

VULCAN MATERIALS CO
Filed by
MARTIN MARIETTA MATERIALS INC

FORM 425

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

Filed 04/09/12

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, 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): April 9, 2012

Martin Marietta Materials, Inc.

(Exact name of registrant as specified in its charter)

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)

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))
-
-

Item 8.01 Other Events

On April 9, 2012, Martin Marietta Materials, Inc. (“Martin Marietta”) sent a letter (the “Letter”) to Vulcan Materials Company (“Vulcan”) in response to the letter Martin Marietta received from Vulcan on April 4, 2012, regarding Martin Marietta’s proposed director nominees to Vulcan’s Board of Directors.

A copy of the Letter is attached as Exhibit 99.1.

In addition, as noted in the Letter, copies of the confidentiality agreements (which are identical in form and substance) that were entered into with each of the proposed nominees and alternate nominees were sent to Vulcan. The form of such confidentiality agreement is attached as Exhibit 99.2.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit</u>	<u>Description</u>
Exhibit 99.1	Letter to Vulcan Materials Company, dated April 9, 2012
Exhibit 99.2	Form of Confidentiality Agreement

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) 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.

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 9, 2012

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

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 99.1	Letter to Vulcan Materials Company, dated April 9, 2012
Exhibit 99.2	Form of Confidentiality Agreement

Martin Marietta Materials



2710 Wycliff Road
Raleigh, North Carolina 27607-3033
Telephone (919) 783-4603
Facsimile (919) 783-4535
Email roselyn.bar@martinmarietta.com

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

April 9, 2012

Vulcan Materials Company
1200 Urban Center Drive
Birmingham, Alabama 35242

Attention: Robert A. Wason IV
Senior Vice President and General Counsel

Re: Notice of Nomination

Dear Mr. Wason:

The right of shareholders to nominate directors, and the right of other shareholders to vote on the election of such nominees, are fundamental to corporate governance under New Jersey law. The efforts of Vulcan Materials Company (“Vulcan”) to subvert these rights, most recently manifested in your letter to me of April 4, 2012, contravene New Jersey law, violate the fiduciary duties of Vulcan’s management and Board, and are disrespectful of Vulcan’s shareholders. Indeed, Martin Marietta Materials, Inc.’s (“Martin Marietta”) lawsuit in New Jersey against Vulcan predicted that Vulcan would conjure up some issues concerning the nominees with the goal of disenfranchising its shareholders. Unfortunately, that appears to have been a sound prediction. Neither Martin Marietta nor, we believe, other Vulcan shareholders will sit idly by and let that happen.

Your letter continues to raise completely unsupportable suspicions about the independence of the proposed director nominees and alternate nominees (“Nominees”) of Martin Marietta and whether proper disclosure was made to Vulcan. The illegitimacy of this effort is demonstrable:

- Your ostensible concern about independence and disclosure is belied by your complete lack of timeliness in asserting any concern. You have had in your possession the responses of the Nominees to Vulcan’s questionnaires since February 13, 2012, and the confidentiality agreements that were entered into between Martin Marietta’s counsel, Skadden, Arps, Slate, Meagher & Flom LLP, and each of the Nominees (the “Agreements”) since February 27, 2012. Yet you failed to raise any so-called issues about the Nominees for more than a month.

-
- On the face of the Agreements the Nominees never agreed to be “Representatives” of Martin Marietta on Vulcan’s Board and the Agreements have no bearing whatsoever on their independence.
 - The Agreements in no way restrict the Nominees from exercising their fiduciary duties solely as directors of Vulcan if and when they are elected.

In sum, the Agreements present no issues regarding the Nominees and never have. Moreover, Martin Marietta’s process with respect to the Nominees has been, and continues to be, in full compliance with the applicable requirements of New Jersey law, the Securities and Exchange Commission and Vulcan. Vulcan’s shareholders deserve the opportunity to consider the Nominees on their merits as director candidates fully prepared and able to exercise completely independent judgment solely in the interests of Vulcan and its shareholders. To further that outcome, although certainly not necessary in light of the foregoing, Martin Marietta confirms that the Nominees have no continuing obligations to it under the Agreements. In addition, copies of the Agreements are enclosed per your request (a form of which is also being filed with the Securities and Exchange Commission). These actions should make clear to all that these Agreements are of no moment and Vulcan’s actions to suggest otherwise are a feeble attempt to create a smokescreen.

For the record, the delivery of this letter shall not be deemed to constitute an admission by Martin Marietta that any notice with respect to the Nominees was or is in any way defective, or a waiver by Martin Marietta of its right, in any way, to contest or challenge any of the foregoing matters. In addition, the delivery of this letter is not an admission that the procedures set forth in Vulcan’s Bylaws are legal, valid or binding, and Martin Marietta reserves all rights in connection with such matters and the other matters addressed in this letter.

Sincerely,

MARTIN MARIETTA MATERIALS, INC.

By: /s/ Roselyn R. Bar

Name: Roselyn R. Bar

Title: Senior Vice President, General Counsel and
Corporate Secretary

cc: Jerry F. Perkins, Jr., Secretary and Assistant General Counsel, Vulcan Materials Company

Edward D. Herlihy, Wachtell, Lipton, Rosen & Katz

Igor Kirman, Wachtell, Lipton, Rosen & Katz

Laurence B. Orloff, Esq., Orloff, Lowenbach, Stifelman & Siegel, P.A.

Alan S. Naar, Esq., Greenbaum, Rowe, Smith & Davis LLP

Peter Allan Atkins, Esq., Skadden, Arps, Slate, Meagher & Flom LLP

Eric L. Cochran, Esq., Skadden, Arps, Slate, Meagher & Flom LLP

Ann Beth Stebbins, Esq., Skadden, Arps, Slate, Meagher & Flom LLP

Philip R. Lochner, Jr.

Edward W. Money Penny

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

CONFIDENTIALITY AGREEMENT

This agreement (“Agreement”) is between [—], an individual residing at [—] (“Recipient”), and a company to be named (the “Company”) that is represented by Skadden, Arps, Slate, Meagher & Flom LLP.

WHEREAS, the Recipient is being considered as a possible nominee of the Company to serve on the Board of Directors (the “Board”) of a U.S. based company listed on a national securities exchange to be identified to you following an initial screening process (“Target”);¹

WHEREAS, in order to facilitate discussions regarding the consideration of Recipient for nomination to Target’s Board, the Recipient may receive certain confidential, proprietary and/or non-public information pertaining to the Company and a potential proxy contest, exchange offer or other transaction between Company and Target (“Potential Transaction”), which the Company desires to protect against unauthorized disclosure and improper use; and

WHEREAS, the Company will seek your views in connection with the Potential Transaction described herein.

NOW THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

1. As used herein “Proprietary Information” means any information, communication or data regarding the Company’s businesses, financial condition, operations, assets and liabilities and any notes, records or other documents and materials that contain, reflect, are based on or are generated from any such information, communication or data. Proprietary Information shall also include any information, communication or data regarding a Potential Transaction (including, without limitation, that you are being considered for, or may become, a nominee of the Company, the existence or terms of this Agreement or any other arrangement or discussions between you and the Company or its Representatives, and the status of any such Potential Transaction) that has been or may be provided or made available to Recipient by the Company or any of its directors, officers, employees, agents, advisors or other representatives (“Representatives”) orally, in writing, electronically or to which the Recipient has access by way of inspection, observation or otherwise.

2. Recipient will not disclose any information, communication or data received from the Company or its Representatives, including Proprietary Information in any manner whatsoever without the prior written approval of the Company. Recipient will not use Proprietary Information for any purpose other than for the benefit of the Company in connection with the Potential Transaction (the “Purpose”).

3. All Proprietary Information which has been or will be disclosed to the Recipient shall be deemed proprietary and subject to the terms of this Agreement unless specifically documented in writing by the Company that said communication is non-proprietary.

¹ Screening process will consist of, among other things, completion of a questionnaire involving a group of potential targets and a background check.

4. The obligations imposed by this Agreement will not apply with respect to any Proprietary Information required to be disclosed by Recipient pursuant to an order of a court of competent jurisdiction, provided that the Recipient promptly notifies the Company of such order to allow the Company to contest such disclosure.

5. This Agreement and the obligations hereunder shall terminate on the later of three (3) years after the effective date of this Agreement or Recipient's last date of service on the Board, if elected; provided that if Recipient is elected to the Board, Recipient may disclose or use such Proprietary Information to the extent, in the written opinion of counsel, such disclosure or use is required by applicable law or exchange listing requirements.

6. Recipient acknowledges that it is aware that applicable United States securities laws prohibit any person who has material nonpublic information about a company from purchasing or selling securities of such company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

7. You acknowledge that the Proprietary Information is confidential and disclosure of Proprietary Information to third parties, or use of Proprietary Information other than as expressly permitted herein, may be expected to cause harm to the Company. You agree that the Company shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this letter agreement.

8. This Agreement shall be governed by the laws of the State of New York and any suit brought by either party against the other party for claims arising out of this Agreement will be brought in the federal and/or state courts sitting therein.

9. Upon the written request and instruction of the Company, all Proprietary Information in the possession of the Recipient shall be returned to the Company.

10. Recipient will agree to be bound as a "Representative" of the Company under the terms of the confidentiality agreement between the Company and the Target for so long as such agreement remains in effect.

11. This Agreement constitutes the entire agreement between the parties with respect to the disclosure(s) of Proprietary Information. Any amendments to this Agreement must be in writing and executed by authorized representatives of each party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto and shall become effective as of November , 2011:

Skadden, Arps, Slate, Meagher & Flom LLP
on behalf of the Company

By: _____
Signature

By: _____
Signature

Print Name

Print Name