

MTGE Investment Corp.
Form SC TO-T/A
September 07, 2018

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

SCHEDULE TO
AMENDMENT NO. 9
(RULE 14D-100)

Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

MTGE INVESTMENT CORP.
(Names of Subject Company)

MOUNTAIN MERGER SUB CORPORATION
ANNALY CAPITAL MANAGEMENT, INC.
(Offerors)

(Names of Filing Persons)
COMMON STOCK, \$0.01 PAR VALUE
(Title of Class of Securities)

55378A105

(CUSIP Number of Class of Securities)

Anthony Green, Esq.

Chief Legal Officer

Annaly Capital Management, Inc.

1211 Avenue of the Americas

New York, New York 10036

(212) 696-1000

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

with copies to:

Adam O. Emmerich, Esq.

Ronald C. Chen, Esq.

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

(212) 403-2000

CALCULATION OF FILING FEE

Transaction Valuation*

\$904,346,135

Amount of Filing Fee**

\$112,591.09***

* Estimated solely for the purpose of calculating the registration fee pursuant to Rule 0-11 of the Securities Exchange Act of 1934, as amended, based on the product of (i) \$19.73, the average of the high and low sales prices per share of MTGE Investment Corp. common stock on May 14, 2018, as reported by Nasdaq, and (ii) 45,836,094 (the number of shares of MTGE Investment Corp. common stock estimated to be outstanding at the time the offer and the merger are consummated).

** The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, equals 0.0001245 multiplied by the transaction valuation.

*** Previously paid.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$56,552.34
Form or Registration No.: Form S-4 333-224968

Filing Party: Annaly Capital Management,
Inc.
Date Filed: May 16, 2018

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

This Amendment No. 9 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO filed by Annaly Capital Management, Inc. (Annaly), a Maryland corporation, and Mountain Merger Sub Corporation, a Maryland corporation and a wholly owned subsidiary of Annaly (Offeror), relating to the offer (the Offer) by Annaly and Offeror to exchange for each outstanding share of common stock of MTGE Investment Corp., a Maryland corporation (MTGE), \$0.01 par value per share (MTGE common stock), at the election of the holder thereof: (a) \$9.82 in cash and 0.9519 shares of Annaly common stock, par value \$0.01 per share (Annaly common stock); (b) \$19.65 in cash (the all-cash consideration); or (c) 1.9037 shares of Annaly common stock (the all-stock consideration), subject in each case to the election procedures and, in the case of elections to receive the all-cash consideration or the all-stock consideration, to the proration procedures described in the Prospectus (as defined below) and the related Letter of Election and Transmittal (as defined below).

Annaly has filed with the Securities and Exchange Commission (the SEC) a Registration Statement on Form S-4 dated May 16, 2018, relating to, among other things, the offer and sale of shares of Annaly common stock to be issued to holders of shares of MTGE common stock in the Offer (as amended, the Registration Statement). The terms and conditions of the Offer are set forth in the Prospectus/Offer to Exchange, which is a part of the Registration Statement (as amended, the Prospectus), and the related letter of election and transmittal (the Letter of Election and Transmittal), which are filed as Exhibit (a)(4) and (a)(1)(A), respectively, hereto. Pursuant to General Instruction F to Schedule TO, the information contained in the Prospectus and the Letter of Election and Transmittal, including any prospectus supplement or other supplement thereto related to the Offer hereafter filed with the SEC by Annaly or Offeror, is hereby expressly incorporated into this Schedule TO by reference in response to Items 1 through 11 of this Schedule TO and is supplemented by the information specifically provided for in this Schedule TO. The Agreement and Plan of Merger, dated as of May 2, 2018, by and among Annaly, Offeror and MTGE (the Merger Agreement), a copy of which is attached as Exhibit (d)(1) to this Schedule TO, is incorporated into this Schedule TO by reference.

All of the information regarding the Offer as set forth in the Schedule TO, including all exhibits and annexes thereto that were previously filed with the Schedule TO, is hereby expressly incorporated by reference into this Amendment, except that such information is hereby amended and supplemented to the extent specifically provided for herein and to the extent amended and supplemented by the exhibits filed herewith. Capitalized terms used but not defined in this Amendment have the meanings ascribed to them in the Schedule TO.

Items 1 through 11.

Items 1 through 11 of the Schedule TO are hereby amended and supplemented by adding the following information:

At 7:00 a.m. Eastern Time, on September 7, 2018, the Offer expired as scheduled and was not extended. Offeror was advised by Computershare, the depositary and exchange agent for the Offer, that as of the expiration of the Offer, a total of 34,632,768 shares of MTGE common stock had been validly tendered and not validly withdrawn in the exchange offer, representing approximately 75.62% of the issued and outstanding shares of MTGE common stock. The number of shares of MTGE common stock validly tendered and not validly withdrawn pursuant to the Offer satisfied the minimum tender condition to the Offer, and all other conditions to the Offer were satisfied. Accordingly, Offeror accepted for payment and exchange, and will promptly pay for and exchange, all such shares of MTGE common stock validly tendered and not validly withdrawn.

Following the consummation of the Offer, on September 7, 2018, Annaly and Offeror completed the acquisition of MTGE pursuant to the terms of the Merger Agreement, through the merger of MTGE with and into the Offeror in accordance with Section 3-106.1 of the Maryland General Corporation Law, with Offeror continuing as the surviving corporation (the Merger). Following the Merger, all shares of MTGE common stock and MTGE 8.125% Series A Cumulative Redeemable Preferred Stock will be delisted from the Nasdaq and deregistered under the Exchange Act.

On September 7, 2018, Annaly issued a press release announcing the expiration and results of the Offer, and the consummation of the Merger. A copy of the press release is filed as Exhibit (a)(5)(M) hereto and incorporated herein by reference.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibits:

Exhibit No.	Description
(a)(5)(M)	Press Release, dated September 7, 2018 (incorporated by reference to Exhibit 99.1 of Annaly's Form 8-K (filed September 7, 2018))

SIGNATURES

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: September 7, 2018

MOUNTAIN MERGER SUB CORPORATION

By: /s/ ANTHONY GREEN

Name: Anthony Green

Title: *Chairman of the Board of Directors,
Chief Executive Officer and
President*

ANNALY CAPITAL MANAGEMENT, INC.

By: /s/ ANTHONY GREEN

Name: Anthony Green

Title: *Chief Legal Officer*

to have, a material adverse impact on any such entity; (4) has materially breached a company policy, materially breached the provisions of the executive officer's employment agreement (if any), or has committed any other intentional misconduct that has, or may be reasonably expected to have, a material adverse impact on the company or any successor or parent or subsidiary thereof, or (5) has intentionally refused or intentionally failed to act in accordance with any lawful and proper direction or order of the board of directors or the appropriate individual to whom the executive officer reports; provided such direction is not materially inconsistent with the executive officer's customary duties and responsibilities.

For purposes of the amended and restated employment agreements, "good reason" means (1) a material diminution in the executive officer's authority, duties or responsibilities, (2) a material diminution in the executive officer's base compensation unless such a reduction is imposed across-the-board to senior management of the company, (3) a material change in the geographic location at which the executive officer must perform services to us, (4) any other action or inaction that constitutes a material breach by the company or any successor or affiliate of its obligations to the executive officer under the employment agreement or (5) a material diminution in the authority, duties or responsibilities of the supervisor to whom the named executive officer is required to report.

For purposes of the amended and restated employment agreements, "change in control" has the same meaning as such term is given under the terms of our 2012 Equity Incentive Award Plan.

Potential Payments Upon Termination or Change in Control Tables

The following tables summarize the payments and benefits that may become payable to our named executive officers in two scenarios: (1) upon involuntary termination without cause or the executive's resignation for good reason apart from a change in control; or (2) upon involuntary termination without cause or the executive's resignation for good reason within 12 months following a change in control. The table assumes that the termination of employment or change in control, as applicable, occurred on December 31, 2017. The definitions of "cause" and "good reason" are

contained in the employment agreement for each of our named executive officers, which are described above under the heading Employment Agreements.

Table of Contents**Involuntary Termination without Cause or Resignation for Good Reason****Apart from a Change in Control**

Name	Cash Severance ⁽¹⁾	Intrinsic Value of Unvested	
		Stock Awards ⁽²⁾	Intrinsic Value of Unvested Options ⁽³⁾
Thomas J Schall, Ph.D.	\$ 887,177	\$ 991,669	\$ 371,875
Susan M. Kanaya	\$ 683,933	\$ 872,669	\$ 235,522
Markus J. Cappel, Ph.D.	\$ 588,762	\$ 277,669	\$ 80,575
Jan L. Hillson, M.D., Ph.D. ⁽⁴⁾	\$	\$	\$
Rajinder Singh, Ph.D.	\$ 558,900	\$ 178,500	\$ 418,688

Involuntary Termination without Cause or Resignation for Good Reason**Within 12 Months Following a Change in Control**

Name	Cash Severance ⁽⁵⁾	Continuation of Benefits	Intrinsic Value of Unvested	
			Stock Awards ⁽²⁾	Intrinsic Value of Unvested Options ⁽³⁾
Thomas J Schall, Ph.D.	\$ 1,330,765	\$ 17,433	\$ 991,669	\$ 371,875
Susan M. Kanaya	\$ 957,506	\$ 32,328	\$ 872,669	\$ 235,522
Markus J. Cappel, Ph.D.	\$ 794,829	\$ 38,034	\$ 277,669	\$ 80,575
Jan L. Hillson, M.D., Ph.D. ⁽⁴⁾	\$	\$	\$	\$
Rajinder Singh, Ph.D.	\$ 754,515	\$ 38,036	\$ 178,500	\$ 418,688

- (1) Cash severance represents 18 months of base salary for each named executive officer, payable in cash in a lump sum.
- (2) The intrinsic value of the unvested stock awards is calculated by multiplying (i) \$5.95, which was the closing price per share of our common stock on December 29, 2017, by (ii) the number of shares of our common stock subject to the unvested stock awards eligible for acceleration.
- (3) The intrinsic value of the unvested options is calculated by multiplying (i) \$5.95, which was the closing price per share of our common stock on December 29, 2017, less the respective exercise prices of unvested options eligible for acceleration, by (ii) the number of shares of our common stock subject to the unvested options eligible for acceleration.
- (4) Dr. Hillson's employment agreement does not have potential payment arrangements upon termination or change in control.
- (5) Cash severance represents (i) 18 months of base salary for each named executive officer, payable in cash in a lump sum, plus (ii) one and one-half times the executive officer's target bonus.

Table of Contents

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a description of transactions since January 1, 2017 to which we have been a party, in which the amount involved exceeds \$120,000, and in which any of our directors, executive officers or holders of more than 5% of our capital stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest. We believe the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described below were comparable to terms available or the amounts that would be paid or received, as applicable, from unaffiliated third parties.

Director and Executive Officer Compensation

Please see [Proposal 1- Director Compensation](#) for additional information regarding compensation of our directors. Please see [Executive Compensation and Other Information](#) for additional information regarding compensation of our executive officers.

Employment Agreements

We have entered into employment agreements with our executive officers. For more information regarding these agreements, see [Executive Compensation and Other Information](#) Narrative Disclosure to Summary Compensation Table Employment Agreements.

Indemnification Agreements

We have entered into indemnification agreements with each of our executive officers and directors.

Procedures for Related Party Transactions

Any request for us to enter into a related party transaction with an officer, director, principal stockholder or any of their immediate family members or affiliates, in which the amount involved exceeds \$120,000 must first be presented to our audit committee for review, consideration and approval. In approving or rejecting any such proposal, our audit committee is to consider the relevant facts and circumstances available and deemed relevant to the audit committee, including, but not limited to, the risks, costs and benefits to us, the extent of the related party's interest in the transaction, the terms of the transaction, the availability of other sources for comparable services or products and the terms available to or from, as the case may be, unrelated third parties or to or from our employees generally. The audit committee will then document its findings and conclusions in written minutes. In the event a transaction relates to a member of our audit committee, that member will not participate in the audit committee's deliberations. Further, when stockholders are entitled to vote on a transaction with a related party, the material facts of the related party's relationship or interest in the transaction will be disclosed to the stockholders, who must approve the transaction in good faith. Our related party policy is in writing and is subject to periodic review.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Under Section 16(a) of the Exchange Act, directors, executive officers and beneficial owners of 10% or more of our common stock, or reporting persons, are required to report to the SEC on a timely basis the initiation of their status as a reporting person and any changes with respect to their beneficial ownership of our common stock. Based solely on our review of copies of such forms that we have received, or written representations from reporting persons, we believe that during the fiscal year ended December 31, 2017, all executive officers, directors and greater than 10% stockholders complied with all applicable filing requirements.

Table of Contents

STOCKHOLDER PROPOSALS

Proposals of stockholders intended to be presented at our annual meeting of stockholders to be held in 2019 must be received by us no later than December 7, 2018, which is 120 days prior to the first anniversary of the mailing date of this proxy, in order to be included in our proxy statement and form of proxy relating to that meeting, unless the date of the 2018 annual meeting of stockholders is changed by more than 30 days from the anniversary of our 2018 annual meeting, in which case the deadline for such proposals will be a reasonable time before we begin to print and send our proxy materials. These proposals must comply with the requirements as to form and substance established by the SEC for such proposals in order to be included in the proxy statement.

In addition, our amended and restated bylaws establish an advance notice procedure with regard to certain matters, including stockholder proposals not included in our proxy statement, to be brought before an annual meeting of stockholders. In general, notice must be received at our principal executive offices not less than 90 calendar days before nor more than 120 calendar days before the one year anniversary of the date on which we first mailed our proxy statement to stockholders in connection with the previous year's annual meeting of stockholders. Therefore, to be presented at our 2019 annual meeting of stockholders, such a proposal must be received by us no earlier than December 7, 2018 and no later than January 6, 2019. However, if the date of the annual meeting is more than 30 days earlier or more than 60 days later than such anniversary date, notice must be received not later than the close of business on the later of 90 calendar days in advance of such annual meeting or, if later, ten calendar days following the date on which public announcement of the date of the meeting is first made. If the stockholder fails to give notice by these dates, then the persons named as proxies in the proxies solicited by the board of directors for the 2019 annual meeting may exercise discretionary voting power regarding any such proposal. Stockholders are advised to review our amended and restated bylaws which also specify requirements as to the form and content of a stockholder's notice.

ANNUAL REPORT

Our annual report for the year ended December 31, 2017 will be mailed to stockholders of record on or about April 6, 2018. Our annual report does not constitute, and should not be considered, a part of this proxy solicitation material.

Any person who was a beneficial owner of our common stock on the record date may request a copy of our Annual Report on Form 10-K for the year ended December 31, 2017, and it will be furnished without charge upon receipt of a written request identifying the person so requesting a report as a stockholder of our company at such date. Requests should be directed to ChemoCentryx, Inc., 850 Maude Avenue, Mountain View, CA 94043, Attention: Corporate Secretary.

STOCKHOLDERS SHARING THE SAME ADDRESS

The rules promulgated by the SEC permit companies, brokers, banks or other intermediaries to deliver a single copy of a proxy statement and annual report to households at which two or more stockholders reside. This practice, known as householding, is designed to reduce duplicate mailings and save significant printing and postage costs as well as natural resources. Stockholders sharing an address who have been previously notified by their broker, bank or other intermediary and have consented to householding will receive only one copy of our proxy statement and annual report. If you would like to opt out of this practice for future mailings and receive separate proxy statements and annual reports for each stockholder sharing the same address, please contact your broker, bank or other intermediary. You may also obtain a separate proxy statement or annual report without charge by sending a written request to ChemoCentryx, Inc., 850 Maude Avenue, Mountain View, CA 94043, Attention: Corporate Secretary, or by calling us at 650-210-2900. We will promptly send additional copies of the proxy statement or annual report upon receipt of such request. Stockholders sharing an address that are receiving

Table of Contents

multiple copies of the proxy statement or annual report can request delivery of a single copy of the proxy statement or annual report by contacting their broker, bank or other intermediary or sending a written request to ChemoCentryx, Inc. at the address above.

OTHER MATTERS

We do not know of any business other than that described in this proxy statement that will be presented for consideration or action by the stockholders at the annual meeting. If, however, any other business is properly brought before the meeting, shares represented by proxies will be voted in accordance with the best judgment of the persons named in the proxies or their substitutes. All stockholders are urged to complete, sign and return the accompanying proxy card in the enclosed envelope.

By Order of the Board of Directors

Thomas J. Schall, Ph.D.

President, Chief Executive

Officer and Chairman

Mountain View, California

April 6, 2018

Table of Contents

Table of Contents