

U.S. 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): December 1, 2011 (December 1, 2011).



American Capital Agency Corp.
(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction
of incorporation)

001-34057
(Commission
File Number)

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

2 Bethesda Metro Center, 14th Floor Bethesda, MD 20814
(Address of principal executive offices, zip code)

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

(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
- Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

Item 1.01 Entry into a Material Definitive Agreement.

On December 1, 2011, American Capital Agency Corp. (the "Company") and American Capital AGNC Management, LLC (the "Manager") entered into separate Sales Agreements (collectively, the "Sales Agreements") with each of Cantor Fitzgerald & Co. ("Cantor") and Mitsubishi UFJ Securities (USA), Inc. ("Mitsubishi" and, together with Cantor, the "Agents"). Under the terms of the Sales Agreements, the Company may sell up to an aggregate of 26,162,000 shares (the "Shares") of its common stock, par value \$0.01 per share ("Common Stock"), from time to time to or through either of the Agents, acting as agent and/or principal.

Sales of the Shares, if any, may be made in any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 under the Securities Act of 1933, as amended, including sales made directly on the NASDAQ Global Select Market, on

any other existing trading market for the Shares or to or through a market maker. Under the Sales Agreements, either Agent (at the Company's election) will use commercially reasonable efforts consistent with its normal sales and trading practices to sell the Shares as directed by the Company. The compensation payable to each Agent for sales of Shares pursuant to its Sales Agreement will be up to 2% of the gross sales price for any Shares sold through it as sales agent under the applicable Sales Agreement.

The Shares will be issued pursuant to the Company's automatic shelf registration statement on Form S-3 (No. 333-170374) (the "Registration Statement"), including the prospectus, dated November 4, 2010, and the prospectus supplement, dated December 1, 2011, as the same may be amended or supplemented.

The Company has agreed to indemnify the Agents against certain specified types of liabilities, including liabilities under the Securities Act of 1933, and to contribute to payments the Agents may be required to make in respect of these liabilities. The Agents or their respective affiliates have engaged and may in the future engage in various financing, commercial banking and investment banking services with, and have provided and may in the future provide financial advisory services to, the Company and its affiliates for which they have received or may receive customary fees and expenses.

Item 1.02 Termination of a Material Definitive Agreement.

On December 1, 2011, the Company delivered a notice to Cantor regarding termination of the Sales Agreement, dated November 8, 2010, by and among the Company and the Manager, on the one hand, and Cantor, on the other hand, relating to the sale by the Company of up to 15,000,000 shares of Common Stock from time to time to or through Cantor, acting as agent and/or principal. All such shares were sold thereunder, except for 1,162,000 shares of Common Stock that are subject to the Sales Agreements described above.

Item 8.01 Other Events.

On December 1, 2011, Skadden, Arps, Slate, Meagher & Flom LLP delivered an opinion (the "Opinion") to the Company in connection with the Company's sale from time to time to or through the Agents of up to an aggregate of 26,162,000 shares of Common Stock pursuant to the Sales Agreements. 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.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No. Description

5.1 Opinion of Skadden, Arps, Slate, Meagher & Flom LLP, dated December 1, 2011

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.

**AMERICAN CAPITAL AGENCY
CORP.**

Dated: December 1, 2011

By: /s/ SAMUEL A. FLAX

Samuel A. Flax
Executive Vice President and Secretary

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036

December 1, 2011

American Capital Agency Corp.

2 Bethesda Metro Center, 14th Floor

Bethesda, Maryland 20814

Re: American Capital Agency Corp. Common Stock At-the-Market Offering Program

Ladies and Gentlemen:

We have acted as special counsel to American Capital Agency Corp., a Delaware corporation (the "Company"), in connection with the Company's sale of up to an aggregate of 26,162,000 shares (the "Securities") of common stock of the Company, par value \$.01 per share (the "Common Stock"), pursuant to (i) the Sales Agreement, dated December 1, 2011, by and among Cantor Fitzgerald & Co., as agent and/or principal, on the one hand, and the Company and American Capital AGNC Management, LLC, a Delaware limited liability company (the "Manager"), on the other hand (the "CF&Co. Sales Agreement"), and (ii) the Sales Agreement, dated December 1, 2011, by and among Mitsubishi UFJ Securities (USA), Inc., as agent and/or principal, on the one hand, and the Company and the Manager, on the other hand (together with the CF&Co. Sales Agreement, the "Sales Agreements"). The Securities were registered by the Company with the Securities and Exchange Commission (the "Commission") on the automatic shelf registration statement on Form S-3 (No. 333-170374) filed on November 4, 2010 (the "Registration Statement") by the Company with the Commission pursuant to the Securities Act of 1933 (the "Act"), including the base prospectus, dated November 4, 2010, as supplemented by a prospectus supplement, dated December 1, 2011, filed by the Company with the Commission pursuant to Rule 424(b) under the Act. The Registration Statement relates to, among other things, the issuance and sale by the Company, from time to time pursuant to Rule 415 of the General Rules and Regulations promulgated under the Act, of an indeterminate number of shares of Common Stock.

This opinion is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement, (ii) the Amended and Restated Certificate of Incorporation of the Company, as certified by the Secretary of State of the State of Delaware, (iii) the Second Amended and Restated By-laws of the Company, as currently in effect, (iv) executed copies of each of the Sales Agreements and (v) certain resolutions of the board of directors of the Company (the "Board") relating to the registration and sale of the Securities (the "Board Resolutions").

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, certificates and records as we have deemed necessary or appropriate as a basis for the opinions set forth herein.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, including endorsements, 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, conformed or photostatic copies and the authenticity of the originals of such copies. In making our examination of documents executed or to be executed, we have assumed that the parties thereto, other than the Company, had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such

documents, and the validity and binding effect thereof on such parties. In addition, we have assumed that the issuance and sale of the Securities do not, violate, conflict with or constitute a default under (i) any agreement or instrument to which the Company is subject (other than the Sales Agreements), (ii) any law, rule or regulation to which the Company is subject (other than Opined on Law, as defined below), (iii) any judicial or regulatory order or decree of any governmental authority (other than those under Opined on Law) or (iv) any consent, approval, license, authorization or validation of, or filing, recording or registration with, any governmental authority (other than those under Opined on Law). As to any facts material to the opinions expressed herein that we have not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others. We have also assumed that, upon issuance of any of the Securities subsequent to the date hereof, the total number of shares of Common Stock of the Company issued and outstanding will not, after giving effect to the issuance of such Securities, exceed the total number of shares of Common Stock that the Company is authorized to issue under its Amended and Restated Certificate of Incorporation in effect at such time. In addition, we have assumed that the price of the Securities will be determined in accordance with the Board Resolutions.

Our opinions set forth herein are limited to the provisions of the Delaware General Corporation Law and, to the extent that judicial or regulatory orders or decrees or consents, approvals, licenses, authorizations, validations, filings, recordings or registrations with governmental authorities are relevant, to those required under such laws (all of the foregoing being referred to as "Opined on Law"). We do not express any opinion with respect to the laws of any jurisdiction other than Opined on Law or as to the effect of any such non-Opined on Law on the opinions herein stated.

Based upon and subject to the foregoing and to the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that, when the Securities are registered in the Company's share registry and delivered upon payment of the agreed upon consideration therefor, the Securities, when issued and sold in accordance with the Sales Agreements, will be duly authorized, validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion with the Commission. 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 of the Commission promulgated thereunder. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very truly yours,

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