



DIVISION OF  
CORPORATION FINANCE

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

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 Valerie 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 4, 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: Valerie 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 Valerie 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.

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## **THE PROPOSAL**

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

“The shareholders of AEye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders seek an amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000. (See attached exhibit A for Amended provisions of the Certificate.”

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) and Rule 14a-8(i)(6) because (1) implementing the Proposal would cause the Company to violate Delaware law and (2) the Company lacks the power to implement the Proposal.

## **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 implementation of the Proposal would require 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.

As a Delaware company, the Company is subject to the General Corporation Law of the State of Delaware (the “DGCL”). Additionally, Article IV, Section 4.1 of the Certificate governs the capitalization of the Company. It states, in relevant part, that “the total number of shares of all classes of capital which the Corporation is authorized to issue is 601,000,000 shares, consisting of (a) 600,000,000 shares of common stock, par value \$0.0001 per share.”

As such, in order for the Proposal to be implemented to reduce the number of authorized shares of common stock of the Company from 600,000,000 to 20,000,000, the Certificate must be amended. The Proposal seeks a unilateral amendment of the Certificate by the shareholders to reduce the number of authorized shares of common stock of the Company. 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.<sup>1</sup>*

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 reduce the authorized number of shares of common stock of the Company, 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 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

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<sup>1</sup> *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.”).

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.

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 would require the Company to file an amendment to the Certificate 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. 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 reduce the number of authorized shares of common stock. 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 reduce the number of authorized shares of common stock. 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.

### **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](mailto:yian.huang@aoshearman.com). Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Yian Huang", written in a cursive style.

Yian Huang

cc: Andrew Hughes, AEye, Inc.

Valerie Wuller

Christopher Forrester, Allen Overy Shearman Sterling US LLP

**EXHIBIT A**

Proposal

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

11/27/2024

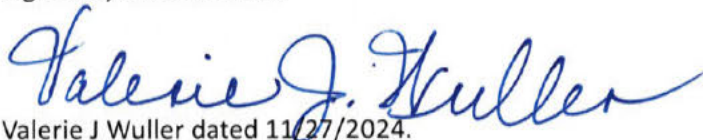
Dear Andrew:

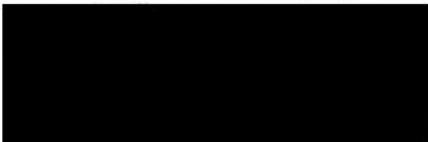
Pursuant to Article II, Section 2.7a(iii) of the Company Bylaws and Section 240.14a-8 of the Securities Act, I would like to submit the following proposal for an agenda item to be considered by the shareholders at the annual meeting of shareholders. The Description of the business desired to be brought 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 request for a change in the Authorized Shares of the Company Common Stock to 20,000,000 1/30 of the current authorization in keeping with the reverse stock split in December 2023.

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: Valerie J Wuller, age [REDACTED], Business and Personal address: [REDACTED]  
[REDACTED] Email: [REDACTED] Phone #: [REDACTED]
- B) At the time of this submission, the submitter owns 55,812 shares of Aeye, Inc. Class A Common Stock individually and 26,987 jointly with her husband, Ransom P 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 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

  
Valerie J Wuller dated 11/27/2024.



## **PROPOSAL: TO AMEND THE SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF AEYE, Inc. TO reduce Authorized Shares of Common Stock to 20,000,000**

The shareholders of Aeye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders seek an amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000. (See attached exhibit A for the Amended provisions of the Certificate.)

### **SUPPORTING STATEMENT**

This resolution urges shareholders to vote for a reduction of the authorized shares of Common Stock to 20,000,000, 1/30 of the authorized shares prior to the reverse stock split of 2023. At the time of the reverse split General Counsel told shareholders that the NASDAQ 20% rule would protect them from undue dilution without shareholder oversight and that the reduction of the then 600,000,000 authorized shares was unnecessary to protect the shareholders from dilution without shareholder input. This was obviously untrue as the Board and Top Management have diluted shareholder interest in 2024 by 40.4% as of Q3, 2024, an increase from 6,502,989 at the end of 2023, to 9,133,148 at the end of Q3, 2024.

It also appears that the Board and Top Management intend to continue to dilute shareholder interest without this amendment and without any shareholder oversight. This comes at a time when funds are tight, and the Board and Top Management continue to pay themselves substantial compensation. It is possible that maintenance of the excessive level of authorized shares could perpetuate the excessive compensation of the board and management.

#### **Vote Required for Approval**

Approval of the Proposal to Declassify the Board of Directors requires the affirmative vote of a majority of the shares entitled to vote and present in person or represented by proxy at the Annual Meeting. Abstentions are considered shares present and entitled to vote on this proposal and thus, will have the same effect as a vote "AGAINST" this proposal.

#### **VOTE:**

For

Against

Abstain

## **APPENDIX A**

### **(Amendments in Red)**

#### **ARTICLE IV**

#### **Capitalization**

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock which the Corporation is authorized to issue is ~~601,000,000~~ 21,000,000 shares, consisting of (a) ~~600,000,000~~ 20,000,000 shares of common stock, par value \$0.0001 per share (the "Common Stock") and (b) 1,000,000 shares of preferred stock, par value \$0.0001 per share (the "Preferred Stock").

**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 Valerie 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 Valerie 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.

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## **THE PROPOSAL**

The Proposal states as follows:

*“The shareholders of AEye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.*

*The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.*

*As a result, the shareholders seek an amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000. (See attached exhibit A for Amended provisions of the Certificate.”*

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. 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 reduce the number of authorized shares by unilaterally amending the Certificate. The Certificate currently includes a provision in Article IV, Section 4.1, which states, in relevant part, that “the total number of shares of all classes of capital which the Corporation is authorized to issue is 601,000,000 shares, consisting of (a) 600,000,000 shares of common stock, par value \$0.0001 per share.” As the Certificate sets forth the number of authorized shares, any attempt to reduce the amount 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 reduce the number of authorized shares. 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.

## **CONCLUSION**

In summary, the Proposal seeks to enable stockholders of the Company to reduce the number of authorized shares by amending the Certificate without Board approval, in contravention of the two-step process required under 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

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 Valerie Wuller  
Reference # 628126

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 that the proposal violates Delaware law by bypassing the Board of Directors role in amending the Certificate of Incorporation.

While counsel sites Rule 14a-8(i)(2) and Rule 14a-8(i)(6) as separate reasons for exclusion the basis of each is the same. However, a reading of the proposal shows that it does not mandate action without board input or in violation of Delaware Law but uses the words “propose” and “seek” when requesting action. AEye fills in the mechanism for its own benefit.

Proponent does admit that the mechanism to achieve the shareholders proposal is not specifically mentioned but implying (as counsel does) that the intent was to bypass the proper procedure and violate state law is absurd. As a result, Proponent has prepared a revised proposal to make the mechanism clear and has filed it with the Company. Both the Red Line and a Clean copy of the revised proposal is attached.

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 her right as a Shareholder of Record but is concerned the Company will treat it as a second proposal (which it clearly is not). Shareholder also understands that pursuant to the SEC's SLB 14E(5) revisions are typically allowed for the type of issues raised by the Company.

Conclusion:

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

Sincerely,

*Valerie Wuller*

Valerie Wuller

## **PROPOSAL: TO RECOMMEND AMENDMENT TO THE SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF AEYE, Inc. TO reduce Authorized Shares of Common Stock to 20,000,000**

The shareholders of Aeye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders recommend and request the Board of Directors amend the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 and file said amendment or set a special shareholder meeting to vote on the amendment. (See attached exhibit A for an exemplar of the Amended provisions of the Certificate.)

### **SUPPORTING STATEMENT**

This resolution urges shareholders to vote for a reduction of the authorized shares of Common Stock to 20,000,000, 1/30 of the authorized shares prior to the reverse stock split of 2023. At the time of the reverse split General Counsel told shareholders that the NASDAQ 20% rule would protect them from undue dilution without shareholder oversight and that the reduction of the then 600,000,000 authorized shares was unnecessary to protect the shareholders from dilution without shareholder input. This was obviously untrue as the Board and Top Management have diluted shareholder interest in 2024 by 40.4% as of Q3, 2024, an increase from 6,502,989 at the end of 2023, to 9,133,148 at the end of Q3, 2024.

It also appears that the Board and Top Management intend to continue to dilute shareholder interest without this amendment and without any shareholder oversight. This comes at a time when funds are tight, and the Board and Top Management continue to pay themselves substantial compensation. It is possible that maintenance of the excessive level of authorized shares could perpetuate the excessive compensation of the board and management.

#### **Vote Required for Approval**

Approval of the Proposal requires the affirmative vote of a majority of the shares entitled to vote and present in person or represented by proxy at the Annual Meeting. Abstentions are considered shares present and entitled to vote on this proposal and thus, will have the same effect as a vote "AGAINST" this proposal.

VOTE:

For

Against

Abstain

**PROPOSAL: TO ~~RECOMMEND~~ AMENDMENT TO THE SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF AEYE, Inc. TO reduce Authorized Shares of Common Stock to 20,000,000**

The shareholders of Aeye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders ~~recommend and request the Board of Directors seek an~~ amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 ~~and file said amendment or set a special shareholder meeting to vote on the amendment~~. (See attached exhibit A for ~~an exemplar of~~ the Amended provisions of the Certificate.)

**SUPPORTING STATEMENT**

This resolution urges shareholders to vote for a reduction of the authorized shares of Common Stock to 20,000,000, 1/30 of the authorized shares prior to the reverse stock split of 2023. At the time of the reverse split General Counsel told shareholders that the NASDAQ 20% rule would protect them from undue dilution without shareholder oversight and that the reduction of the then 600,000,000 authorized shares was unnecessary to protect the shareholders from dilution without shareholder input. This was obviously untrue as the Board and Top Management have diluted shareholder interest in 2024 by 40.4% as of Q3, 2024, an increase from 6,502,989 at the end of 2023, to 9,133,148 at the end of Q3, 2024.

It also appears that the Board and Top Management intend to continue to dilute shareholder interest without this amendment and without any shareholder oversight. This comes at a time when funds are tight, and the Board and Top Management continue to pay themselves substantial compensation. It is possible that maintenance of the excessive level of authorized shares could perpetuate the excessive compensation of the board and management.

Vote Required for Approval

Approval of the Proposal ~~to Declassify the Board of Directors~~ requires the affirmative vote of a majority of the shares entitled to vote and present in person or represented by proxy at the Annual Meeting. Abstentions are considered shares present and entitled to vote on this proposal and thus, will have the same effect as a vote "AGAINST" this proposal.

VOTE:

For

Against

Abstain

# A&O SHEARMAN

1460 El Camino Real, Floor 2  
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+1.650.838.3600

February 4, 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 Valerie 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 Valerie 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). Furthermore, the Company believes

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that both the Proposal and the New Proposal should be properly excluded from the 2025 Proxy Material pursuant to Rule 14a-8(i)(6) because implementing the Proposal and the New Proposal would result in a breach of the Company's existing contractual obligations. 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 amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.*

*The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.*

*As a result, the shareholders recommend and request the Board of Directors amend the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 and file said amendment or set a special shareholder meeting to vote on the amendment. (See attached exhibit A for an exemplar of the Amended provisions of the Certificate.)"*

### **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 Company's 2025 annual meeting of shareholders. 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 actions that it is not permitted to take under Delaware law.

The New Proposal “...request[s] the Board of Directors amend the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 and file said amendment.” 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 it requests the Board unilaterally amend and file the certificate of amendment. 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 lacks the power or authority to implement either the Proposal or the Revised Proposal because it would result in a breach of the Company’s existing contractual obligations.***

Additionally, the Company lacks the power or authority to implement either the Proposal or the New Proposal because such implementation would result in a breach of the Company’s existing contractual obligations. The Staff has consistently taken the position that “[p]roposals that would result in the company breaching existing contractual obligations may be excludable under ... rule 14a-8(i)(6) ... because implementing the proposal ... would not be within the power or authority of the company to implement.” Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”). See also, e.g., Cigna Corporation (Jan. 24, 2017) (expressing the view that a proxy access proposal that would violate the interim operating covenants of a merger agreement to which the company was a party could be excluded under Rule 14a-8(i)(6)); and Comcast Corporation (Mar. 17, 2010) (expressing the view that a proposal regarding an equity holding requirement policy for executives that conflicted with existing contracts between the company and such executives could be excluded as drafted under Rule 14a-8(i)(6)).

Both the Proposal and the New Proposal seek an amendment to the Company’s certificate of incorporation to reduce the number of authorized shares of common stock of the Company to 20,000,000. The Company has publicly disclosed that there were 18,193,723 shares of its common stock outstanding as of January 22, 2025. In addition to such amount, and as previously disclosed in the Company’s public filings with the Commission, the Company has entered into certain contractual arrangements that provide for the issuance of common stock of the Company upon the occurrence of certain events, including pursuant to the exercise of warrants, the conversion of convertible notes and the entry into equity lines of credit and equity incentive plans. These contractual arrangements require the Company to maintain such number of authorized shares of common stock sufficient to cover the issuance of shares pursuant to such contractual arrangements. A table listing certain of these contractual arrangements, including the provisions requiring the reservation of shares of authorized common stock and the number of shares required to be reserved, is attached hereto as Exhibit E (the “Reserved Shares Table”).

As indicated in the Reserved Shares Table, the sum of the number of shares of common stock issued and outstanding and the number of shares of common stock required to be reserved for issuance under the Company's existing contractual obligations currently exceeds 20,000,000 shares. As such, the Company lacks the power and authority to implement either the Proposal or the New Proposal because either would result in a breach of the Company's existing obligations to maintain a sufficient number of shares of authorized common stock. Additionally, due to the nature of the Proposal and New Proposal, neither may be revised to apply only to the Company's future contractual obligations, as permitted from time to time by the Staff pursuant to Staff Legal Bulletin No. 14 (Jul. 13, 2001). Thus, the Company believes that both the Proposal and the New Proposal may be properly excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(6).

***IV. 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. Additionally, it would also be necessary to alter the substance of the New Proposal (including the number of shares to be authorized) in order to bring the New Proposal into compliance with the other requirements of Rule 14a-8. 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.

***V. 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](mailto:yian.huang@aoshearman.com). Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Yian Huang", written in a cursive style.

Yian Huang

cc: Andrew Hughes, AEye, Inc.

Valerie 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  
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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 Valerie 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.

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## **THE PROPOSAL**

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

“The shareholders of AEye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders seek an amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000. (See attached exhibit A for Amended provisions of the Certificate.”

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) and Rule 14a-8(i)(6) because (1) implementing the Proposal would cause the Company to violate Delaware law and (2) the Company lacks the power to implement the Proposal.

## **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 implementation of the Proposal would require 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.

As a Delaware company, the Company is subject to the General Corporation Law of the State of Delaware (the “DGCL”). Additionally, Article IV, Section 4.1 of the Certificate governs the capitalization of the Company. It states, in relevant part, that “the total number of shares of all classes of capital which the Corporation is authorized to issue is 601,000,000 shares, consisting of (a) 600,000,000 shares of common stock, par value \$0.0001 per share.”

As such, in order for the Proposal to be implemented to reduce the number of authorized shares of common stock of the Company from 600,000,000 to 20,000,000, the Certificate must be amended. The Proposal seeks a unilateral amendment of the Certificate by the shareholders to reduce the number of authorized shares of common stock of the Company. 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.<sup>1</sup>*

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 reduce the authorized number of shares of common stock of the Company, 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 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

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<sup>1</sup> *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.”).

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.

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 would require the Company to file an amendment to the Certificate 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. 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 reduce the number of authorized shares of common stock. 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 reduce the number of authorized shares of common stock. 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.

### **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](mailto:yian.huang@aoshearman.com). Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Yian Huang", written in a cursive style.

Yian Huang

cc: Andrew Hughes, AEye, Inc.

Valerie Wuller

Christopher Forrester, Allen Overy Shearman Sterling US LLP

**EXHIBIT B**

The New Proposal

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

January 23, 2025

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 revised proposal for an agenda item to be considered by the shareholders at the annual meeting of 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 request to the Board for a change in the Authorized Shares of the Company Common Stock to 20,000,000 1/30 of the current authorization in keeping with the reverse stock split in December 2023.

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: Valerie J Wuller, age PII Business and Personal address: [REDACTED]  
Email: [REDACTED] Phone #: [REDACTED]
- B) At the time of this submission, the submitter owns 55,812 shares of Aeye, Inc. Class A Common Stock individually and 26,987 jointly with her husband, Ransom P Wuller. 3,000 of these shares are held by Broadridge and I am a Shareholder of Record pursuant to these shares. 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 January 30, 31 and February 7, 2025.
- E) Merrill Lynch is the record holder of certain shares included in the above total and I attached (in the 14a-8 submission) a letter from Merrill Lynch confirming the above shares are held for the Submitter. A similar letter was submitted last year which was also attached, and the shares are 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.
- F) This submission of the revised proposal filed under 240.14a-8 of the Securities Act is being filed in my capacity as a shareholder of record.

Signed by the Submitter

  
Valerie J Wuller dated 1/23/2025.

[REDACTED]  
Email: [REDACTED]  
Phone: [REDACTED]

**PROPOSAL: TO RECOMMEND AMENDMENT TO THE SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF AEYE, Inc. TO reduce Authorized Shares of Common Stock to 20,000,000**

The shareholders of Aeye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders recommend and request the Board of Directors seek an amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 and file said amendment or set a special shareholder meeting to vote on the amendment. (See attached exhibit A for an exemplar of the Amended provisions of the Certificate.)

**SUPPORTING STATEMENT**

This resolution urges shareholders to vote for a reduction of the authorized shares of Common Stock to 20,000,000, 1/30 of the authorized shares prior to the reverse stock split of 2023. At the time of the reverse split General Counsel told shareholders that the NASDAQ 20% rule would protect them from undue dilution without shareholder oversight and that the reduction of the then 600,000,000 authorized shares was unnecessary to protect the shareholders from dilution without shareholder input. This was obviously untrue as the Board and Top Management have diluted shareholder interest in 2024 by 40.4% as of Q3, 2024, an increase from 6,502,989 at the end of 2023, to 9,133,148 at the end of Q3, 2024.

It also appears that the Board and Top Management intend to continue to dilute shareholder interest without this amendment and without any shareholder oversight. This comes at a time when funds are tight, and the Board and Top Management continue to pay themselves substantial compensation. It is possible that maintenance of the excessive level of authorized shares could perpetuate the excessive compensation of the board and management.

**Vote Required for Approval**

Approval of the Proposal to Declassify the Board of Directors requires the affirmative vote of a majority of the shares entitled to vote and present in person or represented by proxy at the Annual Meeting. Abstentions are considered shares present and entitled to vote on this proposal and thus, will have the same effect as a vote "AGAINST" this proposal.

VOTE:

For

Against

Abstain

**PROPOSAL: TO RECOMMEND AMENDMENT TO THE SECOND AMENDED  
AND RESTATED CERTIFICATE OF INCORPORATION OF AEYE, Inc. TO  
reduce Authorized Shares of Common Stock to 20,000,000**

The shareholders of Aeye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.

The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.

As a result, the shareholders recommend and request the Board of Directors amend the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 and file said amendment or set a special shareholder meeting to vote on the amendment. (See attached exhibit A for an exemplar of the Amended provisions of the Certificate.)

**SUPPORTING STATEMENT**

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It also appears that the Board and Top Management intend to continue to dilute shareholder interest without this amendment and without any shareholder oversight. This comes at a time when funds are tight, and the Board and Top Management continue to pay themselves substantial compensation. It is possible that maintenance of the excessive level of authorized shares could perpetuate the excessive compensation of the board and management.

**Vote Required for Approval**

Approval of the Proposal requires the affirmative vote of a majority of the shares entitled to vote and present in person or represented by proxy at the Annual Meeting. Abstentions are considered shares present and entitled to vote on this proposal and thus, will have the same effect as a vote "AGAINST" this proposal.

**VOTE:**

For

Against

Abstain.

**EXHIBIT C**

Excerpted Language from 2024 Proxy Statement

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### **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 househanded, 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@aeeye.ai](mailto:legal@aeeye.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@aeeye.ai](mailto:legal@aeeye.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 Valerie 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 Valerie 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.

## AOSHEARMAN.COM

Allen Overy Shearman Sterling US LLP is a limited liability partnership organized under the laws of the State of Delaware. Allen Overy Shearman Sterling US LLP is affiliated with Allen Overy Shearman Sterling LLP, a limited liability partnership registered in England and Wales with registered number OC306763 and with its registered office at One Bishops Square, London E1 6AD. It is authorized and regulated by the Solicitors Regulation Authority of England and Wales (SRA number 401323). The term partner is used to refer to a member of Allen Overy Shearman Sterling LLP or an employee or consultant with equivalent standing and qualifications. A list of the members of Allen Overy Shearman Sterling LLP and of the non-members who are designated as partners is open to inspection at its registered office at One Bishops Square, London E1 6AD.

## **THE PROPOSAL**

The Proposal states as follows:

*“The shareholders of AEye, Inc. propose to amend the Certificate of Incorporation by reducing the authorized shares of Common Stock from 600,000,000 to 20,000,000 in keeping with the 1/30 reverse split of December 2023.*

*The proposed Amendment would bring the ratio of authorized shares to outstanding shares back to the ratio which existed prior to the reverse split and protect shareholders from undue dilution without shareholder input or authorization.*

*As a result, the shareholders seek an amendment to the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000. (See attached exhibit A for Amended provisions of the Certificate.”*

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. 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 reduce the number of authorized shares by unilaterally amending the Certificate. The Certificate currently includes a provision in Article IV, Section 4.1, which states, in relevant part, that “the total number of shares of all classes of capital which the Corporation is authorized to issue is 601,000,000 shares, consisting of (a) 600,000,000 shares of common stock, par value \$0.0001 per share.” As the Certificate sets forth the number of authorized shares, any attempt to reduce the amount 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 reduce the number of authorized shares. 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.

## **CONCLUSION**

In summary, the Proposal seeks to enable stockholders of the Company to reduce the number of authorized shares by amending the Certificate without Board approval, in contravention of the two-step process required under 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

**EXHIBIT E**

Reserved Shares Table

### Selected Outstanding Derivative Instruments Requiring Reservation of Shares

Instrument	Date Entered Into	Date Filed with SEC	Section Number	Requirements
Warrant to Purchase Common Stock, issued in connection with the Securities Purchase Agreement by and between the Company and 3i, LP ("3i")	January 2, 2025	January 3, 2025	Section 1(g) – Reservation of Shares	<p>So long as the Warrant is outstanding, the Company is required to keep reserved for issuance a number of shares of common stock at least equal to 250% of the maximum number of shares then-issuable under the Warrant (without regard to any limitations on exercise).</p> <p>Total 805,263 shares are issuable under the Warrant as of the date hereof. As such, at least 2,013,158 shares are contractually required to be reserved for the Warrant.</p>
Senior Unsecured Convertible Note, issued in connection with the Securities Purchase Agreement by and between the Company and 3i, LP ("3i")	January 2, 2025	January 3, 2025	Section 13(a) – Reservation	<p>So long as the Note remains outstanding, the Company is required to reserve at least 250% of the number of shares necessary to effect the conversion, accounting for any Installation Conversion, Acceleration Conversion and Alternate Conversion, at the Alternate Conversion Price.</p> <p>Accounting for the interest rate accrual and Installation Conversion at the Alternate Conversion Rate, the reservation obligation requires at least 4,159,460 shares to be reserved.</p>
<b>Total Required for Reservation:</b>				<b>6,172,618 shares of common stock</b>

## AEye Equity Plans<sup>1</sup>

Plan	Date of the Plan	Requirements
2014 US Ladar Inc. Equity Incentive Plan	June 11, 2014	As of February 3, 2025, 14,110 shares are reserved for issuance pursuant to outstanding grants under this plan.
2016 Stock Plan	October 25, 2016	As of February 3, 2025, 761,348 shares are reserved for issuance pursuant to outstanding grants under this plan.
2021 Equity Incentive Plan (“2021 Plan”)	August 16, 2021	<p>The 2021 Plan allows for the issuance of up to the sum of (i) 514,681 shares, plus (ii) 533,333 shares effective May 3, 2023, plus (iii) an annual increase pursuant to its terms.</p> <p>As of the most recent approved increase on January 1, 2024, the maximum number of shares issuable under the 2021 Plan are 1,658,525 shares.</p> <p>As of February 3, 2025, there are 994,007 shares are reserved for issuance under the 2021 Plan.</p>
2022 Employee Stock Purchase Plan (“2022 Plan”)	November 1, 2022	<p>The 2022 Plan allows for the issuance of up to 66,666 shares of common stock; subject to increase on January 1, 2023 and each January 1 thereafter through (and including) January 1, 2032 pursuant to its terms.</p> <p>As of the most recent approved increase on January 1, 2024, up to 184,131 shares of common stock may be issued under 2022 Plan.</p> <p>As of February 3, 2025, 42,703 shares of common stock are reserved for issuance under the 2022 Plan.</p>
2023 CEO Inducement Grant Plan (“2023 Plan”)	February 13, 2023	<p>The 2023 Plan allows for the issuance of up to 233,333 shares of common stock under the plan.</p> <p>As of February 3, 2025, 188,419 shares of common stock are reserved for issuance under the 2023 Plan.</p>
<b>Total Number of Shares Currently Reserved For Issuance:</b>		<b>2,000,587 shares of common stock</b>

<sup>1</sup> All share amounts provided herein give effect to the reverse stock split effected by the Company on December 26, 2023 and disclosed on a Form 8-K filed by the Company with the Commission on December 29, 2023.

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 Valerie Wuller  
Reference # 628126

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 that the proposal violates Delaware law by bypassing the Board of Directors role in amending the Certificate of Incorporation. I responded to their NO ACTION letter on January 22, 2025. In my response I attached an amended proposal which I was filing under the Company's bylaws which permit shareholders of record to request agenda items for the annual meeting between January 15 and February 14. This was not a Rule 14a-8 request. It was not an attempt to file a new or revised proposal under Rule 14a-8 but to encourage your office to allow the amendment to cure any defect in my original proposal. As I noted in my response of January 22 and which counsel in his most recent filing acknowledged, this office routinely allows shareholders to cure the type of defect raised by the Company.

Aeye through counsel has now submitted another letter dated February 4, 2025, responding to my revised proposal stating:

- 1) That the new proposal should be disregarded since it was late under Rule 14a-8.
- 2) That your office routinely allows shareholders to revise their proposals by adding the magic language "that the board of directors take the steps necessary to amend the Company charter" but you shouldn't let me do that in this case because my revision (which they say is a nullity) didn't do it

correctly. Obviously, had I not revised the proposal, and you followed your normal practice, you would let me add the magic language.

- 3) And most troubling of all, that the Company diluted shareholders since their filing on January 16 by 100% effecting a change of control and now they can't limit authorized shares to 20 million because they already diluted beyond that point.
- 4) And they want you to waive their late request based on 3 above.

First, as to 2) above, counsel conveniently omitted the actual language used in my revised proposal. They contend it says "Request(s) the Board of Directors amend the Certificate of Incorporation reducing authorized shares of Common Stock to 20,000,000 and file said amendment." They omitted the OR. I specifically provided as a second option that they present it to the shareholders for vote. I did this because I disagree that the law is clear that after an overwhelming vote by the shareholders for the proposed change, which is ONE Number in the Certificate, it is necessary to incur the huge expense of then setting a special shareholder meeting to revote on the matter. Counsel cites cases about the proper procedure to amend the Certificate of Incorporation, but his cited cases are not on point. I believe the language is appropriate and should be allowed but if this office feels otherwise, then I humbly request that it follow typical practice and allow me to revise and include the "MAGIC LANGUAGE".

Second as to 1) above, if the revised proposal should be ignored, there is ever more reason for this office to follow its practice and allow this shareholder to amend and include the "Magic Language". Further, the revised proposal was filed pursuant to the Company bylaws and not Rule 14a-8, I did ask that this office consider permitting me to revise the Rule 14a-8 proposal but I care not if it is with the Magic Language or the language I proposed.

As to 3) above, I cannot in my wildest fantasy believe that management and the board would dilute shareholder interest by 100% in less than 45 days to avoid my proposal but that is precisely what they have obviously done. They will probably contend they had a business reason for the dilution, but there is NO POSSIBLE NEED TO DILUTE OVER 100% in 45 days. This was done to prevent the shareholders from considering this proposal. I would appeal to this office and the SEC to investigate this clear abuse. In early January the Company shares were selling between \$2 and \$4, and I am sure many new investors bought at these

levels. The actions taken have caused the stock to drop to \$0.82 as of this writing. This is a clear abuse of Corporate Governance. The actions were taken without any notice to the shareholders, without any input from the shareholders and in clear disregard for the welfare of the shareholders. It was done as a plan to prevent the shareholders from weighing in on the actions of Management and the Board and to protect excessive compensation being awarded by the group to themselves.

The management and board have no respect for this shareholder and no respect for the shareholders in general. The SEC should not tolerate this kind of abuse. One can only imagine the possible lawsuits which may now occur because of these actions. To dilute shareholder interest 200% in one year without any input from the shareholders and 100% after a filing by a shareholder to encourage the board to consult on dilutive events (even if legal) is immoral and self-serving.

Because of this abuse, at minimum this office should let this shareholder amend the requested change to something like "to 125% of the then fully diluted shares of Common Stock." To allow the Company to omit this proposal which was intended to allow shareholder input for significant dilution, by massively diluting shareholders would be a farce.

Conclusion:

As a result of the foregoing, Shareholder requests that the No Action request by the Company be denied and this office permit revisions to the proposal which will give the shareholders an opportunity to speak to dilution and the level of authorized shares.

Sincerely,

*Valerie Wuller*

Valerie Wuller

# A&O SHEARMAN

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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 Valerie 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 Valerie 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 4, 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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U.S. Securities and Exchange Commission

April 6, 2025

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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](mailto:yian.huang@aoshearman.com). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Yian Huang", written in a cursive style.

Yian Huang

cc: Andrew Hughes, AEye, Inc.

Valerie Wuller

Christopher Forrester, Allen Overy Shearman Sterling US LLP