

**VULCAN MATERIALS CO**  
Filed by  
**MARTIN MARIETTA MATERIALS INC**

**FORM 425**

(Filing of certain prospectuses and communications in connection with business combination transactions)

Filed 04/17/12

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

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**FORM 8-K**

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**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 16, 2012**

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**Martin Marietta Materials, Inc.**

(Exact name of registrant as specified in its charter)

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**North Carolina**  
(State or Other Jurisdiction of Incorporation)

**1-12744**  
(Commission File Number)

**56-1848578**  
(IRS Employer Identification Number)

**2710 Wycliff Road**  
**Raleigh, NC 27607**  
(Address of principal executive offices, including zip code)

**(919) 781-4550**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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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 (see General Instruction A.2. below):

- ☒ 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))
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**Item 8.01 Other Events**

On April 16, 2012 Martin Marietta Materials, Inc. issued a public letter (the “Letter”) to the shareholders of Vulcan Materials Company (“Vulcan”) with respect to Vulcan’s April 11, 2012 filing of its preliminary proxy statement in connection with its 2012 annual meeting of shareholders.

A copy of the Letter is attached as Exhibit 99.1.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<u>Exhibit</u>	<u>Description</u>
Exhibit 99.1	Letter to the shareholders of Vulcan Materials Company, dated April 16, 2012

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## Cautionary Note Regarding Forward-Looking Statements

This document may include “forward-looking statements.” Statements that include words such as “anticipate,” “expect,” “should be,” “believe,” “will,” and other words of similar meaning in connection with future events or future operating or financial performance are often used to identify forward-looking statements. All statements in this document, other than those relating to historical information or current conditions, are forward-looking statements. These forward-looking statements are subject to a number of risks and uncertainties, many of which are beyond Martin Marietta’s control, which could cause actual results to differ materially from such statements. Risks and uncertainties relating to the proposed transaction with Vulcan include, but are not limited to: Vulcan’s willingness to accept Martin Marietta’s proposal and enter into a definitive transaction agreement reasonably satisfactory to the parties; Martin Marietta’s ability to obtain shareholder, antitrust and other approvals on the proposed terms and schedule; uncertainty as to the actual premium that will be realized by Vulcan shareholders in connection with the proposed transaction; uncertainty of the expected financial performance of the combined company following completion of the proposed transaction; Martin Marietta’s ability to achieve the cost-savings and synergies contemplated by the proposed transaction within the expected time frame; Martin Marietta’s ability to promptly and effectively integrate the businesses of Vulcan and Martin Marietta; the combined company’s ability to pay dividends in the amounts anticipated; a downgrade of the credit rating of Vulcan’s indebtedness, which could give rise to an obligation to redeem Vulcan’s existing indebtedness; the potential implications of alternative transaction structures with respect to Vulcan, Martin Marietta and/or the combined company, including potentially requiring an offer to repurchase certain of Martin Marietta’s existing debt; the implications of the proposed transaction on certain of Martin Marietta’s and Vulcan’s employee benefit plans; and disruption from the proposed transaction making it more difficult to maintain relationships with customers, employees or suppliers. Additional risks and uncertainties include, but are not limited to: the performance of the United States economy; decline in aggregates pricing; the inability of the U.S. Congress to pass a successor federal highway bill; the discontinuance of the federal gasoline tax or other revenue related to infrastructure construction; the level and timing of federal and state transportation funding, including federal stimulus projects; the ability of states and/or other entities to finance approved projects either with tax revenues or alternative financing structures; levels of construction spending in the markets that Martin Marietta and Vulcan serve; a decline in the commercial component of the nonresidential construction market, notably office and retail space; a slowdown in residential construction recovery; unfavorable weather conditions, particularly Atlantic Ocean hurricane activity, the late start to spring or the early onset of winter and the impact of a drought or excessive rainfall in the markets served by Martin Marietta and Vulcan; the volatility of fuel costs, particularly diesel fuel, and the impact on the cost of other consumables, namely steel, explosives, tires and conveyor belts; continued increases in the cost of other repair and supply parts; transportation availability, notably barge availability on the Mississippi River system and the availability of railcars and locomotive power to move trains to supply Martin Marietta’s and Vulcan’s long haul distribution markets; increased transportation costs, including increases from higher passed-through energy and other costs to comply with tightening regulations as well as higher volumes of rail and water shipments; availability and cost of construction equipment in the United States; weakening in the steel industry markets served by Martin Marietta’s dolomitic lime products; inflation and its effect on both production and interest costs; Martin Marietta’s ability to successfully integrate acquisitions and business combinations quickly and in a cost-effective manner and achieve anticipated profitability to maintain compliance with Martin Marietta’s leverage ratio debt covenants; changes in tax laws, the interpretation of such laws and/or administrative practices that would increase Martin Marietta’s and/or Vulcan’s tax rate; violation of Martin Marietta’s debt covenant if price and/or volumes return to previous levels of instability; a potential downgrade in the rating of Martin Marietta’s or Vulcan’s indebtedness; downward pressure on Martin Marietta’s or Vulcan’s common stock price and its impact on goodwill impairment evaluations; the highly competitive nature of the construction materials industry; the impact of future regulatory or legislative actions; the outcome of pending legal proceedings; healthcare costs; the amount of long-term debt and interest expense; changes in interest rates; volatility in pension plan asset values which may require cash contributions to pension plans; the impact of environmental clean-up costs and liabilities relating to previously divested businesses; the ability to secure and permit aggregates reserves in strategically located areas; exposure to residential construction markets; and the impact on the combined company (after giving effect to the proposed transaction with Vulcan) of any of the foregoing risks, as well as other risk factors listed from time to time in Martin Marietta’s and Vulcan’s filings with the SEC.

The foregoing review of important factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included elsewhere, including the Risk Factors section of the Registration Statement and our most recent report on Form 10-K, and any other documents of Martin Marietta and Vulcan filed with the SEC. Any forward-looking statements made in this document are qualified in their entirety by these cautionary statements, and there can be no assurance that the actual results or developments anticipated by us will be realized or, even if substantially realized, that they will have the expected consequences to, or effects on, us or our business or operations. Except to the extent required by applicable law, we undertake no obligation to update publicly or revise any forward-looking statement, whether as a result of new information, future developments or otherwise.

## Important Additional Information

This document relates to the Exchange Offer by Martin Marietta to exchange each issued and outstanding share of common stock of Vulcan for 0.50 shares of Martin Marietta common stock. This document is for informational purposes only and does not constitute an offer to exchange, or a solicitation of an offer to exchange, shares of Vulcan common stock, nor is it a substitute for the Tender Offer Statement on Schedule TO or the preliminary prospectus/offer to exchange included in the Registration Statement on Form S-4 (the “Registration Statement”) (including the letter of transmittal and related documents and as amended and supplemented from time to time, the “Exchange Offer Documents”) initially filed by Martin Marietta on December 12, 2011 with the SEC. The Registration Statement has not yet become effective. The Exchange Offer will be made only through the Exchange Offer Documents. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE EXCHANGE OFFER DOCUMENTS AND ALL OTHER RELEVANT DOCUMENTS THAT MARTIN MARIETTA HAS FILED OR MAY FILE WITH THE SEC WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION.

In connection with the solicitation of proxies for Vulcan’s 2012 annual meeting of shareholders (the “Vulcan Meeting”), Martin Marietta filed a preliminary proxy statement on January 24, 2012 (as amended, the “Vulcan Meeting Preliminary Proxy Statement”) with the SEC and intends to file a definitive proxy statement in connection therewith (the “Vulcan Meeting Definitive Proxy Statement”). When completed, the

Vulcan Meeting Definitive Proxy Statement and accompanying proxy card will be mailed to the shareholders of Vulcan. Martin Marietta also intends to file a proxy statement on Schedule 14A and other relevant documents with the SEC in connection with its solicitation of proxies for a meeting of Martin Marietta shareholders (the “Martin Marietta Meeting”) to approve, among other things, the issuance of shares of Martin Marietta common stock pursuant to the Exchange Offer (the “Martin Marietta Meeting Proxy Statement”). INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE VULCAN MEETING PRELIMINARY PROXY STATEMENT, THE VULCAN MEETING DEFINITIVE PROXY STATEMENT, THE MARTIN MARIETTA MEETING PROXY STATEMENT AND OTHER RELEVANT MATERIALS AS THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.

All documents referred to above, if filed, will be available free of charge at the SEC’s website ([www.sec.gov](http://www.sec.gov)) or by directing a request to Morrow & Co., LLC at (877) 757-5404 (banks and brokers may call (800) 662-5200).

Martin Marietta, its directors and executive officers and the individuals nominated by Martin Marietta for election to Vulcan’s Board of Directors are participants in any solicitation of proxies from Vulcan shareholders for the Vulcan Meeting or any adjournment or postponement thereof. Martin Marietta, its directors and executive officers are participants in any solicitation of proxies from Martin Marietta shareholders for the Martin Marietta Meeting or any adjournment or postponement thereof. Information about the participants, including a description of their direct and indirect interests, by security holdings or otherwise, is available in the Registration Statement, the proxy statement for Martin Marietta’s 2011 annual meeting of shareholders, filed with the SEC on April 8, 2011, and the Vulcan Meeting Preliminary Proxy Statement, or will be available in the Vulcan Meeting Definitive Proxy Statement or the Martin Marietta Meeting Proxy Statement, as applicable.

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## SIGNATURES

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

Date: April 16, 2012

By:	<u>/s/ Roselyn R. Bar</u>
Name:	Roselyn R. Bar
Title:	Senior Vice President, General Counsel and Corporate Secretary

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## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 99.1	Letter to the shareholders of Vulcan Materials Company, dated April 16, 2012

# Martin Marietta Materials



## PUBLIC LETTER TO VULCAN SHAREHOLDERS

April 16, 2012

On April 11, 2012, Vulcan Materials Company filed a preliminary proxy statement for its annual shareholders' meeting. Unfortunately, in its preliminary proxy statement Vulcan repeats many of its prior unfounded assertions in defense of its rejection of Martin Marietta Materials, Inc.'s compelling business combination proposal. Vulcan's preliminary proxy statement also includes a significant number of other materially misleading statements.

Martin Marietta believes that all Vulcan shareholders should know that Vulcan appears to be attempting to impugn and to improperly disqualify the independent director candidates proposed by Martin Marietta for election to Vulcan's Board. Vulcan's actions indicate that it is threatening to disenfranchise Vulcan shareholders, depriving you of your basic rights as shareholders to vote for director candidates.

Martin Marietta's main purpose in proposing its four nominees – a minority of the Vulcan Board – is to bring into the Vulcan Board room a fresh, independent perspective on whether Vulcan should engage with Martin Marietta on its business combination proposal. We believe there is significant value inherent in Martin Marietta's proposed business combination – including a premium for your shares, the reinstatement of a meaningful dividend, relief from Vulcan's substantial debt and a significantly strengthened balance sheet. However, these nominees cannot and will not represent Martin Marietta in the Vulcan Board room. And they cannot and will not be constrained from conscientiously exercising their fiduciary duties in the best interests of you, the Vulcan shareholders. These nominees are experienced business professionals with no connection whatsoever to Martin Marietta – in fact, none of the nominees has ever communicated with any Martin Marietta officer or director. The background and qualifications of the nominees were previously disclosed in Martin Marietta's preliminary proxy statement, as amended, a copy of which can be found at the SEC's website and [www.aggregatesleader.com](http://www.aggregatesleader.com).

If in the end you believe these nominees or any of them will not act properly and represent your interests, you should not vote for them. This is your prerogative. But, it surely is not your Board's and senior management's right to usurp your prerogative and not allow your voice to be heard, particularly based on a campaign of blatant misinformation.

Martin Marietta has an undeniable interest in having you vote on these nominees – and so do you. It is obvious that your Board and senior management won't pay us any heed. Perhaps they will consider the views of those to whom they are accountable, you the shareholders – on a fundamental issue of your right as shareholders to consider and elect directors reasonably presented to you.



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What is happening is clear enough. Your Board and senior management seem to be using every means at their disposal to impede consideration of Martin Marietta's nominees and proposal. That strategy is now focused on the election of directors at the 2012 annual meeting. Your Board and senior management appear to have:

- purposefully and calculatingly delayed raising so-called issues about the independent nominees proposed by Martin Marietta,
- ignored known refutations to plainly wrong statements about the nominees,
- implemented a disinformation campaign about the nominees, and
- continued unjustifiably to refuse to confirm that no objection will be raised to the nominees being presented for election at the annual shareholders' meeting.

You should understand that if your Board and senior management succeed in preventing you from voting on the nominees proposed by Martin Marietta, you will have no effective recourse. Even if, in protest, a "withhold vote" campaign for the Vulcan nominees is successful, Vulcan's governing documents provide that your remaining incumbent directors will decide whether to accept the resignations of the directors not receiving a majority vote or, even if the resignations are accepted, whether anyone and, if so, who, will be appointed in their stead. In sum, your voice as shareholders will be stifled.

If this is not an outcome you want, we urge you to act now by expressing your views directly and openly to Vulcan's Board and to your fellow shareholders.

The Annex to this letter contains a detailed account of the key components of your Board's and senior management's misinformation campaign and other tactics reflected in Vulcan's preliminary proxy statement. Please read it. We believe it speaks very clearly of a Board and senior management acting in a manner that is totally disrespectful of shareholders.

Yours sincerely,

/s/ C. Howard Nye  
President and Chief Executive Officer  
Martin Marietta Materials, Inc.

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**ANNEX TO  
PUBLIC LETTER TO VULCAN SHAREHOLDERS**

**MISINFORMATION, TIMING AND OTHER TACTICS OF  
VULCAN'S BOARD OF DIRECTORS AND SENIOR MANAGEMENT**

- i **Vulcan's Objections to the Nominee Arrangements Are Misleading and Unfounded.** Vulcan suggests that the "nominees' ability to fairly evaluate Martin Marietta's exchange offer could be colored by their relationship with Martin Marietta" based on the "confidentiality, compensation, reimbursement and indemnification arrangements" with the director nominees. Vulcan also proclaims that the compensation, reimbursement and indemnification agreements "do not appear to terminate upon election" to Vulcan's Board.
- First and foremost, Vulcan completely ignores that the nominee confidentiality agreements are no longer in force or effect. While effectively mooted by Martin Marietta's disclosure in its S-4 filed on December 12, 2011, in an effort to foreclose Vulcan gamesmanship on these matters, on April 9, 2012, Martin Marietta expressly released the nominees from any further obligations under the confidentiality agreements – and announced that publicly. Undaunted by this conclusive fact, Vulcan deceptively asserts that the agreements' "obligations would, by their terms, continue through the length of the nominee's service on Vulcan's Board if elected."
  - As to the compensation, reimbursement and indemnification arrangements, they are entirely customary for director nominees proposed by a shareholder to run against nominees proposed by a company's board of directors. If one were to accept the reasoning of Vulcan's objections to the Martin Marietta nominees based on these arrangements, the independence of every nominee ever proposed by a shareholder would be called into question, essentially depriving shareholders of their fundamental right to select the overseers of *their* company.
  - Moreover, a simple reading of the applicable compensation, reimbursement and indemnification agreements – something Vulcan and its counsel must have done (they are attached as exhibits to Martin Marietta's proxy statement) – shows that these agreements by their terms apply only to the nominee's actions as a director candidate, including the nominee's agreement to serve as a director, if elected, but not to a nominee's actual service as a director.
- i **The Timing of Vulcan's Objections Appears to be Purely Tactical and Not at All Supported by its False Claims.** Vulcan received the nominees' completed director questionnaires on January 24, 2012, together with all documentation requested by Vulcan's corporate secretary – any alleged concerns about customary compensation, reimbursement or indemnification arrangements easily could have been voiced before the passing of the submission deadline under Vulcan's Bylaws. In addition, Vulcan asserts that it only "recently learned about the existence" of the confidentiality agreements. In fact, Vulcan has possessed the confidentiality agreements since February 27, 2012. Vulcan failed to raise any so-called issues about the confidentiality agreements for more than a month.
- i **Vulcan is Attempting to Manufacture a Conflict of Interest that it Knows Does Not Exist.** Vulcan continues to allege that the confidentiality agreements (which as noted above are no longer in force or effect) between Martin Marietta's counsel and the independent director nominees

somehow “raise questions about the relationship between Martin Marietta and such nominees, as well as the qualifications of these nominees under Vulcan’s governing documents.” You should know that:

- Vulcan is creating unwarranted suspicion by continuing to mention in a questioning way that, under the confidentiality agreements, the nominees “ ‘agree[d] to be bound as a ‘Representative’ ’ of Martin Marietta, as defined in the [Vulcan / Martin Marietta non-disclosure agreement].” Even if the nominee confidentiality agreements were still in effect (which they are not), there is absolutely nothing wrong here and Vulcan knows it. The term “Representative”, as used in the non-disclosure agreement to which Vulcan itself is a party, means only that the nominees are among the parties subject to an obligation of confidentiality under the non-disclosure agreement (and provides no basis for suggesting that the nominees are Martin Marietta’s “representative” on the Vulcan Board, although that appears to be the inference Vulcan would like people to draw).
- Through further word games, Vulcan even suggests that Martin Marietta is somehow to be faulted for mysteriously disclosing a “form of” the confidentiality agreement. Vulcan conveniently omits that Martin Marietta provided copies of each confidentiality agreement to Vulcan on the same day the form was publicly released, and that, as clearly explained in Martin Marietta’s 8-K that attached the form agreement, each actual confidentiality agreement was *identical* in form and substance to the other agreements and the publicly released form.

j **Vulcan’s Demand for Communications between Martin Marietta and the Nominees Appears to be a Tactic that Vulcan is Using to Run Out the Clock on the Nomination Process.** At this late date, as part of its staged delay tactic campaign, Vulcan now insists that it needs to review “certain Martin Marietta communications with the nominees” as part of its self-declared right – that we believe is an improper denial of a shareholder prerogative under New Jersey law – to pre-screen shareholder nominated directors.

- Notwithstanding having reviewed the confidentiality agreements, Vulcan still has not taken a definitive stance on the qualification of Martin Marietta’s director nominees. Instead, Vulcan manufactured a new basis for delay – offering the pretext that it needs to “receive from Martin Marietta various items, including certain Martin Marietta communications with the nominees, in connection with Vulcan’s review of Martin Marietta’s nominees.”
  - Vulcan’s improper tactics could not be any clearer. There is no reason to disqualify Martin Marietta’s nominees. Each has an impeccable record. Each has agreed to act independently and in the best interests of Vulcan’s shareholders. And each will consider Martin Marietta’s proposal in a manner that is fair and in the best interests of Vulcan’s shareholders – not of Vulcan’s Board or senior management.

j **Vulcan’s Assertion that the Vulcan Director Nominees are Not “Interested Parties” With Respect to the Exchange Offer Provides an Incomplete Picture.** Vulcan asserts that its nominees are not interested parties with respect to the exchange offer (and implies that Martin Marietta’s nominees are interested). The fact is, Vulcan’s nominees and its other incumbent directors have already taken a unanimous position against the Martin Marietta proposal and have rejected negotiations to explore additional potential value. Clearly they have made up their minds. By contrast, the Martin Marietta nominees have executed written agreements acknowledging that they have not committed, and cannot commit, to support any proposal by Martin Marietta. None of the nominees have any prior or current relationship with Martin Marietta and, indeed, there have

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been no communications between any Martin Marietta director or officer and the nominees. They are being compensated, reimbursed and indemnified by Martin Marietta for their time and potential liability as nominees in a contested election pursuant to entirely customary arrangements for non-management nominees, which only cover their actions prior to their election to the Vulcan Board.