

VULCAN MATERIALS CO

FORM 8-K (Current report filing)

Filed 04/04/12 for the Period Ending 04/04/12

Address	1200 URBAN CENTER DRIVE BIRMINGHAM, AL 35242
Telephone	2052983000
CIK	0001396009
Symbol	VMC
SIC Code	1400 - Mining & Quarrying of Nonmetallic Minerals (No Fuels)
Industry	Construction - Raw Materials
Sector	Capital Goods
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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): April 4, 2012

VULCAN MATERIALS COMPANY

(Exact name of registrant as specified in its charter)

New Jersey

(State or other jurisdiction
of incorporation)

001-33841

(Commission File Number)

20-8579133

(IRS Employer Identification No.)

1200 Urban Center Drive
Birmingham, Alabama 35242

(Address of principal executive offices) (zip code)

(205) 298-3000

Registrant's telephone number, including area code:

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 obligations 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))

Item 8.01 Other Events.

On April 4, 2012, Vulcan Materials Company ("Vulcan") sent the letter attached hereto as Exhibit 99.1 to Martin Marietta Materials, Inc. ("Martin Marietta") concerning certain agreements entered into between Martin Marietta and its proposed nominees for Vulcan's Board of Directors with respect to Vulcan's 2012 Annual Meeting of Shareholders.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
99.1	Letter to Martin Marietta Materials, Inc., dated April 4, 2012

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant had duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Vulcan Materials Company

Date: April 4, 2012

By: /s/ Robert A. Wason
Name: Robert A. Wason IV
Title: Senior Vice President
& General Counsel

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
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99.1	Letter to Martin Marietta Materials, Inc., dated April 4, 2012
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[VMC Letterhead]

April 4, 2012

BY FACSIMILE AND E-MAIL

Martin Marietta Materials, Inc.
2710 Wycliff Road
Raleigh, North Carolina 27607-3033
Telephone: 919-783-4603
Facsimile: 919-783-4535

Attention: Roselyn R. Bar, Senior Vice President, General Counsel and Corporate Secretary

Re: Notice of Nomination

Dear Ms. Bar:

I am writing on behalf of Vulcan Materials Company ("Vulcan") in response to your April 3, 2012 letter concerning Martin Marietta Materials, Inc.'s ("Martin Marietta") nomination of candidates for Vulcan's Board of Directors with respect to Vulcan's 2012 Annual Meeting of Shareholders and, in particular, the confidentiality agreements entered into by Martin Marietta with its proposed nominees that were not disclosed in Martin Marietta's nomination documents (the "Nominee Agreements").

We take note of your assertions that the Nominee Agreements are straightforward and were not required to be disclosed by Vulcan's Bylaws and associated questionnaire and Representation and Agreement or the SEC rules, and that "[t]he only commitment given to [Martin Marietta] by each of the [n]ominees is that he or she will stand for election to the Vulcan Board and, if elected, will serve on the Vulcan Board." However, to date you have chosen not to make these agreements public, which for example could easily be done via an exhibit to your recent letter filing, or to otherwise make them available to Vulcan in a manner that would permit them to be used in connection with Vulcan's review of the nomination in accordance with its governing documents.

Although you suggest that Martin Marietta has already given these agreements to Vulcan, they were produced under a court order and the Vulcan Board does not have access to them. We hereby reiterate our request for you to produce the Nominee Agreements as soon as possible so that the Vulcan Board can proceed with its review.

This letter is not and should not in any way be deemed to be an admission by Vulcan that Martin Marietta's nomination materials would be valid but for the matters raised herein, or that Martin Marietta has otherwise complied with the applicable provisions of the Bylaws or of applicable law. Vulcan expressly preserves its right to challenge other defects in the nomination documents, and does not waive any such right or any related rights.

Roselyn R. Bar
Senior Vice President, General Counsel and Corporate Secretary
Martin Marietta Materials, Inc.
April 4, 2012

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Sincerely,

/s/ Robert A. Wason IV

Robert A. Wason IV

cc: Edward D. Herlihy, Esq., Wachtell, Lipton, Rosen & Katz
Igor Kirman, Esq., Wachtell, Lipton, Rosen & Katz

Philip R. Lochner, Jr.
Edward W. Moneypenny
Karen R. Osar
V. James Sardo
J. Keith Matheney
A. Jay Meyerson
c/o McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, NJ 07962-2075
Attn: Joseph LaSala