SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY TRADING FUND, LAWRENCE BASS AND ANDRES CARULLO AS ALL OF THE PARTNERS OF CITY TRADING FUND, A GENERAL PARTNERSHIP, SUING ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. C. HOWARD NYE, STEPHEN P. ZELNAK, JR., SUE W. COLE, DAVID G. MAFFUCCI, WILLIAM E. MCDONALD, FRANK H. MENAKER, JR., LAREE E. PEREZ, MICHAEL J. QUILLEN, DENNIS L. REDIKER, RICHARD A. VINROOT, MARTIN MARIETTA MATERIALS, INC., and TEXAS INDUSTRIES, INC. Defendants.	**Index No. 651668/2014** Hon. Shirley Werner Kornreich (IAS Commercial Part 54)

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ANY AND ALL PERSONS OR ENTITIES WHO HELD SHARES OF MARTIN MARIETTA MATERIALS, INC. ("MARTIN MARIETTA" OR THE "COMPANY") COMMON STOCK, EITHER OF RECORD OR BENEFICIALLY, AT ANY TIME BETWEEN MARCH 25, 2013 AND 11:58 P.M. (EST) ON JULY 1, 2014, INCLUDING ANY AND ALL OF THEIR RESPECTIVE SUCCESSORS IN INTEREST, PREDECESSORS, REPRESENTATIVES, TRUSTEES, EXECUTORS, ADMINISTRATORS, HEIRS, ASSIGNS OR TRANSFEREES, IMMEDIATE AND REMOTE, AND ANY PERSON OR ENTITY ACTING FOR OR ON BEHALF OF, OR CLAIMING UNDER ANY OF THEM, OTHER THAN THE DEFENDANTS, THEIR SUBSIDIARY COMPANIES, AFFILIATES, ASSIGNS, AND MEMBERS OF THEIR IMMEDIATE FAMILIES, AS THE CASE MAY BE (THE "SETTLEMENT CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THIS CLASS ACTION AND, IF YOU ARE A CLASS MEMBER, CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHTS CONCERNING THE PROPOSED SETTLEMENT DESCRIBED BELOW.

This Notice is not a lawsuit against you; you are not being sued. You are receiving this Notice because you may be a member of the Settlement Class described in this Notice.

I. PURPOSE OF THIS NOTICE

This Notice is given pursuant to an Order of the Supreme Court of the State of New York, County of New York (the "Court") entered in the above-captioned action (the "Action") on June 21, 2017 (the "Notice Order"). The purpose of this Notice is to inform you of the pendency and proposed settlement of the Action (the "Proposed Settlement") and the preliminary certification of a Settlement Class for purposes of the Proposed Settlement, and to notify you of a hearing to be held on October 17, 2017 at 11 a.m., before the Court (the "Settlement Hearing") at 60 Centre St, New York, NY 10007-1488 for the purpose of determining, among other things, the fairness of the Proposed Settlement and the matters listed in the following paragraph.

The New York Supreme Court Appellate Division, First Department (the "Appellate Division") has determined that, for purposes of the Proposed Settlement only, the Action shall be preliminarily maintained as a class action pursuant to CPLR 901, *et seq.*, on behalf of the Settlement Class. At the Settlement Hearing, the Court will consider whether the Settlement Class should be permanently certified as a class pursuant to CPLR 901, *et seq.*; whether Plaintiffs and their counsel have adequately represented the Settlement Class; whether the Proposed Settlement should receive the final approval of the Court; and whether Plaintiffs' counsel should be awarded attorneys' fees and expenses in the amount of $500,000.

If the Court approves the Proposed Settlement at the Settlement Hearing, the Plaintiffs will ask the Court at the Settlement Hearing to enter an Order and Final Judgment dismissing the Action and releasing all Released Claims (as defined below).

The Court has reserved the right to adjourn the Settlement Hearing without further notice to the Settlement Class other than by announcement at the Settlement Hearing or any adjournment thereof.

This Notice describes the rights that you may have pursuant to the Proposed Settlement and what steps you may, but are not required to take, in relation to the Proposed Settlement.

II. HISTORY AND BACKGROUND OF THE PROPOSED SETTLEMENT

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON THE STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES. IT IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE LAWSUIT AND OF THE FINAL SETTLEMENT HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THE LAWSUIT.

On January 28, 2014, Martin Marietta and Texas Industries, Inc. ("TXI") announced that their respective boards of directors had unanimously approved an agreement and plan of merger (the "Merger Agreement") pursuant to which Martin Marietta would acquire TXI by way of a merger in which holders of TXI common stock would receive 0.700 Martin Marietta shares for each share of TXI common stock (the "Transaction").

On March 3, 2014, Martin Marietta filed a Form S-4 registration statement containing a preliminary joint proxy statement/prospectus with the Securities and Exchange Commission (the "SEC").

On May 30, 2014, Martin Marietta and TXI filed a definitive joint proxy statement in connection with the Transaction on Form 424B3 and Schedule 14A, respectively, with the SEC (the "Definitive Proxy Statement").

On May 30, 2014, following the filing of the Definitive Proxy Statement, Plaintiff City Trading Fund filed a putative class action complaint (the "Complaint") against Defendants in the Court. The Complaint alleged that Defendants Martin Marietta and its Directors failed to disclose all material facts in the Definitive Proxy Statement and breached their fiduciary duties in connection therewith. The Complaint alleged that Defendant Texas Industries aided and abetted the Martin Marietta Defendants' alleged breach of fiduciary duties.

The Complaint further alleged, *inter alia*, that by reason of Defendants' actions, Plaintiffs and the class members had suffered and would suffer irreparable harm, and requested that the Court grant appropriate relief for such alleged harm.

On June 2, 2014, Plaintiff City Trading Fund filed a Request for an Order to Show Cause Scheduling a Hearing on its Motion for (1) a Preliminary Injunction Pending Expedited Discovery, (2) Expedited Discovery, and (3) a Hearing Date for a Post-Expedited Discovery Motion to Continue the Preliminary Injunction Pending Trial (the "Preliminary Injunction and Expedited Discovery Motion").

On June 3, 2014, in connection with Plaintiff City Trading Fund's Request for an Order to Show Cause, the Court entered a modified version of the requested Order to Show Cause and scheduled a hearing on the Plaintiff's requests for June 20, 2014.

On June 16, 2014, Defendants filed a request for an Order to Show Cause why Plaintiffs should be entitled to maintain this Action ("Defendants' Order to Show Cause") pursuant to the Court's inherent powers and New York General Business Law § 130.

On June 16, 2014, the Court entered a modified version of Defendants' requested Order to Show Cause and scheduled it to be heard with Plaintiff's Preliminary Injunction and Expedited Discovery Motion on June 20, 2014.

On June 17, 2014, Defendants filed an opposition to Plaintiff's Preliminary Injunction and Expedited Discovery Motion.

On June 19, 2014, Plaintiffs filed an opposition to Defendants' Order to Show Cause.

On June 19, 2014, Plaintiffs filed an Amended Complaint to add as named Plaintiffs Lawrence Bass and Andres Carullo.

After arm's-length negotiations, on June 20, 2014 before the scheduled hearing on Plaintiff's and Defendants' Orders to Show Cause, the Parties and their counsel reached an agreement-in-principle concerning the Proposed Settlement, which they set forth in a Memorandum of Understanding dated June 20, 2014. In connection with such negotiations, Defendants agreed, solely to eliminate the risk, burden, and expense of further litigation, to provide certain supplemental disclosures, which they did on a Form 8-K filed with the SEC on June 20, 2014. The hearing set for June 20, 2014 was taken off the Court's calendar, and the Parties' requests were permitted to be withdrawn.

In connection with the Memorandum of Understanding, Defendants each denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law or breaches of duty or engaged in any of the alleged wrongful acts; and Defendants expressly maintained, and continue to maintain, that they diligently and scrupulously complied with their fiduciary, disclosure, and other legal duties, and that they entered into the Memorandum of Understanding solely to eliminate the risk, burden, and expense of further

litigation. The Memorandum of Understanding should not be deemed an admission or concession by Defendants that any of the supplemental disclosures are material.

On August 15, 2014, Plaintiffs filed a motion seeking orders, *inter alia*, for preliminary approval of the Proposed Settlement and directing notice of the settlement to the Settlement Class (the "Motion for Preliminary Approval"). Pursuant to the request of the Court, on August 15, 2014, Defendants filed a Joint Paper Regarding the Policy Implications of this Action and its Settlement.

On January 7, 2015, the Court denied Plaintiffs' Motion for Preliminary Approval, which denial Plaintiffs appealed on February 9, 2015 to the Appellate Division.

On November 29, 2016, the Appellate Division entered an order which (1) reversed the Court's denial of Plaintiffs' Motion for Preliminary Approval, (2) granted Plaintiffs' Motion for Preliminary Approval of the Parties' Settlement, concluding that the Court's finding that the Supplemental Disclosures were not beneficial was "premature" and that as a result of the Proposed Settlement, the shareholders obtained a number of additional disclosures reflected in the supplemental proxy statement, including disclosures of additional information regarding the investment banks' conflicts of interest and the projections upon which they relied in rendering their fairness opinions, that were arguably beneficial, and (3) remanded the matter to the Court for a hearing, during which any opposition from shareholders could be expressed, to determine whether the Proposed Settlement should receive final approval and whether Plaintiffs' counsel should be awarded attorneys' fees and expenses in the sum of $500,000.

III. THE PROPOSED SETTLEMENT

In consideration for the full settlement and release of all Released Claims (as defined below), Martin Marietta and TXI agreed to disclose, and did disclose, additional information,

substantially in the form attached hereto at Attachment 1 (the "Supplemental Disclosures"), which Martin Marietta filed on Form 8-K with the SEC on June 20, 2014, which information addresses certain additional disclosures demanded in the Complaints and negotiated by Plaintiffs and their counsel.

Pursuant to the Memorandum of Understanding, Defendants acknowledged that the decision to file the Supplemental Disclosures was a direct and sole result of Plaintiffs' lawsuit, Defendants' desire to settle the Action, and the negotiations between counsel for Plaintiffs and counsel for Defendants.

IV. RELEASE AND DISMISSAL OF CLAIMS—ORDER AND FINAL JUDGMENT

At the Settlement Hearing, Plaintiffs will ask the Court to enter an Order and Final Judgment which will, among other things:

a. approve the Proposed Settlement;

b. authorize and direct performance of the Proposed Settlement in accordance with its terms and conditions and reserve jurisdiction to supervise the consummation of the Proposed Settlement;

c. certify the Settlement Class for settlement purposes only pursuant to CPLR 901, *et seq.*;

d. provide for the full and complete discharge, dismissal with prejudice, settlement, and release of, and a permanent injunction barring, any and all manner of claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, amounts, duties, suits, costs, expenses, matters, and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including any claim that Plaintiffs, any

affiliates of Plaintiffs, or any member of the Settlement Class (collectively, the "Releasing Persons") does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against any party to the Action, or any of their respective families, parent entities, controlling persons, associates, predecessors, successors, affiliates, or subsidiaries, and each and all of their respective past or present officers, directors, executives, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, and assigns (collectively, the "Released Persons"), including without limitation those which, if known, might have affected the decision to enter into the Proposed Settlement and Unknown Claims (as defined below) that have been, could have been, or in the future can or might be asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, foreign, or common law, including the federal securities laws and any state disclosure law), by or on behalf of the Releasing Persons, whether individual, direct, class, derivative, representative, legal, equitable, or any other type or in any other capacity against the Released Persons which have arisen, could have arisen, arise now, or hereafter may arise out of or relate in any manner to the allegations, facts, statements, representations, misrepresentations, omissions or any other matter, thing, or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to (i) the Action or any preliminary or definitive joint proxy statement or other disclosure filed or distributed to stockholders in connection with the Transaction (including without limitation the Preliminary Proxy Statement/Prospectus, the First Amended Preliminary Proxy Statement/Prospectus, the Second

Amended Preliminary Proxy Statement/Prospectus, and the Definitive Proxy Statement and any Form 8-K filing containing supplemental disclosures relating thereto), including without limitation any disclosures, non-disclosures or public statements made in connection with any of the foregoing, and (ii) with respect to any named Plaintiffs and any affiliates of Plaintiffs only, in addition to the Released Claims described in part (i) above, any events, transactions, acts, or occurrences related to the Transaction, the negotiation or consideration of the Transaction or any agreements or disclosures relating thereto, and the Merger Agreement (collectively, the "Released Claims"); provided, however, that the Released Claims shall not include any claims to enforce the Proposed Settlement;

e. provide that Defendants shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs, the Settlement Class, and Plaintiffs' counsel in the Action from all claims, penalties, allegations or sanctions (including Unknown Claims, as defined below) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims (the "Defendants' Released Claims");

f. provide that the Proposed Settlement is intended to extinguish all Released Claims and Defendants' Released Claims and, consistent with such intentions, the Releasing Persons and Released Persons shall waive their rights to the extent permitted by state law, federal law, foreign law, or principle of common law, which may have the effect of limiting the releases set forth above. This shall include Unknown Claims. "Unknown Claims" means any claim that a Releasing Person does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Persons, including without limitation those which, if known, might have affected the decision to enter into the Proposed Settlement and any claim that a

Released Person does not know or suspect exists in his, her, or its favor at the time of the release of the Defendants' Released Claims as against the Releasing Persons, including without limitation those which, if known, might have affected the decision to enter into the Proposed Settlement. This shall include a waiver of any rights pursuant to § 1542 of the California Civil Code (or any similar, comparable or equivalent provision) which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Releasing Persons acknowledge that members of the Settlement Class and/or other Martin Marietta stockholders may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Settlement Class, to fully, finally, and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts. Plaintiffs and the members of the Settlement Class by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for, constitutes separate consideration for, and was a key element of the Proposed Settlement and was relied upon by each and all of the Defendants in entering into the Memorandum of Understanding;

g. permanently bar and enjoin the institution and prosecution by Plaintiffs and any member of the Settlement Class of any other action against any Released Person in any court asserting any Released Claims; and

h. reserve jurisdiction over all matters relating to the administration and effectuation of the Proposed Settlement.

V. PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND EXPENSES

The Defendants have acknowledged that Plaintiffs' counsel have asserted a claim for attorneys' fees and reimbursement of expenses in this action based upon the benefits that the Proposed Settlement provided to Martin Marietta's public shareholders. Rather than continuing to litigate this issue, the Parties (after negotiating the other elements of the Proposed Settlement) agreed that, subject to Court approval of the Proposed Settlement (including approval of the resolution of Plaintiffs' counsel's claim for attorneys' fees), Martin Marietta will cause to be paid to Plaintiffs' counsel the sum of $500,000 in full settlement of this claim for attorneys' fees and expenses. Should the Court fail to approve settlement of Plaintiffs' claim for attorneys' fees or unilaterally decide to approve a lesser amount, Defendants shall pay only the lesser amount approved by the Court. The approval of any fee to Plaintiffs' counsel is not a precondition to consummation of the Proposed Settlement, the dismissal with prejudice of the Action, or the release of the Released Claims, and any failure by the Court or any appellate court to approve any amount of fees to Plaintiffs' counsel shall not affect the validity of the Proposed Settlement.

VI. THE SETTLEMENT HEARING

Any Class Member or person representing the Class or friend of the Court may show cause, personally or through counsel, why the Proposed Settlement should or should not be approved, why the Plaintiffs' fees should or should not be paid, or why the Final Judgment should or should not be entered, provided, however, that no one shall be heard or entitled to contest the approval of the terms and conditions of the Proposed Settlement or, if approved, the Final Judgment to be entered thereon, unless that person or entity has served on the following

counsel (i) a written notice of whether he, she or it intends to appear in person at the Settlement Hearing, (ii) proof of his, her or its membership in the Settlement Class or interest in the matter, (iii) a written statement of the position he, she or it will assert, (iv) the reason for his, her or its position, and (v) copies of any papers, briefs or other matter they wish the Court to consider; on or before twenty-eight (28) calendar days before the Settlement Hearing:

Richard B. Brualdi, Esq.
THE BRUALDI LAW FIRM, P.C.
29 Broadway, Suite 2400
New York, New York 10006
(212) 952-0602

Counsel for Plaintiffs City Trading Fund, Lawrence Bass and Andres Carullo

-and-

Sandra C. Goldstein, Esq.
CRAVATH, SWAINE & MOORE, LLP
825 Eighth Avenue
New York, New York 10019
(212) 474-1000

Counsel for Defendants C. Howard Nye, Stephen P. Zelnak, Jr., Sue W. Cole, David G. Maffucci, William E. McDonald, Frank H. Menaker, Jr., Laree E. Perez, Michael J. Quillen, Dennis J. Rediker, Richard A. Vinroot, and Martin Marietta Materials, Inc.

-and-

Rachelle Silverberg, Esq.
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019
(212) 403-1000

Counsel for Defendant Texas Industries, Inc.

and e-filed said objections, papers and briefs with a copy to Part 54, Supreme Court, New York County, 60 Centre St, Room 228, New York, NY 10007-1488, on or before the same date. Even if you do not appear in person at the Settlement Hearing, the Court will consider your written

submission if it is served and filed in accordance with the foregoing procedures. Any Class Member who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Proposed Settlement unless otherwise ordered by the Court.

VII. EXCLUSION FROM SETTLEMENT CLASS

Class Members have the right to seek exclusion from the Settlement Class only as to any direct individual damages claims for monetary damages arising out of the merger and not for any derivative claims or claims for injunctive relief. You may request to be excluded from the Settlement Class with respect to any direct individual damages claims. To do so, you must so state in writing post-marked no later than September 19, 2017 (twenty-eight (28) days before the Settlement Hearing). You must set forth: (a) your name, current address and day-time or evening telephone numbers, (b) the number of shares of Martin Marietta common stock held by you at any time between March 25, 2013 and July 1, 2014, and (c) a clear and unambiguous statement that you wish to be excluded from the Settlement Class. The request for exclusion should be addressed to Plaintiffs' Counsel and Defendants' Counsel as follows:

Richard B. Brualdi, Esq.
THE BRUALDI LAW FIRM, P.C.
29 Broadway, Suite 2400
New York, New York 10006

Counsel for Plaintiffs City Trading Fund, Lawrence Bass and Andres Carullo

-and-

Sandra C. Goldstein, Esq.
CRAVATH, SWAINE & MOORE, LLP
825 Eighth Avenue
New York, New York 10019

Counsel for Defendants C. Howard Nye, Stephen P. Zelnak, Jr., Sue W. Cole, David G. Maffucci, William E. McDonald, Frank H. Menaker, Jr., Laree E. Perez, Michael J. Quillen, Dennis J. Rediker, Richard A. Vinroot, and Martin Marietta Materials, Inc.

-and-

Rachelle Silverberg, Esq.
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019

Counsel for Defendant Texas Industries, Inc.

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL OF THE INFORMATION DESCRIBED ABOVE IS INCLUDED IN ANY SUCH REQUEST.

If you validly request exclusion from the Settlement Class (a) you will be excluded from the Settlement Class with respect to damages claims only, (b) you will not be bound by any judgment entered in the Action as it relates to damages claims only, and (c) you will not be precluded, by reason of your decision to request exclusion from the Settlement Class, from otherwise prosecuting an individual damages claim, if timely, against the Defendants based on the matters complained of in the Action.

VIII. EXAMINATION OF PAPERS

This notice contains only a summary of the terms of the Proposed Settlement. For a more detailed statement of the matters involved in these proceedings, you may review the files at the office of the Clerk of the Court during regular business hours or contact Plaintiffs' counsel at the address and telephone number listed below.

IF YOU HAVE ANY QUESTIONS, PLEASE MAKE ALL INQUIRIES TO:

THE BRUALDI LAW FIRM, P.C.
Richard B. Brualdi
29 Broadway, Suite 2400
New York, New York 10006
(212) 952-0602

PLEASE DO NOT CONTACT THE COURT DIRECTLY

Dated: June 27, 2017

DISTRIBUTED BY ORDER OF THE
SUPREME COURT OF NEW YORK, NEW YORK
COUNTY

8-K 1 form8-k.htm CURRENT REPORT

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): June 20, 2014

Martin Marietta Materials, Inc.

(Exact name of registrant as specified in charter)

North Carolina	1-12744	56-1848578
(State or Other Jurisdiction of Incorporation)	(Commission File No.)	(I.R.S. Employer Identification No.)

2710 Wycliff Road, Raleigh, North Carolina	27607
(Address of Principal Executive Offices)	(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.

Introduction

As previously announced, on January 27, 2014, Martin Marietta Materials, Inc., a North Carolina corporation ("Martin Marietta"), Texas Industries, Inc., a Delaware corporation ("TXI"), and Project Holdings, Inc., a North Carolina corporation and a wholly owned subsidiary of Martin Marietta ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which Merger Sub will merge with and into TXI (the "Merger"), with TXI surviving the Merger as a wholly owned subsidiary of Martin Marietta. On May 30, 2014, Martin Marietta and TXI each filed with the Securities and Exchange Commission (the "SEC") a definitive joint proxy statement/prospectus (the "Definitive Joint Proxy Statement/Prospectus") in connection with the Merger, which was mailed to the shareholders of Martin Marietta and the stockholders of TXI on or about June 2, 2014. Martin Marietta is making this filing in connection with the execution of a memorandum of understanding (the "MOU") regarding the settlement of certain litigation arising out of the announcement of the Merger Agreement.

As disclosed in a Current Report on Form 8-K filed by Martin Marietta on June 10, 2014, a purported stockholder of Martin Marietta filed a putative class action lawsuit against Martin Marietta and members of the Martin Marietta board, and against TXI (collectively, the "Defendants"), in the Supreme Court of the State of New York, County of New York (the "Court"), captioned *City Trading Fund, on Behalf of Itself and All Others Similarly Situated v. C. Howard Nye, et al.*, Index No. 651668/2014 (the "*City Trading Fund* Action"). The plaintiff in the *City Trading Fund* Action (the "Plaintiff") alleges that Martin Marietta and its board members breached their fiduciary duties by failing to disclose material information in the Definitive Joint Proxy Statement/Prospectus, and that TXI aided and abetted such breach. The plaintiff in the *City Trading Fund* Action seeks, among other things, injunctive relief enjoining TXI and Martin Marietta from proceeding with the Merger absent additional disclosures, damages and an award of attorneys' and other fees and costs.

On June 20, 2014, counsel for the Defendants entered into the MOU with counsel for the Plaintiff pursuant to which Martin Marietta and TXI have agreed to make the disclosures concerning the Merger set forth below. The MOU also provides that, solely for purposes of settlement, the Court will certify a class consisting of all persons who were record or beneficial shareholders of Martin Marietta at any time between March 25, 2013 and the consummation of the Merger (the "Class"). In addition, the MOU provides that, subject to approval by the Court after notice to the members of the Class (the "Class Members"), the *City Trading Fund* Action will be dismissed with prejudice and all claims, including derivative claims, that the Class Members may possess with regard to the Merger will be released. In connection with the settlement, the Plaintiff's counsel has expressed its intention to seek an award by the Court of attorneys' fees and expenses. The amount of the award to the Plaintiff's counsel will ultimately be determined by the Court. This payment will not affect the amount of merger consideration to be received by any TXI stockholder in the Merger. There can be no assurance that the parties will ultimately enter into a definitive settlement agreement or that the Court will approve the settlement. In the absence of either event, the proposed settlement as contemplated by the MOU may be terminated.

The Defendants each have denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law or breaches of duty or engaged in any of the alleged wrongful acts and the Defendants expressly maintain that they diligently and scrupulously complied with their fiduciary, disclosure and other legal duties. The Defendants are entering into the MOU and the contemplated settlement solely to eliminate the risk, burden and expense of further litigation. Nothing in the MOU, any settlement agreement or any public filing, including this Current Report on Form 8-K (this "Current Report"), is or shall be deemed to be an admission of the legal necessity of filing or the materiality under applicable laws of any of the additional information contained herein or in any public filing associated with the proposed settlement of the *City Trading Fund* Action.

Supplemental Disclosures

Solely in connection with the contemplated settlement of the *City Trading Fund* Action, Martin Marietta and TXI have agreed to make the following supplemental disclosures to the Definitive Joint Proxy Statement/Prospectus. The following information should be read in conjunction with the Definitive Joint Proxy Statement/Prospectus, which should be read in its entirety. All page references in the information below are to pages in the Definitive Joint Proxy Statement/Prospectus, and

capitalized terms used in this Current Report shall have the meanings set forth in the Definitive Joint Proxy Statement/Prospectus, unless otherwise defined herein.

(1) Supplement to "Background of the Merger"

The following disclosure supplements and is to be inserted after the first sentence in the twenty-fifth paragraph under the heading "Background of the Merger" on page 42 of the Definitive Joint Proxy Statement/Prospectus.

These discussions focused on the impact of TXI's revised forecast, and the additional diligence that was provided by TXI to Martin Marietta as a result of such revised forecast, on Martin Marietta's value assessment and TXI's proposed exchange ratio of 0.70, as well as TXI's position on the resolution of the other open issues under negotiation noted above.

(2) Supplement to "Summary of Material Joint Analyses—Estimates"

The following disclosure supplements and is to be inserted after the fifth sentence in the first paragraph under the heading "Summary of Material Joint Analyses—Estimates" on page 58 of the Definitive Joint Proxy Statement/Prospectus.

The publicly available consensus estimates of TXI's CY2014E and CY2015E EBITDA from I/B/E/S used by the Martin Marietta Financial Advisors in their analyses were $165 million and $228 million, respectively.

The following disclosure supplements and is to be inserted after the fourth sentence in the second paragraph under the heading "Summary of Material Joint Analyses—Estimates" on page 58 of the Definitive Joint Proxy Statement/Prospectus.

The publicly available consensus estimates of Martin Marietta's CY2014E and CY2015E EBITDA from I/B/E/S used by the Martin Marietta Financial Advisors in their analyses were $476 million and $589 million, respectively.

(3) Supplement to "Opinions of Martin Marietta's Financial Advisors"

The following disclosure supplements and is to be inserted after the only sentence in the penultimate paragraph under the heading "Opinion of J.P. Morgan Securities LLC" on page 53 of the Definitive Joint Proxy Statement/Prospectus.

According to the Form 13F filed by JPMorgan Chase & Co., the parent entity of J.P. Morgan Securities LLC, with the SEC for the quarter ended March 31, 2014 and the Form 13F/A for the calendar year and quarter ended December 31, 2013, JPMorgan Chase & Co. and its affiliates held the following positions in the securities of TXI:

December 31, 2013	March 31, 2014
27,563 common shares	122,024 common shares

The following disclosure supplements and is to be inserted after the second sentence in the last paragraph under the heading "Opinion of Deutsche Bank Securities Inc." on page 55 of the Definitive Joint Proxy Statement/Prospectus.

According to the Form 13F filed by Deutsche Bank AG, the parent entity of Deutsche Bank Securities Inc., with the SEC for the quarter ended March 31, 2014 and the Form 13F/A for the calendar year and quarter ended December 31, 2013, Deutsche Bank AG and its affiliates held the following positions in the securities of TXI:

December 31, 2013	March 31, 2014
90,629 common shares	52,338 common shares

The following disclosure supplements and is to be inserted after the second sentence in the penultimate paragraph under the heading "Opinion of Barclays Capital Inc." on page 57 of the Definitive Joint Proxy Statement/Prospectus.

According to the Form 13F filed by Barclays PLC, the parent entity of Barclays Capital Inc., with the SEC for the quarter ended March 31, 2014 and the Form 13F for the calendar year and quarter ended December 31, 2013, Barclays PLC and its affiliates held the following positions in the securities of TXI:

December 31, 2013	March 31, 2014
624 common shares	32,084 common shares
19,600 put options	4,200 put options
4,900 call options	2,300 call options

The following disclosure supplements and is to be inserted in place of clause (iii) of the first sentence in the last paragraph under the heading "Opinions of Martin Marietta's Financial Advisors—General" on page 66 of the Definitive Joint Proxy Statement/Prospectus:

An affiliate of J.P. Morgan provides treasury and securities services to NNS Holdings, and the fees paid to such affiliate in connection with such services over the two year period preceding the date of delivery by J.P. Morgan of its fairness opinion is approximately $1.8 million.

(4) Supplement to "Financial Interests of Martin Marietta Directors and Officers in the Merger"

The following disclosure supplements and replaces the first two sentences in the second paragraph under the heading "Financial Interests of Martin Marietta Directors and Officers in the Merger" on page 72 of the Definitive Joint Proxy Statement/Prospectus.

Martin Marietta's directors and executive officers will not receive any special compensation the payment of which is payable upon completion of the merger. Certain of Martin Marietta's executive officers, including Chief Executive Officer Nye, may receive compensation under Martin Marietta's executive compensation programs attributable to additional responsibilities in connection with the merger and subsequent integration process.

Cautionary Statements Regarding Forward-Looking Statements

Certain statements in this communication regarding the proposed acquisition of TXI by Martin Marietta, the expected timetable for completing the transaction, benefits and synergies of the transaction, future opportunities for the combined company and products and any other statements regarding Martin Marietta's and TXI's future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not historical facts are "forward-looking" statements made within the meaning of Section 21E of the Securities Exchange Act of 1934. These statements are often, but not always, made through the use of words or phrases such as "may", "believe," "anticipate," "could", "should," "intend," "plan," "will," "expect(s)," "estimate(s)," "project(s)," "forecast(s)", "positioned," "strategy," "outlook" and similar expressions. All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed in the statements. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are the following: the parties' ability to consummate the transaction; the conditions to the completion of the transaction, including the receipt of approval of both Martin Marietta's shareholders and TXI's stockholders; the regulatory approvals required for the transaction not being obtained on the terms expected or on the anticipated schedule; the parties' ability to meet expectations regarding the timing, completion and accounting and tax treatments of the transaction; the possibility that the parties may be unable to achieve expected synergies and operating efficiencies in connection with the transaction within the expected time-frames or at all and to successfully integrate TXI's operations into those of Martin Marietta; the integration of TXI's operations into those of Martin Marietta being more difficult, time-consuming or costly than expected; operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) being greater than expected following the transaction; the retention of certain key employees of TXI being difficult; Martin Marietta's and TXI's ability to adapt its services to changes in technology or the marketplace; Martin Marietta's and TXI's ability to maintain and grow its relationship with its customers; levels of construction spending in the markets; a decline in the commercial component of the

nonresidential construction market and the subsequent impact on construction activity; a slowdown in residential construction recovery; unfavorable weather conditions; a widespread decline in aggregates pricing; changes in the cost of raw materials, fuel and energy and the availability and cost of construction equipment in the United States; the timing and amount of federal, state and local transportation and infrastructure funding; the ability of states and/or other entities to finance approved projects either with tax revenues or alternative financing structures; and changes to and the impact of the laws, rules and regulations (including environmental laws, rules and regulations) that regulate Martin Marietta's and TXI's operations. Additional information concerning these and other factors can be found in Martin Marietta's and TXI's filings with the SEC, including Martin Marietta's and TXI's most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. These risks, as well as other risks associated with Martin Marietta's proposed acquisition of TXI are also more fully discussed in the definitive joint proxy statement/prospectus that Martin Marietta and TXI filed with the SEC on Form 424B3 and Schedule 14A, respectively, on May 30, 2014 in connection with the proposed acquisition. Martin Marietta and TXI assume no obligation to update or revise publicly the information in this communication, whether as a result of new information, future events or otherwise, except as otherwise required by law. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

Additional Information and Where to Find It

In connection with the proposed transaction between Martin Marietta and TXI, Martin Marietta filed with the SEC a registration statement on Form S-4 that includes a joint proxy statement of Martin Marietta and TXI and that also constitutes a prospectus of Martin Marietta (which registration statement was declared effective on May 30, 2014). INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC BY MARTIN MARIETTA OR TXI, BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT MARTIN MARIETTA, TXI AND THE PROPOSED TRANSACTION. The joint proxy statement/prospectus and other documents relating to the proposed transaction can be obtained free of charge from the SEC's website at www.sec.gov. These documents can also be obtained free of charge from Martin Marietta upon written request to the Corporate Secretary at Martin Marietta Materials, Inc., 2710 Wycliff Road, Raleigh, NC 27607, telephone number (919) 783-4540 or from Martin Marietta's website, http://ir.martinmarietta.com or from TXI upon written request to TXI at Investor Relations, Texas Industries, Inc., 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234, telephone number (972) 647-6700 or from TXI's website, http://investorrelations.txi.com.

Participants in Solicitation

This communication is not a solicitation of a proxy from any investor or security holder. However, Martin Marietta, TXI and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction under the rules of the SEC. Information regarding Martin Marietta's directors and executive officers may be found in its Annual Report for the year ended December 31, 2013 on Form 10-K filed with the SEC on February 24, 2014 and the definitive proxy statement relating to its 2014 Annual Meeting of Shareholders filed with the SEC on April 17, 2014. Information regarding TXI's directors and executive officers may be found in its Annual Report for the year ended May 31, 2013 on Form 10-K filed with the SEC on July 22, 2013 and the definitive proxy statement relating to its 2013 Annual Meeting of Shareholders filed with the SEC on August 23, 2013. These documents can be obtained free of charge from the sources indicated above. Additional information regarding the interests of these participants is also included in the joint proxy statement/prospectus.

Non-Solicitation

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

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.

MARTIN MARIETTA MATERIALS, INC.

Date: June 20, 2014

By: /s/ Roselyn R. Bar

Name: Roselyn R. Bar
Title: Senior Vice President, General Counsel
And Corporate Secretary

8-K/A 1 form8ka.htm AMENDMENT NO. 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K/A

CURRENT REPORT
Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 20, 2014

Martin Marietta Materials, Inc.

(Exact name of registrant as specified in charter)

North Carolina	1-12744	56-1848578
(State or Other Jurisdiction of Incorporation)	(Commission File No.)	(I.R.S. Employer Identification No.)

2710 Wycliff Road, Raleigh, North Carolina	27607
(Address of Principal Executive Offices)	(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.

This Amendment No. 1 to the Registrant's Current Report on Form 8-K (this "Amendment") amends the Registrant's original Current Report on Form 8-K filed earlier today (the "Original Report"), which contained a transcription error. The Original Report reported that, according to the Form 13F filed by Barclays PLC with the SEC for the quarter ended March 31, 2014, Barclays PLC and its affiliates held 32,084 common shares of Texas Industries, Inc. as of March 31, 2014. This Amendment corrects the error by reporting that, according to such Form 13F, Barclays PLC and its affiliates held 360,500 common shares of Texas Industries, Inc. as of March 31, 2014. Other than this correction, this Amendment does not modify the disclosure contained in the Original Report.

Cautionary Statements Regarding Forward-Looking Statements

Certain statements in this communication regarding the proposed acquisition of TXI by Martin Marietta, the expected timetable for completing the transaction, benefits and synergies of the transaction, future opportunities for the combined company and products and any other statements regarding Martin Marietta's and TXI's future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not historical facts are "forward-looking" statements made within the meaning of Section 21E of the Securities Exchange Act of 1934. These statements are often, but not always, made through the use of words or phrases such as "may", "believe," "anticipate," "could", "should," "intend," "plan," "will," "expect(s)," "estimate(s)," "project(s)," "forecast(s)", "positioned," "strategy," "outlook" and similar expressions. All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed in the statements. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are the following: the parties' ability to consummate the transaction; the conditions to the completion of the transaction, including the receipt of approval of both Martin Marietta's shareholders and TXI's stockholders; the regulatory approvals required for the transaction not being obtained on the terms expected or on the anticipated schedule; the parties' ability to meet expectations regarding the timing, completion and accounting and tax treatments of the transaction; the possibility that the parties may be unable to achieve expected synergies and operating efficiencies in connection with the transaction within the expected time-frames or at all and to successfully integrate TXI's operations into those of Martin Marietta; the integration of TXI's operations into those of Martin Marietta being more difficult, time-consuming or costly than expected; operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) being greater than expected following the transaction; the retention of certain key employees of TXI being difficult; Martin Marietta's and TXI's ability to adapt its services to changes in technology or the marketplace; Martin Marietta's and TXI's ability to maintain and grow its relationship with its customers; levels of construction spending in the markets; a decline in the commercial component of the nonresidential construction market and the subsequent impact on construction activity; a slowdown in residential construction recovery; unfavorable weather conditions; a widespread decline in aggregates pricing; changes in the cost of raw materials, fuel and energy and the availability and cost of construction equipment in the United States; the timing and amount of federal, state and local transportation and infrastructure funding; the ability of states and/or other entities to finance approved projects either with tax revenues or alternative financing structures; and changes to and the impact of the laws, rules and regulations (including environmental laws, rules and regulations) that regulate Martin Marietta's and TXI's operations. Additional information concerning these and other factors can be found in Martin Marietta's and TXI's filings with the SEC, including Martin Marietta's and TXI's most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. These risks, as well as other risks associated with Martin Marietta's proposed acquisition of TXI are also more fully discussed in the definitive joint proxy statement/prospectus that Martin Marietta and TXI filed with the SEC on Form 424B3 and Schedule 14A, respectively, on May 30, 2014 in connection with the proposed acquisition. Martin Marietta and TXI assume no obligation to update or revise publicly the information in this communication, whether as a result of new information, future events or otherwise, except as otherwise required by law. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

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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.

MARTIN MARIETTA MATERIALS, INC.

Date: June 20, 2014

By: /s/ Roselyn R. Bar

Name: Roselyn R. Bar
Title: Senior Vice President, General Counsel
And Corporate Secretary