



SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN STREET  
CHICAGO, IL 60603  
+1 312 853 7000  
+1 312 853 7036

AMERICA • ASIA PACIFIC • EUROPE

January 2, 2024

**Via Online Submission Form**

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

Re: PulteGroup, Inc. - Shareholder Proposal Submitted by John Chevedden

Dear Ladies and Gentlemen:

On behalf of PulteGroup, Inc., a Michigan corporation (“PulteGroup” or the “Company”), and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, we hereby request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if PulteGroup excludes a shareholder proposal received on October 15, 2023 (together with the supporting statement, the “Proposal”) by John Chevedden (the “Proponent”) from the proxy materials (the “2024 Proxy Materials”) for PulteGroup’s 2024 annual shareholders’ meeting (the “2024 Annual Meeting”). PulteGroup expects to file the 2024 Proxy Materials in definitive form with the SEC on or about March 22, 2024.

Pursuant to Rule 14a-8(j),

- (a) a copy of the Proposal is attached hereto as Exhibit A; and
- (b) a copy of this letter is being sent to notify the Proponent of PulteGroup’s intention to omit the Proposal from the 2024 Proxy Materials.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter.

Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships.

## THE PROPOSAL

The Proposal relates to a request to implement a majority voting standard. The text of the Proposal, in pertinent part, states:

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

A copy of the full Proposal is attached hereto as Exhibit A.

## BASIS FOR EXCLUSION

We hereby request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Proposal is substantially implemented.

## ARGUMENT

### **The Proposal May be Excluded Under Rule 14a-8(i)(10) Because The Proposal Is Substantially Implemented.**

1. *Relevant Provisions in PulteGroup's Organizational Documents and the Anticipated Amendments to the Articles of Incorporation*

PulteGroup's Restated Articles of Incorporation, as amended (the "Articles of Incorporation"), contain two provisions calling for a supermajority vote of shareholders. The Company's Amended and Restated By-Laws effective May 3, 2023 (the "By-Laws") contain a provision providing for plurality voting in contested director elections and otherwise contain only voting standards that are the "closest standard to a majority of the votes cast for and against . . . consistent with applicable laws", as requested by the Proposal.<sup>1</sup>

---

<sup>1</sup> Section 3.2 of the By-Laws provides that a director may be removed with or without cause by the vote of the holders of a majority of the shares entitled to vote at an election of directors. Section 441 of the Michigan Business Corporation Act provides: "The vote for removal [of a director] shall be by a majority of shares entitled to vote at an election of directors except that the articles may require a *higher vote* for removal without cause" (emphasis added).

Article X of the Articles of Incorporation currently provides that certain business combinations with interested shareholders or their affiliates require the affirmative vote of the holders of at least sixty-nine and three tenths percent (69.3%) of the shares voting on the proposed business combination, subject to certain exceptions (the “Business Combination Provision”).

Articles X and XI of the Articles of Incorporation provide in relevant parts that Articles X and XI of the Articles of Incorporation may only be amended by the affirmative vote of sixty-nine and three tenths percent (69.3%) of the shares voting (the “Amendment Provisions”).

Based upon discussion by the Board of Directors of PulteGroup (the “Board”) at a Board meeting on November 15, 2023, the Board is expected, at a Board meeting on January 31, 2024 (the “Board Meeting”), to consider resolutions (i) approving amendments to the Articles of Incorporation to revise the (a) Business Combination Provision to implement a voting standard based on a majority of the outstanding shares other than voting shares beneficially owned by the interested shareholder who is, or whose affiliate is, a party to the business combination or an affiliate or associate of the interested shareholder and (b) Amendment Provisions to provide for a voting standard based on a majority of the outstanding shares entitled to vote on the proposed amendment (collectively, the “Articles Amendments”), (ii) declaring the Articles Amendments advisable and in the best interests of the Company and its shareholders, (iii) directing that the Articles Amendments be submitted to shareholders for adoption at the 2024 Annual Meeting and (iv) recommending that shareholders vote to adopt the Articles Amendments. In the event that the Board adopts the resolutions described above (the “Resolutions”), and the shareholders approve the Articles Amendments at the 2024 Annual Meeting, PulteGroup will have removed all supermajority voting provisions requiring the affirmative vote of the holders of at least sixty-nine and three tenths percent (69.3%) of the shares voting from its Articles of Incorporation. The text of the Articles Amendments, marked to show proposed revisions, will be included in the supplemental letter, as described below, notifying the Staff of the Board’s action on this matter shortly after the Board Meeting.

## *2. Rule 14a-8(i)(10) Background*

Rule 14a-8(i)(10) permits a company to omit a proposal from its proxy materials if the company has substantially implemented the proposal, so as “to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management.” *Release No. 34-12598 (July 7, 1976)*. Originally, the Staff interpreted this standard narrowly and granted no-action relief only when proposals were “‘fully’ effected” by the company. *See Release No. 34-19135 (Oct. 14, 1982)*. However, the Commission later recognized that the “previous formalistic application of [the rule] defeated its purpose.” *See Release No. 34-20091 (Aug. 16, 1983)*. The Staff now interprets this exclusion to apply when the company has taken actions to address satisfactorily the proposal’s underlying concerns and

its “essential objectives”. See, e.g., *Bank of America Corp.* (avail. Jan. 19, 2018) and *Anheuser-Busch Cos., Inc.* (avail. Jan. 17, 2007). The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991). Although the implementation of this standard is fact-dependent, the Commission has consistently allowed the exclusion of a proposal under Rule 14a-8(i)(10) when a company demonstrates that it has already taken actions to address the underlying concerns and “essential objectives” outlined in a proposal, even if the proposal is not implemented in full or precisely as proposed. See, e.g., *Exxon Mobil Corp.* (Mar. 23, 2018) (concurring with exclusion of a proposal requesting that the company issue a report “describing how the company could adapt its business model to align with a decarbonizing economy by altering its energy mix to substantially reduce dependence on fossil fuels” where the company had previously issued a report providing examples of how the company was adapting its business model to reduce greenhouse gas emissions).

With respect to so-called “simple majority vote” proposals similar to the Proposal, the Staff has repeatedly concurred with exclusion under Rule 14a-8(i)(10) where such proposals have sought the elimination of provisions requiring “a greater than simple majority vote” in situations where the company replaces a supermajority vote standard with, or retains an existing voting requirement of, a majority of shares outstanding. See, e.g., *AbbVie Inc.* (avail. Mar. 2, 2021)\* (concurring with exclusion of a proposal similar to the Proposal under Rule 14a-8(i)(10) where the proposed amendments to the company’s charter and by-laws would replace supermajority standards for amendments thereto with voting standards based on a majority of the outstanding shares of common stock); *Stanley Black & Decker, Inc.* (avail. Jan. 15, 2021)\* (concurring with exclusion of a proposal similar to the Proposal submitted by the same shareholder proponent under Rule 14a-8(i)(10) where proposed amendments to the charter would include requirements that certain provisions relating to certain business combinations and related amendments would require the approval of the holders of not less than a majority of the outstanding shares of stock entitled to vote); *Fortive Corporation* (avail. Feb. 12, 2020) (concurring with exclusion of a proposal similar to the Proposal by the same shareholder proponent where the company proposed replacing all supermajority voting provisions in its charter that applied to the company’s common stock with a majority of the outstanding shares standard); and *Fortive Corporation* (avail. Mar. 13, 2019) (same).

Turning to the specific organizational document provisions at issue here, first, with respect to provisions that relate to business combinations with interested shareholders, the Staff has concurred with exclusion under Rule 14a-8(i)(10) where the company retains a business combination provision in its governing documents with an approval standard based on a majority of the outstanding shares not held by the interested shareholder. For example, in *Mastercard*

---

\* Citations marked with an asterisk indicate Staff decisions issued without a letter.

# SIDLEY

Page 5

*Incorporated* (avail. Mar. 20, 2021)\*, the Staff concurred with exclusion of a proposal nearly identical to the Proposal submitted by the same shareholder proponent under Rule 14a-8(i)(10) where the company proposed amendments contingent on shareholder approval to opt out the state default statute regarding business combinations with interested shareholders in Section 203 of the Delaware General Corporation Law (“DGCL Section 203”), which applies a requirement for approval by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested shareholder, and instead add a provision regarding business combinations with interested shareholders in the company’s charter that would require the “affirmative vote of at least a majority of the outstanding voting stock of the Corporation which is not owned by the interested stockholder”. The Staff reached the same conclusion where a business combination with an interested shareholder would require the approval of a majority of the outstanding shares not held by the interested shareholder based on applicable state law, rather than an organizational document provision, in *Flowserve Corporation* (avail. Mar. 30, 2021)\* (concurring with exclusion pursuant to Rule 14a-8(i)(10) of a proposal nearly identical to the Proposal and by the same shareholder proponent where the company’s board of directors approved an amendment to the company’s charter to remove the supermajority provision for business combinations with interested shareholders such that New York law would apply by default, where New York Business Corporation Law Section 912 requires approval of the transaction “by the affirmative vote of the holders of a majority of the outstanding voting stock not beneficially owned by such interested shareholder or any affiliate or associate of such interested shareholder”). The Staff has even concurred with exclusion of a proposal nearly identical to the Proposal and by the same shareholder proponent under Rule 14a-8(i)(10) where a company elected to be governed by DGCL Section 203. See *CDW Corporation* (avail. Mar. 22, 2021)\*.

Second, with respect to plurality voting for contested director elections, the Staff has consistently concurred that proposals very similar to the Proposal were substantially implemented under Rule 14a-8(i)(10) where a company retains a plurality voting standard for director elections in contested elections, as it is not a “greater than simple majority vote” standard. See, e.g., *AT&T Inc.* (avail. Mar. 15, 2023); *Northrop Grumman* (avail. Mar. 16, 2006); and *Pfizer, Inc.* (avail. Jan. 31, 2006).

Finally, from a timing perspective, because companies’ actions in this regard often involve an amendment to a company’s articles of incorporation or similar governing document in a manner that requires a shareholder vote (*i.e.*, the board of directors is unable to act unilaterally), the Staff has regularly concurred with exclusion where the company intends to submit appropriate amendments to replace supermajority voting standards for shareholder approval at the upcoming annual meeting of shareholders. For example, in *Marriott International, Inc.* (avail. Mar. 22, 2021)\*, the company argued that amendments to its articles of incorporation that its board of directors had directed to submit for a vote at its shareholders’

meeting should result in a proposal similar to the Proposal being excludable under Rule 14a-8(i)(10) since the company's proposal, if approved, would eliminate all supermajority voting requirements, and the Staff concurred with exclusion. *See also United Technologies Corp.* (avail. Mar. 1, 2019) (concurring with exclusion under Rule 14a-8(i)(10) of a similar shareholder proposal where the company's proposal, if approved, would eliminate the supermajority provisions in the company's governing documents).

3. *The Anticipated Articles Amendments Substantially Implement the Proposal*

As in the precedent cited above, the anticipated Articles Amendments substantially implement the Proposal. Specifically, in the event that the Board adopts the Resolutions at the Board Meeting, the Company's shareholders will be asked at the 2024 Annual Meeting to vote to adopt the Articles Amendments that would, if approved, eliminate the only supermajority vote standards requiring the affirmative vote of the holders of at least sixty-nine and three tenths percent (69.3%) of the shares voting in the Articles of Incorporation. As a result, upon the Board's adoption of the Resolutions, the Company will have addressed the "essential objective" of the Proposal. We are submitting this letter on behalf of PulteGroup before the Board has approved the Articles Amendments and related Resolutions due to the timing requirements of Rule 14a-8(j). Consistent with the precedent cited above, the Company will notify the Staff once formal action has been taken by the Board to adopt the Articles Amendments and related Resolutions.

## CONCLUSION

For the foregoing reasons, on behalf of PulteGroup, we request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the 2024 Proxy Materials for the reasons described in this letter.

If the Staff has any questions, or if for any reason the Staff does not agree that PulteGroup may omit the Proposal from its 2024 Proxy Materials, please contact me at 312-853-7783 or [swilliams@sidley.com](mailto:swilliams@sidley.com).

Sincerely yours,



Scott R. Williams

Enclosure: Exhibit

cc: Mr. John Chevedden

**SIDLEY**

Page 7

Exhibit A

Proposal

*See attached.*

[PHM: Rule 14a-8 Proposal, October 15, 2023]  
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Simple Majority Vote**

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. This proposal topic also received overwhelming 98%-support each at the 2023 annual meetings of American Airlines (AAL) and The Carlyle Group (CG).

Please vote yes:

**Simple Majority Vote – Proposal 4**  
[The above line – *Is* for publication.]