

NAVISTAR INTERNATIONAL CORP  
Form SC 13D/A  
October 09, 2012

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

## SCHEDULE 13D

[Rule 13d-101]

INFORMATION TO BE INCLUDED IN STATEMENTS FILED

PURSUANT TO § 240.13d-1(a) AND AMENDMENTS

THERE TO FILED PURSUANT TO § 240.13d-2(a)

(Amendment No. 3)\*

## Navistar International Corporation

(Name of Issuer)

Common Stock, par value \$0.10 per share

(Title of Class of Securities)

63934E108

(CUSIP Number)

**Janet Yeung**

**MHR Fund Management LLC**

**40 West 57th Street**

**New York, New York 10019**

**(212) 262-0005**

**(Name, Address and Telephone Number of Person Authorized to Receive Notices of Communication)**

**October 5, 2012**

**(Date of Event Which Requires Filing of This Statement)**

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. "

*Note:* Schedules filed in paper format shall include a signed original and five copies of the Schedule, including all exhibits. *See* §240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (the Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(Continued on following pages)

(Page 1 of 12 Pages)

**1 NAME OF REPORTING PERSON**

MHR INSTITUTIONAL PARTNERS III LP

**2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP** (see instructions)

(a)  (b)

**3 SEC USE ONLY**

**4 SOURCE OF FUNDS** (see instructions)

WC

**5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)**

..

**6 CITIZENSHIP OR PLACE OF ORGANIZATION**

Delaware

**7 SOLE VOTING POWER**

**NUMBER OF**

**SHARES** 9,394,601  
**8 SHARED VOTING POWER**

**BENEFICIALLY**

**OWNED BY** 0  
**EACH** **9 SOLE DISPOSITIVE POWER**

**REPORTING**

**PERSON** 9,394,601  
**10 SHARED DISPOSITIVE POWER**

**WITH**

0

**11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON**

9,394,601

**12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES**

(see instructions)

..

**13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)**

13.7%

**14 TYPE OF REPORTING PERSON** (see instructions)

PN

**1 NAME OF REPORTING PERSON**

MHR INSTITUTIONAL ADVISORS III LLC

**2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP** (see instructions)

(a)  (b)

**3 SEC USE ONLY**

**4 SOURCE OF FUNDS** (see instructions)

AF

**5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)**

..

**6 CITIZENSHIP OR PLACE OF ORGANIZATION**

Delaware

**7 SOLE VOTING POWER**

**NUMBER OF**

**SHARES** 9,394,601

**8 SHARED VOTING POWER**

**BENEFICIALLY**

**OWNED BY**

0

**EACH**

**9 SOLE DISPOSITIVE POWER**

**REPORTING**

**PERSON** 9,394,601

**10 SHARED DISPOSITIVE POWER**

**WITH**

0

**11**      **AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON**

9,394,601

**12**      **CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES**

(see instructions)

..

**13**      **PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)**

13.7%

**14**      **TYPE OF REPORTING PERSON** (see instructions)

OO

**1 NAME OF REPORTING PERSON**

MHR FUND MANAGEMENT LLC

**2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP** (see instructions)

(a)  (b)

**3 SEC USE ONLY**

**4 SOURCE OF FUNDS** (see instructions)

AF

**5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)**

..

**6 CITIZENSHIP OR PLACE OF ORGANIZATION**

Delaware

**7 SOLE VOTING POWER**

**NUMBER OF**

**SHARES** 10,275,000

**8 SHARED VOTING POWER**

**BENEFICIALLY**

**OWNED BY**

0

**EACH**

**9 SOLE DISPOSITIVE POWER**

**REPORTING**

**PERSON** 10,275,000

**10 SHARED DISPOSITIVE POWER**

**WITH**

0

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

10,275,000

**12** CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

(see instructions)

..

**13** PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

14.98%

**14** TYPE OF REPORTING PERSON (see instructions)

OO



CUSIP No. 63934E108

13D

(Page 5 of 12 Pages)

**1 NAME OF REPORTING PERSON**

MHR HOLDINGS LLC

**2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP** (see instructions)

(a)  (b)

**3 SEC USE ONLY**

**4 SOURCE OF FUNDS** (see instructions)

AF

**5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)**

..

**6 CITIZENSHIP OR PLACE OF ORGANIZATION**

Delaware

**7 SOLE VOTING POWER**

**NUMBER OF**

**SHARES** 10,275,000

**8 SHARED VOTING POWER**

**BENEFICIALLY**

**OWNED BY**

0

**EACH**

**9 SOLE DISPOSITIVE POWER**

**REPORTING**

**PERSON** 10,275,000

**10 SHARED DISPOSITIVE POWER**

**WITH**

0

**11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON**

10,275,000

**12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES**

(see instructions)

..

**13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)**

14.98%

**14 TYPE OF REPORTING PERSON** (see instructions)

OO

**1 NAME OF REPORTING PERSON**

MARK H. RACHESKY, M.D.

**2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP** (see instructions)

(a)  (b)

**3 SEC USE ONLY**

**4 SOURCE OF FUNDS** (see instructions)

AF

**5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e)**

..

**6 CITIZENSHIP OR PLACE OF ORGANIZATION**

United States of America

**7 SOLE VOTING POWER**

**NUMBER OF**

**SHARES** 10,275,000  
**8 SHARED VOTING POWER**

**BENEFICIALLY**

**OWNED BY** 0  
**EACH** **9 SOLE DISPOSITIVE POWER**

**REPORTING**

**PERSON** 10,275,000  
**10 SHARED DISPOSITIVE POWER**

**WITH**

0

**11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON**

10,275,000

**12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES**

(see instructions)

..

**13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)**

14.98%

**14 TYPE OF REPORTING PERSON** (see instructions)

IN; HC

**Explanatory Note**

This statement on Schedule 13D (this Statement ) amends and supplements, as Amendment No. 3, the Schedule 13D filed on June 15, 2012 (the Initial Schedule 13D ), which was amended on June 25, 2012 by Amendment No. 1 to the Initial Schedule 13D ( Amendment No. 1 ) and on July 10, 2012 by Amendment No. 2 to the Initial Schedule 13D ( Amendment No. 2 ) and, together with Amendment No. 1 and the Initial Schedule 13D, the Schedule 13D ) and relates to shares of common stock, par value \$0.10 per share (the Common Stock ), of Navistar International Corporation (the Issuer ). Capitalized terms used in this Statement but not defined herein shall have the respective meanings given to such terms in Amendment No. 2.

**Item 3. Source and Amount of Funds or Other Consideration**

Item 3 is hereby amended by adding the following paragraph:

On August 2, 2012, Master Account, Capital Partners (100) and Institutional Partners III acquired an aggregate of 25,000 shares of Common Stock in open market purchases for aggregate consideration (excluding commissions) of \$517,697.50. All of the funds required to acquire such shares were obtained from the capital of Master Account, Capital Partners (100) and Institutional Partners III.

**Item 4. Purpose of the Transaction**

Item 4 is hereby amended by adding the following:

After conversations between representatives of the Reporting Persons and the Issuer, the Reporting Persons (together with certain of their affiliates) and the Issuer entered into a Settlement Agreement, effective October 5, 2012 ( Settlement Agreement ) and certain of the Reporting Persons and the Issuer entered into a Registration Rights Agreement, effective October 5, 2012 ( Registration Rights Agreement ). A copy of each of the Settlement Agreement and Registration Rights Agreement are attached hereto as Exhibits 1 and 2, respectively, and are incorporated herein by reference.

**Item 5. Interests in Securities of the Issuer**

Item 5 is hereby amended by deleting such item in its entirety and replacing it with the following:

The percentages set forth below are calculated based on information contained in the Issuer's Form 10-Q for the quarterly period ended July 31, 2012, which disclosed that there were 68,588,952 shares of Common Stock outstanding as of August 31, 2012.

- (a) (i) Master Account may be deemed to be the beneficial owner of 776,604 shares of Common Stock held for its own account (approximately 1.1% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act).
- (ii) Capital Partners (100) may be deemed to be the beneficial owner of 103,795 shares of Common Stock held for its own account (approximately 0.2% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act).
- (iii) Advisors may be deemed to be the beneficial owner of 880,399 shares of Common Stock (approximately 1.3% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act). This number consists of (A) 776,604 shares of Common Stock held for the account of Master Account and (B) 103,795 shares of Common Stock held for the account of Capital Partners (100).
- (iv) Institutional Partners III may be deemed to be the beneficial owner of 9,394,601 shares of Common Stock held for its own account (approximately 13.7% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act).
- (v) Institutional Advisors III may be deemed to be the beneficial owner of 9,394,601 shares of Common Stock (approximately 13.7% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act). This number consists of 9,394,601 shares of Common Stock held for the account of Institutional Partners III.
- (vi) Fund Management may be deemed to be the beneficial owner of 10,275,000 shares of Common Stock (approximately 14.98% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act). This number consists of all of the shares of Common Stock otherwise described in this Item 5 by virtue of Fund Management's investment management agreement with Master Account, Capital Partners (100) and Institutional Partners III.
- (vii) MHR Holdings may be deemed to be the beneficial owner of 10,275,000 shares of Common Stock (approximately 14.98% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act). This number consists of all of the shares of Common Stock otherwise described in this Item 5 by virtue of MHR Holdings' position as the managing member of Fund Management.
- (viii) Dr. Rachesky may be deemed to be the beneficial owner of 10,275,000 shares of Common Stock (approximately 14.98% of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d 3(d)(1)(i) under the Act). This number consists of all of the shares of Common Stock otherwise described in this Item 5 by virtue of Dr. Rachesky's position as the managing member of each of Advisors, Institutional Advisors III and MHR Holdings.
- (b) (i) Master Account may be deemed to have (x) the sole power to direct the disposition of 776,604 shares of Common Stock which may be deemed to be beneficially owned by Master Account as described above, and (y) the sole power to direct the voting of 776,604 shares of Common Stock which may be deemed to be beneficially owned by Master Account as described above.

(ii) Capital Partners (100) may be deemed to have (x) the sole power to direct the disposition of 103,795 shares of Common Stock which may be deemed to be beneficially owned by Capital Partners (100) as described above, and (y) the sole power to direct the voting of 103,795 shares of Common Stock which may be deemed to be beneficially owned by Capital Partners (100) as described above.

(iii) Advisors may be deemed to have (x) the sole power to direct the disposition of 880,399 shares of Common Stock which may be deemed to be beneficially owned by Advisors as described above, and (y) the sole power to direct the voting of 880,399 shares of Common Stock which may be deemed to be beneficially owned by Advisors as described above.

(iv) Institutional Partners III may be deemed to have (x) the sole power to direct the disposition of 9,394,601 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners III as described above, and (y) the sole power to direct the voting of 9,394,601 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners III as described above.

(v) Institutional Advisors III may be deemed to have (x) the sole power to direct the disposition of 9,394,601 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors III as described above, and (y) the sole power to direct the voting of 9,394,601 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors III as described above.

(vi) Fund Management may be deemed to have (x) the sole power to direct the disposition of 10,275,000 shares of Common Stock which may be deemed to be beneficially owned by Fund Management as described above, and (y) the sole power to direct the voting of 10,275,000 shares of Common Stock which may be deemed to be beneficially owned by Fund Management as described above.

(vii) MHR Holdings may be deemed to have (x) the sole power to direct the disposition of 10,275,000 shares of Common Stock which may be deemed to be beneficially owned by MHR Holdings as described above, and (y) the sole power to direct the voting of 10,275,000 shares of Common Stock which may be deemed to be beneficially owned by MHR Holdings as described above.

(viii) Dr. Rachesky may be deemed to have (x) the sole power to direct the disposition of 10,275,000 shares of Common Stock which may be deemed to be beneficially owned by Dr. Rachesky as described above, and (y) the sole power to direct the voting of 10,275,000 shares of Common Stock which may be deemed to be beneficially owned by Dr. Rachesky as described above.

(c) See Annex A.

(d) (i) The partners of Master Account, including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, Common Stock held for the account of Master Account in accordance with their partnership interests in Master Account.

(ii) The partners of Capital Partners (100), including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, Common Stock held for the account of Capital Partners (100) in accordance with their partnership interests in Capital Partners (100).

(iii) The partners of Institutional Partners III, including Institutional Advisors III, have the right to participate in the receipt of dividends from, or proceeds from the sale of, Common Stock held for the account of Institutional Partners III in accordance with their partnership interests in Institutional Partners III.

(e) Not Applicable.

**Item 6. Contracts, Arrangements, Understandings or Relationships with respect to the Securities of the Issuer.**

Item 6 is hereby amended by adding the following:

The information set forth in Item 4 above and Exhibits 1 and 2 to this Statement are incorporated into this Item 6 by reference.

**Item 7. Material to be filed as Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
1	Settlement Agreement, effective October 5, 2012, by and among MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Holdings LLC, MHR Institutional Partners III LP, MHR Fund Management LLC, MHR Advisors LLC, MHR Institutional Advisors III LLC, Mark H. Rachesky, M.D., and Navistar International Corporation.
2	Registration Rights Agreement, effective October 5, 2012, by and among MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP and MHR Institutional Partners III LP.



**SIGNATURES**

After reasonable inquiry and to the best of our knowledge and belief, the undersigned certify that the information set forth in this Statement is true, complete and correct.

Dated: October 9, 2012

MHR INSTITUTIONAL PARTNERS III, LP  
By: MHR Institutional Advisors III LLC,

its General Partner

By: /s/ Janet Yeung  
Name: Janet Yeung  
Title: Authorized Signatory

MHR INSTITUTIONAL ADVISORS III, LLC

By: /s/ Janet Yeung  
Name: Janet Yeung  
Title: Authorized Signatory

MHR FUND MANAGEMENT LLC

By: /s/ Janet Yeung  
Name: Janet Yeung  
Title: Authorized Signatory

MHR HOLDINGS LLC

By: /s/ Janet Yeung  
Name: Janet Yeung  
Title: Authorized Signatory

MARK H. RACHESKY, M.D.

By: /s/ Janet Yeung, Attorney in Fact

## Annex A

Transaction					
Date	Person Named in Item 5(a)	Common Stock Acquired	Weighted Average Price (\$ [1] [2])	Price Range (\$)	Description of Transaction
August 2, 2012	Master Account	1,997	20.7079	20.46 - 20.95	Open Market Purchase
August 2, 2012	Capital Partners	266	20.7079	20.46 - 20.95	Open Market Purchase
	(100)				
August 2, 2012	Institutional Partners III	22,737	20.7079	20.46 - 20.95	Open Market Purchase

(1) Excluding commissions.

(2) The Reporting Persons undertake to provide, upon request by the Staff of the Securities and Exchange Commission, full information regarding the number of shares of Common Stock purchased at each separate price.

**SETTLEMENT AGREEMENT**

This Settlement Agreement, effective as of October 5, 2012 (this Agreement ), is by and among the persons and entities listed on Schedule A hereto (collectively, the MHR Group , and individually a member of the MHR Group) and Navistar International Corporation (the Company ). In consideration of and reliance upon the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. *Reserved*

2. Board and Committee Representation.

(a) The Company agrees:

- (i) no later than October 8, 2012, to appoint Mark H. Rachesky (the designee of the MHR Group) or his Replacement (as hereinafter defined) (Mr. Rachesky and his Replacement, the MHR Nominee ), as a Class I or Class II director in replacement of a director serving on the Board of the Company on the date hereof (any such director, an Incumbent Director ), subject, if not previously executed, to such nominee s execution and delivery to the Company of the Company s standard director nomination documentation, in the form previously provided to the MHR Group (which documentation included such nominee s consent to be named as a nominee in the Company s proxy statement for the Company s 2013 annual meeting of stockholders, which shall not be held later than February 28, 2013 (the 2013 Annual Meeting ), and to serve as a director if so elected (collectively, the Nomination Documents ));
- (ii) *Reserved*
- (iii) to appoint an additional person approved by the Company, such approval not to be unreasonably withheld or delayed (any such person, an Acceptable Person ) (or such person s Replacement) mutually designated by the MHR Group and the Icahn Group (as defined in that certain Settlement Agreement by and among the Company and the members of the Icahn Group signatory thereto, dated as of October 5, 2012 (the Other Shareholder Agreement ); such Icahn Group members entering into such Settlement Agreement, the Other Shareholder , and the person so mutually designated by the MHR Group and the Icahn Group, the Mutual

Designee ) to the Board, as a Class I or Class II director in replacement of an Incumbent Director (and, if such proposed designee is not an Acceptable Person, the MHR Group and the Other Shareholder shall be entitled to continue designating a potential Mutual Designee until such proposed designee is an Acceptable Person), subject, if not previously executed, to such nominee's execution and delivery to the Company of the Nomination Documents and the resignation referred to in Section 2(c); provided, that if, for any reason, the MHR Group and the Other Shareholder fail to provide the Company with written notice of the selection of any designee prior to the later of December 15, 2012 and twenty (20) days after notice from the Company that a particular designee is not an Acceptable Person, then the right of the MHR Group and the Other Shareholder to designate the Mutual Designee shall immediately and permanently terminate. The Company agrees that any appointment of a Mutual Designee shall occur within three (3) business days after receipt of written notice by the Company from the MHR Group and the Other Shareholder of such selection of an Acceptable Person as described herein and the other documents described in this Section 2(a)(iii). The Company represents that the Other Shareholder Agreement contains the same terms and conditions as this Agreement (other than a provision relating to the termination of that certain agreement between the Company and Other Shareholders, dated November 14, 2011 and the withdrawal of the Other Shareholder's books and records demand and related matters), including the Confidentiality Agreement (as hereinafter defined), but with all references to the Icahn Group, the Icahn Affiliates and the Icahn Nominee under this Agreement being changed to the Other Shareholder, the Other Shareholder Affiliates and the Other Shareholder Nominee, as applicable, and such other modifications as are necessary or appropriate to reflect the Other Shareholder as a party;

- (iv) to include the MHR Nominee and the Mutual Designee in the Company's slate of nominees for election as directors of the Company at the 2013 Annual Meeting;
  
- (v) subject to (A) compliance with applicable New York Stock Exchange listing requirements, being, as of the date hereof, those set forth in Sections 303A.02 and 303A.04 of the New York Stock Exchange listed company manual (the "NYSE Manual") and (B) compliance with changes in applicable law after the date hereof, no later than October 8, 2012, and at all times thereafter provided an MHR Nominee is a member of the Board, to include an MHR Nominee on the Nominating and Corporate Governance Committee (or such other committee responsible for the organizational structure of the Board and its committees, including the search to identify a chief executive officer). The Company hereby acknowledges and agrees that the MHR Nominee does not have a material relationship with the Company as such term is used in Section 303A.02 of the NYSE Manual by virtue of the MHR Group's beneficial ownership of shares of Common Stock as of the date hereof;

- (vi) should any MHR Nominee or the Mutual Designee resign from the Board or be rendered unable to, or refuse to, be appointed to, or to serve on, the Board (other than as a result of not being nominated by the Company for an Annual Meeting subsequent to the 2013 Annual Meeting), the MHR Group, in the case of any MHR Nominee, and the MHR Group and the Other Shareholder, in the case of the Mutual Designee, shall be entitled to designate a replacement that is an Acceptable Person for each such MHR Nominee or Mutual Designee (and if such proposed designee is not an Acceptable Person, the MHR Group, in the case of the MHR Nominee, and the MHR Group and the Other Shareholder, in the case of the Mutual Designee, shall be entitled to continue designating a replacement until such proposed designee is an Acceptable Person) (a Replacement); and the Company shall take all necessary action within its control necessary to satisfy the requirements under Section 2(a) as promptly as practicable. Any such Replacement who becomes a Board member in replacement of an MHR Nominee shall be deemed to be the MHR Nominee for all purposes under this Agreement, and any such Replacement who becomes a Board member in replacement of the Mutual Designee shall be deemed to be the Mutual Designee for all purposes under this Agreement, and in each case, prior to his or her appointment to the Board, shall be required to execute the Nomination Documents and an irrevocable resignation as director in the form attached hereto as Exhibit B or Exhibit C (as applicable) and deliver it to the Company;
  
- (vii) to use commercially reasonable efforts to cause the election of the MHR Nominee and the Mutual Designee to the Board at the 2013 Annual Meeting (including recommending that the Company's stockholders vote in favor of the election of the MHR Nominee and the Mutual Designee, including such nominees in the Company's proxy statement for the 2013 Annual Meeting and otherwise supporting such nominees for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees in the aggregate);
  
- (viii) for any Annual Meeting subsequent to the 2013 Annual Meeting, to notify the MHR Group prior to the August 31st immediately preceding such Annual Meeting (which such date of notification shall in no event be less than 20 calendar days before the advance notice deadlines set forth in Sections 8 and 9 of the Company's Amended and Restated Bylaws, as such date may change from time to time) whether any MHR Nominee or the Mutual Designee will be nominated by the Company for election as a

director at such Annual Meeting and to use commercially reasonable efforts to cause the election of any such nominees so nominated by the Company (including recommending that the Company's stockholders vote in favor of the election of any such nominees, including such nominees in the Company's proxy statement for such Annual Meeting and otherwise supporting any such nominee for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees in the aggregate);

(ix) that as of the date hereof, the Company represents and warrants that the Board is composed of ten (10) directors and that there are no vacancies on the Board. The Company agrees that, from and after the date hereof, so long as an MHR Nominee is a member of the Board, the Company shall not take any action, or support any person who is seeking, to increase the size of the Board above ten (10) directors, each having one vote on all matters; and

(x) no later than October 5, 2012, the Company shall disband the Executive Committee of the Board and amend its by-laws and the applicable corporate governance guidelines of the Company to eliminate the Executive Committee of the Board; and if the Company subsequently creates an executive committee and at such time an MHR Nominee is a member of the Board, to include an MHR Nominee on such executive committee.

(b) Notwithstanding the foregoing, if at any time after the date hereof, the MHR Group, together with all controlled Affiliat