



DIVISION OF  
CORPORATION FINANCE

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

March 2, 2023

Lyuba Goltser  
Weil, Gotshal & Manges LLP

Re: Annaly Capital Management, Inc. (the "Company")  
Incoming letter dated December 13, 2022

Dear Lyuba Goltser:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board take the steps necessary to amend the appropriate Company governing documents to give the owners of a combined 10% of the Company's outstanding common stock the power to call a special shareholder meeting regardless of length of stock ownership.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

# Weil, Gotshal & Manges LLP

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
+1 212 310 8007 fax

**Lyuba Goltser**  
lyuba.goltser@weil.com

December 13, 2022

## VIA EMAIL

Office of the Chief Counsel  
Division of Corporation Finance  
US Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Annaly Capital Management, Inc.*  
*Stockholder Proposal of Mr. John Chevedden*  
*Securities Exchange Act of 1934 – Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Annaly Capital Management, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Stockholders (collectively, the “Proxy Materials”) a stockholder proposal (the “Proposal”), and statements in support thereof (the “Supporting Statement”) received from John Chevedden (the “Proponent”).

The Company respectfully requests that the Staff of the Division of Corporate Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action against the Company if the Company omits the Proposal in its entirety from its Proxy Materials.

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting this request to the Staff and has concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal, as revised, states, in relevant part:

### **Proposal 4 – Adopt a Shareholder Right to Call a Special Shareholder Meeting**

“Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting regardless of length of stock ownership.

One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting and to clear up any ambiguity that could prevent street name shareholders from the same formal participation in calling for a special shareholder meeting as non street name shareholders to the fullest extent possible.

Currently it appears only non street name shareholders can participate in calling for a special shareholder meeting. Thus if one makes the reasonable estimate that 50% of Annaly Capital stock is non street name stock, it means that our current requirement that 25% of shares are needed to call for a special shareholder meeting translates to 50% of this one category of stock.”

The Company received the initial version of the Proposal on October 27, 2022. On December 7, 2022, the Company received a revised version of the Proposal. A copy of the initial Proposal, revised Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in our view that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal and Supporting Statement contain materially false and misleading statements contrary to Rule 14a-9.

## ANALYSIS

### **Rule 14a-8(i)(3) and Staff precedent allow for exclusion where a proposal contains factual statements that are materially false or misleading**

Rule 14a-8(i)(3) provides that a company may omit a stockholder proposal from its proxy statement if the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9. Specifically, Rule 14a-9 provides that no solicitation shall be made by means of any proxy statement “containing any statement which, at the time and in light of the

circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” In Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”), the Staff stated that exclusion under Rule 14a-8(i)(3) may be appropriate where “the company demonstrates objectively that a factual statement is materially false or misleading.”

Staff precedent indicates that when the premise of the proposal is based on an objectively false or materially misleading statement, total exclusion of the proposal is warranted. For example, in *General Magic, Inc.* (avail. May 1, 2000), the Staff concurred with the exclusion of a proposal requesting that the company make “no more false statements” to its stockholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary. *See also Ferro Corp.* (avail. Mar. 17, 2015) (concurring with the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the stockholders would have increased rights if Delaware law governed the company instead of Ohio law); *JPMorgan Chase & Co.* (avail. Mar. 11, 2014, *recon. denied* Mar. 28, 2014) (concurring in the exclusion of a proposal in reliance on Rule 14a-8(i)(3) because, among other things, it misrepresented the company’s vote counting standard for electing directors and mischaracterized the company’s treatment of abstentions); *General Electric Co.* (avail. Jan. 6, 2009) (concurring with the exclusion of a proposal under which any director who received more than 25% in “withheld” votes would not be permitted to serve on any key board committee for two years because the company did not typically allow stockholders to withhold votes in director elections); *Duke Energy Corp.* (avail. Feb. 8, 2002) (concurring with the exclusion of a proposal that urged the company’s board to “adopt a policy to transition to a nominating committee composed entirely of independent directors as openings occur” because the company had no nominating committee).

In *NETGEAR, Inc.* (avail. Apr. 9, 2021, *recon. denied* Apr. 23, 2021), the Staff concurred with the exclusion under Rule 14a-8(i)(3) of a proposal regarding the ability of stockholders to call special meetings where the proposal inaccurately alleged that the company did not allow for stockholders to call a special meeting. The proposal requested that the company “take the steps necessary to . . . give holders with an aggregate of 15% net long of [the company’s] outstanding common stock the power to call a special shareowner meeting.” In support of its request, the proposal stated, “Our company only allows a majority of the Board, the Chairman of the Board, the Chief Executive Officer or the President to call a special meeting, whereas Delaware law provisions allow shareholders holding 10% of outstanding shareholder [sic] to call such meetings.” Contrary to the proposal’s suggestion that the company did not already allow stockholders to call special meetings, the company’s bylaws in fact permitted stockholders owning at least 25% of the voting power of its stock to call a special meeting of stockholders. The company argued that the proposal’s false statements regarding its existing special meeting right were material because stockholders would accept them as true and consider them when determining how to vote on the proposal. After concurring that the entire proposal could be excluded under Rule 14a-8(i)(3), the Staff explained in its denial of the proponent’s request for reconsideration that the proposal created



a false impression about the company's existing special meeting right and therefore contained a materially false and misleading statement.

**The Proponent's Proposal and Supporting Statement contain materially false factual statements about the Company's existing special meeting rights**

As in *NETGEAR*, the Proposal relates to the ability of Company stockholders to call special meetings and, through materially false and misleading statements, the Proposal creates a false impression that the Company does not already have special meeting rights for its stockholders.

Here, the heading of the Proposal, entitled "Adopt a Shareholder Right to Call a Special Shareholder Meeting," is materially false and misleading. The use of the word "adopt" in the Proposal heading falsely suggests to the Company's stockholders that the Company does not currently provide stockholders with the right to call a special meeting. The Company's Amended and Restated Bylaws (the "Bylaws"), however, clearly and unambiguously provide for a stockholder right to call a special meeting. Specifically, Section 3(a) of the Bylaws states that:

"[A] special meeting of stockholders shall also be called by the secretary of the [Company] to act on any matter that may properly be considered at a meeting of stockholders upon the written request of one or more stockholders of record entitled to cast not less than twenty five percent (25%) of all the votes entitled to be cast on such matter at such meeting."

In fact, the Company proactively amended this provision of the Bylaws on February 9, 2022 to reduce the threshold required for stockholders to call a special meeting from 50% to 25%.<sup>1</sup>

The heading of the Proposal is materially and demonstrably false because it plainly contradicts the Bylaws. The heading of the Proposal may mislead stockholders to mistakenly believe that they do not currently have the right to call a special stockholder meeting at any threshold, which is often a material factor in voting decisions. Such a statement is prejudicial to the Company. A fact is material if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976). Under this standard, the false assertion that the Company does not currently allow stockholders to call a special meeting renders the heading of the Proposal materially false and misleading. *See TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

The Supporting Statement of the Proposal is also materially false and misleading. The Proposal falsely asserts that it appears that not all stockholders of the Company have the right to participate in calling a special stockholder meeting and that in order for a stockholder to participate in calling a special meeting, such stockholder must be a stockholder of record. However, this assertion is contrary to the Company's Bylaws, which, as described in further detail below, expressly state that "any stockholder" may request a special meeting. The Company's current 25% threshold required for stockholders to call a special meeting does not disqualify beneficial holders.

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1043219/000119312522034522/d295984d8k.htm>

The Proposal claims that these alleged restrictions are one of the main reasons for the Proposal and suggests that implementation of the change requested in the Proposal would somehow remedy the situation. Accordingly, stockholders evaluating the Proposal and determining whether to vote their shares in favor of the Proposal would be misled as to the reasons for and the consequence of voting for the Proposal.

The Proponent's assertion that only record holders of the Company's common stock can participate in calling a special meeting is objectively false and plainly contradicts the Company's Bylaws. The Bylaws, which are publicly available as an Exhibit to the Company's filings on Form 10-K, provide all stockholders with the right to participate in calling a special stockholder meeting. Specifically, Section 3(b)(2) of the Bylaws states that:

“In order for *any stockholder* (emphasis added) to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the “Special Meeting Request”) signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than twenty five percent (25%) of all of the votes entitled to be cast on such matter at such meeting...”

The process of calling a special meeting is well established and has been utilized by record and beneficial holders. Any stockholder, whether beneficial or of record, may utilize the process. Stockholders that hold their shares through a broker, dealer, bank, or another entity may, if they desire, either easily direct their broker or bank to participate in calling a special meeting or freely move their shares into registered name. Record holders are also free to solicit all other stockholders, including record and beneficial holders, to support the calling of a special meeting. Beneficial holders can provide proof of ownership by submitting a written statement from the record holder of the securities (usually a bank or broker). Because the Bylaws provide all stockholders with the ability to call a special meeting, and do not restrict such right to only record holders, the Proponent's statement is demonstrably false.

Furthermore, the Proponent misleadingly claims that “[the Company's] current requirement that 25% of shares are needed to call for a special shareholder meeting translates into 50% of this one category of stock.” This statement is false on its face. As discussed above, both record and beneficial holders have the ability to call a special meeting. The Company's current 25% threshold required for stockholders to call a special meeting does not disqualify beneficial holders. Moreover, the Proponent's statement that the threshold is set at 50% is demonstrably false and misleading. In response to stockholder engagement and to further enhance the Company's corporate governance and stockholder rights framework, the Company affirmatively amended this provision on February 9, 2022 to reduce the threshold required for stockholders to call a special meeting from 50% to 25%.<sup>2</sup> The Proposal falsely suggests that the Company made no such change to its special meeting right, thereby negating the recent enhancement made by the Company and

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<sup>2</sup> <https://www.sec.gov/Archives/edgar/data/1043219/000119312522034522/d295984d8k.htm>

adding further confusion to stockholders attempting to understand their right to call a special meeting at the Company.

The Proponent's false statements are also material. A fact is material if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976). The materiality standard under Rule 14a-8(i)(3) of false and misleading assertions in a supporting statement is demonstrated by the court's holding in *Express Scripts Holding Co. v. Chevedden*, 2014 WL 631538, at \*4 (E.D. Mo. Feb. 18, 2014). There, in the context of a proposal that sought to separate the positions of chief executive officer and chairman, the court ruled that, "when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company's existing corporate governance practices are important to the stockholder's decision whether to vote in favor of the proposed measure" and therefore are material. *See id.* at \*4. Just as in *Express Scripts*, the Proponent's Supporting Statement is misleading because it materially misstates the Company's "existing governance practices." Specifically, the statements convey the false notion that only record holders of the Company's stock are eligible to call a special meeting and is misleading as to the permitted threshold at which stockholders may call a special meeting. The Supporting Statement's assertion that all stockholders do not currently have the right to call for a special stockholder meeting and that the threshold is 50% may mislead investors, particularly beneficial holders, who represent the vast majority of investors in shares issued by U.S. companies. Similar to *Express Scripts*, the statements are material because stockholders would assume them to be true and would consider them in the context of determining how to vote on the Proposal. As a result, if the Company were to include the Proposal in its Proxy Materials, a stockholder's vote might be based on the mistaken assumption that the Company does not currently provide them with the right to call a special meeting if they are a beneficial owner of the Company's stock, when in fact the Bylaws place no such limitations on the right to call a special meeting.

**The Proponent has not appropriately amended the Proposal or Supporting Statement to address the materially false statements therein**

As shown in the correspondence with the Proponent attached hereto as Exhibit A, the Company proactively contacted the Proponent to request an amendment to the Proposal and Supporting Statement to eliminate the materially false statements contained therein. The Company and Proponent subsequently discussed the Proposal on the phone on November 21, 2022. During this discussion and as summarized by the correspondence that followed, as shown in Exhibit A, the Proponent agreed to amend the heading of the Proposal to a more appropriate heading that reflects the fact that the Company currently has a special meeting right, for which the Company suggested "Proposal 4 – Reduce the Threshold Required to Call a Special Shareholder Meeting." The Proponent also agreed to consider amending the Supporting Statement to reflect that a beneficial stockholder can participate in calling a special stockholder meeting. The Company followed up with the Proponent on November 22, 2022 to reaffirm the discussion between the Company and the Proponent and reminded the Proponent that the deadline to submit a revised proposal is December 7, 2022.

The Proponent submitted a revised Proposal on December 7, 2022, attached hereto in Exhibit A. Although the second paragraph of the Supporting Statement was revised slightly, the Proposal continues to be false and misleading. Additionally, the Proponent did not amend the heading to accurately indicate that there currently exists a right to call a special meeting for the Company's stockholders, nor did the Proponent's revised Supporting Statement serve to remove the false claim that only record holders can participate in calling a special stockholder meeting or reflect the fact that beneficial stockholders can participate in this process. Ultimately, for the reasons stated above, the Proposal continues to be materially and demonstrably false and misleading.

For these reasons, the Proposal would impermissibly and materially mislead stockholders, just like the proposals in *NETGEAR* and the other precedents discussed above. By falsely suggesting that the Company's existing special meeting bylaw only allows stockholders of record to call a special meeting, and falsely implying that the Company does not currently give stockholders the right to call a special stockholder meeting, the Proposal materially misrepresents the Company's existing corporate governance practices. Accordingly, the Proposal is excludable under Rule 14a-8(i)(3) for containing materially false and misleading statements that violate Rule 14a-9.

#### CONCLUSION

On behalf of the Company and based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [lyuba.goltser@weil.com](mailto:lyuba.goltser@weil.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 310-8048.

Sincerely,

  
Lyuba Goltser  
Weil, Gotshal & Manges LLP

Enclosures

Cc:

Anthony Green, Annaly Capital Management, Inc.  
Audrey Susanin, Annaly Capital Management, Inc.  
John Chevedden

EXHIBIT A

Stockholder Proposal, Supporting Statements and Substantive Related Correspondence

**EXHIBIT A**

**Email from Mr. Chevedden to Annaly, Dec. 7, 2022, 6:36 PM ET**

**From:** John Chevedden [REDACTED]  
**Sent:** Wednesday, December 7, 2022 6:36 PM  
**To:** Anthony Green [REDACTED]; Audrey Susanin [REDACTED]; Goltser, Lyuba  
<[REDACTED]>  
**Subject:** Rule 14a-8 Proposal (NLY) REVISED

Rule 14a-8 Proposal (NLY)            REVISED

Dear Mr. Green,  
Please see the attached rule 14a-8 proposal.  
John Chevedden





Mr. Anthony C. Green  
Corporate Secretary  
Annaly Capital Management, Inc. (NLY)  
1211 Avenue of the Americas  
New York, NY 10036  
PH: [REDACTED]  
Fax: [REDACTED]

Revised December 7, 2022

Dear Mr. Green,

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

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

This proposal is for the next annual shareholder meeting.

I intend to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

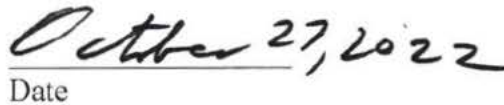
Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from formally requesting a broker letter from me.

Sincerely,

  
John Chevedden

  
Date

cc: Audrey Susanin <[REDACTED]>  
investor@annaly.com

**Proposal 4 – Adopt a Shareholder Right to Call a Special Shareholder Meeting**

Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting regardless of length of stock ownership.

One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting and to clear up any ambiguity that could prevent street name shareholders from the same formal participation in calling for a special shareholder meeting as non street name shareholders to the fullest extent possible.

Currently it appears only non street name shareholders can formally participate in calling for a special shareholder meeting. Thus if one makes the reasonable estimate that 50% of Annaly Capital stock is non street name stock, it means that our current requirement that 25% of shares are needed to call for a special shareholder meeting translates into 50% of this one category of stock.

Thus what seems to be a somewhat favorable 25% right to call for a special shareholder meeting turns into an unfavorable 50% right to call for a special shareholder meeting plus we have no right to act by written consent. A 50% stock ownership threshold to call for a special shareholder meeting means that any fleeting shareholder thought of calling for a special shareholder meeting is killed in the crib.

Plus many companies allow for both a right to call a shareholder meeting and a shareholder right to act by written consent and Annaly Capital Management shareholders have no right to act by written consent.

Calling for a special shareholder meeting is hardly ever used by shareholders but the main point of the right to call for a special shareholder meeting is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders instead of stonewalling shareholders if shareholders have a realistic Plan B option of calling a special shareholder meeting. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these low impact means are as effective as mailing a post card to the CEO. A reasonable shareholder right to call a special shareholder meeting is an important step for effective shareholder engagement with management.

Please vote yes:

**Adopt a Shareholder Right to Call a Special Shareholder Meeting – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]



Notes:

**Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.** If there is objection to the title please negotiate or seek no action relief as a last resort.

“Proposal 4” stands in for the final proposal number that management will assign.

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company’s 2023 Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [REDACTED].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).  
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.



FOR

**Shareholder  
Rights**

**Email from Annaly to Mr. Chevedden, Nov. 22, 2022, 5:39 PM**

**From:** Audrey Susanin <[REDACTED]>  
**Sent:** Tuesday, November 22, 2022 5:39 PM  
**To:** 'John Chevedden' <[REDACTED]>  
**Cc:** Anthony Green <[REDACTED]>; Goltser, Lyuba <[REDACTED]>  
**Subject:** RE: (NLY))

Mr. Chevedden,

Thank you for your time yesterday. We greatly appreciate your commitment to amending the heading of your shareholder proposal dated October 27, 2022 from “Adopt a Shareholder Right to Call a Special Shareholder Meeting – Proposal 4” to “Reduce the Threshold Required to Call a Special Shareholder Meeting – Proposal 4,” and to your continued consideration of changes to your supporting statement to reflect that a beneficial shareholder can participate in calling a special shareholder meeting if they work with the record holder (usually a bank or broker) to provide the Company with proof of ownership. We look forward to receiving your revised proposal and would like to remind you that you must submit such proposal **no later than December 7, 2022**, in order to be timely. If you have any questions or would like to discuss further, don't hesitate to let us know.

Best,

Audrey

**Audrey K. Susanin**  
Deputy General Counsel and  
Chief Compliance Officer  
Annaly Capital Management, Inc.

[REDACTED]  
Direct: [REDACTED]  
Mobile: [REDACTED]  
Fax: [REDACTED]

**Email from Annaly to Mr. Chevedden, Nov. 18, 2022, 8:47 PM**

**From:** Audrey Susanin

**Sent:** Friday, November 18, 2022 8:47 PM

**To:** 'John Chevedden' <[REDACTED]>

**Cc:** Anthony Green <[REDACTED]>

**Subject:** RE: (NLY))

Dear Mr. Chevedden,

Please find a link to the Company's Amended and Restated Bylaws:

<https://www.sec.gov/Archives/edgar/data/1043219/000119312522034522/d295984dex31.htm>

For our discussion, please refer to Article II, Section 3(b) (Stockholder Requested Special Meetings).  
Have a nice weekend and we look forward to speaking with you on Monday.

Thanks,

Audrey

**Audrey K. Susanin**

Annaly Capital Management, Inc.

[REDACTED]

Direct: [REDACTED]

Mobile: [REDACTED]

Fax: [REDACTED]

**Response from Annaly to Mr. Chevedden, Nov. 17, 2022, 9:57 AM**



Thu 11/17/2022 9:57 AM

Anthony Green <[REDACTED]>

RE: (NLY))

To  'John Chevedden'

Cc  Audrey Susanni

Mr. Chevedden,

Thank you for offering times to discuss your stockholder proposal sent on October 27, 2022. We would like to confirm a discussion with you for November 21, 2022 at 1:00 pm PT. Please use the below dial-in for our call:

Dial-in – [REDACTED]

Toll – [REDACTED]

Passcode – [REDACTED]

We look forward to speaking with you next week and will send you a planner with the above dial-in details shortly. During our call, we would be happy to address your question on the meaning of the term “stockholders of record” in Section 3(b) of the Company’s Amended and Restated Bylaws. In the interim, we would encourage you to review our prior response dated November 7, 2022 for a discussion of the process for both stockholders of record and beneficial holders to participate in calling a special meeting.

Best,

Anthony Green

Anthony Green  
Chief Corporate Officer & Chief Legal Officer  
Annaly Capital Management, Inc.

[REDACTED]

Direct: [REDACTED]

Mobile: [REDACTED]

**Email from Mr. Chevedden to Annaly, Nov. 7, 2022, 10:53 PM ET**

**From:** John Chevedden <[REDACTED]>  
**Date:** Monday, Nov 07, 2022, 10:53 PM  
**To:** Anthony Green <[REDACTED]>  
**Subject:** (NLY)

EXTERNAL SENDER

Mr. Green,

Please explain the meaning of the bold words:  
upon the written request of one or more **stockholders of record**  
entitled to cast not less than twenty five percent (25%)

John Chevedden

Email Disclaimer: <http://www.annaly.com/site-services/email-disclaimer.aspx>

**Response from Annaly to Mr. Chevedden, Nov. 7, 2022, 5:22 PM ET**

**From:** Anthony Green <[REDACTED]>  
**Sent:** Monday, November 7, 2022 5:22 PM  
**To:** 'John Chevedden' <[REDACTED]>  
**Cc:** Audrey Susanin <[REDACTED]>; Goltser, Lyuba <[REDACTED]>  
**Subject:** RE: Rule 14a-8 Proposal (NLY

Dear Mr. Chevedden,

Please find attached a letter in response to your stockholder proposal sent on October 27, 2022 for inclusion in the Company's proxy materials for its 2023 Annual Meeting of Stockholders.

Sincerely,  
Anthony C. Green

Anthony Green  
Chief Corporate Officer & Chief Legal Officer  
Annaly Capital Management, Inc.

[REDACTED]  
Direct: [REDACTED]  
Mobile: [REDACTED]



# ANNALY<sup>®</sup>

November 7, 2022

VIA E-MAIL AND FEDERAL EXPRESS

John Chevedden  


Dear Mr. Chevedden,

Annaly Capital Management, Inc. ("Annaly" or the "Company") is in receipt of your stockholder proposal (the "Proposal") on October 27, 2022 for inclusion in the Company's proxy materials for its 2023 Annual Meeting of Stockholders (the "Annual Meeting") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Company would like to formally notify you of deficiencies in the Proposal pursuant to Rule 14a-8(b)(1)(i) and (iii). In addition, the Company believes that statements made in the Proposal convey the impression that the Company does not currently provide stockholders with a right to call a special meeting, and therefore are materially false and misleading contrary to Rule 14a-9. The Company hereby requests that you remedy the deficiencies set forth below, and that you revise the Proposal to cure any materially false and misleading statements. The Company would appreciate your willingness to engage on the content of the Proposal and the supporting statement to the Proposal ("Supporting Statement") in order to avoid the cost and time consumption of having to go to the U.S. Securities and Exchange Commission ("SEC") to seek exclusion under Rule 14a-8.

The Company requests that you amend the Supporting Statement to revise or eliminate the following sentences: "One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting. Currently only non street name shareholders can participate in calling a special shareholder meeting." These statements are false in their entirety and plainly contradict the Company's Amended and Restated Bylaws (the "Bylaws"). The Bylaws provide all stockholders with the right to participate in calling a special stockholder meeting. Section 3(b)(2) of the Bylaws states that "[i]n order for *any stockholder* [emphasis added] to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than twenty five percent (25%) of all of the votes entitled to be cast on such matter at such meeting ... shall be delivered to the secretary." The process of calling a special meeting is well established

and any stockholder, whether beneficial or of record, may utilize the process. Stockholders that hold their Annaly shares through a broker, dealer, bank, or another entity may, if they desire, freely move shares into registered name or work with their broker to obtain a proxy in order to request that the Company's Board of Directors (the "Board") fix a record date to determine the stockholders entitled to request a special meeting date. Such record stockholder is then free to solicit all other stockholders, including both record and beneficial holders, to support the calling of a special meeting. In order to participate in calling a special meeting, beneficial holders can provide proof of ownership by submitting a written statement from the record holder of the securities (usually a bank or broker).

The Supporting Statement is materially and demonstrably false because it contradicts the Bylaws, which give all stockholders the right to call a special stockholder meeting. The Supporting Statement's assertion that all stockholders do not currently have the right to call for a special stockholder meeting may mislead investors, particularly beneficial holders, who represent the vast majority of investors in shares issued by U.S. companies. As a result, a stockholder's vote might be based upon the mistaken assumption that the Company does not currently provide them with the right to call a special meeting. The Bylaws place no such limitation on the Company's stockholders. Because Rule 14a-9(a) of the Exchange Act prohibits the use of materially false and misleading statements in proxy materials or other solicitations, the Company requests that you revise or eliminate the following sentences in the Supporting Statement, which would render the entire Proposal false and misleading: "One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting. Currently only non street name shareholders can participate in calling a special shareholder meeting." The Company would be glad to discuss with you proposed alternatives to this language as well as the overall language of the Proposal and the Supporting Statement.

The Company also requests that you amend the heading of the Proposal from "Adopt a Shareholder Right to Call a Special Shareholder Meeting – Proposal 4" to "Reduce the Threshold Required to Call a Special Shareholder Meeting – Proposal 4." We believe it is materially false and misleading to include the heading you propose because it falsely suggests to stockholders that Annaly does not currently allow stockholders to call a special meeting, which would render the Proposal as a whole materially false and misleading. The use of the word "adopt" in the Proposal implies that this right does not already exist. As you know, and as you expressed in the Supporting Statement, the Bylaws plainly provide for a stockholder right to call a special meeting at a threshold of 25%. Section 3(b)(1) of the Company's Bylaws, which are readily available on [www.sec.gov](http://www.sec.gov), states that "[a]ny stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the secretary of the Corporation (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date")."

The heading of the Proposal is materially and demonstrably false because it plainly contradicts the Bylaws. The Proposal may mislead stockholders to mistakenly believe that they do not currently have the right to call a special stockholder meeting at any threshold, which is often a



material factor in voting decisions. Because Rule 14a-9(a) of the Exchange Act prohibits the use of materially false and misleading statements in proxy materials or other solicitations, we request that you amend the heading of Proposal to remove the language calling for the adoption of a stockholder right to call a special stockholder meeting, and replace the heading as follows: “Reduce the Threshold Required to Call a Special Shareholder Meeting – Proposal 4.”

In addition, the Company notes that your Supporting Statement states that “[m]anagement likes to claim that shareholders have multiple means to communicate with management but in most cases these low impact means are as effective as mailing a post card to the CEO.” The Company strongly disagrees with your characterization of our stockholder engagement program. The Company is committed to ongoing engagement with both retail and institutional stockholders and these discussions have generated significant feedback for the Company and resulted in a number of enhancements to the Company’s corporate governance practices, including the Board’s decision to proactively amend the Bylaws in February 2022 to lower the threshold for stockholders to call a special meeting from the previous majority threshold to 25% of shares outstanding. As disclosed in our proxy statement for our 2022 Annual Meeting of Stockholders, approximately 90% of all institutional investors were included in our 2021-2022 outreach efforts and we held over 100 meetings with stockholders. The Company would welcome the opportunity to engage with you on the Proposal, the Supporting Statement and our corporate governance practices more broadly.

#### *Procedural Deficiencies*

Rule 14a-8(b) of the Exchange Act provides that, in order to be eligible to submit a shareholder proposal, a shareholder proponent must have continuously held (i) at least \$2,000 in market value of the Company’s securities entitled to vote on the proposal for at least three years; or (ii) at least \$15,000 in market value of the Company’s securities entitled to vote on the proposal for at least two years; or (iii) at least \$25,000 in market value of the Company’s securities entitled to vote on the proposal for at least one year. Alternatively, you must have continuously held at least \$2,000 of the Company’s securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you must have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the submission date of the Proposal. Based on our review of the information in your Proposal, our records, and regulatory materials, we are unable to conclude that you are a registered holder of Annaly’s common stock, as required by Rule 14a-8. Please provide a written statement from the record holder of your shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time you submitted the Proposal, you had beneficially held the requisite number of shares of Annaly common stock for the requisite duration.

Rule 14a-8(b)(iii) also requires you to provide us with a written statement that you are able to meet with us in person or via teleconference between 10 and 30 days after submission of the Proposal. We have not received such a statement from you. Please provide Annaly with this statement, which must include your contact information as well as business days and specific times between the hours of 9:00 a.m. and 5:30 p.m. Eastern Time that you are available to discuss the Proposal with Annaly.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to Anthony Green, Chief Corporate Officer, Chief Legal Officer and Secretary at [REDACTED]. The failure to correct the deficiencies within this timeframe will provide the Company with a basis to exclude the Proposal from the Company's proxy materials for its 2023 Annual Meeting of Stockholders.

If you have any questions with respect to the foregoing, please contact me at the above noted email address. For your reference, enclosed a copy of Rule 14a-8.

The Company reserves the right to submit a no-action request to the staff of the SEC, as appropriate, with respect to this Proposal for any of the foregoing reasons stated in this letter.

Sincerely,



Anthony Green  
Chief Corporate Officer, Chief Legal Officer and Secretary

cc:

Audrey Susanin, Deputy General Counsel and Chief Compliance Officer  
Lyuba Goltser, Partner, Weil, Gotshal & Manges LLP

Enclosure – Exchange Act Rule 14a-8

**Email from Mr. Chevedden to Annaly, Oct. 27, 2022, 1:43 PM ET**

From: John Chevedden <[REDACTED]>  
Sent: Thursday, October 27, 2022 1:43 PM  
To: Anthony Green <[REDACTED]>; Audrey Susanin <[REDACTED]>; Annaly Investor Relations <[investorannaly@annaly.com](mailto:investorannaly@annaly.com)>  
Subject: Rule 14a-8 Proposal (NLY)

EXTERNAL SENDER

Dear Mr. Green,  
Please see the attached rule 14a-8 proposal.  
Please confirm that this is the correct email address for rule 14a-8 proposals.  
John Chevedden



Email Disclaimer: <http://www.annaly.com/site-services/email-disclaimer.aspx>

Mr. Anthony C. Green  
Corporate Secretary  
Annaly Capital Management, Inc. (NLY)  
1211 Avenue of the Americas  
New York, NY 10036  
PH: [REDACTED]  
Fax: [REDACTED]

Dear Mr. Green,

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

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

This proposal is for the next annual shareholder meeting.

I intend to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

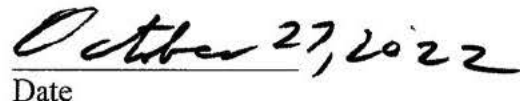
Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from formally requesting a broker letter from me.

Sincerely,

  
John Chevedden

  
Date

cc: Audrey Susanin <[REDACTED]>  
investor@annaly.com

[NLY – Rule 14a-8 Proposal, October 27, 2022]

[This line and any line above it is not for publication.]

**Proposal 4 – Adopt a Shareholder Right to Call a Special Shareholder Meeting**

Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting regardless of length of stock ownership.

One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting. Currently only non street name shareholder can participate in calling a special shareholder meeting. Thus if one makes the reasonable estimate that 50% of Annaly Capital stock is non street name stock, it means that our current requirement that 25% of shares are needed to call for a special shareholder meeting translates into 50% of this one category of stock.

Thus what seems to be a favorable 25% right to call special shareholder meeting turns into an unfavorable 50% right to call for a special shareholder meeting plus we have no right to act by written consent. A 50% stock ownership threshold to call for a special shareholder meeting means that any fleeting shareholder thought of calling for a special shareholder meeting is killed in the crib.

Plus many companies allow for both a right to call a shareholder meeting and a shareholder right to act by written consent and we have no right to act by written consent.

Calling for a special shareholder meeting is hardly ever used by shareholders but the main point of the right to call for a special shareholder meeting is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders instead of stonewalling shareholders if shareholders have a realistic Plan B option of calling a special shareholder meeting. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these low impact means are as effective as mailing a post card to the CEO. A reasonable shareholder right to call a special shareholder meeting is an important step for effective shareholder engagement with management.

Please vote yes:

**Adopt a Shareholder Right to Call a Special Shareholder Meeting – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]



Notes:

"Proposal 4" stands in for the final proposal number that management will assign.

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

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

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

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

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

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

[REDACTED]

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

This proposal is not intended to be more than 500 words. Should it exceed 500 words after notification to the proponent then the words that exceed 500 words shall be taken out of the proposal starting with the last full sentence of the proposal and moving upwards as needed to omit full sentences.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.

If there is objection to the title please negotiate or seek no action relief.

Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.



FOR

*Shareholder  
Rights*

December 13, 2022

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

**# 1 Rule 14a-8 Proposal**  
**Annaly Capital Management, Inc. (NLY)**  
**Special Shareholder Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the thinly supported December 13, 2022 no-action request.

Management claims that the process of calling a special meeting, that includes street name shareholders, is well established but does not offer one example.


Management ignores that the proposal at least seeks clarification with “clear up any ambiguity.” Management does not offer to put any clarifying text in the bylaws.

“Ambiguity” is what creates lawsuits when shareholders attempt to exercise a right that they though they had. A lawsuit kills in the crib a shareholder attempt to call a special meeting.

Management ignores that the proposal uses words like “appears.”

The proposal asks for adoption of a different right to call a special meeting and acknowledges that the current right is a higher 25% of shares.

Sincerely,

  
John Chevedden

cc: Anthony Green

**Proposal 4 – Adopt a Shareholder Right to Call a Special Shareholder Meeting**

Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting regardless of length of stock ownership.

One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting and to clear up any ambiguity that could prevent street name shareholders from the same formal participation in calling for a special shareholder meeting as non street name shareholders to the fullest extent possible.

Currently it appears only non street name shareholders can formally participate in calling for a special shareholder meeting. Thus if one makes the reasonable estimate that 50% of Annaly Capital stock is non street name stock, it means that our current requirement that 25% of shares are needed to call for a special shareholder meeting translates into 50% of this one category of stock.

Thus what seems to be a somewhat favorable 25% right to call for a special shareholder meeting turns into an unfavorable 50% right to call for a special shareholder meeting plus we have no right to act by written consent. A 50% stock ownership threshold to call for a special shareholder meeting means that any fleeting shareholder thought of calling for a special shareholder meeting is killed in the crib.

Plus many companies allow for both a right to call a shareholder meeting and a shareholder right to act by written consent and Annaly Capital Management shareholders have no right to act by written consent.

Calling for a special shareholder meeting is hardly ever used by shareholders but the main point of the right to call for a special shareholder meeting is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders instead of stonewalling shareholders if shareholders have a realistic Plan B option of calling a special shareholder meeting. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these low impact means are as effective as mailing a post card to the CEO. A reasonable shareholder right to call a special shareholder meeting is an important step for effective shareholder engagement with management.

Please vote yes:

**Adopt a Shareholder Right to Call a Special Shareholder Meeting – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]



JOHN CHEVEDDEN

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December 14, 2022

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

**# 2 Rule 14a-8 Proposal**  
**Annaly Capital Management, Inc. (NLY)**  
**Special Shareholder Meeting**  
**John Chevedden**

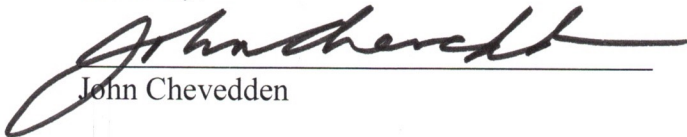
Ladies and Gentlemen:

This is in regard to the thinly supported December 13, 2022 no-action request.

According to the no action request as long a shareholder remains a street name shareholder the shareholder has no right to formally participate in calling for a special shareholder meeting.

Page 5 said, "freely move their shares into registered name."

Sincerely,



John Chevedden

cc: Anthony Green

# Weil, Gotshal & Manges LLP

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
+1 212 310 8007 fax

**Lyuba Goltser**  
lyuba.goltser@weil.com

December 20, 2022

VIA EMAIL

Office of the Chief Counsel  
Division of Corporation Finance  
US Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Annaly Capital Management, Inc.*  
*Stockholder Proposal of Mr. John Chevedden*  
*#2 Counterpoint to No-Action Request*  
*Securities Exchange Act of 1934 – Rule 14a-8*

Ladies and Gentlemen:

On December 13, 2022, Annaly Capital Management, Inc. (the “Company”) submitted a no-action request (the “No-Action Request”) to the Staff of the Division of Corporate Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) with respect to the stockholder proposal received by the Company on October 27, 2022 (the “Proposal”) from Mr. John Chevedden for inclusion in the Company’s proxy statements for its 2023 Annual Meeting of Stockholders. The purpose of this letter is to respond to Mr. John Chevedden’s letter to the Staff, emailed on December 14, 2022 under subject line “# 2 Counterpoint to No Action Request (NLY)”. The Company respectfully notes that Mr. Chevedden’s letter purposefully misrepresents the premise of the No-Action Request, including quoting language from the Company’s No-Action Request out of context, in an attempt to further perpetuate the false and misleading nature of the claims provided in the Proposal.

The contents of Mr. Chevedden’s letter are false and misleading, and the letter continues to mischaracterize the substance of the right of all of the Company’s stockholders to call a special meeting. As stated in the No-Action Request, the Company’s Amended and Restated Bylaws (the “Bylaws”) provide all stockholders, both record and beneficial, with the right to participate in calling a special stockholder meeting. Section 3(b)(2) of the Bylaws states that:

“In order for *any stockholder* (emphasis added) to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the “Special Meeting Request”) signed by

stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than twenty five percent (25%) of all of the votes entitled to be cast on such matter at such meeting...”

Mr. Chevedden’s letter selectively quotes the No-Action Request to falsely convey that it suggests that beneficial holders have no right to formally participate in the calling of a special stockholder meeting unless they move their shares into registered name. This is antithetical to the Company’s position in its No-Action Request, which clearly and unequivocally articulates that stockholders have multiple means to participate in calling a special meeting: “Stockholders that hold their shares through a broker, dealer, bank, or another entity may, if they desire, either easily direct their broker or bank to participate in calling a special meeting *or* (emphasis added) freely move their shares into registered name.” Mr. Chevedden’s assertions contradict the Bylaws and therefore perpetuate the false and misleading claims of the Proposal.

We respectfully hope that this e-mail helps clarify this matter before the Staff, and would be pleased to discuss it with the Staff if there are any further questions. Correspondence regarding this letter should be sent to [lyuba.goltser@weil.com](mailto:lyuba.goltser@weil.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 310-8048.

Sincerely,  
  
Lyuba Goltser  
Weil, Gotshal & Manges LLP

Enclosures

Cc:  
Anthony Green, Annaly Capital Management, Inc.  
Audrey Susanin, Annaly Capital Management, Inc.  
John Chevedden

December 20, 2022

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

**# 3 Rule 14a-8 Proposal**  
**Annaly Capital Management, Inc. (NLY)**  
**Special Shareholder Meeting**  
**John Chevedden**

Ladies and Gentlemen:

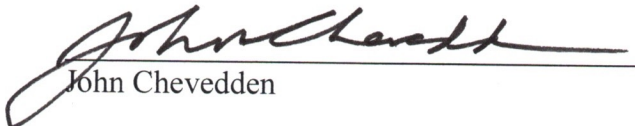
This is in regard to the thinly supported December 13, 2022 no-action request.

The below bylaw sentence contradicts itself.

It starts out with “any stockholder” and then specifies “stockholders of record.”

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the “Special Meeting Request”) signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than twenty five percent (25%) of all of the votes entitled to be cast on such matter at such meeting or, if the last sentence of Section 3(a) applies, a majority of all the votes entitled to be cast at such meeting (as applicable, the “Special Meeting Percentage”) shall be delivered to the secretary.

Sincerely,

  
John Chevedden

cc: Anthony Green

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported):  
December 8, 2022

**Annaly Capital Management, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

Maryland  
(State or other jurisdiction of  
incorporation or organization)

1-13447  
(Commission  
File Number)

22-3479661  
(IRS Employer  
Identification No.)

1211 Avenue of the Americas  
New York, New York  
(Address of principal executive offices)

10036  
(Zip Code)

Registrant's telephone number, including area code: (212) 696-0100

Not Applicable  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$0.01 per share	NLY	New York Stock Exchange
6.95% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	NLY.F	New York Stock Exchange
6.50% Series G Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	NLY.G	New York Stock Exchange
6.75% Series I Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	NLY.I	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On and effective as of December 8, 2022, the Board of Directors of Annaly Capital Management, Inc. (the "Company") approved and adopted an amendment and restatement of the Company's Bylaws (the "Amended and Restated Bylaws"). Among other things, the Amended and Restated Bylaws:

- (a) Enhance disclosure and procedural requirements in connection with stockholder nominations of directors, including by (i) requiring any stockholder submitting a director nomination notice to represent as to whether such stockholder intends to solicit proxies in support of director nominees other than the Company's nominees in accordance with Rule 14a-19 under the Securities Exchange Act of 1934, as amended, (ii) requiring such nominating stockholder to provide reasonable evidence, at the Company's request, that certain requirements of Rule 14a-19 have been satisfied, (iii) permitting the Company to disregard proxies or votes solicited for such stockholder's nominees if such stockholder fails to comply with the requirements of Rule 14a-19 and (iv) incorporating other technical changes in light of the universal proxy rules adopted by the SEC;
- (b) Clarify that a stockholder is permitted to cast a vote by proxy filed in accordance with the procedures established by the Company, if that proxy is (i) executed by such stockholder or its agent in a manner permitted by applicable law, (ii) compliant with Maryland law and the Company's Bylaws and (iii) filed in accordance with the procedures established by the Company;
- (c) Clarify that the Board of Directors of the Company may determine that a meeting of stockholders may be held by means of remote communication;
- (d) Outline the procedures for announcing the date, time and place of a reconvened meeting of stockholders in the event a meeting of stockholders



**ANNALY CAPITAL MANAGEMENT, INC.  
AMENDED AND RESTATED BYLAWS**

**ARTICLE I  
OFFICES**

Section 1. PRINCIPAL OFFICE. The principal office of Annaly Capital Management, Inc. (the "Corporation") in the State of Maryland shall be located at such place as the Board of Directors may designate.

Section 2. ADDITIONAL OFFICES. The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II  
MEETINGS OF STOCKHOLDERS**

Section 1. PLACE. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set in accordance with these Bylaws and stated in the notice of the meeting. The Board of Directors is authorized to determine that a meeting not be held at any place, but instead may be held partially or solely by means of remote communication. In accordance with these Bylaws and subject to any guidelines and procedures adopted by the Board of Directors, stockholders and proxy holders may participate in any meeting of stockholders held by means of remote communication and may vote at such meeting as permitted by Maryland law. Participation in a meeting by these means constitutes presence in person at the meeting.

Section 2. ANNUAL MEETING. An annual meeting of stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board of Directors.

Section 3. SPECIAL MEETINGS.

(a) General. The chair of the Board of Directors, the president, the chief executive officer, or the Board of Directors may call a special meeting of the stockholders. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the secretary of the Corporation to act on any matter that may properly be considered at a meeting of stockholders upon the written request of one or more stockholders of record entitled to cast not less than twenty five percent (25%) of all the votes entitled to be cast on such matter at such meeting. Unless requested by stockholders of record entitled to cast a majority of all the votes entitled to be cast at such meeting, a special meeting need not be called to consider any matter which is substantially the same as a matter voted on at any special meeting of stockholders held during the preceding twelve months.



(b) Stockholder Requested Special Meetings.

(1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the secretary of the Corporation (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information and certifications relating to each such stockholder, each individual whom the stockholder proposes to nominate for election or reelection as a director and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors or the election of each such individual, as applicable, in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten (10) days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within twenty (20) days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the twentieth (20th) day after the first date on which a Record Date Request Notice is received by the secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than twenty five percent (25%) of all of the votes entitled to be cast on such matter at such meeting or, if the last sentence of Section 3(a) applies, a majority of all the votes entitled to be cast at such meeting (as applicable, the "Special Meeting Percentage") shall be delivered to the secretary.

(3) In addition, the Special Meeting Request shall (a) set forth the specific purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the secretary), (b) bear the date of signature of each such stockholder of record (or such agent) signing the Special Meeting Request, (c) set forth (i) the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), (ii) the class, series and number of all shares of stock of the Corporation which are owned by each such stockholder (beneficially or of record), (iii) the nominee holder for, and number of, shares of stock of the Corporation owned by such stockholder beneficially but not of record, and (iv) the information, representations and agreements required by paragraphs (a) (3) and (4) of Section 11 of Article II as to the business proposed to be conducted, any nominations proposed to be presented, and as to each stockholder and beneficial owner and the other parties referenced in Section 11 of Article II proposing such business or nominations at such special meeting, (d) provide an acknowledgement by the requesting stockholders and the beneficial owners, if any, on whose behalf the Special Meeting Request is being made that a disposition of shares of the Corporation's capital stock owned of record or beneficially as of the Request Record Date shall constitute a revocation of such Special Meeting Request with respect to such disposed shares, (e) provide documentary evidence that the requesting stockholders own the Special Meeting Percentage as of the Request Record Date; provided, however, that if the requesting stockholders are not the beneficial owners of the shares representing the Special Meeting Percentage, then, to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the secretary within ten (10) days after the date on which the Special Meeting Request is delivered to the secretary) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own the Special Meeting Percentage as of the Request Record Date, (f) be sent to the secretary by registered mail, return receipt requested, and (g) be received by the secretary within sixty (60) days after the Request Record Date. The requirement set forth in clause (c)(iv) of the immediately preceding sentence shall not apply to any stockholder of record that is a broker, bank or custodian (or similar entity) and is acting solely as nominee on behalf of a beneficial owner. The Special Meeting Request shall also include a representation from each requesting stockholder and beneficial owner, if any, on whose behalf the Special Meeting Request is being made that such at least one requesting stockholder or beneficial owner or a duly authorized agent of the requesting stockholders, as applicable, will attend the special meeting of stockholders in order to present the business. The requesting stockholders and the beneficial owners, if any, on whose behalf the Special Meeting Request is being made shall also promptly provide any other information reasonably requested by the Corporation.



January 15, 2023

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

**# 4 Rule 14a-8 Proposal**  
**Annaly Capital Management, Inc. (NLY)**  
**Special Shareholder Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the thinly supported December 13, 2022 no-action request.

Another way to view the 120-word run-on bylaw sentence is that it begins with “any stockholder” and then transitions to more narrowly define the stockholders who can then actually request a special meeting.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the “Special Meeting Request”) signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than twenty five percent (25%) of all of the votes entitled to be cast on such matter at such meeting or, if the last sentence of Section 3(a) applies, a majority of all the votes entitled to be cast at such meeting (as applicable, the “Special Meeting Percentage”) shall be delivered to the secretary.

Sincerely,

  
John Chevedden

cc: Anthony Green