

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 25, 2024



AGNC INVESTMENT CORP.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

001-34057
(Commission File Number)

26-1701984
(I.R.S. Employer
Identification No.)

**7373 Wisconsin Avenue, 22nd Floor
Bethesda, Maryland 20814**
(Address of principal executive offices)

Registrant's telephone number, including area code:
(301) 968-9300

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Exchange on Which Registered
Common Stock, par value \$0.01 per share	AGNC	The Nasdaq Global Select Market
Depository shares of 7.000% Series C Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	AGNCN	The Nasdaq Global Select Market
Depository shares of 6.875% Series D Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	AGNCM	The Nasdaq Global Select Market
Depository shares of 6.50% Series E Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	AGNCO	The Nasdaq Global Select Market
Depository shares of 6.125% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock	AGNCP	The Nasdaq Global Select Market
Depository shares of 7.75% Series G Fixed-Rate Reset Cumulative Redeemable Preferred Stock	AGNCL	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01. Other Events

As previously reported, on October 12, 2023, AGNC Investment Corp., a Delaware corporation (the “Company”) entered into separate sales agreements (the “Original Sales Agreements”) with each of Goldman Sachs & Co. LLC, Barclays Capital Inc., BTIG, LLC, Citigroup Global Markets Inc., Citizens JMP Securities, LLC, J.P. Morgan Securities LLC, Keefe, Bruyette & Woods, Inc., Morgan Stanley & Co. LLC, RBC Capital Markets, LLC, UBS Securities LLC, Virtu Americas LLC, and Wells Fargo Securities, LLC (each, an “Agent” and collectively, the “Agents”), to implement a new “at the market” common stock issuance program under which the Company may, from time to time to or through any of the Agents, acting as agent and/or principal, offer and sell shares of its common stock, par value \$0.01 per share (the “Common Stock”). On May 9, 2024, the Company entered into separate amendments to the Original Sales Agreements with each of the Agents to increase the aggregate offering price of Common Stock available for issuance under the Original Sales Agreements (“Amendment No. 1 to the Original Sales Agreements” and together with the Original Sales Agreements, the “Amended Sales Agreements.”). As of October 25, 2024, in addition to the previously disclosed shares of Common Stock sold under the Original Sales Agreements, the Company has sold shares of Common Stock having an aggregate offering price of approximately \$1.25 billion under Amendment No. 1 to the Original Sales Agreements.

On October 25, 2024, the Company entered into separate amendments to the Amended Sales Agreements with each of the Agents to increase the aggregate offering price of Common Stock available for issuance under the Amended Sales Agreements and to revise certain other provisions of the Amended Sales Agreements (“Amendment No. 2 to the Original Sales Agreements” and, together with the Amended Sales Agreements, each, a “Sales Agreement” and collectively, the “Sales Agreements”). As a result of Amendment No. 2 to the Original Sales Agreements, the Company may, but has no obligation to, issue and sell under the Sales Agreements shares of Common Stock having an aggregate offering price of up to \$1.5 billion (the “Shares”).

Shares sold under the Sales Agreements, if any, will be issued pursuant to the Company's automatic shelf registration statement on Form S-3ASR (File No. 333-279249), filed with the Securities and Exchange Commission on May 9, 2024 (the “Registration Statement”), including the prospectus, dated May 9, 2024 and the prospectus supplement, dated October 25, 2024, as the same may be amended or supplemented.

Sales, if any, of Shares under the Sales Agreements may be made in ordinary brokers’ transactions, to or through a market maker, on or through the Nasdaq Global Select Market or any other market venue where the securities may be traded, in the over-the-counter market, in privately negotiated transactions (including block transactions), or through a combination of any such methods of sale. The Agents may also sell Shares by any other method permitted by law. Each Agent will make all sales on a best efforts basis using commercially reasonable efforts consistent with its normal trading and sales practices, on mutually agreed terms between each Agent and the Company. The compensation payable to each Agent for sales of Shares pursuant to its respective Sales Agreement will be up to 1.0% of the gross sales price for any Shares sold through it as agent under the applicable Sales Agreement.

The offering of Shares pursuant to the Sales Agreements will terminate upon the earlier of (1) the sale of all of the Shares or (2) the termination of the Sales Agreements by the Agents or the Company upon 10 days’ notice. The form of Amendment No. 2 to the Original Sales Agreements is filed as Exhibit 1.1 to this Current Report on Form 8-K. The description of Amendment No. 2 to the Original Sales Agreements does not purport to be complete and is qualified in its entirety by reference to the form of Amendment No. 2 to the Original Sales Agreements filed herewith as an exhibit to this Current Report on Form 8-K and incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Item 9.01. Financial Statements and Exhibits.

On October 25, 2024, Skadden, Arps, Slate, Meagher & Flom LLP delivered an opinion (the “Opinion”) to the Company in connection with the Company’s sale of the Shares from time to time to or through the Agents. The

Opinion is being filed herewith, and thereby automatically incorporated by reference into the Registration Statement, in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933.

(d) Exhibits.

Exhibit No. **Description**

1.1	Form of Amendment No. 2 to the Original Sales Agreements
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP
23.1	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1 hereto)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: October 28, 2024

AGNC INVESTMENT CORP.

By: /s/ Kenneth L. Pollack

Kenneth L. Pollack

Executive Vice President, Chief Compliance Officer, General Counsel and Secretary

**AGNC INVESTMENT CORP.
SHARES OF COMMON STOCK
(\$0.01 PAR VALUE PER SHARE)**

**AMENDMENT NO. 2 TO
SALES AGREEMENT**

October 25, 2024

[NAME OF AGENT]
[ADDRESS OF AGENT]

Ladies and Gentlemen:

This Amendment No. 2 (this “**Amendment**”) to the Sales Agreement (as defined below) is entered into as of the date first written above (the “**Effective Date**”) by AGNC Investment Corp., a Delaware corporation (the “**Company**”), and [•] (the “**Agent**”), in order to amend that certain Sales Agreement, dated October 12, 2023, as amended by that certain Amendment No. 1 to Sales Agreement, dated May 9, 2024 (the “**Sales Agreement**”), relating to the offer and sale of shares of the Company’s common stock, par value \$0.01 per share, having an aggregate offering price of up to \$1,250,000,000 (the “**Shares**”) from time to time through the Agent, acting as agent and/or principal.

The parties wish to amend the Sales Agreement through this Amendment to increase the aggregate offering price of Shares that may be sold by the Company under the Sales Agreement and the Alternative Sales Agreements and to revise certain other provisions of the Sales Agreement. The Company has also entered into separate amendments to the Alternative Sales Agreements, dated as of the Effective Date, with each of the Alternative Agents.

Section 1. **Definitions.** Unless otherwise specified herein, capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to such terms in the Sales Agreement.

Section 2. **Representation and Warranty.** The Company represents and warrants to the Agent that this Amendment has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company.

Section 3. **Amendments to the Sales Agreement.**

(a) On and after the Effective Date, the reference to “\$1,250,000,000” in Section 1 of the Sales Agreement shall be struck and replaced with “1,500,000,000” and \$1,500,000,000 shall remain available as the aggregate offering price of Shares that may be sold by the Company under the Sales Agreement and the Alternative Sales Agreements, after giving effect to any prior issuances before the Effective Date.

(b) On and after the Effective Date, Section 3 of the Sales Agreement shall be struck in its entirety and replaced with the following:

“3. **Sale of Placement Shares by the Agent.** Subject to the terms and conditions herein set forth, during an Active Placement Notice Period, the Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the Nasdaq Stock Market LLC and the Nasdaq Global Select Market (“**Nasdaq**”) to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice; *provided, however*, that, except in the case of a block sale transaction to be executed after 4:00 p.m. New York City time, such sales are only permitted to be executed between 9:30 a.m. New York City time and 4:00 p.m. New York City time. The Agent will provide written confirmation to the Company (including by e-mail correspondence to each of the individuals of the Company set forth on Schedule 2 hereto) no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 of this Agreement with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(a) of this Agreement) from the gross proceeds that it receives from such sales. The Agent may sell Placement Shares by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) of the Securities Act, including without limitation sales made directly on Nasdaq or on any other existing trading market for the Common Stock. Subject to the terms of the Placement Notice, the Agent may also sell Placement Shares by any other method permitted by law, including, but not limited to, in negotiated transactions, as shall be agreed by the Company and the Agent. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Placement Shares as required under this Section 3 and (iii) the Agent shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent in the Placement Notice. For the purposes hereof, “**Trading Day**” means any day on which the Common Stock is purchased and sold on the principal market on which the Common Stock is listed or quoted. For the purposes hereof, “**Active Placement Notice Period**” means the period of time commencing upon the earliest time specified in connection with a Placement Notice and ending upon the earlier of (i) the latest time specified in connection with such Placement Notice and (ii) the time that the sale of the Placement Shares described in such Placement

Notice has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement.”

(c) On and after the Effective Date, Section 5(d) of the Sales Agreement shall be struck in its entirety and replaced with the following:

“(d) **One Agent.** The Company agrees that there shall be only one Active Placement Notice Period effective at any time under this Agreement and the Alternative Sales Agreements.”

(d) All references to the Sales Agreement or in any other document executed or delivered in connection therewith shall, from the date hereof, be deemed a reference to the Sales Agreement as amended by this Amendment. Notwithstanding anything to the contrary contained herein, this Amendment shall not have any effect on offerings or sales of Shares prior to the Effective Date or on the terms of the Sales Agreement, and the rights and obligations of the parties thereunder, insofar as they relate to such offerings or sales, including, without limitation, the representations, warranties and agreements (including the indemnification and contribution provisions), as well as the definitions of “Registration Statement,” “Base Prospectus,” “Prospectus Supplement” and “Prospectus” contained in the Sales Agreement prior to the Effective Date.

Section 4. **Applicable Law.** This Amendment and any claim, controversy or dispute arising hereunder or related hereto shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its choice of law provisions.

Section 5. **Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

Section 6. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Amendment. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature Pages Follow]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement by and between the Agent and the Company in accordance with its terms.

Very truly yours,

AGNC INVESTMENT CORP.

By: /s/ Bernice Bell

Name: Bernice Bell

Title: Executive Vice President and
Chief Financial Officer

Accepted as of the date hereof:

[•]

By: ___
Name:
Title:

[LETTERHEAD OF SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP]

October 25, 2024

AGNC Investment Corp.
7373 Wisconsin Ave, 22nd Floor
Bethesda, Maryland 20814

Re: AGNC Investment Corp. Common Stock At-the-Market Offering Program

Ladies and Gentlemen:

We have acted as special United States counsel to AGNC Investment Corp., a Delaware corporation (the "Company"), in connection with the Company's sale of up to \$1,500,000,000 aggregate offering price of shares (the "Securities") of common stock of the Company, par value \$0.01 per share (the "Common Stock"), pursuant to (a) the Sales Agreement, dated October 12, 2023, by and between the Company and Goldman Sachs & Co. LLC (the "Original GS Sales Agreement"), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Goldman Sachs & Co. LLC (the "First Amended GS Sales Agreement"), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Goldman Sachs & Co. LLC (the "Second Amended GS Sales Agreement"), and together with the Original GS Sales Agreement and the First Amended GS Sales Agreement, the "GS Sales Agreement"), (b) the Sales Agreement, dated October 12, 2023, by and between the Company and Barclays Capital Inc. (the "Original Barclays Sales Agreement"), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Barclays Capital Inc. (the "First Amended Barclays Sales Agreement"), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Barclays Capital Inc. (the "Second Amended Barclays Sales Agreement") and together with the Original Barclays Sales Agreement and the First Amended Sales Agreement, the "Barclays Sales Agreement"), (c) the Sales Agreement, dated October 12, 2023, by and between the Company and BTIG, LLC (the "Original BTIG Sales Agreement"), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and BTIG, LLC (the "First Amended BTIG Sales Agreement"), and that certain Amendment No. 2 to Sales Agreement,

dated October 25, 2024, by and between the Company and BTIG, LLC (the “Second Amended BTIG Sales Agreement” and together with the Original BTIG Sales Agreement and the First Amended BTIG Sales Agreement, the “BTIG Sales Agreement”), (d) the Sales Agreement, dated October 12, 2023, by and between the Company and Citigroup Global Markets Inc. (the “Original Citigroup Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Citigroup Global Markets Inc. (the “First Amended Citigroup Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated October 25, 2024, by and between the Company and Citigroup Global Markets Inc. (the “Second Amended Citigroup Sales Agreement” and together with the Original Citigroup Sales Agreement and the First Amended Citigroup Sales Agreement, the “Citigroup Sales Agreement”), (e) the Sales Agreement, dated October 12, 2023, by and between the Company and Citizens JMP Securities, LLC (the “Citizens Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Citizens JMP Securities, LLC (the “First Amended Citizens Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Citizens JMP Securities, LLC (the “Second Amended Citizens Sales Agreement” and together with the Original Citizens Sales Agreement and the First Amended Citizens Sales Agreement, the “Citizens Sales Agreement”), (f) the Sales Agreement, dated October 12, 2023, by and between the Company and J.P. Morgan Securities LLC (the “Original J.P. Morgan Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and J.P. Morgan Securities LLC (the “First Amended J.P. Morgan Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and J.P. Morgan Securities LLC (the “Second Amended J.P. Morgan Sales Agreement” and together with the Original J.P. Morgan Sales Agreement and the First Amended J.P. Morgan Sales Agreement, the “J.P. Morgan Sales Agreement”), (g) the Sales Agreement, dated October 12, 2023, by and between the Company and Keefe, Bruyette & Woods, Inc. (the “Original Keefe Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Keefe, Bruyette & Woods, Inc. (the “First Amended Keefe Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Keefe, Bruyette & Woods, Inc. (the “Second Amended Keefe Sales Agreement” and together with the Original Keefe Sales Agreement and the First Amended Keefe Sales Agreement, the “Keefe Sales Agreement”), (h) the Sales Agreement, dated October 12, 2023, by and between the Company and Morgan Stanley & Co. LLC (the “Original MS Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Morgan Stanley & Co. LLC (the “First Amended MS Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Morgan Stanley & Co. LLC (the “Second Amended MS Sales Agreement” and together with the Original MS Sales Agreement and the First Amended MS Sales Agreement, the “MS Sales Agreement”), (i) the Sales Agreement, dated October 12, 2023, by and between the Company and RBC Capital Markets, LLC (the “Original RBC Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and RBC

Capital Markets, LLC (the “First Amended RBC Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and RBC Capital Markets, LLC (the “Second Amended RBC Sales Agreement” and together with the Original RBC Sales Agreement and the First Amended RBC Sales Agreement, the “RBC Sales Agreement”), (j) the Sales Agreement, dated October 12, 2023, by and between the Company and UBS Securities LLC (the “Original UBS Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and UBS Securities LLC (the “First Amended UBS Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and UBS Securities LLC (the “Second Amended UBS Sales Agreement” and together with the Original UBS Sales Agreement and the First Amended UBS Sales Agreement, the “UBS Sales Agreement”), (k) the Sales Agreement, dated October 12, 2023, by and between the Company and Virtu Americas LLC (the “Original Virtu Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Virtu Americas LLC (the “First Amended Virtu Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Virtu Americas LLC (the “Second Amended Virtu Sales Agreement” and together with the Original Virtu Sales Agreement and the First Amended Virtu Sales Agreement, the “Virtu Sales Agreement”) and (l) the Sales Agreement, dated October 12, 2023, by and between the Company and Wells Fargo Securities, LLC (the “Original Wells Fargo Sales Agreement”), as amended by that certain Amendment No. 1 to Sales Agreement, dated as of May 9, 2024, by and between the Company and Wells Fargo Securities, LLC (the “First Amended Wells Fargo Sales Agreement”), and that certain Amendment No. 2 to Sales Agreement, dated as of October 25, 2024, by and between the Company and Wells Fargo Securities, LLC (the “Second Amended Wells Fargo Sales Agreement” and together with the Original Wells Fargo Sales Agreement and the First Amended Wells Fargo Sales Agreement, the “Wells Fargo Sales Agreement” and, together with the GS Sales Agreement, the Barclays Sales Agreement, the BTIG Sales Agreement, the Citigroup Sales Agreement, the Citizens Sales Agreement, the J.P. Morgan Sales Agreement, the Keefe Sales Agreement, the MS Sales Agreement, the RBC Sales Agreement, the UBS Sales Agreement and the Virtu Sales Agreement, the “Sales Agreements”).

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933 (the “Act”).

In rendering the opinion stated herein, we have examined and relied upon the following:

(a) the registration statement on Form S-3ASR (File No. 333-279249) of the Company relating to the Securities and other securities of the Company filed on May 9, 2024, with the Securities and Exchange Commission (the “Commission”) under the Act allowing for delayed offerings pursuant to Rule 415 of the General Rules and Regulations under the Act (the “Rules and Regulations”), including the information deemed to be a part of the registration statement pursuant to Rule 430B of the Rules and Regulations (such registration statement being hereinafter referred to as the “Registration Statement”);

(b) the prospectus, dated May 9, 2024 (the “Base Prospectus”), which forms a part of and is included in the Registration Statement;

(c) the prospectus supplement, dated October 25, 2024 (the “Prospectus Supplement” and, together with the Base Prospectus, the “Prospectus”) relating to the offering of the Securities, in the form filed by the Company with the Commission pursuant to Rule 424(b) of the Rules and Regulations;

(d) executed copies of each of the Sales Agreements;

(e) an executed copy of a certificate of Kenneth L. Pollack, Executive Vice President, General Counsel, Chief Compliance Officer and Secretary of the Company, dated the date hereof (the “Secretary’s Certificate”);

(f) a copy of the Company’s Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”), as amended and restated and in effect as of April 22, 2021 and as of the date hereof, certified by the Secretary of State of the State of Delaware as of the date hereof, and certified pursuant to the Secretary’s Certificate;

(h) a copy of the Company’s Amended and Restated Bylaws, as amended and restated and in effect as of July 20, 2023 and as of the date hereof (the “Bylaws”), certified pursuant to the Secretary’s Certificate; and

(i) copies of certain resolutions of the Board of Directors of the Company, adopted on September 13, 2023, April 18, 2024 and October 17, 2024, and copies of certain resolutions of the Pricing Committee of the Board of Directors of the Company, adopted on October 12, 2023, May 9, 2024 and October 25, 2024, certified pursuant to the Secretary’s Certificate.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinion stated below, including the facts and conclusions set forth in the Secretary’s Certificate and the factual representations and warranties set forth in the Sales Agreements.

In our examination, we have assumed the genuineness of all signatures, including electronic signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photocopied copies, and the authenticity of the originals of such copies. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon statements and

representations of officers and other representatives of the Company and others and of public officials, including the factual representations and warranties set forth in the Sales Agreements.

We do not express any opinion with respect to the laws of any jurisdiction other than the General Corporation Law of the State of Delaware (the “DGCL”).

Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that, the Securities have been duly authorized by all requisite corporate action on the part of the Company under the DGCL and when issued and sold in accordance with the Sales Agreements, will be validly issued, fully paid and nonassessable provided that the consideration therefor is not less than \$0.01 per share.

In addition, in rendering the foregoing opinion we have assumed that:

(a) the Company’s issuance of the Securities does not and will not (i) except to the extent expressly stated in the opinion contained herein, violate any statute to which the Company or such issuance is subject, or (ii) constitute a violation of, or a breach under, or require the consent or approval of any other person under, any agreement or instrument binding on the Company (except that we do not make this assumption with respect to the Certificate of Incorporation, the Bylaws or those agreements or instruments expressed to be governed by the laws of the State of New York which are listed in Part II of the Registration Statement or the Company’s Annual Report on Form 10-K for the year ended December 31, 2023 although we have assumed compliance with any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of the Company contained in such agreements or instruments), and we have further assumed that the Company will continue to have sufficient authorized shares of Common Stock; and

(b) the Company’s authorized capital stock is as set forth in the Certificate of Incorporation and we have relied solely on the certified copy thereof issued by the Secretary of State of the State of Delaware and have not made any other inquiries or investigations.

This opinion letter shall be interpreted in accordance with customary practice of United States lawyers who regularly give opinions in transactions of this type.

We hereby consent to the reference to our firm under the heading “Legal Matters” in the Prospectus. We also hereby consent to the filing of this opinion with the Commission as an exhibit to the Company’s Current Report on Form 8-K being filed on October 28, 2024 and incorporated by reference into the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the Rules and Regulations.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP