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

DIVISION OF
CORPORATION FINANCE

March 1, 2019

George F. Schoen
Cravath, Swaine & Moore LLP
gschoen@cravath.com

Re: Martin Marietta Materials, Inc.

Dear Mr. Schoen:

This letter is in regard to your correspondence dated February 28, 2019 concerning the shareholder proposal (the "Proposal") submitted to Martin Marietta Materials, Inc. (the "Company") by the New York State Common Retirement Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 28, 2019 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Courtney Haseley
Special Counsel

cc: Patrick Doherty
State of New York
Office of the State Comptroller
pdoherty@osc.state.ny.us

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

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SPECIAL COUNSEL
SAMUEL C. BUTLER

OF COUNSEL
MICHAEL L. SCHLER

February 28, 2019

Martin Marietta Materials, Inc.
Shareholder Proposal of the New York State Common Retirement Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

We are writing on behalf of our client, Martin Marietta Materials, Inc., a North Carolina corporation (the "Company"), to advise the Staff of the Division of Corporation Finance (the "Staff") that at the Company's direction we are formally withdrawing our request that the Staff concur in our view that the Company may properly exclude the shareholder proposal (the "Proposal") previously submitted by the State of New York Office of the State Comptroller as trustee of the New York State Common Retirement Fund (the "Proponent") from the Company's proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the "2019 Proxy Materials").

We are withdrawing our request of the Staff in light of the fact that the Proponent has withdrawn the Proposal and no longer seeks to have it included in the 2019 Proxy Materials. We are enclosing in Exhibit A a copy of a letter from Mr. Patrick Doherty dated February 20, 2019, in which he withdraws the Proposal on behalf of the Proponent.

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at (212) 474-1740 or gschoen@cravath.com.

Sincerely,

/s/ George F. Schoen

George F. Schoen

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

VIA EMAIL: shareholderproposals@sec.gov

Encls.

Copies w/encls. to:

Roselyn R. Bar
Executive Vice President, General Counsel and Corporate Secretary
Martin Marietta Materials, Inc.

VIA EMAIL: roselyn.bar@martinmarietta.com

and

Patrick Doherty
Director of Corporate Governance
State of New York, Office of the State Comptroller
59 Maiden Lane, 30th Floor
New York, NY 10038

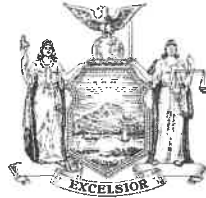
VIA EMAIL: pdoherty@osc.state.ny.us

Exhibit A

Withdrawal Correspondence

[see attached]

THOMAS P. DiNAPOLI
STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 20, 2019

Ms. Roselyn Bar
Executive Vice President, General Counsel
and Corporate Secretary
Martin Marietta
2710 Wycliff Road
Raleigh, NC 27607

Dear Ms. Bar:

On the basis of the commitments contained in your letter of February 20, I hereby withdraw the stockholder resolution submitted by our Office on behalf of the New York State Common Retirement Fund.
Please feel free to contact me at (212) 383-1428 and or email at pdoherty@osc.ny.gov should you have any further questions on this matter.

Very truly yours,

Patrick Doherty
Director of Corporate Governance

Enclosures

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SPECIAL COUNSEL
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MICHAEL L. SCHLER

January 28, 2019

<u>Martin Marietta Materials, Inc.</u>
<u>Shareholder Proposal of the New York State Common Retirement Fund</u>
<u>Securities Exchange Act of 1934—Rule 14a-8</u>

Ladies and Gentlemen:

I am writing on behalf of our client, Martin Marietta Materials, Inc., a North Carolina corporation (the "Company"), in accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended. The Company is seeking to exclude a shareholder proposal (the "Proposal") submitted by the State of New York Office of the State Comptroller as trustee of the New York State Common Retirement Fund (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the "2019 Proxy Materials"). For the reasons set forth below, we respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm that it will not recommend enforcement action if the Company excludes the Proposal from the 2019 Proxy Materials. The Company has advised us as to the factual matters set forth below.

Pursuant to Rule 14a-8(j) and *Staff Legal Bulletin 14D* (Nov. 7, 2008) ("SLB 14D"), we have submitted this letter to the Staff via e-mail at shareholderproposals@sec.gov in lieu of mailing paper copies. Also, in accordance with Rule 14a-8(j), a copy of this letter is being sent simultaneously to the Proponent. This letter is being sent to the Staff fewer than 80 calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission and accordingly, as described below, the Company requests that the Staff waive the 80-day requirement with respect to this letter.

Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, the Company is taking this

opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company and to Roselyn R. Bar, Executive Vice President, General Counsel and Corporate Secretary of the Company.

THE PROPOSAL

The resolution included in the Proposal reads as follows:

"Resolved: Shareholders request that the Board of Directors issue enhanced disclosure annually in communications to shareholders, utilizing quantitative metrics where relevant, focusing on the physical and transition risks to and opportunities for the Company associated with climate change. The reporting should be prepared at reasonable cost, omit proprietary information, and focus on disclosures beyond existing disclosures and beyond those required by law."

A complete copy of the resolution included in the Proposal and related correspondence from the Proponent is set forth in Exhibit A.

BASES FOR EXCLUSION

On behalf of the Company, we respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(i)(10), because the Company has already substantially implemented the Proposal; and
- Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations.

ANALYSIS

I. The Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.

A. Background on Rule 14a-8(10).

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release") and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected"

provided that they have been "substantially implemented" by the company. *See* 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal when it has determined that the company's particular policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., Walgreens Boots Alliance, Inc.* (Nov. 13, 2018); *United Cont'l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder Sys., Inc.* (Feb. 11, 2015); *Wal-Mart Stores, Inc.* (Mar. 27, 2014); *Peabody Energy Corp.* (Feb. 25, 2014); *The Goldman Sachs Group, Inc.* (Feb. 12, 2014); *Hewlett-Packard Co.* (Dec. 18, 2013); *Deere & Co.* (Nov. 13, 2012); *Duke Energy Corp.* (Feb. 21, 2012).

In addition, the Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented in a manner that satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail or exercised discretion in determining how to implement the proposal. For example, in *Pfizer Inc*. (Mar. 1, 2018), the proponent requested a report on risks that the company faced as a result of rising pressure to contain prescription drug prices and asked that the report address the likelihood and potential impact of those risks as they applied to Pfizer, the steps Pfizer was taking to mitigate or manage those risks and the board's oversight role. In its no-action request, the company cited its public disclosures that related to the areas of risk disclosures requested in the proposal. *Id.* Despite the fact that the proponent characterized the company's disclosure as "incomplete" and "generic," the Staff granted the company relief to exclude the proposal under Rule 14a-8(i)(10) based on the company's existing public disclosures relating to the risk areas identified in the proposal. *Id.*; s*ee also Wal-Mart Stores, Inc.* (Mar. 25, 2015) (permitting exclusion of a shareholder proposal requesting an employee engagement metric for executive compensation where a "diversity and inclusion metric related to employee engagement" was already included in the company's management incentive plan); *Entergy Corp* (Feb. 14, 2014) (permitting exclusion of a shareholder proposal requesting a report "on policies the company could adopt . . . to reduce its greenhouse gas emissions consistent with the national goal of 80% reduction in greenhouse gas emission by 2050" where the requested information was already available in its sustainability and carbon disclosure reports); *Duke Energy* (Feb. 21, 2012) (permitting exclusion of a shareholder proposal requesting that the company assess potential actions to reduce greenhouse gas and other emissions where the requested information was available in the Form 10-K and its annual sustainability report); *Exelon Corp* (Feb. 26, 2010) (concurring in the exclusion of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that together provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"); *The Dow Chemical Co.* (Mar. 5, 2008) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting a "global warming report" discussing how the company's efforts to ameliorate climate change may have affected the global climate when the company

had already made statements about its efforts related to climate change in various corporate documents and disclosures).

B. The Company has substantially implemented the Proposal through the Company's existing disclosures to shareholders, which focus on the physical and transition risks to and opportunities for the Company associated with climate change.

The Company has substantially implemented the Proposal, the essential objective of which is to obtain industry-appropriate annual public disclosure about risks and opportunities relating to climate change, such as those in line with the Task Force on Climate-related Financial Disclosures (the "Task Force") Recommendations (the "Recommendations"), which aim to facilitate more informed business and investment decision-making. Specifically, the Proposal requests that the Company "issue enhanced disclosure annually" in its communications to shareholders, which, consistent with the Recommendations, focus on the physical and transition risks to, as well as the opportunities for, the Company associated with climate change.

The Company satisfies the Proposal's essential objective through its existing public disclosures in the Company's Annual Report on Form 10-K for the year ended December 31, 2017 (the "Form 10-K"), the Company's 2017 Annual Report[1] and the Company's 2017 Sustainability Report.[2] In these reports, the Company already delivers annual disclosure in its communications to shareholders with respect to the subject matter of the Proposal and, in fact, already enhanced that disclosure for the 2017 reporting year to focus specifically on the physical and transition risks to and opportunities for the Company associated with climate change, in connection with the Company's ordinary course periodic assessment of its operations and related disclosures. For example, in its Form 10-K and 2017 Annual Report, the Company added the following language, consistent with the Task Force's focus on "physical and transition risks" related to erratic weather as well as "opportunities" related to rising temperatures:

> **Erratic weather can significantly impact operations**.
> Climate change is defined as a change in global or regional climate patterns. Changes to the climate have been occurring for centuries due to minor shifts in the Earth's orbit . . . . More recently, however, this rate of change has accelerated and climate change is considered a leading cause of erratic weather. Production and shipment levels for the Building Materials business correlate with general construction activity, most of which occurs outdoors and, as a result, is affected by erratic weather, seasonal changes and other weather-related conditions which can significantly affect the business.

[1] http://ir.martinmarietta.com/static-files/5ea93cb2-026f-460c-81c6-46f85401245a

[2] https://cdn.martinmarietta.com/media/1413/2017sustainabilityreport.pdf

> Excessive rainfall jeopardizes production, shipments and profitability in all markets served by the Company. In particular, the Company's operations in the southeastern and Gulf Coast regions of the United States and the Bahamas are at risk for hurricane activity, most notably in August, September and October. . . .
>
> NOAA reports that since 1895, the contiguous United States has experienced an average temperature increase of 1.5°F per century . . . . In fact, 2017 marked the 21st consecutive warmer-than-average year for the contiguous United States, and five states, including North Carolina and South Carolina, had a record year. Temperature plays a significant role in the months of March and November, meaningfully affecting the Company's first- and fourth-quarter results, respectively. Warm and/or moderate temperatures in March and November allow the construction season to start earlier and end later, respectively. . . . [Form 10-K, page 6; 2017 Annual Report, page 58]

The above climate-related disclosure augmented existing disclosure in the prior Annual Reports on the potential financial impacts from climate change and climate change regulations:

> [C]limate and inclement weather can reduce the useful life of an asset. [2017 Annual Report, page 79; 2016 Annual Report, page 78]
>
> Large emitters (facilities that emit 25,000 metric tons or more per year) of greenhouse gases (GHG) must report GHG generation to comply with the EPA's Mandatory Greenhouse Gases Reporting Rule (GHG Rule). The Company files annual reports in accordance with the GHG Rule relating to operations at its Magnesia Specialties facilities in Woodville, Ohio, and Manistee, Michigan, as well as the two cement plants in Texas, each of which emit certain GHG, including carbon dioxide, methane and nitrous oxide. . . . Under President Trump's administration, it is unknown whether the EPA is likely to impose additional regulatory restrictions on emissions of GHG. However, the Company believes that any increased operating costs or taxes related to GHG emission limitations at its Woodville or cement operations would be passed on to its customers. The Manistee facility may have to absorb extra costs due to the regulation of GHG emissions in order to maintain competitive pricing in its markets. The Company cannot reasonably predict how much those increased costs may be. [2017 Annual Report, page 61; 2016 Annual Report, page 69]

Further, the 2017 Sustainability Report contains the following examples of specific steps taken by the Company to mitigate transition risks, all of which are not only consistent with the Recommendations, but expand on disclosures in the 2016 Sustainability Report and, where appropriate, provide quantitative metrics relevant to those initiatives:

Our corporate-wide management strategy includes upgrading our mobile fleet and implementing GHG reduction processes and technologies that also improve operational efficiencies. Since 2010, the initial year of our Strategic Operating Analysis and Review (SOAR) process, we have implemented multiple operating initiatives with the potential for broader rollout across our sites. This prepares us for medium- and long-term risk mitigation associated with GHG emissions while ensuring and improving financial sustainability.

Some examples of initiatives include:

- Using alternative fuels such as bio-diesel
- Implementing state-of-the-art emissions monitoring equipment and real-time fleet management software
- Converting from quarry trucks to conveyor belt systems to reduce fuel use [2017 Sustainability Report, page 23]

In 2017, nearly 1,500 old, low-capacity rail cars were replaced with more efficient, high-capacity rail cars. This decreases the number of trips needed to deliver the same tonnage by 7.5 percent, equating to an annual fuel savings of 775,000 gallons and reduction of 7.9 million Kg CO_2 (According to the U.S. Energy Information Administration) [2017 Sustainability Report, page 24]

$200M committed to investing in mobile equipment that delivers improved operating efficiencies and GHG emissions profiles from 2016-2018 [2017 Sustainability Report, page 23]

19% use of alternative fuels at our Midlothian Cement Plant, improved from the 10 percent reported in our 2015 Sustainability Report [2017 Sustainability Report, page 23]

30M + tons of material shipped by Martin Marietta from both our Building Materials and Magnesia Specialties businesses via rail, removing 1.2 million loaded trucks from our nation's roadways [2017 Sustainability Report, page 25]

5M tons of rail capacity expected to be added by Martin Marietta over the next few years in lieu of truck movements [2017 Sustainability Report, page 25]

Martin Marietta is committed to continued investment in its rail-based distribution network and to partnering with companies that share our ideals. Union Pacific believes that the environment is a guiding principle and provides safe, efficient and sustainable freight solutions to help reduce carbon footprints. By transporting shipments through Union Pacific rail,

Martin Marietta reduces greenhouse gas emissions and continues to innovate for environmental progress

Estimated Carbon Footprint for 2017 Rail Shipments

Total Loaded Miles 19,401,915

Carbon Footprint of Union Pacific Shipments* 32,031

Carbon Footprint of Comparative Truck Shipments* 179,411

Total Carbon Emission Savings* 147,380

(*Estimated rail and truck carbon footprint in metric tons CO_2 equivalent. Emissions factors from The Climate Registry general reporting protocol CO_2 includes CO_2 or CO_2 equivalent, methane (CH_4) and nitrous oxide (N_2O)) [2017 Sustainability report, page 25]

The Proposal's "Whereas" clauses highlight wide-spread support for the Recommendations and state that "Marin Marietta's current climate-related disclosure falls short of what the Task Force recommends." In fact, the Company's current climate-related disclosures compare favorably to the Recommendations in that they provide relevant information with respect to the Company's strategic approach to climate change, including its risk management practices as well as the opportunities available to the Company as a result of climate change and adaptations thereto.

Specifically, as noted above, the Company's disclosures identify, and provide various examples and/or quantitative metrics with respect to, (a) physical risks, both event-driven (such as hurricanes) as well as longer-term shifts (such as sustained higher rainfall or temperatures), and the potential for damage to assets and/or disruptions to production or transportation networks, (b) risks associated with the transition to a lower carbon economy, including increased regulatory compliance obligations and the ability to pass related costs to customers as well as higher fuel or electric prices and (c) opportunities arising from better fuel efficiency in transportation networks, transitioning to lower-emission sources of energy and accessing new or expanded markets. Notably, the Company's disclosures in the reports as a whole are comparable in scope and approach to other competitor aggregates companies—allowing for comparisons across companies in an industrial sector, which is an underlying tenant to the Recommendations. *See* Recommendations, pages 18 and 22.

In addition, the fact that the Company's disclosures do not include detail on every type of physical and transition risk mentioned in the Recommendations, such as litigation or reputation risks, or every category of climate-related opportunity, does not undermine the disclosures' essential consistency with the Recommendations. Indeed, the Recommendations explicitly anticipate that companies will exercise discretion in choosing what to disclose. The Recommendations state that they are meant "to serve to encourage organizations to evaluate and disclose . . . the climate-related risks and opportunities that <u>are most pertinent to their business activities</u>." S*ee* Recommendations,

page 5 (emphasis added). Further, the Recommendations state that "the impact of climate-related risks differs by sector, industry, geography, and organization." *Id.* at 8. Because the Company's primary business is the production of aggregates (crushed stone, sand and gravel), which has a relatively small greenhouse gas ("GHG") emission footprint, the Company believes that the most significant financial risk related to the business is the impact of increased fuel, electric or other energy prices on cash flow and/or results. However, the volatility in recent years in oil and gas prices, as well as the differing approaches by the Obama and Trump Administrations to renewable and non-renewable fuels, makes it impossible to reasonably estimate future availability of any specific fuel source or pricing of that supply. Nevertheless, in furtherance of the Recommendations, the Company's disclosures include information relating to its fuel efficiency initiatives, the capital or operational costs of those efforts as well as the related long-term cost savings, and its mitigation efforts.

For example, the Company also already includes in its disclosures to shareholders the following risks to the Company related to its energy use and costs:

> ***Short supplies and high costs of fuel, energy and raw materials affect our businesses.***
>
> Our businesses require a continued supply of diesel fuel, natural gas, coal, petroleum coke and other energy. The financial results of these businesses have been affected by the short supply or high costs of these fuels and energy. Changes in energy costs also affect the prices that the Company pays for related supplies, including explosives, conveyor belting and tires. While we can contract for some fuels and sources of energy, such as fixed-price supply contracts for coal and petroleum coke, significant increases in costs or reduced availability of these items have and may in the future reduce our financial results. Moreover, fluctuations in the supply and costs of these fuels and energy can make planning our businesses more difficult. Because of the fluctuating trends in diesel fuel prices, we enter into fixed-price fuel agreements from time to time for a portion of our diesel fuel to reduce our diesel fuel price risk. Our last fixed-price commitment for a portion of our diesel fuel requirements expired at the end of 2016.
>
> To illustrate how diesel fuel price fluctuations and other energy costs have impacted our business, consider the recent years. In 2013 the average price we paid per gallon of diesel fuel was 4% lower than we paid in 2012, but the average cost of natural gas was 18% higher than 2012. Similarly, in 2014 the average price we paid per gallon of diesel fuel was 8% lower compared to 2013, but the average cost of natural gas increased 24% from 2013. Diesel fuel, which averaged $2.82 per gallon in 2014 and $2.98 per gallon in 2013, represents the single largest component of energy costs for our aggregates, ready mixed concrete and asphalt and paving product lines. Diesel fuel prices declined rapidly during December 2014, ending the year at a per gallon price that was 26% below the 2014 average. This trend continued in 2015, as the Company's average price per gallon of diesel fuel in 2015 was $2.05 compared with $3.02 in 2014. Natural gas

costs also declined in 2015, down 28% from the 2014 average cost. These trends continued in 2016 and 2017 for diesel fuel prices. Average diesel fuel prices per gallon fell to $1.81 in 2017 compared to $1.96 in 2016, which compared with $2.05 in 2015. Our average diesel fuel prices for 2015 and 2016 were higher than spot market prices by $0.30 per gallon since we purchased approximately 40% of our diesel fuel under a fixed price fuel agreement, which has expired, that had locked in a higher price at an earlier time. Natural gas costs increased in 2017 approximately 33% from 2016 levels, which had declined in 2016, down 25% from the 2015 average cost.

The Company has fixed price agreements for 100% of its 2018 coal needs, approximately 33% of its 2018 natural gas needs, and 100% of its 2018 petroleum coke needs.

Cement production requires large amounts of energy, including electricity and fossil fuels. Energy costs represented approximately 22% of the 2017 direct production costs of our cement product line. Therefore, the cost of energy is one of our largest expenses. Prices for energy are subject to market forces largely beyond our control and can be quite volatile. Price increases that we are unable to pass through in the form of price increases for our products, or disruption of the uninterrupted supply of fuel and electricity, could adversely affect us. Accordingly, volatility in energy costs can adversely affect the financial results of our cement product line. Profitability of the cement product line is also subject to kiln maintenance, which requires the plant to be shut down for a period of time as repairs are made. The cement product line incurred shutdown costs of $12.6 and $20.9 million during 2017 and 2016, respectively.

Similarly our ready mixed concrete and asphalt and paving operations also require a continued supply of liquid asphalt and cement, which serve as key raw materials in the production of hot mix asphalt and ready mixed concrete, respectively. Some of these raw materials we can produce internally but most are purchased from third parties. These purchased raw materials are subject to potential supply constraints and significant price fluctuations, which are beyond our control. The financial results of our ready mixed concrete and asphalt and paving operations have been affected by the short supply or high costs of these raw materials. We generally see frequent volatility in the costs for these raw materials. For 2014, we saw higher prices for these raw materials than 2013. This trend reversed in 2015, when we saw lower prices for these raw materials than 2014. Liquid asphalt prices in 2016 were again lower than in 2015. The trend reversed itself again in 2017 when liquid asphalt prices were slightly higher than in 2016. Liquid asphalt prices may not always follow other energy products (e.g., oil or diesel fuel) because of complexities in the refining process which converts a barrel of oil into other fuels and petrochemical products. [Form 10-K, pages 27-28.]

Our Magnesia Specialties business depends in part on the steel industry and the supply of reasonably priced fuels.

> Our Magnesia Specialties business sells some of its products to companies in the steel industry. While we have reduced this risk over the last few years, this business is still dependent, in part, on the strength of the cyclical steel industry. The Magnesia Specialties business also requires significant amounts of natural gas, coal, and petroleum coke, and financial results are negatively affected by increases in fuel prices or shortages. [Form 10-K, page 33]

Recognizing that the full scope of such climate-related disclosures may be more easily accessible to shareholders if they were consolidated, for example, in the Company's Form 10-K reports, the Company is planning to incorporate some of the disclosures relating to climate opportunities and risks appearing in the 2017 Annual Report and 2017 Sustainability Report into its Annual Report on Form 10-K for the year ended December 31, 2018. The Company is also planning to add headings and make other formatting changes that further enhance a shareholder's ability to more easily consider that information, as well as to provide ordinary course updates to such disclosure. Such contemplated improvements, however, do not alter the fact that disclosures consistent with the Recommendations already exist in the Company's 2017 Annual Report and 2017 Sustainability Report, that such disclosures contain information as well as quantitative metrics that the Company has deemed relevant to its business, and that the Company's 2017 Annual Report and the 2017 Sustainability Report are publicly available to both existing and potential shareholders on the Company's website.

As described above, the Company delivers annual public disclosure in its communications to shareholders, namely in its Form 10-K, Annual Report and Sustainability Report, that focus on the physical and transition risks to and opportunities for the Company associated with climate change. As such, the Company believes that it has satisfied the Proposal's essential objective and that its existing public disclosures compare favorably with the Recommendations and, therefore, with the guidelines of the Proposal. Moreover, as the Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the "essential objective" of a proposal, even if the company did not implement the proposal in every detail or exercised discretion in determining how to implement it, the Proposal should be excluded under Rule 14a-8(i)(10) as substantially implemented.

II. The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

A. Background on Rule 14a-8(i)(7).

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials if it deals with a matter relating to the company's ordinary business operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but rather "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *See* Amendments to Rules on Shareholder Proposals, SEC Release No. 34-40018, May 21, 1998 (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is to "confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Id.* The 1998 Release stated that the ordinary business exclusion rests on either of two central considerations: the subject matter of the proposal or micromanagement. *See id.* The latter consideration relates "to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* The 1998 Release identified a proposal that "seeks to impose specific time-frames or methods for implementing complex policies" as an example of a proposal that may micromanage the company. *Id.*

As recently explained by the Staff, the consideration of whether to exclude a proposal based on micromanagement grounds looks only to the degree to which a proposal seeks to micromanage. *See Staff Legal Bulletin No. 14J* (Oct. 23, 2018) ("SLB 14J"). The excludability of a proposal is determined "on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed." *Id.* The Staff further explained that a "proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds," and that it would, consistent with Commission guidance, "consider the underlying substance of the matters addressed by the study or report" in determining whether exclusion would be appropriate. *See id.*

Additionally, just prior to the release of SLB 14J, the Staff had concurred with the omission of a number of shareholder proposals on the basis that the proposals sought to micromanage a company. *See, e.g., PayPal Holding, Inc.* (Mar. 6, 2018) and *EOG Resources, Inc.* (Feb. 26, 2018) (reduce greenhouse gas emissions); *Amazon.com, Inc.* (Mar. 6, 2018), *Verizon Communications Inc.* (Mar. 6, 2018), *Deere & Company* (Dec. 27, 2017), and *Apple Inc.* (Dec. 21, 2017) (achieve net zero omissions); and *Amazon.com, Inc.* (Jan. 18, 2018) (list a particular type of showerhead before other showerheads).

B. The Proposal seeks to "micromanage" the Company by requiring the Company to conduct an assessment of a nature and to a degree beyond that deemed appropriate by management on a complex subject matter that is deeply tied to Company operations as to which shareholders, as a group, would not be in a position to make an informed judgment.

The Proposal, when considered within the framework explained by the Staff in SLB 14J, seeks to micromanage the Company to such a degree that exclusion is proper. Although not excessively detailed on its face, to the extent the Proposal calls for disclosure beyond those already available to shareholders (as discussed in Section II(A) above), and to enhance such disclosure every year, the Proposal seeks to impose an on-going obligation, regardless of management's judgment regarding whether such enhanced disclosure is appropriate or helpful. Moreover, given the geographic reach of the business, the different profiles of the Company's various business lines and the number

of facilities, obtaining data to support and verify quantitative metrics would essentially require the Company to use significant resources, and to engage external experts, in order to assess the risks and opportunities of climate change in a way and to an extent that, given the nature of the Company's operations, cannot be justified by the marginal benefit of any additional information to the Company and its shareholders. As discussed further below, the type of assessment required to provide certain types of additional disclosures is complex, contingent and multifaceted, would require the continual involvement and input of Company management and other personnel, as well as input from third-party experts, and would result in significant unnecessary additional costs. Although the Company reviews the business risks and opportunities, including those relating to climate change and other environmental matters, in the ordinary course, it is in the purview of management to decide whether, how and to what degree to dedicate resources to that kind of strategic undertaking.

SLB 14J notes that the "nature of the proposal" is a factor the Staff will consider in determining whether such proposal should be excluded under the micromanagement prong of Rule 14a-8(i)(7). In this case, the nature of the Proposal calls for disclosure, enhanced every year, beyond the Company's existing disclosures on risks and opportunities related to the Company associated with climate change. Developing enhanced disclosure would effectively require the Company to commit to conducting an intensive site-by-site analysis, across various business lines (including some that are not GHG intensive) and would require continuous monitoring and oversight. Such analysis and oversight would also require a deep understanding and assessment of various industrial processes and technologies, scientific information, product composition and performance demands, market analysis, budgeting, financial engineering and capital expenditures, as well as permitting, construction and regulatory compliance obligations, as each relates to the Company's various business lines.

Further, the Company's business operations cover a wide geographic area. The Company has a network of over 400 facilities, including more than 300 quarries and numerous distribution yards located in 27 states, Canada, and the Bahamas; cement plants in Texas; ready mixed concrete and asphalt operations in Texas, Colorado, Louisiana and Arkansas; paving services in Colorado; and magnesia specialties facilities in Michigan and Ohio. These sites will be subject to varying circumstances as related to potential physical, regulatory and other risks associated with climate change. Developing the enhanced disclosure requested by the Proposal requires an assessment of such circumstances as well as the input and oversight of personnel across Company sites and/or regions. As such, the nature of the proposal involves complex decision-making and assessments by the Company's management of highly-technical issues across a broad geographic footprint relating to the Company's operations.

SLB 14J also points to "the circumstances of the company to which [the proposal] is directed." The Company's primary business involves producing aggregates products (crushed stone, sand and gravel) for the construction industry, as well as operating certain vertically-integrated businesses (e.g., asphalt products and ready-mix concrete). The Company does not consider these operations to be major sources of GHGs. For example, none of the GHGs from those operations exceed thresholds that

would require reporting emissions under the U.S. EPA's Mandatory GHG Reporting Rule. Rather, the GHG emissions from most of the operations of the Company's aggregates business are primarily associated with tailpipe emissions from mobile sources of equipment, and the related costs and opportunities derive from fuel costs and decisions regarding alternative means of transport. The Company also has other operations that involve the manufacture of cement (first acquired in July 2014), lime sold primarily to be used in steel production and certain chemical products used in industrial, agricultural and environmental applications. While these operations involve a greater amount of GHG emissions, they constitute a substantially smaller percentage of the Company's business from a revenue generation and financial risk perspective than the Company's aggregates business. As such, the circumstances of the Company—namely that its business primarily relates to relatively non-carbon intensive aggregates operations conducted over a large geographic footprint with varying risk profiles relating to climate change—should also be an important consideration in the context of this Proposal.

To the extent the Proposal calls for additional disclosure beyond what the Company already has determined is relevant with respect to climate-related risks and opportunities and has addressed in its publicly available reports, the Proposal is essentially dictating that the Company conduct an assessment to identify, monitor and address such risks and opportunities. Given the Company's circumstances as a relatively non-carbon intensive business, management has decided the current level of risk and opportunity assessment, and the disclosures flowing from such assessments, are both consistent with the Recommendations and useful for shareholders and, thus, adequately address the Company's risks and opportunities related to climate change. The Company will continue to review the adequacy of this assessment in the ordinary course. Determining how best to deploy Company resources to identify, monitor and address the business risks and opportunities involves highly technical issues, requires the expertise of the Company's management and is fundamental to the operation of the Company's business. Thus, to the extent the Proposal calls for additional disclosure beyond what the Company already addresses in its publicly available reports, it is micromanaging the Company by probing too deeply into matters of a complex and detailed nature that should be reserved for management.

Moreover, the Proposal calls for issuing enhanced disclosure "annually" relating to such evaluations, asking the Company to increase, year over year, the scope and depth of its disclosures. Given the nature of Company operations and the financial and resource-related costs of such analysis, such an obligation would divert resources and attention away from the priorities that the Company's board of directors and management deem to be in the best interests of the Company and its shareholders—including in respect of pressing issues to the Company's industry associated with worker safety, employee well-being, managing water and dust, and land reclamation and preservation—and transfer responsibility for critical decision-making from management with marginal benefits to the Company and its shareholders. In fact, it is telling that based on a search of Ceres' Climate and Sustainability Shareholder Resolutions Database on January 27, 2019, none of the Company's competitor aggregates companies have received similar proposals from the Proponent or other investors. Rather, such proposals have been submitted to companies that are likely to be significantly more carbon intensive, such as

MGE Energy (a utility holding company) and Southern Copper Corporation (a metallurgical mining and refining company).

In sum, the Proposal seeks to micromanage the Company by effectively mandating the evaluation of climate-related risks and opportunities to a degree and level of detail that is well beyond what Company management deems either appropriate for its business or advantageous to or protective of the Company and its resources and shareholders. Consequently, the Proposal substitutes management's judgment on this complex issue with that of the Company's shareholders, who as a group, are not in a position to make an informed judgment.

REQUEST FOR WAIVER UNDER RULE 14a-8(i)(1)

The Company further requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-(j)(l) for good cause. Rule 14a-8(j)(l) requires that, if a company "intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." However, Rule 14a-8(j)(l) allows the Staff, in its discretion, to permit a company to make its submission later than 80 days before the filing of its definitive proxy statement if the company demonstrates good cause for missing the deadline.

The Company believes that it has good cause for its failure to make its no-action letter request within the 80-day period. Good cause for a waiver exists because the Company proactively attempted to engage with the Proponent to reach a mutually agreeable resolution such that the Proponents would formally withdraw the Proposal, obviating any need for the formal exclusion process under Rule l4a-8 that is the subject of this letter. The Company attempted to schedule discussions with the Proponent in early January 2019; however, the Company and the Proponent were unable to schedule a discussion until late January, thus the efforts to reach a mutually agreeable solution are still ongoing. Additionally, in light of the longest government shut down in U.S. history extending from December 22, 2018 to January 25, 2019, its attendant uncertainty and the Staff's inability to review this letter and concur with our view that we may exclude the Proposal during the shutdown, the Company did not believe it would be appropriate to submit this request until it had an opportunity to discuss the Proposal with the Proponent, which only occurred a few days ago, and after the government reopened. Accordingly, we believe that the Company has "good cause" for not having submitted this letter earlier, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

CONCLUSION

Based on the foregoing analysis, the Company respectfully requests that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal from its 2019 Proxy Materials for the reasons set forth above. We would be pleased to provide the Staff with any additional information, and answer any questions that you may have regarding this letter. I can be reached at (212) 474-1740 or

gschoen@cravath.com. Please copy Roselyn R. Bar, Executive Vice President, General Counsel and Corporate Secretary of the Company, on any related correspondence at roselyn.bar@martinmarietta.com.

We are sending the Proponent a copy of this letter. Rule 14a-8(k) provides that a shareholder proponent is required to send a company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. As such, the Proponent is respectfully reminded that if it elects to submit additional correspondence to the Staff with respect to this matter, a copy of that correspondence should concurrently be furnished directly to my attention and to the attention of Roselyn R. Bar, Executive Vice President, General Counsel and Corporate Secretary of the Company, in accordance with Rule 14a-8(k). My fax number is (212) 474-3700 and Ms. Bar's fax number is (855) 783-4603.

Thank you for your attention to this matter.

Sincerely,

/s/ George F. Schoen

George F. Schoen

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

VIA EMAIL: shareholderproposals@sec.gov

Encls. Copies w/encls. to:

Roselyn R. Bar
Executive Vice President, General Counsel and Corporate Secretary
Martin Marietta Materials, Inc.

VIA EMAIL: roselyn.bar@martinmarietta.com

and

Patrick Doherty
Director of Corporate Governance
State of New York, Office of the State Comptroller
59 Maiden Lane, 30th Floor
New York, NY 10038

VIA EMAIL: pdoherty@osc.state.ny.us

<u>Exhibit A</u>

<u>Proposal and Related Correspondence</u>

THOMAS P. DiNAPOLI
STATE COMPTROLLER

DIVISION OF CORPORATE GOVERNANCE
59 Maiden Lane-30th Floor
New York, NY 10038
Tel: (212) 383-3931
Fax: (212) 681-4468

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 4, 2018

Ms. Roselyn R. Bar
Executive Vice President, General Counsel and Secretary
Martin Marietta Materials, Inc.
2710 Wycliff Road
Raleigh, North Carolina 27607

Dear Ms. Bar:

The Comptroller of the State of New York, Thomas P. DiNapoli, is the trustee of the New York State Common Retirement Fund (the "Fund") and the administrative head of the New York State and Local Retirement System. The Comptroller has authorized me to inform of his intention to offer the enclosed shareholder proposal for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank verifying the Fund's ownership of Martin Marietta Materials, Inc. shares, continually for over one year, is enclosed. The Fund intends to continue to hold at least $2,000 worth of these securities through the date of the annual meeting.

We would be happy to discuss this initiative with you. Should Martin Marietta Materials, Inc. decide to endorse its provisions as company policy, the Comptroller will ask that the proposal be withdrawn from consideration at the annual meeting. Please feel free to contact me at (212) 383-1428 and/or email at pdoherty@osc.ny.gov should you have any further questions on this matter.

Very truly yours,

Patrick Doherty
Director of Corporate Governance

Enclosures

Whereas: 195 countries adopted the 2015 Paris Agreement, which specifies a goal to limit the increase in global temperatures. Mitigating the most devastating impacts of climate change on humanity, ecosystems, and the global economy will require corporations and civil society to take significant action. This transition to a low-carbon future will fundamentally transform the economy and the competitive environment in which all corporations operate. Investors need to know how Martin Marietta plans to thrive during this transition.

As of September 2018, over 500 organizations have expressed support for the industry-led Task Force on Climate-related Financial Disclosures Recommendations (the Recommendations), including: BlackRock, Fidelity, Vanguard, Statoil, and Glass Lewis.

A Statement of Support for the Recommendations — signed by more than 100 leading companies and investors including the London Stock Exchange, Moody's, Morgan Stanley, Royal Dutch Shell and Swiss Re — reads in part:

> We believe that climate change will have significant impacts across many sectors and that we, as business leaders, have an important role to play in ensuring transparency around climate-related risks and opportunities.
>
> ...The Task Force's recommendations will catalyze more consistent, comparable, and reliable disclosure of climate-related information that will facilitate more informed business and investment decision-making.
>
> These disclosures are an important step forward in enabling market forces to drive efficient allocation of capital and support a smooth transition to a low-carbon economy.
>
> [W]e are proud to express our support...and we urge other business leaders to do the same.

Because Martin Marietta contributes to climate change through its greenhouse gas emissions, it faces climate-related risks including carbon-related regulations, damage to infrastructure, and loss of market share caused by delayed action on low-emissions product development.

Martin Marietta's current climate-related disclosure falls short of what the Task Force recommends.

Resolved: Shareholders request that the Board of Directors issue enhanced disclosure annually in communications to shareholders, utilizing quantitative metrics where relevant, focusing on the physical and transition risks to and opportunities for the Company associated with climate change. The reporting should be prepared at reasonable cost, omit proprietary information, and focus on disclosures beyond existing disclosures and beyond those required by law.

J.P.Morgan

Daniel F. Murphy
Vice President
CIB Client Service Americas

December 4, 2018

Ms. Roselyn R. Bar
Executive Vice President, General Counsel and Secretary
Martin Marietta Materials, Inc.
2710 Wycliff Road
Raleigh, North Carolina 27607

Dear Ms. Bar,

This letter is in response to a request by The Honorable Thomas P. DiNapoli, New York State Comptroller, regarding confirmation from JP Morgan Chase that the New York State Common Retirement Fund has been a beneficial owner Martin Marietta Materials Inc. continuously for at least one year as of and including December 4, 2018.

Please note that J.P. Morgan Chase, as custodian for the New York State Common Retirement Fund, held a total of 206,415 shares of common stock as of December 4, 2018 and continues to hold shares in the company. The value of the ownership stake continuously held by the New York State Common Retirement Fund had a market value of at least $2,000.00 for at least twelve months prior to, and including, said date.

If there are any questions, please contact me at (212) 623-8481.

Regards,

Daniel Murphy

cc: Patrick Doherty – NYSCRF
Tana Goldsmith – NYSCRF
Kyle Seeley - NYSCRF

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JPMorgan Chase Bank, N.A.