

American Capital Agency Corp
Form S-3MEF
September 28, 2010

As filed with the Securities and Exchange Commission on September 28, 2010

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

American Capital Agency Corp.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

26-1701984
(I.R.S. Employer
Identification Number)

American Capital Agency Corp.

2 Bethesda Metro Center, 14th Floor

Bethesda, Maryland 20814

(301) 968-9300

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Samuel A. Flax

Executive Vice President and Secretary

American Capital Agency Corp.

2 Bethesda Metro Center, 14th Floor

Bethesda, Maryland 20814

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(301) 968-9300

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

COPY TO:

David J. Goldschmidt, Esq.

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036

(212) 735-3000

(212) 735-2000 (facsimile)

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-159650

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (check one)

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered(1) | Proposed | Amount of Registration Fee |
|---|-------------------------------|--|----------------------------------|
| | | Maximum Aggregate Offering Price(2) | |
| Common Stock, \$0.01 par value(2) | \$67,768,750 | \$67,768,750 | \$4,831.91 |

(1) The registrant previously registered shares of its common stock at an aggregate offering price not to exceed \$750,000,000 on Form S-3 (File No. 333-159650), which registration statement was declared effective by the Securities and Exchange Commission on July 13, 2009. In accordance with Rule 462(b) promulgated under the Securities Act, and certain interpretations of the Securities and Exchange Commission

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with respect thereto, an additional amount of securities having a proposed maximum aggregate offering price of no more than 20% of the remaining amount of the offering price of the securities eligible to be sold under such registration statement is hereby registered.

- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act.

This Registration Statement shall become effective upon filing with the Securities and Exchange Commission in accordance with Rule 462(b) promulgated under the Securities Act.

EXPLANATORY NOTE

This registration statement is being filed by American Capital Agency Corp. (the Company) pursuant to Rule 462(b) (Rule 462(b)) under the Securities Act of 1933 and General Instruction IV(A) of Form S-3. Pursuant to Rule 462(b), the contents of the Company's registration statement on Form S-3, as amended (File No. 333-159650), including the exhibits thereto, which was declared effective by the Securities and Exchange Commission on July 13, 2009 (the Initial Registration Statement), are incorporated by reference into this registration statement. This registration statement covers the registration of an additional \$67,768,750 aggregate offering price of shares of the Company's common stock described in the prospectus constituting a part of the Initial Registration Statement.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits

| EXHIBIT NUMBER | DESCRIPTION |
|---------------------------|---|
| 5.1 | Opinion of Skadden, Arps, Slate, Meagher & Flom LLP relating to the legality of the securities being registered |
| 8.1 | Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding tax matters |
| 23.1 | Consent of Ernst & Young LLP |
| 23.2 | Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1) |
| 23.3 | Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 8.1) |
| 24.1* | Power of Attorney of directors and officers |

* Previously filed as Exhibit 24.1 to the registrant's Registration Statement on Form S-3 (File No. 333-159650), which was originally filed with the Commission on June 1, 2009.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Bethesda, State of Maryland, on the 28th day of September, 2010.

American Capital Agency Corp.

By: /s/ SAMUEL A. FLAX
Name: **Samuel A. Flax**
Title: **Executive Vice President and Secretary**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated on the 28th day of September, 2010.

| <u>Signature</u> | <u>Title</u> |
|---|---|
| * _____ Malon Wilkus | Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer) |
| * _____ John R. Erickson | Chief Financial Officer and Executive Vice President (Principal Financial and Accounting Officer) |
| * _____ Morris A. Davis | Director |
| * _____ Randy E. Dobbs | Director |
| * _____ Larry K. Harvey | Director |
| * _____ Alvin N. Puryear | Director |
| *By: <u> /s/ </u> SAMUEL A. FLAX _____ Samuel A. Flax Attorney-in-fact | |