. 7, 2008), the Staff permitted the exclusion of a proposal that requested the board of directors "adopt cumulative voting." Based on the opinion of Pfizer's Delaware counsel, Pfizer could not implement such proposal without violating certain provisions of the DGCL, because "adopt[ing] cumulative voting" requires an amendment to the company's certificate of incorporation, and the board of directors cannot unilaterally amend a certificate of incorporation. In *Fortune Brands, Inc.* (Jan. 6, 2010), the Staff permitted the exclusion of a proposal that required the board of directors to unilaterally amend the charter to remove a prohibition on stockholder action by written consent, noting the opinion of the company's Delaware counsel that implementing the proposal would cause the company to violate Delaware law. In *eBay Inc.* (Apr. 1, 2020), the Staff permitted the exclusion of a proposal to "reform the structure of the board of directors letting the employees to elect at least 20% of the board members." Based on the opinion of eBay's Delaware counsel, eBay could not implement such proposal without violating certain provisions of the DGCL.

Additionally, as discussed above, the Proposal states that following declassification, "all directors will be up for election at that time (and all annual meetings thereafter)." As disclosed in the Company's Form 8-K filed with the Commission on May 15, 2024, the Company's stockholders elected each of Prof. Dr. Bernd Gottschalk and Jonathon B. Husby as a Class III director at the 2024 annual stockholders meeting, to hold office until the Company's 2027 annual stockholders meeting and until his successor is duly elected and qualified, or until his earlier death, resignation or removal. Additionally, as disclosed in the Company's Form 8-K filed with the Commission on May 3, 2023, the Company's stockholders elected each of Matthew Fisch and Luis Dussan as Class II directors at the 2023 annual stockholders meeting, to hold office until the Company's 2026 annual stockholders meeting and until his successor is duly elected and qualified, or until his earlier death, resignation or removal. Accordingly, the Proposal would not allow previously elected directors to serve their full three-year terms but instead, require the directors to cut short their elected terms.

Under Delaware law, a Delaware corporation may reduce the terms of its directors who were validly elected by stockholders to full three-year terms only by means that are permitted under Delaware law. Section 141(b) of the DGCL provides that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." In Kurz vs. Holbrook, 989 A.2d 140 (Del. Ch. 2010), aff'd in part, Crown EMAK Partners, LLC vs. Kurz, 992 A.2d 377 (Del. 2010), the Delaware Court of Chancery invalidated a bylaw that would prematurely end certain directors' terms by reducing the size of the board as it would conflict with Section 141(b), and held that when a director is elected to a term of office, he or she is entitled to complete the remainder of that term unless the director (i) resigns, (ii) is removed from office by stockholders or (iii) is disqualified from continuing to hold office for failure to satisfy a qualification provision in place when the director was elected.

None of such methods is consistent with the Proposal. First, every director owes the Company and its stockholders a fiduciary duty to determine whether resigning from the Board will advance the best interests of the Company and its stockholders. Therefore, resignation is each individual director's personal responsibility and the Company requiring the resignation of directors would violate the DGCL. Second, Article V, Section 5.4 of the Certificate governs the removal of directors. It states, in relevant part, that directors "may be removed from office, but only for cause." The Proposal does not purport to remove any director from office for cause. Therefore, no director will be removed from office by the Company's shareholders prior to the purported implementation of the Proposal. Third, neither the Certificate nor the bylaws of the Company have ever had a director-qualification provision. As such, none of the previously elected directors will be disqualified from holding office for failure to satisfy a qualification provision in place when the director was elected. Therefore, by declassifying the board of the directors and providing for immediately elections of all directors, the Proposal has the effect of unseating directors of the Company without proper resignation, removal or disqualification, in contravention of the DGCL.

Accordingly, for the reasons set forth above and as supported by the Opinion, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(2) because implementation of the Proposal (1) would require the Company to file an amendment to the Certificate in contravention of applicable state law and (2) would have the effect of prematurely terminating the terms of the previously duly-elected directors in contravention of applicable state law.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power to Implement the Proposal

Rule 14a-8(i)(6) allows a company to exclude a proposal if the company would lack the power to implement the proposal. As explained above, implementing the Proposal would require the filing of an amendment to the Certificate in contravention of the DGCL and would result in the premature termination of the existing directors' terms in contravention of the DGCL. The Staff has repeatedly concurred with the exclusion of proposals under both Rule

14a-8(i)(2) and Rule 14a-8(i)(6) when implementation of the proposal would violate state corporate law and, accordingly, the company would lack the authority to implement the proposal. See *Highlands REIT, Inc.* (Feb. 7, 2020) (permitting exclusion under both Rule 14a-8(i)(2) and 14a-8(i)(6) as implementation of the proposal would, in the opinion of company's counsel, cause the company to violate Maryland law); *IDACORP, Inc.* (Mar. 13, 2012) (permitting exclusion under both Rule 14a-8(i)(2) and 14a-8(i)(6) as implementation of the proposal would, in the opinion of company's counsel, cause the company to violate Idaho law); *The Boeing Co.* (Feb. 20, 2008) (permitting exclusion under both Rule 14a-8(i)(2) and 14a-8(i)(6) as implementation of the proposal would, in the opinion of company's counsel, cause the company to violate Delaware law).

Here, the Proposal explicitly contemplates the shareholders of the Company amending the Certificate to declassify the Company's board of directors. However, the Company does not have the power and authority under the DGCL to file a certificate of amendment unilaterally adopted by the shareholders to declassify the board. Additionally, the Company does not have the power and authority under the DGCL to remove a director from office prior to the expiration of his or her term without proper resignation, removal or disqualification, all of which are absent or inapplicable here. Therefore, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(6) because the Company lacks the power to implement the proposal since such implementation would be in contravention of state law.

III. The Proposal May Be Excluded Under Rule 14a-8(i)(8)(ii) Because the Implementation of the Proposal Would Remove a Director from Office Before His or Her Term Expired.

Rule 14a(i)(8)(ii) states that a shareholder proposal may be excluded from a company's proxy materials if it "[would] remove a director from office before his or her term expired." The Commission has stated the purpose of Rule 14a-8(i)(8) is "to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature." *Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release NO. 34-12598 (Jul. 7, 1976) [41 FR 29982]. To further clarify this purpose, the text of Rule 14a-8(i)(8) was amended in 2010 to "codify prior [S]taff interpretations with respect to the types of proposals that would continue to be excludable pursuant to Rule 14a-8(i)(*8). "Facilitating Shareholder Director Nominations," Exchange Act Release No. 62764* (Aug. 25, 2010). These types of excludable proposals included those that would have removed a director from office before his or her term expired.

As discussed above, the Proposal states that immediately following the purported amendment of the Certificate to declassify the board of directors, "[a]ll directors will be up for election at that time (and at all annual meetings thereafter)." As such, the Proponent is explicitly rejecting the idea that following declassification of the board of directors, any directors that have been previously elected will continue to serve out their remaining terms, which for Matthew Fisch and Luis Dussan, will expire at the Company's 2026 annual meeting

of stockholders and for Prof. Dr. Bernd Gottschalk and Jonathon B. Husby, will expire at the Company's 2027 annual meeting of stockholders. Therefore, the Proposal could, if implemented, disqualify directors previously elected from completing their terms on the Company's board of directors.

The Staff has repeatedly concurred with the exclusion of shareholder proposals that act to cut short the terms of current directors. *See ES Bancshares, Inc.* (Feb. 2, 2011) (permitting the exclusion of a proposal requesting that two directors be removed); *Commonwealth Biotechnologies, In*c. (Dec. 28, 2010) (permitting the exclusion of a proposal that requested the removal of specific directors). Accordingly, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(6) because it could have the effect of removing a director from office before his or her term expires.

CONCLUSION

Based on the foregoing, the Company believes that the Proposal may be omitted from the 2025 Proxy Materials. Accordingly, we respectfully request that the Staff indicate that it will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2025 Proxy Materials.

If you have any questions regarding this request, please contact the undersigned at 650.838.3720 or yian.huang@aoshearman.com. Thank you for your consideration.

Sincerely,

Yian Huang

cc: Andrew Hughes, AEye, Inc.
Ransom Wuller
Christopher Forrester, Allen Overy Shearman Sterling US LLP

EXHIBIT A

Proposal

Andrew Hughes
Attn: Corporate Secretary
Aeye, Inc.
4670 Willow Rd, Suite 125
Pleasonton, CA 94588

November 27, 2024

Dear Andrew:

Pursuant to Article II, Section 2.7a(iii) of the Company Bylaws and Section 240.14a-8 of the Securities Act, I would like to submit the following proposal for an agenda item to be considered by the shareholders at the annual meeting of the shareholders. The Description of the business desired to be brought before the annual meeting, the text of the proposal and/or business to be decided and the reasons for the proposal are attached. Briefly, this is a proposal to Amend the Company's Certificate of Incorporation to Declassify the Board of Directors.

The following information is provided to meet procedural requirements of Article II, Section 2.7a(iii) of the Company Bylaws and Section 240.14a-8 of the Securities Act.

A) Submission is made by: Ransom P Wuller, age [redacted], Business and Personal address: [redacted]. Email Address: [redacted] Phone #: [redacted]
B) At the time of this submission, the submitter owns 65,287 shares of Aeye, Inc. Class A Common Stock individually and 26,987 jointly with his wife, Valerie J Wuller. These shares have been held continuously since the SPAC merger in August 2021. The submitter intends to hold these shares through the upcoming annual shareholder meeting.
C) The Submitter intends to appear in person at the meeting to introduce the agenda item.
D) The Submitter is available to consult via teleconference at 9am PST on December 17, 18 or 19, 2024 or appear in person to meet at the Company offices on December 16, 2024, beginning at 9am PST.
E) Merrill Lynch is the record holder of certain shares included in the above total and attached is a letter from Merrill Lynch confirming the above shares are held for the Submitter. A similar letter was submitted last year which is also attached, and the shares are substantially the same except for 3,000 shares transferred to Broadridge in 2024 to meet the shareholder of record requirement of Article II of the Bylaws.

Signed by the Submitter

Ransom P Wuller, dated 11/27/2024.

[redacted]

PROPOSAL: TO DECLASSIFY THE BOARD OF DIRECTORS AND ESTABLISH A NON-CLASSIFIED BOARD OF DIRECTORS

The shareholders of Aeye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3 and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provisions with those necessary to establish a non-classified board.

All directors will be up for election at that time (and at all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.

Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board)

SUPPORTING STATEMENT

This resolution urges the shareholders to vote for DECLASSIFICATION of the board. Such a change would enable shareholders to register their views on the performance of all directors at each annual meeting.

Having directors stand for elections annually makes directors more accountable to shareholders, and could thereby contribute to improving performance and increasing Company value.

Over the past 20 years, many S&P 500 companies have declassified their board of directors. According to data cited by Harvard University, the number of S&P 500 companies with classified. boards declined from 50% to 10% in the last 20 years and the average percentage of votes cast in favor of shareholder proposals to declassify the boards of S&P 500 companies during the period January 1, 2010 – June 30, 2011, exceeded 75%.

The significant shareholder support for proposals to declassify boards is consistent with empirical. studies reporting that classified boards could be associated with lower Company valuation and/or worse. corporate decision-making. Studies report that:

- Classified boards are associated with lower Company valuation (Bebchuk and Cohen, 2005. confirmed by Faleye (2007) and Frakes (2007).
- Takeover targets with classified boards are associated with lower gains to shareholders (Bebchuk, Coates, and Subramanian, 2002).
- Firms with classified boards are more likely to be associated with value-decreasing

acquisition decisions (Masulis, Wang, and Xie, 2007); and
• Classified boards are associated with lower sensitivity of compensation to performance and lower sensitivity of CEO turnover to firm performance (Faleye, 2007).

Please vote for this proposal to make directors more accountable to shareholders.

Vote
For
Against
Abstain

APPENDIX A
(Amendments in Red)

ARTICLE V
BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Second Amended and Restated Certificate or the Bylaws of the Corporation ("**Bylaws**"), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Second Amended and Restated Certificate, and any Bylaws adopted by the stockholders of the Corporation; provided, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term.

(a) The number of directors of the Corporation, other than those who may be elected by the holders of one or more series of the Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Board.

(b) Subject to Section 5.5 hereof, the directors of the Corporation shall hold office until the next annual meeting of the stockholders following their election and until their successors shall have been duly elected and qualified, or until their death, resignation or removal. Nothing in this Certificate of Incorporation shall preclude a director from serving consecutive terms. ~~Subject to Section 5.5 hereof, the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II, and Class III. The Board is authorized to assign members of the Board already in office to Class I, Class II, or Class III. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, and the term of the initial Class III directors shall expire at the third annual meeting of the stockholders following the effectiveness of this Second Amended and Restated Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, each of the successors elected to replace the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation or removal. Subject to Section 5.5 hereof, if the number of directors that constitutes the Board is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board shorten the term of any incumbent director. Subject to the rights of the holders of~~

~~one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board already in office to the aforesaid classes at the time this Second Amended and Restated Certificate (and therefore such classification) becomes effective in accordance with the DGCL.~~

(c) ~~Subject to Section 5.5 hereof, a director shall hold office until the next annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.~~

(d) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot. The holders of shares of Common Stock shall not have cumulative voting rights.

Section 5.3 Newly Created Directorships and Vacancies. Subject to Section 5.5 hereof, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely and exclusively by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office ~~for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.~~ until the next annual meeting.

Section 5.4 Removal. Subject to Section 5.5 hereof, any or all of the directors may be removed from office~~, but only for cause~~ with or without cause, by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, at an annual meeting or a special meeting called for that purpose.

Section 5.5 Preferred Stock—Directors. Notwithstanding any other provision of this Article V, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Second Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article V unless expressly provided by such terms.

ARTICLE VII

SPECIAL MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Special Meetings. Except as provided in Section 5.4 and sSubject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, Chief Executive Officer of the Corporation, or the Board pursuant to a resolution adopted by a majority of the Board, and the ability of the stockholders of the Corporation to call a special meeting is hereby specifically denied. Except as provided in the foregoing sentence, special meetings of stockholders of the Corporation may not be called by another person or persons.

EXHIBIT B

Opinion

A&O SHEARMAN

1460 El Camino Real, Floor 2
Menlo Park, CA 94025
+1.650.838.3600

January 16, 2025

AEye, Inc.
4670 Willow Rd, Suite 125
Pleasanton, CA 94588

Re: Exclusion of Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen,

We have acted as counsel to AEye, Inc., a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") received from Ransom Wuller (the "Proponent"), dated November 27, 2024, for the 2025 annual meeting of stockholders of the Company (the "Annual Meeting"). In connection with the foregoing, you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware, 8 Del. C. §101, *et seq*. (the "DGCL").

For the purpose of rendering our opinions as expressed herein, we have been furnished with, and have reviewed, the following documents: (i) the Second Amended and Restated Certificate of Incorporation of the Company, as amended (as filed with the Secretary of State of the State of Delaware and in effect as of the date hereof, the "Certificate"); (ii) the Amended and Restated Bylaws of the Company, as amended (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review have not been altered or amended in any respect material to our opinions as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinions as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states as follows:

> "*The shareholders of AEye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3, and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provision with those necessary to establish a non-classified board.*
>
> *All directors will be up for election at that time (and all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.*
>
> *Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board.)*"

A copy of the full Proposal and the associated supporting statements received by the Company are attached hereto as Annex A.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rules 14a-8(i)(2) and 14a-8(i)(6) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." Rule 14a-8(i)(6) provides that a registrant may omit a proposal from its proxy statement "if the company would lack the power or authority to implement the proposal." You have requested our opinions as to whether the implementation of the Proposal, if adopted by the Company's stockholders, would violate the DGCL and consequently, whether the Company would lack the power or authority to implement the Proposal under the DGCL.

For the reasons set forth below, to the extent the Proposal, if approved by the stockholders of Company and sought to be implemented, would purport to amend the Company's Certificate without action by the Company's board of directors (the "Board"), such purported amendment would contravene the DGCL. Additionally, to the extent the Proposal would purport to prematurely terminate certain directors before their terms are schedule to expire, such purported termination would also contravene the DGCL. As such, the Company would lack the power or authority to implement the Proposal under the DGCL.

DISCUSSION

The Proposal seeks to enable stockholders of the Company to declassify the board of directors by unilaterally amending the Certificate. The Certificate currently includes a provision in Article V, Section 5.2(b), which states, in relevant part, that "the Board shall be divided into three classes, as

nearly equal in number as possible and designated Class I, Class II, and Class III."[1] As the Certificate sets forth the classified Board structure, any attempt to declassify the Board must be in the form of an amendment to the Certificate and made in accordance with the Section 242 of the DGCL, which lays out a two-step process for amending a company's certificate of incorporation. First, the board of directors "shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote […] or directing that the amendment proposed be considered at the next annual meeting of stockholders." Second, at the stockholder meeting, "a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders." The Delaware Supreme Court has emphasized that the corporation only has the power to file a certificate of amendment if the two steps are taken in the order as prescribed in the DGCL: "[I]t is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 *Del. C.* § 242." (*Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996)). As a result, "stockholders may not act without prior board action." *Id*.

We have been advised by the Company that the Board has not currently approved or recommended to shareholders an amendment to the Certificate to declassify the Board. As such, contrary to the prescribed statutory construct, the Proposal, if sought to be implemented, would result in a vote of stockholders to amend the Certificate before the Board adopts a resolution recommending the proposal and calling a stockholder meeting for a vote. As the implementation of the Proposal would fail to follow the appropriate procedure to amend the Certificate prescribed by the DGCL, the Proposal, if approved by the stockholders and sought to be implemented, would contravene the DGCL. *See Blades v. Wisehart*, C.A. No. 5317-VCS (Del. Ch. 2010) (finding that an amendment to the certificate of incorporation was invalid because the board failed to follow the "prescribed corporate formalities to amend its certificate of incorporation" with emphasis on the events being "temporally significant"); *Klang v. Smith's Food & Drug Ctrs., Inc.*, 1997 Del. Ch. LEXIS 73, at *53 (May 13, 1997) ("Pursuant to 8 *Del. C.* § 242, amendment of a corporate certificate requires a board of directors to adopt a resolution which declares the advisability of the amendment and calls for a stockholder vote. Thereafter, in order for the amendment to take effect, a majority of the outstanding stock must vote in its favor.") *aff'd*, 702 A.2d 150 (Del. 1997) *STAAR Surgical Co. v. Waggoner*, 588 A.2d 1130 (Del. 1991) (reasoning that, despite intentions of the board or stockholders, proper procedure must be followed to effectively amend a company's charter). As the Company may not take actions that contravene the DGCL, it lacks the power and authority to implement the Proposal.

In addition to the foregoing, the Proposal provides that immediately following declassification, "[a]ll directors will be up for election at that time (and all annual meetings thereafter)." Directors

[1] Section 141(d) of the DGCL provides that "[t]he directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes."

are elected to serve full terms; in the case of directors elected to a classified board, those directors are elected to serve full three-year terms. Section 141(b) of the DGCL, together with the cases interpreting that Section, set out the means for unseating a director from office before the scheduled expiration of his or her term. Section 141(b) provides that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." The Delaware Court of Chancery recently interpreted Section 141(b) in *Kurz v. Holbrook* and observed that the statute "recognizes three procedural means by which the term of a sitting director can be brought to a close: (1) when the director's successor is elected and qualified, (2) if the director resigns, or (3) if the director is removed…This interpretation of Section 141(b) comports with how [Delaware] law has developed."[2] Later in the *Kurz* decision, the Court of Chancery stated that Section 141(b) contemplates a fourth means to unseat a director: a director could be disqualified from continuing to hold office by a charter provision setting forth qualifications for directorship that was enacted prior to such director's election.[3] Such methods of unseating a director were treated by the Court of Chancery as the *exclusive* means of ending a director's term.[4] On appeal, the Delaware Supreme Court upheld the Court of Chancery's holding that a "scenario in which the terms of the extra directors would end conflicts with Section 141(b)'s mandate that '[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal.'"

Kurz demonstrates that the Delaware courts are not willing to allow stockholders to "end run" the express procedures contemplated by Section 141 (b) for ending a director's term. In other words, the Delaware courts will not allow a director to be unseated prior to the expiration of his or her term except by removal, resignation or disqualification. If directors were permitted to be unseated by other means, then, as in Kurz, the board or a group of stockholders would be able to subvert the stockholder vote required for director removal.

The Proposal explicitly states that following declassification, "[a]ll directors will be up for election at that time (and all annual meetings thereafter)." As such, they do not allow certain directors to serve their full three-year terms. Accordingly, the Proposal does not follow the first means under

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[2] 989 A.2d 140, 155-56 (Del. Ch. 2010), aff'd in part, rev 'd in part sub nom. Crown EMAK Partners, LLC v. Kurz, 992 A.2d 377 (Del. 2010) (affirming Court of Chancery ruling invalidating bylaw that would prematurely end certain directors' terms by reducing size of board).

[3] Id. at 157 (citing Stroud v. Milliken Enters., Inc., 585 A.2d 1306, 1309 (Del. Ch. 1988)). The Delaware courts have reasoned that a charter can operate to unseat a director if he or she fails to satisfy a qualification because the directors are elected subject to their continued qualification. The Delaware courts have analogized this type of provision to a resignation because a director takes office with the understanding of how the qualification will operate. Stroud, 585 A.2d at 1309.

[4] Id. at 156 (noting that a director's death is not expressly recognized as a method of ending a director's term but also noting that because death obviously results in the termination of a director's term, "I ... do *not* regard the absence of any reference to death in Section 141(b) as implying that the identified means [described by the Court to unseat a director] are *non*-exclusive") (emphasis added).

Section 141(b) to unseat a director: by electing a successor once the current director's term expires. Kurz specifically held that a director cannot be unseated by the election of a successor until the annual meeting at which his or her term is scheduled to expire.[5] Nor does the Proposal contemplate the resignation or removal of directors, and no qualification provision is applicable here. As such, implementation of the Proposal would prematurely unseat certain directors before their terms are schedule to expire, which would be in contravention of the DGCL. As the Company may not take actions that contravene the DGCL, it lacks the power and authority to implement the Proposal.

CONCLUSION

In summary, the Proposal seeks to enable stockholders of the Company to declassify the Board by amending the Certificate without Board approval, in contravention of the two-step process required under the DGCL. Additionally, implementation of the Proposal would mean prematurely unseating certain directors of the Company in contravention of the framework contemplated by the DGCL. Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if it were approved by the stockholders of Company and sought to be implemented, would contravene the DGCL. Consequently, it is our opinion that the Company does not have the power and authority to implement the Proposal.

The foregoing opinions are limited to the DGCL. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or any other regulatory body.

The foregoing opinions are rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinions be relied upon by, any person or entity for any purpose without our prior written consent.

Sincerely,

/s/Allen Overy Shearman Sterling US LLP

YH/hs/nr
CMF

[5] Kurz, 989 A.2d at 160 (holding that a director's term cannot be ended prematurely by "purporting to elect the director's successor early."). The Supreme Court affirmed this holding as well. Crown EMAK Partners, 992 A.2d at 401-02 ("[Stockholders] cannot end an incumbent director's term prematurely by purporting to elect the director's successor before the incumbent's term expires.").

January 22, 2025

VIA STAFF ONLINE FORM

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

RE: AEye, Inc. – Stockholder Proposal Submitted by Ransom Wuller
Reference # 628136

Ladies and Gentlemen:

On January 16, 2025, Aeye, Inc. through counsel filed a No-Action letter concerning my shareholder proposal filed under Rule 14a-8 with the Company on December 2, 2024. The basis cited for No-Action is 1), that the proposal violates Delaware law by by-passing the Board of Directors role in amending the Certificate of Incorporation and 2), because it would remove a director from Office before his or her term expired.

I begin with 1). While counsel sites Rule 14a-8(i)(2) and Rule 14a-8(i)(6) as separate reasons for this exclusion the basis of each is the same. Counsel also states, "implementing the Proposal would cause the Company to violate Delaware Law"," the Company lacks the power to implement the proposal", "explicitly seeks adoption of an amendment to the Certificate by the shareholders unilaterally" and the proposal seeks to by-pass the Board. But the proposal doesn't say any of that, Aeye is just extrapolating for its argument.

The shareholder proposal is to Declassify the Board of Directors. Declassification is a typical agenda item proposed by shareholders, and one routinely included by Company's for its annual meeting. The only way this Company can declassify the board is through an amendment to the Certificate of Incorporation. But the proposal doesn't say how that is to occur. It doesn't say who will file the amendment (the word file is never used). It doesn't say the normal procedure for amending the Certificate is to be by-passed. It doesn't say the Board is mandated to do anything or that the shareholders intend to violate the law and do

something they are legally not allowed to do. Implementation is not mentioned. And instead of assuming as counsel does that the law is to be violated (which is outlandish without clear language), then the proposal would not cause the Company to violate Delaware Law or lack the power to implement the proposal.

Obviously, this shareholder wishes he would have included the word “legally” between “by” and “amending” in the first sentence of the proposal but is that necessary? Legal construction doesn’t assume an illegal act or improper procedure is proposed and no language from the proposal has been identified to justify the Company’s position and No-Action position. The undersigned would also point out that this process has provisions for the parties to dialogue about the proposal. I gave the Company specific dates I was available to discuss the proposal. Not a call, not a word until the NO-Action letter and then I find out they are reading the first sentence as “by illegally amending”. One of the main purposes of declassifying the board is to make them more responsive to the shareholders, pretty clear here why they don’t want that.

As a result of the above, Proponent has prepared a revision to the proposal (which is attached) by adding “legally” between “by” and “amending” and the language referenced in SLB 14E(5) to “recommend or request the Board of Directors”. The undersigned asks that the Staff permit such a revision.

As to the second point raised, I do see how the language could be misinterpreted to remove a director before his or her term expires. I also note that a revision to correct this error is typically permitted (See SLB 14E(5)) and my revision also includes this change. Both the Red Line and a Clean copy of the revised proposal are attached and has been emailed and hard copy mailed to the Company.

Shareholder would also point out that the Company Bylaws provide two windows for filing Annual Meeting Agenda Proposals, one under Rule 14a-8 which was required to be filed on or before December 3, 2024 and the other for Shareholders of Record to be filed between January 15, 2025 and February 15, 2025. This Shareholder is filing the revised proposal now as part of his right as a Shareholder of Record but is concerned the Company will treat it as a second proposal (which it clearly is not).

Conclusion:

As a result of the foregoing, Shareholder requests that he be permitted to revise the proposal as indicated and that the Staff deny Aeye's requested relief.

Sincerely,
Ransom Wuller (RW)
Ransom Wuller

PROPOSAL: TO DECLASSIFY THE BOARD OF DIRECTORS AND ESTABLISH A NON-CLASSIFIED BOARD OF DIRECTORS

The shareholders of Aeye, Inc. propose to declassify the board of directors and establish a non-classified board by legally amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3 and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provisions with those necessary to establish a non-classified board.

All directors elected thereafter will be up for election at ~~that time (and at all~~ the annual meeting~~s thereafter)~~ and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.

Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for exemplar~~the~~ Amendments proposed to Declassify the board). Shareholders recommend and request that the board take the action specified in the proposal.

SUPPORTING STATEMENT

This resolution urges the shareholders to vote for DECLASSIFICATION of the board. Such a change would enable shareholders to register their views on the performance of all directors at each annual meeting.

Having directors stand for elections annually makes directors more accountable to shareholders, and could thereby contribute to improving performance and increasing Company value.

Over the past 20 years, many S&P 500 companies have declassified their board of directors. According to data cited by Harvard University, the number of S&P 500 companies with classified. boards declined from 50% to 10% in the last 20 years and the average percentage of votes cast in favor of shareholder proposals to declassify the boards of S&P 500 companies during the period January 1, 2010 – June 30, 2011, exceeded 75%.

The significant shareholder support for proposals to declassify boards is consistent with empirical. studies reporting that classified boards could be associated with lower Company valuation and/or worse. corporate decision-making. Studies report that:

● Classified boards are associated with lower Company valuation (Bebchuk and Cohen, 2005. confirmed by Faleye (2007) and Frakes (2007).
● Takeover targets with classified boards are associated with lower gains to shareholders (Bebchuk, Coates, and Subramanian, 2002).

● Firms with classified boards are more likely to be associated with value-decreasing acquisition decisions (Masulis, Wang, and Xie, 2007); and
● Classified boards are associated with lower sensitivity of compensation to performance and lower sensitivity of CEO turnover to firm performance (Faleye, 2007).

Please vote for this proposal to make directors more accountable to shareholders.

Vote
For
Against
Abstain

PROPOSAL: TO DECLASSIFY THE BOARD OF DIRECTORS AND ESTABLISH A NON-CLASSIFIED BOARD OF DIRECTORS

The shareholders of Aeye, Inc. propose to declassify the board of directors and establish a non-classified board by legally amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3 and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provisions with those necessary to establish a non-classified board.

All directors elected thereafter will be up for election at the annual meeting and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.

Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for exemplar Amendments proposed to Declassify the board). Shareholders recommend and request that the board take the action specified in the proposal.

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Please vote for this proposal to make directors more accountable to shareholders.

Vote
For
Against
Abstain

A&O SHEARMAN

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February 24, 2025

VIA STAFF ONLINE FORM

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

Re: AEye, Inc. - Exclusion of New Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen:

On January 16, 2025, this firm, on behalf of and as counsel for AEye, Inc., a Delaware corporation (the "Company"), filed a letter (the "Original No-Action Request") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a shareholder proposal (the "Proposal") from the Company's proxy statement and form of proxy (together, the "2025 Proxy Materials") to be distributed to the Company's stockholders in connection with its 2025 annual meeting of stockholders (the "2025 Annual Meeting"). The Company requested confirmation that the staff of the Division of Corporation Finance of the Commission (the "Staff") would not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2025 Proxy Materials. A copy of the Original No-Action Request is attached to this letter as Exhibit A.

On behalf of the Company, we are submitting this letter in response to Ransom Wuller's (the "Proponent") request, by letter dated January 22, 2025, that the Company (and the Staff) consider a new proposal submitted by the Proponent (the "New Proposal"). A copy of the New Proposal and associated supporting statements is attached to this letter as Exhibit B.

The Company believes that the New Proposal should be properly excluded from the 2025 Proxy Materials as untimely pursuant to Rule 14a-8(e)(2) because the New Proposal was received after the deadline for submitting shareholder proposals. Additionally, while the Company recognizes the Staff's guidance set forth in Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") related to revisions of shareholder proposals, it believes the Proponent did not properly revise the Proposal in a manner that would result in there not being a basis for the Company to

exclude the Proposal under Rules 14a-8(i)(2) or 14a-8(i)(6). Finally, the Company requests that the Staff waive the 80-day deadline in Rule 14a-8(j)(1) for good cause.

THE NEW PROPOSAL

The New Proposal states as follows:

> *"The shareholders of Aeye, Inc. propose to declassify the board of directors and establish a non-classified board by legally amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3 and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provisions with those necessary to establish a non-classified board.*
>
> *All directors elected thereafter will be up for election at the annual meeting and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.*
>
> *Under Delaware law, directors of companies that have a classified Board may be removed only for cause unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for exemplar Amendments proposed to Declassify the board). Shareholders recommend and request that the board take the action specified in the proposal.*

ANALYSIS

I. The Company should exclude the New Proposal under Rule 14a-8(e)(2) because the New Proposal was received after the deadline for submitting shareholder proposals.

Rule 14a-8(e)(2) provides that a shareholder proposal with respect to a company's regularly scheduled annual meeting "must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting." The Company released its 2024 proxy statement to its shareholders on April 2, 2024. As required under Rule 14a-5(e)(1), the Company disclosed in its 2024 proxy statement the deadline for submitting shareholder proposals, as well as the method for submitting such proposals, for the 2025 Annual Meeting. Specifically, page 34 of the Company's 2024 proxy statement states:

> Stockholders who, in accordance with Rule 14a-8 of the Exchange Act, wish to present proposals at our 2025 Annual Meeting of Stockholders (the "2025 Annual Meeting") and wish to have those proposals included in the proxy materials to be distributed by us in connection with our 2025 Annual Meeting must submit their proposals to the Company at the physical address provided below ***on or before December 3, 2024***. Any such proposal must meet the requirements set forth in the rules and regulations of the SEC, including Rule 14a-8, in order for such proposal to be eligible for inclusion in our 2025 proxy statement. (emphasis added)

A copy of the relevant excerpt of the Company's 2024 proxy statement is attached to this letter as Exhibit C. The Company received the New Proposal via email on January 22, 2025, 50 days after the deadline set forth in the Company's 2024 proxy statement.

Rule 14a-8(e)(2) provides that the 120-calendar day advance receipt requirement does not apply if the current year's annual meeting has been changed by more than 30 days from the date of the prior year's meeting. The Company's 2024 annual meeting of shareholders was held on May 15, 2024, and the Company intends to hold the 2025 annual meeting of shareholders within 30 days of the one-year anniversary of last year's meeting. Accordingly, the deadline for shareholder proposals is that which was set forth in the Company's 2024 proxy statement when released to shareholders on April 2, 2024.

The Proponent may consider the New Proposal a revision to the Proposal, but as stated by the Staff in Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"), "[i]f a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions." *See* Section D.2, SLB 14F. SLB 14F states that in this situation, the company "must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j), unless the claimed defect cannot be cured." *Id*. As stated in Staff Legal Bulletin No. 14 (July 13, 2001), Rule 14a-8(f)(1) does not require the 14-day notice in connection with a proponent's failure to submit a proposal by the submission deadline set forth under Rule 14a-8(e). As the New Proposal did not meet this deadline and this defect is incapable of being cured, the Company is not required to send prior notice to the Proponent informing them of such deficiency in order for the New Proposal to be excluded under Rule 14a-8(e)(2).

The Staff has construed the Rule 14a-8 deadline strictly, permitting companies to exclude from proxy materials those proposals received after the deadline. *See, e.g*., *Laboratory Corporation of America Holdings* (Mar. 22, 2023) (concurring in the exclusion of a revised proposal received 89 days after the deadline in the proxy statement); *QEP Resources, Inc.* (Jan. 4, 2013) (concurring in the exclusion of a revised proposal received 2 days after the deadline in the proxy statement); *Costco Wholesale Corporation* (Nov. 20, 2012) (concurring in the exclusion of a revised proposal received over one month after the deadline in the proxy statement); *IDACORP, Inc.* (Mar. 16, 2012) (concurring in the exclusion of a revised proposal received over one month after the deadline in the proxy statement); *Walgreens Boots All., Inc.* (Oct. 12, 2021) (concurring in the exclusion of a proposal received 2 days after the deadline in the proxy statement); *Verizon Communications, Inc.* (Jan. 4, 2018) (concurring in the exclusion of a proposal received one day after the deadline in the proxy statement).

As such, the Company respectfully requests that the Staff concur that the New Proposal may properly be excluded from the 2025 Proxy Materials because the New Proposal was not received within the time frame required under Rule 14a-8(e)(2).

II. The provisions of the New Proposal do not properly revise the Proposal in the manner described under SLB 14D, are improper under Delaware law and thus remain excludable under Rules 14a-8(i)(2) and 14a-8(i)(6).

Notwithstanding the foregoing, the Company recognizes that in the event of a shareholder proposal that "recommends, requests, or requires the board of directors to amend the company's charter" and would otherwise be excludable under Rules 14a-8(i)(2) or 14a-8(i)(6), it has been a Staff practice to "permit the proponent to revise the proposal to provide that the board of directors 'take the steps necessary' to amend the company's charter." *See* Section B, SLB 14D. The New Proposal does not make such a revision and instead requests that the Board take action that it is not permitted to take under Delaware law.

The New Proposal requests that the Board of Directors of the Company (the "Board") "take the action specified in the proposal" and "declassify the board of directors and establish a non-classified board by legally amending the Certificate of Incorporation." As noted in the opinion attached to the Original No-Action Request, reattached hereto as Exhibit D, the process prescribed by Delaware law to amend the certificate of incorporation of a Delaware company requires strict compliance with a two-step process. First, according to Section 242 of the General Corporation Law of the State of Delaware (the "DGCL"), the board of directors must adopt resolutions setting forth the proposed amendment, recommending the adoption of the amendment by the shareholders, and calling a meeting at which the shareholders may vote to approve it. Second, a majority of the outstanding shareholders entitled to vote on the amendment must affirmatively vote in favor of amending the company's certificate of incorporation. Only if these two steps are taken in precise order does the Company have the power to file a certificate of amendment with the office of the Secretary of State of the State of Delaware to effectuate the amendment. Under the New Proposal, the Company's certificate of incorporation would be amended in a manner inconsistent with the prescribed process, as the Board cannot "legally amend the Certificate of Incorporation," "declassify the board of directors," or "establish a non-classified board" in a unilateral manner. The New Proposal merely adds the word "legally" to its request to amend the Company's certificate of incorporation and shifts the unilateral action sought from the shareholders to the Board. This does not solve the fatal flaw in the Proposal – that under Delaware law, bilateral action, in a specific order, is required to initiate an amendment to the certificate of incorporation declassifying the Board. As such, the revisions sought by the Proponent in the New Proposal do not resolve the underlying Delaware law issues raised by the Company in the Original No-Action Request.

As noted in the Original No-Action Request, the Staff has repeatedly permitted the exclusion of proposals on the basis that they do not follow proper amendment procedure by requiring either unilateral action of shareholders or the board of directors in violation of state law. In *Pfizer Inc.* (Mar. 7, 2008), the Staff permitted the exclusion of a proposal that requested the board of directors "adopt cumulative voting." Based on the opinion of Pfizer's Delaware counsel, Pfizer could not implement such proposal without violating certain provisions of the

DGCL, because "adopt[ing] cumulative voting" requires an amendment to the company's certificate of incorporation, and the board of directors cannot unilaterally amend a certificate of incorporation. In *Fortune Brands, Inc.* (Jan. 6, 2010), the Staff permitted the exclusion of a proposal that required the board of directors to unilaterally amend the charter to remove a prohibition on stockholder action by written consent, noting the opinion of the company's Delaware counsel that implementing the proposal would cause the company to violate Delaware law. In *eBay Inc.* (Apr. 1, 2020), the Staff permitted the exclusion of a proposal to "reform the structure of the board of directors letting the employees to elect at least 20% of the board members." Based on the opinion of eBay's Delaware counsel, eBay could not implement such proposal without violating certain provisions of the DGCL.

As such, the Company believes that the Proponent has not revised the Proposal in the manner requested by the Staff in SLB 14D, the New Proposal, if implemented, would continue to contravene the DGCL, and both the Proposal and the New Proposal may be properly excluded from the 2025 Proxy Materials.

III. The Company believes that the opportunity for further revisions to the New Proposal should be denied.

As noted above, the Company recognizes that in the event of a shareholder proposal that "recommends, requests, or requires the board of directors to amend the company's charter" and would otherwise be excludable under Rules 14a-8(i)(2) or 14a-8(i)(6), it is a Staff practice to "permit the proponent to revise the proposal to provide that the board of directors 'take the steps necessary' to amend the company's charter." *See* Section B, SLB 14D. This is in line with the Staff's position in SLB 14B, which provides proponents the opportunity to make revisions to proposals that are "minor in nature and do not alter the substance of the proposal," in order to deal with proposals that "comply generally with the substantive requirements of Rule 14a-8, but contain some minor defects that could be corrected easily." *See* SLB 14B, Section B-2. A proponent's revisions are rightly limited in such a manner because, under Rule 14a-8(c), a shareholder may only submit one proposal to a company for a particular shareholders' meeting, and, under Rule 14a-8(e), shareholders must comply with specific deadlines in submitting proposals (see SLB 14, Section E-3 ("depending on the nature and timing of the changes, a revised proposal could be subject to exclusion under Rule 14a-8(c), Rule 14a-8(e), or both").

The Company believes that the Staff in this case should not afford the Proponent a further opportunity to continue revising the New Proposal. First, the Company believes that significant additional revisions would be required to recast the New Proposal in a manner that complies with Delaware law. Second, the Proponent has already attempted to revise the Proposal in the form of the New Proposal and stated its belief that the New Proposal is valid. While the Proponent has had ample opportunity to prepare a Rule 14a-8 proposal which complies with previous Staff positions, the New Proposal continues to contain deficiencies which the Company believes results in its excludability under 14a-8, as discussed herein. The Company believes that it is unnecessary to allow the Proponent to revise its resolution for a second time, which would continue to divert time and resources of the Company and the Staff.

The Company also believes that allowing a proponent to continuously revise its proposal has the effect of discouraging investors from ensuring that proposals are drafted in compliance with Rule 14a-8 at the outset and instead rely on companies and the Staff to provide blueprints for remedying defects in these proposals. More importantly, it would be inconsistent with the reasonable expectations of the Rule 14a-8 process.

Accordingly, the Company urges the Staff not to allow the Proponent to further revise the New Proposal.

IV. The Company requests waiver of the 80-day requirement in Rule 14a-8(j)(1) because there is good cause.

The Company further requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j)(1) for good cause with respect to the New Proposal. Rule 14a-8(j)(1) requires that, if a company "intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." However, Rule 14a-8(j)(1) allows the Staff to waive the deadline if a company can show "good cause." The Company presently intends to file its definitive proxy statement on or about April 7, 2025. The Company did not receive the New Proposal until January 22, 2025. Therefore, it was impossible for the Company to prepare and file this submission within the 80-day requirement.

The Staff has consistently found "good cause" to waive the 80-day requirement in Rule 14a-8(j)(1) where the untimely submission of a proposal prevented a company from satisfying the 80-day provision. *See* SLB 14B (indicating that the "most common basis for the company's showing of good cause is that the proposal was not submitted timely and the company did not receive the proposal until after the 80-day deadline had passed"); *Gamestop Corp*. (Apr. 24, 2024); *Tesla, Inc.* (Mar. 23, 2023); *Costco Wholesale Corporation* (Nov. 20, 2012); *Andrea Electronics Corp*. (July 5, 2011); (each waiving the 80-day requirement when the proposal was received by the company after the 80-day submission deadline).

The New Proposal was submitted to the Company after the 80-day deadline in Rule 14a-8(j)(1) had passed. Accordingly, we believe that the Company has "good cause" for its inability to meet the 80-day requirement, and based on the foregoing precedent, we respectfully request the Staff waive the 80-day requirement with respect to this letter.

CONCLUSION

Based on the foregoing, the Company believes that the New Proposal and the Proposal should be omitted from the 2025 Proxy Materials. Accordingly, we respectfully request that the Staff indicate that it will not recommend enforcement action to the Commission if the Company excludes the New Proposal and the Proposal from the 2025 Proxy Materials.

If you have any questions regarding this request, please contact the undersigned at 650.838.3720 or yian.huang@aoshearman.com. Thank you for your consideration.

Sincerely,

Yian Huang

cc: Andrew Hughes, AEye, Inc.
Ransom Wuller
Christopher Forrester, Allen Overy Shearman Sterling US LLP

EXHIBIT A

Original No Action Letter Request Filed January 16, 2025

A&O SHEARMAN

1460 El Camino Real, Floor 2
Menlo Park, CA 94025
+1.650.838.3600

January 16, 2025

VIA STAFF ONLINE FORM

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

Re: AEye, Inc. - Exclusion of Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen:

On behalf of AEye, Inc., a Delaware corporation (the "Company"), we are filing this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude the shareholder proposal described below (the "Proposal") from the Company's proxy statement and form of proxy (together, the "2025 Proxy Materials") to be distributed to the Company's stockholders in connection with its 2025 annual meeting of stockholders (the "2025 Annual Meeting"). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance of the Commission (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2025 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), a copy of this letter and its attachments are being concurrently sent to the Proponent (as defined below), informing the Proponent of the Company's intention to exclude the Proposal from the 2025 Proxy Materials.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

THE PROPOSAL

On December 2, 2024, the Company received the Proposal dated November 27, 2024 from Ransom Wuller (the "Proponent") for inclusion in the 2025 Proxy Materials. The Proposal states as follows:

> "The shareholders of AEye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3, and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provision with those necessary to establish a non-classified board.
>
> All directors will be up for election at that time (and all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.
>
> Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board.)"

Copies of the Proposal and the supporting statement relating thereto are attached to this letter as Exhibit A.

BASES FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company believes that it may properly exclude the Proposal from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(2), Rule 14a-8(i)(6) and Rule 14a-8(i)(8)(ii) because (1) implementing the Proposal would cause the Company to violate Delaware law, (2) the Company lacks the power to implement the Proposal and (3) implementing the Proposal would remove a director from office before their term has expired.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because the Implementation of the Proposal Would Cause the Company to Violate Delaware Law

Rule 14a-8(i)(2) provides for the exclusion of a stockholder proposal if implementation of the proposal would "cause the company to violate any state, federal, or foreign law to which it is subject." As discussed below and for the reasons set forth in our opinion attached hereto as Exhibit B (the "Opinion"), the Company believes that the Proposal is excludable under Rule 14a-8(i)(2) because the Proposal seeks an amendment to the Company's Second Amended and Restated Certificate of Incorporation (as further amended from time to time, the "Certificate"), the filing of which without prior approval from the Company's board of directors would be in

contravention of Delaware law. Additionally, even assuming *ex arguendo* that a unilateral amendment of the Certificate were not in contravention of Delaware law, fully implementing the Proposal, which states that "all directors will be up for election" immediately following declassification, would result in the three-year terms of the directors previously elected to be prematurely terminated in contravention of Delaware law.

As a Delaware corporation, the Company is subject to the General Corporation Law of the State of Delaware (the "DGCL"). Additionally, Article V, Section 5.2(b) of the Certificate governs classification of the board of directors. It states, in relevant part, that "the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II, and Class III." The Proposal seeks a unilateral amendment of the Certificate by the shareholders to declassify the board. Under the DGCL, as explained more thoroughly in the Opinion, bilateral action by the board and shareholders, in a specific order, is required to amend a company's certificate of incorporation. First, according to Section 242 of the DGCL, the board of directors must adopt resolutions setting forth the proposed amendment, recommending the adoption of the amendment by the shareholders, and calling a meeting at which the shareholders may vote to approve it. Second, a majority of the outstanding shareholders entitled to vote on the amendment must affirmatively vote in favor of amending the company's certificate of incorporation. *See 8 Del. C.* § 242(b)(1). Only if these two steps are taken in precise order does the Company have the power to file a Certificate of Amendment with the office of the Secretary of State of the State of Delaware to effectuate the amendment. The Delaware Supreme Court has required strict compliance with this two-step procedure:

> *[I]t is significant that two discrete corporate events must occur in precise sequence to amend the certificate of incorporation under 8 Del. C. § 242: First, the board of directors must adopt a resolution declaring the advisability of the amendment and calling for a stockholder vote. Second, a majority of the outstanding stock entitled to vote must vote in favor.*[1]

The Proposal explicitly seeks adoption of an amendment to the Certificate by the shareholders unilaterally. However, the Company has advised us that its board of directors has not currently approved or recommended to shareholders an amendment to the Certificate to declassify the board, and the shareholders do not have the power to unilaterally amend the Certificate under Delaware law. Therefore, filing an amendment to the Certificate, which is

[1] Williams v. Geier, 671 A.2d 1368, 1381 (Del. 1996); see also Gantler v. Stephens 2008 Del. Ch. LEXIS 20, at *45 n. 81 (Del. Ch. Feb. 14, 2008) ("A board must submit a proposed amendment of the certificate of incorporation to the shareholders for a vote, and it will not be effective unless 'a majority of the outstanding stock entitled to vote thereon votes in favor of the amendment."); Lions Gate Entm't Corp. v. Image Entm't Inc., 2006 Del. Ch. LEXIS 108, at *23-*24 (Del. Ch. June 5, 2006) ("Because the Charter Amendment Provision purports to give the….board the power to amend the charter unilaterally without shareholder vote, it contravenes Delaware law and is invalid."); Klang v. Smith's Food Drug Centers, Inc., 1997 Del. Ch. LEXIS 73, at *53-*54 (Del. Ch. May 13, 1997) ("Pursuant to 8 Del. Co. § 242, amendment of corporate certificate requires board of directors to adopt resolution which declares the advisability of the amendment and calls for shareholder vote. Thereafter in order for the amendment to take effect majority of outstanding stock must vote in its favor.").

necessary to implement the Proposal, with only shareholder approval would be in contravention of the DGCL. This conclusion is supported by the Opinion.

The Staff has repeatedly permitted the exclusion of proposals on the basis that they do not follow proper amendment procedure by requiring either unilateral action of shareholders or the board of directors in violation of state law. In *The Stanley Works* (Feb. 2, 2009), the Staff permitted the exclusion of a proposal that called for "the articles of incorporation to be amended to provide that directors shall be elected by the shares represented in person or by proxy at any meeting for the election of directors at which a quorum is present," in reliance on Rules 14a-8(i)(2) and 14a-8(i)(6). *Stanley Works* argued that under the laws of Connecticut, its state of incorporation, *Stanley Works'* charter may not be amended by action only of the stockholders and without the necessary prior approval of the board. This position was supported by an opinion submitted by *Stanley Works'* Connecticut counsel. In a similar way, the Staff has permitted the exclusion of proposals that request the board to unilaterally amend the company's charter, contrary to state law that requires stockholder action. In *Pfizer Inc.* (Mar. 7, 2008), the Staff permitted the exclusion of a proposal that requested the board of directors "adopt cumulative voting." Based on the opinion of Pfizer's Delaware counsel, Pfizer could not implement such proposal without violating certain provisions of the DGCL, because "adopt[ing] cumulative voting" requires an amendment to the company's certificate of incorporation, and the board of directors cannot unilaterally amend a certificate of incorporation. In *Fortune Brands, Inc.* (Jan. 6, 2010), the Staff permitted the exclusion of a proposal that required the board of directors to unilaterally amend the charter to remove a prohibition on stockholder action by written consent, noting the opinion of the company's Delaware counsel that implementing the proposal would cause the company to violate Delaware law. In *eBay Inc.* (Apr. 1, 2020), the Staff permitted the exclusion of a proposal to "reform the structure of the board of directors letting the employees to elect at least 20% of the board members." Based on the opinion of eBay's Delaware counsel, eBay could not implement such proposal without violating certain provisions of the DGCL.

Additionally, as discussed above, the Proposal states that following declassification, "all directors will be up for election at that time (and all annual meetings thereafter)." As disclosed in the Company's Form 8-K filed with the Commission on May 15, 2024, the Company's stockholders elected each of Prof. Dr. Bernd Gottschalk and Jonathon B. Husby as a Class III director at the 2024 annual stockholders meeting, to hold office until the Company's 2027 annual stockholders meeting and until his successor is duly elected and qualified, or until his earlier death, resignation or removal. Additionally, as disclosed in the Company's Form 8-K filed with the Commission on May 3, 2023, the Company's stockholders elected each of Matthew Fisch and Luis Dussan as Class II directors at the 2023 annual stockholders meeting, to hold office until the Company's 2026 annual stockholders meeting and until his successor is duly elected and qualified, or until his earlier death, resignation or removal. Accordingly, the Proposal would not allow previously elected directors to serve their full three-year terms but instead, require the directors to cut short their elected terms.

Under Delaware law, a Delaware corporation may reduce the terms of its directors who were validly elected by stockholders to full three-year terms only by means that are permitted under Delaware law. Section 141(b) of the DGCL provides that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." In Kurz vs. Holbrook, 989 A.2d 140 (Del. Ch. 2010), aff'd in part, Crown EMAK Partners, LLC vs. Kurz, 992 A.2d 377 (Del. 2010), the Delaware Court of Chancery invalidated a bylaw that would prematurely end certain directors' terms by reducing the size of the board as it would conflict with Section 141(b), and held that when a director is elected to a term of office, he or she is entitled to complete the remainder of that term unless the director (i) resigns, (ii) is removed from office by stockholders or (iii) is disqualified from continuing to hold office for failure to satisfy a qualification provision in place when the director was elected.

None of such methods is consistent with the Proposal. First, every director owes the Company and its stockholders a fiduciary duty to determine whether resigning from the Board will advance the best interests of the Company and its stockholders. Therefore, resignation is each individual director's personal responsibility and the Company requiring the resignation of directors would violate the DGCL. Second, Article V, Section 5.4 of the Certificate governs the removal of directors. It states, in relevant part, that directors "may be removed from office, but only for cause." The Proposal does not purport to remove any director from office for cause. Therefore, no director will be removed from office by the Company's shareholders prior to the purported implementation of the Proposal. Third, neither the Certificate nor the bylaws of the Company have ever had a director-qualification provision. As such, none of the previously elected directors will be disqualified from holding office for failure to satisfy a qualification provision in place when the director was elected. Therefore, by declassifying the board of the directors and providing for immediately elections of all directors, the Proposal has the effect of unseating directors of the Company without proper resignation, removal or disqualification, in contravention of the DGCL.

Accordingly, for the reasons set forth above and as supported by the Opinion, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(2) because implementation of the Proposal (1) would require the Company to file an amendment to the Certificate in contravention of applicable state law and (2) would have the effect of prematurely terminating the terms of the previously duly-elected directors in contravention of applicable state law.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power to Implement the Proposal

Rule 14a-8(i)(6) allows a company to exclude a proposal if the company would lack the power to implement the proposal. As explained above, implementing the Proposal would require the filing of an amendment to the Certificate in contravention of the DGCL and would result in the premature termination of the existing directors' terms in contravention of the DGCL. The Staff has repeatedly concurred with the exclusion of proposals under both Rule

14a-8(i)(2) and Rule 14a-8(i)(6) when implementation of the proposal would violate state corporate law and, accordingly, the company would lack the authority to implement the proposal. See *Highlands REIT, Inc.* (Feb. 7, 2020) (permitting exclusion under both Rule 14a-8(i)(2) and 14a-8(i)(6) as implementation of the proposal would, in the opinion of company's counsel, cause the company to violate Maryland law); *IDACORP, Inc.* (Mar. 13, 2012) (permitting exclusion under both Rule 14a-8(i)(2) and 14a-8(i)(6) as implementation of the proposal would, in the opinion of company's counsel, cause the company to violate Idaho law); *The Boeing Co.* (Feb. 20, 2008) (permitting exclusion under both Rule 14a-8(i)(2) and 14a-8(i)(6) as implementation of the proposal would, in the opinion of company's counsel, cause the company to violate Delaware law).

Here, the Proposal explicitly contemplates the shareholders of the Company amending the Certificate to declassify the Company's board of directors. However, the Company does not have the power and authority under the DGCL to file a certificate of amendment unilaterally adopted by the shareholders to declassify the board. Additionally, the Company does not have the power and authority under the DGCL to remove a director from office prior to the expiration of his or her term without proper resignation, removal or disqualification, all of which are absent or inapplicable here. Therefore, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(6) because the Company lacks the power to implement the proposal since such implementation would be in contravention of state law.

III. The Proposal May Be Excluded Under Rule 14a-8(i)(8)(ii) Because the Implementation of the Proposal Would Remove a Director from Office Before His or Her Term Expired.

Rule 14a(i)(8)(ii) states that a shareholder proposal may be excluded from a company's proxy materials if it "[would] remove a director from office before his or her term expired." The Commission has stated the purpose of Rule 14a-8(i)(8) is "to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature." *Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release NO. 34-12598 (Jul. 7, 1976) [41 FR 29982]. To further clarify this purpose, the text of Rule 14a-8(i)(8) was amended in 2010 to "codify prior [S]taff interpretations with respect to the types of proposals that would continue to be excludable pursuant to Rule 14a-8(i)(*8). "Facilitating Shareholder Director Nominations," Exchange Act Release No. 62764* (Aug. 25, 2010). These types of excludable proposals included those that would have removed a director from office before his or her term expired.

As discussed above, the Proposal states that immediately following the purported amendment of the Certificate to declassify the board of directors, "[a]ll directors will be up for election at that time (and at all annual meetings thereafter)." As such, the Proponent is explicitly rejecting the idea that following declassification of the board of directors, any directors that have been previously elected will continue to serve out their remaining terms, which for Matthew Fisch and Luis Dussan, will expire at the Company's 2026 annual meeting

of stockholders and for Prof. Dr. Bernd Gottschalk and Jonathon B. Husby, will expire at the Company's 2027 annual meeting of stockholders. Therefore, the Proposal could, if implemented, disqualify directors previously elected from completing their terms on the Company's board of directors.

The Staff has repeatedly concurred with the exclusion of shareholder proposals that act to cut short the terms of current directors. *See ES Bancshares, Inc.* (Feb. 2, 2011) (permitting the exclusion of a proposal requesting that two directors be removed); *Commonwealth Biotechnologies, In*c. (Dec. 28, 2010) (permitting the exclusion of a proposal that requested the removal of specific directors). Accordingly, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(6) because it could have the effect of removing a director from office before his or her term expires.

CONCLUSION

Based on the foregoing, the Company believes that the Proposal may be omitted from the 2025 Proxy Materials. Accordingly, we respectfully request that the Staff indicate that it will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2025 Proxy Materials.

If you have any questions regarding this request, please contact the undersigned at 650.838.3720 or yian.huang@aoshearman.com. Thank you for your consideration.

Sincerely,

Yian Huang

cc: Andrew Hughes, AEye, Inc.
Ransom Wuller
Christopher Forrester, Allen Overy Shearman Sterling US LLP

EXHIBIT A

Proposal

Andrew Hughes
Attn: Corporate Secretary
Aeye, Inc.
4670 Willow Rd, Suite 125
Pleasonton, CA 94588

November 27, 2024

Dear Andrew:

Pursuant to Article II, Section 2.7a(iii) of the Company Bylaws and Section 240.14a-8 of the Securities Act, I would like to submit the following proposal for an agenda item to be considered by the shareholders at the annual meeting of the shareholders. The Description of the business desired to be brought before the annual meeting, the text of the proposal and/or business to be decided and the reasons for the proposal are attached. Briefly, this is a proposal to Amend the Company's Certificate of Incorporation to Declassify the Board of Directors.

The following information is provided to meet procedural requirements of Article II, Section 2.7a(iii) of the Company Bylaws and Section 240.14a-8 of the Securities Act.

A) Submission is made by: Ransom P Wuller, age [redacted], Business and Personal address: [redacted]. Email Address: [redacted] Phone #: [redacted]
B) At the time of this submission, the submitter owns 65,287 shares of Aeye, Inc. Class A Common Stock individually and 26,987 jointly with his wife, Valerie J Wuller. These shares have been held continuously since the SPAC merger in August 2021. The submitter intends to hold these shares through the upcoming annual shareholder meeting.
C) The Submitter intends to appear in person at the meeting to introduce the agenda item.
D) The Submitter is available to consult via teleconference at 9am PST on December 17, 18 or 19, 2024 or appear in person to meet at the Company offices on December 16, 2024, beginning at 9am PST.
E) Merrill Lynch is the record holder of certain shares included in the above total and attached is a letter from Merrill Lynch confirming the above shares are held for the Submitter. A similar letter was submitted last year which is also attached, and the shares are substantially the same except for 3,000 shares transferred to Broadridge in 2024 to meet the shareholder of record requirement of Article II of the Bylaws.

Signed by the Submitter

Ransom P Wuller, dated 11/27/2024.

[redacted]

PROPOSAL: TO DECLASSIFY THE BOARD OF DIRECTORS AND ESTABLISH A NON-CLASSIFIED BOARD OF DIRECTORS

The shareholders of Aeye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3 and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provisions with those necessary to establish a non-classified board.

All directors will be up for election at that time (and at all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.

Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board)

SUPPORTING STATEMENT

This resolution urges the shareholders to vote for DECLASSIFICATION of the board. Such a change would enable shareholders to register their views on the performance of all directors at each annual meeting.

Having directors stand for elections annually makes directors more accountable to shareholders, and could thereby contribute to improving performance and increasing Company value.

Over the past 20 years, many S&P 500 companies have declassified their board of directors. According to data cited by Harvard University, the number of S&P 500 companies with classified. boards declined from 50% to 10% in the last 20 years and the average percentage of votes cast in favor of shareholder proposals to declassify the boards of S&P 500 companies during the period January 1, 2010 – June 30, 2011, exceeded 75%.

The significant shareholder support for proposals to declassify boards is consistent with empirical. studies reporting that classified boards could be associated with lower Company valuation and/or worse. corporate decision-making. Studies report that:

- Classified boards are associated with lower Company valuation (Bebchuk and Cohen, 2005. confirmed by Faleye (2007) and Frakes (2007).
- Takeover targets with classified boards are associated with lower gains to shareholders (Bebchuk, Coates, and Subramanian, 2002).
- Firms with classified boards are more likely to be associated with value-decreasing

acquisition decisions (Masulis, Wang, and Xie, 2007); and
• Classified boards are associated with lower sensitivity of compensation to performance and lower sensitivity of CEO turnover to firm performance (Faleye, 2007).

Please vote for this proposal to make directors more accountable to shareholders.

Vote
For
Against
Abstain

APPENDIX A
(Amendments in Red)

ARTICLE V
BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Second Amended and Restated Certificate or the Bylaws of the Corporation ("**Bylaws**"), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Second Amended and Restated Certificate, and any Bylaws adopted by the stockholders of the Corporation; provided, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term.

(a) The number of directors of the Corporation, other than those who may be elected by the holders of one or more series of the Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Board.

(b) Subject to Section 5.5 hereof, the directors of the Corporation shall hold office until the next annual meeting of the stockholders following their election and until their successors shall have been duly elected and qualified, or until their death, resignation or removal. Nothing in this Certificate of Incorporation shall preclude a director from serving consecutive terms. ~~Subject to Section 5.5 hereof, the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II, and Class III. The Board is authorized to assign members of the Board already in office to Class I, Class II, or Class III. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, and the term of the initial Class III directors shall expire at the third annual meeting of the stockholders following the effectiveness of this Second Amended and Restated Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this Second Amended and Restated Certificate, each of the successors elected to replace the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation or removal. Subject to Section 5.5 hereof, if the number of directors that constitutes the Board is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board shorten the term of any incumbent director. Subject to the rights of the holders of~~

~~one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board already in office to the aforesaid classes at the time this Second Amended and Restated Certificate (and therefore such classification) becomes effective in accordance with the DGCL.~~

(c) ~~Subject to Section 5.5 hereof, a director shall hold office until the next annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.~~

(d) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot. The holders of shares of Common Stock shall not have cumulative voting rights.

Section 5.3 Newly Created Directorships and Vacancies. Subject to Section 5.5 hereof, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely and exclusively by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office ~~for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.~~ until the next annual meeting.

Section 5.4 Removal. Subject to Section 5.5 hereof, any or all of the directors may be removed from office~~, but only for cause~~ with or without cause, by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, at an annual meeting or a special meeting called for that purpose.

Section 5.5 Preferred Stock—Directors. Notwithstanding any other provision of this Article V, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Second Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article V unless expressly provided by such terms.

ARTICLE VII

SPECIAL MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Special Meetings. Except as provided in Section 5.4 and sSubject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, Chief Executive Officer of the Corporation, or the Board pursuant to a resolution adopted by a majority of the Board, and the ability of the stockholders of the Corporation to call a special meeting is hereby specifically denied. Except as provided in the foregoing sentence, special meetings of stockholders of the Corporation may not be called by another person or persons.

EXHIBIT B

Opinion

A&O SHEARMAN

1460 El Camino Real, Floor 2
Menlo Park, CA 94025
+1.650.838.3600

January 16, 2025

AEye, Inc.
4670 Willow Rd, Suite 125
Pleasanton, CA 94588

Re: Exclusion of Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen,

We have acted as counsel to AEye, Inc., a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") received from Ransom Wuller (the "Proponent"), dated November 27, 2024, for the 2025 annual meeting of stockholders of the Company (the "Annual Meeting"). In connection with the foregoing, you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware, 8 Del. C. §101, *et seq*. (the "DGCL").

For the purpose of rendering our opinions as expressed herein, we have been furnished with, and have reviewed, the following documents: (i) the Second Amended and Restated Certificate of Incorporation of the Company, as amended (as filed with the Secretary of State of the State of Delaware and in effect as of the date hereof, the "Certificate"); (ii) the Amended and Restated Bylaws of the Company, as amended (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review have not been altered or amended in any respect material to our opinions as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinions as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states as follows:

> "*The shareholders of AEye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3, and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provision with those necessary to establish a non-classified board.*
>
> *All directors will be up for election at that time (and all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.*
>
> *Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board.)*"

A copy of the full Proposal and the associated supporting statements received by the Company are attached hereto as Annex A.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rules 14a-8(i)(2) and 14a-8(i)(6) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." Rule 14a-8(i)(6) provides that a registrant may omit a proposal from its proxy statement "if the company would lack the power or authority to implement the proposal." You have requested our opinions as to whether the implementation of the Proposal, if adopted by the Company's stockholders, would violate the DGCL and consequently, whether the Company would lack the power or authority to implement the Proposal under the DGCL.

For the reasons set forth below, to the extent the Proposal, if approved by the stockholders of Company and sought to be implemented, would purport to amend the Company's Certificate without action by the Company's board of directors (the "Board"), such purported amendment would contravene the DGCL. Additionally, to the extent the Proposal would purport to prematurely terminate certain directors before their terms are schedule to expire, such purported termination would also contravene the DGCL. As such, the Company would lack the power or authority to implement the Proposal under the DGCL.

DISCUSSION

The Proposal seeks to enable stockholders of the Company to declassify the board of directors by unilaterally amending the Certificate. The Certificate currently includes a provision in Article V, Section 5.2(b), which states, in relevant part, that "the Board shall be divided into three classes, as

nearly equal in number as possible and designated Class I, Class II, and Class III."[1] As the Certificate sets forth the classified Board structure, any attempt to declassify the Board must be in the form of an amendment to the Certificate and made in accordance with the Section 242 of the DGCL, which lays out a two-step process for amending a company's certificate of incorporation. First, the board of directors "shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote […] or directing that the amendment proposed be considered at the next annual meeting of stockholders." Second, at the stockholder meeting, "a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders." The Delaware Supreme Court has emphasized that the corporation only has the power to file a certificate of amendment if the two steps are taken in the order as prescribed in the DGCL: "[I]t is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 *Del. C.* § 242." (*Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996)). As a result, "stockholders may not act without prior board action." *Id*.

We have been advised by the Company that the Board has not currently approved or recommended to shareholders an amendment to the Certificate to declassify the Board. As such, contrary to the prescribed statutory construct, the Proposal, if sought to be implemented, would result in a vote of stockholders to amend the Certificate before the Board adopts a resolution recommending the proposal and calling a stockholder meeting for a vote. As the implementation of the Proposal would fail to follow the appropriate procedure to amend the Certificate prescribed by the DGCL, the Proposal, if approved by the stockholders and sought to be implemented, would contravene the DGCL. *See Blades v. Wisehart*, C.A. No. 5317-VCS (Del. Ch. 2010) (finding that an amendment to the certificate of incorporation was invalid because the board failed to follow the "prescribed corporate formalities to amend its certificate of incorporation" with emphasis on the events being "temporally significant"); *Klang v. Smith's Food & Drug Ctrs., Inc.*, 1997 Del. Ch. LEXIS 73, at *53 (May 13, 1997) ("Pursuant to 8 *Del. C.* § 242, amendment of a corporate certificate requires a board of directors to adopt a resolution which declares the advisability of the amendment and calls for a stockholder vote. Thereafter, in order for the amendment to take effect, a majority of the outstanding stock must vote in its favor.") *aff'd*, 702 A.2d 150 (Del. 1997) *STAAR Surgical Co. v. Waggoner*, 588 A.2d 1130 (Del. 1991) (reasoning that, despite intentions of the board or stockholders, proper procedure must be followed to effectively amend a company's charter). As the Company may not take actions that contravene the DGCL, it lacks the power and authority to implement the Proposal.

In addition to the foregoing, the Proposal provides that immediately following declassification, "[a]ll directors will be up for election at that time (and all annual meetings thereafter)." Directors

[1] Section 141(d) of the DGCL provides that "[t]he directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes."

are elected to serve full terms; in the case of directors elected to a classified board, those directors are elected to serve full three-year terms. Section 141(b) of the DGCL, together with the cases interpreting that Section, set out the means for unseating a director from office before the scheduled expiration of his or her term. Section 141(b) provides that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." The Delaware Court of Chancery recently interpreted Section 141(b) in *Kurz v. Holbrook* and observed that the statute "recognizes three procedural means by which the term of a sitting director can be brought to a close: (1) when the director's successor is elected and qualified, (2) if the director resigns, or (3) if the director is removed…This interpretation of Section 141(b) comports with how [Delaware] law has developed."[2] Later in the *Kurz* decision, the Court of Chancery stated that Section 141(b) contemplates a fourth means to unseat a director: a director could be disqualified from continuing to hold office by a charter provision setting forth qualifications for directorship that was enacted prior to such director's election.[3] Such methods of unseating a director were treated by the Court of Chancery as the *exclusive* means of ending a director's term.[4] On appeal, the Delaware Supreme Court upheld the Court of Chancery's holding that a "scenario in which the terms of the extra directors would end conflicts with Section 141(b)'s mandate that '[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal.'"

Kurz demonstrates that the Delaware courts are not willing to allow stockholders to "end run" the express procedures contemplated by Section 141 (b) for ending a director's term. In other words, the Delaware courts will not allow a director to be unseated prior to the expiration of his or her term except by removal, resignation or disqualification. If directors were permitted to be unseated by other means, then, as in Kurz, the board or a group of stockholders would be able to subvert the stockholder vote required for director removal.

The Proposal explicitly states that following declassification, "[a]ll directors will be up for election at that time (and all annual meetings thereafter)." As such, they do not allow certain directors to serve their full three-year terms. Accordingly, the Proposal does not follow the first means under

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[2] 989 A.2d 140, 155-56 (Del. Ch. 2010), aff'd in part, rev 'd in part sub nom. Crown EMAK Partners, LLC v. Kurz, 992 A.2d 377 (Del. 2010) (affirming Court of Chancery ruling invalidating bylaw that would prematurely end certain directors' terms by reducing size of board).

[3] Id. at 157 (citing Stroud v. Milliken Enters., Inc., 585 A.2d 1306, 1309 (Del. Ch. 1988)). The Delaware courts have reasoned that a charter can operate to unseat a director if he or she fails to satisfy a qualification because the directors are elected subject to their continued qualification. The Delaware courts have analogized this type of provision to a resignation because a director takes office with the understanding of how the qualification will operate. Stroud, 585 A.2d at 1309.

[4] Id. at 156 (noting that a director's death is not expressly recognized as a method of ending a director's term but also noting that because death obviously results in the termination of a director's term, "I ... do *not* regard the absence of any reference to death in Section 141(b) as implying that the identified means [described by the Court to unseat a director] are *non*-exclusive") (emphasis added).

Section 141(b) to unseat a director: by electing a successor once the current director's term expires. Kurz specifically held that a director cannot be unseated by the election of a successor until the annual meeting at which his or her term is scheduled to expire.[5] Nor does the Proposal contemplate the resignation or removal of directors, and no qualification provision is applicable here. As such, implementation of the Proposal would prematurely unseat certain directors before their terms are schedule to expire, which would be in contravention of the DGCL. As the Company may not take actions that contravene the DGCL, it lacks the power and authority to implement the Proposal.

CONCLUSION

In summary, the Proposal seeks to enable stockholders of the Company to declassify the Board by amending the Certificate without Board approval, in contravention of the two-step process required under the DGCL. Additionally, implementation of the Proposal would mean prematurely unseating certain directors of the Company in contravention of the framework contemplated by the DGCL. Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if it were approved by the stockholders of Company and sought to be implemented, would contravene the DGCL. Consequently, it is our opinion that the Company does not have the power and authority to implement the Proposal.

The foregoing opinions are limited to the DGCL. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or any other regulatory body.

The foregoing opinions are rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinions be relied upon by, any person or entity for any purpose without our prior written consent.

Sincerely,

/s/Allen Overy Shearman Sterling US LLP

YH/hs/nr
CMF

[5] Kurz, 989 A.2d at 160 (holding that a director's term cannot be ended prematurely by "purporting to elect the director's successor early."). The Supreme Court affirmed this holding as well. Crown EMAK Partners, 992 A.2d at 401-02 ("[Stockholders] cannot end an incumbent director's term prematurely by purporting to elect the director's successor before the incumbent's term expires.").

EXHIBIT B

The New Proposal

PROPOSAL: TO DECLASSIFY THE BOARD OF DIRECTORS AND ESTABLISH A NON-CLASSIFIED BOARD OF DIRECTORS

The shareholders of Aeye, Inc. propose to declassify the board of directors and establish a non-classified board by legally amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3 and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provisions with those necessary to establish a non-classified board.

All directors elected thereafter will be up for election at ~~that time (and at all~~ the annual meeting~~s thereafter)~~ and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.

Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for exemplar~~the~~ Amendments proposed to Declassify the board). Shareholders recommend and request that the board take the action specified in the proposal.

SUPPORTING STATEMENT

This resolution urges the shareholders to vote for DECLASSIFICATION of the board. Such a change would enable shareholders to register their views on the performance of all directors at each annual meeting.

Having directors stand for elections annually makes directors more accountable to shareholders, and could thereby contribute to improving performance and increasing Company value.

Over the past 20 years, many S&P 500 companies have declassified their board of directors. According to data cited by Harvard University, the number of S&P 500 companies with classified. boards declined from 50% to 10% in the last 20 years and the average percentage of votes cast in favor of shareholder proposals to declassify the boards of S&P 500 companies during the period January 1, 2010 – June 30, 2011, exceeded 75%.

The significant shareholder support for proposals to declassify boards is consistent with empirical. studies reporting that classified boards could be associated with lower Company valuation and/or worse. corporate decision-making. Studies report that:

● Classified boards are associated with lower Company valuation (Bebchuk and Cohen, 2005. confirmed by Faleye (2007) and Frakes (2007).
● Takeover targets with classified boards are associated with lower gains to shareholders (Bebchuk, Coates, and Subramanian, 2002).

● Firms with classified boards are more likely to be associated with value-decreasing acquisition decisions (Masulis, Wang, and Xie, 2007); and
● Classified boards are associated with lower sensitivity of compensation to performance and lower sensitivity of CEO turnover to firm performance (Faleye, 2007).

Please vote for this proposal to make directors more accountable to shareholders.

Vote
For
Against
Abstain

EXHIBIT C

Excerpted Language from 2024 Proxy Statement

STOCKHOLDER PROPOSALS FOR THE 2024 ANNUAL MEETING OF STOCKHOLDERS

Stockholders who, in accordance with Rule 14a-8 of the Exchange Act, wish to present proposals at our 2025 Annual Meeting of Stockholders (the "2025 Annual Meeting") and wish to have those proposals included in the proxy materials to be distributed by us in connection with our 2025 Annual Meeting must submit their proposals to the Company at the physical address provided below on or before December 3, 2024. Any such proposal must meet the requirements set forth in the rules and regulations of the SEC, including Rule 14a-8, in order for such proposal to be eligible for inclusion in our 2025 proxy statement.

In accordance with our Bylaws, in order to be properly brought before the 2025 Annual Meeting, regardless of inclusion in our proxy statement, notice of a matter a stockholder wishes to present, including any director nominations, must be delivered to the Company at the physical address provided below, not less than 90 nor more than 120 days prior to the first anniversary date of this year's annual meeting, which would be no earlier than January 15, 2025 and no later than February 14, 2025. If, however the date of the meeting is advanced by more than 30 days, or delayed by more than 60 days, from the anniversary date of this year's annual meeting, notice by the stockholder to be timely must be delivered not earlier than 90 days prior to the 2025 Annual Meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or 10th day following the day on which public announcement of the date of such meeting is first made by the us. The stockholder must also provide all of the information required by our Bylaws.

AEye, Inc.
Corporate Secretary
One Park Place, Suite 200
Dublin, CA 94568

HOUSEHOLDING

The SEC allows companies and intermediaries (such as brokers) to implement a delivery procedure called "householding." Householding is the term used to describe the practice of delivering a single set of notices, proxy statements, and annual reports to any household at which two or more stockholders reside. This procedure reduces the volume of duplicate information stockholders receive and also reduces a company's printing and mailing costs. Householding will continue until you are notified otherwise or you submit contrary instructions.

The Company will promptly deliver an additional copy of any such document to any stockholder who writes the Company. Alternatively, if you share an address with another stockholder and have received multiple copies of our notice, proxy statement, and annual report, you may contact us to request delivery of a single copy of these materials. Stockholders of record who currently receive multiple copies of the annual report and proxy statement or Notice of Internet Availability at their address who would prefer that their communications be householded, or stockholders of record who are currently participating in householding and would prefer to receive separate copies of our proxy materials, should also contact us. Any such written requests should be directed to the Company at the following physical address or email address:

AEye, Inc.
Corporate Secretary
One Park Place, Suite 200
Dublin, CA 94568
Email: legal@aeye.ai
(925) 400-4366

ANNUAL REPORT ON FORM 10-K

A copy of our annual report on Form 10-K for the year ended December 31, 2023, as filed with the SEC, is available to stockholders without charge upon written request directed to Corporate Secretary, AEye, Inc., One Park Place, Suite 200, Dublin, CA 94568 or by phone at (925) 400-4366, or by email at legal@aeye.ai. The Company makes available on or through our website free of charge our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to such reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after filing.

EXHIBIT D

Opinion from Original No-Action Request

A&O SHEARMAN

1460 El Camino Real, Floor 2
Menlo Park, CA 94025
+1.650.838.3600

January 16, 2025

AEye, Inc.
4670 Willow Rd, Suite 125
Pleasanton, CA 94588

Re: Exclusion of Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen,

We have acted as counsel to AEye, Inc., a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") received from Ransom Wuller (the "Proponent"), dated November 27, 2024, for the 2025 annual meeting of stockholders of the Company (the "Annual Meeting"). In connection with the foregoing, you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware, 8 Del. C. §101, *et seq*. (the "DGCL").

For the purpose of rendering our opinions as expressed herein, we have been furnished with, and have reviewed, the following documents: (i) the Second Amended and Restated Certificate of Incorporation of the Company, as amended (as filed with the Secretary of State of the State of Delaware and in effect as of the date hereof, the "Certificate"); (ii) the Amended and Restated Bylaws of the Company, as amended (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review have not been altered or amended in any respect material to our opinions as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinions as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states as follows:

> "*The shareholders of AEye, Inc. propose to declassify the board of directors and establish a non-classified board by amending the Certificate of Incorporation. This amendment would revise Section 5.2, 5.3, and 5.4 of Article V of the Second Amended and Restated Certificate of Incorporation (Certificate) which established a Classified Board of Directors and replace these provision with those necessary to establish a non-classified board.*
>
> *All directors will be up for election at that time (and all annual meetings thereafter) and will serve a term of one year and until his or her successor is duly elected and qualified or until such director's earlier death, resignation or removal.*
>
> *Under Delaware law, directors of companies that have a classified Board may be removed only for cause, unless the certificate provides otherwise, but directors of companies that do not have a classified board may be removed with or without cause. Therefore, Section V must also be amended to provide for removal with or without cause as provided by Delaware law. (See attached exhibit A for the Amendments proposed to Declassify the board.)*"

A copy of the full Proposal and the associated supporting statements received by the Company are attached hereto as Annex A.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rules 14a-8(i)(2) and 14a-8(i)(6) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." Rule 14a-8(i)(6) provides that a registrant may omit a proposal from its proxy statement "if the company would lack the power or authority to implement the proposal." You have requested our opinions as to whether the implementation of the Proposal, if adopted by the Company's stockholders, would violate the DGCL and consequently, whether the Company would lack the power or authority to implement the Proposal under the DGCL.

For the reasons set forth below, to the extent the Proposal, if approved by the stockholders of Company and sought to be implemented, would purport to amend the Company's Certificate without action by the Company's board of directors (the "Board"), such purported amendment would contravene the DGCL. Additionally, to the extent the Proposal would purport to prematurely terminate certain directors before their terms are schedule to expire, such purported termination would also contravene the DGCL. As such, the Company would lack the power or authority to implement the Proposal under the DGCL.

DISCUSSION

The Proposal seeks to enable stockholders of the Company to declassify the board of directors by unilaterally amending the Certificate. The Certificate currently includes a provision in Article V, Section 5.2(b), which states, in relevant part, that "the Board shall be divided into three classes, as

nearly equal in number as possible and designated Class I, Class II, and Class III."[1] As the Certificate sets forth the classified Board structure, any attempt to declassify the Board must be in the form of an amendment to the Certificate and made in accordance with the Section 242 of the DGCL, which lays out a two-step process for amending a company's certificate of incorporation. First, the board of directors "shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote […] or directing that the amendment proposed be considered at the next annual meeting of stockholders." Second, at the stockholder meeting, "a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders." The Delaware Supreme Court has emphasized that the corporation only has the power to file a certificate of amendment if the two steps are taken in the order as prescribed in the DGCL: "[I]t is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 *Del. C.* § 242." (*Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996)). As a result, "stockholders may not act without prior board action." *Id*.

We have been advised by the Company that the Board has not currently approved or recommended to shareholders an amendment to the Certificate to declassify the Board. As such, contrary to the prescribed statutory construct, the Proposal, if sought to be implemented, would result in a vote of stockholders to amend the Certificate before the Board adopts a resolution recommending the proposal and calling a stockholder meeting for a vote. As the implementation of the Proposal would fail to follow the appropriate procedure to amend the Certificate prescribed by the DGCL, the Proposal, if approved by the stockholders and sought to be implemented, would contravene the DGCL. *See Blades v. Wisehart*, C.A. No. 5317-VCS (Del. Ch. 2010) (finding that an amendment to the certificate of incorporation was invalid because the board failed to follow the "prescribed corporate formalities to amend its certificate of incorporation" with emphasis on the events being "temporally significant"); *Klang v. Smith's Food & Drug Ctrs., Inc.*, 1997 Del. Ch. LEXIS 73, at *53 (May 13, 1997) ("Pursuant to 8 *Del. C.* § 242, amendment of a corporate certificate requires a board of directors to adopt a resolution which declares the advisability of the amendment and calls for a stockholder vote. Thereafter, in order for the amendment to take effect, a majority of the outstanding stock must vote in its favor.") *aff'd*, 702 A.2d 150 (Del. 1997) *STAAR Surgical Co. v. Waggoner*, 588 A.2d 1130 (Del. 1991) (reasoning that, despite intentions of the board or stockholders, proper procedure must be followed to effectively amend a company's charter). As the Company may not take actions that contravene the DGCL, it lacks the power and authority to implement the Proposal.

In addition to the foregoing, the Proposal provides that immediately following declassification, "[a]ll directors will be up for election at that time (and all annual meetings thereafter)." Directors

[1] Section 141(d) of the DGCL provides that "[t]he directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes."

are elected to serve full terms; in the case of directors elected to a classified board, those directors are elected to serve full three-year terms. Section 141(b) of the DGCL, together with the cases interpreting that Section, set out the means for unseating a director from office before the scheduled expiration of his or her term. Section 141(b) provides that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." The Delaware Court of Chancery recently interpreted Section 141(b) in *Kurz v. Holbrook* and observed that the statute "recognizes three procedural means by which the term of a sitting director can be brought to a close: (1) when the director's successor is elected and qualified, (2) if the director resigns, or (3) if the director is removed…This interpretation of Section 141(b) comports with how [Delaware] law has developed."[2] Later in the *Kurz* decision, the Court of Chancery stated that Section 141(b) contemplates a fourth means to unseat a director: a director could be disqualified from continuing to hold office by a charter provision setting forth qualifications for directorship that was enacted prior to such director's election.[3] Such methods of unseating a director were treated by the Court of Chancery as the *exclusive* means of ending a director's term.[4] On appeal, the Delaware Supreme Court upheld the Court of Chancery's holding that a "scenario in which the terms of the extra directors would end conflicts with Section 141(b)'s mandate that '[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal.'"

Kurz demonstrates that the Delaware courts are not willing to allow stockholders to "end run" the express procedures contemplated by Section 141 (b) for ending a director's term. In other words, the Delaware courts will not allow a director to be unseated prior to the expiration of his or her term except by removal, resignation or disqualification. If directors were permitted to be unseated by other means, then, as in Kurz, the board or a group of stockholders would be able to subvert the stockholder vote required for director removal.

The Proposal explicitly states that following declassification, "[a]ll directors will be up for election at that time (and all annual meetings thereafter)." As such, they do not allow certain directors to serve their full three-year terms. Accordingly, the Proposal does not follow the first means under

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[2] 989 A.2d 140, 155-56 (Del. Ch. 2010), aff'd in part, rev 'd in part sub nom. Crown EMAK Partners, LLC v. Kurz, 992 A.2d 377 (Del. 2010) (affirming Court of Chancery ruling invalidating bylaw that would prematurely end certain directors' terms by reducing size of board).

[3] Id. at 157 (citing Stroud v. Milliken Enters., Inc., 585 A.2d 1306, 1309 (Del. Ch. 1988)). The Delaware courts have reasoned that a charter can operate to unseat a director if he or she fails to satisfy a qualification because the directors are elected subject to their continued qualification. The Delaware courts have analogized this type of provision to a resignation because a director takes office with the understanding of how the qualification will operate. Stroud, 585 A.2d at 1309.

[4] Id. at 156 (noting that a director's death is not expressly recognized as a method of ending a director's term but also noting that because death obviously results in the termination of a director's term, "I ... do *not* regard the absence of any reference to death in Section 141(b) as implying that the identified means [described by the Court to unseat a director] are *non*-exclusive") (emphasis added).

Section 141(b) to unseat a director: by electing a successor once the current director's term expires. Kurz specifically held that a director cannot be unseated by the election of a successor until the annual meeting at which his or her term is scheduled to expire.[5] Nor does the Proposal contemplate the resignation or removal of directors, and no qualification provision is applicable here. As such, implementation of the Proposal would prematurely unseat certain directors before their terms are schedule to expire, which would be in contravention of the DGCL. As the Company may not take actions that contravene the DGCL, it lacks the power and authority to implement the Proposal.

CONCLUSION

In summary, the Proposal seeks to enable stockholders of the Company to declassify the Board by amending the Certificate without Board approval, in contravention of the two-step process required under the DGCL. Additionally, implementation of the Proposal would mean prematurely unseating certain directors of the Company in contravention of the framework contemplated by the DGCL. Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if it were approved by the stockholders of Company and sought to be implemented, would contravene the DGCL. Consequently, it is our opinion that the Company does not have the power and authority to implement the Proposal.

The foregoing opinions are limited to the DGCL. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or any other regulatory body.

The foregoing opinions are rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinions be relied upon by, any person or entity for any purpose without our prior written consent.

Sincerely,

/s/Allen Overy Shearman Sterling US LLP

YH/hs/nr
CMF

[5] Kurz, 989 A.2d at 160 (holding that a director's term cannot be ended prematurely by "purporting to elect the director's successor early."). The Supreme Court affirmed this holding as well. Crown EMAK Partners, 992 A.2d at 401-02 ("[Stockholders] cannot end an incumbent director's term prematurely by purporting to elect the director's successor before the incumbent's term expires.").

March 3, 2025

VIA STAFF ONLINE FORM

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

RE: AEye, Inc. – Stockholder Proposal Submitted by Ransom Wuller
Reference # 628136

Ladies and Gentlemen:

On January 16, 2025, Aeye, Inc. through counsel filed a No-Action letter concerning my shareholder proposal filed under Rule 14a-8 with the Company on December 2, 2024. I responded to the No-Action letter on January 22, 2025, pointing out that Proposals to declassify the Board of Directors is routinely granted by this office and that proponents (under SLB 14D) are typically granted the right to revise such a proposal to meet what can best be described as Company objections to procedural mandates in the proposal. I also attached a revised proposal I planned to file under the Company bylaws which I believe resolved the procedural issue addressed by the Company in its 1-16-2025 letter. The revised proposal was not a filing under Rule 14a.

Now after waiting over a month, the Company responds to my letter of 1-22-25, claiming the revised proposal I attached (which is not a Rule 14a filing) be excluded as untimely. Then the Company claims the revised proposal is asking the board to take illegal steps even though it requests the board to legally declassify the board and as a kicker after waiting over a month requests this office waive their procedural deadlines.

BACKGROUND

The undersigned is not a marginal disgruntled shareholder. I founded Aeye, Inc. in 2013. I was a member of the board of directors for the Company from 2013 to 2020 when I retired. During that time, I held various offices including President,

Secretary, Treasurer, and CFO and when I retired the Company was on the verge of going public, which is did in 2021 with the NASDAQ. At that time, it had a market value of about $1.3 billion. The current Board and the CEO have overseen a decrease in value to $10 million. They have overseen a reverse stock split of 1/30. The current price is under $1 and the Company is in jeopardy of entertaining another reverse split. In the last year the Board and CEO have diluted shareholders by over 70% without one word to the shareholders, without any shareholder input and without any notice to the SEC regarding an obvious change in control.

During this same year, the CEO and Board have paid themselves unseemly compensation amounting to over 25% of the Company's value. These are not good actors.

REVISED PROPOSAL

The revised proposal I submitted with my January 22, 2025, letter was filed under the Company bylaws, not Rule 14a. Under the bylaws, such a proposal may be presented to the shareholders through a process outside of the Company Proxy. That was its purpose. Obviously, it is unnecessary if this office denies the Company's 1-16-25 No-Action letter either as to the original proposal or allows a typical revision to the original proposal as described in SLB 14D. I anticipate that unless this office denies the No-Action letter the Company will nevertheless litigate my right as a shareholder to present the proposal at the annual meeting. That is the real purpose of their new filing which is comical in that it asks this office to exclude my revision but then wants you to consider it to deny me the typical revisions granted for proposals to declassify the board. I urge you to deny this attempted slight of hands.

NO-ACTION REQUEST

In its filing of 2-24-25, the Company all but concedes that its No-Action Request should be denied. It acknowledges that this office would typically allow a revision to the proposal to declassify the board but contends that my revision does not meet SLB 14D (even though you should otherwise ignore it) and is improper under Delaware law. But what is the difference in the language. The language in my revised proposal is "requests and recommends that the board legally declassify

the Board" and according to Aeye, the SLB requires language as follows "requests and recommends that the Board take the steps necessary to declassify the board". The idea that these ask for different action by the board is nonsense. They are basically identical. In fact, neither tell the board what steps to take to accomplish declassification but each would require legal appropriate steps. The idea that my revised proposal would require the board to take steps which would violate or ignore Delaware Law when it specifically requires the steps be "LEGAL" is the most absurd interpretation possible.

The board under my proposal could not declassify the board without following Delaware Law and the two step process they describe. Otherwise, it would not legally declassify the board. It is almost an act of bad faith for them to even make that argument.

While the SEC may have preferred language to meet the threshold for revision described in SLB 14D, there are certainly many acceptable variations which "request and recommend the Board take "acceptable" action to achieve Declassification". This author has no preferred language but only wishes to give the shareholders of Aeye the right to voice their opinion on this important issue. The current Board and management obviously don't want the shareholders to be heard in any way.

For all the above reasons, the undersigned requests that this office deny Aeye's request for No-Action.

Sincerely,
Ransom Wuller (RW)
Ransom Wuller

A&O SHEARMAN

1460 El Camino Real, Floor 2
Menlo Park, CA 94025
+1.650.838.3600

April 6, 2025

VIA STAFF ONLINE FORM

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

Re: AEye, Inc. – Stockholder Proposal Submitted by Ransom Wuller

Ladies and Gentlemen:

In a letter dated January 16, 2025 (the "No-Action Request"), this firm, on behalf of and as counsel for AEye, Inc., a Delaware corporation (the "Company"), requested confirmation that the Staff of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission") would not recommend enforcement action to the Commission if the Company excludes the shareholder proposal (the "Proposal") submitted by Ransom Wuller (the "Proponent") from the Company's proxy statement and form of proxy to be distributed to the Company's stockholders in connection with its 2025 annual meeting of stockholders (the "2025 Proxy Materials").

On January 22, 2025, the Proponent filed another proposal with the Commission (the "New Proposal") with revisions to address the points made in the No-Action Request. On February 24, 2025, this firm, on behalf of and as counsel for the Company, requested confirmation (the "Second No-Action Request") that the Commission would not recommend enforcement action to the Commission if the Company excludes the New Proposal submitted by the Proponent from the Company's 2025 Proxy Materials.

Subsequent to our No-Action Request and Second No-Action Request (collectively, the "No-Action Requests"), the Company has reconsidered its position on the No-Action Requests and hereby withdraws the same. The Company will include the New Proposal in its 2025 Proxy Materials.

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If you have any questions with respect to the foregoing, please contact the undersigned at 650.838.3720 or yian.huang@aoshearman.com. Thank you for your attention to this matter.

Sincerely,

Yian Huang

cc: Andrew Hughes, AEye, Inc.
Ransom Wuller
Christopher Forrester, Allen Overy Shearman Sterling US LLP